EXHIBITS

A-14 to Z-14

CROSS-EXAMINATION

BY MR. VALENTINE:

Q Sir, do you have Exhibit 160 which is the agreement between -- oh, excuse me. I'm Tony Valentine, Mr. Plaster.

A Thank you.

Q I represent Bill Flynn. Do you have that Exhibit 160 in front of you?

A Yes, I have it in front of me.

Q Can you take a look at the date in the upper right-hand corner? Please, would you mind? Exhibit 160. If you take a look, and I'm going to try to slide it down, see if I can hit the mark, the date on that agreement is January 3, 2002; is that correct?

A That's correct.

Q All right. And just to put things in perspective, when did discussions with MLC or discussions about the development of this land commence, any idea?

A I didn't hear your question, I'm sorry.

Q How far back did discussions about the development of this land commence?

A Probably about three years before this date, two and a half to three years, something like that.

Q Okay. That would put it roughly in the year 1999 or so?

A Late 1990s, yes.

Q Your involvement with MLC has been discussed, and do you

have any recollection as to when MLC might have been incorporated?

A No, I do not.

Q May I approach the witness, Your Honor?

I'm going to ask you to take a look at the MLC Development, Inc. incorporation document.

A Which page?

Q The last page thereof. And does that document indicate when MLC might have been incorporated?

A The date on this is the 20th day of April, 1999.

MR. VALENTINE: Okay. Your Honor, I'd offer that as Defendant's Exhibit -- and I heard we were using letters. Would you like me to start with WF-A as in William Flynn A?

THE COURT: Right. Flynn A will be fine.

MR. VALENTINE: May I approach the witness again, Your Honor?

BY MR. VALENTINE:

Q Mr. Plaster, take a look if you would at Page 2 of that document. Does that indicate that there is a Robert Plaster in a town called Lebanon, Missouri?

A It does.

Q All right. Whereabouts do you reside, sir?

A Lebanon, Missouri.

Q Okay. Does that have a post office box in there?

A Yes. It's my post office box.

Q It's your post office box too. Does that document indicate as to who may be the incorporators of that organization called MLC?
A It indicates that Michael Carney and Sheila Carney are the incorporators.
Q Okay. And what does it say below Michael Carney and Sheila Carney's name? Read that to the jury, would you, please?
A It says husband and wife.
Q Okay. We're not going down far enough. What's it say by your name?
A By my name it says that I purchased stock on May 14th, I think it is, can't read it, 1999, 20 percent of the ownership of -- 20 percent ownership, it says. It doesn't say what.
Q Showing you now Exhibit WF-A on the screen, I'll try to slide it up, that's what you were referring -- that's what you were referring to when you read Robert W. Plaster as an individual with that P.O. box and that statement that Mr. Plaster purchased ownership, purchased stock on May 1st, 1999, 20 percent ownership. Mr. Plaster is not an original incorporator. Is that a fair recitation of what that document indicated to you?
A I'm not reading it now, but I think that's correct, yes.
Q This area in Branson, it's quite a growing area, isn't it?

A It is.
Q Lot of development going on down there?
A It is, yes.
Q Be pretty clear to anybody visiting that it was an area that was up and coming. Fair statement?
A Well, it would be clear to a lot of people. I'm not sure everybody --
Q That's so argumentative I can't believe I asked you.
A Okay. All right.

MR. VALENTINE: Thank you very much.

That's all I have, Your Honor, thank you. Oh, if we didn't admit Defendant's Exhibit A, I'd move for its admission now. I thought we did.

MR. GEZON: No objection.

THE COURT: Okay. Received.

MR. VALENTINE: Thank you, Your Honor. Thank you, Mr. Plaster.

THE COURT: Received. Redirect?

MR. GEZON: Yes.

REDIRECT EXAMINATION

BY MR. GEZON:
Q Mr. Plaster, do you see these documents which apparently Mr. Carney filed claiming that you're part of this venture?
A I see them, yes.
Q And you've reviewed them here today after we've given

them to you to look at?
A Yes, sir, that's correct.
Q And is any of that true?
A No, it is not.
Q So apparently Mr. Carney has been dropping your name?
A No question about it.
Q And with regard to this document he filed with the Secretary of State saying you're part of this MLC, you were not other than to try and sell him this property?
A That's exactly correct.
Q Did Mr. Carney ask you to get involved in the project?
A Mr. Carney asked me early on to invest money in this venture and I refused to do that.
Q Now, you heard Ms. Marcusse suggest that you had represented to her and Mr. Carney that you were part of this venture. Do you recall after you met her and after Mr. Carney gave you this million dollars and he didn't comply with the rest of the conditions that Ms. Marcusse wrote you about this matter?
A Yes, she wrote -- I think she -- I think that's right. She may have written -- do you have something to show me in that regard? That may have happened. I can't recall.
Q Let me show you what we've -- let me show you a letter. Can you tell us, did you write to Ms. Marcusse and tell her that you were in fact not part of this organization?

A Okay. You're referring to this letter?
Q Yes, sir, if that refreshes your memory.
A It does refresh my memory, yes.
Q When did you write her and tell her you had no part of this company?
A November 15, 2002.
Q So if this Mr. Carney came to you and tried to buy this land in January, by November of 2002 you were writing her saying you're no part of this company?
A That's correct.
Q Would you please tell us what you told Ms. Marcusse?
A May I just read the letter?
Q Please.
A "I just this morning received a letter from you" -- Mrs. Marcusse -- "dated October 29, 2002, and as you know, there have been a number of other communications recently as well." And that was alluding to phone calls she made to my office. "Apparently you are laboring under some misconceptions and it's time to set the record straight. Michael Carney is now deceased. I understand all corporate matters are being handled by the corporate attorney, Dan Evans, who address is as follows," and I have his address in the letter for her benefit. "I would suggest you direct all communications concerning MLC to Dan Evans. You should also be aware that I am not now nor have I ever been an officer, director,

investor, shareholder, or otherwise involved in any other way with MLC. Apparently you have been told to the contrary, but if so, you have received bad information. Hopefully you'll find the above information useful."

Q And Mr. Evans was the attorney for MLC?

A Yes.

Q So you told her to go talk to him?

A I did. I gave her his address where she could reach him.

Q Now, this trial here is about $20 million that Ms. Marcusse took from investors throughout this --

MR. KACZOR: Your Honor, I would object to statements being made. That's not a question; it's a statement about what the trial is about.

MR. GEZON: Well, Your Honor, Ms. Marcusse seems to want to address this person as some person that has relevance to what she did with $20 million.

THE COURT: The only thing I find objectionable is the word "alleges" should be in there somewhere. I think that's what the objection goes to.

MR. KACZOR: Thank you, Your Honor.

BY MR. GEZON:

Q Did you have anything to do with Ms. Marcusse in any investment ventures of hers?

A No, sir.

MR. GEZON: Thank you.

A Yes, I know that.
Q Could you identify this list of MLC employees and associates if you were to see it, please?
MR. KACZOR: May I approach, Your Honor?
(Document provided to witness for review.)
THE WITNESS: Yes, I know almost every one of them.
BY DEFENDANT MARCUSSE:
Q All right. And are you listed on the list of employees and associates of MLC?
A Yes, I am.
Q What was your job position promised to be?
A I was supposed to, like I said, fly with Mr. Williamson to get the leases in from the other Indian tribes, and also I had a ski site on the water for an international ski show and training kids from all over, and that was my part of it right there.
Q All right. Let's see here. Do you recall at some point that we on behalf of the investors had put a million two wire transfer to release the land for the MLC Branson Project to move forward?
A Yes, I know that for a fact.
Q Was there an additional agreement that was made with Mr. Carney as far as the one million portion of that to return to the investor group four million dollars?
A Yes, there was actually two of them. The agreement was

that Mr. Carney would take in the leases and pay four million back to Access Financial, and he had 90 days for that. Then when he didn't come up with it, then he came up with this other deal and he said, Give me 60 more days because I made a deal with Robert Plaster, we'll open this up, and then it was supposed to be ten million back to Access Financial.

Q Would you recognize a copy of the note if you were to see it that was signed by Mr. Carney?

A Yes, I would.

MR. VALENTINE: Your Honor, this is far outside the scope of anything I elicited on direct. If they intend to put documents into evidence, I'd suggest they do it in their case in chief. Thank you very much.

MR. KACZOR: Your Honor, I think this is cross-examination, and it's a letter that was addressed to Mr. Flynn. It's not just a note; it's an actual document sent to Mr. Flynn.

MR. VALENTINE: In response, I think it is cross-examination, but not every letter in the world that was ever addressed to Mr. William Flynn comes into evidence in this case. This case is about Access Financial, their funds, et cetera. Thank you.

THE COURT: We're getting to the outer limits here.

MR. KACZOR: I beg your pardon?

THE COURT: I think we're getting to the outer

was one through Mr. Everett.

Q Okay. So basically we have discussed them all; is that fair to say?

A I believe so.

Q Can you tell me, then, of all the projects that we've identified, was there income coming in to the Sanctuary Ministries account, you know, from these investment opportunities or projects?

A There was income coming in from the initial one, the Nichols program. There was income coming in from the Everett program. There was a small amount that came from the Bahamas program when it was still state-side, basically before we got tremendously large with it. There was -- most of that was offshore and left offshore.

There was no return from MLC. The Crawford check bounced. And there was another potential. In the summer of 2002 I had asked Mr. Plaster, who had founded Empire Gas & Oil, to help me collect Crawford, and in the summer of 2002 we had received a wire transfer copy that the funds were coming in on one of those contracts. And so I had Jeff and Jessie prepare for me exact figures for the payout of everybody, all investors in order to be paid off, and I was quite optimistic at that point in regards to getting the funds because typically if you have some political clout, you've got a much better shot of getting what you're supposed to be getting.

That's just basically a fact of life. So I was optimistic.
Q Let me ask you, so one other project you ultimately get Mr. Plaster -- you attempt to get him involved?
A Yes.
Q To try and collect the money from the Crawford Project?
A Yes.
Q But we know from the Crawford Project you got a check that ultimately bounced?
A Right. That was a year earlier.
Q Okay. Was the result any different once you got or attempted to get Mr. Plaster involved?
A We saw the wire transfer was issued, I believe it was like July of 2002 or late June 2002, and ultimately we didn't get it, but it was just an odd situation. It seemed like something came through, but it just -- I don't know what happened to it.
Q Okay. Again, let me ask you have we now discussed each of the investment opportunities that you were involved with through Access or Sanctuary Ministries?
A Yes, I believe so.
Q And we've discussed the result of each one of those; is that right?
A Yes.
Q Now, Mr. Gezon has phrased it as I think Access Financial fell apart or something to that effect. I mean, I think

News-Leader.com

September 23, 2007

Locals upset by Plaster petition

Law appears to have been changed to allow village incorporation.

Kathleen O'Dell
News-Leader

Residents and resort owners around DD Highway at Table Rock Lake are alarmed over a Lebanon businessman's petition to make his property an incorporated village, removing it from Stone County jurisdiction as well as planning and zoning.

Members of the Friends of Table Rock Lake say they worry Robert W. Plaster's plan to incorporate 400 to 500 acres would invite unchecked development around the lake community, and threaten quality of life and water.

The plan appears to have been made possible by a late change to a bill in the last legislative session.

The residents group plans to discuss Plaster's petition during its annual meeting at 7 p.m. Monday in the DD Community Center.

"Our concern is if he does have a village, he'll be able to bypass planning and zoning and build anything he wants," said Wayne Miles, a Springfield doctor who has had a home off DD Highway for 20 years. "He's had several projects presented to planning and zoning and been turned down."

The lakeside community includes about 1,600 homes -- many of them high-end housing -- 15 resorts and several businesses along narrow, winding two-lane lake roads.

Plaster, chairman of the board and president of Evergreen National Corp., Branson, recently petitioned the Stone County Commission to incorporate as a village about 500 acres he owns on the so-called DD Peninsula on Table Rock. The property lies roughly between Kimberling City and Indian Point.

The new entity would be called "Village of Table Rock," but the petition does not describe what, if any, construction or use is planned for the mostly undeveloped property.

"No one seems to know what he wants," said Kathy Clark, a spokeswoman for Friends of Table Rock Lake. "Obviously it's something he doesn't think planning and zoning would agree with."

The commission will discuss the document with the petitioners' attorney, Michael Cully, at an open hearing on Tuesday in the courthouse.

What the commission can do with the petition is up for debate, said Presiding Commissioner George Cutbirth.

"We feel we have options. They (petition representatives) feel we don't," Cutbirth said. "What Mr. Cully has stated to us is he thought the only authority we had was to present it to the voters to decide."

Cutbirth said he feels the commission can vote to deny the petition, after which Cully could appeal the

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decision to the circuit court. Or the commission can accept the petition and put it to a vote of the residents within Plaster's property -- not the residents surrounding his property.

Passage would require a simple majority, Cutbirth said, and only six or seven voters live on Plaster's property. Five of them signed the petition.

"Now the fish really smells, doesn't it?" Cutbirth said.

When contacted by telephone at Plaster's Lebanon office Thursday, a spokeswoman said Plaster was traveling and unavailable for comment. He did not return a News-Leader message to call back.

Stone County officials have denied Plaster's efforts in past years to rezone his property for condominiums, commercial developments and casino gaming. Officials have said the proposed projects were incompatible with the mainly single-family development on the peninsula, and would be detrimental to nearby property values. Some 650 area residents signed a petition opposing Plaster's 2004 effort to create a village there, Miles said.

Late change in law

A Plaster representative submitted the petition to Stone County officials on Aug. 28 under a change in Missouri law that went into effect the same day. The provision, a late addition to Senate Bill 22 this year, appears to remove a county commission's ability to regulate the formation of cities, villages and towns in their counties, state officials said.

"My main concern is that 650 people don't want this village, and somehow a magical state statute gets changed in the last hour of the legislative session, gets slipped into Senate Bill 22 and passes," Wayne Miles said. "We also communicated with Gov. Matt Blunt (before passage) and he signed the bill anyway."

"Any rural piece of land can be made a village and someone can put an ethanol plant there, a Tyson chicken plant, a fertilizer plant -- in any rural incorporated place in the state," Miles said. "We're not worried about just us, but we're worried about this thing happening around the state."

Cutbirth noted that the Missouri Court of Appeals Southern District ruled in 2006 that the commission had legal grounds on which to deny Plaster's 2004 effort to incorporate a village on that property.

As the amended state statute reads now, he said, "Every arguable point we won on in the Court of Appeals is exactly what they amended" and did away with, Cutbirth said.

Yet another state statute appears to indicate that, because Plaster's property is within 2 radius miles of another incorporated city -- Kimberling City -- Cully must file a separate petition with that city, Cutbirth said. Cully disagrees, he said, adding that no one has presented such a petition to Kimberling City officials.

Rep. Dennis Wood, of Kimberling City, plans to attend Monday's meeting.

"I've been a strong advocate for county rights and county commissions, and remain that way," he said. "Anything that diminishes that local control is very suspicious to me. For that reason I'm opposed to what they did in Senate Bill 22 and will make every effort to correct it in the next session."

Al Morton, owner of Gobblers Mountain Resort, said he's concerned as a resort owner and resident of the DD Highway community. He joined Friends of Table Rock Lake after Plaster proposed rezoning for a casino in 1999.

"I just don't think we can handle the traffic and I'm not sure about the lake, depending on what he

wants to put in there, if he's not going to be under planning and zoning," Morton said. "He may do a good job and he may be concerned about the lake, but I don't know ..."

Retiree Ellis Martin and his wife moved to the community from Waynesville about 13 years ago.

"I'm always concerned about the quality of life that we have here," and how each new development will affect Table Rock water quality, Martin said.

"When you incorporate a city and call it a name ... you come out from under the rules and regulations of the county, and that can be a little hairy," Martin said. "That's why we like to keep it and work with the county commission and want the things to be under county supervision."

Mystery sponsor

Rep. Wood declined to identify the House member who inserted the change late in the session.

He plans to reveal the representative's name in context of the bill's origin at Monday's meeting with Friends of Table Rock Lake. That person has also been invited to attend the meeting, he said.

"There is nothing that has happened illegally, but there certainly is some question as to why something has happened, and I will endeavor on Monday night to explain that," Wood said. "Not defend it, but explain it."

He said he's offended that a House member outside the district ushered a change to the state statute that directly affects his district voters but didn't alert colleagues in the House and Senate about the proposed change.

"This affects us a great deal, and this person decided we weren't very important," Wood said. "This may challenge my credentials with my party because I'm going to say it like it is on Monday."

According to minutes of their Sept. 11 meeting, the Stone County Commission planned to send a letter to Missouri Attorney General Jay Nixon asking him to investigate who was responsible for getting the amendment into the bill at that late hour.

The bill was handled in the House by state Rep. Vicki Schneider of O'Fallon. The section that allows Plaster to incorporate was added in substitute language when the bill passed out of the House Local Government Committee on April 24. Schneider is chairwoman of that committee.

She couldn't be reached for comment.

House Research Department staffer Julie McNitt did not return a News-Leader telephone call on Thursday and was out of the office on Friday.

Sen. Jack Goodman, R-29, also declined to disclose the House member's name until Monday's meeting.

"I know the people at home are not happy about it," he said.

Goodman, of Mount Vernon, said he voted against the bill out of concern it was too large —220 pages —for him to closely review every section. "I felt it would be dangerous policy making to vote yes, since it was dealing with important local government issues."

The change should concern all local governments because it affects efforts to incorporate property in all 114 Missouri counties, he said.

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He said the provision is inconsistent with the intent and expectations of state and local governments, and said he'll likely work in the next session to correct the provision of the bill.

Additional Facts

Past proposals

Businessman Robert Plaster has proposed several projects for his 700-acre plot at Table Rock Lake, about 300 of which is on U.S. Army Corps of Engineers property.

- In 1999 he asked the Stone County Planning and Zoning Board to rezone the Evergreen National Corporation properties to allow construction of a convention center complex, with plans to apply for Native American Reservation status for the property. The request was denied.
- In 2003 he offered a "conceptual presentation" to Stone County Planning and Zoning proposing construction on the Evergreen properties of a large botanical garden. The plans also included some 1,000 condominium units and other features. The planning and zoning board deemed it unsuitable for the DD peninsula.
- In 2003, five residents of the Evergreen property filed a petition for incorporation of Village of Table Rock with the Stone County Commissioners. After public hearings at which area residents voiced strong opposition, the commissioners denied the request. Plaster appealed the decision in Circuit Court, which overturned the commissioners' decision.

The commissioners appealed the Circuit Court's decision in the Missouri Court of Appeals, which overturned the Circuit Court's decision and upheld the decision of the commissioners.

- In August 2007, Friends of Table Rock Lake learned that the Missouri legislature had passed and Gov. Matt Blunt had signed legislation that included changes in village incorporation limitations. Changes to the incorporation statutes became effective Aug. 28, the same day Plaster's representative delivered a new petition for incorporation of Village of Table Rock to the county commissioners.

EXHIBIT D-14

United States District Court
Western District of Michigan (Southern Division (1))
CIVIL DOCKET FOR CASE #: 1:09-cv-00913-RHB

Marcusse #17128-045 v. United States of America
Assigned to: Judge Robert Holmes Bell
Related Case: 1:04-cr-00165-RHB-1
Cause: 28:2255 Motion to Vacate / Correct Illegal Sentenc

Date Filed: 10/02/2009
Jury Demand: None
Nature of Suit: 510 Prisoner: Vacate Sentence
Jurisdiction: U.S. Government Defendant

movant

RESTRICTED FILER Janet Mavis Marcusse #17128-045

represented by **Janet Mavis Marcusse #17128-045**
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V.

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Date Filed	#	Docket Text
10/02/2009	1	MOTION to vacate, set aside or correct sentence (2255) filed by Janet Mavis Marcusse #17128-045 (Attachments: # 1 Certificate of Service)(cr) (Entered: 10/06/2009)
10/02/2009	2	MOTION for order *To Compel Production of Trial Exhibits Fed. Rule of Criminal Procedures 16(c); Sec. 2255 Proceedings Rule 6* by movant Janet Mavis Marcusse #17128-045; (cr) (Entered: 10/06/2009)
10/02/2009	3	MOTION for extension of time to *File Brief of Points and Authorities in Support of Motion Under 28 USC Sec. 2255* by movant Janet Mavis Marcusse #17128-045; (cr) (Entered: 10/06/2009)
10/06/2009	4	NOTICE of receipt of case (cr) (Entered: 10/06/2009)
10/06/2009		Copy of Receipt of Case Notice 4 sent via U.S. Mail to Movant Janet Mavis Marcusse (cr) (Entered: 10/06/2009)
10/13/2009	5	MOTION to compel *discovery, Brady, Jencks Materials* by movant Janet Mavis Marcusse #17128-045; (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(gjf) (Entered: 10/13/2009)
10/13/2009	6	CERTIFICATE OF SERVICE by movant Janet Mavis Marcusse #17128-045 re 5 (gjf) (Entered: 10/13/2009)
10/20/2009	7	MOTION for leave to proceed in forma pauperis by movant Janet Mavis Marcusse #17128-045; (Attachments: # 1 Attachment 1, # 2 Attachment 2, # 3 Attachment 3)(gjf) (Entered: 10/20/2009)
01/04/2010	8	MOTION for extension of time to file *brief in support of 2255 motion with certificate of service* by movant Janet Mavis Marcusse #17128-045; (gjf) (Entered: 01/04/2010)
01/07/2010	9	MEMORANDUM OPINION AND ORDER denying motions to compel discovery and for production of trial exhibits [2 & 5]; granting in part motions for extension of time to file a brief in support of 2255 motion [4 & 8]. Movant shall have 30 days from the date of this opinion and order to file a brief in support of the claims raised in her 2255 motion; signed by Judge Robert Holmes Bell (Judge Robert Holmes Bell, kcb) (Entered: 01/07/2010)

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		(Entered: 03/01/2010)
03/01/2010	19	CERTIFICATE OF SERVICE by movant Janet Mavis Marcusse #17128-045 re MOTION to compel *Clerk of Court to show receipt of memorandum and notice of service of memorandum of points and authorities in support of motion to vacate with Exhibit A* 18 (gjf) (Entered: 03/01/2010)
03/16/2010	20	MOTION for order *(document named as motion to resubmit memorandum of points and exhibits to memorandum to comply with court orders)* by movant Janet Mavis Marcusse #17128-045; (Attachments: # 1 Orders Rejecting Pleading)(gjf) (Entered: 03/16/2010)
03/16/2010	21	CERTIFICATE OF SERVICE by movant Janet Mavis Marcusse #17128-045 re MOTION for order *(document named as motion to resubmit memorandum of points and exhibits to memorandum to comply with court orders)* 20 (gjf) (Entered: 03/16/2010)
03/16/2010	34	MEMORANDUM in support of Motion to Vacate/Set Aside/Correct Sentence (2255) 1 *(document named as memorandum of points and authorities with exhibitsA-Z, AA-ZZ, AAA-ZZZ, AAAA-ZZZZ and A1-N1)* filed by Janet Mavis Marcusse #17128-045(gjf) (Entered: 01/14/2011)
04/06/2010	22	MOTION for leave to file *first amended and supplemental memorandum in support of motion to vacate to establish evidence tampering* by movant Janet Mavis Marcusse #17128-045; (Attachments: # 1 Proposed Document First Amended and Supplemental Memorandum in Support of the Motion to Vacate, # 2 Proposed Document Exhibits A-Y)(gjf) (Entered: 04/06/2010)
04/06/2010	23	CERTIFICATE OF SERVICE by movant Janet Mavis Marcusse #17128-045 re MOTION for leave to file *first amended and supplemental memorandum in support of motion to vacate to establish evidence tampering* 22 (gjf) (Entered: 04/06/2010)
04/30/2010	24	NOTICE re 22 *(document named as motion to clarify first amended and supplemental memorandum in support of the motion to vacate is supplemental pleading only) with certificate of service* by movant Janet Mavis Marcusse #17128-045 (gjf) (Entered: 04/30/2010)
05/21/2010	25	MOTION for leave to file *second supplemental memorandum in support of the motion to vacate* by movant Janet Mavis Marcusse #17128-045; (Attachments: # 1 Proposed Document, # 2 Exhibit A-E, # 3 Exhibit F-O)(elc) (Entered: 05/21/2010)
05/21/2010	26	CERTIFICATE OF SERVICE by movant Janet Mavis Marcusse #17128-045 re MOTION for leave to file *second supplemental memorandum in support of the motion to vacate* 25 (elc) (Entered: 05/21/2010)
06/01/2010	27	MOTION for leave to file by movant Janet Mavis Marcusse #17128-045; (Attachments: # 1 Proposed Document Third supplemental memorandum in support of motion to vacate)(gjf) (Entered: 06/01/2010)
06/01/2010	28	CERTIFICATE OF SERVICE by movant Janet Mavis Marcusse #17128-045 re MOTION for leave to file 27 (gjf) (Entered: 06/01/2010)

07/13/2010	29	MOTION for leave to file *fourth supplemental memorandum in support of motion to vacate* by movant Janet Mavis Marcusse #17128-045; (Attachments: # 1 Proposed Document)(mkc) (Entered: 07/13/2010)
09/21/2010	30	MOTION for leave to file *supplement to ground seven of the motion to vacate regarding the pervasive bias of the trial judge* by movant Janet Mavis Marcusse #17128-045 (elc) Modified text on 12/21/2010; previously filed attachments moved to Dkt #32 per chambers (kvt). (Entered: 09/21/2010)
09/21/2010	32	MOTION to disqualify judge *Robert Holmes Bell* by movant Janet Mavis Marcusse #17128-045; (Attachments: # 1 Memorandum in support, # 2 Affidavit, # 3 Proposed Order, # 4 Exhibit A-Z, # 5 Exhibit AA-ZZ, # 6 Exhibit AAA-ZZZ)(gjf) (Attachments taken from Dkt #30 per chambers.) Modified text on 12/21/2010 (kvt). (Entered: 12/21/2010)
12/14/2010	31	LETTER FROM CCA regarding petition for writ of mandamus filed with CCA (gjf) (Entered: 12/14/2010)
12/15/2010		CASE NUMBER 10-2630 assigned to writ of mandamus filed with the Sixth Circuit (elc) (Entered: 12/15/2010)
01/13/2011	33	MEMORANDUM OPINION AND ORDER denying 14 movant's motion for leave to file excess pages; denying 18 movant's motion to compel; and granting 20 movant's motion to resubmit her memorandum in support of her 2255 motion ; signed by Judge Robert Holmes Bell (Judge Robert Holmes Bell, kcb) (Entered: 01/13/2011)
01/14/2011		Copy of Order on Motion for Leave to File Excess Pages, Order on Motion to Compel, and Order on Motion for Order 33 sent via U.S. Mail to movant Janet Mavis Marcusse (gjf) (Entered: 01/14/2011)
03/08/2011	35	ORDER denying 22 motion for leave to file; denying 25 motion for leave to file; denying 27 motion for leave to file; denying 29 motion for leave to file; signed by Judge Robert Holmes Bell (Judge Robert Holmes Bell, sdb) (Entered: 03/08/2011)
03/09/2011		Copy of Order on Motion for Leave to File 35 sent via U.S. Mail to movant Janet Mavis Marcusse (gjf) (Entered: 03/09/2011)
03/10/2011	36	ORDER denying 10 motion to amend/correct (construed as a motion for reconsideration); signed by Judge Robert Holmes Bell (Judge Robert Holmes Bell, sdb) (Entered: 03/10/2011)
03/11/2011		Copy of Order on Motion to Amend/Correct 36 sent via U.S. Mail to movant Janet Mavis Marcusse (gjf) (Entered: 03/11/2011)
03/14/2011	37	ORDER FROM CCA regarding petition for writ of mandamus filed with CCA *that the petition for a writ of mandamus is dismissed* (mrs) Modified text on 3/14/2011 (mrs). (Entered: 03/14/2011)
03/21/2011	38	MOTION to amend/correct *findings* by movant Janet Mavis Marcusse #17128-045; (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C-F)(elc) (Entered: 03/21/2011)

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03/21/2011		RESPONSE TO 35 *order denying motions to file supplemental briefs (see entry 38 to view document)* filed by movant Janet Mavis Marcusse #17128-045 (elc) (Entered: 03/21/2011)
03/21/2011	39	CERTIFICATE OF SERVICE by movant Janet Mavis Marcusse #17128-045 re MOTION to amend/correct *findings* 38 *and response to order denying motions to supplement* (elc) (Entered: 03/21/2011)
03/28/2011	40	MOTION to vacate 35 , 36 by movant Janet Mavis Marcusse #17128-045; (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Certificate of Service)(gjf) (Entered: 03/28/2011)
03/30/2011	41	OPINION ; signed by Judge Robert Holmes Bell (Judge Robert Holmes Bell, kcb) (Entered: 03/30/2011)
03/30/2011	42	ORDER; the Government shall file a response within 90 days to the grounds as stated in this order to movant Janet Mavis Marcusse's motion to vacate, set aside or correct sentence ; signed by Judge Robert Holmes Bell (Judge Robert Holmes Bell, kcb) (Entered: 03/30/2011)
03/31/2011		Copy of Opinion 41 and Order 42 sent via U.S. Mail to movant Janet Mavis Marcusse (gjf) (Entered: 03/31/2011)
05/12/2011	43	MOTION to amend/correct 41 , 42 , MOTION to vacate 41 , 42 *(document named as motion for amended or additional findings, to alter or amend judgment and to vacate the 3/30/11 opinion/order)* by movant Janet Mavis Marcusse #17128-045; (Attachments: # 1 Motion - Part 2, # 2 Motion - Part 3)(gjf) (Entered: 05/13/2011)
05/12/2011	44	EXHIBIT re 43 *(Exhibits A-J)* by movant Janet Mavis Marcusse #17128-045 (Attachments: # 1 Exhibit K-W, # 2 Exhibit X-Z, # 3 Exhibit AA-QQ, # 4 Certificate of Service)(gjf) (Entered: 05/13/2011)
05/13/2011	45	ATTORNEY SUBSTITUTION adding attorney Jennifer L. McManus in the place of Michael L. Schipper (McManus, Jennifer) (Entered: 05/13/2011)
05/17/2011	46	MOTION for order *authorizing release of information subject to attorney-client privilege* by respondent United States of America; (Attachments: # 1 Proposed Order)(McManus, Jennifer) (Entered: 05/17/2011)
05/17/2011	47	BRIEF in support of MOTION for order *authorizing release of information subject to attorney-client privilege* 46 with certificate of service filed by United States of America(McManus, Jennifer) Modified text on 5/18/2011 (gjf). (Entered: 05/17/2011)
05/31/2011	48	RESPONSE in opposition to MOTION for order *authorizing release of information subject to attorney-client privilege* 46 *with certificate of service* filed by Janet Mavis Marcusse #17128-045 (gjf) (Entered: 05/31/2011)
06/06/2011	49	MEMORANDUM OPINION AND ORDER granting 46 government's motion for an order finding that attorney-client privilege has been waived with respect to movant's ineffective assistance of counsel claims ; signed by Judge Robert Holmes Bell (Judge Robert Holmes Bell, kcb) (Entered: 06/06/2011)

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This document is not available for review electronically.
It is available for review at the courthouse.
See W.D. Mich. LCivR 5.7(d)(ii)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT CONVICTIONS AND SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	**District** WESTERN DISTRICT OF MICHIGAN
Name (under which you were convicted): JANET MARCUSSE	**Docket or Case No.:** 1:04-cr-165
Place of Confinement: FCI TALLAHASSEE	***Prisoner No.:*** 17128-045
UNITED STATES OF AMERICA	**Movant** (include name und
v. JANET MARCUSSE	

1:09-cv-913
Robert Holmes Bell
U.S. District Judge

MOTION

1. **(a) Name and location of court that entered the judgment of conviction you are challenging:** United States District Court, Western District of Michigan Southern Division, 110 Michigan Street, NW, Grand Rapids, MI 49503

   (b) Criminal docket or case number (if you know): 1:04-cr-165

2. **(a) Date of the judgment of conviction (if you know):** October 31, 2005

   (b) Date of sentencing: October 28, 2005

3. **Length of sentence:** 300 months

4. **Nature of crime (all counts):** Knowingly false ponzi scheme "crime" used to subrogate claims from investors for Counts 1-39, Mail Fraud; Count 40, Conspiracy to commit mail fraud; Count 41, Conspiracy to commit money laundering; Count 42, Conspiracy to defraud the IRS; Count 43-57, 58, 81-82, Money laundering; Count 83, Civil money judgment converted for restitution to IRS and investors for funds that went to third-parties (see below)

5. **(a) What was your plea? (Check one)**
   Not permitted by court to plead; court entered plea of
   (1) Not guilty ☒X **(2) Guilty** ☐ **(3) Nolo contendere (no contest)** ☐

   (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? N/A

6. **If you went to trial, what kind of trial did you have? (Check one)** **Jury** ☒X **Judge only** ☐

4. (continued) ponzi scheme charge withdrawn by AUSA Gezon in rebuttal closing arguments from jury deliberation but resubmitted for sentencing in violation of judicial estoppel.

		01/07/2010)
01/08/2010		Copy of Order on Motion for Order; Order on Motion to Compel; Order on Motion for Extension of Time to File 9 sent via U.S. Mail to movant Flynn (gjf) (Entered: 01/08/2010)
01/15/2010	10	LETTER from movant William Edward Flynn #07471-089 requesting docket sheet; *docket sheet mailed 1/15/10* (gjf) (Entered: 01/15/2010)
02/08/2010	11	MEMORANDUM in support of Motion to Vacate/Set Aside/Correct Sentence (2255) 1 *Part 1* filed by William Edward Flynn #07471-089(mkc) (Entered: 02/08/2010)
02/08/2010	12	MEMORANDUM in support of Motion to Vacate/Set Aside/Correct Sentence (2255) 1 *Part 2 of document 11* filed by William Edward Flynn #07471-089 (Attachments: # 1 Exhibit A - M, # 2 Exhibit N - Z, # 3 Exhibit AA - MM, # 4 Exhibit NN - ZZ, # 5 Exhibit AAA - JJJ)(mkc) (Entered: 02/08/2010)
02/08/2010	13	PROOF OF SERVICE by movant William Edward Flynn #07471-089 re Memorandum in Support of a Motion 11 , Memorandum in Support of a Motion 12 (mkc) (Entered: 02/08/2010)
02/08/2010	14	LETTER from movant William Edward Flynn #07471-089 regarding request for copy of pending amended petition (Attachments: # 1 Response from Clerk)(mkc) Modified text on 2/9/2010 (mkc). (Entered: 02/09/2010)
02/16/2010	15	MOTION for leave to file excess pages *instanter of brief in support of motion to vacate under 28:2255* by movant William Edward Flynn #07471-089; (gjf) (Entered: 02/16/2010)
02/16/2010	16	SUPPLEMENT re 11 , 12 by movant William Edward Flynn #07471-089 (Attachments: # 1 Attachment 1, # 2 Exhibit R)(gjf) (Entered: 02/16/2010)
02/16/2010	17	PROOF OF SERVICE by movant William Edward Flynn #07471-089 re Supplement 16 , MOTION for leave to file excess pages *instanter of brief in support of motion to vacate under 28:2255* 15 (gjf) (Entered: 02/16/2010)
03/01/2010	18	MOTION for leave to file *amended pleading to memorandum of points and authorities in support of motion to vacate* by movant William Edward Flynn #07471-089; (gjf) (Entered: 03/01/2010)
03/01/2010	19	PROOF OF SERVICE by movant William Edward Flynn #07471-089 re MOTION for leave to file *amended pleading to memorandum of points and authorities in support of motion to vacate* 18 *(document named as notice of filing and proof of service)* (gjf) (Entered: 03/01/2010)
04/19/2010	20	LETTER from movant William Edward Flynn #07471-089 requesting docket sheet; *docket sheet from 1/1/10 to present mailed to movant Flynn on 4/19/10* (gjf) (Entered: 04/19/2010)
05/27/2010	21	MOTION for leave to file *the first supplemental memorandum in support of the motion to vacate* by movant William Edward Flynn #07471-089; (Attachments: # 1 Attachment 1, # 2 Proposed Document First Supplemental Memorandum in Support of Motion to Vacate)(gjf) (Entered: 05/27/2010)
05/27/2010	22	PROOF OF SERVICE by movant William Edward Flynn #07471-089 re MOTION for leave to file *the first supplemental memorandum in support of the motion to vacate* 21

ordered by the Sixth Circuit--a motion to vacate--is currently being obstructed by the district court. Thus, she has no other adequate means to obtain relief, her relief under the law is clear and indisputable, and her liberty interests are currently being damaged.

The Sixth Circuit has embraced a multi-factor test for determining the propriety of mandamus. "When making such a determination, this Court will consider whether the following factors are met: (1) the party seeking the writ has no other adequate means, such as direct appeal, to attain the relief desired. (2) The petitioner will be damaged or prejudiced in a way not correctable on appeal. (3) The district court's order is clearly erroneous as a matter of law. (4) The district court's order is an oft-repeated error, or manifests a persistent disregard of the federal rules. (5) The district court's order raises new and important problems, or issues of law of first impression." **In re Lott**, 424 F 3d 446, 449 (6th Cir., 2005).

A. RESTRICTED FILER STATUS, AS APPLIED TO THE FIRST MOTION TO VACATE, IS OVERTLY BIASED, DENIES EQUAL PROTECTION, AND IS ILLEGAL AS IT OBSTRUCTS ACCESS TO THE COURTS AND VIOLATES THE SUSPENSION CLAUSE

"Inmates have a constitutional right of access to the courts, which is partially grounded in 'the right of the people...to petition the Government for a redress of grievances.' U.S. Const. amend. 1; See **Christopher v. Harbury**, 536 US 403, 415, 122 S Ct 2179, 153 L Ed 2d 413 & n. 12 (2002); **Thaddeus-X v. Blatter**, 175 F 3d 378, 391 (6th Cir., 1999). And that right extends to habeas petitioner. See **Lewis v. Casey**, 518 US 343, 354, 116 S Ct 2174, 135 L Ed 2d 606 (1996)." **Hill v. Dailey**, 557 F 3d 437, 438-439 (6th Cir., 2009).

In addition, it has been long established that the standard for an evidentiary hearing on a federal habeas petition is met, in part,

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if the Petition does not consist solely of conclusory, unsworn statements unsupported by any proof or offer thereof. See **Ladner v. United States,** 358 US 169 (1958). Thus, for the district court to tamper with Marcusse's pleadings in order to pretend as if her Memorandum was never received--a Petition which <u>does</u> contain exhibits in proof, or the offer of proof thereof, for every claim made--denies her the ability to meet such a published standard.

Equal protection under the law and the Suspension Clause are violated where a search is made in LexisNexis CD, using the phrase, "restricted filer", of the 15,686,403 records from every circuit and district court, and there are only 89 cases nationwide in which a litigant is shown as a "restricted filer". Fully half of them, or 47, are located in the Western District of Michigan.[1] There are no others

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[1] McGee v. Unknown Parties, US Dist Lexis 94831 (WD Mich 2010); McGee v. Unknown Parties, US Dist Lexis 94906 (WD Mich 2010); McGee v. Unknown Parties, US Dist Lexis 93834 (WD Mich 2010); Walker v. Morin, US Dist Lexis 92678 (WD Mich 2010); McGee v. Unknown Parties, US Dist Lexis 87100 (WD Mich 2010); McGee v. Unknown Parties, US Dist Lexis 87138 (WD Mich 2010); McGee v. Unknown Parties, US Dist Lexis 87141 (WD Mich 2010); McGee v. Unknown Parties, US Dist Lexis 87146 (WD Mich 2010); McGee v. Unknown Parties, US Dist Lexis 87119 (WD Mich 2010); McGee v. Unknown Parties, US Dist Lexis 87115 (WD Mich 2010: McGee v. Unknown Parties, US Dist Lexis 87118 (WD Mich 2010); McGee v. Unknown Parties, US Dist Lexis 87123 (WD Mich 2010); McGee v. Unknown Parties, US Dist Lexis 85473 (WD Mich 2010; Modena v. Mercer, US Dist Lexis 3993 (WD Mich 2010); Marcusse v. United States, US Dist Lexis 1055 (WD Mich 2010); Flynn v. United States, US Dist Lexis 1056 (WD Mich 2010); Modena v. Mercer, US Dist Lexis 123498 (WD Mich 2009); Clark v. Frontera, US Dist Lexis 35113 (WD Mich 2009); United States v. Modena, US Dist Lexis 97920 (WD Mich 2009); Robinson v. County of Calvert, US Dist Lexis 89299 (WD Mich 2009); Robinson v. Wheeling, US Dist Lexis 89297 (WD Mich 2009); Modena v. Miller, US Dist Lexis 88758 (WD Mich 2009); Johnson v. Brown, US Dist Lexis 83533 (WD Mich 2009); Clark v. Capello, US Dist Lexis 67920 (WD Mich 2009); Fed Home Loan Mtg v. Lear, US Dist Lexis 51333 (WD Mich 2009); Modena v. Fed Home Loan Mtg, US Dist Lexis 24255 (WD Mich 2009); Patrick v. Butzbaugh, US Dist Lexis 8804 (WD Mich 2009); Michigan v. Modena, US Dist Lexis 5846 (WD Mich 2009); Clark v. Frontera, US Dist Lexis 62015 (WD Mich 2008); Modena v. Modena, US Dist Lexis 85232 (WD Mich 2008); Burnett v. Lyon, US Dist Lexis 31391 (WD Mich 2007); Burnett v. Lyon, US Dist Lexis 31392 (WD Mich 2007);

in the Sixth Circuit. The rest of the cases are derived from just two other circuits--the Seventh Circuit[2] and the Tenth Circuit.[3]

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[1](continued) Burnett v. Chippewa County Sheriff Dept, US Dist Lexis 84648 (WD Mich 2007); Clark v. Naples, US Dist Lexis 46234 (WD Mich 2007); Traylor v. Miller, US Dist Lexis 63476 (WD Mich 2007); Burnett v. Chippewa County Sheriff Dept, US Dist Lexis 63477 (WD Mich 2007); First Black Amer President v. Unknown Taylor, US Dist Lexis 62278 (WD Mich 2006); Johnson v. Johnson, US Dist Lexis 32525 (WD Mich 2006); Clark v. Clark v. Smooth Magazine, US Dist Lexis 21500 (WD Mich 2006); Clark v. Frontera, US Dist Lexis 12010 (WD Mich 2006); Moore v. Westra, US Dist Lexis 38729 (WD Lexis 38717 (WD Mich 2006); Moore v. Quist, US Dist Lexis 44262 (WD Mich 2005); Mich 2006); Burton v. Derooy, US Dist Lexis 43606 (WD Mich 2005); Johnson v. Edwards v. Wisanger, US Dist Lexis 27157 (WD Mich 2003); United States ex rel Michigan, US Dist Lexis 13624 (WD Mich 1999); Moore Stewart v. Fleet Financial, US Dist Lexis 5102 (WD Mich 1999). v. County of Muskegon,

[2]Ghashiyah v. Huibregtse, US Dist Lexis 47279 (WD Wisc 2010); Twitty v. Ashcroft, US Dist Lexis 7495 (SD Ill 2009); Wingo v. Kluck, US Dist Lexis 84893 (ED Wisc 2009); Ghashiyah v. Raemisch, US Dist Lexis 28197 (ED Wisc 2009); Ghashiyah v. Huibregtse, US Dist Lexis 46640 (WD Wisc 2009): Pozo v. Huibregtse, US Dist Lexis 99303 (WD Wisc 2008); Pozo v. Herwig, US Dist Lexis 92848 (ED Wisc 2008); Twitty v. Ashcroft, US Dist Lexis 55310(SD Ill 2008); Hale v. Pulley, US Dist Lexis 52891 (SD Ill 2008); Henderson v. Unknown, US Dist Lexis 49832 (WD Va 2008) (litigant from Seventh Circuit); Lamb v. Madigan, US Dist Lexis 77831 (CD Ill 2007); Sumbry v. Warden, US Dist Lexis 15428 (ND Ind 2007); Sumbry v. Davis, US Dist Lexis 51313 (ND Ind 2006); Sumbry v. Ind. State Prison, US Dist Lexis 22974 (WD Va 2006)(litigant from Seventh Circuit); Sumbry v. Ind State Prison, US Dist Lexis 54016 (litigant from Seventh Circuit); Sumbry v. Ind State Prison, 37950 (ND Ind 2006); Sumbry v. Ind State Prison, US Dist Lexis 9323 (ND Ind 2006); Sumbry v. Sup't Ind State Prison, US Dist Lexis 42211 (ND Ill 2006); Sumbry v. Ind. State Prison, US Dist Lexis 42782 (ND Ind 2006); Sumbry v. Ind State Prison, US Dist Lexis 89321 (ND Ind 2006); Sumbry v. Davis, US Dist Lexis 44098 (ND Ind 2005); Sumbry v. Davis, US Dist Lexis 44099 (ND Ind 2005); Sumbry v. Davis, US Dist Lexis 44096 (ND Ind 2005); Sumbry v. Davis, US Dist Lexis 44100 (ND Ind 2005); Sumbry v. Davis, US Dist Lexis 44097 (ND Ind 2005); Sumbry v. Davis, US Dist Lexis 30206 (ND Ind 2004); Sumbry v. Davis, US Dist Lexis 30202 (ND Ind 2004); Dallas v. Gamble, 448 F Supp 2d 1020 (WD Wisc 2006); In re Eldridge, US Dist Lexis 3900 (SD Ill 2006); Sumbry v. Sup'd Ind State Prison, US Dist Lexis 42355 (ND Ind 2006).

[3]Lowery v. State of Utah, US Dist Lexis 56313 (CD Utah 2009); Moss v. Schwarzenegger, US Dist Lexis 38673 (CD Utah 2008); Lacefield v. Big Planet, US Dist Lexis 30518 (CD Utah 2008); In re Raiser, US Dist Lexis 3114 (CD Utah 2008); Raiser v. Brigham Young University, US Dist Lexis 3048; Poll v. Paulson, US Dist Lexis 1322 (ND Utah 2008); In re Raiser, 293 Fed Appx 619 (10th Cir., 2008); Raiser v. Kono, 245 Fed Appx 732 (10th Cir., 2007); In re Raiser, 243 Fed Appx 376 (10th Cir., 2007); Jamison v. Costco Wholesale Corp, US Dist Lexis

Of the 30 cases in the Seventh Circuit, 19 consist of just two litigants, L. Sumbry and R. Pozo, both of whom had prior federal habeas corpus review. The Seventh Circuit requires an "exception" to restricted filer status in that it "does not apply to criminal cases or petitioners challenging the term of confinement". See **Dallas v. Gamble**, 448 F Supp 2d 1020, 1024 (WD Wisc 2006). No Tenth Circuit case involved a habeas corpus petitioner.

As the result, this search shows that, other than that of Marcusse and her co-defendant, Flynn, not another case in the entire United States has been of "restricted filer" status in a federal defendant's first motion to vacate. Thus, overt bias is also established.

B. THE FRAUDULENT MANIPULATION OF DOCUMENTS USED TO FIND PETITIONER'S MEMORANDUM WAS "INCOMPLETE" ALLOWS FOR A PROCESS PREVIOUSLY EMPLOYED TO DISMISS THE PETITION AND EVADE CONSIDERATION

A review of "restricted filer" status in the Western District of Michigan exposes the case of **Edwards v. Wisanger,** US Dist Lexis 43606 (WD Mich 2005), where it states, "This Court prevented Petitioner from filing his habeas corpus application in forma pauperis because it did not comply with this court's order restricting Petitioner's filings. See Edwards v. Watson, No. 1:02-mc-26 (WD Mich, March 13, 2002). As noted above, Petitioner is a restricted filer and his pleadings were substantially illegible and <u>incomplete</u>" [emphasis added].

Given this history, the fraud in which the district court engaged to find Marcusse's Memorandum was "incomplete" demonstrates the expectation to use such a precedent as the means to dismiss her motion to vacate petition without having to file the complete pleading on the

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[3](continued) 84529 (CD Utah 2007); Raiser v. Kono, US Dist Lexis 70567 (CD Utah 2006); Raiser v. Church of Jesus Christ, US Dist Lexis 7484 (CD Utah 2006).

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record, thereby evading having to consider it and protecting official misconduct from exposure.

C. PETITIONER DOES NOT HAVE AN APPEAL AS OF RIGHT TO A DENIAL OF A §2255 MOTION ACCORDING TO 28 USC §2253

Marcusse has no other recourse to have the caselaw of the higher courts applied to her case, given Judge Bell's obdurate refusal to obey the law, than to submit this petition for writ of mandamus.

D. THE REFUSAL OF THE DISTRICT COURT TO ACKNOWLEDGE RECEIPT OF PLEADINGS OR TO FILE THEM AS SUBMITTED WITHOUT TAMPERING WITH THEM VIOLATES 28 USC §951

28 USC §951, the oath of office of a clerk of court states:

> Each clerk of court and his deputies shall take the following oath or affirmation before entering upon their duties: "I, ----- ---- having been appointed ----, do solemnly swear (or affirm) that I will faithfully enter and record all orders, decrees, judgments and proceedings of such court, and will faithfully and impartially discharge all other duties of my office according to the best of my abilities and understanding. So help me God."

E. THE RECORD SHOWS JUDGE BELL HAS ENGAGED IN THE PERSISTENT DISREGARD OF FEDERAL RULES, DELIBERATE DISREGARD OF HIGHER COURT CASELAW, THE CONSTITUTION & 28 USC §453, AND WILLFUL JUDICIAL MISCONDUCT

Agent Flink's substantially misleading "summary" exhibits, used as the evidence of a ponzi scheme, were based upon a gross violation of **Torres v. County of Oakland,** 758 F 2d 147 (6th Cir., 1985). "The United States Court of Appeals for the Sixth Circuit grants trial judges a relatively wide degree of discretion in admitting or excluding testimony which arguably contains a legal conclusion. Nevertheless, **Torres** mandates exclusion of lay opinion testimony containing terms which have a separate, distinct, and specialized meaning in the law different from that present in the vernacular." **United States v. Parris,** 243 F 3d 286, 288 (6th Cir., 2001).

Not only does Judge Bell disregard **Torres**, but he compounds the error by using Agent Flink's violation of it to remove the ponzi scheme charge from jury deliberation to find this fact for himself, protecting the ability to do so by prohibiting Marcusse from using any admitted bank record documents, direct witnesses to investments, or business records in her own defense. He meets privately with the jury, not once, but twice. He prohibits Marcusse from making objections to evidence, and he even arranges by pretrial order to protect anticipated IRS fraud by denying any defense or evidence about it, thereby exposing ex parte strategy meetings and the bottom line that he knew in advance the charges were indeed garbage. In the motion to vacate, he continues to protect this fraud by denying discovery through disregarding **Torres**:

> Movant argues that the government's witness and summary evidence relied upon a 'restrictive and deceptive' definition of investments, 'limited to that of a prime bank instrument only', and that evidence relying on this definition constitutes 'falsified evidence' and 'perjury'. However, Movant's disagreement with the government's definition, and the conclusions drawn by its witness on the basis of that definition does not tend to show that the government knowingly offered false or perjured testimony. Indeed, Movant notes that the witness disclosed his definition of investment as part of his trial testimony.

(R. 9, p. 3). See also **Marcusse v. United States**, US Dist Lexis 1055 (WD Mich 2010). In essence, Agent Flink lies about the disposition of $12.1 million, claiming the defendants spent it on themselves and others, denying it was spent on investments because they were not prime bank instruments. He engages in a nonsensical, rambling response intended to confuse the jury when questioned about his definition of investments (TR 2052), which would not have been necessary if it had been lawful. His cohorts even try to circumvent Marcusse's questions by having the jail drug her food, yet Judge Bell finds no error in all of this? Such reasoning transcends mere error and constitutes cognizable judicial misconduct for collusion with the IRS under

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Rule 3(h) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. It shows a willful disrespect for the law, oath of office, and basic human rights indispensible to civilized peoples.

Indeed, Judge Bell repeatedly refuses to place his oath of office on the record at trial, including by threatening Marcusse for asking for it (TR 11-12; R. 421; TR 3496).

F. A COURT OF COMPETENT JURISDICTION IS NOT BEING PROVIDED

It was either irrational or malicious, or both, for Judge Bell to publicly equate being a violent white supremacist with the failure to file an income tax return by using defendant pleadings claiming status as a white male sovereign to invent the appearance of violence in order to tacitly condone an incited jail attack by refusing to investigate, refusing to accept pleadings, and retaliate by raising bogus competency issues to blame the victim; order an anonymous jury; issue a "protection" order thereby prohibiting the defendants from being able to use Jencks and **Brady** materials, including admitted bank records; condone physical abuse, including attacks in open court; orchestrate the outcome of the trial to teach "respect" for the "law"; and extend the length of the "conspiracy" so that 17 years might be added to the contrived sentence. All of this misconduct, including that of a criminal nature, establishes Judge Bell has a substantial personal conflict of interest in determining the outcome of the motion to vacate.

Thus, the Western District of Michigan has failed to meet its fundamental responsibility of providing a competent forum for the trial or this motion to vacate proceeding. It falls to the supervisory authority of the Sixth Circuit Court of Appeals under 28 USC §2106 to see that no federal court under it degenerates into lawless violence, such as occurred in this case. A trial held before a judge engaging

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in felonious activity is not a competent forum. Collusion with IRS agents, prosecutors, and U.S. Marshals, in having Marcusse abused and denied a defense, for the purpose of fixing the outcome of a trial where knowingly false ponzi scheme, unreported income, and honest services fraud charges were made, but not specified in any indictment, in violation of 18 USC §241 and 26 USC §7214, is not a competent forum. A motion to vacate proceeding where this same judge acts to obstruct pleadings raising such claims, and issues orders in violation of standing Sixth Circuit precedent, is not a competent forum. It further displays a certain arrogance that no higher authority will take it to task.

G. SKILLING ENTITLES PETITIONER TO IMMEDIATE RELEASE

The law of the case is the jury instructions, which in this case was honest services fraud. As the result, Marcusse's liberty interests are being damaged every day she stays imprisoned under void charges.

CONCLUSION

It is requested an Order issue commanding the district court to:

1. Strike "restricted filer" status from Petitioner's motion to vacate proceeding in Case No. 1:09-cv-913;

2. Acknowledge receipt of Petitioner's complete Memorandum in support of her motion to vacate dated March 11, 2010, and properly file it with its exhibits, as already done in her co-defendant's cases;

3. Properly file Petitioner's Motion to Disqualify Judge Bell and its Memorandum in support rather than as "Proposed Documents";

4. Recuse Judge Bell from consideration of Case No. 1:09-cv-913.

"The citizen's respect for judgments depends in turn upon the issuing court's absolute probity." **Caperton v. Massey**, 173 L Ed 2d 1208 (2009).

Respectfully submitted,

Date: December 9, 2010

Janet Marcusse, pro se

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mcf

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
602 FEDERAL COURTHOUSE
GRAND RAPIDS, MICHIGAN 49503-2363

CHAMBERS OF
ROBERT HOLMES BELL
DISTRICT JUDGE

(616) 456-2021

December 22, 2010

Mr. Leonard Green, Clerk
United States Court of Appeals
for the Sixth Circuit
100 East Fifth Street, Room 540
Potter Stewart U.S. Courthouse
Cincinnati, Ohio 45202-3988

Dear Mr. Green:

I am writing in response to the petition for writ of mandamus filed by Janet Marcusse, Case No. 10-2627. The underlying matter is *Marcusse v. United States*, 1:09-cv-913. Petitioner seeks (1) revocation of her status as a restricted filer; (2) acceptance of her 309 page memorandum in support of her motion to vacate (along with many exhibits); (3) corrected filing of her motion to disqualify; and (4) an order from the Court of Appeals disqualifying this Court from hearing Petitioner's underlying case.

Petitioner appears to believe that this Court is evading her case and subverting justice. The reality is that this Court receives dozens of habeas corpus cases each year. Her case is proceeding in the order in which it was filed. She has no authority to dictate this Court's docket management.

Petitioner has been classified as a restricted filer. The Court believes this designation is appropriate. Petitioner has a history of copious filings. In this habeas case alone, Petitioner has submitted a 309 page memorandum in support of her motion to vacate, and requested leave to file four lengthy supplemental memoranda. Petitioner is apparently unhappy that her massive memorandum has yet to be docketed, yet this was due initially to her own failure to sign the document in compliance with court rules. (Dkt. No. 12) This Court now has a complete and signed copy of the memorandum, and despite its length, the Court intends to accept the document. Her status as a restricted filer does not impede her ability to bring non-frivolous arguments before the court in compliance with court rules.

Petitioner's objection to the classification of her motion to disqualify as a "proposed" document under her "motion for leave to file supplement to ground seven of the motion to vacate regarding the pervasive bias of the trial judge" has merit; (Dkt. No. 30), though it hardly requires

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an extraordinary writ of mandamus to correct. It appears that the clerk's office understandably mistook the documents mailed together on September 21, 2010, as pieces of one motion, rather than a motion to disqualify and a separate motion to incorporate the new 125 page memorandum into issue seven (pervasive bias of trial judge) of Ms. Marcusse's initial 309 page memorandum. The Court has spoken with the clerk's office and the docket should now reflect a separate motion to disqualify.

The Court of Appeals may be assured that Petitioner's motion to disqualify and all other motions in this matter will be diligently addressed and impartially decided in due course. As this Court has yet to decide Plaintiff's pending motion to disqualify, it is respectfully requested that Petitioner's motion for writ of mandamus be denied.

Sincerely,

Robert Holmes Bell
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JANET MARCUSSE,

Petitioner,

v. Case No. 1:09-cv-913

UNITED STATES OF AMERICA,

Respondent.

_____/

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO VACATE CONVICTIONS AND UNLAWFUL SENTENCES PURSUANT TO 28 U.S.C. §§ 2255 AND 1651

COMES NOW Petitioner, Janet Marcusse (hereinafter "Marcusse"), a pro se prisoner, pursuant to 28 USC §2255 and §1651, to move the court to vacate her unconstitutional, illegal and unlawful convictions and sentences, arising from Criminal Case No. 1:04-cr-165.

SUMMARY OF CASE

As this was a complex case and numerous claims for relief raised in this petition, a summary is being presented of them.

In the trial held from 5/16/05 through 6/14/05, in which prosecutors introduced their case as being about a "Ponzi scheme" (See Exh. A, TR 41), Marcusse was denied the right to place the charges to meaningful adversarial testing where she was denied 20 witnesses and "reams" of evidence intended to establish her defense that the investments made with third-parties were legitimate, utilizing actual instruments, such as stocks and C.D.'s, and actual contracts, to show she intended no loss to investors and instead was the victim of third-party fraud, which included two federal government officials. Marcusse was even denied the use of documents from admitted bulk bank record exhibits by prosecutors and the court.

EXHIBIT K-14

EXHIBITS

TO

MEMORANDUM OF POINTS AND AUTHORITIES

IN SUPPORT OF MOTION TO VACATE

VOLUME I

EXHIBITS A - KK

CASE NO. 1:09-cv-913

EXHIBITS

TO

MEMORANDUM OF POINTS AND AUTHORITIES

IN SUPPORT OF MOTION TO VACATE

VOLUME II

EXHIBITS LL - Fl

CASE NO. 1:09-cv-913

No. 10-2627

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: JANET MARCUSSE,

Petitioner.

ORDER

Before: KEITH, CLAY, and KETHLEDGE, Circuit Judges.

Petitioner Janet Marcusse is a federal prisoner serving a 25-year sentence for mail fraud, conspiracy to commit mail fraud, conspiracy to commit money laundering, conspiracy to defraud the United States, and money laundering. Following her conviction, the district court issued an administrative order designating Marcusse as a restricted filer. On October 2, 2009, she filed a motion to vacate her sentence under 28 U.S.C. § 2255. Marcusse now petitions this court for a writ of mandamus. She also moves to supplement her petition and for leave to proceed *in forma pauperis*. We have considered the supplement filed by Marcusse on January 25, 2011.

Mandamus is an extraordinary remedy that is infrequently used by the court. *John B. v. Goetz*, 531 F.3d 448, 457 (6th Cir. 2008). "[F]or the writ to issue, petitioners must demonstrate a clear abuse of discretion on the part of the district court." *Id.* (citation and internal quotation marks omitted). To warrant relief in mandamus, Marcusse must show that her right to the writ is "clear and indisputable." *Cheney v. U.S. Dist. Court for Dist. of Columbia*, 542 U.S. 367, 381 (2004) (quoting *Kerr v. U.S. Dist. Court for No. Dist. of Cal.*, 426 U.S. 394, 403 (1976)).

Marcusse seeks a order directing the district court to: 1) remove the restricted-filer status from her § 2255 proceeding; 2) acknowledge the receipt of her memorandum in support of the

motion to vacate and the exhibits thereto; 3) properly file her motion to disqualify; and 4) recuse the district judge. The district court docket reflects that Marcusse's memorandum in support of the motion to vacate and her exhibits were docketed with a file date of March 16, 2010, and an entry date of January 14, 2011. The motion to disqualify was docketed with a file date of September 21, 2010, and an entry date of December 12, 2010. The petition for a writ of mandamus is moot with respect to the request for an acknowledgment of the receipt of the memorandum and exhibits and the filing of the motion to disqualify.

Marcusse's petition also requests an order disqualifying the district judge. Although her motion to disqualify has now been properly filed, the district court has not addressed it on the merits. Under the circumstances of this case, the district court has not unduly delayed in ruling on the motion. Marcusse has not demonstrated a clear and indisputable right to have the district judge disqualified at this time.

Finally, Marcusse seeks the removal of her status as a restricted filer in this proceeding. The district court has the inherent power "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). To that end, a district court may impose prefiling restrictions on a litigant with a history of repetitive or vexatious litigation. *Feathers v. Chevron U.S.A., Inc.*, 141 F.3d 264, 269 (6th Cir. 1998); *Filipas v. Lemons*, 835 F.2d 1145, 1146 (6th Cir. 1987) (order). Marcusse has not shown that her status as a restricted filer in this proceeding is a clear abuse of discretion. The restricted-filer status has not prevented Marcusse from litigating her motion to vacate or improperly denied her access to the district court. Our review of the district court docket sheet in this proceeding and in Marcusse's criminal action indicates that the designation as a restricted filer is justified.

The petition for a writ of mandamus is **DISMISSED** in part as moot and **DENIED** in part. The motion to proceed *in forms pauperis* is **GRANTED**. The motion to file a supplement is GRANTED.

ENTERED BY ORDER OF THE COURT

Clerk

847, 859 (1988). "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994) (quoting *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966)).

Movant alleges that the Court publicly compared "tax protestors" to "mass murders," "terrorists" and "white supremacists." (1:09-CV-913, Dkt. No. 34, at 119-29, Ex. W). Movant alleges that these comparisons combined with certain rulings made by the Court during the trial proceedings indicate impermissible bias. These allegations represent a false invention by Movant and are not supported by the record, her motion, or her exhibits. *Id.* The Court is quoted as saying "[i]t all started with these tax protestors . . . They're angry with everyone and everything." *Id.* This quote appeared in the Grand Rapids Press, March 5, 2005, and regarded the murder of a Chicago area Judge's husband and mother. *Id.* In a completely unrelated article published in March 26, 2004, by the New York Times, a David Cay Johnston is cited as suggesting that tax evaders sympathize with Al-Queda and secretly support white supremacists. *Id.* There is no plausible connection between the two articles.

Movant has failed to produce any authority to demonstrate that the Court's isolated comment was evidence of Court bias which prejudiced Movant. Additionally, Movant's allegation that Court rulings made during the trial proceedings were a result of Court bias against tax protestors is not supported by Movant's motion, any attached exhibits, or the record. Neither the public statement made by the Court nor the judicial rulings during the trial could create grounds to reasonably question the impartiality of the Court. Accordingly, Movant's argument of judicial bias is without merit.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JANET MARCUSSE,

Petitioner,

v.

Case No: 1:09-cv-913
Crim. No: 1:04-cr-165

UNITED STATES OF AMERICA,

Respondent.

_____/

MOTION FOR AMENDED OR ADDITIONAL FINDINGS, TO ALTER OR AMEND JUDGMENT, AND TO VACATE THE MARCH 30, 2011, OPINION/ORDER, PURSUANT TO RULES 52(b), 59(e), and 60(b)(1)&(4), Fed. R. Civ. Proc.

NOW COMES Petitioner, Janet Marcusse (hereinafter "Marcusse"), as a pro se prisoner, to submit this Motion for Amended or Additional Findings, to Alter or Amend Judgment, and to Vacate the March 30, 2011, Opinion/Order, pursuant to Rules 52(b), 59(e), and 60(b)(1) and (4), of the Federal Rules of Civil Procedure. According to Rule 52(b) and 59(e), effective December 1, 2009, such a motion may be filed no later than 28 days after the entry of judgment.

The March 30, 2011, Opinion relies on reasoning invented post hoc by Judge Bell in response to this litigation, which is not supported by the underlying record and which consists of new and objectively unreasonable applications of fact and law, causing this Motion to be submitted under Rules 52(b) and 59(e).

According to **Okoro v. Hemingway**, 481 F 3d 873 (6th Cir., 2007), "Rule 60(b) provides for relief from judgment in instances of "mistake, inadvertance, surprise, or excusable neglect" and governs instances where the mistake was based on legal error. **Hopper v. Euclid Manor Nursing Home**, 867 F 2d 291, 294 (6th Cir., 1989)."

"Decisions of the United States Supreme Court rendered by written

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similar conduct in the future". **239 Breyer Committee Report,** 239 F.R.D. 116, at 244 (Sept. 2006)[emphasis added].

The claim raised in argument (1) was in regards to Judge Bell's hostile and even dangerous treatment and abuse of individuals profiled by the Office of U.S. Attorney as a "tax protester", such as repeated assaults, including one incited against Marcusse in jail and twice by U.S. Marshals in open court (R. 34, p. 122-123, 128-129, 268). The assault in pretrial custody was by another prisoner, three days after her transport to a Michigan jail, where Marcusse was called a "constitutionalist", "white supremacist", and "snitch" (R. 34, Exh. X). While the first label might be true, it is not something over which any prisoner is going to attack another. The second and third labels, however, were slander and therefore obviously planted by federal officials to incite violence against her, as no one can reasonably argue that someone sentenced to 25 years on white-collar fraud (Cat. I), is a "snitch".

In support of showing it was not just the Office of U.S. Attorney, U.S. Marshals, IRS agents, and/or jail employees, who might be involved in this abusive activity, the point was raised that Judge Bell had been quoted in the Grand Rapids Press on 3/5/05 regarding the Judge Lefkow murders as saying, "It all started with these tax protesters...They're angry with everyone and everything" (R. 34, p. 119-200). At the time, it had been reported in the media that a white supremacist group headed by Matthew Hale was responsible. An article to this effect was included in Exhibit W, along with the 3/5/05 Grand Rapids Press article containing Judge Bell's quote, a 3/10/05 CBS News article indicating Bart Ross to be the killer, who had been a disgruntled litigant from Judge Lefkow's court, and a 3/26/04 article quoting New York Times Reporter David Cay Johnston (R. 34, Exh. W).

To summarily dismiss the irrational tie of a tax protester with a white supremacist, and break the link of Judge Bell's condoning the jail attack against Marcusse, activity which she had described as, "It is not a normal reaction to equate a 'tax protester' with neo-Nazi's, or for that matter, multiple murder[ers]" (R. 34, p. 120), Judge Bell now claims Marcusse is, in effect, a liar:

> Movant alleges that the Court publicly compared 'tax protesters' to 'mass murders', "terrorists", and 'white supremacists' (1:09-cv-913, Dkt. No. 34, at 119-29, **Ex. W**). Movant alleges that these comparisons combined with certain rulings made by the Court during the trial proceedings indicate impermissible bias. These allegations represent a false invention by Movant and are **not supported by the record, her motion, or her exhibits. Id.** The Court is quoted as saying "[i]t all started with these tax protesters...They're angry with everyone and everything". **Id.** This quote appeared in the Grand Rapids Press, March 5, 2005, and regarded the murder of a Chicago area Judge's husband and mother. **Id.** In a completely unrelated article published in March 26, 2004, by the New York Times, a David Cay Johnston is cited as suggesting that tax evaders sympathize with Al-Queda and secretly support white supremacists. **Id.** There is no plausible connection between the two articles (R. 41, p. 19) [emphasis added].

While referring to "Ex. W", Judge Bell completely ignores the 3/1/05 article, which had been included in it, that discussed Matthew Hale's arrest on 1/8/03 for "trying to arrange Lefkow's murder":

> "We don't know yet who carried out these grisly executions. But what's clear is that the members of the World Church of the Creator have been involved in a huge amount of criminal violence over the years". "Its leader is in prison for soliciting the murder of Judge Lefkow, whose home address was posted by a group member on the internet. So it is not difficult to surmise that a member or sympathizer of this incredibly violent group might very well have been behind the murders".

(See Exh. V). Given the article described Matthew Hale's organization, as a "white supremacist hate group", Marcusse decided to check the 2/16/10 date stamped copies of the exhibits sent to her by the court on 1/14/11 from her Memorandum. The only item contained in Exhibit W was the 3/26/04 article about New York Times Reporter David Cay Johnston. The rest of the articles had been removed. This would not be the first

time such tampering with Marcusse's pleadings or the record has occurred. Indeed, the Memorandum in Support of the Motion to Disqualify (R. 32), which Judge Bell refuses to address and tries to misfile, contains numerous examples of it (R. 32, p. 20, 23, 49-50, 70-71, 76-77, 82-83).

In addition, for the better part of a year, Judge Bell refused to even acknowledge the receipt of, much less file, the Memorandum in Support of the motion to vacate, which was first sent on 2/6/10 and again on 3/11/10. He also filed the Motion to Disqualify and its Memorandum in Support behind a motion for leave to file a supplemental memorandum in order to obstruct the duty to consider it. It was not until a petition for writ of mandamus was filed on 12/14/10 at the Sixth Circuit opening Case No. 10-2627 (See Exh. W), requesting an order to command Judge Bell to acknowledge receipt of her Memorandum as well as properly file the Motion to Disqualify, that the Motion to Disqualify was filed on 12/20/10 (R. 32), and the Memorandum and its exhibits were filed on 1/4/11 (R. 34)(See Exh. X).

Thus, Judge Bell had ample opportunity to tamper with the Memorandum and remove exhibits necessary to substantiate his position. While the point might be raised that Marcusse forgot to include all three articles in the Memorandum's Exhibit W, according to the individual who assisted her by assembling the exhibits, Patricia Thyer, she recalls the articles and they were all included (See Exh. Y). The Memorandum makes repeated reference to Matthew Hale and his white supremacist group (R. 34, p. 15, 120), and the Case number for the petition for writ of mandamus is also misstated on the docket as No. 10-2630, not 10-2627 (See Exh. X). The petition for writ of mandamus makes numerous references to exhibits included with the Memorandum in Support of the Motion to Disqualify. These exhibits include Exhibit A, the 3/5/05 Grand Rapids Press article;

Exhibit B, the 3/1/05 article about Matthew Hale's violent white supremacist group; and Exhibit C, the 3/10/05 article about the killer, Bart Ross (R. 32).

It should further be noted that IRS booklet, "Illegal Tax Protester Information Book--Document 7072 (1-86)", a "classified" publication also tied tax protesters with violence and white supremacy groups. On 8/15/86, the Acting Ass't. Commissioner for Criminal Investigation informed all Regional Commissioners of the IRS that Document 7072 was obsolete and all copies should be destroyed (R. 32, p. 9). Both Judge Bell and IRS Agent Flink had been employed long enough with the federal government to have been aware of this publication.

As the result, the record shows that the dishonest individual engaging in false inventions, fraud upon the record, and post hoc rationalizations is not Janet Marcusse, but it is Judge Robert Holmes Bell. If insufficient cause had been presented by Marcusse to request Judge Bell's disqualification or recusal, then he would not have had any need to engage in such subterfuge. After all, it is Judge Bell who agreed the purpose of 28 USC §455 is to "promote public confidence in the **integrity** of the judicial process", quoting **Liljeberg v. Health Services Acquisition Corp.,** 486 US 847, 859 (1988)[emphasis added](R. 41, p. 18-19; R. 32, p. 1).

Judge Bell further claims that, "Movant has failed to produce any authority to demonstrate that the Court's isolated comment was evidence of Court bias which prejudiced Movant" (R. 41, p. 19). That is also not true as shown by the record.

In the Sixth Circuit, in **Marshall v. Bramer,** 828 F 2d 335, 357-358 (6th Cir. 1987), the judge took judicial notice of the Ku Klux Klan as a "violence-prone group", which was a "legal conclusion, not a mere

"restricted filer" status removed and Judge Bell disqualified, because "the district court has not unduly delayed in ruling on the motion. Marcusse has not demonstrated a clear and indisputable right to have the district judge disqualified at this time" (App. 41a).

On March 30, 2011, Judge Bell ignores the duty to first rule on the motion to disqualify, and instead proceeds to determine the §2255 Memorandum on the merits, summarily dismissing all or part of 19 of 30 grounds raised (R. 42, App. 43-44a), including Ground Seven, which raised the issue of his pervasive bias and collusion preventing a fair trial.

REASONS TO GRANT THE PETITION

I.

JUDGE ROBERT HOLMES BELL SHOULD BE RECUSED OR DISQUALIFIED NOW

A. In order to provide the means to summarily dismiss Ground Seven, Judicial Bias, Judge Bell removed part of Exhibit W to the Memorandum in Support thereby removing the evidence in support of a finding of personal bias, a conflict of interest, and criminal activity

Judge Bell summarily dismisses Ground Seven as follows:

> Movant alleges that the Court publicly compared "tax protestors" to "mass murders", "terrorists" and "white supremacists" (1:09-cv-913, Dkt. No. 34, at 119-29, Ex. W). Movant alleges that these comparisons combined with certain rulings made by the Court during the trial proceedings indicate impermissible bias. These allegations represent a false invention by Movant and are not supported by the record, her motion, or her exhibits. Id. The Court is quoted as saying "[i]t all started with these tax protestors... They're angry with everyone and everything." Id. This quote appeared in the Grand Rapids Press, March 5, 2005, and regarded the murder of a Chicago area Judge's husband and mother. Id. In a completely unrelated article published in March 26, 2004, by the New York Times, a David Cay Johnston is cited as suggesting that tax evaders sympathize with Al-Queda and secretly support white supremacists. Id. There is no plausible connection between the two articles.

He concludes, "Movant's argument of judicial bias is without merit" (R. 41, p. 19, App. 49a).

While Exhibit W is referenced by Judge Bell, he makes no mention

of the other two articles included in it, which did indicate law enforcement initially suspected Matthew Hale, a federal felon, and his group of violent white supremacists were behind the murders (App. 52, 54a). Hale had been convicted in 2004 for soliciting the murder of Judge Lefkow.

After reading the March 30 Opinion and in effect being called a liar, i.e., "These allegations represent a false invention by Movant", Marcusse reviewed the copy of exhibits sent to her by the court, as included with the January 13, 2011 Order to file the Memorandum in Support, only to discover the two articles mentioning Matthew Hale were missing from Exhibit W (App. 52-55a). The only item left in it was the March 26 Johnston article (App. 56-57a). Even the March 5, 2005 Grand Rapids Press article quoting Judge Bell was missing from Exhibit W (App. 50-51a).

As of March 5, 2005, the trial in the instant case had been scheduled for April 18 (R. 165). It is only when the two articles mentioning Hale are considered in conjunction with Judge Bell's March 5 comments that the bizarre and biased nature of these public comments can be exposed. It is not a normal reaction to link white supremacists with tax protesters, however, violence incited against Marcusse, as a pretrial detainee, can also be established by this link, which not only demonstrates Judge Bell's personal bias, but it shows that he, in his official capacity as Chief Judge at the time, condoned a policy allowing for such criminal activity, thereby further exposing he had a personal conflict of interest, which is what caused him to remove the Hale articles from Exh. W.

If Judge Bell had not been concerned that such a link could be shown, he would not have removed the articles from the Memorandum in Support after refusing to even file the brief for the better part of a year. The record shows he only filed it after Marcusse applied to the Sixth Circuit in a mandamus petition for an order commanding him to do so.

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This is not a question of Marcusse "forgetting" to include the Hale articles in Exhibit W, as she filed the Memorandum and its exhibits twice. In any event, the Memorandum itself refers to Matthew Hale and his white supremacist group in Ground Seven (App. 60-61a). In addition, in the Memorandum in Support of the Motion to Disqualify, the four articles contained in Exh. W were separated into four different exhibits (R. 32-4)[1], which may be a reason Judge Bell elected to ignore it, as the same evasive technique and ruling could not be applied.

In **United States v. Ayala-Garcia**, 574 F 3d 5 (1st Cir. 2009), a drug-trafficking case, it was the prosecutor's improper remarks in closing arguments suggesting defendants were potential killers that "so poisoned the well" a new trial was ordered (R. 32-1, p. 3).

How much more cause for reversal should it have been for the trial judge, the Chief Judge of a U.S. District Court, to have made a similarly prejudicial remark to the press right before the trial?

Judge Bell ignores the specific allegations that he had condoned the violence incited against Marcusse on July 24, 2004, three days after she was placed in Newaygo County Jail, in which she was attacked by a cellmate under the false planted rumors she was a "white supremacist", "constitutionalist", and "snitch" (App. 58, 62a). Besides being assaulted, Marcusse was also terrorized by vicious threats, such as her eyes would be "stab[bed] out with a pen" while she slept, and she would otherwise be "taken care of" by the men (App. 63-67a)(R. 32-1, p. 18).

Similar to the §2255 Memorandum, the court first refuses to file Marcusse's complaint regarding this assault, and then when she indicates

[1]Exhibit A was the March 5, 2005 article in the Grand Rapids Press quoting Judge Bell (App. 50-51a). Exhibit B was the March 1, 2005 Hale article (App. 52a). Exhibit C was the March 10, 2005 Ross article (App. 53-55a). Exhibit U was the March 26, 2004 Johnston article (App. 56-57a).

she could have a sheriff file her pleadings, the eye witness affidavit attached to the complaint is removed and filed at a separate place on the docket (R. 32-1, p. 19-20; R. 152, 157). No investigation is ever ordered. Instead, the court retaliates against Marcusse by ordering a competency exam, because "Defendant Janet Marcusse seems to believe that Chief Judge Robert Holmes Bell...[is] in a conspiracy against her" (R. 150, p. 1; R. 32-1, p. 19).

The manner in which the court responds shows Chief Judge Bell's official policy was to condone the assault. Rather than protect her rights as a pretrial detainee, the court instead tries to act as if she's crazy (R. 32-1, p. 20-21). To further discredit Marcusse, the competency hearing issue is fed to the press to taint the jury pool (R. 32-1, p. 21).

"Even a dog distinguishes between being stumbled over and being kicked". **Morisette v. United States**, 342 US 246, 252, Nt. 9 (1952).

The Supreme Court has held that an assault or personal injury in, or related to, official custody, can give rise to criminal liability under 18 USC §241 or §242. See **Logan v. United States**, 144 US 263 (1892); **In re Quarles**, 158 US 532 (1958); **United States v. Price**, 383 US 787 (1966); **Farmer v. Brennan**, 511 US 825 (1994).

In AUSA Gezon's Trial Brief dated May 4, 2005 (R. 297, p. 49), the tax evasion prosecution of **United States v. Masat**, 948 F 2d 923 (5th Cir. 1991), is cited. A new trial was ordered in the appeal after the first trial, referenced at 896 F 2d 88, 95-96 (5th Cir. 1990). The voir dire was condemned as a "foul blow" where the prosecutor's questions asking if "any members of the jury were members of the Aryan Brotherhood", because they painted the defendant as a "racist". As part of Masat's defense, his views that his status as a free, white, male sovereign had been put before the jury where he believed he did not have to pay taxes.

Such beliefs were not intended as the defense for any defendant at Marcusse's trial, except it was the defense prosecutors wanted to show.

Prior to trial, Judge Bell revokes co-defendant Donald Buffin's bond based on "a review of pleadings filed" (R. 354). Buffin's pleadings challenged the jurisdiction of the court (R. 82, 83, 84, 103). Pleadings filed by several defendants during the grand jury proceedings had also asserted white male, sovereign state citizenship status (R. 34, p. 156-57).

In **Marshall v. Bramer**, 828 F 2d 335, 357-58 (6th Cir. 1987), judicial notice was taken of the Ku Klux Klan as a "violence-prone group", which was a "legal conclusion, not a mere finding of fact, and the court records resorted to here may properly be viewed as 'sources whose accuracy cannot reasonably be questioned.'" (R. 32-1, p. 36-37).

At trial, Judge Bell permitted AUSA Gezon to submit the pleadings into evidence over counsel objections they were being used to extend the length of the "conspiracy" past the January, 2002, grand jury (TR 1131-32). Gezon argued they were "efforts to obstruct the investigation" (TR 1131), calling them in closing arguments "outrageous" (TR 3520, 3522, 3526, 3543), "nonsense" (TR 3567, 3742), "off the wall" (TR 3567), and "goofy" (TR 3521, 3543, 3558, 3559, 3567, 3742, 3740).

At sentencing, over counsel objections, rather than the 2000 Guidelines Manual, the 2004 version was used, which constituted over 16 years of the 25-year sentence attributed to Marcusse.

"The Sentencing Commission makes no provision for upward departures based upon a pro se defendant's meritless filings--however vexatious, numerous, or annoying. Nor does any case to our knowledge endorse such a departure." **United States v. O'Georgia**, 569 F 3d 281 (6th Cir. 2009).

In every court to rule on the subject nationwide, including in the Sixth Circuit, challenges to jurisdiction and arguments the defendant

is a "state" citizen, are "without merit", "routinely rejected by the courts, often with little discussion", or "barely worth a footnote", except in the instant case in front of Judge Bell. See **United States v. Mundt**, 29 F 3d 233, 237 (6th Cir. 1994)(R. 32-1, p. 32).

The manner in which the court retaliated in response to defendant pleadings is raised in Ground Nine (R. 34, p. 150-158), but summarily dismissed as "without merit" (R. 41, p. 20-21).

B. In order to summarily dismiss Ground Seven, Judicial Bias, Judge Bell misrepresents the underlying record, thereby protecting prosecutorial misconduct, criminal activity, and a personal conflict of interest

In his March 30, 2011 Opinion, Judge Bell finds, "Additionally, Movant's allegation that Court rulings made during the trial proceedings were a result of Court bias against tax protestors is not supported by Movant's motion, any attached exhibits, or the record" (App. 49a).

This finding mischaracterizes the specific allegations made, which challenged his pretrial activity and rulings as having been motivated by his personal bias against tax protestors.

The record shows Judge Bell assigns himself to the case three weeks before an indictment is obtained, but to cover up, has the docket show the magistrate signing an order he himself instead signed (R. 34, p. 137). A July 7, 2004, Motion and Order to Unseal Case contains Judge Bell's signature, not Magistrate Carmody's signature, as the docket misrepresents (App. 68-70a). It is not until September 8 that the docket indicates a copy of the docket sheet has been given to Judge Bell's case manager. In any event, no trial date is set until after the October 27 superseding indictment is filed (R. 113), suggesting ex parte communications occurred in which Judge Bell was made aware it would be forthcoming from the start. The superseding indictment broadens the scope of

authenticated by court order (App. 84a), as well as the record supplemented with the **Skilling** claim (App. 85a). In spite of a complaint filed with the warden (App. 86-87a), the problem persists. Both Marcusse and Besser have suffered dismissals due to a default caused by this criminal activity (App. 88-89a). Under 18 USC §1702, it is a criminal felony to obstruct the mail.

Since arriving in FCI Tallahassee on December 6, 2005, Marcusse has had no problems with her mail. Clearly then, the problem has not originated with the BOP. The only party left original to the criminal trial is Judge Bell, as both prosecutors and IRS Agent Flink have retired.

If Marcusse's issues had no merit, there would be no fear of another judge's consideration of them.

G. At sentencing, U.S. Marshals try to break Marcusse's fingers, which appears to have been retaliation for filing Rule 60(b) fraud motions

Other criminal activity in which Judge Bell has participated to obstruct access to the courts includes where, at sentencing, he refuses to order U.S. Marshals to cease attempting to break Marcusse's fingers (R. 639, TR 46, App. 90a). As she had been silent prior to this attack, had they wanted her to move, stand, or sit, they would have grabbed her arms, not targeted the attack on her thumbs and fingers (App. 90a).

Objections to the PSR were obstructed when it was confiscated (R. 494), causing Marcusse to file several Rule 60(b)(3)&(4) complaints (R. 545, 546, 551, 553, 563, 590). Three days after she files a transcript tampering complaint about the removal from page 806 of witness Leonard Zawistowski's admittance his employer, the Federal Reserve, collapsed the Class B Bahamian banks in 2001 (R. 590), thereby including SSBT after Agent Forrester's endorsement letters, Judge Bell retaliates by filing an "Administrative Order", making her a restricted filer (App. 91a).

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H. Judge Bell protects the government from responding to the evidence of unclean hands and a good-faith reliance defense by summarily dismissing relevant claims, violating 28 USC §753(b)

For the §2255, Judge Bell denied a motion to compel discovery of the "original records so taken" under 28 USC §753(b) for Zawistowski's cross examination and that Agent Forrester's employment be verified and his endorsement letters authenticated (R. 5, ¶¶ 20, 21, 33; R. 9). At trial, prosecutors claimed Forrester's "existence" was of "doubtful validity", and his "alleged" endorsement letters of SSBT were "bogus on their face" (R. 397, p. 2-3), causing Judge Bell to deny him as a witness (App. 21a).

In his March 30, 2011 Opinion, Judge Bell summarily dismisses Ground Twenty-Four, transcript tampering, as "without merit", because "Movant cites no evidence of transcript tampering other than her contentions that the transcript doesn't reflect what she remembers occuring at trial" (R. 41, p. 37-38). This finding ignores the 8 later references she cited from the trial to Zawistowski's admittance (TR 2107, App. 92a; TR 2537, 3246, 3247, 3251; R. 392-1, p. 3, 8, 10, App. 26-28a)(R. 34, p. 30-31).

"In some instances the failure of a court to follow the §753(b) mandate will require reversal." "It is the duty of the district court...to meet the Act's requirements." **U.S. v. Gallo**, 763 F 2d 1504 (6th Cir. 1984).

Judge Bell also summarily dismisses Ground Fifteen, denial of a good-faith reliance defense and the evidence of unclean hands as follows:

> Movant's argument for a "good-faith reliance" regards only the collateral matter of whether Movant was defrauded by a third-party. Accordingly, Movant's argument is without merit. Fourth, Movant argues that federal officials were involved with the administration, endorsement, and collapse of a bank located in the Bahamas, and that she was entitled to evidence regarding the federal involvement with that bank under **Brady v. Maryland**, 373 US 83 (1963), and **Jencks v. United States**, 353 US 657 (1957)(1:09-cv-913, Dkt. No. 34, at 186-188). Movant's implausible assertions are speculative conclusions, unsupported by the record, motion, or exhibits and are without merit.

EXHIBIT O-14

No. 11-2258

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: JANET MARCUSSE,

Petitioner.

ORDER

Before: MERRITT, KETHLEDGE, and WHITE, Circuit Judges.

Janet Marcusse was convicted and sentenced for mail fraud, conspiracy to commit mail fraud, and money laundering. She and several codefendants appealed, and we affirmed. *United States v. Flynn*, 265 F. App'x 434 (6th Cir. 2008). Marcusse then filed in the district court a motion to vacate under 28 U.S.C. § 2255. One of the grounds for relief that she asserts is judicial bias and impartiality. She also separately moved the district judge to recuse or disqualify himself from further action in the proceedings. In this petition for a writ of mandamus, Marcusse asks this court to recuse or disqualify the district judge and to vacate any of his previously entered opinions and orders. She moves for leave to proceed *in forma pauperis* as to this petition.

The district court issued an opinion and order reviewing 30 grounds that Marcusse stated in support of her § 2255 motion, dismissing several of them, and directing the government to respond to the remaining grounds. The court rejected Marcusse's claim of judicial bias and prejudice.

Although a district court's denial of a motion to disqualify based on an appearance of partiality may be reviewable in mandamus, the burden for relief in mandamus remains high, and a petitioner must show a clear and indisputable right to relief. *See United States v. Gomez-Gomez*, 643 F.3d 463, 471 (6th Cir. 2011). Marcusse has not met that burden.

To support the recusal of a district judge, the moving party must show bias or prejudice that is personal and extrajudicial in nature; it cannot be based upon rulings or other acts of the judge taken in the course of present or past litigation. *See Liteky v. United States*, 510 U.S. 540, 550-56 (1994); *United States v. Sammons*, 918 F.2d 592, 599 (6th Cir. 1990). Marcusse's petition makes numerous claims that essentially argue trial error and that do not compel that the district judge be relieved from consideration of the § 2255 motion. Further, we note that when the district court has rendered a final decision on the § 2255 motion, if Marcusse is dissatisfied, she may seek review in this court by requesting a certificate of appealability. *See* 28 U.S.C. § 2253.

Therefore, the petition for a writ of mandamus is **DENIED**. Marcusse's request to proceed *in forma pauperis* is denied as moot.

ENTERED BY ORDER OF THE COURT

Clerk

PETITION FOR EXTRAORDINARY WRIT OF MANDAMUS

REMEDY REQUESTED

NOW COMES the Petitioner, Janet Mavis Marcusse ("Marcusse"), as a pro se prisoner, to submit to the Sixth Circuit Court of Appeals this Petition for Extraordinary Writ of Mandamus for an Order to command Judge Robert Bell to:

(1) Properly file the Memorandum of Points and Authorities in Support of the Motion to Vacate pursuant to 28 USC §2255 and all accompanying exhibits, as submitted by Marcusse on March 11, 2010, on the public record in Case No. 1:09-cv-913;

(2) Properly file Exhibits A-1 through L-1 of the Memorandum in Support of the Motion to Disqualify Judge Bell with the Memorandum, as submitted by Marcusse on September 14, 2010, on the public record in Case No. 1:09-cv-913;

(3) Properly file the Motion to Compel Production of Valid Search Warrant & Affidavit and all accompanying exhibits, as submitted by Marcusse on January 29, 2013, on the public record in Case No. 1:04-cr-165;

(4) Provide Marcusse with a copy of all of these pleadings after they have been properly filed on the public record, so that verification can be made that they have been accurately filed from the docket references made on each page.

JURISDICTION

This Petition for Extraordinary Writ of Mandamus is submitted pursuant to 28 USC §§ 1651 and 2106.

SUMMARY OF ISSUES PRESENTED

ISSUE (1)

In Response to Request (2) of Marcusse's previous Petition for Writ of Mandamus to the Sixth Circuit in Case No. 10-2627, which was filed on December 14, 2010, requesting that an Order issue to command the district court to acknowledge receipt and file her complete Memorandum of Points and Authorities in Support of the Motion to Vacate pursuant to 28 USC §2255 ("Memorandum"), and all accompanying exhibits, which was dated March 11, 2010 (See Exh. A), Judge Bell issues a Memorandum Opinion and Order to have it filed on January 13, 2011 (See Exh. B). The docket for Case

EXHIBIT Q-14

No. 1:09-cv-913 shows the Memorandum and Exhibits A-Z, AA-ZZ, AAA-ZZZ, AAAA-ZZZZ, and A1 - N1 being filed on January 14, 2011 at Dkt. No. 34 (See Exh. C, p. 3).

The Sixth Circuit judicial panel relies upon Judge Bell's representations in order to dismiss Request (2) as "moot" on March 11, 2011 (See Exh. D). Marcusse also relies upon these representations to abandon the issue, such as in her Petition for Writ of Certiorari to the Supreme Court in Case No. 11-5826. Recently, however, when requesting copies of Exhibit W from the Memorandum on the public record from the government website known as "pacer", it was discovered that the Memorandum and its Exhibits had not in fact been filed on the public record, as represented by Judge Bell. Instead, access to view these documents has been restricted to only those individuals able to travel to the Ford Federal Building in Grand Rapids, Michigan, to view it at the courthouse (See Exh. E). Additionally, at Dkt. No. 34-1, where it states, "document named as memorandum of points and authorities with exhibits A-Z, AA-ZZ, AAA-ZZZ, AAAA-ZZZZ, and A1-N1", is instead located the Motion to Vacate, which is the application form provided by the district courts to list the grounds raised that had been previously filed at Dkt. No. 1 on October 2, 2009 (See Exh. C).

In a published Opinion dated March 30, 2011, Judge Bell omits reference to two documents filed in Exhibit W from the Memorandum in order to summarily dismiss Ground Seven, Judicial Bias, in her §2255 brief by, in effect, calling Marcusse a liar where he finds she had made "false inventions" against him that were not supported by her Exhibit W (1:09-cv-913, R. 41, p. 19)(See Exh. F). See also **Marcusse v. United States**, 785 F Supp 2d 654, 668 (WD Mich. 2011). In a Motion to Vacate the Opinion pursuant to Fed. R. Civ. Proc. 60(b) filed on May 12, 2011, Marcusse alleges two documents were removed from Exhibit W in order to be able to make this finding (Id., R. 43, p. 54)(See Exh. G). It is a crime under 18 USC §2071(a) to conceal, remove, mutilate or destroy documents filed with a clerk of court.

Marcusse currently has open appeals in Case No. 12-2677 from the denial of her §2255 by Judge Bell, and Case No. 13-1500 from the denial of her Rule 60(b) Motion to Vacate the denial of her §2255, including through the disregard of 42 claims

argued in her Memorandum (Id., R. 80, p. 19)(See Exh. H). Where the application for a §2255, a/k/a Motion to Vacate, is misrepresented as the Memorandum in Support, a brief that contains a complete Statement of Facts and all arguments in support of the grounds raised in the Motion to Vacate, including the 42 claims disregarded, such activity lends the appearance of a fraudulent scheme concocted by Judge Bell to fix the outcome of her appeal by enabling the Sixth Circuit to also disregard these important claims. This cheats Marcusse out of the "one fair shot" both the Supreme Court and Congress intended a federal prisoner to have in a §2255 proceeding. After all, Marcusse did not plead guilty and waive her right to a full and fair trial proceeding under the law, which was a right that was not respected by this judge.

ISSUE (2)

On September 14, 2010, Marcusse submits a Motion to Disqualify Judge Robert Holmes Bell & Accompanying Affidavit; a Memorandum in Support of the Motion to Disqualify Judge Bell, which included Exhibits A-Z, AA-ZZ, AAA-ZZZ, and A-1 to L-1,; and a Motion for Leave to File Supplement to Ground Seven of the Motion to Vacate Regarding the Pervasive Bias of the Trial Judge by incorporating Memorandum in Support of Motion to Disqualify Judge Bell, except when filed by the district court on September 21, 2010, the Motion to Disqualify, Memorandum in Support of the Motion to Disqualify, and its Exhibits are all filed as "Proposed" documents behind the Motion for Leave to File Supplement to Ground Seven (Id., R. 30)(See Exh. I).

As Request (3), therefore, in the December 14, 2010 Petition for Writ of Mandamus, Marcusse asks that her Motion to Disqualify Judge Bell and its Memorandum in Support be properly filed instead of mischaracterized as "Proposed" documents (See Exh. A). In his January 13, 2011 Memorandum Opinion and Order, Judge Bell attests that the "motion to disqualify has been properly filed" (Id., R. 33)(See Exh. B), which causes the Sixth Circuit to dismiss Request (3) as "moot" (See Exh. D), and Marcusse to abandon the issue.

While preparing the instant petition, it was discovered that Exhibits A-1 to L-1 of the Memorandum in Support of the Motion to Disqualify had not been filed with

the rest of the pleadings at Dkt. No. 32 (See Exh. C, p. 4). It is a crime under 18 USC §2071(a) to conceal, remove, mutilate or destroy documents filed with a clerk of court.

ISSUE (3)

On or about January 18, 2012, unknown individuals broke into the residence of Christopher Milson at 15 Choctaw Trail, Elkland, Missouri, where Marcusse had been living prior to her arrest on July 1, 2004, and where her business records were still being maintained (See Exh. J). Only Marcusse's business records were targeted, which had been inside filing cabinets and boxes. These records were methodically located, removed, and thrown about the house in a malicious crazed frenzy that was intended to destroy them and disguise what documents were stolen (See Exh. K). There was no reasonable means to determine what might be missing where Marcusse is incarcerated in Florida, as no doubt intended. Nor would it be reasonable to conclude this was the random act of a burglar where no valuables were stolen.

It is presumed that rogue government agents engaged in an illegal search and seizure to destroy exculpatory evidence, particularly in light of a history in this case of similar illegal activity. Right after Marcusse's arrest on July 1, 2004, her business attorney, Gurmail Sidhu, had his office and home "raided" and her bank and business records seized under a bogus "drug-trafficking" search warrant (See Exh. M). The documents seized have been withheld from Marcusse since that time in spite of numerous requests for them, including a pending Freedom of Information lawsuit (1:12-cv-01025, D.C.). In response to fabricated drug-trafficking charges of "Conspiracy to distribute five kilograms of cocaine" on co-defendant George Besser's arrest warrant, AUSA Gezon avers at trial, "This case is not about drugs" (1:04-cr-165, R. 470, TR 23).

When Marcusse submits a Motion to Compel Production of Valid Search Warrant & Affidavit for the January, 2012 burglary, along with the evidence in support consisting of pictures of the mayhem caused by it, which was served via certified mail in the criminal case, No. 1:04-cr-165 (See Exh. K), Judge Bell has refused to file

it, as of 10 months later, as shown by the docket in that case (See Exh. N).

If there had been legitimate criminal charges against Marcusse, or if there was no concern reversible trial error had occurred, there would have been no need to break into a private residence to destroy exculpatory evidence 5-1/2 years after the criminal trial. It is a crime to engage in a search without a warrant in violation of 18 USC §2336. Furthermore, it is a crime in violation of 18 USC §3, accessory after the fact, to assist such an offender by hindering an investigation or prosecution.

ISSUE (4)

If Marcusse had requested a copy of her pleadings after Judge Bell represented they had been properly filed on the record, she could have verified they were accurately filed almost three years ago, which would have been before a decision was rendered in Case No. 10-2627 mooting Requests (2) and (3)(Issues (1) and (2) herein). In addition, by so doing, it may have precluded Judge Bell from omitting documents in her exhibits in order to summarily dismiss a valid judicial bias claim and required him to respond to the 42 claims he was able to disregard by concealing the Memorandum from view or reasonable access--claims that were deliberately ignored in order to deny relief in the §2255 case and maintain illegal convictions.

STATEMENT OF THE FACTS

A Motion to Vacate application for a petition under 28 USC §2255 is filed on October 2, 2009, opening Case No. 1:09-cv-913 in the Western District of Michigan (See Exh. C, p. 1). A Motion for Extension of Time to file Brief of Points and Authorities in Support is also filed on October 2, 2009 (1:09-cv-913, R. 4)(See Exh. C, p. 1). When no response is made to the motion for extension of time, a second extension of time is filed on January 4, 2010, requesting an additional 90 days, as Marcusse was expecting FBI Form 302's in support of her issues under the Freedom of Information Act ("FOIA"), as requested on May 12, 2009, which the FBI had agreed to release after she appealed the request (Id., R. 8)(See Exh. C, p. 1).

On January 7, 2010, a Memorandum Opinion and Order grants in part the motions for extension of time for 30 days (Id., R. 9)(See Exh. C, p. 1-2).

EXHIBIT Q-14

No. 13-2551

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: JANET MARCUSSE,

Petitioner.

ORDER

Before: MOORE, COLE, and GIBBONS, Circuit Judges.

In 2005, petitioner Janet Marcusse was convicted after a jury trial of conspiracy to commit mail fraud, money laundering, and related offenses. Her conviction and sentence were affirmed on appeal. *United States v. Marcusse*, Nos. 05-2586/2668 (6th Cir. Feb. 14, 2008). Pursuant to Western District of Michigan Local Civil Rule 5.7(d)(ii), her pro se post-conviction documents may not be filed electronically. She petitions for a writ of mandamus directing the district court to electronically file her documents so that they may be located via the Internet through the Public Access to Court Electronic Records service known as PACER, and she asks to be provided "with a copy of all these pleadings after they have been properly filed on the public record, so that verification can be made that they have been accurately filed from the docket references on each page." Additionally, she moves to proceed *in forma pauperis*.

"The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations where the petitioner can show a clear and indisputable right to the relief sought." *In re Am. President Lines, Ltd.*, 929 F.2d 226, 227 (6th Cir. 1991) (citations omitted). "Mandamus from this court is generally reserved for questions of unusual importance necessary to the economical

and efficient administration of justice or important issues of first impression." *John B. v. Goetz*, 531 F.3d 448, 457 (6th Cir. 2008) (citation and quotation marks omitted). Mandamus is not available when petitioners have "adequate alternative means to obtain the relief they seek." *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1078 (6th Cir. 1996) (quoting *Mallard v. U.S. Dist. Court*, 490 U.S. 296, 309 (1989)). This "ensure[s] that the writ will not be used as a substitute for the regular appeals process." *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 380-81 (2004) (citation omitted).

Marcusse has appeals pending in Nos. 12-2677 and 13-1500 from the denial of her post-conviction motions. She may not use mandamus as a substitute for the regular appeals process. Neither has she shown a clear and indisputable right to the relief sought.

The petition for a writ of mandamus is **DENIED**. The motion to proceed *in forma pauperis* is **DENIED** as moot.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

1997). Accordingly, Flynn has not demonstrated prosecutorial misconduct sufficient to warrant a new trial.

In light of the foregoing, Flynn has not demonstrated that reasonable jurists would debate the district court's determination that the prosecutorial misconduct was sufficient to warrant a new trial.

Judicial Bias

Flynn argues that the district court improperly invaded the province of the jury by highlighting government exhibits on the jury's verdict form.

In a criminal trial, a judge is "more than a mere arbitrator," and instead has a responsibility to assure "that the issues are not obscured and that the testimony is not misunderstood." *United States v. Hynes*, 467 F.3d 951, 958 (6th Cir. 2006) (citation omitted). "The court may therefore interject itself into the proceedings when necessary to clear up confusion in the evidence or to supplement, in an impartial fashion, the presentation of a poorly prepared attorney." *Id.* (internal quotation marks and citation omitted). In determining whether a trial judge has overstepped his or her authority, a court may consider

> (1) whether the trial is lengthy or complex, such that the court's intervention might help clarify issues and facts for the jury; (2) whether counsel are unprepared or obstreperous such that the facts become muddled and the district court needs to clarify the issues for the jury; and (3) whether a witness becomes inadvertently confused or is difficult to deal with such that judicial intervention may add increased efficiency to the trial process.

United States v. Powers, 500 F.3d 500, 511-12 (6th Cir. 2007) (internal quotation marks omitted).

Here, reasonable jurists would not debate the district court's determination that its inclusion of exhibit numbers on the jury's verdict form did not constitute error because (1) Flynn's trial lasted several weeks; (2) the issues involved were complex; (3) the exhibits were voluminous; (4) several of the defendants' self- or hybrid-representation may have muddled the facts relevant to the proceedings; and (5) the district court informed the jury that the exhibit numbers were being provided solely to help them "cut to the chase a little quicker."

1997). Accordingly, Besser has not demonstrated that the prosecutorial misconduct requires a new trial.

In light of the foregoing, Besser has not demonstrated that reasonable jurists would debate the district court's determination that the prosecutorial misconduct was insufficient to warrant a new trial.

Judicial Bias

Besser argues that the district court improperly invaded the province of the jury by highlighting government exhibits on the jury's verdict form.

In a criminal trial, a judge is "more than a mere arbitrator," and instead has a responsibility to assure "that the issues are not obscured and that the testimony is not misunderstood." *United States v. Hynes*, 467 F.3d 951, 958 (6th Cir. 2006) (citation omitted). "The court may therefore interject itself into the proceedings when necessary to clear up confusion in the evidence or to supplement, in an impartial fashion, the presentation of a poorly prepared attorney." *Id.* (internal quotation marks and citation omitted). In determining whether a trial judge has overstepped his or her authority, a court may consider

> (1) whether the trial is lengthy or complex, such that the court's intervention might help clarify issues and facts for the jury; (2) whether counsel are unprepared or obstreperous such that the facts become muddled and the district court needs to clarify the issues for the jury; and (3) whether a witness becomes inadvertently confused or is difficult to deal with such that judicial intervention may add increased efficiency to the trial process.

United States v. Powers, 500 F.3d 500, 511-12 (6th Cir. 2007) (internal quotation marks and citation omitted).

Here, reasonable jurists would not debate the district court's determination that its inclusion of exhibit numbers on the jury's verdict form did not constitute error because (1) Besser's trial lasted several weeks; (2) the issues involved were complex; (3) the exhibits were voluminous; (4) several of the defendants' self- or hybrid-representation may have muddled the facts relevant to the proceedings; and (5) the district court informed the jury that the exhibit numbers were being provided solely to help them "cut to the chase a little quicker."

Judicial Council of the Sixth CircuitRules text

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

To begin the complaint process, complete this form and prepare the brief statement of facts described in item 5 (below). The Rules for Judicial-Conduct and Judicial-Disability Proceedings, adopted by the Judicial Conference of the United States, contain information on what to include in a complaint (Rule 6), where to file a complaint (Rule 7), and other important matters. The rules are available in federal court clerks' offices, on individual federal courts' Web sites, and on www.uscourts.gov.

Your complaint (this form and the statement of facts) should be typewritten and must be legible. For the number of copies to file, consult the local rules or clerk's office of the court in which your complaint is required to be filed. Enclose each copy of the complaint in an envelope marked "COMPLAINT OF MISCONDUCT" or "COMPLAINT OF DISABILITY" and submit it to the appropriate clerk of court. **Do not put the name of any judge on the envelope.**

1. Name of Complainant: Janet Marcusse
   Contact Address: #17128-045, FCI Tallahassee
   501 Capital Circle, NE, Tallahassee, FL 32301
   Daytime telephone: (___) N/A

2. Name(s) of Judge(s): Robert Holmes Bell
   Court: Western District of Michigan

3. Does this complaint concern the behavior of the judge(s) in a particular lawsuit or lawsuits?
   [XX] Yes [ ] No
   If "yes," give the following information about each lawsuit:
   Court: Western District of Michigan
   Case Number: 1:04-cr-165; 1:09-cv-913
   Docket number of any appeal to the 6th Circuit: 05-2586/2668
   Are (were) you a party or lawyer in the lawsuit?
   [XX] Party [ ] Lawyer [ ] Neither
   If you are (were) a party and have (had) a lawyer, give the lawyer's name, address, and telephone number: (stand-by counsel)
   David Kaczor, Federal Public Defender
   50 Louis, NW
   Grand Rapids, MI 49503

4. Have you filed any lawsuits against the judge?
   [ ] Yes [XX] No
   If "yes," give the following information about each lawsuit:
   Court: _____
   Case Number: _____
   Present status of lawsuit: _____
   Name, address, and telephone number of your lawyer for the lawsuit against the judge:

EXHIBIT U-14

Court to which any appeal has been taken in the lawsuit against the judge:

Docket number the appeal:

Present status of the appeal:

5. Brief Statement of Facts. Attach a brief statement of the specific facts on which the claim of judicial misconduct or disability is based. Include what happened, when and where it happened, and any information that would help an investigator check the facts. If the complaint alleges judicial disability, also include any additional facts that form the basis of that allegation. See note below.

6. Declaration and signature:

I declare under penalty of perjury that the statements made in this complaint are true and correct to the best of my knowledge.

(Signature) _____ . (Date) 12/10/2010

DAVE DURIS, CASE MANAGER,
AUTHORIZED BY THE ACT OF
JULY 7, 1955, AS AMENDED, TO
ADMINISTER OATHS (18 USC 4004)

Please note that additional details and exhibits in support are available in the Memorandum in Support of Motion to Disqualify Judge Bell ("Memorandum"), which are referenced in the Affidavit of Facts attached by the applicable section and exhibits. Reference is also made in the Affidavit of Facts to additional details in support in the Petition for Writ of Mandamus ("Mandamus").

EXHIBIT U-14

AFFIDAVIT OF FACTS

I, Janet Marcusse, being duly sworn, hereby deposes and says:

1. I am a 54-year-old woman, currently imprisoned at FCI Tallahassee on convictions for a fabricated, nonexistent "crime", which was further made null and void by **Skilling v. United States**, 130 S Ct 2986 (2010), except my access to the courts for relief is being obstructed by Judge Bell (See Mandamus, p. 4-22, 30; Memorandum, Sections I, J & DD).

2. I am currently the petitioner in a first motion to vacate pursuant to 28 USC §2255 in Case No. 1:09-cv-913, in which Judge Bell made me a "restricted" filer as soon as the application was filed, further misrepresenting documents and pleadings in order to reject them from filing or as "incomplete" (See Mandamus, p. 1-2, 18-20, 26-27).

3. Claims made in the §2255 brief were that Judge Bell was biased, allowing and/or ordering repeated acts of violence against me, in which I was injured, including in open court, in retaliation for asking to file pleadings, make objections, or trying to raise a defense, and that he engaged in collusion with IRS agents in presenting false claims for unreported income in violation of 26 USC §7214, causing a conflict of interest (See Memorandum, Sections B, F, H, X & Z; Mandamus, p. 20-21).

4. A search made of LexisNexis CD of 15,686,403 records nationwide shows only I and a co-defendant, William Flynn, have ever been made "restricted" filers in a first §2255 motion proceeding (See Mandamus, p. 23-26).

5. From May 16 to June 14, 2005, I was the "lead" defendant in a trial, over which Judge Bell presided, in Case No. 1:04-cr-165, on charges alleged by prosecutors to be a "ponzi scheme" (TR 41). Claims of $943,370 in "unreported income" were first made at trial to invent motive (TR 1923).

6. I fully expected to win at trial, advising Judge Bell the first morning of it that my expected defense was, "bank records show the money was invested with other individuals" (TR 8). Likewise, the bank records would also show the unreported income charges consisted of funds expended for investments on behalf of the investors (TR 81).

7. Judge Bell denies me this defense (TR 8-9). He further denies me the right to proceed pro se (TR 18), make objections or cross examine witnesses (TR 18, 31), after I question the nature of a so-called "Article III" court so unconstitutional as to deny me the right to use admitted bank records underlying IRS summary exhibits purporting to prove a ponzi scheme (TR 11-15). Because I ask for his oath of office to the Constitution to be placed on the record (TR 11-12), Judge Bell threatens me with removal to "sit and watch us do this trial on a video-audio feed". I also request his recusal, but he refuses (TR 20)(See Memorandum, Sections M, O & P).

8. Prior to the trial on March 5, 2005, Judge Bell is quoted in the Grand Rapids Press in response to the Judge Lefkow murders as equating tax protesters to multiple murderers by claiming, "It all started with those tax protesters". A white supremacist group headed by convicted felon Matthew Hale was originally suspected of being responsible, but on March 10, it was learned a disgruntled litigant, a cancer victim denied his day in court, was responsible. On July 24, 2004, three days after

EXHIBIT U-14

I was placed in Newaygo County Jail, I was attacked and injured by another prisoner, Michelle McDaniel, who had called me a "white supremacist", "constitutionalist", and "snitch". Threats were made to "stab" my "eyes out with a pen" while I slept, and that the men would "take care of" me during a transport (See Memorandum, Sections A & B).

9. It is my firm belief that this jail attack was incited by federal officials trying to terrorize me into pleading guilty because they knew their charges were garbage, they did not want to be embarrassed at a trial, and they believed if they could get me to plead out, the rest of the accused would have no choice but to fall in line right behind me.

10. There has never been presented any evidence or testimony to support labeling me or any co-defendant a "white supremacist", which is a label I find most offensive. It is an irrational, even incomprehensible conclusion for any federal judge to equate the failure to file an income tax return with a violent white supremacist or racist, yet that is what Judge Bell appears to have done to order an anonymous jury and grant prosecutors a "protection" order for their trial exhibits, Jencks and **Brady** materials, which included the bank records. It also exposes Judge Bell's tacit approval of the 7/24/04 jail attack (See Memorandum, Sections B & C).

11. It is my firm belief that Judge Bell was basing his conduct on a scam perpetuated 25 years ago by irresponsible IRS agents in which those who challenged imprisoning people for tax debts were claimed to secretly support "white racist" organizations (See Memorandum, Section C). A "classified" booklet, "Illegal Tax Protester Information Book-Document 7072 (1-86)", which had been ordered to be destroyed on 8/25/86, was the apparent source of such accusations (See Memorandum, Section A).

12. "[A] review of pleadings filed by the defendant" is the reasoning Judge Bell uses to revoke co-defendant, Donald Buffin's, bond on 5/11/05 (R. 354), in which he challenged jurisdiction, claiming he was a white male, sovereign, state citizen, and not a federal citizen. Previously, the magistrate had refused to grant the government's motion to revoke his bond (R. 272, 291). Buffin was held in the drunk tank at Newaygo County Jail for 6 days, including the first 2 days of trial, without shower or shave, until he agreed to allow court-appointed counsel, Ken DeBoer, fully represent him (TR 3, R. 409). Buffin had just advised the court it was his intention to proceed pro se (R. 330)(See Memorandum, Section C).

13. The objectionable pleadings Buffin filed had been supplied to him by David Paul Rendleman, a repeat offender looking for a deal (See Memorandum, Section C). These pleadings were then used as the excuse by prosecutors to obtain a superseding indictment on 10/27/04, extending the length of the "conspiracy", and adding 20-year money laundering counts to the 5-year mail fraud counts.

14. My business attorney, Gurmail Sidhu, had his home and office raided by a false "drug-trafficking" search warrant, which was then used to confiscate my business and bank records. When Sidhu would not respond to my queries for documents or to be a defense witness, I requested a subpoena for the records, which was denied by Judge Bell (R. 333, 342). The records were never provided under **Brady**, yet Sidhu handled several wire transfers for investments, including the $1.2 million wire transfer to MLC Development, out of which $1 million ended up in Robert Plaster's

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pocket. Plaster, CFO of MLC, was a long-time friend and political patron to John Ashcroft, the U.S. Attorney General in power at the time the indictments were obtained. A ponzi scheme allegation insured Plaster was not charged in the case (See Memorandum, Section K).

15. It is my firm belief that my attorney, Gurmail Sidhu, was threatened under the auspices of national security, which would have been a gross abuse of authority given the false drug search warrant. Judge Bell had to have known in order to cover up these abuses.

16. Prior to the indictment being obtained on 7/29/04, Judge Bell assigns himself to the case on 7/12/04, signing orders which are misrepresented on the docket as having been signed by the magistrate (See Memorandum, Section E).

17. It is my firm belief sufficient cause exists to prove Judge Bell assigned himself to the case in order to fix its outcome.

18. On 11/9/04, at arraignment on the superseding indictment, when I tried to have the clerk accept several pleadings, including, ironically, a complaint about the 7/24 jail attack, and another about the "protection racket" for Plaster, I am jumped so violently from behind by U.S. Marshals that the leg on the table where I had been sitting is broken. I suffered severe bruising, particularly on my arms, and a herniated disk in my back, as confirmed by numerous witnesses. I was removed from the courtroom and not permitted to plead "not guilty", except the docket covers up the attack by misrepresenting I "stood mute" while the court entered "not guilty" on my behalf (See Memorandum, Section H).

19. After 3 weeks, when none of my pleadings are filed on the record, demonstrating the tacit approval of the 7/24 jail attack, I write a letter to the clerk of court indicating I will have the sheriff serve my pleadings if they are not filed. The court retaliates by ordering a competency exam based on the reasoning, I "became visibly out of control and had to be restrained and removed". It is also concluded, based on my pleadings, I am "possibly paranoid" (See Memorandum, Section H). If I am so "delusional", then why would the court find it expedient to remove the eye witness account of the 7/24 jail attack from my complaint before filing it as a separate document? (See Memorandum, Section B).

20. A review of the public record shows that Judge Bell's court discriminated against women in general (See Mandamus, p. 19), and in particular, if they were accused of a tax crime (See Memorandum, Section G).

21. My right to file pleadings as a pro se, was routinely obstructed by their being rejected from filing or misconstrued on the record, until I filed a notice of intent to appeal (R. 239)(See Memorandum, Section I & H; Mandamus, p. 14-15).

22. I and two other co-defendants, 67-year-old George Besser, and Jeff Visser, who were detained pretrial, were physically abused, sleep deprived, and my food drugged, during the trial (See Memorandum, Section F; Mandamus, p. 17-18). It was only those of us who requested to proceed pro se, out of the 8 charged, that were denied bond pretrial.

23. Judge Bell colludes with prosecutors and IRS agents by granting a

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pretrial motion in limine in which the defendants are prohibited from using any defense or evidence to show "the persons engaged in the investigation and prosecution of this matter have engaged in several crimes including extortion, oppression, fraud" (R. 277), adding any evidence showing "that the government's implementation of the statutes is erroneous" (R. 339)(See Memorandum, Section C; Mandamus, p. 6).

24. Judge Bell fixes the outcome of the trial by disregarding the law in order to enable IRS Agent James Flink, the prosecution's chief witness and "investigator", to present false claims. In his testimony, Agent Flink claims the defendants "spent" $12.1 million on themselves and others, presenting one-page summary exhibits in support of a ponzi scheme (TR 1691). When I question Agent Flink as to his definition of an investment, he evasively and nonsensically admits that if an investment did not match GX-1, a prime bank debenture booklet containing a 10% product, he did not count it in his exhibits (TR 2052). This violated the standing precedent of the Sixth Circuit where such an odd definition for a common word would cause his testimony and evidence to be "mandatorily" excluded. Judge Bell also meets privately with the jury twice at this time (See Memorandum, Section E & N; Mandamus, p. 9, 27-28).

25. Judge Bell colludes with prosecutors by enabling them to base their case on GX-1, an irrelevant product, by using it to order that any defense evidence or witnesses regarding a different product was irrelevant. Besides making GX-1 a fraudulent nonrebuttable presumption, I objected to the exhibit when it was entered as GX#2 at the 7/28/04 detention hearing as irrelevant to the witness (TR 19, R. 178), who had first invested on 10/25/99 (GX-80). Investor newsletters from 6/99 and 10/99, GX-31 and GX-33, which described the main investment product as a managed stock investment program, should have been relevant given the 39 mail fraud counts began on 10/21/99 (R. 24). GX-33 further disclosed the "standard bank debenture" product, e.g., GX-1, was no longer being used. GX-31 and GX-33 were tampered with by prosecutors removing their attachments prior to submission, and the jury misled by their refusing to review these exhibits with them (TR 247, 344-345). During this time, I was not allowed to cross examine witnesses or object (See Memorandum, Section T).

26. This prosecution violated a contract co-defendant George Besser had with the federal government, entered as GX-380 at trial, in which he, as signatory, was considered the innocent victim of a prime bank fraud where the funds were seized in May, 1999 (See Memorandum, Section T).

27. Judge Bell colludes with prosecutors by removing the ponzi scheme element from jury deliberation, finding it for himself after the trial when denying motions for judgment of acquittal (R. 491), and protecting his ability to do so by preventing me from presenting any evidence or witnesses on the record that could have proven Agent Flink was committing perjury and falsifying evidence, including going so far as to have me drugged by jail employees to prevent me from being able to cross examine him (See Memorandum, Section S, F, P & Q; Mandamus, p. 9, 17-18, 28).

28. Judge Bell fixes the outcome of the trial by switching the scheme element for mail fraud in his jury instructions to honest services fraud after prosecutors are shown in defense closing arguments to have been lying about at least $7.3 million in investments made by their own evidence and witnesses. Prosecutors withdraw the ponzi scheme element from

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jury deliberation, instead claiming in rebuttal closing arguments the defendants made "misrepresentations" to investors by not investing in GX-1 (TR 3713-15), allowing for the switch (See Memorandum, Section T).

29. In essence, I'm found guilty and given 25 years for not committing the illegal activity of investing in GX-1 after I've received the notice of prime bank fraud in GX-380, which causes it to also be a fabricated, nonexistent "crime", in that GX-33, the 10/99 newsletter, proves I had provided written notice to investors this product was discontinued before the first mail fraud count of 10/23/99 (R. 24). AUSA Schipper even admits in his appellee proof brief on appeal the 10% product was discontinued "before 1999" (p. 15), which was the product described in GX-1.

30. After I take "exception" to the Presentence Report "in its entirety" (R. 482), I am moved the next day to another jail and all legal papers confiscated from me (R. 494), making it impossible for me to submit written objections to the PSR for sentencing (See Mandamus, p. 14-15).

31. At Besser's sentencing, Judge Bell expresses his "perverse pleasure" we had been "basically scammed" by others, but sentences this elderly man to 20 years on a "ponzi scheme". Judge Bell also admits the tax liability he attributed to Besser of $317,605 "would have been considerably less" had he "cooperated" (See Memorandum, Section W & X). This is an admittance Judge Bell knew IRS agents fabricated their tax claims at trial, yet he sentences Besser to this amount in IRS restitution anyway.

32. At Buffin's sentencing, Judge Bell insults our religious character by claiming it could be determined by the kind of income tax return filed (See Memorandum, Section Y). Given the bank records prove at least $2 million of tax claims made against us at trial were fabricated, Judge Bell's religious comments are not only unwarranted, but criminal in nature.

33. At my sentencing, I'm handed a glass of water by counsel, which causes all of the saliva in my mouth to dry up, making it very difficult to speak, and interferring with my right to an allocution. Afterwards, when Judge Bell is speaking, U.S. Marshals on both sides of me start to bend my fingers and thumbs back, trying to break them. When I beg Judge Bell to make them stop hurting me, he orders me to be quiet, which I can't do given the excruciating pain. He orders my removal, and then sentences me to 25 years for a crime described as "specialized high return investments", $12,651,244 in investor restitution for losses caused by others who were protected from prosecution, and $310,772 in IRS restitution for taxes I don't owe (See Memorandum, Section R, Z & K; Mandamus, p. 16, 21).

34. Judge Bell colludes in transcript tampering to protect himself and the government's unclean hands (See Memorandum, Section N, Q, R & T).

35. I was cheated out of a legitimate direct appeal just as I was cheated out of the basic right to a fair trial (See Memorandum, Section AA).

36. The 5-page limit for this Complaint impedes my right to petition for redress of grievances given the enormity and overwhelming evidence of misconduct in which Judge Bell engaged. Therefore, I request the entire content of the Memorandum and Mandamus be incorporated into it.

Date: 12/15/2010 Janet Marcusse

DAVE DURIS, CASE MANAGER,
AUTHORIZED BY THE ACT OF
JULY 7, 1955, AS AMENDED, TO
ADMINISTER OATHS (58 USC 4004)

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Judicial Council of the Sixth CircuitRules text

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

To begin the complaint process, complete this form and prepare the brief statement of facts described in item 5 (below). The Rules for Judicial-Conduct and Judicial-Disability Proceedings, adopted by the Judicial Conference of the United States, contain information on what to include in a complaint (Rule 6), where to file a complaint (Rule 7), and other important matters. The rules are available in federal court clerks' offices, on individual federal courts' Web sites, and on www.uscourts.gov.

Your complaint (this form and the statement of facts) should be typewritten and must be legible. For the number of copies to file, consult the local rules or clerk's office of the court in which your complaint is required to be filed. Enclose each copy of the complaint in an envelope marked "COMPLAINT OF MISCONDUCT" or "COMPLAINT OF DISABILITY" and submit it to the appropriate clerk of court. **Do not put the name of any judge on the envelope.**

1. Name of Complainant: Janet Marcusse
   Contact Address: #17128-045, FCI Tallahassee
   501 Capital Circle, NE, Tallahassee, FL 32301
   Daytime telephone: (___) N/A

2. Name(s) of Judge(s): William Bertelsman
   Court: Eastern District of Kentucky, Covington

3. Does this complaint concern the behavior of the judge(s) in a particular lawsuit or lawsuits?
   [X] Yes [ ] No
   If "yes," give the following information about each lawsuit:
   Court: Sixth Circuit Court of Appeals
   Case Number: 05-2586, 05-2668
   Docket number of any appeal to the ____ Circuit: _____
   Are (were) you a party or lawyer in the lawsuit?
   [X] Party [ ] Lawyer [ ] Neither
   If you are (were) a party and have (had) a lawyer, give the lawyer's name, address, and telephone number:
   Melvin Houston, Court-appointed
   15346 Asbury Park
   Detroit, MI 48227-1545

4. Have you filed any lawsuits against the judge?
   [ ] Yes [X] No
   If "yes," give the following information about each lawsuit:
   Court: _____
   Case Number: _____
   Present status of lawsuit: _____
   Name, address, and telephone number of your lawyer for the

lawsuit against the judge:

_____

_____

_____

Court to which any appeal has been taken in the lawsuit against the judge:

_____

Docket number the appeal: _____

Present status of the appeal: _____

5. Brief Statement of Facts. Attach a brief statement of the specific facts on which the claim of judicial misconduct or disability is based. Include what happened, when and where it happened, and any information that would help an investigator check the facts. If the complaint alleges judicial disability, also include any additional facts that form the basis of that allegation.

6. Declaration and signature:

I declare under penalty of perjury that the statements made in this complaint are true and correct to the best of my knowledge.

(Signature) _____ (Date) 4/5/2011

AFFIDAVIT OF FACTS

I, Janet Marcusse, being duly sworn, hereby deposes and says:

1. I am a 54-year-old woman, who is illegally and unjustly imprisoned at FCI Tallahassee on a "ponzi scheme" charge, which had been described as no investments having been made (R. 108; TR 41, Exh. A). At trial, the charge was based on one-page IRS summary exhibits that illegally limited the definition of an "investment" to only mean the prime bank debenture product described in GX-1 (TR 2052, Exh. A), an irrelevant exhibit to the dates of the mail fraud counts in the indictment (R. 108). I was denied the use of any documents from the "bulk" bank record exhibits admitted in support of these IRS summary exhibits (TR 8-9, 13-15, 3049), including even after I filed them in "certified" evidence packs in order to have them admitted (R. 421, TR 3679-80). I was also denied all direct witnesses to non-prime bank investments as "irrelevant" (R. 401). Prosecutors withdrew the ponzi scheme charge in rebuttal closing arguments after they were shown to be lying from their own witnesses and evidence about at least $7.3 million in legitimate investments made (TR 3713, Exh. A). Rather than dismiss the counts, prosecutors changed the charge to a scheme where the defendants did not invest in GX-1 as "promised" investors (TR 3714-15, Exh. A), which disregarded the admitted evidence of GX-33, an investor newsletter which proved this prime bank product (GX-1) had been withdrawn in writing prior to the first mail fraud count (R. 108). Out of 500 investors, 36 of which testified for either side, only 6 early investors could be found that ever saw GX-1. No investor testified it was the only product offered. The jury instructions were changed after the jury instruction hearing to honest services fraud to accommodate the switch in the "scheme or artifice to defraud" (TR 3757, Exh. A). Making different investments than those "promised" is not a lesser charge of making no investments. Immediately following the jury verdict, prosecutors lie and claim the jury found a "ponzi scheme" (Exh. B). As the result of **Skilling v. United States,** 130 S Ct 2986 (2010), the charges are also now null and void.

2. It is my firm belief prosecutors, AUSA's Tom Gezon and Michael Schipper; IRS witnesses acting as "investigators", Agents James Flink and Steve Corcoran; and trial judge, Robert Bell, colluded together, meeting ex parte, to fix the outcome of the trial by engaging in fraud, suppressing exculpatory evidence, tampering with witnesses, tampering with the jury, tampering with the trial transcript, having me repeatedly assaulted, attempting to have me drugged to prevent my being able to cross examine IRS witnesses, disregarding their oaths of office, denying my civil rights, disregarding the law, and engaging in criminal activity, including violations of 26 USC §7214 (Exh. C). Judge Bell has the worst track record in the Sixth Circuit in that 34% of his cases are overturned in full or part on appeal (Exh. C-1).

3. On 10/28/05, I was sentenced to 25 years (Cat. I), $12,651,244 in investor restitution for losses the bank records prove were caused by third parties protected from prosecution and repaying the money by the ponzi scheme charge made against me, and $310,722 in IRS restitution on taxes on "unreported income" not charged in the indictment, bank records prove I never earned, and were instead funds invested under contract with the investors as agent.

4. It is my firm belief fraud, collusion, and a cover-up is shown by the judges on direct appeal--William Bertelsman, John Rogers, and Jeffery Sutton--who affirmed the convictions and sentences based on a ponzi scheme (Exh. D), by ignoring the issues raised in my pro se supplemental brief (Exh. E), and then lying about it (Exh. F), only to reverse course when challenged in my petition to recall the mandate (Exh. G). After withdrawing the ponzi charge, it would have been impossible for prosecutors to successfully retry the case if reversed.

5. On 12/16/05, Case Nos. 05-2586/2668 were opened at the Sixth Circuit, which constitued the direct appeal of the convictions and sentences. My case(s) were consolidated with my co-defendants in Case Nos. 05-2556/2666/2667. Because I was a "restricted" filer at the district court (R. 601), I filed a motion at the Sixth Circuit to request a different attorney or that I be permitted to proceed pro se. On 3/2/06, Melvin Houston was appointed.

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6. On 6/22/06, Houston files his proof brief, raising 4 issues (Exh. H, p. i). It was utterly unacceptable to me, given his gross misrepresentations of the honest facts and omission of the best issues for review, particularly in light of the fact I had previously suggested issues for review and provided documents filed on the record in support (Exh. I).

7. On 7/4/06, I sent a "Notice of Exception Taken to Appellant Proof Brief" to the Sixth Circuit, stating that, "Attorney Melvin Houston no longer has the appellant's permission to represent her in any way, shape, or form", as his brief was "especially crafted to 'stipulate' to the most indefensible 'facts' by an advocate for the government rather than for the appellant" (Exh. J, p. 1). His Issue III, for example, argued I was denied due process over being denied 3 witnesses when I had been deprived of 20 witnesses (Exh. J, Exh. A), out of 29 witnesses requested (R. 392). Houston further misrepresents the witness issue where, out of the 3 witnesses named, he includes Richard Williams, a witness that testified (Exh. J, p. 2). Houston argues Williams had been "expected to testify about one of Access Financial's investment programs or projects being brought before Congress" (Exh. J, Exh. A). Mr. Williams, Tribal Chairman, Lac Vieux Desert, did testify about the MLC Development "Branson Project" (TR 2782, Exh. K), a company in which we invested on behalf of the investors.

8. On 8/15/06, Houston responds, claiming "no interest or intent of withdrawing" unless the court of appeals removes him, but makes no mention of fixing his errors (Exh. L). Later, after successfully sabotaging my appeal, he says I should have pled guilty (Exh. L-1). If he honestly felt that way, he should have filed an Anders brief so I could be heard pro se.

9. My 7/4/06 "Notice of Exception Taken to Appellant Proof Brief" is never filed at the Sixth Circuit (Exh. M), in spite of a copy being served via certified mail (Exh. N).

10. On 7/24/06, my "Motion for Removal of Appellant Counsel" is filed at the Sixth Circuit, as well as on Houston, raising due process concerns. In addition to the witness issue, on page 11, I indicate Houston misrepresents the Bahamas CD Program was "expected to return $25 million on a $350,000 investment", citing transcript page 3214 in support (Exh. H, p. 13). Page 3214 discusses a different investment, Crawford Ltd (Exh. O). Had Houston cited page 3213 as well, it would have shown I was testifying Agent Flink was "wrong" where he testified $350,000 was all that had been invested for Crawford (Exh. O). I had previously testified to $4,186,700 as having been invested for Crawford (TR 3127, Exh. O), presenting a "summary" exhibit, Def. Exh. M-Z, listing dates and amounts invested, which Judge Bell denied admission (TR 3125-27, Exh. O). As to the Bahamas CD Program, I had testified it was a stock investment program at Suisse Security Bank (TR 3053-58, Exh. O), which Houston further misrepresents as a separate program than the one at Suisse Security Bank (Exh. H, p. 13).

11. It is my firm belief that prosecutors had Houston lie in this manner to manufacture support after the fact for their "prime bank" fraud theory so that the Bahamas CD Program, a managed stock program, could be misrepresented as a prime bank fraud program.

12. In his Issue I, Houston raises whether the renewed motion for judgment of acquittal should have been granted (Exh. H, pg. 17-19). In my 7/24/06 motion for removal, pg. 6-7, I claim Houston made no mention of prosecutors withdrawing their ponzi scheme charge in rebuttal closing arguments or about the jury instructions changing the charge to honest services fraud. Houston merely claims Flink's testimony was "damaging", because of Flink's opinion it was a "Ponzi scheme" (Exh. H, p. 11). He makes no mention of Flink's illegal and misleading investment definition used to falsely deny $12.1 million in investments made (TR 2052, Exh. A). He makes no mention of the IRS agents' admittance they made no investigation of any investments or related investment accounts (Flink at TR 1982-83, 2052 (Exh. A), 2065, 2073, 3420-24; Corcoran at TR 2292-93). He makes no mention of Robert Plaster admitting he kept the money invested in MLC Development's "Branson Project" (TR 2256). Trial counsel, David Kaczor, made a Rule 29 motion for directed order of acquittal based in part on Plaster admitting he kept the funds, which was a "legitimate" investment (TR 2402).

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13. In his appellee proof brief, AUSA Schipper deceitfully argues there was "overwhelming evidence of each defendant's guilt" to "sustain jury verdicts" on a "ponzi scheme" (pg. 4-5). Nowhere in his 100-page brief does he disclose their withdrawal of the ponzi scheme charge from jury deliberation, or the change of scheme element to honest services fraud.

14. It is my firm belief prosecutors withdrew their ponzi scheme charge in rebuttal closing arguments because they had been proven to be lying about no investments made, and they were worried if they put it to jury deliberation, they risked acquittals.

15. In my 7/24/06 motion for removal, I also claim Houston made no mention of my being denied the use of any documents from the admitted "bulk" bank record exhibits (p. 3). Prosecutorial misconduct is raised throughout my motion, including where AUSA Gezon lies to the jury, taking advantage of Judge Bell's bias, by claiming I had "nothing" by way of "bank statements" in evidence to prove I had invested $4.2 million in the Bahamas CD Program (p. 10; TR 3721). On page 4, I claim I was denied the right to proceed pro se, a structural defect, except Houston not only does not raise this issue, he falsely claims I represented myself (Exh. H, p. 7). On pages 8-9, I claim $600,000 of the unreported income claims made against me were instead placed into investments for investors with Winfield Moon of World-wide E Capital, except I was denied the bank records and witnesses to prove it (TR 3094, 3209, Exh. O). Houston misrepresents the unreported income charge by claiming, "she considered all amounts to be gifts" (Exh. H, p. 13). On pages 11-12, I claim I was denied a "good faith reliance" defense. In his Issue III, Houston fails to include FBI Agent Forrester or Treasury attorney Kramer-Wilt, witnesses which were blocked or denied (Exh. J, Exh. A).

16. It is my firm belief the record shows Houston and AUSA Schipper colluded together to misstate the number and devastating effect caused by the denial of 14 defense witnesses by Judge Bell (R. 401), in order to fraudulently exhaust this important issue on appeal. Houston lies where he claims I presented "12 total witnesses" (Exh. H, p. 7). The record shows I presented 10 witnesses, not 12. Houston also lies about the two defense witnesses released, claiming I "concluded" their testimony would not help my case (Exh. J, Exh. A). I did not agree to release Robert Everett, and agreed to release Moon only if Richard Gerry could testify (TR 2221, Exh. P). Moon or Gerry was necessary to testify regarding the $1.8 million invested with them, $600,000 of which had been misrepresented as unreported income to me, but not charged in the indictment (R. 108). After the trial, I filed Rule 60(b) fraud motions, claiming witness tampering in regards to Moon and Gerry, as well as Treasury attorney, James Kramer-Wilt, who was an advisor to Gerry (R. 551, Exh. Q). Kramer-Wilt was a witness Kaczor indicated he could not locate (TR 2644). This Rule 60(b) motion had been sent to Houston for use in preparing his brief (Exh. I). AUSA Schipper misleadingly argues the irrelevancy of four witnesses, which were individuals I had previously removed before submitting my amended witness list (Compare R. 392 to appellee proof brief, pg. 7, 82).

17. On 8/8/06, in response to my motion for removal of Houston, the Sixth Circuit grants me permission to file a pro se supplemental brief (Exh. R).

18. On 8/21/06, SIS (Special Investigative Services) officials at FCI Tallahassee confiscate my trial transcript. Pleadings requesting an emergency court order to have my legal papers returned are filed but ignored by the Sixth Circuit (Exh. M). In order to regain my legal papers, I have to appeal through the Administrative Remedy Process to the Regional Office, FBOP, who has Lt. Neel, Atlanta, travel here to Tallahassee in order to retrieve and return them to me (Exh. S).

19. In spite of these and other attempts to advise Houston he was substantially misrepresenting the facts and issues, on 6/22/07, exactly one year after filing his proof brief, he files an identical final brief (Exh. M), obstinately refusing to correct anything.

20. On 6/22/07, when I file a motion to correct misstatements in evidence and of law, ob-

jecting to AUSA Schipper's request to have his exhibits certified--exhibits which were tampered with or based on an illegal definition of investments (Exh. T)--it is ignored (Exh. M).

21. On 7/5/07, the Sixth Circuit files my pro se supplemental brief, which raises 12 issues for consideration (Exh. E), including an accurate "Statement of Facts", and objections to the misrepresentations made in Houston's and AUSA Schipper's proof briefs. AUSA Schipper's final brief is filed 7/23/07 (Exh. M).

22. I request leave to appear at oral arguments on 11/29/07, or alternatively, to participate by telephone, but am denied (Exh. M). Houston appears, but persists in arguing I was denied just 3 witnesses, one of which was Richard Williams. The issue is made to look not only meritless, but stupid, when AUSA Schipper argues Williams testified. AUSA Schipper lies, however, where he claims the government "may have called" Williams themselves (Exh. U). In his proof brief, which was filed on 5/3/07, he states, "the Government notes Marcusse did call witness Williams (even thought [sic] not subpoenaed at Government expense)" (p. 84).

23. When a judge asks AUSA Schipper if he had any objection to the other appellants joining in with my brief, as had been requested (Exh. V), he responds "no", making it appear as if the panel intended to consider my pro se brief, in light of the fool Houston made of himself.

24. Given Houston's conduct and that he sounded drunk on the audiotape of the oral arguments, I file a petition for writ of mandamus to strike his brief and oral arguments, requesting my pro se appellant brief be substituted in its stead (Exh. W), opening Case No. 08-1003 at the Sixth Circuit. Immediately following Judge Bell's refusal to respond to it, the petition is denied (Exh. W). A motion for reconsideration is also denied (Exh. X).

25. On 2/14/08, the panel issues the Opinion affirming the convictions and sentences, ignoring the issues and all content in my pro se brief, and making the opinion nonpublished to detract attention from it. Judge Bertelsman is its author.

26. I file a pro se Petition for Rehearing and Suggestion for Rehearing En Banc, including my co-defendants/appellants as parties to it, asking whether due process was denied when the Sixth Circuit ignored my pro se issues in favor of a brief prepared by incompetent and conflicted appointed counsel (Exh. Y).

27. On 5/20/08, the panel denies it, concluding "the issues raised in the petition were fully considered upon the original submission and decision of the cases" (Exh. F).

28. On 2/12/09, I file a petition for Recall of the Mandate, pursuant to Rule 60(b), raising as Issue I, "the denial of all due process by the court of appeals, which allowed for the collusion of court-appointed appellant counsel with the federal attorney & B.O.P. in the presentation of a falsified record, over the express objections of the appellant, caused the process of appeal to be null & void in the conspiracy deprivation of a lawful judgment on its true merits. The appellants were entitled to a complete response to all issues presented, including of those presented in the pro se brief approved for filing" (Exh. Z). I liken the process used to evade addressing my issues to "a form of legal rape" (Exh. Z, p. 20).

29. On 5/14/09, the panel denies my petition, claiming that because I had been "represented by counsel on appeal, the court properly declined to consider their pro se issues on appeal" (Exh. G). This demonstrates they had lied when they previously claimed they "fully considered" my pro se issues (Exh. F). It further demonstrates discrimination (Exh. G-1).

30. A review of LexisNexis CD shows the panel's 5/14/09 holding flatly contradicts their own practice in 180 other appeals (Exh. AA). On 2/25/09, for example, Judge Sutton was on a panel where in response to a petition for rehearing, it was concluded the original order should be amended because the prior order did not consider the merits of an appellant's supplemental

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claim, who also had representation (Exh. AA). For at least 40 years, the Sixth Circuit has always allowed an appellant who has representation, to also have their pro se issues considered, except where it was untimely filed, raised ineffective assistance of trial counsel, an issue not raised by me, or in my case, to fix its outcome (Exh. E & BB). If a court does not intend to consider a pleading, proper due process dictates it be returned unfiled (Exh. CC).

31. The 2/14/08 Opinion shows collusion where a "ponzi scheme" is made a holding (Exh. D, p. 4), a charge which could not have been made "law of the case" absent misrepresentations by AUSA Schipper and Houston, because it was not found by the jury or admitted by the defendants. This served to protect U.S. Attorney General John Ashcroft's friend, Robert Plaster, who admittedly kept investor funds, not just from criminal prosecution, but civil litigation. It served to protect IRS and FBI agents and prosecutors from litigation for malicious prosecution and false claims. It also served to protect the FBI from liability for the endorsement letters of Agent Forrester, admitted by the IRS Office of Chief Counsel to exist (Exh. DD), and to protect the Federal Reserve from liability due to its admitted part in collapsing the bank where the stock investment program was held and investor funds lost as the result (Exh. DD-1).

32. The 2/14/08 Opinion shows collusion by fabricating the holding that the defendants destroyed evidence (Exh. D, p. 4). Nowhere in any brief filed by any appellant or the appellee is the claim made a defendant destroyed evidence. The underlying record instead shows I made repeated efforts to submit business records and use bank record documents from the admitted bulk exhibits (See Item 1). Issue IV in my pro se brief raises the issue of being unjustly denied such evidence (Exh. E). The 2/14/08 Opinion misleadingly acts as if my pro se brief was considered, but disregarded due to my own fault, where it uses a quote from Houston's brief and falsely attributes it to me (Exh. EE & H, p. 18).

33. The appeal process was also contaminated by Anthony Valentine, the court-appointed attorney to William Flynn, who was used to delay the appeal for a year by repeatedly requesting additional time (Exh. FF). He did not file his 17-page Proof Brief until 8/3/07, which allowed AUSA Gezon sufficient time to retire on 2/12/07 (Exh. M). Valentine's Certificate of Service shows it had originally been dated January, 2007 (Exh. V). Out of the 4 of us, Flynn was the only one whose request for different counsel on appeal was denied (R. 647). In addition, while George Besser's Notice of Appeal was not entered on the record until 11/15/05, it had been filed on 10/17/05 (R. 588), allowing for Flynn's Notice of Appeal filed on 11/3/05 to be entered first (R. 573). Also, a second case number, 05-2668, is assigned to me to show a later docketing date of 12/16/05. This permitted the 2/14/08 Opinion to be hidden under **United States v. Flynn**, which enabled my pro se petitions as "lead" defendant and the court's responses to them to be kept off the "published" record (Exh. D). Making the case nonpublished further discouraged review by other judges (Exh. GG). LexisNexis falsely shows Flynn and Besser as pro se with representation, but not me, thereby acting to cover up the fraudulent, unconstitutional, and discriminatory process in which this panel of judges engaged.

34. My pleading to stay the mandate based on attorney fraud is withheld from filing (Exh. M & HH). The IRS refused to disclose whether these judges received a monetary award (Exh. II).

35. The fraud and collusion in which the three judge panel engaged denied me the statutory right to a direct appeal. It underhandedly bestowed unreviewable discretion on Judge Bell to protect his biased and illegal rulings made to fix the outcome of the trial. It obstructed a hearing en banc and proper consideration of my issues in the petition for writ of certiorari denied on 10/6/08. It is now also exposed as a fraudulent scheme to prevent me from ever having my issues considered, including in a §2255 proceeding, contrary to the panel's claim this would be an "adequate, alternative remedy" to not having my claims considered (Exh. G, p. 3), due to Judge Bell's refusal to even file my pleadings proving IRS Agent Flink committed perjury over $10.3 million or submit an innocence claim under **Skilling** (Exh. JJ).

Date: 4/5/2011

DAVE DURIS, CASE MANAGER,
AUTHORIZED BY THE ACT OF
JULY 7, 1955, AS AMENDED, TO
ADMINISTER OATHS (18 USC 4004)

Janet Marcusse

EXHIBIT V-14

180 OTHER SIXTH CIRCUIT COURT OF APPEALS CASES WHERE JUDGES BERTELSMAN, ROGERS, OR SUTTON, WERE EITHER THE AUTHOR OF AN OPINION OR ON A PANEL WHERE AN APPELLANT WHO HAD REPRESENTATION WAS ALSO HEARD PRO SE[1]

A. District Court Judge William Bertelsman as author

United States v. Ottoman, US App Lexis 25260 (2010)(Bertelsman & Sutton); United States v. Barry-Scott, 251 Fed Appx 983 (2007); United States v. Wheeler, 59 Fed Appx 30 (2003); Bailey v. Mitchell, 271 F 3d 651 (2003).

B. Judge William Bertelsman as a member of the appellate panel

Greer v. Commissioner, US App Lexis 18703 (2009); Bey v. Johnson, 248 Fed Appx 675 (2007); United States v. Davis, 63 Fed Appx 234 (2003); United States v. Wheeler, 59 Fed Appx 30 (2003); United States v. Leach, 14 Fed Appx 319 (2001); Bailey v. Mitchell, 271 F 3d 652 (2001); United States v. Rich, US App Lexis 826 (2000); United States v. Davis, US App Lexis 25407 (2000); United States v. Adams, US App Lexis 34046 (1999).

C. Circuit Judge John Rogers as author

Clark v. Johnston, US App Lexis 1490 (2011); Carethers v. Wolfenbarger, US App Lexis 415 (2011); United States v. Conway, US App Lexis 25544 (2010); United States v. Brooks, US App Lexis 23671 (2010); In re Sosa, US App Lexis 16906 (2010); United States v. Gilmore, US App Lexis 15098 (2010); United States v. Snider, US App Lexis 11050 (2010)(conviction reversed); United States v. Hughes, 370 Fed Appx 629 (2010); Brown v. McKee, 340 Fed Appx 254 (2009)(remanded for evidentiary hearing); Thomas v. Miller, 329 Fed Appx 623 (2009); Willis v. Jones, 329 Fed Appx 7 (2009)(reversed in part); Wright v. United States, 320 Fed Appx 421 (2009)(vacated denial of §2255 motion); Wood v. Vasbinder, 310 Fed Appx 861 (2009); Richards v. United States, 301 Fed Appx 454 (2008); United States v. Conway, US App 22094 (2008)(Rogers & Sutton); United States v. Graham, 278 Fed Appx 538 (2008); Hourani v. United States, 239 Fed Appx 195 (2007)[2]; United States v. Angelus, 258 Fed Appx 840 (2007) (Rogers, Bertelsman & Sutton); Wiedbrauk v. Lavigne, 174 Fed Appx 993

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[1]Does not include cases where an Anders brief was submitted by counsel. Search conducted on LexisNexis CD in February, 2011.

[2]In Hourani, a COA had been issued on a pro se motion pursuant to Rule 60(b) "for relief from mistake(s) in proceedings effecting [sic] substantial rights/laws in Movant's §2255 Petition for review." Judge Rogers held, "Hourani asserts that the motion attacks the integrity of the proceedings because the district court never squarely addressed the merits of his ineffective assistance of counsel claim." "We need not decide the applicability of Rule 60(b) where a petitioner's claim truly is ignored by the federal courts, because a cursory review of Hourani's Rule 60(b) motion reveals that the substance of Hourani's complaint is that Mazer, Hourani's attorney in the §2255 proceedings, failed to present the ineffective assistance of counsel claim properly, leading the district court to rule on a claim different from what Hourani intended to assert. This kind of argument presents an issue of counsel's performance, not a claim of error on the part of the district court." Id., at 197-198.

(2006); Kloian v. Simon, 179 Fed Appx 262 (2006); Kumar v. United States, 163 Fed Appx 361 (2006); United States v. Sandles, 469 F 3d 508 (2006) (reversed & remanded for new trial)[3]; United States v. Bass, 460 F 3d 830 (2006); Tareco Props. v. Morriss, 196 Fed Appx 358 (2006); United States v. Makki, 129 Fed Appx 185 (2005)(vacated sentence; appellant won on pro se issue); Sosa v. Jones, 389 F 3d 644 (2004); Kline v. Gulf Ins. Co., 98 Fed Appx 471 (2004)(Rogers & Bertelsman)(reversed and remanded); United States v. Crayton, 357 F 3d 560 (2003).

D. Judge John Rogers as a member of the appellate panel

United States v. Hughley, US App Lexis 17165 (2010)(vacated and remanded); Gagne v. Booker, US App Lexis 15052 (2010)(Rogers & Sutton)(vacated for rehearing en banc); Bisgeier v. Mich. Dept. Corr., US App Lexis 11724 (2010): Eid v. St-Gobain Abrasives, US App Lexis 9806 (2010); United States v. Jiles, 372 Fed Appx 609(2010); United States v. Logan, 372 Fed Appx 601 (2010)(conviction & sentence vacated); United States v. Bush, 363 Fed Appx 364 (2010); Brown v. Sheets, 359 Fed Appx 628 (2009); Mitan v. Taunt, 234 Fed Appx 752 (2009); Carter v. Wolfenbayer, 347 Fed Appx 205 (2009); United States v. Johnson, 340 Fed Appx 309 (2009)(vacated sentence); United States v. Leasure, 331 Fed Appx 370 (2009); United States v. Haque, 315 Fed Appx 510 (2009)(three appellants filed eleven pro se briefs in addition to the briefs filed by their lawyers); United States v. Rainer, 314 Fed Appx 846 (2009); Awkal v. Mitchell, US App 17145 (2009)(Rogers & Sutton, en banc); Devereaux v. Mills, 307 Fed Appx 934 (2009); United States v. Chanh Chan Lao, 287 Fed Appx 472 (2008); McSwain v. Davis, 287 Fed Appx 450 (2008); United States v. Zendezas, US App Lexis 28063 (2008); Jacobs v. Sherman, 301 Fed Appx 463 (2008); Amr v. United States, 280 Fed Appx 480 (2008); United States v. Swift, 276 Fed Appx 439 (2008); United States v. Collier, 246 Fed Appx 321 (2007); United States v. Lester, 238 Fed Appx 80 (2007); United States v. Jackson, 238 Fed Appx 45 (2007); Simmons v. Kapture, US App Lexis 13708 (2007)(voted for rehearing en banc); Craig v. White, 227 Fed Appx 480 (2007); United States v. Hemphill, 221 Fed Appx 435 (2007)(sentence reversed); Thompson v. Bock, 215 Fed Appx 431 (2007); United States v. Merrill, 213 Fed Appx 402 (2007); United States v. Bearden, 213 Fed Appx 410 (2007); United States v. Reyes-Perez, 239 Fed Appx 222 (2007); United States v. Spry, 238 Fed Appx 142 (2007); United States v. Swain, 227 Fed Appx 494 (2007); United States v. Darway, 225 Fed Appx 68 (2007); United States v. Lukasik, 250 Fed Appx 135 (2007); United States v. Goins, 186 Fed Appx 586 (2007)(remand for resentencing); Del Bosque v. United States, 169 Fed Appx 934 (2006); Casnave v. Lavigne, 169 Fed Appx 435 (2006); United States v. Nance, 481 F 3d 882 (2006)(two days prior to oral arguments Nance filed a pro se supplemental brief); King v. United States, 199 Fed Appx 524 (2006); Hayes v. Prelesnik, 193 Fed Appx 577 (2006); United States v. Calkins, 193 Fed Appx 417 (2006)(vacated sentence): United States v. Sawyers, 127 Fed Appx 174 (2005)(remanded for resentencing); United States v. Hill, US App Lexis 630 (2005); United States v. Jones, 399 F 3d 640 (2004)(sentence vacated); United States v. Manthey, 92 Fed Appx 291 (2004); United States v. Lewis, 88 Fed Appx 898 (2004)(sentence vacated); United States v. Taulbee, 86 Fed Appx 860

[3]In Note 1, Judge Rogers admits, "We must, of course, also address Sandles' arguments that the..." Id., at 513.

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(2004); Miller v. Cate, 86 Fed Appx 830 (2004); United States v. Wells, 100 Fed Appx 440 (2004); United States v. Wooten, 96 Fed Appx 385 (2004); United States v. Dailey, 100 Fed Appx 500 (2004)(vacated and remanded for resentencing); United States v. Ross, 69 Fed Appx 710 (2003); United States v. Shults, 68 Fed Appx 648 (2003); United States v. Carpenter, 360 F 3d 591 (2003)(Rogers & Sutton, en banc); United States v. Hughley, 68 Fed Appx 616 (2003); United States v. Chalmers, 57 Fed Appx 688 (2003); United States v. Yancy, 56 Fed Appx 708 (2003).

E. Circuit Judge Jeffery Sutton as author

United States v. Jennings, US App Lexis 649 (2011); United States v. Payton, US App Lexis 11720 (2010); United States v. McBee, 364 Fed Appx 991 (2010); United States v. Hardison, 365 Fed Appx 661 (2010); Thomas v. Romanski, 362 Fed Appx 452 (2010); United States v. Turner, 602 F 3d 778 (2009)(reversed convictions); United States v. Keys, 359 Fed Appx 585 (2009); United States v. Davis, 332 Fed Appx 247 (2009); United States v. Kimbrel, 532 F 3d 461 (2008)(reversed and remanded for new trial); United States v. Shults, 295 Fed Appx 21 (2008)(Sutton & Rogers); Ramirez-Felipe v. Mukasey, 292 Fed Appx 482 (2008)(Sutton & Rogers); United States v. Dunn, 269 Fed Appx 567 (2008); United States v. Booker, 367 Fed Appx 571 (2007); United States v. Moore, 240 Fed Appx 699 (2007); Crehore v. United States, 253 Fed Appx 547 (2007); Cannon v. Lafler, 247 Fed Appx 796 (2007); Lyell v. Renico, 470 F 3d 1177 (2006)(habeas granted as to unfair trial); United States v. Gilliam, 127 Fed Appx 820 (2005); United States v. Green, 125 Fed Appx 659 (2005)(vacate sentence); SEC v. George, 426 F 3d 786 (2005); United States v. Rone, 147 Fed Appx 490 (2005)(Sutton & Rogers); United States v. Ross, 131 Fed Appx 52 (2005)(vacate sentence); United States v. Mooney, US App Lexis 639 (2005); United States v. Calloway, 89 Fed Appx 982 (2004); United States v. Day, 89 Fed Appx 986 (2004); United States v. Simpson, 116 Fed Appx 736 (2004); United States v. Simpson, 113 Fed Appx 150 (2004); United States v. Leonard, 97 Fed Appx 599 (2004); United States v. Kelso, 97 Fed Appx 543 (2004)(vacated sentence); Scott v. Gundy, 100 Fed Appx 476 (2004)(granted habeas); United States v. Character, 76 Fed Appx 690 (2003).

F. Judge Jeffery Sutton as a member of the appellate panel

Jones v. Harry, US App Lexis 25652 (2010); United States v. Tillman, US App Lexis 25705 (2010: United States v. Browning, 378 Fed Appx 545 (2010); United States v. Staton, 373 Fed Appx 553 (2010); Jackson v. Herrington, US App Lexis 18347 (2010); Fisher v. UPS, US App Lexis 15575 (2010); United States States v. Escalon-Levasquez, 371 Fed Appx 622 (2010: Warlick v. Romanski, 367 Fed Appx 634 (2010); United States v. Lundy, 366 Fed Appx 590 (2010); In re Smith, 349 Fed Appx 12 (2009); United States v. Nassib Saadallah Berro, 348 Fed Appx 98 (2009); Young v. Renico, 346 Fed Appx 53 (2009); United States v. Herrod, 342 Fed Appx 180 (2009); Ward v. Wolfenbarger, 342 Fed Appx 134 (2009); United States v. Sylvester, 330 Fed Appx 545 (2009); United States v. Simpson, US App Lexis 24182 (2009)(amended order because the panel did not fully consider the merits of Simpson's supplemental claim); United States v. Porter, 312 Fed Appx 772 (2009); United States v. Buffington, 310 Fed Appx 757 (2009)(remand for resentencing); Tucker v. Palmer, US App Lexis 10972 (2009); United States v. Cope, 282 Fed Appx 369 (2008); Connolly v. Howe, 304 Fed Appx 412 (2008); Newman v. Metrish, 300 Fed Appx 342 (2008)(affirmed order

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for release on bond); United States v. Simpson, US App Lexis 27805 (2008); Newman v. Metrish, 543 F 3d 793 (2008)(affirmed grant of habeas); United States v. Murphy, 278 Fed Appx 577 (2008); Lockett v. Suardini, 526 F 3d 866 (2008); United States v. Slaughter, 274 Fed Appx 460 (2008); Lewis v. Tennessee, 279 Fed Appx 322 (2008); United States v. Stamper, 255 Fed Appx 381 (2007); United States v. Cobbs, 233 Fed Appx 524 (2007); United States v. Maxwell, 233 Fed Appx 433 (2007); Shohatee v. Jackson, 257 Fed Appx 968 (2007); Allen v. Bell, 250 Fed Appx 713 (2007); Winkelman v. Parma City School Dist., 166 Fed Appx 807 (2006); United States v. Harding, US App Lexis 32771 (2006); Shohadaee v. Metro Gov't of Nashville, 150 Fed Appx 402 (2005); United States v. Counterman, 121 Fed Appx 581 (2005); United States v. Peoples, US App Lexis 29562 (2005)(sentence vacated); United States v. Burgess, 142 Fed Appx 232 (2005): United States v. Reamey, 132 Fed Appx 613 (2005)(remand for resentencing based on pro se Booker issue, has Houston as attorney); Dietz v. Sanders, 100 Fed Appx 334 (2004); United States v. Rich, 90 Fed Appx 921 (2004)[4]; United States v. Hughley, 118 Fed Appx 896 (2004); United States v. Cinnamon, 112 Fed Appx 415 (2004); United States v. Thomas, 99 Fed Appx 665 (2004); United States v. Shabazz, 98 Fed Appx 408 (2004); United States v. Delgado, 350 F 3d 520 (2003); United States v. Ramsey, 81 Fed Appx 547 (2003); United States v. Fredell, 79 Fed Appx 799 (2003)(vacated conviction & sentence).

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[4]In Rice, a pro se supplemental brief was filed by leave of the court. The Court acknowledged, "the government has chosen to forego filing a response to Rice's supplemental brief. We treat this, for present purposes, as a concession of the truth of Rich's assertions about the affidavit's contents." Id., at 926, Nt. 3 (per curiam decision before Boggs, Chief Judge, Batchelder, and Sutton)

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140 ADDITIONAL SIXTH CIRCUIT COURT OF APPEALS CASES WHERE OTHER JUDICIAL PANELS CONSIDERED PRO SE ISSUES IN ADDITION TO THOSE RAISED BY COUNSEL[1]

Hill v. Carlton, US App Lexis 17501 (2010)
United States v. Cox, 365 Fed Appx 631 (2010)
United States v. Thornton, 509 F 3d 373 (2010)
United States v. Robinson, 357 Fed Appx 677 (2009)
Gordon v. England, 354 Fed Appx 975 (2009)(remanded for opportunity to amend complaint)
Zimmerman v. Cason, 354 Fed Appx 228 (2009)
United States v. Terrell, 345 Fed Appx 97 (2009)
United States v. Vallellanes, 339 Fed Appx 579 (2009)(Vallellanes filed a pro se motion requesting to have counsel withdraw. The clerk denied his motion but granted him leave to file a pro se supplemental brief which was addressed by the panel)
United States v. Hyler, 308 Fed Appx 962 (2009)
United States v. Fitch, 355 Fed Appx 871 (2009)
Wilson v. United States, 287 Fed Appx 490 (2008)
United States v. Kirby, 282 Fed Appx 376 (2008)
United States v. Campbell, 549 Fed Appx 376 (2008)
United States v. Martin, 318 Fed Appx 313 (2008)
United States v. Simpson, US App Lexis 27865 (2008)
United States v. Fletcher, 295 Fed Appx 749 (2008)
United States v. Tarpley, 295 Fed Appx 11 (2008)
United States v. Bell, 259 Fed Appx 733 (2008)
United States v. Hardin, 539 F 3d 404 (2008)(vacated conviction)
United States v. Marrero, 237 Fed Appx 71 (2007)
United States v. Brika, 487 F 3d 450 (2007)
United States v. Howard, 216 Fed Appx 463 (2007)(remanded for resentencing)
United States v. Gabrion, 517 F 3d 839 (2007)
Cottenham v. Jamroy, 248 Fed Appx 625 (2007)(Held denial of right to counsel on appeal, including right to counsel of choice, is structural error that can never be harmless. "A criminal defendant has the constitutional right to counsel of choice on his appeal." See Wilson v. Mintzes, 761 F 2d 275, 278-80 (6th Cir. 1985). The right to choice of counsel is implicated whenever a defendant informs the court that he or she is unhappy with his or her counsel. See United States v. Iles, 906 F 2d 112, 113 (6th Cir. 1990); Wilson, 761 F 2d at 281, n. 10. Upon receiving such information, a court has an obligation to investigate. See Iles, 906 F 2d at 1131. The Fourteenth Amendment requires that an indigent defendant receive due process and equal protection in his appeal of a criminal conviction. See Ross v. Moffitt, 417 US 600, 608-609 (1974); Thomas v. Arn, 474 US 140, 155 (1985). An indigent defendant has a constitutional right...to a review of his or her case on appeal as a matter of right if the same right is extended to non-indigents. See Benoit v. Wingo, 423 F 2d 880, 882 (6th Cir. 1970).)
United States v. Fore, 507 F 3d 412 (2007)
Hargrave v. McKee, 248 Fed Appx 718 (2007)(granted habeas)
United States v. McCreary-Redd, 475 F 3d 718 (2006)(vacated guilty plea and remanded for pleading anew)(In this appeal, not only was a federal criminal defendant allowed to file a pro se supplemental brief, but he was granted the motion to dismiss counsel, allowing him to proceed pro se on

[1]Does not include cases where an Anders brief was submitted by counsel. Search conducted on LexisNexis CD in March, 2011.

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appeal where he prevailed with his claim)
United States v. Garcia, 496 F 3d 495 (2006)(vacated sentence)
Haliym v. Mitchell, 492 F 3d 680 (2006)(vacated sentence)
United States v. Watson, 468 F 3d 891 (2006)
United States v. Jones, 205 Fed Appx 327 (2006)
United States v. Watford, 468 F 3d 891 (2006)
United States v. Wilbon, 150 Fed Appx 497 (2005)(vacated sentence)
United States v. Kirby, 418 F 3d 621 (2005)
United States v. Baker, US App Lexis 29573 (2005)(remanded for resentencing; won on pro se issue raised)
United States v. Jenkins, 229 Fed Appx 362 (2005)
United States v. Smith, 429 F 3d 620 (2005)(remanded for resentencing)
United States v. Burgess, 142 Fed Appx 232 (2005)
United States v. Reamey, 132 Fed Appx 613 (2005)(remanded for resentencing based on pro se issue)
United States v. Collins, 129 Fed Appx 213 (2005)(vacated sentence)
United States v. Jones, 399 F 3d 640 (2004)(sentence vacated)(federal prosecutorial policy had both a discriminatory effect and a discriminatory intent)
United States v. Espey, US App Lexis 18072 (2004)
Turner v. Bagley, 401 F 3d 718 (2004)(reversed judgment and granted unconditional grant of habeas corpus)(Held where ineffective assistance rendered by state-appointed attorney in state court deprives a defendant of an opportunity to pursue a meaningful direct appeal from his conviction, law and justice require that the defendant's petition for habeas corpus be unconditionally granted)
United States v. Causey, 92 Fed Appx 306 (2004)
Jones v. Brock, 107 Fed Appx 480 (2004)
United States v. Valentine, 70 Fed Appx 314 (2003)
United States v. Liddell, 64 Fed Appx 958 (2003)
United States v. Hence, 60 Fed Appx 560 (2003)
United States v. Denkins, 367 F 3d 537 (2003)
United States v. Angel, 355 F 3d 462 (2003)(reversed and remanded for resentencing)
United States v. Gross, 84 Fed Appx 531 (2003)
United States v. Irrorere, 69 Fed Appx 231 (2003)
United States v. Murray, 66 Fed Appx 600 (2003)
United States v. Wheeler, 67 Fed Appx 296 (2003)
United States v. Hayes, 62 Fed Appx 588 (2003)
United States v. Page, 58 Fed Appx 79 (2003)
United States v. Sizemore, 76 Fed Appx 708 (2003)
United States v. Wright, 343 F 3d 849 (2003)(Wright also submitted a pro se motion for sanctions pursuant to Fed. Rules of App. Proc. 38 and 47(b) on January 16, 2003. He argues that the government made "multiple errors" and "false, misleading statements" in the proof brief it submitted to this Court. On January 29, 2003, the government submitted its final brief to this Court accompanied by a letter explaining that it had corrected the two mistakes in its citations that Wright had noted in his January 16 motion) Id., at 867.
United States v. Berry, 50 Fed Appx 251 (2002)
United States v. Reyes, 51 Fed Appx 488 (2002)
United States v. Dunn, 52 Fed Appx 666 (2002)(The appellate court did grant his motion to file a supplemental pro se brief)
United States v. Hedden, 11 Fed Appx 419 (2001)
Harris v. Perez, 15 Fed Appx 227 (2001)
United States v. Rich, US App Lexis 826 (2000)

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United States v. Jewell, 16 Fed Appx 295 (2001)
United States v. Taylor, 9 Fed Appx 465 (2001)
United States v. Johnson, 9 Fed Appx 373 (2001)
United States v. Pleasant, 12 Fed Appx 262 (2001)(Months after the government and defendant's counsel submitted their briefs, defendant submitted pro se a supplemental brief. Though we are not obligated to consider the issues raised by defendant's untimely brief, we note that all of his claims lack merit) Id., at 269.
United States v. Laydon, 11 Fed Appx 392 (2001)
United States v. Roper, 266 F 3d 526 (2001)
United States v. Sargent, 19 Fed Appx 268 (2001)(In response to the issues raised in defendant's [pro se] supplemental brief, the United States concedes...the defendant may have been assessed criminal history points for another individual's conviction, which would constitute plain error. The United States asserts that this matter should be remanded to the district court to correct the PSR, consider the sentencing issues not previously raised, and resentence defendant upon the corrected record) Id., at 271.
United States v. Smith, 20 Fed Appx 258 (2001)(conviction reversed)
United States v. Martin, 24 Fed Appx 504 (2001)
United States v. Arbeluez-Agudelo, 19 Fed Appx 203 (2001)
United States v. Cooper, 15 Fed Appx 238 (2001)
United States v. Oguaju, US App Lexis 25958 (2000)
United States v. Mason, 221 F 3d 1336 (2000)
United States v. Lanier, 201 F 3d 842 (2000)
United States v. Curtis, 237 F 3d 598 (2000)(reversed sentence)
United States v. Simpson, US App Lexis 23344 (1999)
United States v. Waldon, 206 F 3d 597 (1999)(This Court granted Waldon leave to file a supplemental brief) Id., at 600, Nt. 1.
United States v. Polk, US App Lexis 11414 (1999)
United States v. Poole, US App Lexis 19815 (1999)(sentence vacated
United States v. Payne, 181 F 3d 781 (1999)(reversed denial of motion to suppress)(filed pro se supplemental brief just before oral arguments)
United States v. Jenkins, US App Lexis 13650 (1999)
United States v. Paille, US App Lexis 10657 (1999)(On November 6, 1998, Defendant filed a pro se motion for leave to file a supplemental brief, which this Court granted on November 13, 1998)
Carson v. Burke, 178 F 3d 434 (1999)
United States v. Mustafa, US App Lexis 1701 (1999)
Penix v. Turner, US App Lexis 1471 (1999)(Given the unique circumstances of this case, in that Penix's assignments of error were not considered by the state courts due to alleged ineffective assistance of appellate counsel, it is necessary to consider each assignment presented by Penix in order to determine whether counsel's deficient performance was prejudicial)
United States v. Son, US App Lexis 839 (1999)
Hamilton v. United States, US App Lexis 19810 (1999)
United States v. Causey, US App Lexis 9838 (1999)
United States v. Propes, US App Lexis 2622 (1999)
United States v. Porto, US App Lexis 13525 (1998)
United States v. Pineda, US App Lexis 30756 (1998)
United States v. Blackstock, US App Lexis 6036 (1998)(vacated sentence)
United States v. Wrubel, US App Lexis 2779 (1998)
United States v. Harris, 165 F 3d 1062 (1998)(reversed sentence)
United States v. Echols, US App Lexis 28063 (1998)
United States v. Myers, US App Lexis 26939 (1998)

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United States v. Owusu, 199 F 3d 329 (1999)(reversed denial of motion for acquittal)
Norris v. Schotten, 146 F 3d 314 (1997)
United States v. Morrison, US App Lexis 28710 (1997)
United States v. Kurpiewski, US App Lexis 17195 (1997)
United States v. Starling, US App Lexis 30211 (1997)
Allen v. Perry, US App Lexis 41404 (1997)
United States v. Lanier, 114 F 3d 84 (1997)(en banc)
United States v. Saez, US App Lexis 7182 (1997)
United States v. Love, US App Lexis 17928 (1997)
United States v. Carter, US App Lexis 22837 (1997)
United States v. Mainville, US App Lexis 10792 & 16539 (1997)(Mainville filed a petition for rehearing based on the failure of the original per curiam opinion to address an argument advanced in a supplemental brief, filed pro se, regarding the adequacy of the jury instructions given at trial. "In order to make clear that this court did consider the pro se issue on direct appeal, the previous decision is modified by adding the following paragraph at the end of Section II ...")
United States v. Cato, US App Lexis 9337 (1997)(vacated conviction)
United States v. Barrow, 118 F 3d 482 (1996)
United States v. Freeman, US App Lexis 8244 (1996)(vacated count)
United States v. Giles, US App Lexis 12433 (1996)
United States v. Washington, US App Lexis 30162 (1996)
Lyons v. Ohio Adult Parole Authority, 105 F 3d 1063 (1996)
United States v. Chambos, US App Lexis 26670 (1996)
United States v. Galarzo, US App Lexis 35389 (1995)
United States v. Butler, US App Lexis 13737 (1995)(reversed and remanded)
United States v. Alter, US App Lexis 967 (1994)(vacated sentence)
United States v. Yannott, 42 F 3d 999 (1994)
United States v. Curtsinger, US App Lexis 27329 (1993)(vacated sentence)
United States v. Dusenberg, US App Lexis 26287 (1993)(reversed forfeiture charge)
United States v. Butler, US App Lexis 25182 (1993)(vacated sentence)
United States v. Crumb, US app Lexis 23097 (1993)
United States v. Geiger, US App Lexis 11428 (1993)
United States v. Taylor, US App Lexis 7566 (1993)
United States v. Burgess, US App Lexis 4107 (1993)("Lastly, we must address the allegations raised in defendant's supplemental brief filed pro se")
United States v. Gray, US App Lexis 5619 (1992)
United States v. Wright, US App Lexis 15676 (1990)
United States v. Sammons, 918 F 2d 592 (1990)
United States v. Iles, 906 F 2d 1122 (1990)
Perotti v. Morris, 865 F 2d 1269 (1989)(remanded for further proceedings)
Cobb v. Perini, 832 F 2d 342 (1987)
United States v. McMullen, 755 F 2d 65 (1984)
United States v. Holloway, 744 F 2d 527 (1984)
United States v. Stull, 743 F 2d 439 (1984)
United States v. Hill, 688 F 2d 18 (1982)
United States v. Condor, 423 F 2d 904 (1970)

3 CASES WHERE THE SIXTH CIRCUIT COURT OF APPEALS REFUSED TO CONSIDER A PRO SE SUPPLEMENTAL BRIEF BECAUSE IT WAS UNTIMELY FILED

Andrews v. United States, 106 Fed Appx 389 (2004)(The Apprendi claim was abandoned because it was not mentioned until the inmate filed a pro se

supplemental brief after the government had filed its brief. The supplemental brief was in the nature of a reply brief.

United States v. Arbelaez-Argudelo, 19 Fed Appx 203 (2001)(Although not raised in the brief filed by counsel, defendant attempts to raise an Apprendi issue by filing a pro se supplemental citation of authorities. See Apprendi v. New Jersey, 500 US 466 (2000). We normally decline to consider issues that are not raised in the appellant's opening brief as is required in Fed. R. App. P. 28(a). See United States v. Brown, 151 F 3d 476, 487 (6th Cir. 1998)) Id., at 206, Nt. 2.

United States v. Lindow, US App Lexis 2924 (1995)(reversed count two) (pro se supplemental brief tendered for filing after the defendant's reply brief was filed, which was considered "too late to make them reviewable on appeal")

IN THE STATE OF MICHIGAN, A DEFENDANT IS ALLOWED TO FILE A BRIEF IN PROPRIA PERSONA ON APPEAL IF COUNSEL REFUSES TO RAISE HIS OR HER REQUESTED ISSUES, YET FOR A DEFENDANT OUT OF THE WESTERN DISTRICT OF MICHIGAN, HE OR SHE IS DENIED A LEGITIMATE DIRECT APPEAL IF COURT-APPOINTED COUNSEL IS INTENT ON SABOTAGING THE PROCESS IN ORDER TO SATISFY THE GOVERNMENT, THE IRS, OR A PRIVATE PARTY

Martinez v. Court of Appeal of California, 528 US 152, 162 (2000)(Held there is no constitutional right to proceed pro se on appeal. "Our holding is, of course, narrow. It does not preclude the States from recognizing such a right under their own constitutions")

Gadowski v. Renico, 258 Fed Appx 781 (2007)(Even if their counsel refused, they could have raised their partially developed claim on direct appeal in a Standard 11 (called Standard 4 since 2004) pro se brief permitted under state criminal procedure. See People v. Scott, 474 Mich. 1012, 708 N.W. 2d 372, 373 (Mich. 2006)(Administrative Order No. 2004-6, Standard 4, allows a defendant to file a brief in propria persona, raising issues that the defendant's attorney does not believe are meritorious)

McMeans v. Brigano, 228 F 3d 674 (2000)(After filing a pro se supplemental brief, the Ohio Court of Appeals struck McMeans brief, noting that he had the option of dismissing his appointed counsel and relying upon his pro se brief. McMeans did not dismiss his appointed counsel. The Supreme Court has held that a defendant has no constitutional right to represent himself on direct appeal. Martinez v. Court of Appeal of California, 528 US 152 (2000). Clearly, this holding contradicts the petitioner's assertion that there exists a constitutional entitlement to submit a pro se appellant brief on direct appeal <u>in addition to</u> the brief submitted by appointed counsel [emphasis added]. Thus, we reject the petitioner's argument that the Ohio Court of Appeals' decision to strike his pro se brief constitutes "cause" to excuse his procedural default) Id., at 678.

Title 26 USC §7623 authorizes payments and awards to anyone deemed "necessary" for detecting and bringing to trial and punishment persons guilty of violating internal revenue laws. Title 5 USC §§ 4502-4506 authorize performance-based cash awards to federal government employees (See Exh. II).

Robert Plaster has a history of paying politicians for favors (See

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Exh. BB-1). While U.S. Attorney General John Ashcroft was in power, a second federal criminal prosecution netted the Plasters a vital property to their Branson Landing Project in the Western District of Missouri (See Exh. BB-2). The Dept. of Justice had no legitimate business protecting a man who has been repeatedly indicted in the past for criminal activity in his business dealings (See Exh. BB-3)

ONLY TWICE BEFORE IN THE SIXTH CIRCUIT COURT OF APPEALS HAS A JUDGE HELD AN APPELLATE COURT DOES NOT ORDINARILY CONSIDER PRO SE CLAIMS BROUGHT BY A DEFENDANT REPRESENTED BY COUNSEL, AND TO DO IT, THE NONPUBLISHED OPINIONS CONTRADICTED THE USUAL PRACTICE IN EVERY OTHER CASE IN WHICH THE JUDGE PARTICIPATED

Martinez v. Court of Appeal of California, 528 US 152, 159 (2000)(Apellate courts have maintained the discretion to allow litigants to "manage their own cases"--and some such litigants have done so effectively. That opportunity, however, has been consistently subject to each court's own rules)

Langes v. Green, 282 US 531 (1931)(Discretion, when invoked as a guide to judicial action, means a sound discretion exercised not arbitrarily or willfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result)[emphasis added]

United States v. Ogburn, 288 Fed Appx 226, 238 (7/28/08). Judge Gibbons contradicts her usual practice in every other case, both before and after, and also ignores the usual practice in hundreds of other cases, including published cases which would be considered precedential, to cite two nonpublished cases, in order to hold, "Because Crutcher was represented by counsel on appeal, we decline to address these [supplemental pro se] claims. See United States v. Howton, 260 Fed Appx 813, 819 (6th Cir. 2008)("We decline to address these arguments because [the defendant] was represented by counsel in this matter"); United States v. Jenkins, 229 Fed Appx 362, 370 (6th Cir. 2005)("[W]e do not ordinarily consider pro se claims brought by a defendant represented by counsel on appeal...")."

United States v. Jenkins, 229 Fed Appx 362, 370 (12/14/05)(vacated sentence and remanded). Judge Batchelder holds, "Although we do not ordinarily consider pro se claims brought by a defendant represented by counsel on appeal, we have, in an abundance of caution, reviewed them, and we find them to be entirely without merit" [emphasis added].

United States v. Howton, 260 Fed Appx 813, 819 (1/16/08). In this opinion, Judge Batchelder leaves off the rest of the sentence from Jenkins, where she holds, "We decline to address these arguments because Howton was represented by counsel in this matter. See, e.g., United States v. Jenkins, 229 Fed Appx 362, 370 (6th Cir. 2005)("[W]e do not ordinarily consider pro se claims brought by a defendant represented by counsel on appeal.")

It should be noted that my appeal was docketed on 12/16/05 (Note date of United States v. Jenkins), and the denial of my petition for writ of mandamus to strike attorney Melvin Houston's appellant brief was dated 1/17/08 (Note date of United States v. Howton)(See Exh. M & W).

Given 1,018,408 records were reviewed in LexisNexis CD over 200 years, from 1806 to 2010, in order to obtain this data, the timing of these cases in relation to events in my own appeal, are disturbing and lend to the appearance of injustice.

In every other case, both before and after United States v. Ogburn, Judge Gibbons considers the issues of a pro se appellant with representation:

United States v. Cox, 365 Fed Appx 631 (2010)
United States v. Hyler, 308 Fed Appx 962 (2009)
United States v. Kirby, 282 Fed Appx 376 (6/20/08)(Judge Gibbons is the author of the Opinion in this case, and Judge Batchelder is also on the panel. Judge Gibbons addresses Kirby's pro se supplemental brief claim regarding judicial fact finding at sentencing at page 379. She also holds, "The Sixth Circuit may review claims of ineffective assistance of counsel on direct appeal in rare cases where there is no legitimate, strategic reason to fail to raise the claims under the circumstances and the record is sufficient to allow review of defense counsel's conduct." See also United States v. Meeker, 411 F 3d 736, 748-49 (2005)).
United States v. Marrero, 237 Fed Appx 71 (2007)(Judge Gibbons, as author of the Opinion, addresses Marrero's pro se brief issue)
United States v. Brika, 487 F 3d 450 (2007)
United States v. Barry-Scott, 251 Fed Appx 983 (2007)(Judge Bertelsman is the author of the Opinion, and at page 992, Nt. 2, refers to Barry-scott's pro se supplemental brief)
United States v. Nance, 481 F 3d 882 (2006)(Judge Gibbons is the author of the Opinion, and Judge Rogers is also on the panel. Noting the pro se supplemental brief, Judge Gibbons finds the failure to bring a pretrial motion of 12(b)(3) defenses constitutes waiver). Id., at 884, Nt. 1.
United States v. Watford, 468 F 3d 891 (2006)
United States v. Green, 125 Fed Appx 659 (2005)(vacate sentence)(Judge Sutton wrote the Opinion in this case)
United States v. Kirby, 418 F 3d 621 (2005)(In regards to a pro se supplemental brief filed after oral arguments, Judge Gibbons addresses the claim) Id., at 628, Nt. 4.
United States v. Espey, US App Lexis 18072 (2004)
United States v. Fredell, 79 Fed Appx 799 (2003)(Judge Sutton was on this panel with Judge Gibbons writing the opinion, addressing the pro se claims at pages 802, 808-809)
United States v. Murray, 66 Fed Appx 600 (2003)
United States v. Hayes, 62 Fed Appx 588 (2003)

Likewise, in every other case except United States v. Howton, Judge Batchelder considers the issues of a pro se appellant with representation:

United States v. Kirby, 282 Fed Appx 376 (6/20/08)
United States v. Campbell, 549 F 3d 364 (2/6/08)
United States v. Bell, 259 Fed Appx 733 (1/7/08)
Nichols v. United States, 563 F 3d 240 (9/10/08)(en banc)(Judge Bathelder wrote the Opinion)
United States v. Hardin, 539 F 3d 404 (8/25/07)
United States v. Howard, 216 Fed Appx 463 (1/24/07)
United States v. Gabrion, 517 F 3d 839 (2/28/07)(Judge Bathchelder wrote the Opinion)

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United States v. Garcia, 496 F 3d 495 (9/20/06)(vacate sentence)(Judge Batchelder wrote the Opinion)
United States v. Collins, 129 Fed Appx 213 (4/20/05)
United States v. Rice, 90 Fed Appx 921 (2/20/04)(Judge Gibbons also on panel)
United States v. Espey, US App Lexis 18072 (8/19/04)(Judge Gibbons also on panel)
United States v. Curtis, 237 F 3d 598 (2000)(reversed and remanded)
United States v. Lanier, US App Lexis 28047 (2000)(Judge Batchelder wrote the Opinion)
United States v. Waldon, 206 F 3d 597 (1999)
United States v. Polk, US App Lexis 11414 (1999)
United States v. Negro, US App Lexis 10657 (1999)
United States v. Tolley, US App Lexis 3864 (1999)
United States v. Son, US App Lexis 839 (1999)
United States v. Starling, US App Lexis 30211 (1997)
Allen v. Perry, US App Lexis 41404 (1997)
United States v. Lanier, 114 F 3d 84 (1997)(en banc)
United States v. Saez, US App Lexis 7182 (1997)
United States v. Butler, US App Lexis 25182 (1993)(vacated sentence)
United States v. Crumb, US App Lexis 23097 (1993)

THE INESCAPABLE CONCLUSION IS THE THREE JUDGE PANEL ENGAGED IN JUDICIAL FRAUD, COLLUSION, AND DISCRIMINATION TO FIX THE OUTCOME OF MY DIRECT APPEAL

May 20, 2008, Order from Judges Rogers, Sutton and Bertelsman:
"The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the cases." [emphasis added] (See Exh. F)

May 14, 2009, Order from Rogers, Sutton and Bertelsman:
"Because Marcusse and Besser were represented by counsel on appeal, the court properly declined to consider their pro se issues on appeal." [emphasis added] (See Exh. G)

Moder v. United States, 62 F 2d 462, 465 (D.C. Cir. 1932)("[H]ere the allegation goes beyond the mere matter of error, and charges judicial fraud. We have been and are unwilling to hear and decide an appeal on a record alleged to be purposefully untrue, and we have no doubt that in such a case we have an inherent power to set aside the judgment and award a new trial, and, in this view, we deem it our duty not to hear argument on this appeal or decide the case without further investigation")[emphasis added]

Yick Wo v. Hopkins, 118 US 356, 367, 373-74 (1886)(The Court first coined the term, "evil eye and uneven hand", standing for the proposition that it is "unjust and illegal" to discriminate against persons in similar circumstances, because "there should be no arbitrary deprivation of life or liberty", and there should be "like access to the courts")

Jones v. Barnes, 463 US 745, 756, ft. 1 (1983)("There are few, if any, situations in our system of justice in which a single judge is given unreviewable discretion over matters concerning a person's liberty

or property, and the reversal rate of criminal convictions on mandatory appeals in the state courts, while not overwhelming, is certainly high enough to suggest that depriving defendants of their right to appeal would expose them to an unacceptable risk of erroneous conviction." "Of course, a case presenting this question is unlikely to arise, for the very reason that a right of appeal is now universal for all significant criminal convictions")(J. Brennan and J. Marshall, dissenting)

There is said to be a 1 in 13 chance, or 7.7% rate of reversal on direct appeal, however, a review of Judge Bell's reversal rate on appeal from 1988 to 2010 shows a 34% reversal rate (See Exh. C-1). This rate is far higher than any other judge in the Sixth Circuit, if not the entire country, and exposes an attitude that exhibits disrespect for following the law. Indeed, Judge Bell threatened me with removal from the trial for asking he place his oath of office on the record once he began stripping me of the right to meaningfully defend myself (TR 12).

Jones v. Barnes, 463 US 745, 755 (1983)("But the attorney, by refusing to carry out his client's express wishes, cannot forever foreclose review of nonfrivolous constitutional claims." "For such overbearing conduct by counsel, there is a remedy." "The remedy, of course, is a writ of habeas corpus")(J. Blackmun, concurring)

That would not be true in my case. No remedy is available when a district court judge, who secured convictions at a trial by disregarding the law, is allowed by a court of appeals to enjoy unreviewable discretion on direct appeal, and then, in the subsequent §2255 proceeding, dismiss viable claims by refusing to file them without the bother of a show cause order (See Exh. JJ)

Evitts v. Lucey, 469 US 387 (1985)(A first appeal as of right...is not adjudicated in accord with due process of law if the appellant does not have the effective assistance of an attorney)

Martinez v. Court of Appeal of California, 528 US 152, 159 (2000)("No State or Colony ever forced counsel upon a convicted appellant, and no spokesman ever suggested that such a practice would be tolerable or advisable." See Faretta v. California, 422 US 806, 832 (1975)) ("Our system of laws generally presumes that the criminal defendant, after being fully informed, knows his own best interests and does not need them dictated by the State. Any other approach is unworthy of a free people")(J. Scalia, concurring) Id., at 165.

REMEDY REQUESTED

WHERE NO DISPOSITION HAS BEEN MADE OF COMPLAINTS OF JUDICIAL MISCONDUCT SUBMITTED FOR REVIEW BY THE CHIEF JUDGE OF THE SIXTH CIRCUIT COURT OF APPEALS, AS ACKNOWLEDGED OVER 30 MONTHS AGO, VIOLATIONS OF 28 USC § 352(a), EXPEDITIOUS REVIEW, HAVE OCCURRED, INCLUDING SUBSECTION (1), WHETHER APPROPRIATE CORRECTIVE ACTION HAS BEEN OR CAN BE TAKEN, AND CAUSING THERE TO BE THE APPEARANCE OF AN OFFICIAL POLICY CONDONING THE MISCONDUCT DESCRIBED, AS OTHERWISE THE COMPLAINTS COULD HAVE BEEN DISMISSED IN A TIMELY MANNER; THEREFORE, AN ORDER DIRECTING DISPOSITION UNDER 28 USC §352(b) OR §353(a) OF THESE COMPLAINTS IS REQUESTED.

EXHIBIT Y-14

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

October 3, 2013

Janet Marcusse
#17128-045
FCI - Tallahassee
501 Capital Circle, NE
Tallahassee, FL 32301

RE: Extraordinary Writ of Mandamus

Dear Ms. Marcusse:

The above-entitled petition for an extraordinary writ of mandamus was received on October 1, 2013. The papers are returned for the following reason(s):

The petition does not show how the writ will be in aid of the Court's appellate jurisdiction, what exceptional circumstances warrant the exercise of the Court's discretionary powers, and why adequate relief cannot be obtained in any other form or from any other court. Rule 20.1.

The petition does not state the reasons for not making application to the district court of the district in which you are held. Rule 20.4(a) pertaining to petitions for writs of habeas corpus.

A copy of the rules of this Court are enclosed.

A copy of the corrected petition must be served on opposing counsel.

Sincerely,
Scott S. Harris, Clerk
By:
Andrew Downs
(202) 479-3038

Enclosures

EXHIBIT Z-14