

# EXHIBITS

A-5 to Z-5

1 through more witnesses here this afternoon than -- we went  
2 through them faster than it was anticipated, so the lawyers  
3 tell me we're making good progress, so you will be excused  
4 early today. We'll see you tomorrow morning at nine o'clock  
5 for a continuation. Again, please do not discuss this case  
6 with anyone, and you'll beat the traffic if you get out of  
7 here pretty soon, okay? You may be excused.

8 (Jury out at 4:14 p.m.)

9 THE COURT: Anything else for us to take up at this  
10 time on behalf of the government?

11 MR. GEZON: No, Your Honor.

12 THE COURT: Okay. On behalf of any defendants,  
13 anything else to take up?

14 MR. VALENTINE: No, Your Honor.

15 DEFENDANT MARCUSSE: I need to file the witness fee  
16 list.

17 THE COURT: Okay. Okay. Just give me a few minutes  
18 and Sue will come around. I'll get Sue's attention right  
19 away.

20 Anything else? Okay. That's all. We'll see you  
21 tomorrow morning for our next group of witnesses.

22 MR. GEZON: Your Honor, may I? I'm sorry, I  
23 apologize. There's something that came up that we think we  
24 should put on the record.

25 We've been advised by those that are wearing the

1 Court's headsets to assist them in hearing that it actually  
2 magnifies the conversations occurring confidentially at our  
3 desk and the defendants' desks quite loudly. I wonder if  
4 there's some way perhaps that we can turn them off at the  
5 attorneys' table. I'm told by the witnesses and the court  
6 officers that are listening to this that they can hear the  
7 conversations of the attorneys and the parties.

8 THE COURT: Okay. We'll work on this tonight. I  
9 think we can maybe do some unplugging or turn these -- is  
10 there a push button there that turns them on and off? I think  
11 that's all it does is turn them on and off.

12 MR. SCHIPPER: It does. You have to hold it, Your  
13 Honor. You have to hold it and it's off.

14 MR. GEZON: It's a mute button.

15 THE COURT: We'll work on this. This is part of our  
16 figuring out what to do with all this stuff.

17 All right. Good. That's all.

18 (Proceedings recessed at 4:18 p.m.)  
19  
20  
21  
22  
23  
24  
25

1 THE COURT: Okay. Okay.

2 DEFENDANT MARCUSSE: I have a couple of questions,  
3 concerns. One is in regards to the -- I haven't seen all of  
4 the orders that have come through in the past couple of days.  
5 There's a couple days' delay getting to me. However,  
6 apparently getting some bank records was denied. That goes  
7 directly to my defense in that the bank records show the money  
8 was invested with other individuals.

9 THE COURT: Ms. Marcusse, you have harassed me for  
10 the last several days with absolutely nonsensical motions.  
11 Look at me. I want to talk to you.

12 You do not understand what this trial is about, and  
13 I have urged you to talk to your lawyer. This matter is not  
14 whether you invested money wisely. That's not the issue that  
15 the government has put before us. So whether or not the money  
16 that you allegedly may have had to invest was run off with by  
17 a third party or a fourth party or someone else is really not  
18 the issue here, so that's why I want you to focus clearly on  
19 this.

20 The allegation is that you and others -- listen  
21 carefully to me. The allegation is that you and others  
22 fraudulently and deceitfully deceived other people, not that  
23 other people deceived you, which may be the case. I imagine  
24 the government might concede that if you ask them. The  
25 question is whether you and others deceitfully deceived other

1 else and their crazy ideas.

2 DEFENDANT MARCUSSE: Now, getting back to the bank  
3 records, though, I was accused of running a Ponzi, which means  
4 that, like Exhibit 94, that I spent the money. And if I can't  
5 get bank records, I can't prove that I invested the funds. So  
6 there's where I totally don't understand why I can't have bank  
7 records that are my own bank records. Is it not true I was  
8 accused of running a Ponzi?

9 THE COURT: I haven't heard the evidence yet.  
10 That's the allegation.

11 DEFENDANT MARCUSSE: Well, the indictment says that,  
12 so I can't defend it without being able to get bank records,  
13 especially trapped in jail, which makes me suspicious that's  
14 the reason I was trapped in jail, to prohibit a defense.

15 THE COURT: Have you talked to your lawyer about  
16 this, Mr. Kaczor? Have you discussed this matter with your  
17 lawyer?

18 DEFENDANT MARCUSSE: What, as far as getting bank  
19 records? He thought I should be able to get bank records,  
20 that I should be able to subpoena bank records. It should be  
21 a simple matter.

22 THE COURT: Did you ask him to assist you in  
23 that matter?

24 DEFENDANT MARCUSSE: Well, yes, except I was denied  
25 the ability to get the -- by you, the bank records. You

1 denied me the ability to get them.

2 THE COURT: That wasn't the question. Did you ask  
3 him to assist you in getting an understanding of what the  
4 records were that you needed and to discuss that with the  
5 United States attorney?

6 DEFENDANT MARCUSSE: I asked him to help me subpoena  
7 them.

8 THE COURT: Did you ask him whether you had the  
9 right to certain records and what those records were, or do  
10 you want me to ask him? Do you want me to ask Mr. Kaczor?

11 DEFENDANT MARCUSSE: Don't I have the right to my  
12 own bank records?

13 THE COURT: I don't know. That's not the motion  
14 that I had in front of me when I ruled on it.

15 DEFENDANT MARCUSSE: The motion asked for  
16 Starbright, which was my own account.

17 THE COURT: Ma'am, ma'am. Mr. Kaczor?

18 MR. KACZOR: Thank you, Your Honor.

19 Your Honor, we've discussed bank records and I've  
20 indicated to her that I've gone over and I've looked at all  
21 the bank records, that there are summaries of many of the bank  
22 records. I've explained to her that the rules of evidence  
23 allow her to review any of the bank records that were used to  
24 formulate the summaries, and therefore, she would be able to  
25 look at bank records. And I don't know if they're all the

1 MR. VALENTINE: Thank you.

2 (Mr. Valentine exited the courtroom.)

3 THE COURT: Ms. Marcusse, I'm not going to have a  
4 nonsensical debate with you about using the Constitution. You  
5 do not know what you are talking about.

6 I'm going to require in this case, because you do  
7 not know what you're talking about, I'm going to require Mr.  
8 Kaczor to do the examination of the witnesses on your behalf.  
9 You do not know what this case is about, and I have to protect  
10 your rights by asking Mr. Kaczor to speak on your behalf.

11 If you can demonstrate to me at a certain point that  
12 you do understand what this trial is about and you can stay  
13 focused on what this trial is about, then I definitely believe  
14 that you have the right to represent yourself under the  
15 Constitution. But when I hear all these irrelevancies, I  
16 can't let you do that to yourself, and I'm going to ask Mr.  
17 Kaczor to confer with you.

18 But I'm going to ask Mr. Kaczor to do the  
19 examination of witnesses on your behalf. This is not  
20 something Mr. Kaczor would like to do. It's not something I  
21 would like him to do. But I think we're left with no  
22 alternative in this matter.

23 Mr. Kaczor, do you understand what I'm asking you to  
24 do?

25 MR. KACZOR: Yes, Your Honor. I am prepared to do

1 now on, and --

2 DEFENDANT MARCUSSE: I will be putting in a motion  
3 for bias and prejudice as well.

4 THE COURT: File as many as you would like. But I'm  
5 again telling you that they're not focused, and I'll take them  
6 for what they are.

7 Anything else we need to bring up here? All right.  
8 Now, Mr. Besser, you're giving me signals. What's that mean?

9 DEFENDANT BESSER: Oh, I'm just -- I'm just  
10 thinking.

11 THE COURT: Oh, good.

12 DEFENDANT BESSER: As a matter of fact, may I  
13 address the Court?

14 THE COURT: You may. You may.

15 DEFENDANT BESSER: Your Honor, when we were here  
16 previously, I believe it was on the 5th, I asked to not have  
17 to have anything to do with this attorney that you appointed  
18 to me.

19 THE COURT: Yes.

20 DEFENDANT BESSER: Well, I have no defense to this  
21 charge because I have been in captivity, and so I can't obtain  
22 any information which could be used to excuse the charges. I  
23 can't try to find an attorney or anything. I was brought here  
24 from Mexico as -- well, as I read here, as a drug dealer. I  
25 had in excess of five kilograms or more of cocaine. They --



1 THE COURT: Yes.

2 MR. KACZOR: You had indicated that I should take  
3 over for Mrs. Marcusse in the questioning of witnesses, and I  
4 wondered to what extent I should also take over if an opening  
5 statement were to be given or objections were to be made or --

6 THE COURT: Absolutely. Absolutely, until  
7 otherwise.

8 MR. KACZOR: Thank you, Your Honor.

9 THE COURT: Okay. Let's bring the jury in.

10 (Jury in at 1:52 p.m.)

11 THE COURT: You may be seated.


12 Members of the jury, before we begin this trial, let  
13 me tell you a little bit about what is going to follow,  
14 describe generally how the trial will be conducted and explain  
15 what we will be doing; that is, you, the lawyers in this  
16 matter, and I will be doing. At the end of this trial I will  
17 give you more detailed guidance as to how you will go about  
18 reaching your decision, but now I simply want to explain to  
19 you how the trial will proceed.

20 As I indicated to you earlier this morning, this  
21 matter is a criminal case brought by the United States  
22 government after indictment by the grand jury. I will refer  
23 to the government perhaps more than once as the prosecution.  
24 The government is represented, as I said, by the two United  
25 States attorneys here, Mr. Gezon and Mr. Schipper.

FILED

05 MAY 16 AM 11:33

: Janet - Mavis: Marcusse  
c/o 300 Williams Street  
White Cloud, Michigan [49349]  
(231) 689-7024

U.S. DISTRICT COURT  
WESTERN DISTRICT OF MICH  
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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA )  
 ) Case Number: 1:04-cr-165  
 v. )  
 ) ROBERT HOLMES BELL  
 : Janet Mavis: Marcusse, Sui Juris )

**COMPULSORY JOINDER OF INDISPENSABLE PARTIES TO THIS ACTION**

**FRCP Rule 19, FRCP Rule 14**

For the Office of U.S. Attorney to be allowed to maintain the current charges as contained in the "new" Superseding Indictment (reformatted), the following individuals are deemed to be absolutely essential parties to this action and must be joined under FRCP Rule 19 (b) as co-defendants as Claimant absolutely relied upon these individuals for investment advice.

The Office of U.S. Attorney can be readily demonstrated to have hidden their existence for "self-dealing" purposes, and/or suppressed bank records showing that Claimant entrusted significant funds to these individual's care. At one point or another, all of the individuals below can be proven to be the original source of the information relayed by Claimant to clients in her newsletters, making all of them essential parties to this action.

Essential additional co-defendants include:

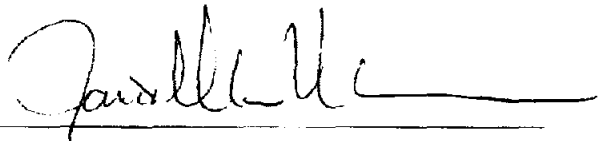
1. **Robert W. Plaster**, founder Empire Gas and Oil, former CEO and co-founder of MLC Developments, International, Inc. Chairman of the Board, Evergreen Investments
2. **Winfield Moon**, Worldwide E. Capital
3. **Richard Gerry**, Director/Trustee Crawford Ltd. , Starbright City Centre
4. **James Kramer-Wilt**, former lawyer, Bureau of the Public Debt, Dept. of Treasury, partner of Richard Gerry.
5. **Gerard Forrester**, former Supervisory Agent, Dept. of Justice
6. **James Longwell**, former FBI Special Agent.
7. **John Ashcroft**, former Senator from Missouri and former U.S. Attorney General
8. **Dan Evans**, Attorney
9. **Thomas Connelly**, Attorney
10. **Christopher Lunn**, former CEO of SSBT, former regulator at the Central Bank of the Bahamas
11. **Mohammed Harajchi**, former owner SSBT

Over a month ago, a defense attorney in this action indicated to one of the co-defendants that the government intended to drop all charges but Count 42, the "tax" charge. Had that occurred, this action would not be necessary. With other charges still included, particularly mail fraud, it is a fact that Claimant absolutely relied upon the individuals listed above for her decisions and the information she subsequently relayed to members of her group.

Without the inclusion of these individuals, the Office of U.S. Attorney must drop this prosecution for the multiple reasons of "unclean hands", abuse of the public trust, perjury to the grand jury, "privity", gross conflicts of interest, fraud, libel, slander, obstruction of justice, suppression/withholding of material evidence, unlawful arrest and extradition, and impairing the obligation of contracts.

This Court, while federal, is still located in the State of Michigan where the U.S. Constitution does still apply. "Equality under the law is paramount."

Date: May 12, 2005

By:   
Janet Mavis Marcusse, Sui Juris

## NewsBank InfoWeb

### NewsLibrary

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Topics:

**Index Terms:**

Court; Decision

#### **Judges chastise prosecutor**

**The appeals court said Assistant U.S. Attorney Don Davis improperly put "pressure" on a jury to convict an accused tax rebel.**

Author: *Ed White / The Grand Rapids Press*

Article Text:

Federal prosecutor **Don Davis** pursues tax rebels with a passion. An appeals court, however, says he needs to turn down the heat in the courtroom.

The court said Davis, in a closing argument, improperly pressured a jury to convict Michael Modena, a Kent County man who was accused of conspiring to help five brothers evade taxes.

Davis told the jury: "We can all take some measure of satisfaction in the investigation and prosecution of the Russells, of John Modena. But we're not finished. We're not finished until this verdict is returned."

The appeals court said "statements that exhort the jury to 'do its job' are improper."

The three-judge panel, citing a ruling in a similar case, said "this kind of pressure has no place in the administration of criminal justice."

Nonetheless, Modena's conviction and five-year prison sentence will stand. Davis' comments, "although regrettable," did not spoil the bushel of evidence against the defendant, the 6th U.S. Circuit Court of Appeals said last week.

Modena, 41, was found guilty in August 2000 after a strange 21/2-day trial in which he refused to be represented by an **attorney** and sat mute during the proceedings. "Stone silence," U.S. Chief District Judge Robert Holmes Bell said at the time.

Modena sold bogus trusts and helped the Russell brothers obstruct the Internal Revenue Service. Denver,

Daniel, Orval, Jack and Timothy Russell owed more than \$500,000.

The government said Modena's trusts and other "de-taxing" schemes probably involved hundreds of people. He was on the run for 14 months before authorities captured him at a restaurant near Lansing in June 2000.

In its ruling, the appeals court said Davis also erred when he vouched for the credibility of a witness, Daniel Russell, whom he described as someone who had become a "law-abiding man." Separately, the court said Bell should not have allowed some financial summaries into evidence. But again, the mistakes were not enough to overturn the guilty verdict.

Modena's only victory on appeal: The court said Bell "abused (his) discretion" when he ordered drug tests, counseling and a three-year ban on alcohol when the prison sentence ends.

"Neither alcohol nor drug use played a role in Modena's crime," the court said.

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Record Number: 0400994163

1 Q So when you told the folks at the seminar in March of  
 2 2001 -- or May of 2001 that you pay your taxes, that was a  
 3 lie, wasn't it?

4 A I pay approximately 160 different types of taxes.  
 5 Property taxes, sales taxes, gas taxes, taxes endlessly. And  
 6 I filed when I believed it to be according to the Tax Code  
 7 appropriate to file.

8 MR. SCHIPPER: Can we play that portion of the  
 9 seminar tape, please?

10 (An excerpt of GX-58-A, a videotape, played to jury.)

11 MR. SCHIPPER: You can stop it now.

12 BY MR. SCHIPPER:

13 Q You just said, "I file mine individually?"

14 A I have always filed a tax return.

15 Q Isn't that what you just said, yes or no?

16 A I filed tax returns for 25 years.

17 Q Yes or no. Is that what you just said?

18 A Yes.

19 Q Thank you. Ms. Marcusse, let's look at that time frame  
 20 around that May seminar that we just showed some video of.  
 21 You've heard Mr. Flink testify, correct?

22 A Yes.

23 Q And in his review -- his testimony was that he reviewed  
 24 all of the bank records, all of the investors he found, traced  
 25 all the money into Access, Sanctuary, any of those bank

Taxpayer Name: MARCUSSE, JANET M.  
 TIN:  
 Tax Form: 1040  
 Tax Year:

Examiner: Kempf, Donald  
 Date:

### Other Income Lead Sheet

Tax Period	Per Return	Per Exam	Adjustment	Reference
199912	.00	48,000.00	48,000.00	
200012	.00	188,084.00	188,084.00	
200112	.00	700,542.00	700,542.00	

**Conclusion:** *(Reflects the final determination on the issue.)*

The income received by the Taxpayer from Access Financial Group is her Gross Income and reportable by her on her tax return.

**Facts:** *(Document the relevant facts.)*

Janet Mavis Marcusse represented herself to be a successful investment and financial advisor with access to secret investment opportunities. She operated an investment company called Access Financial Group. She along with 7 other people, acting as her associates, conspired to operate a Ponzi scheme to defraud investors, by investing into her company, their money and to keep it for herself and the other seven individuals who aided and abetted in the scheme. She received money through this scheme and converted the money for her own personal use. She failed to file a tax return for the years 1999, 2000, and 2001. She failed to report any income received from Access Financial Group either as wages, commissions, payments for services, or for any other type of gain or income. She and her seven associates were found guilty of Mail Fraud, Conspiracy to Commit Money Laundering, Conspiracy to Defraud the United States, and Money Laundering.

**Law:** *(Tax Law, Regulations, court cases, and other authorities. If Unagreed, include Argument)*

IRC Section: 61 - Gross Income includes income from whatever source derived.  
 The income received by Janet Mavis Marcusse through the Ponzi Scheme with Access Financial Group is Gross Income for her and reportable by her on her tax returns. These were funds obtained by her and used by her for her own personal use – directly for her benefit or for the benefit of her family and friends at her direction and control.

Specific citations:

**Taxpayer Position:** *(If applicable)*

None was provided.



UNITED STATES TAX COURT  
WASHINGTON, DC 20217

JANET MAVIS MARCUSSE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 14234-09.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER AND DECISION**

On January 6, 2012, respondent filed two motions: a motion for entry of decision and a motion to vacate the Court's November 30, 2011, Order, which had granted in part petitioner's motion to compel filed August 9, 2010. On January 25, 2012, petitioner filed a no objection to respondent's motions. It is

ORDERED that respondent's motion for entry of decision is granted. It is further

ORDERED that respondent's motion to vacate the Court's November 30, 2011, Order is granted; that the Court's Order dated November 30, 2011, is hereby vacated; and that in addition to the respects in which petitioner's motion to compel filed August 9, 2010, was already denied by the Court's order dated January 5, 2011, it is now denied as moot in all other respects. It is further

ORDERED AND DECIDED that for tax years 1999, 2000, and 2001, there are no income tax deficiencies and no additions to tax and penalties pursuant to I.R.C. secs. 6651(a)(2), 6654, and 6651(f) due from petitioner.

**(Signed) David Gustafson  
Judge**

ENTERED: **JAN 31 2012**

**SERVED Jan 31 2012**

**EXHIBIT G-5**


**AFFIDAVIT OF FACTS CONCERNING JANET MARCUSSE**

In Re: United States District Court Western District of Michigan  
Criminal Docket for Case #: 1:04-cr-00165-RHB-ALL

On or around Monday, May 16, 2005, concerning the trial of the above referenced case, I personally observed a sign on the courtroom door demanding that unless you were an investor or a witness, you could not enter the courtroom while selection of the jury was in progress.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 30th, 2011

Signed   
\_\_\_\_\_  
Christopher J. Milson

1 thank you ahead of time.

2           Myself along with Mr. Gezon represent the government  
3 in this case, and this is a criminal case in which charges  
4 were brought against the eight defendants. **Ponzi** scheme.  
5 You've heard the word already, **Ponzi** scheme. That's what this  
6 case is about.

7           Now, some of you may not know what a **Ponzi** scheme  
8 is.

9           THE COURT: Excuse me. I think we need to turn up  
10 the volume a little bit.

11           MR. SCHIPPER: Thank you, Your Honor.

12           A **Ponzi** scheme is a form of investment fraud named  
13 after Charles **Ponzi** after about 1919 or 1920 who came up with  
14 an investment fraud scheme that was named after him. Now,  
15 some of you may have heard of a pyramid scheme. A **Ponzi**  
16 scheme is similar, and a **Ponzi** scheme has certain  
17 characteristics.

18           You'll hear from Leonard Zawistowski. Leonard  
19 Zawistowski is an expert with the Federal Reserve Board. He  
20 investigates financial fraud cases, investment fraud cases  
21 specifically, including **Ponzi** schemes. Mr. Zawistowski will  
22 tell you that **Ponzi** schemes have several characteristics that  
23 are common. Now, not every **Ponzi** scheme has all of these  
24 eight, ten or twelve characteristics. Some have six or eight  
25 of them and some have different little twists. But they

From Vol. I Trial Transcript, dated 5/16/05 [bold emphasis added]

1 generally have the common characteristics of they mention and  
2 refer to, as the testimony will be the defendants did, to  
3 using prime banks or world banks or the Federal Reserve or  
4 International Monetary Fund, International Chamber of  
5 Commerce. Those types of terms are thrown around.

6 They typically promise a very high, very, very high  
7 rate of return, rate of interest on your money, sometimes as  
8 much as three percent to ten percent a month, maybe even  
9 twenty percent a month. They typically tell you that the  
10 investment vehicles -- the reason they're able to get this  
11 kind of high interest or this high return is because there are  
12 these secret markets out there that the general public doesn't  
13 know about and certainly doesn't have the ability to get  
14 into. These are the investment vehicles that people like the  
15 Rockefellers and the Trumps have access to. But typical in  
16 these Ponzi schemes is someone in the scheme or the group have  
17 access, they've gained access to those top secret investment  
18 opportunities, and that's how they can get this high rate of  
19 return.

20 But you must keep it secret. Secrecy is another  
21 common characteristic. You can't go to your banker or your  
22 lawyer or your CPA or your stockbroker because then you can't  
23 be part of this because then we wouldn't be able to get into  
24 this. This isn't something that's open to the general public,  
25 and then we'd lose our opportunity to get into this

1 investment.

2 You'll hear terms used like bank debenture, high  
3 yield investment program, things like that. One of the other  
4 keys to a Ponzi scheme is the safety that's promised. You'll  
5 hear testimony from the witnesses that they were told that  
6 their money, the principal that they invested, was safe. Now,  
7 they were told that by differing defendants and it was told in  
8 different ways. The testimony will be that my money is in a  
9 blocked bank account or a guaranteed bank account or it's in a  
10 world bank backed by a CD, but that the money is safe.

11 And lastly, Mr. Zawistowski will tell you that  
12 frequently, almost always with these investment fraud schemes,  
13 Ponzi schemes, the individuals have some sort of humanitarian  
14 purpose that they try to sell or promote. They try to pull on  
15 the heartstrings of good folks and/or on the religious beliefs  
16 of those folks by telling them that this isn't just a greedy  
17 venture. We're not out there just to make a bunch of money.  
18 We want to do it so that you're freed up to do mission work  
19 that you've wanted to do or to give more monies to charity or  
20 to help the sick or the infirm. And those are the common  
21 characteristics of a Ponzi scheme.

22 Now, let me introduce you to the defendants. It's  
23 difficult here because there are so many defendants mixed in  
24 with so many attorneys. Let me take just a minute to go  
25 through and introduce you to each of the defendants so that

1 Well, as is typical, this was the beginning of the  
2 end for the Ponzi scheme. You'll hear that throughout 2001  
3 very little, if any, monies were sent to investor victims.  
4 And eventually near the end of 2001, when investor victims  
5 went -- you'll hear testimony they went to the office, they  
6 went to Access to talk to someone, and the office was gone.  
7 There was no office, there was no forwarding address, there  
8 was no forwarding phone number. Jan had left. Janet Marcusse  
9 had left.

10 Now, what are some of the primary claims? There are  
11 many, but what are some of the primary claims you're going to  
12 hear consistent from the victims who are going to testify?  
13 Well, you're going to hear claims that, number one, this was a  
14 successful investment company when in fact you'll hear that  
15 the reality was that they were not a successful investment  
16 company.

17 You'll hear that there were top secret investments,  
18 and you'll hear testimony from Mr. Zawistowski that these top  
19 secret investments don't exist.

20 You'll hear that their money was being invested when  
21 in fact the facts will show, the testimony will be that their  
22 money was spent. It wasn't invested.

23 You'll hear that they were qualified to take, to  
24 accept money, 401(k) or retirement money, as a rollover. The  
25 testimony will be that they absolutely were not a qualified

1 MR. KACZOR: I will, Your Honor.

2 (Jury in at 3:38 p.m.)

3 THE COURT: You may be seated. You may come up  
4 here.

5 MR. KACZOR: Thank you, Your Honor.

6 THE COURT: At this time, ladies and gentlemen, Ms.  
7 Marcusse wishes to give you an opening statement as to what  
8 she believes the proofs will show, and you're to give the same  
9 respectful consideration to her as you would to a lawyer  
10 representing her. Her standby counsel will be standing beside  
11 her as she gives you her opening statement.

12 Ms. Marcusse, you may proceed to address the jury.

13 MR. KACZOR: Thank you, Your Honor.

14 DEFENDANT MARCUSSE: Good afternoon. My name is Jan  
15 Marcusse, and I've been waiting ten and a half months for  
16 today so that I can tell my side of the story and give you an  
17 idea of an overview of what I'm going to prove to you in order  
18 to show that I'm innocent, that we were trying to do a good  
19 thing here, and unfortunately some people that made promises  
20 to me have taken advantage of the situation and I find myself  
21 here trying to defend myself today.

22 We did not run a Ponzi. We invested tens of -- well  
23 not tens of millions of dollars, but -- excuse me.

24 (Defendant Marcusse conferred with Mr. Kaczor.)

25 DEFENDANT MARCUSSE: The proof will show that bank

1 records will prove to you that we invested over \$10 million on  
2 benefit -- for the benefit of investors. The proof will show  
3 that in March of 2001 a bank that we were using that we had  
4 CDs in failed. The proof will show that the Department of  
5 Justice had an agent who had endorsed this bank in writing,  
6 and this was an endorsement upon which I had relied in order  
7 to make the decision that it was a safe bank.

8 We had -- the proof will show that we had at least  
9 three different main diversifications, one of which was to  
10 further a charitable concern, an agenda close to my heart.  
11 I'm a cancer survivor, and we had wanted -- I had wanted to  
12 with the help of everyone put together an alternative health  
13 clinic on property close to Branson, Missouri. It was called  
14 the Branson Project, and you'll probably hear things about the  
15 Branson Project.

16 We had made plans to move there I think early 2000,  
17 possibly as long ago as late 1999. I did not -- the proof  
18 will show I did not run there because things were bad. I had  
19 had plans for a year to a year and a half prior to move to  
20 Branson to do this project.

21 The proof will also show that a project is going  
22 forward in Branson, Missouri, without us. And that  
23 individual, the proof will show, received a very sizeable  
24 amount of funds from our organization and is an individual of  
25 wealth that has prevented my litigation so far by having the



1 appearance that I spent the money.

2 The proof will show that we were in the bank, as I  
3 mentioned before, with CDs. The proof will also show that it  
4 was a stock-based investment. It was not a bank debenture or  
5 type of trading program as they're trying to make out the main  
6 investments of our company to be. This was a CD-backed  
7 program with margined and leveraged positions in the stock  
8 market, and it did have a very high return. The proof will  
9 show we left the returns offshore rather than bringing them in  
10 every month because it took time to move money back and  
11 forth.

12 The proof will also show that we did handle a lot of  
13 retirement funds. However, it will show that we used  
14 legitimate pension and 401(k) rollover organizations like  
15 Mid-Ohio Securities which to the best of my knowledge is still  
16 in business today as the recipient for IRAs and pensions. The  
17 proofs will also show that it's perfectly legitimate to open  
18 up your own profit-sharing plan, which was the other option  
19 that we had.

20 The government is also trying to make a case for  
21 fraud with tax returns and not reporting income. We didn't  
22 report taxes on the \$10 million because we didn't get to spend  
23 the \$10 million. We invested it. So therefore, there were no  
24 taxes due on monies that were invested elsewhere.

25 Also, we used -- the proof will show that we used an

1 exception under the Tax Code. It's called the Exception Act,  
2 508(c)(1)(A). It is not a 501(c)(3), and there is a  
3 difference. As you know, there's, what, nine million pages of  
4 Tax Code. It gets very complex and it gives virtually  
5 everyone a headache trying to determine how best to follow  
6 it. But to the best of our knowledge it was there in black  
7 and white; and to the best of our knowledge the Supreme Court,  
8 appellate courts and other types of courts had all upheld the  
9 ability, the genuineness, the legitimacy of the position that  
10 we took.

11 MR. GEZON: Your Honor, I'm going to object. Ms.  
12 Marcusse's comments upon what the law is is incorrect and the  
13 Court will be instructing, and she's in violation of the  
14 pretrial order.

15 THE COURT: Continue as to what you expect the  
16 evidence to show. Thank you.

17 DEFENDANT MARCUSSE: I'm sorry, I didn't hear him.

18 THE COURT: Continue with what you expect the  
19 evidence to show.

20 MR. KACZOR: What you expect the evidence to show.

21 DEFENDANT MARCUSSE: Oh, I'm sorry. You're just  
22 difficult to hear, that's all.

23 The evidence will show that we did not have over \$20  
24 million. The evidence will show that we did have returns that  
25 were coming in inside the United States and that the investor

1 deposit number that you will see is artificially enhanced, as  
2 is the amount of deposits the government is saying that we  
3 received in investor deposits. The evidence will also show  
4 that one of our associates was not listed on one of the  
5 exhibits so that his bank accounts could not be included, as  
6 considerable amounts went to the Branson Project on behalf of  
7 the investor group.

8 I am well aware the investor group is very unhappy.  
9 I have spent a lot of time, tears and aggravation every single  
10 day on the phone since myself to try and -- okay, the -- that  
11 we have tried, and I -- the proof will show that I did try to  
12 begin litigation against the responsible -- one of the  
13 responsible parties. And I believe that at the end of all of  
14 this, that you will be able to easily find yourself able to  
15 find all of us innocent of any of these charges.

16 Thank you for listening to me.

17 THE COURT: Thank you. Thank you.

18 You may proceed.

19 MR. GEZON: Thank you, Your Honor. We'd like to  
20 call our first witness, Mr. Paul Stinger.

21 THE COURT: This is the government's proofs we are  
22 starting on now, ladies and gentlemen. Until told  
23 differently, you can expect that every person who is hereafter  
24 called will be called under subpoena or by agreement from the  
25 government.

1 THE COURT: I think we've got a broken leg on that.

2 MR. VALENTINE: That's what I heard. That's why I  
3 thought overnight might be the best time. Thank you.

4 THE COURT: I think the repair parts are somewhere  
5 in transit. Yes, I'm aware of that.

6 BY MR. GEZON:

7 Q Is that one of the newsletters you received, sir?

8 A I've got to be honest, I don't remember this particular  
9 one. I read most all of them that came, but I don't remember  
10 this particular one.

11 Q All right.

12 A The name Greg Brown doesn't ring a bell at all. Sorry.

13 Q Then let's take a look at the next one. Let me show you  
14 the one we've marked as Exhibit 37.

15 A I recognize that one, yes, sir.

16 Q Is that one of the many newsletters you received?

17 A Yes. I think probably the format on this probably threw  
18 me off, but I don't remember the first one. Yes, I do  
19 remember the second one.

20 MR. GEZON: Move to admit Exhibit 37.

21 THE COURT: Any objection?

22 MR. DOELE: No objection.

23 THE COURT: Received.

24 MR. GEZON: Can we have that displayed for us,

25 Cindy?

1 appropriate, but I know that the Court has not even seen this  
2 document and I have just gotten it. So I just want to let the  
3 Court know that that's coming sometime this morning, sir.

4 THE COURT: Have you conferred with the United  
5 States Attorney's Office about this?

6 MR. DUNN: I've conferred with them about the 404(b)  
7 notice issue and they disagree with me. I have not conferred  
8 with them about the 403 objection or the 401 objection, Your  
9 Honor, and I can do that at break, sir, if that's appropriate.

10 THE COURT: Okay. Okay. This Court was informed  
11 apparently that Mr. Besser had some health issues. Are you  
12 okay this morning?

13 DEFENDANT BESSER: Fine.

14 THE COURT: Okay. All right. Okay. Good.

15 Anything else we need to take up this morning?

16 DEFENDANT MARCUSSE: Your Honor, I believe that Mr.  
17 Besser had a seizure last night, I understand, and had to go  
18 to the hospital. I believe that perhaps the getting up at  
19 five o'clock and sitting in a tank for two or three hours and  
20 then two or three hours on the back side is top much  
21 physically because, for example, I didn't get back until eight  
22 o'clock last night, and physically it's almost impossible to  
23 deal with the hours with that. I was wondering if something  
24 couldn't be done to shorten up the time where we just have to  
25 sit there and we can't sleep or look at our case. That's

1 almost six hours a day that we're in a holding tank during  
2 this trial, and that's -- I'm too old for it, so I know Mr.  
3 Besser's too old for it.

4 THE DEPUTY MARSHAL: Well, Your Honor, I know  
5 Newaygo makes it a standard practice to get them up an hour or  
6 so early. I called this morning and they were getting ready  
7 to load about seven o'clock to bring them down, so then they  
8 come in the afternoon usually around 5:00, 5:30. You know the  
9 distance, it's an hour, so she's probably pretty correct as  
10 far as the times. Now, I can ask them to try to adjust that  
11 during this trial if you'd like.

12 THE COURT: Part of the reason is to make sure that  
13 if people aren't prepared, they give them plenty of time to  
14 get prepared?

15 THE DEPUTY MARSHAL: Right, right, to do medical  
16 stuff, get them dressed and feed them. Everything that's in  
17 place time-wise is usually scheduled for reasons, getting to  
18 court on time, getting everything done before court as far as  
19 medications and that sort of thing.

20 THE COURT: Would you when you get a chance check  
21 with them and see if -- we have three, right? See if these  
22 three are dragging their feet. If they're not dragging their  
23 feet, then I don't see any reason why they can't get them up  
24 and get them in and get them up here more expeditiously. If  
25 they're dragging their feet, I guess there's nothing we can do

1 about it. But if their record is that they're not dragging  
2 their feet, then I don't see any reason why we shouldn't be  
3 able to move them along. Let's see if we can check that,  
4 okay?

5 DEFENDANT MARCUSSE: Thank you.

6 MR. KACZOR: Your Honor, Mrs. Marcusse informed me  
7 today that she wished to cross-examine some of the witnesses  
8 on today's list, and I just wanted to know the procedure.  
9 Should I ask the Court's permission before each witness or  
10 should I appear with her or does the Court have her permission  
11 to do that without me?

12 THE COURT: I'd like you to chair with her when  
13 she's up there.

14 MR. KACZOR: Thank you, Your Honor.

15 THE COURT: Okay, Ms. Marcusse?

16 DEFENDANT MARCUSSE: Yes.

17 THE COURT: You'll have him beside you when you do  
18 it, and there are certain rules, obviously, that apply to  
19 relevancy and materiality here, and certainly Mr. Kaczor has  
20 demonstrated that he understands those rules carefully.

21 DEFENDANT MARCUSSE: Yes, that's fine.

22 THE COURT: All right. All right. Okay.

23 Mr. DeBoer, you're ready to go this morning?

24 MR. DEBOER: Yes.

25 THE COURT: All right. Let's bring the jury in,

1 Grand Rapids, Michigan

2 May 23, 2005

3 9:02 a.m.

4 - - -  
5  
6 P R O C E E D I N G S

7  
8 THE COURT: You may be seated. Good morning, ladies  
9 and gentlemen.

10 We're ready to continue on week two in case number  
11 1:04-CR-165. Is there anything that we should take up before  
12 proceeding on with the next witness on behalf of the  
13 government, Mr. Gezon?

14 MR. GEZON: No, Your Honor.

15 THE COURT: Okay. Anything any counsel here wish to  
16 place on the record?

17 MR. MITCHELL: No, Your Honor.

18 THE COURT: All right.

19 DEFENDANT MARCUSSE: Excuse me. I have just a  
20 couple little things, I'm sorry.

21 This morning I checked as I always do that they had  
22 my files and they forgot them, and I need to have some system  
23 to where I know I'm going to be able to get my files in order  
24 to be able to effectively defend myself.

25 THE COURT: They is whom?



1           DEFENDANT MARCUSSE: Pardon?

2           THE COURT: They is whom?

3           DEFENDANT MARCUSSE: Newaygo, the transfer crew.

4           THE DEPUTY MARSHAL: Your Honor, I'm not sure where  
5 the files are. We sent a deputy downstairs to the sallyport  
6 to see if -- sometimes Newaygo takes the property and just  
7 leaves it down there for us to pick up, so someone's running  
8 down there now to see if the files were left downstairs. If  
9 they're not there, then they are at the Newaygo County Jail.

10           DEFENDANT MARCUSSE: Also I had asked about a mat in  
11 the morning and --

12           THE COURT: About a --

13           DEFENDANT MARCUSSE: A mat because it's such long  
14 hours, and they said unless it's in writing, they won't do it,  
15 so that wasn't done this morning. Friday night we got back to  
16 the cells as late as we ever have, so that's not working  
17 either. They're not getting us out right away, and the  
18 television is on all night long and I can't get any sleep. So  
19 please, whatever can be done on these issues would be very,  
20 very helpful. Thank you.

21           THE DEPUTY MARSHAL: I don't know anything about a  
22 mat. We don't supply mats in our cell block.

23           THE COURT: No, no.

24           THE DEPUTY MARSHAL: As for the TV, she lives in a  
25 community cell and we can't force the other inmates that are

1 not our prisoners to shut off the television. I can bring it  
2 up with Newaygo, but I don't know how much cooperation we're  
3 going to get or not get. I can check into it.

4 DEFENDANT MARCUSSE: Excuse me, Your Honor. They do  
5 turn the TVs off for people who are in trial. That's been  
6 standard practice at the jail.

7 THE DEPUTY MARSHAL: I'll ask, put it in writing.

8 THE COURT: That's reasonable. I don't know what to  
9 do about the file. It seems to me that we ought to, if  
10 there's a clearly identifiable pile, folder or whatever, it  
11 seems to me that ought to go with the person.

12 THE DEPUTY MARSHAL: Right. I absolutely agree.

13 THE COURT: I agree glitches can occur. Why don't  
14 we see if we can look into that and let me know.

15 MR. KACZOR: Thank you, Your Honor.

16 THE COURT: Also, I -- is it crowded up there?

17 THE DEPUTY MARSHAL: Yes, it is, yes. We can call  
18 the jail administrator and see what we can do.

19 THE COURT: Let's do that.

20 THE DEPUTY MARSHAL: Yes, Your Honor.

21 THE COURT: We've got a little bit of a long haul  
22 here. It's not an in-and-out situation. Let's see what we  
23 can do.

24 Ms. Marcusse, I have no -- I don't have much control  
25 over this. I have very little control over it. Your best

1 friend is the person standing right here, so we'll do what we  
2 can.

3 DEFENDANT MARCUSSE: I appreciate that.

4 THE COURT: We're crowded. I tried to get some -- I  
5 tried to get you transferred as I recall earlier to Kent  
6 County because I thought it would be easier, but Kent is full,  
7 absolutely full. So I've tried a couple routes to see if we  
8 can alleviate this. I think the best we can do is see if  
9 Newaygo can accommodate us on this matter. This isn't a  
10 two-day trial. It should be understood that --

11 THE DEPUTY MARSHAL: I understand. There were a  
12 couple issues the first day. Actually one of them they took  
13 care of immediately and the second one they're still working  
14 on, so we'll just ask them to follow up on these also.

15 THE COURT: All right. Good.

16 Anything else? All right. Let's bring the jury in  
17 and we'll continue with the next witness on behalf of the  
18 government.

19 MR. SCHIPPER: Steven Bolks, Your Honor.

20 (Jury in at 9:05 a.m.)

21 THE COURT: You may be seated. Good morning, ladies  
22 and gentlemen.

23 STEVEN J. BOLKS,

24 A witness called at 9:06 a.m. by the government, sworn by  
25 the Court, testified:



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Local News

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Tuesday, July 19, 2005

# eBay scammer arrested, to appear in court

David Rendleman failed to appear at hearing last October

By **RICHARD HARROLD** | Staff writer  
U.S. District Judge Robert Holmes Bell took steps to ensure David Paul Rendleman would show up for his hearing on Friday after Rendleman failed to appear for his October plea hearing in Grand Rapids federal court.

Bell denied bond when Rendleman was arrested in June, after he skipped his plea hearing last fall and stayed on the lam.

Rendleman, 34, was scheduled Oct. 29, 2004, to plead guilty to conspiracy to commit mail fraud for his role in a scam that sold fake Rolex watches as the real item on eBay.

But when the day came, Rendleman, formerly of Hamilton, failed to show. He eluded police until 9:30 a.m. June 9 when FBI agents, U.S. Marshals and deputies from Kent County showed up where he was living in Zeeland and arrested him without incident. He's been jailed without bond since.

A new plea hearing was scheduled for Friday, when it is expected Rendleman will plead guilty to not only the eBay scam-related charge but to absconding while on bond as well, said U.S. Assistant Attorney Richard Murray.

Rendleman faces up to five years in federal prison on the mail fraud conspiracy alone.

"I don't think we have any sentence recommendation," Murray said.

A prior plea agreement still stands, which expects Rendleman to cooperate with authorities in any future investigations relating to his activity.

Prosecutors also agree to not seek any other charges relating to the scam, Murray said. The agreement, however, does not prevent prosecution for criminal tax violations.

Two other men involved in the scam already pleaded guilty and were sentenced. They and Rendleman were charged in January 2004.

They were accused of purchasing imitation Rolex watches and auctioning them off as the real thing on the Web site eBay. The imitations were sold for between \$2,000 and \$3,000 but were worth only a few hundred dollars, according to the charges in court records.

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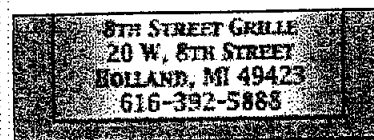
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1           So exactly as you're saying, Your Honor. If they  
2 want to introduce a statement about didn't one of these  
3 witnesses say that he really believed what this was and had  
4 faith in what this was, that would not be permitted because  
5 it's for the truth of the matter and offered by the party  
6 themselves.

7           THE COURT: I feel like I'm back teaching evidence.  
8 But, Mr. Kaczor, you can inquire as to what your client said  
9 to someone else if in fact the examination goes to what your  
10 client allegedly represented on another occasion.

11           Now, we haven't talked yet about the Enright  
12 conspiracy question. I looked at you a couple of times, Mr.  
13 Gezon, and I didn't get any signal, so apparently we're not  
14 using Enright today in this proceeding. You're charging  
15 conspiracy, but you're not using conspiracy joint testimony  
16 here. So if we're not, then I'll judge it accordingly.  
17 Okay?

18           MR. KACZOR: Thank you, Your Honor.

19           THE COURT: Anything else, Mr. Gezon?

20           MR. GEZON: The last issue, Your Honor, is the issue  
21 of representation involving Ms. Marcusse. I had occasion to  
22 look at the Supreme Court case of Faretta, Your Honor, and the  
23 Sixth Circuit cases having to do with this matter, and I  
24 happen to be, I think, the only lawyer who was at the initial  
25 appearances for Ms. Marcusse, Mr. Kaczor having come on later

1 after the first lawyers were recused.

2 Ms. Marcusse at the magistrate stage clearly put on  
3 the record that she wanted to represent herself. She did not  
4 want anyone to represent her and did not want standby  
5 counsel. And Magistrate Carmody put on the record the  
6 colloquy which is required by the Sixth Circuit bench book  
7 establishing that she knew what she was doing, advising her  
8 that it was an awful idea, advising her that she would be  
9 required to abide by the rules of what a lawyer would have to  
10 do in the courtroom; and even though it was a terrible idea  
11 and would probably not effectively present her case, it was  
12 her decision to do it or not, and she said she wanted to do  
13 that.

14 Since that time she's filed pleadings and made  
15 statements in which she appears to be quite ambivalent about  
16 what she wants to do. And I think that before we get much  
17 farther in this trial, we need to really clarify it so we know  
18 what she wants to do or what her position is so the Court can  
19 rule on that.

20 The cases seem to say, Your Honor, that the fact  
21 that it's an awful decision, that it's unwise, that she's  
22 probably going to go down in flames if she pursues what she  
23 wants to do, doesn't apparently affect her waiver. She's got  
24 the right to do that, and at this stage because she's chosen  
25 such a silly, perhaps frivolous defense, it is her choice to

1 make. But I understand from speaking to Mr. Kaczor this  
2 morning that it appears that she does want him to do the cross  
3 or the direct examination and cross. If that's --

4 THE COURT: Mr. Gezon, let me back up a little bit.  
5 I think you jumped over a couple fences too quickly here.

6 The primary issue the Court faces with Mr. Besser  
7 and certainly has faced here with Ms. Marcusse is whether the  
8 particular defendant agrees to, understands the rules that are  
9 to be followed in this courtroom for the presentation of their  
10 case and/or their participation, and if it appears that they  
11 do not want to follow them or they do not respect them, that  
12 is the prerequisite for a Faretta self-representation.

13 It's clear that the Court's ordering role here is  
14 that this is not a circus, and this Court has the ability to  
15 say to an individual if you will in fact and understand your  
16 role here, you may represent yourself, but you may not turn  
17 this place into a circus. That's what this Court has ruled  
18 repeatedly on in this case.

19 I'm well aware of Faretta. I'm well aware of these  
20 other cases. But I'm also well aware of the fact that I have  
21 to get some kind of an understanding of the particular  
22 individual that they in fact are going to follow the rules of  
23 this Court, and that's why we have standby counsel assisting  
24 them. And like you say, and I think your point is well made,  
25 perhaps overmade a little bit, that it's not a wise decision.

1 But it's a decision that each party has to take unto  
2 themselves.

3 Have I made myself clear on that?

4 MR. GEZON: Yes, Your Honor.

5 THE COURT: Anything else on that issue you wish to  
6 raise?

7 MR. GEZON: No, Your Honor.

8 THE COURT: Okay.

9 MR. KACZOR: Your Honor, may I ask, I spoke with  
10 Mrs. Marcusse this morning and yesterday. It's my  
11 understanding that she wishes to continue to, as I say,  
12 represent herself, but at the same time she would like to have  
13 what I would call hybrid representation. She would like me to  
14 ask some questions of the witnesses while she may be permitted  
15 to ask questions of other witnesses, and I guess I'm asking  
16 for the Court's instruction. Will I be allowed to  
17 cross-examine the next witness, and assuming she can follow  
18 the rules of evidence, be allowed to cross-examine a witness  
19 after that? That's my understanding of what she would like,  
20 Your Honor.

21 THE COURT: Very well.

22 MR. KACZOR: Thank you, Your Honor.

23 THE COURT: Anything else before we bring the jury  
24 in?

25 MR. KACZOR: No, Your Honor, thank you.



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

---

UNITED STATES OF AMERICA,

Plaintiff,

Case No.: 1:09-cv-913

v.

Hon. Robert Holmes Bell  
United States District Judge

JANET MARCUSSE,

Defendant.

---

**AFFIDAVIT OF DAVID L. KACZOR**

David L. Kaczor, being first duly sworn, deposes and says:

1. I am an attorney licensed to practice law in the State of Michigan and have been so licensed for over thirty (30) years.
2. I am currently employed at the Federal Defender's Office as the Senior Trial Litigator, however, I was in private practice and acting as a Criminal Justice Act (CJA) Attorney during the pendency of my representation of Ms. Marcusse.
3. I file this Affidavit in response to Ms. Marcusse's Motion to Vacate her sentence pursuant to 28 U.S.C. § 2255.
4. Because Ms. Marcusse has made allegations claiming ineffective assistance of counsel, I prepare this affidavit pursuant to this Court's order waving the attorney/client privilege with respect to information necessary to respond to Ms. Marcusse's allegations.
5. I prepare this Affidavit to the best of my ability using information from Ms.

ATTACHMENT A

EXHIBIT P-5

Bell regarding the conditions at the Newaygo County Jail.

- DD. On May 3, 2005, Ms. Marcusse filed a response to a government motion in limine which she named as "demand for due process grievance about government's motion in limine."
- EE. On May 5, 2005, Ms. Marcusse filed a motion for "release from custody under rule 64," a motion for "immediate pretrial release," as well as eight other motions. These motions were for, among other things, "notice and demand to dismiss," and "claim for savings to suitors clause to be invoked in this case."
- FF. On May 12, 2005, Ms. Marcusse filed a notice for a hearing named as "claim for immediate and mandatory Frank's hearing," as well as a "claim for videotapes of 11/9/04 hearing," and a notice named as "assertion of the right of self defense."
- GG. On May 13, 2005, Ms. Marcusse filed a "claim for order to show cause for why Cindy Vine should not be held in contempt of court," as well as a motion to dismiss named "claim for dismissal under the Speedy Trial Act 18 U.S.C. § 3162(a)(2)," and a "claim for failure to appear by standby counsel."
- HH. On May 16, 2005, a jury trial was commenced against Ms. Marcusse and her co-defendants. On that same day, Ms. Marcusse filed a notice named as "notice of default of claim for admission of truth."
- II. Prior to the commencement of the jury trial, I met with Ms. Marcusse, as standby counsel, a total of ten times for a total of 12.5 hours despite the fact that Ms. Marcusse refused to discuss her case with me, as well as any possible defense that she wanted to present on her behalf.
- JJ. Prior to the commencement of trial, I spent 87.8 hours preparing for trial despite the fact that Ms. Marcusse refused to cooperate with me and refused to discuss her alleged involvement in the charges contained in the indictment.
- KK. In preparation for trial I:
  - 1. Obtained and reviewed all Jencks material;
  - 2. Researched the duties of standby counsel, of presenting a good faith defense, and in participating in the discovery process as

standby counsel;

3. Reviewed all proposed evidence and exhibits;
4. Reviewed all witness statements, videos, and transcripts;
5. Prepared a trial notebook and drafted questions for the witnesses; and
6. I personally spoke with, or attempted to speak with, many of the witnesses identified by Ms. Marcusse. I chose not to speak with some of the witnesses whose testimony I deemed to be irrelevant at trial.

LL. Once trial commenced, Ms. Marcusse began to speak with undersigned counsel about her case and her proposed defense. Despite Ms. Marcusse's claim that undersigned counsel visited with her "two or three times" (Marcusse motion p. 227), the truth is that undersigned counsel met with Ms. Marcusse a total of six times at the Newaygo County Jail during the course of the trial. Undersigned counsel spent a total of twelve hours with Ms. Marcusse during these visits. In addition, undersigned counsel met with Ms. Marcusse prior to trial on just about every day scheduled for trial.

MM. As the trial proceeded and Ms. Marcusse requested that undersigned counsel be more involved in helping her to represent herself, undersigned counsel requested that his role as standby counsel be expanded to a hybrid representation, whereby, Ms. Marcusse could direct or cross examine witnesses, and undersigned counsel could do the same. This request was granted by the court. Later in the trial, Ms. Marcusse requested that she be allowed to cross examine government witnesses in addition to the cross examination by undersigned counsel. This request was again granted by the court thus allowing Ms. Marcusse to cross examine every government witness either by herself or in tandem with undersigned counsel.

NN. In direct response to Ms. Marcusse's allegations of ineffective assistance of counsel prior to trial, I state the following:

1. Prior to the commencement of trial and while acting as standby counsel, I not only researched my role as standby counsel, but I visited Ms. Marcusse on ten occasions and spent nearly 100 hours preparing for trial despite the fact that Ms. Marcusse refused to cooperate with me and filed her own motions on an almost daily

basis.

2. Despite Ms. Marcusse's claims that I failed to take a "closer look at and read certain materials," I state emphatically that this is not the case. I carefully reviewed all the Jenck's material, all proposed evidence and exhibits, as well as anything provided to me by Ms. Marcusse or the government. I was 100% prepared to try the case against Ms. Marcusse in the event that my status as standby counsel changed during the course of the trial.

OO. In direct response to Ms. Marcusse's allegations of ineffective assistance of counsel during the course of trial, I state the following:

1. During the trial I tried very hard to cooperate with Ms. Marcusse to present her defense. I argued to the court that Ms. Marcusse should be allowed to present the opening statement, and when this request was denied by the court, I asked the court to reconsider, and eventually the court allowed her to present the opening statement.
2. When Ms. Marcusse decided that she wanted to directly examine some of her own witnesses and cross examine some of the government witnesses, first on her own and then in tandem with undersigned counsel, I requested that the court allow this and the request was granted. Consequently, Ms. Marcusse was free to make objections consistent with the Rules of Criminal Procedure, as well as maintain a specific line of questioning on her own behalf. In addition, undersigned counsel worked with Ms. Marcusse to insure that any objections she had would be raised, as well as preparing and presenting cross examination in the manner which Ms. Marcusse requested. Despite her claim to the contrary (Marcusse motion p. 79), Ms. Marcusse was free to cross examine any witness she wanted to cross examine.
3. Undersigned counsel cannot remember one single request regarding the trial, trial procedure, or trial strategy made by Ms. Marcusse to undersigned counsel that I did not try to accomplish.

PP. In direct response to Ms. Marcusse's allegation that I colluded with the court and the government, I state the following:

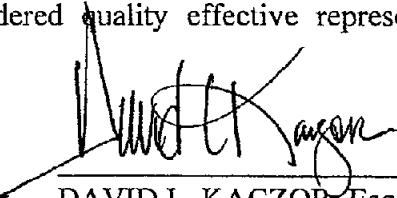
1. Not only does undersigned counsel submit that this allegation is without merit and absolutely absurd, but, in addition, that a review

of the trial transcript and any other relevant documents would establish that I acted with the best interests of Ms. Marcusse first and foremost in my mind.

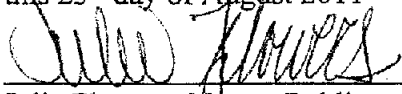
QQ. In summary, undersigned counsel states the following:

1. Prior to trial, I worked diligently to meet with Ms. Marcusse and to be 100% ready to represent her at trial, if necessary. I read every document that was important to read.
2. During the trial, I worked with Ms. Marcusse to present her defense and to establish that the government had failed to meet its burden of proof on each and every count charged in the indictment against her. I cooperated with and coordinated with Ms. Marcusse to insure that objections or a specific line of questioning that either she or undersigned counsel thought was proper would be made. Ms. Marcusse was given the opportunity to cross examine every government witness, to direct examine every defense witness, and to testify on her own behalf. The final decision whether to cross examine witnesses, to direct examine witnesses, to take the witness stand, and to ask undersigned counsel to specifically make objections were Ms. Marcusse's to make.
3. I believe I rendered quality effective representation to Ms. Marcusse.

Dated: August 23, 2011

  
 \_\_\_\_\_  
 DAVID L. KACZOR, Esq.  
 Assistant Federal Public Defender  
 The Trade Center  
 50 Louis NW, Suite 300  
 Grand Rapids, Michigan 49503  
 (616) 742-7420

Subscribed and sworn to before me  
this 23<sup>rd</sup> day of August 2011

  
 \_\_\_\_\_

Julie Flowers, Notary Public  
 Kent County, Michigan  
 My Commission Expires: 05/18/2014



JULIE FLOWERS  
 Notary Public, State of Michigan  
 County of Kent  
 My Commission Expires May 18, 2014  
 Acting in the County of Kent

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

UNITED STATES OF AMERICA

Case No. 1:03-mj-666

-v-

Grand Rapids, Michigan

July 28, 2004

JANET MAVIS MARCUSSE,

2:04 p.m.

Defendant.  
\_\_\_\_\_ /

PRELIMINARY HEARING and DETENTION HEARING  
BEFORE THE HONORABLE ELLEN S. CARMODY  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: Mr. Thomas J. Gezon  
Assistant U.S. Attorney  
The Law Building - Fifth Floor  
330 Ionia Avenue, NW  
Grand Rapids, MI 49503  
(616) 456-2404

In Pro Per: Ms. Janet Mavis Marcusse

As Stand-by Counsel: Mr. Raymond S. Kent  
Attorney at Law  
990 Monroe Ave., NW  
Grand Rapids, MI 49503  
(616) 458-0550

Patricia R. Pritchard, Certified Electronic Reporter  
(616) 364-4943

EXHIBIT Q-5

I N D E X

<u>WITNESSES - PLAINTIFF:</u>	<u>PAGE</u>
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<u>WITNESSES - DEFENDANT:</u>	
None	

1 THE DEFENDANT: Yes.

2 THE COURT: All right. Now, I want to talk to you  
3 about this decision not to have an attorney. Now, the first  
4 thing I want to tell you is we're proceeding today pursuant to a  
5 number of court rules and statutes. Those would be the Federal  
6 Rules of Criminal Procedure 5.1, 18 USC Section 3060, 28 USC  
7 Section 636(a), a detention hearing that's a proceeding under 18  
8 USC 1304(1), and 28 USC 636(a)(2).

9 Have you read those rules?

10 THE DEFENDANT: The rules?

11 THE COURT: Yes. And the statutes.

12 THE DEFENDANT: No. You denied me access to the law  
13 library last week.

14 THE COURT: All right. Well, let me talk to you  
15 about the reasons that I again would suggest that you do have an  
16 attorney. And it doesn't have to be Mr. Kent. If you want an  
17 appointed attorney that's who has been appointed to represent you  
18 and I can assure you he is a highly respected criminal attorney  
19 in this district.

20 But let me ask you a few questions. Have you ever  
21 studied law?

22 THE DEFENDANT: No. I've studied it to a little  
23 degree but not a great degree.

24 THE COURT: Have you ever represented yourself before  
25 in a criminal action?



1 THE COURT: Okay. Are you familiar with the Federal  
2 Rules of Evidence?

3 THE DEFENDANT: I'm familiar with the book only but  
4 again I was not allowed to look at the law library.

5 THE COURT: Have you ever taken a course in the  
6 Federal Rules of Evidence?

7 THE DEFENDANT: No.

8 THE COURT: Have you ever read them before you were  
9 in custody?

10 THE DEFENDANT: No.

11 THE COURT: Are you familiar with the Federal Rules  
12 of Criminal Procedure?

13 THE DEFENDANT: I've perused the book.

14 THE COURT: Have you ever taken a course in that?

15 THE DEFENDANT: No.

16 THE COURT: Do you understand that this case will  
17 proceed pursuant to the Federal Rules of Criminal Procedure and  
18 the Federal Rules of Evidence?

19 THE DEFENDANT: On the record again I asked to be in  
20 a court of record under the common law procedure.

21 THE COURT: Now, but do you understand that  
22 regardless of what you're requesting, in fact, if you go to a  
23 trial in this matter that the case will proceed pursuant to the  
24 Federal Rules of Criminal Procedure and the Federal Rules of  
25 Evidence?

1 they all know that this program is illegitimate. They know that  
2 the Federal Reserve would never participate in something like  
3 this or the World Bank would not be involved in it. They know  
4 you could not return or realize returns of this nature without  
5 risk to your principal, to your investment.

6 Q Thank you.

7 MR. GEZON: Pass the witness.

8 THE COURT: Ms. Marcusse, would you like to cross-  
9 examine the witness?

10 THE DEFENDANT: Yes.

11 CROSS-EXAMINATION

12 BY MS. MARCUSSE:

13 Q Just one question. Do you have a copy of the complaint?

14 A I believe I do.

15 Q If you would refer to the October newsletter, page two.

16 A I do have the complaint, and which month?

17 Q October.

18 THE COURT: What exhibit is that, Ms. Marcusse?

19 THE DEFENDANT: D as in dog.

20 THE COURT: Oh, attached to the complaint, all right.

21 THE WITNESS: Attached to the complaint, D, okay.

22 October newsletter, yes, ma'am.

23 BY MS. MARCUSSE:

24 Q Right. Second page. If you would read for us the third  
25 sentence, please?

1 A Third sentence from the top?

2 Q Yes.

3 A Starting with "Just recently" --

4 Q No. The next one, please.

5 A "This program is not considered to be a standard bank  
6 debenture program."

7 Q All right. That's all I have. Thank you.

8 THE COURT: Thank you.

9 Any redirect, Mr. Gezon?

10 MR. GEZON: No, thank you, your Honor.

11 THE COURT: Thank you, sir, you may step down.

12 MR. GEZON: Call Agent Moore to the stand.

13 THE COURT: Good afternoon, sir.

14 SAMUEL J. MOORE, GOVERNMENT'S WITNESS, SWORN

15 DIRECT EXAMINATION

16 BY MR. GEZON:

17 Q Can you give us your name for the record, sir?

18 A My name is Samuel J. Moore.

19 Q Can you spell it for us?

20 A Samuel is S-a-m-u-e-l, and J is the middle initial, Moore,  
21 M-o-o-r-e.

22 Q Since approximately 2001 have you been investigating Ms.  
23 Marcusse and Access Financial?

24 A That's correct.

25 Q Is that when people -- investors came to you and told you

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 540  
POTTER STEWART U.S. COURTHOUSE  
CINCINNATI, OHIO 45202-3988

LEONARD GREEN  
CLERK

BRYANT CRUTCHER  
(513) 564-7013  
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Filed: August 8, 2006

Janet Marcusse  
FCI Tallahassee  
17128-045  
501 Capital Circle, N.E.  
Tallahassee, FL 32301

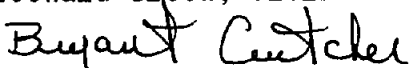
RE: 05-2586: 05-2668  
USA vs. Marcusse  
District Court No. 04-00165

Dear Ms. Marcusse:

This court has received your motion for removal of appellate counsel. Please be advised that you may file a supplemental brief addressing any issue you so desire.

A copy of the court's briefing schedule is enclosed. Your supplemental brief is due after briefing has ended.

Very truly yours,  
Leonard Green, Clerk

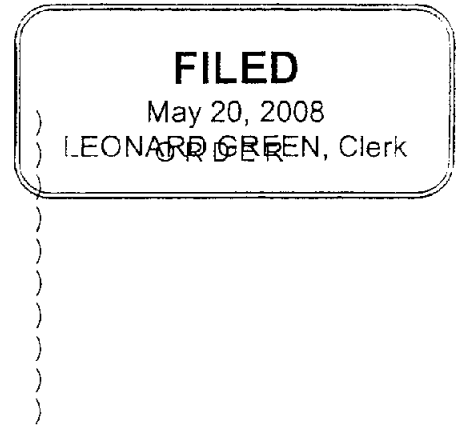
  
Bryant L. Crutcher  
Case Manager

Enclosure

cc:  
Mr. Michael L. Schipper  
Mr. Thomas J. Gezon

EXHIBIT R-5

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT



UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JANET MARCUSSE,

Defendant-Appellant.

**BEFORE:** ROGERS and SUTTON, Circuit Judges; and BERTELSMAN,<sup>\*</sup> District  
Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

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. Accordingly, the petition is denied.

**ENTERED BY ORDER OF THE COURT**

A handwritten signature in cursive script, appearing to read "Leonard Green".

**Leonard Green**  
Clerk

---

<sup>\*</sup> Hon. William O. Bertelsman, Senior United States District Judge for the Eastern District of Kentucky, sitting by designation.

Nos. 05-2556/2586/2666/2668

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
May 14, 2009  
LEONARD GREEN, Clerk

UNITED STATES OF AMERICA, )  
 )  
Plaintiff-Appellee, )  
 )  
v. )  
 )  
WILLIAM EDWARD FLYNN (No. 05-2556); )  
JANET MARCUSSE (Nos. 05-2586/2668); and )  
GEORGE TERRANCE BESSER (No. 05-2666), )  
 )  
Defendants-Appellants. )

ORDER

Before: ROGERS and SUTTON, Circuit Judges; BERTELSMAN, District Judge.\*

The defendants, proceeding pro se, move to recall the mandate in *United States v. Flynn*, 265 F. App'x 434 (Feb. 14, 2008), which affirmed their convictions and sentences for various offenses related to their operation of a fraudulent investment scheme.

The government charged Marcusse in an 83-count superseding indictment, also naming seven others, with mail fraud (Counts 1-39), conspiracy to commit mail fraud (Count 40), conspiracy to commit money laundering (Count 41), conspiracy to defraud the United States (Count 42), and money laundering (Counts 43-58, 81-82). The government charged Flynn with Counts 1 through 57 and money laundering (Counts 77-80). The government charged Besser with Counts 1 through 57 and 81 to 82. Marcusse refused to enter a plea, so the district court entered a plea of not guilty on her behalf. A jury returned a guilty verdict on all counts against Marcusse, Flynn, and Besser.

---

\* The Honorable William O. Bertelsman, United States District Court Judge for the Eastern District of Kentucky, sitting by designation.

Marcusse was sentenced to 300 months of imprisonment, three years of supervised release, and \$12,651,244 in restitution. Flynn was sentenced to nine years of imprisonment, five years of supervised release, and \$11,700,000 in restitution. Besser was sentenced to twenty years of imprisonment, three years of supervised release, and \$12,100,000 in restitution.

The defendants appealed, and this court consolidated their appeals. We affirmed the defendants' judgments of conviction and sentence. The court denied Marcusse's subsequent petition for rehearing en banc. The mandates in her appeals issued on May 29, 2008, and the Supreme Court subsequently denied her certiorari petition. The mandates in Flynn and Besser's appeals issued on August 1, 2008.

The defendants now move to recall the mandates in their appeals. "[C]ourts of appeals have the inherent authority to recall a mandate." *United States v. Saikaly*, 424 F.3d 514, 517 (6th Cir. 2005). Such power, however, "should only be exercised in extraordinary circumstances because of the profound interests in repose attached to a court of appeals mandate." *Id.* (citing *Calderon v. Thompson*, 523 U.S. 538, 549-50 (1998)). Further, such power "is one of last resort, to be held in reserve against grave, unforeseen contingencies." *Id.* (citing *Calderon*, 523 U.S. at 549-50). Thus, the power to recall the mandate should be "sparingly used, and only in cases where a party can demonstrate exceptional circumstances 'sufficient to override the strong public policy that there should be an end to a case in litigation.'" *Id.* (citing *BellSouth Corp. v. FCC*, 96 F.3d 849, 851-52 (6th Cir. 1996)).

The defendants have not presented such extraordinary circumstances as to warrant the unusual and rare step of recalling the mandates in their cases. To the extent the defendants continue to argue the merits of their issues on appeal, they have not provided any additional authority in support of their arguments. Because Marcusse and Besser were represented by counsel on appeal,

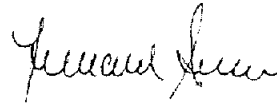
Nos. 05-2556/2586/2666/2668

- 3 -

the court properly declined to consider their pro se issues on appeal. The defendants have an adequate, alternative remedy to pursue their remaining claims – filing motions to vacate, set aside, or correct their sentences under 28 U.S.C. § 2255 or civil rights actions under 42 U.S.C. § 1983.

The defendants' motions to recall the mandate are **DENIED**.

ENTERED BY ORDER OF THE COURT

A handwritten signature in cursive script, appearing to read "Leonard Green".

Leonard Green  
Clerk



1 THE COURT: That's all?

2 MR. GEZON: We would ask -- we'll be asking them  
3 each are they a Federal Reserve bank, and in each case they  
4 will say they're a federal -- I mean, an FDIC-insured bank.  
5 And we would ask them if they are a bank that operates in  
6 interstate and foreign commerce, and they would answer that  
7 question yes also. That would be what the proposed testimony  
8 of each of these bank witnesses would be.

9 THE COURT: Okay. Let me start the other way  
10 around. Is there anyone who's opposed to that stipulation for  
11 that limited purpose as stated here by Mr. Gezon and  
12 apparently agreed upon by some of the counsel? Anyone  
13 opposed?

14 DEFENDANT MARCUSSE: As long as I can get the  
15 statements and the wire transfers off the accounts, then I'm  
16 not opposed.

17 THE COURT: As long as you can see the records, you  
18 mean?

19 DEFENDANT MARCUSSE: Yes.

20 THE COURT: Yes. I think they're here. They will  
21 be here and they'll be available.

22 MR. GEZON: They have been available. They continue  
23 to be available.

24 THE COURT: Yeah. This goes to the authenticity  
25 question, which is -- you're not -- authenticity's not the

1 by Mr. DeBoer. This form was filled out to the best of your  
2 knowledge and the person to contact was Don Buffin?

3 A Yes, sir.

4 Q Was it your testimony that your rules are that if someone  
5 from your office needs to call for clarification, they're to  
6 call Mr. Buffin?

7 A Yes, sir.

8 Q The contact person?

9 A Yes, sir.

10 Q And if they speak with anyone other than Mr. Buffin and  
11 if changes are made like the two changes here, that must be  
12 notated on the form?

13 A Yes, sir.

14 Q So pursuant to your office's rules, it appears that those  
15 two changes were made pursuant to Mr. Buffin's directions?

16 A Yes, sir.

17 MR. SCHIPPER: Nothing further, Your Honor.

18 THE COURT: Okay. Anything on recross? All right.  
19 Thank you, sir. You may be excused.

20 Let's take a noon recess till 1:15. At 1:15 the  
21 government will call its next witness. That's all.

22 (Jury out at 11:55 a.m.)

23 THE COURT: And again, the exhibits will remain here  
24 for purposes of review?

25 MR. GEZON: Yes.

1           MR. KACZOR: Your Honor, can we make arrangements  
2 with the marshals so that she can stay here and review the  
3 exhibits during the lunch period or -- I guess I'm physically  
4 not sure how it could be done.

5           THE DEPUTY MARSHAL: It's kind of a difficult thing  
6 for us to do, Your Honor. We can take some of them, whatever  
7 she wants to look at in the lock-up.

8           THE COURT: When she has lunch, can you bring her  
9 down here earlier?

10          THE DEPUTY MARSHAL: Yes, Your Honor.

11          THE COURT: Let's do that. Let's bring her down  
12 earlier. As soon as she finishes with lunch, have her come  
13 down, okay?

14          MR. KACZOR: Thank you, Your Honor.

15 (Proceedings recessed at 11:57 a.m.; reconvened at 1:30 p.m.)

16          MR. KACZOR: Your Honor, could I indicate something  
17 for the record? I'd just like to indicate that Mrs. Marcusse  
18 was not provided any of the records during the lunch period.  
19 I got a description from her of the records that she needed.  
20 I took it to the attorneys, the U.S. attorneys. The marshals  
21 had indicated they would bring her up at one o'clock to review  
22 the records, and although I didn't think that was enough time,  
23 they did bring her up. She has been here since one o'clock  
24 and no records have been provided to her, Your Honor.

25          THE COURT: Where are they?

1 MR. KACZOR: Pardon me?

2 THE COURT: No records were provided?

3 MR. KACZOR: No records were provided.

4 THE COURT: Where are they?

5 MR. KACZOR: They're with the U.S. Attorney's  
6 Office, Your Honor.

7 THE COURT: I thought they're down here. They're  
8 down here, aren't they?

9 MR. GEZON: They are.

10 MR. KACZOR: I'm sorry. I was told that they were  
11 going to be brought in and --

12 THE COURT: No, they were right here. That's why we  
13 had --

14 MR. KACZOR: I'm sorry. I didn't realize that they  
15 were segregated and -- no one indicated that to me, Your  
16 Honor.

17 THE COURT: I did. I did. When they left, I  
18 pointed at them.

19 (Jury in at 1:33 p.m.)

20 THE COURT: Next witness, please.

21 MR. SCHIPPER: Thank you, Your Honor. We'd call  
22 Stanley Krogman.

23 STANLEY KROGMAN,

24 A witness called at 1:33 p.m. by the government, sworn by  
25 the Court, testified:

1 THE COURT: Do you want me to put a time limit on  
2 you?

3 MR. VALENTINE: I'm sorry. Maybe I can be a little  
4 clearer. Could I cross-examine Agent Flink for about 15  
5 minutes on Wednesday?

6 THE COURT: I always hate to have lawyers tell me  
7 how long it will take them because I find that I want it to be  
8 truthful and I want to accept them on your word, but just tell  
9 me you have a few more questions.

10 MR. VALENTINE: I just have a little bit more, thank  
11 you.

12 THE COURT: That makes me feel a whole lot better.

13 All right. Let's go through this again. The  
14 exhibits are right down there. See them, Mr. Kaczor?

15 MR. KACZOR: Yes, Your Honor.

16 THE COURT: They're right down there, and I think  
17 Mr. Flink has been here the whole time. He's been sitting in  
18 the chair the whole time, and I think when we have break  
19 times, you can go up, and I think, Mr. Flink, you'll talk to  
20 them if they come up to you?

21 MR. FLINK: Yes.

22 THE COURT: All right. So this is not cat and  
23 mouse. It's pretty obvious what we're doing here, and I don't  
24 think the jury should be entitled to think that the  
25 government's hiding something under a shell somewhere. My

1 understanding is they've been here the whole time, and I think  
2 that, Mr. Schipper, you indicated, I think, or one of you  
3 indicated that they're here, come look at them.

4 MR. SCHIPPER: Absolutely. They've been available  
5 for months.

6 THE COURT: So let me be very clear. I don't want  
7 to hear anything like that from you. If I do, I'll stop you,  
8 because I think this jury -- there's some integrity to this  
9 process, and I think at the time we begin to say someone's  
10 hiding something, I get involved at that point because I've  
11 represented to them that there's integrity to this process and  
12 I intend to enforce that. I'm not accusing anybody of  
13 anything, but I'm saying that let's make sure that -- okay.

14 These exhibits will obviously be taken back with you  
15 to your offices, Mr. Gezon, across the street today and  
16 they'll be available tomorrow and they'll be available  
17 Tuesday, correct?

18 MR. GEZON: Yes, Your Honor.

19 THE COURT: And they'll be available in your office  
20 where you have a conference room and the lawyers can come and  
21 look at them?

22 MR. GEZON: Either there or here in our trial prep  
23 room in this building, yes.

24 MR. KACZOR: Your Honor, can I say, one, I  
25 apologize. I misunderstood the process. I wasn't aware of

1 the documents specifically that Mrs. Marcusse wanted and she  
2 gave me a list that I brought to the government. I thought  
3 they were going to remove those documents and show them to me  
4 as opposed to just pointing me to the boxes, and that's what I  
5 was waiting for. I misunderstood that, and that's my fault.

6 But if I can ask you about something, Mr. Gezon and  
7 I have talked about the possibility of -- my understanding is  
8 the Court's in session tomorrow. My understanding is that the  
9 transfer pool will be bringing people from Newaygo here. We  
10 wondered if Mrs. Marcusse could be brought in tomorrow. Mr.  
11 Gezon has said that he's willing to have an intern sit in a  
12 room with her while she looks through the documents tomorrow,  
13 and I wonder if that would be possible.

14 There's just boxes and boxes of documents, Your  
15 Honor, and they're the documents that were used for the  
16 summary exhibits, and I certainly think she's entitled to  
17 them. I understand they've been there for months.

18 Unfortunately, Mrs. Marcusse hasn't had access to them. I've  
19 gone and looked at what I could, but Mrs. Marcusse wants to  
20 look at specific records. So what I'm asking is whether she  
21 can be brought down tomorrow to review the records.

22 THE COURT: Are you -- you're coming down?  
23 Newaygo's coming back with a shipment tomorrow?

24 THE DEPUTY MARSHAL: Yes, Your Honor.

25 THE COURT: Okay. Ms. Marcusse can get on the bus

1 normal activities. I was just in talking with them to see how  
2 they all were, and they were all enjoying their coffee and  
3 whatever we'd given them. And I said to them, I said because  
4 they were -- yesterday was off, I said, Well, did you take  
5 care of all of this week's work yesterday? And a couple of  
6 them said, Yeah, Friday we took care of all of last week's and  
7 today we took care of all this week's. So we have some of  
8 them that are really doing double-time here, and I think they  
9 deserve to be kept busy.

10 I also think there's a real advantage to everyone  
11 concerned if we can keep rolling and keep their attention.  
12 The worst thing that can happen to all of us is to have breaks  
13 once we get going again when the jurors' attention span and  
14 their interest is lost, and then they have to manufacture  
15 getting themselves back up and ready to go. I've done this  
16 long enough to know that there is a pace which is good for a  
17 jury's learning, and I think that pace means that we keep  
18 going all day long and keep them interested so they don't get  
19 distracted.

20 All right. Let's see. Ready to proceed? All  
21 right. Let's bring the jury in and Mr. Flink can come back  
22 up. I believe you will be ready to proceed, Mr. Kaczor? Or  
23 Mr. DeBoer, you had a couple extra?

24 MR. DEBOER: We're not going to re -- or continue  
25 cross-examination upon reflection, so I believe it's Mr.



1 large \$500,000 or plus amount deposited or transferred into  
2 those accounts?

3 A No. The only amounts that came in after that were new  
4 investors putting -- and existing investors putting funds into  
5 the accounts.

6 MR. SCHIPPER: Thank you.

7 THE COURT: Recross?

8 DEFENDANT MARCUSSE: Yes, please. Just one  
9 quick question.

10 RE CROSS-EXAMINATION

11 BY DEFENDANT MARCUSSE:

12 Q In light of that, did you investigate any account other  
13 than Access or Sanctuary Ministries?

14 A Yes. The investigation involved approximately 70 bank  
15 accounts, the 20 bank accounts that were where initial  
16 investor funds were deposited and then additional accounts  
17 where monies were transferred from those accounts.

18 Q So you're talking only on the list of the 20 bank  
19 accounts that -- I'm not sure what exhibit number that is, but  
20 does that include Worldwide E-Capital, Starbright, City  
21 Center, or any of those accounts?

22 A Not Starbright, no. That wouldn't include any account  
23 with the name Starbright. I'm saying the analysis of the  
24 accounts included those 20 accounts and other accounts where  
25 money was transferred from those main 20 to. I mean, I'm

1 sorry, it was transferred from the main 20 to additional  
2 accounts, and those additional accounts were also analyzed.

3 Q Like Worldwide E-Capital?

4 A That account, yes, that was analyzed also. But as far as  
5 any large profit pool check coming in, there was no evidence  
6 of any large profit pool check.

7 Q Did you investigate any of the Bahamas offshore accounts?

8 A No.

9 Q So you would have no idea if there was three dollars or  
10 \$30 million in those accounts?

11 A No, I'm not familiar with those accounts. I know some  
12 money was sent to the Bahamas, but I didn't analyze those  
13 accounts. We never saw any money coming back from those  
14 accounts to any accounts that were used to pay investors their  
15 monthly checks.

16 Q Is it possible that because the bank failed, that that  
17 might be the reason why the money didn't come back from there?

18 MR. SCHIPPER: Objection, Your Honor, calls for  
19 evidence not in --

20 DEFENDANT MARCUSSE: I withdraw it.

21 MR. KACZOR: Thank you, Your Honor.

22 THE COURT: Anything else by way of  
23 recross-examination of this witness? Thank you, sir. You may  
24 be excused.

25 Next witness.