

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 29, 2004

JANET MAVIS MARCUSSE,

10:15 a.m.

Defendant.
_____ /

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

APPEARANCES:

For the Government:

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In Pro Per:

Ms. Janet Mavis Marcusse

As Stand-by Counsel:

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JAMES FLINK (Continued testimony)

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WITNESSES - DEFENDANT:

None

EXHIBITSRECEIVED

None

1 Grand Rapids, Michigan

2 Thursday, July 29, 2004 - 10:15 a.m.

3 THE CLERK: The Court calls the case of United States
4 of America versus Janet Mavis Marcusse, case number 1:03-mj-666.

5 THE COURT: Good morning, ladies and gentlemen.

6 MR. GEZON: Good morning, your Honor.

7 MR. KENT: Good morning, your Honor.

8 THE COURT: This is the date and time set for a
9 continued detention hearing and a preliminary hearing on a
10 criminal complaint in this matter.

11 Are you prepared to proceed, Mr. Gezon?

12 MR. GEZON: Yes, your Honor.

13 THE COURT: And would you introduce to me the lady at
14 your table?

15 MR. GEZON: Yes, your Honor. Agent Sam Moore had to
16 be in another courtroom today. One of the other investigators on
17 our team who's Special Agent Erica Voorman with the Internal
18 Revenue Service.

19 THE COURT: All right. Thank you.

20 And, Mr. Kent, have you had the chance to talk to
21 your client anymore about whether she would accept you as
22 counsel?

23 MR. KENT: Yes, your Honor, and it's my understanding
24 that Ms. Marcusse desires to proceed on her own behalf.

25 THE COURT: All right.

1 I do want you to understand, Ms. Marcusse, do you
2 understand that you are at a distinct disadvantage by
3 representing yourself?

4 THE DEFENDANT: No, your Honor. I would like to put
5 in a couple of writs at this point in my defense.

6 THE COURT: We'll get to that but right now I'm still
7 dealing with the waiver of counsel issue. Do you understand that
8 it's my opinion that you are at a distinct disadvantage by not
9 having court-appointed counsel?

10 THE DEFENDANT: I understand.

11 THE COURT: All right. Do you also understand that
12 you're facing charges of two federal felony crimes?

13 THE DEFENDANT: Yes, I understand.

14 THE COURT: And do you understand that the penalties
15 for those could be up to ten years in one case and up to 20 years
16 in prison on the other charge?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: Okay. Has anybody tried to persuade you
19 not to have counsel represent you?

20 THE DEFENDANT: No.

21 THE COURT: That is your own free will decision?

22 THE DEFENDANT: Yes, it is.

23 THE COURT: And you're not being influenced by
24 anybody else or any promises or threats of any kind?

25 THE DEFENDANT: No.

1 THE COURT: And you do understand that if you were to
2 accept appointed counsel that would be at no cost to you?

3 THE DEFENDANT: Yes.

4 THE COURT: All right. I'm going to give you what's
5 called a Waiver of Counsel. I don't know whether you'll be
6 willing to sign it or not but it's basically the questions I've
7 just asked you and ask if you would take a look at that and sign
8 it.

9 We have a record of all this but it's simply another
10 way of you saying that you're giving up your right to counsel.

11 THE DEFENDANT: Right.

12 THE COURT: All right. That's been signed by Ms.
13 Marcusse and will be made part of the court file.

14 Right now, Ms. Marcusse, we're going to proceed with
15 the hearings that have been scheduled, and at the end of this
16 proceeding I'll take up your writ.

17 As I recall you had no more witnesses; is that
18 correct?

19 MR. GEZON: That's correct, your Honor. I think
20 probably I was finished direct examining Mr. Flink.

21 THE COURT: That was my recollection as well.

22 Mr. Flink --

23 Let me first ask, Ms. Marcusse, did you want to
24 cross-examine Mr. Flink or Agent Flink?

25 THE DEFENDANT: Yes, I did. I would like to ask the

1 Court again about the writ that I had asked to file.

2 THE COURT: I just told you that we'll take up that
3 at the end of the hearing, all right, and I will --

4 THE DEFENDANT: At the end of the hearing?

5 THE COURT: Yes. Because this is scheduled for now
6 and not the writ, all right, so if you have something else you
7 want to talk about this morning we'll do it after this
8 proceeding.

9 THE DEFENDANT: Can it be filed into the record in
10 the meantime?

11 THE COURT: Well, it has to be filed with the clerk's
12 office so we will accept it for filing at the end of the hearing.

13 THE DEFENDANT: Yes, I wanted to question Flink.

14 THE COURT: Okay.

15 Agent Flink, would you come to the witness stand,
16 please. And you are still under oath, sir; do you understand
17 that?

18 THE WITNESS: Yes.

19 THE COURT: All right.

20 Are you prepared to proceed, Ms. Marcusse?

21 THE DEFENDANT: Oh, I'm sorry, I just received my
22 legal documents and I was reviewing them quickly.

23 AGENT JAMES FLINK, PREVIOUSLY SWORN

24 CROSS-EXAMINATION

25 BY MS. MARCUSSE:

1 Q All right. On Exhibit 45, yesterday you admitted that some
2 of it went to MLC. Do you have -- can you tell me how much went
3 to MLC?

4 A The records that I have show approximately \$160,000.

5 Q All right.

6 THE COURT: Who's that that it went to?

7 THE WITNESS: MLC --

8 THE COURT: MLC.

9 THE WITNESS: -- Developments International --

10 THE COURT: Okay.

11 THE WITNESS: -- or Michael Carney.

12 BY MS. MARCUSSE:

13 Q And that was a thorough investigation of the 19 banks
14 listed on Number 43?

15 A Yes.

16 Q That is just checks?

17 A Checks and withdrawals and wire transfers and deposits.

18 Q What did you categorize MLC as, an associate or an
19 investment?

20 A It would be under "other entities." I'm not sure what it--
21 it's not listed as a payment to subject.

22 Q In the government's investigation wasn't it obvious that
23 MLC was an investment?

24 A No, it wasn't obvious.

25 Q There was half a day of a seminar devoted to an MLC that

1 you were not aware of, nobody mentioned?

2 A What's the question?

3 Q You were saying you weren't aware of MLC as an investment.

4 A We were aware of MLC. I'm not sure what it was.

5 Q We had two clients yesterday mention that. Tim Bannister
6 mentioned that MLC was one of the investments, and he's one of
7 your witnesses.

8 THE COURT: Ms. Marcusse, let me clarify. This agent
9 doesn't have any witnesses; the government has witnesses.

10 THE DEFENDANT: Well, the complaint stated that it
11 was a Ponzi and that there were no investments, so I was trying
12 to clarify that because obviously --

13 THE COURT: You're free to ask him the question. I
14 just wanted you to understand his role here.

15 THE DEFENDANT: -- obviously the complaint is
16 inaccurate and misleading.

17 THE COURT: Well, are you asking him if he agrees
18 with that?

19 BY MS. MARCUSSE:

20 Q Do you agree with that?

21 A That it's misleading or what? I'm not sure --

22 Q Well, acts of omission on purpose to mislead a judge to get
23 an arrest warrant; is that not misleading?

24 A I'm not sure what your question is.

25 Q Or is it that you don't like the question?

1 A No. Are you talking in general or are you talking about
2 this specific?

3 Q This specific case states that I ran a Ponzi. Thomas Gezon
4 has stated in front of the grand jury that I stole all of the
5 money. Now, in the process of investigating government employees
6 we are finding that there were investments, and to most people's
7 definition that is an act of omission that is designed to be
8 misleading to a judge to get an arrest warrant; is it not?

9 A I don't think so, no.

10 Q How can it not be?

11 THE COURT: Ms. Marcusse, you can't argue with the
12 witness. If you want to ask a different question, if you don't
13 like the witness's answer that you're --

14 THE DEFENDANT: Okay.

15 THE COURT: -- one of the tenets of cross-examination
16 is you're stuck with the answer you get.

17 THE DEFENDANT: All right. Apparently Mr. Flink's
18 never been falsely arrested.

19 BY MS. MARCUSSE:

20 Q On the initial deposits you show \$20,686,000?

21 A Yes.

22 Q Did you have any checks and balances as to money which may
23 be double counted in this figure?

24 A Explain how it would be double-counted?

25 Q If it came into one account and then was moved to another,

1 it's not a new deposit and it's not new funds.

2 A That's why we called it initial deposits. We took out all
3 the transfers from one account to another.

4 Q All right. I'd like to direct your attention to Number 18
5 for \$642,000 in Mid-Ohio.

6 A Okay.

7 Q You did not find any transfers from any of the other
8 accounts to Mid-Ohio?

9 A To Mid-Ohio or from Mid-Ohio?

10 Q To.

11 A Some small payments, you mean?

12 Q No.

13 A The investors in this situation invested their pension
14 plans in Mid-Ohio Securities. Mid-Ohio Securities then
15 transferred the money to Access Financial. We didn't count the
16 \$680,000 transferred from Mid-Ohio Securities to Access Financial
17 as an initial deposit investor funds into Access Financial.

18 Q You took that out of Access?

19 A Yes.

20 Q What about -- let's see here -- some of these, for example,
21 number four and number six --

22 THE COURT: Were you talking about Exhibit 43?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay.

25 BY MS. MARCUSSE:

1 Q -- those were associates of the company. Are you saying
2 that they took in initial investor deposits?

3 A Yes.

4 Q And where is that information coming from?

5 A From the bank account, from the investors.

6 Q From the investors?

7 A Yes.

8 Q All right. Number 12, discovery. Was this -- did you show
9 that this was initial investor funds?

10 A Yes.

11 Q Matching deposit receipts?

12 A Yes.

13 Q You matched all of these deposits on this entire sheet to
14 deposit receipts?

15 A To the best of our knowledge, the best of our ability based
16 on the records we were provided by the bank, information we were
17 provided by investors, other sources, we came up with a list.

18 Q All right. And this list you show 577 investors.

19 A Yes.

20 Q For \$20,686,075?

21 A Yes.

22 Q All right. Where did this list of investors come from?

23 A It came from various places. We received partial lists of
24 investors from ex-employees. We sent out a survey to investors.
25 Other people called us.

1 We've interviewed individuals during -- while we were
2 checking into some other purchases of assets, the individuals who
3 sold assets to people in Access Financial also invested in Access
4 Financial so they told us about investments that they had made
5 and then we traced where their money went and so we determined
6 other bank accounts from that. And we determined that they were
7 then an investor.

8 Q Are you aware that there were upwards of 24 or more bogus
9 investors that the Bosses put in that weren't really investors?

10 A I'm not sure that I knew of a lot of bogus investors.

11 Q But you matched deposit receipts to deposits?

12 A Matched deposit receipts to deposits. We didn't match the
13 investor list necessarily to deposits.

14 Q All right. So there's a wide margin for error there in --

15 A I don't think there's a wide margin. There could be a few.
16 If you tell me there's bogus investors on the investor list that
17 I wouldn't know about then possibly we have additional investors
18 that are bogus that we don't know about.

19 Q Well, wouldn't you agree that investor funds or investor
20 numbers would have to match deposit receipts as held by the
21 company stating it was funds that the company acknowledged it
22 received?

23 A I'm not sure. We didn't have the list from the company.
24 We wanted that list. We wanted the records of the company. And
25 if we had the records of the company it would have been much

1 easier to match the investors with their deposits and with their
2 -- make up a list of investors if we had the records from the
3 company but we were never given those records so we had to do the
4 best we could piecing it together from interviews and partial
5 lists and deposit items and interviews.

6 Q You received a list of investors from Diane and Wes Boss;
7 did you not?

8 A A partial list. They weren't there for the entire time
9 Access operated.

10 Q Are you aware of a newsletter that stated we were receiving
11 no new deposits from investors?

12 A I'm not sure at what point in time.

13 Q Who is this on number ten, this R. Gilbert, as far as a
14 signatory?

15 A I'm not sure. I think it's Rosemary Gilbert.

16 Q Who's Rosemary Gilbert?

17 A I'm not sure. Her name's on the signature card. We were
18 not able to locate her.

19 Q I've never heard of a Rosemary Gilbert but you're saying
20 this was on the signature card?

21 A Yes.

22 Q As far as the disposition of assets with the Bosses, is the
23 IRS taking action against their properties?

24 A I'm not able to disclose that, I don't believe.

25 Q So in other words they probably are and that's what

1 precipitated the meddling in the client lawsuit against the
2 Bosses?

3 THE COURT: Is that a question?

4 THE DEFENDANT: Yeah, from a confirmation standpoint
5 which --

6 THE COURT: Can you confirm or deny that?

7 THE WITNESS: Not to my knowledge. The statement
8 just made, I don't believe that's true.

9 BY MS. MARCUSSE:

10 Q It was merely coincidental then?

11 A I'm not -- what's coincidental? I'm not sure what you're
12 talking about.

13 Q Well, in the summer of 2002 the Bosses were getting ready
14 to settle by admitting that they had stolen funds, and all of a
15 sudden there was conversation publicly about plea bargains and
16 other agreements and criminals now being able to sue criminals,
17 and then we were unable to proceed and it just seems coincidental
18 that the cooperation --

19 THE COURT: Ms. Marcusse, I think you're testifying.
20 What is it you want him to answer? You will get a chance to
21 testify if you so choose.

22 THE DEFENDANT: Yes. All right.

23 THE COURT: Is the question withdrawn?

24 THE DEFENDANT: Yeah, the question is withdrawn.

25 BY MS. MARCUSSE:

1 Q Okay. Then, let's see here. How much of this -- you show
2 this \$4 million on Exhibit 45, you show this \$4,977,000,
3 "payments to subjects." What is the definition of "subject?"

4 A People were investigating in relationship to Access
5 Financial.

6 Q How much of that \$5 million was attributed to me?

7 A I don't have the exact figure but I believe it's
8 approximately \$900,000.

9 Q And to what accounts did that go to?

10 A It was used for various purchases, and part of it was for
11 the down payment on your house, part of it was for the payments
12 on the monthly payments on your house, a large part of it -- most
13 of it was checks made out to you that you deposited into your
14 personal checking account.

15 Q Most of it?

16 A A large portion of it.

17 Q How much?

18 A I would say maybe 600,000.

19 Q Okay. You're going to say 600,000 made out directly to me?

20 A Yes. Or withdrawn from Access or Sanctuary Account and
21 transferred to your personal account. I'm not sure if it was a
22 check or wire transfer, withdrawal.

23 Q All right. So, in other words, the government is saying
24 that I ran a Ponzi which most people run a Ponzi for personal
25 enrichment. Out of \$20,686,000 a total over that time would have

1 went to me you're stating of \$900,000 --

2 A Approximately

3 Q -- of which \$600,000 was made out directly to me?

4 A To the best of my recollection.

5 Q Did you track that 600,000 any further?

6 A Some of it.

7 Q All right. And what did you determine?

8 A It went for personal expenses. There was a large portion
9 that went out to Las Vegas to, I think, I believe another account
10 you operated in Las Vegas.

11 Q Would that have been World Wide E-Capital?

12 A There was a World Wide E-Capital account.

13 Q All right. And could that not have been an investment for
14 the benefit of the clients?

15 A I'm not sure what you used the money for. The money was
16 transferred into your personal account. The money then was
17 transferred from your personal account into another personal
18 account that you opened.

19 Q All right. So \$600,000 of it then, it's possible that it
20 went into an investment, in other words?

21 A I don't know what World Wide E-Capital is. It went into a
22 bank account. I have no idea it went into any investment.

23 Q Okay. All right. Then the \$8 million payments to other
24 individuals and entities, is it not theoretically possible that
25 all of that went into investments?

1 A No, it's not theoretically possible. Not in this
2 situation.

3 Q Well, why is it not?

4 A Well, a million dollars was paid to different individuals
5 for commissions for selling Access Financial, Sanctuary
6 Ministries, Discovery Church, paid to secretaries.

7 Q You're stating that out of the five million that came out
8 of there, not out of the eight million?

9 A No, the eight million -- the five million is people that
10 we're investigating as subjects. The eight million are other
11 individuals, other salesmen, out of state.

12 Q So you're stating that all of the eight million went to
13 other salesmen?

14 A No. No.

15 Q How much money are you talking about?

16 A Approximately \$1 million went to other individuals as
17 salaries, commissions.

18 Q And who was the other individual?

19 A The other individual?

20 Q Yes.

21 A It's individuals.

22 Q All right. And who were they and how much?

23 A I don't have the exact figures. There were individuals in
24 Minnesota, Wisconsin, New York, Colorado, Wisconsin -- I
25 mentioned that.

1 Q And the rest of the money?

2 A The rest of the money went all over the world. We've got--
3 there's hundreds of transactions.

4 Q And you're stating that it couldn't be investments?

5 A I don't know what they are. They're not investments of the
6 type of trading programs. They're, I mean, we have money going
7 to a bank account in the Bahamas in the name of STIRS. I don't
8 know what that is.

9 Q Well, are you familiar with seeing literature on a Bahamas
10 CD program?

11 A Yes.

12 Q Could that not be related to that perhaps?

13 A It's possible. I don't know what STIRS is. I don't know
14 what the Bahamas, you know, it's a checking account in the
15 Bahamas; that's all I know.

16 Q Isn't it normal procedure in these investigations to look
17 at where the money ultimately went and prosecute those
18 individuals?

19 A We traced the money as far as we could in the situation.
20 When it leaves the country we have difficulty tracing it and so
21 certainly we would try to look where the money went and prosecute
22 individuals if they've committed crimes.

23 Q So if I had -- and, in fact, I had -- filed a criminal
24 complaint against the Bosses, only to become the target of the
25 investigation and only to have the IRS interfere in the

1 litigation, do you not suppose that that might make me a little
2 less anxious to come forward with other criminal complaints?

3 A I would think so maybe.

4 Q Yeah, I would think so probably.

5 THE COURT: Ms. Marcusse, please stop the commentary.
6 Ask the questions. You will get a chance to testify if you so
7 choose.

8 THE DEFENDANT: All right. Thank you.

9 BY MS. MARCUSSE:

10 Q And you stated that once the money went off shore you were
11 unable to track it any further?

12 A Yes.

13 Q So you would have no idea if any of those accounts off
14 shore made money or not?

15 A I would say that's correct.

16 Q You would have no idea?

17 A I don't know what the money -- if the money went into an
18 account in another country and we don't have any other
19 information on it I don't know what happened to it after it left
20 that account or if it stayed in that account and earned interest.
21 I'm not sure what happened.

22 Q So is it common practice to simply assume given the fact
23 that such a tiny amount of the total went to me directly that I
24 was doing no investing -- is that a normal assumption -- and that
25 I was making no returns when it looks like a great deal of the

1 money went into off shore accounts and other bank accounts and
2 possibly could have had some returns?

3 THE COURT: The question is is that a normal
4 assumption?

5 THE DEFENDANT: Right.

6 THE COURT: Can you answer the question?

7 THE WITNESS: I would say no.

8 BY MS. MARCUSSE:

9 Q Let's see if that's everything I need. Are you aware of
10 who the partners are on MLC?

11 A No.

12 Q Did you know Michael Carney, who is now deceased?

13 A Did I know him?

14 Q Or did you know of him?

15 A Yes.

16 Q Did you speak with him directly?

17 A Yes.

18 Q Can you characterize the nature of the conversations?

19 A I think we were asking him if you invested money with him
20 and he basically said no. He told us that you did not give him
21 any money.

22 Q Even though you had copies of checks and wire transfers to
23 him?

24 A What's the question?

25 Q At that time did you have copies of checks and wire

1 transfers to MLC?

2 A We might have had a couple small ones but the largest one
3 we didn't have at that point when we talked to him. That was
4 transferred in later from an account, American Heritage Church.

5 Q So Michael Carney stated to you that we had no investments
6 with him?

7 A Yes.

8 Q Is that recorded somewhere? Is that in writing somewhere?

9 A I'm not sure. I'm not sure. I think he might have
10 testified to the grand jury.

11 Q Okay. What would the government characterize it then, as a
12 gift that we were giving money to Michael Carney?

13 A I'm not sure. I know Mr. Carney said he was making -- he
14 was paying expenses for you while you were living down there.

15 Q Are you aware of a \$1 million dollar check that went to
16 Robert W. Plaster?

17 A No.

18 Q Are you aware that Robert W. Plaster was one of the co-
19 founders -- co-partners of MLC?

20 A No.

21 Q Are you aware that Robert W. Plaster is one of John
22 Ashcroft's best friends?

23 A No.

24 Q Is there anything else that you can tell me about Michael
25 Carney in regards to funds that he may have mentioned to you?

1 A Not that I can think of. He basically wanted to know if
2 you had given him funds and he denied it at the time we talked to
3 him.

4 Q All right. So bank records can prove otherwise would be
5 what you would determine -- make your determination on?

6 A Yes. I said we had \$120,000 payment from American Heritage
7 Church, Sanctuary Ministries, in I believe September of '01.

8 Q Okay.

9 A But we didn't have that, I don't think, at the time we
10 talked to Mr. Carney.

11 Q All right. And it's also possible that payments to an MLC
12 or any of the other investments that we had could have been
13 larger because they could have come from offshore accounts that
14 you said you could not track; is that correct?

15 A That's possible.

16 Q All right. Now, I believe yesterday you admitted that
17 there was at least 2.7 million that you saw go to the Bahamas out
18 of the accounts?

19 A No.

20 Q What did you state?

21 A I said we tracked that to foreign investments.

22 THE COURT: How much was that?

23 THE WITNESS: 2.7 million.

24 BY MS. MARCUSSE:

25 Q Again I have to ask, you just used the term yourself, 2.7

1 million in that regard going to foreign investments, again how
2 can I be characterized as a Ponzi if I'm making investments on
3 behalf of the clients?

4 A My opinion of a Ponzi is when you take investors' funds and
5 use their same funds to pay back earlier investors, and that
6 happened to a large extent to at least \$8 million was paid back
7 to the investors from other investors' funds.

8 Q If you were managing your own funds and you could enjoy
9 good returns, would you be willing to give up a couple weeks a
10 month of those good returns just for the benefit of a wire
11 transfer from offshore?

12 A I'd say no. I don't know what -- I'm not sure of the
13 question.

14 Q Does that make good business sense to do so? Wouldn't a
15 good business manager maximize the rate of return for their
16 investment group?

17 A In general?

18 Q Yes.

19 A That makes sense.

20 Q Yes. Wouldn't a good investment manager also look at the
21 cost of moving funds and the time it takes to move funds in that
22 consideration as well?

23 A I'm not sure again what the question is but it sounds like
24 a good practice in general.

25 Q Yes, if it took you two weeks to move money it might make

1 more sense to use it from another area, wouldn't you agree?

2 A I'm not sure about that. You'd have to give me specifics.

3 Q Well, you do have specifics on this flow of 20 million.

4 All right. When did Mike Carney testify in front of the grand
5 jury?

6 MR. GEZON: Objection, your Honor. That's not
7 available nor a public record.

8 THE COURT: Grand jury testimony is privileged, Ms.
9 Marcusse.

10 THE DEFENDANT: Well, obviously it was before 11 of
11 '02. Okay. And I think that's it for right now, anyway.

12 THE COURT: All right. Thank you, Ms. Marcusse.
13 Any redirect, Mr. Gezon?

14 MR. GEZON: Yes, your Honor.

15 REDIRECT EXAMINATION

16 BY MR. GEZON:

17 Q Ms. Marcusse asked you about good practices regarding
18 clients' money when you're an investment advisor. Did you hear
19 those questions?

20 A Yes.

21 Q Did you hear previously that Ms. Marcusse was a licensed
22 securities advisor and had experience in that market?

23 A Yes.

24 Q In your investigation of these funds that she took from
25 investors in her organization, can you say that you found her

1 practicing any good sound practices which would have protected
2 this investors' group, this money as she committed it to them?

3 A I would say no. The records weren't kept. We saw no
4 records; we heard of no records that kept track of where the
5 money went and how it was accounted for.

6 Q One would think that if someone was trying to keep track of
7 these investors' money and protect their trust and use good
8 practices, all the money would have been accounted for at a
9 central location before being disbursed. Did you find that, in
10 fact, it was spread over 19 accounts --

11 A Yes.

12 Q -- willy-nilly?

13 A Yes.

14 Q Did you find that, in fact, as she promised that she kept
15 this \$20 million of investors' principal in a safe world bank
16 somewhere?

17 A No, she did not.

18 Q Did you find that, in fact, this money was used by her and
19 her associates for pretty much anything they wanted to any time
20 they wanted to?

21 A Yes.

22 THE DEFENDANT: Objection.

23 THE COURT: Ms. Marcusse, you stand when you make an
24 objection. And what is the basis of your objection?

25 THE DEFENDANT: Mr. Flink --

1 THE COURT: Please stand up, ma'am. Stand up.

2 THE DEFENDANT: Pardon?

3 THE COURT: Stand up.

4 THE DEFENDANT: Mr. Flink's already testified that he
5 has no way of knowing the answer to that.

6 THE COURT: The answer to what?

7 THE DEFENDANT: Of whether it was good business
8 practice -- I'm sorry, I don't know the exact way it was termed.

9 THE COURT: Do you remember your question, Mr. Gezon?

10 BY MR. GEZON:

11 Q My question was did your investigation find that this money
12 was used by Ms. Marcusse and her associates for personal expenses
13 or pretty much anything they wanted to any time?

14 A Yes.

15 Q As opposed to being kept in a safe CD for the protection of
16 the clients?

17 A Correct.

18 Q Did you find --

19 THE COURT: Wait. Just a minute. What is the basis
20 of your objection?

21 THE DEFENDANT: The objection is that Mr. Flink
22 testified that there was only a total of 900,000 that he could
23 track to me, and that of that 600,000 went to World Wide E-
24 Capital which may have been an investment.

25 THE COURT: All right. I don't see that the two

1 directly conflict but I'm going to -- I'll take any inconsistency
2 into account. The objection's overruled.

3 BY MR. GEZON:

4 Q Mr. Flink, let's look at some of the things you traced that
5 went to other people in your list, Exhibit 45. You said she
6 spent millions to pay other people to promote the scheme; is that
7 correct?

8 A Yes.

9 Q She paid the staff and the secretaries and so forth; is
10 that correct?

11 A Yes.

12 Q And she sent that money to various places that you've not
13 been able to trace any farther; is that correct?

14 A Yes.

15 Q You heard the representations of the victim investors in
16 the literature that Ms. Marcusse put out about what she was doing
17 with that money. Did any of those traces end up to be going to
18 anything that looked like some world investment that was
19 generating income?

20 A No.

21 Q Did you find that some of these --

22 THE DEFENDANT: Objection.

23 THE COURT: Stand up.

24 THE DEFENDANT: I'm sorry.

25 THE COURT: What's the basis of the objection?

1 THE DEFENDANT: Mr. Flink already testified that he
2 had no idea what these bank accounts were and that there were a
3 number of bank accounts so he has no way of characterizing
4 whether or not it's a good bank or a bad bank.

5 THE COURT: All right. I think that -- Ms. Marcusse,
6 I think that's a matter for argument. You'll have a chance to
7 argue and you can argue any inconsistencies that you find in the
8 testimony. But it was not the exact same question so I'm going
9 to overrule the objection.

10 Go ahead, Mr. Gezon.

11 BY MR. GEZON:

12 Q Now, you mentioned that a large amount of money went to a
13 bank account in the Bahamas under the name "STIRS," S-T-I-R-S
14 account; is that correct?

15 A Yes.

16 Q Have you talked to people associated with this
17 investigation which have told you what STIRS stands for?

18 A Yes.

19 Q What does STIRS stand for?

20 A "Screw the IRS."

21 Q And were you able to trace that account any further?

22 A No, we were not.

23 Q Did you see that that account having money put into it
24 generated huge amounts of profits which Ms. Marcusse put back in
25 these accounts and paid the investors?

1 A No.

2 Q Were you in any of these --

3 THE DEFENDANT: Objection.

4 THE COURT: Just a minute, Mr. Gezon.

5 THE DEFENDANT: Mr. Flink already stated that he has
6 no idea what happened to these accounts. They were unable to
7 trace them. He has no idea if they made money or not.

8 THE COURT: Again, Ms. Marcusse, any inconsistencies
9 you find in his testimony can be the subject of your argument,
10 but it's not an improper question by Mr. Gezon, and the fact that
11 the answer is arguably or you think is inconsistent is not
12 grounds for an objection, so I'm going to overrule the objection.

13 Go ahead, Mr. Gezon.

14 BY MR. GEZON:

15 Q In these other placement funds in these accounts that you
16 traced --

17 A Yes.

18 Q -- did you find any of them that had any indications that
19 they returned substantial amounts of money to Ms. Marcusse or her
20 associates which was paid to the investors in these three percent
21 checks?

22 A There was one account in the name of Valley Boys in
23 Wisconsin, some individuals. A million dollars was sent to them.
24 They sent the money to Colorado. Colorado sent that money to
25 Florida. Florida sent that money to the Channel Islands.

1 The government determined that it was a fraudulent
2 scheme, the money from Florida and Colorado, and, therefore, they
3 seized approximately \$500,000 -- there were several million
4 seized. They traced the million back to the Valley Boys which
5 was traced back to Terry Besser and Access Financial and --

6 THE DEFENDANT: Objection.

7 THE COURT: Just a minute. Let me -- just a minute.
8 What is the basis of your objection?

9 THE DEFENDANT: How much money did you say?

10 THE COURT: Wait a minute, Ms. Marcusse. Mr. Gezon's
11 question may be objected to.

12 THE DEFENDANT: Okay.

13 THE COURT: The fact that the witness is answering in
14 a way that you believe is inconsistent is a subject for argument.
15 If you want to object to a question that Mr. Gezon asked, you may
16 do so.

17 Go ahead. Objection overruled.

18 BY MR. GEZON:

19 Q You can continue to tell us what happened with that
20 million.

21 A Okay. So of that money that was seized the government
22 contacted Terry Besser and Access Financial and they returned
23 \$500,000 of the million to Access Financial. That's the amount
24 that they had seized.

25 Q So that's not exactly profits; that's just the government

1 seizing the fraud money and returning it actually to Mr. Besser
2 and Access Financial?

3 A Yes.

4 Q So you found no indication of any huge profit-making
5 investments?

6 A No.

7 Q Now, Mr. Marcusse keeps asking about Mr. Carney and a
8 company called MLC. Does that MLC stand for Michael L. Carney?

9 A I believe so.

10 Q And did you in the course of trying to figure out what
11 happened to all this money talk to Mr. Carney and say what's your
12 association with Ms. Marcusse?

13 A Yes.

14 Q What did he say his association with Ms. Marcusse was?

15 A He said that she was going to provide the money for his
16 development of a type of theme park in Branson, Missouri, and so
17 she was down in Branson. He was paying for her to live there for
18 a certain period of time and then she was going to provide the
19 funding for this theme park.

20 Q Well, what stage was this theme park at? A gleam in
21 someone's eye or was this thing going -- was there ground being
22 moved and buildings being put up?

23 A There were drawings and plans that Mr. Carney had but I
24 don't believe anything was ever finalized or any ground broken.

25 Q So any money that Ms. Marcusse gave to Mr. Carney was about

1 a venture that he hoped to put up someday?

2 A Yes.

3 Q Did that sound like it was -- was it in any way in your
4 investigation connected to any World Bank?

5 A No.

6 Q Was Mr. Carney in any way a financial institution, the
7 money for which he got from Access could be considered a safe
8 place to put investors' money?

9 A No.

10 Q Now, is it true that in about the summer of 2001 that Ms.
11 Marcusse, after the Bosses had left the organization, accused the
12 Bosses of embezzling funds and spending investors' money?

13 A Yes.

14 Q And did you, in fact, trace, like all the other subjects,
15 how much money the Bosses got for their personal use and benefit
16 or the use and benefit of their relatives and so forth?

17 A Yes, we did.

18 Q And about how much money was it?

19 A Approximately \$1.4 million.

20 Q What sort of things did they do with that money?

21 A They purchased a residence for, I believe, \$350,000, and
22 paid that off in full.

23 Q This was the home where the office was at the time?

24 A Yes. They put in approximately \$200,000 worth of
25 landscaping that was paid for with Access Financial funds. They

1 purchased vehicles and paid off credit cards, personal living
2 expenses, numerous other expenses.

3 Q And at the time that this money was acquired by them, was
4 Mr. Boss a sales manager?

5 A Yes.

6 Q And was Diane the office manager?

7 A Yes.

8 Q Now, was that lawsuit filed in Ottawa County?

9 A Yes.

10 Q And are those -- the pleadings that we had filed in this
11 case from Ottawa County, that's that particular lawsuit where Ms.
12 Marcusse is accusing the Bosses of embezzling this money?

13 A Yes.

14 Q And eventually did that matter get dismissed because Ms.
15 Marcusse would not come to court?

16 A That's my understanding.

17 THE DEFENDANT: Objection.

18 THE COURT: What is the basis of the objection?

19 THE DEFENDANT: Mr. Gezon is saying that it was his
20 understanding that it was because I didn't show up that lawsuit
21 was dismissed.

22 THE COURT: He's asking the witness if that was the
23 witness's understanding.

24 BY MR. GEZON:

25 Q Did Ms. Marcusse show up at the final hearings in that

1 case?

2 A Not that I'm aware of.

3 Q And did her attorney file a pleading saying that he no
4 longer knew where she was?

5 A Yes.

6 Q And was that case dismissed?

7 A I believe so.

8 THE DEFENDANT: I object.

9 THE COURT: Ms. Marcusse, the objection's overruled.
10 There's nothing improper about the questions. If you have a
11 different version of events you can either call a witness or
12 testify to your version if you so choose, but there's nothing
13 improper about the question.

14 THE DEFENDANT: Is it not true that I had a judgment
15 against Diane and Wes for embezzlement and the FBI and Ottawa
16 County detective quashed the judgment?

17 THE COURT: Ms. Marcusse --

18 THE DEFENDANT: Is that not a political question?

19 THE COURT: Do you want to be removed? Do you want
20 to be removed from the courtroom? Please sit down.

21 MR. GEZON: I've no further questions.

22 THE DEFENDANT: Have you ruled on an executive order?

23 THE COURT: Would the marshals take Ms. Marcusse out
24 and then --

25 THE DEFENDANT: Is it not true that I have a

1 contract?

2 THE COURT: Why don't you think about it for a little
3 bit and we'll reconvene at 11:30 and we'll see if you're willing
4 to and ready to follow the rules of court.

5 This matter is recessed until 11:30.

6 (At 11:05-11:30 a.m., proceedings recessed.)

7 THE COURT: Ms. Marcusse, as I told you, you have a
8 right to be present at these proceedings, and especially since
9 you're representing yourself it seems to me to be essential that
10 you do be present, but I will not tolerate outbursts. Do you
11 understand that, ma'am?

12 THE DEFENDANT: Mm-hmm.

13 THE COURT: Do you think you can follow the rules?

14 THE DEFENDANT: Yes.

15 THE COURT: All right.

16 Now, I forget -- I think Mr. Flink was still on the
17 stand; was he not?

18 MR. GEZON: I believe so.

19 THE COURT: And you were doing redirect, I believe.

20 MR. GEZON: Yes, your Honor, and I've concluded my
21 questions.

22 THE COURT: All right.

23 Mr. Marcusse, do you have any recross examination for
24 Agent Flink?

25 THE DEFENDANT: Just a couple things.

1 THE COURT: All right.

2 RECROSS-EXAMINATION

3 BY MS. MARCUSSE:

4 Q How much money did you say went into Valley Boys?

5 A A million dollars.

6 Q A million?

7 A One million.

8 Q Did Michael Carney provide you with any of the projections
9 on the theme park?

10 A I don't recall them myself, no.

11 Q Were you aware that there were going to be five gambling
12 boats involved with the project?

13 A Never heard that.

14 Q Are you aware that in Kansas City the gross on a boat is
15 \$350 million?

16 A I'm not aware of that.

17 Q Were you aware that MLC was going to be doing a bank?

18 A I heard some discussion of a bank on sovereign land by
19 yourself but I'm not sure if MLC was doing that or if you were
20 planning on that.

21 Q Were you aware that Mr. Carney, myself, and Mr. Williams of
22 the LVD Indian tribe went to Washington, DC, in April of 2002?

23 A I'm not aware of that.

24 Q Did you read the Boss embezzlement transcript?

25 A I would think I would have at some point in time within the

1 last --

2 Q Then it was --

3 A -- several years.

4 Q -- contained in that transcript so you should have.

5 A I don't recall it but I think I most likely would have read
6 the transcript.

7 MR. GEZON: Your Honor, may I ask for a clarification
8 and what is this transcript?

9 THE COURT: I don't know either. I thought maybe the
10 next question --

11 THE DEFENDANT: The Boss embezzlement --

12 THE COURT: I don't know what you're talking about.

13 THE DEFENDANT: -- litigation where we sued the
14 Bosses for embezzlement.

15 THE COURT: Was there a deposition taken in that
16 case?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. So you're referring to the
19 deposition transcript?

20 THE DEFENDANT: Yes, July of -- or June or July, I'm
21 not certain what date, 2002.

22 THE COURT: All right.

23 MR. GEZON: But of who, your Honor? I'm still not
24 clear whose deposition this was we're talking about.

25 THE COURT: I thought of the Diane Boss; is that --

1 THE DEFENDANT: No. It would have been of myself and
2 the Bosses.

3 THE COURT: All right.

4 Is that clear now, Mr. Gezon?

5 MR. GEZON: Thank you, yes.

6 THE COURT: All right.

7 You may proceed, Ms. Marcusse.

8 BY MS. MARCUSSE:

9 Q Were you aware of the LVD's role in the park?

10 A No.

11 Q So you weren't aware of an \$87 million signed agreement
12 that the LVD had with MLC?

13 A I'm not aware of that.

14 Q Would the aspect of an almost \$90 million signed contract
15 with an Indian tribe that owns a profitable casino make any
16 difference on your determination of whether or not MLC may or may
17 not have been a safer place to place funds?

18 A I'm not sure how to answer that.

19 Q Well, generally when you invest if an investment has
20 security collateral or value behind it of significance rather
21 than just paper or hot air and promises, it tends to make it a
22 better investment; is that not true?

23 A I would agree with that.

24 Q Yes. So in other words \$90 million worth of value would be
25 better to you than just projections on a piece of paper?

1 A That makes sense.

2 Q Yes. Did you state that Diane and Wes, the amounts they
3 took was \$1.4 million?

4 A Yes.

5 Q You mentioned relatives. What relatives did that include?

6 A Kristin, Joshua. That's pretty much it. Maybe another
7 daughter.

8 Q All right. What about sister-in-law, brother-in-law, other
9 family members, her brother?

10 A I'm not -- well, I have some information on her brother.
11 He paid some money and also for some credit cards, I believe.

12 Q Is that included in that 1.4?

13 A I believe so.

14 Q And did Diane and Wes do a plea bargain?

15 A Did they do one?

16 Q Yes.

17 A I don't -- no.

18 Q No or you don't know?

19 A What's the definition of "do a plea bargain?"

20 Q Agree to.

21 A I'm not sure if I can answer that.

22 THE COURT: Mr. Gezon?

23 MR. GEZON: Your Honor, let me state for the record
24 that negotiations with the Bosses and their attorneys occurred.
25 No plea agreement has arisen out of those discussions.

1 BY MS. MARCUSSE:

2 Q If additional information comes to light showing that they
3 committed perjury in their assertions (sic), does this make a
4 difference to the government on what they get as far as
5 punishment?

6 A Can you repeat that?

7 Q If someone puts into writing or transcript form or verbal
8 form what their position is on something and additional
9 information comes to light which provides that they were lying,
10 therefore, perjuring themselves, all I'm asking is does this not
11 break any prior agreements and add additional punishment to
12 whatever initial negotiations may have been.

13 MR. GEZON: Object to the form of the question, your
14 Honor, because it's not the testimony on the record.

15 THE COURT: I think the question you're asking is a
16 very hypothetical. Can you make it more concrete, Ms. Marcusse?

17 BY MS. MARCUSSE:

18 Q Mr. Gezon said that no plea agreement has been arisen is
19 the term. As I recall in the newspaper, however --

20 THE COURT: Now, are you getting into testifying? If
21 you want to testify you may do so but not when you're recross
22 examining Mr. Flink.

23 THE DEFENDANT: Well, I was building up to the
24 question.

25 THE COURT: Okay. Why don't you ask the question

1 then?

2 THE DEFENDANT: Okay.

3 BY MS. MARCUSSE:

4 Q It was stated that one had been reached publicly and --

5 THE COURT: Why don't you ask him if he's aware that
6 that statement was made if it was made.

7 THE DEFENDANT: Okay.

8 BY MS. MARCUSSE:

9 Q Are you aware that it was in the press that a plea
10 agreement had been reached with the Bosses?

11 A I don't recall that but it's possible. I don't remember.

12 Q And also in the same article or article in a close time
13 frame, it was stated that as part of that agreement that they
14 were planning to, along with government cooperation, provide
15 restitution to the victims.

16 THE COURT: Are you asking him if he read that or if
17 he recalls that?

18 BY MS. MARCUSSE:

19 Q Is that to your knowledge because the IRS would undoubtedly
20 try to stake a claim on the Boss assets?

21 MR. GEZON: Your Honor, that's not a question again.
22 It sounds like legal argument.

23 THE COURT: Ms. Marcusse, I remind you again if you
24 want to ask him if he's aware of certain facts that is fair game.
25 But it is not fair game for you at this time to testify to what

1 you think the facts are. So you need to put your colloquy or
2 your question -- you need to put your questions in a question,
3 not just state facts.

4 THE DEFENDANT: All right.

5 BY MS. MARCUSSE:

6 Q Are you aware of an article in which the Bosses stated that
7 they planned in cooperation with the government to provide
8 restitution to victims?

9 A If it was in The Grand Rapids Press article about the
10 investigation of the Bosses I'm sure I read it.

11 Q Okay. And I guess I was asking if such plan is still in
12 the works for the IRS and the Bosses to be providing restitution
13 in conjunction with the government to the victims of the Boss
14 assets.

15 A I'm not -- you're talking about the IRS restitution and the
16 Bosses' restitution.

17 Q Restitution is typically ordered by the government; is that
18 not true?

19 A In some cases.

20 THE COURT: Ms. Marcusse, why don't you ask him if
21 he's aware of an agreement to provide restitution to the victims?
22 I think that's what you're trying to ask him.

23 THE DEFENDANT: Okay.

24 BY MS. MARCUSSE:

25 Q Are you aware of an agreement regarding the Boss assets to

1 provide restitution to the victims?

2 A No.

3 Q And communications of the Bosses to the client base in
4 order to induce clients to respond to government questionnaires,
5 it was noted that this restitution and cooperation would be
6 forthcoming, and if this wasn't really what the intention was was
7 it then, in fact, just an inducement to get clients to respond
8 without really providing what the government has promised?

9 MR. GEZON: Objection, your Honor. That question
10 calls for all kinds of speculation of nothing that's been in
11 testimony in here today.

12 THE COURT: What I'd like you to do, Ms. Marcusse, is
13 see if you can break your question down into several questions.
14 Why don't you ask him if he is aware of such a questionnaire?
15 Why don't you ask him if he is aware of such a representation?

16 THE DEFENDANT: All right.

17 BY MS. MARCUSSE:

18 Q Are you aware of the letter that Diane and Wes sent out in
19 roughly September-October of 2002?

20 A Yes, it sounds familiar.

21 Q And you also stated that you were aware of a Grand Rapids
22 Press article around the same time?

23 A Yes.

24 Q Between the two it was represented that the Bosses would be
25 cooperating to provide their assets as restitution to the

1 victims.

2 THE COURT: Is he aware of that?

3 BY MS. MARCUSSE:

4 Q Are you aware of that?

5 A Yes.

6 Q All right. Because of what I saw to be government
7 interference in the litigation against the Bosses, I'm asking if
8 those plans are still -- are the seizure of the Boss assets to
9 provide restitution, is that still a plan for the government to
10 do?

11 MR. GEZON: Your Honor, beyond what's been stated in
12 the public record I would object to that question.

13 THE COURT: On what basis, Mr. Gezon?

14 MR. GEZON: The scope of the investigation; the
15 intent of the United States to file pleadings in the future is
16 not within the purview of this witness to say or give an opinion
17 on. That would be a position that the United States government
18 would take and not Mr. Flink of the IRS.

19 THE COURT: I would sustain the objection on that
20 basis.

21 Can you rephrase your question to ask him what his
22 knowledge is rather than what the government intends?

23 BY MS. MARCUSSE:

24 Q The IRS would undoubtedly want to stake a claim on some of
25 the Boss assets; is that not correct?

1 A I would think so. I'm part of the criminal division.
2 That's a separate division. The civil division puts liens on
3 property.

4 Q Okay. But is it reasonable to assume that the Bosses would
5 have a large tax bill as a result of this investigation?

6 A I'm not sure if I -- and I can't really speculate. I don't
7 know all of their -- at this time I really can't disclose what
8 their earnings are or what they reported.

9 Q Okay. But earlier you said they got 1.4 million that you
10 showed and I showed as much or more as far as embezzlement funds,
11 and to my knowledge embezzled funds are taxable, so I'm asking
12 then if the IRS would be taking the assets which theoretically
13 would belong to my clients first and foremost.

14 MR. GEZON: Objection, your Honor.

15 THE COURT: What is the basis of the objection?
16 Please stand when you speak.

17 MR. GEZON: Again, the question is argumentative.
18 She's trying to present what would be an argument she'd like to
19 make but not anything this witness can say about what they expect
20 the IRS to do or the United States to file against these people.

21 THE COURT: Ms. Marcusse, if you want to make
22 argument, you will have a chance to do that. But it's not the
23 point of recross-examination for you to argue with the witness or
24 you to state the facts. And I've repeated this several times.
25 You will have a chance to state the facts as you believe them to

1 be but this witness is here to answer questions within his
2 knowledge so why don't you move on?

3 THE DEFENDANT: All right. I think that should do it
4 for now.

5 THE COURT: All right.

6 MR. GEZON: Your Honor, for the state of the record,
7 I want to restate the questions about the Bosses. The Bosses are
8 also subjects of this investigation as are others associated with
9 Ms. Marcusse. The investigation is ongoing. They are
10 represented by private counsel. Those private counsel have
11 talked to us but no plea agreement has been reached in that case.

12 For the record, their attorneys are in the courtroom
13 today.

14 THE COURT: All right.

15 You may step down, sir. Thank you.

16 MR. GEZON: No further evidence, your Honor.

17 THE COURT: All right.

18 Ms. Marcusse, do you have witnesses that you would
19 like to call?

20 THE DEFENDANT: Yes, I have two witnesses that I'd
21 like to call.

22 THE COURT: And who would the first one be?

23 THE DEFENDANT: First one would be Virgil Boss.

24 THE COURT: Is he in the courtroom?

25 THE DEFENDANT: I didn't see him earlier.

1 THE COURT: All right. How about the second one?

2 THE DEFENDANT: The second one was Chris Milson, and
3 I don't see him in the courtroom either so I guess I would ask
4 for an adjournment.

5 THE COURT: And you probably want to talk to Mr. Kent
6 about getting a subpoena to those witnesses. All right.

7 Does the government object to an adjournment?

8 MR. GEZON: For how long, your Honor?

9 THE COURT: For how long do you request the
10 adjournment?

11 THE DEFENDANT: Just two days or so, so I can get
12 notification to them. I'm very hampered in my ability to notify
13 people.

14 THE COURT: Can I speak to you once again about the
15 fact that that's a really good reason to have an attorney
16 represent you rather than represent yourself.

17 THE DEFENDANT: I understand.

18 THE COURT: I must note that.

19 MR. GEZON: Your Honor, for the record I'd to place
20 something on the record with regard to the two witnesses.

21 THE COURT: Certainly.

22 MR. GEZON: Virgil Boss was a man who's been in the
23 courtroom yesterday all day during this hearing and was here
24 today in this hearing.

25 Chris Milson, if I'm not mistaken, is the person with

1 whom the defendant was living in Missouri at the time of being
2 arrested.

3 THE COURT: All right. And your point is?

4 MR. GEZON: Just wanted to place it on the record
5 that those people are well-known to the defendant and they've
6 been here, I'm sure won't be too far or too hard to get hold of.

7 THE COURT: All right. I was proposing that we
8 adjourn this until Monday.

9 MR. KENT: Your Honor, before we go further in that
10 regard, to the extent I remain involved in the proceedings --

11 THE COURT: Yes.

12 MR. KENT: -- I am out of town tomorrow and Monday
13 and would be unavailable until approximately noon on Tuesday.

14 THE COURT: And I have something at two on Tuesday.
15 Do you have any estimate, Ms. Marcusse, about how long your
16 witnesses will take?

17 THE DEFENDANT: Hour maybe.

18 THE COURT: Hour each?

19 THE DEFENDANT: Maybe hour-and-a-half for both.

20 THE COURT: Do you presently intend to testify
21 yourself?

22 THE DEFENDANT: Not at the present time.

23 THE COURT: Okay.

24 MR. GEZON: Your Honor, I was hoping to be out of
25 town all next week also for a family vacation. I can make

1 arrangements to have someone else here. Is there any problem
2 with trying to get people here for tomorrow to finish this up?

3 THE COURT: Well, the problem might be my schedule.

4 MR. GEZON: Oh, I'm sorry.

5 MR. KENT: And, your Honor, unfortunately, I'm out of
6 town, as I just said, tomorrow.

7 THE COURT: That's right.

8 MR. GEZON: I apologize. I forgot.

9 MR. KENT: That's okay.

10 MR. GEZON: I wasn't listening to that.

11 THE COURT: So tomorrow's not going to work anyway.

12 And you're gone -- can you -- are you comfortable having somebody
13 else represent the government for the remainder of this hearing?

14 MR. GEZON: No, I'm not. It's a rather complex case
15 and it's a case that I know a lot of the facts with regarding,
16 but with deference to the Court's schedule and so forth I'm not.

17 THE COURT: Was that -- my schedule's not being the
18 problem.

19 MR. GEZON: I'm sorry, with the Court's scheduling of
20 it next week.

21 THE COURT: All right. I don't want to let it go a
22 whole other week.

23 MR. GEZON: I think Mr. Davis will be the one I'll be
24 asking to see if he can do it next week.

25 THE COURT: All right.

1 MR. GEZON: Your Honor, If we could get Mr. Boss in
2 here. He's been in and out of the building and I know he lives
3 in Jenison, he's not that far.

4 THE COURT: Well --

5 MR. GEZON: Maybe we can get him today.

6 THE COURT: -- the only problem I have is I have
7 another proceeding at two.

8 MR. GEZON: Oh.

9 THE COURT: So I think it's unlikely we can get him
10 here. How are you proposing we get him here?

11 MR. GEZON: We can give him a phone call for that
12 matter.

13 THE COURT: I think we're still going to have to
14 adjourn given the time that Ms. Marcusse estimates it's going to
15 take. She is entitled to call witnesses.

16 How about if we try for -- let me see -- Wednesday at
17 one p.m.

18 MR. KENT: That's fine, your Honor.

19 THE COURT: I know it's not your choice but do you
20 think you can make that work, Mr. Gezon?

21 MR. GEZON: Your Honor, if I can't I'll have someone
22 here.

23 THE COURT: Okay.

24 So we're going to continue the preliminary hearing
25 and the detention hearing until 1:30 p.m.

1 Ms. Marcusse, you should make sure that you get in
2 touch with your witnesses and make sure that you can get them to
3 be here at that time because I'm not likely to be willing to
4 adjourn it again.

5 THE DEFENDANT: Yes. You also mentioned about being
6 able to place the writ into the record.

7 THE COURT: That is right. Why don't you give that
8 to the marshal and he'll -- or Mr. Kent and give it to Cynthia.

9 There is -- this is a writ of mandamus signed by Ms.
10 Marcusse. We will get that filed, Ms. Marcusse, and I will
11 address the issues raised in your writ at the continued hearing.

12 Anything further, Mr. Gezon?

13 MR. GEZON: No, thank you. Your Honor, did you wish
14 to keep the exhibits or did you want the return them to us?

15 THE COURT: Why don't I return them to you for
16 safekeeping and then if you could give them back to me. I do
17 have a record of what's been admitted and what has not.

18 MR. GEZON: You're welcome to keep them.

19 THE COURT: I don't know if you want to just put a
20 rubber band on them and give them back to me but I'd just as soon
21 that you keep them because I don't know if any of them are
22 originals or anything like that. These two also. Thank you.

23 MR. GEZON: Thank you.

24 THE COURT: Anything further, Ms. Marcusse?

25 THE DEFENDANT: Time allowing I would like to address

1 the writ.

2 THE COURT: Well, I haven't had a chance to read it
3 so I would like to be informed as to what's in it before I
4 respond so I will -- we will take up the writ on August 4th at
5 1:30 p.m. before we start the continued hearing.

6 THE DEFENDANT: All right.

7 THE COURT: All right. Anything further?

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

9 THE COURT: This matter is in recess until 1:30 p.m.
10 on August 4th.

11 (At 12:55 p.m., proceedings recessed.)

12

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

January 5, 2005

Patricia R. Pritchard /S/
Patricia R. Pritchard, CER 3752