

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

100 E. FIRST STREET

CINCINNATI, OHIO 45202

UNITED STATES OF AMERICA

v.

JANET MARCUSSE

CASE NOS. 05-2586, 05-2668, 08-1003

Criminal Case No. 1:04-cr-00165

Robert Bell, "Judge"

WESTERN DISTRICT OF MICHIGAN

THE CALL FOR RECALL OF THE MANDATE
FOR
ATTORNEY & JUDICIAL FUNDAMENTAL FRAUD
THE DENIAL OF ALL DUE PROCESS

FEDERAL RULES OF EVIDENCE RULE 201(d)

DEFAULT ON RULE 60(b)(3)&(4) CLAIMS

FIRST & FIFTH AMENDMENTS

Title 28 U.S.C. §2072(b)

Appellate Procedure Rule 41(d)

BY RIGHT OF INTERVENTION IN HER OWN RIGHT

Janet Marcusse

[#17128-045]

c/o Federal Correctional Institution

501 Capital Circle, NE

Tallahassee, Florida 32301

WRIT OF ERROR CORAM NOBIS

TO: Judge William Bertelsman
United States District Court
P.O. Box 1012
Covington, Kentucky 41012

Proof of Service via
Certificate of Service
#7008-0500-0001-6948-6383
USPS First Class Mail

Judge Jeffrey Sutton
260 Kinneary U.S. Courthouse
85 Marconi Boulevard
Columbus, Ohio 43215

Proof of Service via
Certificate of Service
#7008-0500-0001-6948-6512
USPS First Class Mail

Judge John Rogers
Post Office Drawer 3074
Lexington, Kentucky 40588

Proof of Service via
Certificate of Service
#7008-0500-0001-6948-6529
USPS First Class Mail

KNOW ALL MEN BY THESE PRESENTS

NOW COMES, Janet Marcusse, by right of intervention, in her own right, to call for the recall of the fraudulently begotten Judgments and Mandate, rejected and returned herein, for the attorneys' conspiracy fraud upon this Court, and for the structural defect of judicial fraud, obtained in the absence of all substantive due process, thereby causing the results to be voidable and void, requiring relief, in non-published Case Nos: 05-2586, 05-2668, and 08-1003, arising from 1:04-cr-00165, 1:03-mj-666, and 1:02-mc-78, in the Western District of Michigan, as the result of these specific fundamental deprivations of her Rights, causing a Miscarriage of Justice:

I.

THE EVIDENCE TAMPERING & MISREPRESENTATIONS, LINGUISTIC TRICKERY & DECEPTION, FRAUD & COLLUSION, USED TO PURSUE DEMONSTRABLY NONEXISTENT CHARGES, COMMITTED BY THE OFFICERS OF THE COURT, AS PROMOTED THROUGH THE BIAS, DENIAL OF THE RIGHT TO PROCEED PRO SE, DENIAL OF A DEFENSE, DENIAL OF ALL DUE PROCESS, DISREGARD FOR THE HONEST SUBSTANCE OF THE ADMITTED BANK RECORD EVIDENCE & USURPATION OF THE FUNCTION OF THE JURY BY THE TRIAL JUDGE, CAUSED THIS "TRIAL" PROCESS TO BE NULL & VOID.

WHEN COMBINED WITH THE DENIAL OF ALL DUE PROCESS BY THE COURT OF APPEALS, WHICH ALLOWED FOR THE COLLUSION OF COURT-APPOINTED APPELLANT COUNSEL WITH THE FEDERAL ATTORNEY & B.O.P. IN THE PRESENTATION OF A FALSIFIED RECORD, OVER THE EXPRESS OBJECTIONS OF THE APPELLANT, CAUSED THE PROCESS OF APPEAL TO BE NULL & VOID IN THE CONSPIRACY DEPRIVATION OF A LAWFUL JUDGMENT ON ITS TRUE MERITS. THE APPELLANTS WERE ENTITLED TO A COMPLETE RESPONSE TO ALL ISSUES PRESENTED, INCLUDING OF THOSE PRESENTED IN THE PRO SE BRIEF APPROVED FOR FILING.

NEITHER THE TRIAL JUDGE NOR THE FEDERAL ATTORNEYS HAVE EVER RESPONDED TO ANY OF THE TIMELY FILED RULE 60(b)(3)&(4) CLAIMS, INCLUDING THOSE CONTAINING NEWLY FOUND EVIDENCE REGARDING FRAUD UPON THE COURT, THEREFORE, THEY HAVE DEFAULTED, CAUSING RELIEF TO BE DUE.

II.

THE DUPLICITY IN THE CHARGING DOCUMENT IS VOIDABLE FOR FRAUD AND FOR CAUSING AN UNRELIABLE JURY VERDICT.

III.

CONSTRUCTIVELY AMENDED JURY INSTRUCTIONS SPIN FAILURE TO FILE INTO THREE CONSPIRACIES, CAUSING THE TRIAL COURT'S PROCESS TO BE VOID FOR FRAUD AND FOR CAUSING AN UNRELIABLE JURY VERDICT.

IV.

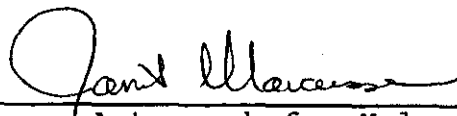
THE CONTINUING ARBITRARY REFUSAL TO MEANINGFULLY HEAR OR CONSIDER THE CLAIMS OF THE ACCUSED FOR UNDISCLOSED REASONS OR TO EVEN SO MUCH AS INFORM THEM OF THE TRUE NATURE & CAUSE OF THE ALLEGATIONS AGAINST THEM CONSTITUTES CONSPIRACY FRAUD, IS AN ABUSE OF PRIVILEGE, BRADY, JENCKS, AND THE CONSTITUTIONAL PROVISIONS OF ARTICLE I, III, AND IV, VIOLATING THE FIRST, FOURTH, FIFTH, SIXTH, EIGHTH, THIRTEENTH AND FOURTEENTH AMENDMENTS. THE RETENTION OF "PERSONAL" JURISDICTION BY THE TRIAL JUDGE DURING APPEAL FOR "ENFORCEMENT" PURPOSES FURTHER

CAUSED AN INHERENTLY BIASED PROCESS.

* * * * *

WHEREAS, with relief being mandatory under the law, Janet Marcusse makes these following claims in the interests of fair and substantial justice:

1. For an ORDER to recall the Mandate;
2. For an ORDER for the immediate release of Janet Marcusse;
3. For an ORDER to vacate the convictions and sentences as null and void for their fraud, bias, and lack of due process;
4. For an ORDER for a Show Cause Hearing in a State court of competent jurisdiction before a tribunal duly authorized to hear the cause;
5. For an ORDER for an investigation into the record, and into the accounts and books of Judge Bell (Refer to attached True Bill); and
6. For an ORDER for sanctions to be applied to all attorneys found to have engaged in substantive misrepresentations to collude to construct a false record to falsely target and imprison the victims of crime while protecting themselves and the true perpetrators of it from criminal charges and civil litigation.



Autograph for Value

All rights and remedies fully reserved
Without prejudice or recourse

LIST OF DESIGNATED DEFENDANTS/APPELLANTS

Janet Marcusse

#17128-045

FCI Tallahassee
501 Capital Circle, NE
Tallahassee, Florida 32301

George Besser

#27340-112

FMC Devens
42 Patton Road
Ayers, Massachusetts 01432

Donald Buffin

#11929-040

FCI Elkton
8730 Scroggs Road
Elkton, Ohio 44415

William Flynn

#07471-089

FPC Duluth
P.O. Box 1000
Duluth, Minnesota 55814

LIST OF PARTIES TO CHARGES

District Judge Robert Bell (P-10654), Trial "Judge"
United States District Court
Western District of Michigan
110 Michigan Street, N.W.
Grand Rapids, MI 49503

District Judge William Bertelsman, Author of Opinion on Appeal
United States District Court
P.O. Box 1012
Covington, KY 41012-1012

Circuit Judge Jeffrey Sutton, Party to Opinion on Appeal
260 Kinneary U.S. Courthouse
85 Marconi Boulevard
Columbus, OH 43215

Circuit Judge John Rogers, Party to Opinion on Appeal
Post Office Drawer 3074
Lexington, KY 40588-3074

Thomas Gezon (P-24066), Assistant U.S. Attorney ("AUSA")
Resigned 2/07

Margaret Chiara, U.S. Attorney
Fired 2/07

Michael Schipper (P-42154), Assistant U.S. Attorney ("AUSA")
The Law Bldg.
330 Ionia Ave., N.W.
P.O. Box 208
Grand Rapids, MI 49501-0208

David Kaczor (P-29860), Court-appointed trial attorney to Marcusse
Federal Public Defender
50 Louis, N.W.
Grand Rapids, MI 49503-2633

Michael Dunn, Court-appointed trial attorney to George Besser
Dunn & Gibbons, PLC
1303 McKay Tower
146 Monroe Ctr., N.W.
Grand Rapids, MI 49503

Melvin Houston (P-36280), Court-appointed appellant attorney
15346 Asbury Park
to Marcusse
Detroit, MI 48227-1545

TABLE OF CONTENTS

	PAGE
CLAIMS PRESENTED	i
LIST OF DESIGNATED DEFENDANTS/APPELLANTS	iv
LIST OF PARTIES TO CHARGES	v
TABLE OF AUTHORITIES CITED	vii
CASES	vii
STATUTES	viii
CONSTITUTIONAL PROVISIONS	ix
CALL FOR THE RECALL OF THE MANDATE	1
JURISDICTION	1
SUMMARY OF THE VOIDABLE & VOID GROUNDS	4
I. FUNDAMENTAL FRAUDS COMMITTED IN COLLUSION BY ALL OFFICERS OF THE COURT, INCLUDING THE TRIAL JUDGE	4
A. THE PRIME BANK CHARGE IS VOIDABLE FOR FRAUD	4
B. THE PONZI SCHEME CHARGE IS VOIDABLE FOR FRAUD	11
C. THE FAILURE TO FILE CHARGE IS VOIDABLE FOR FRAUD	17
D. THE COURT-APPOINTED APPELLANT ATTORNEY SABOTAGED THE APPEAL PROCESS	19
II. DUPLICITY IN THE CHARGING DOCUMENT ALLOWS THE JUDGE TO FRAUDULENTLY DIRECT HIS SWORN JURY TO FIND GUILT	21
III. THE JURY INSTRUCTIONS SPIN FAILURE TO FILE INTO THREE CONSPIRACIES	22
IV. SUBROGATION OF INVESTOR CLAIMS IS VOIDABLE FOR UNCLEAN HANDS & TO FAVOR CAMPAIGN CONTRIBUTOR	24
V. THE TRUE NATURE AND CAUSE OF THIS ACTION HAS BEEN SUPPRESSED	27
CONCLUSION	30
This Court has the Non-Discretionary Duty to Vacate these Void Judgments & Mandate and to Release Janet Marcusse Immediately	
ATTACHMENTS	
Mandate - Refused for fraud and lack of due process	

TABLE OF CONTENTS (CONTINUED)

ATTACHMENTS (Continued)

Petition for Rehearing Order - Refused for fraud and lack
of due process

Opinion of 2/14/08 - Refused for fraud and lack of due process

Judgment of 10/31/08 - Refused for fraud and lack of due process

True Bill

APPENDICES

I. Supplementary Appendix - Miscellaneous

II. Supplementary Appendix - Trial Transcript Excerpts

III. Supplementary Appendix - Docket Record "R" 2, Att. A, B & D

This Brief and its Appendices are located at www.ipiw.com and
at www.inmatehope.com

TABLE OF AUTHORITIES CITED

CASES	PAGE
Antoine v. Atlas Turner, Inc., 66 F 3d 105, 108 (6th Cir., 1995)	2
Blakely v. Washington, 542 US 296 (2004)	22
Bloom v. Illinois, 391 US 194 (1968)	21
Chambers v. Nasco, Inc., 501 US 32, 44 (1991)	1
Cheek v. United States, 498 US 192 (1991)	21
Cleveland v. United States, 512 US 12, 25-26 (2000)	22
Colorado v. Connelly, 479 US 157, 167 (1986)	12
Craig v. Hecht, 263 US 255 (1923)	21
Davis v. Alaska, 415 US 208 (1974)	21
Evitts v. Lucey, 469 US 387 (1985)	19
Grayned v. City of Rockford, 408 US 104 (1972)	17
Hazel-Atlas Glass Co. v. Hartford-Empire Co., 332 US 238 (1944)	1

TABLE OF AUTHORITIES (CONTINUED)

CASES	PAGE
Jencks v. United States, 353 US 657, 670-72 (1957)	27
Kenner v. Commissioner, 387 F 2d 689 (7th Cir., 1968) cert. denied, 393 US 841 (1968)	19
New Hampshire v. Maine, 532 US 742, 751 (2001)	15
Orner v. Shalala, 30 F 3d 1307, 1310 (10th Cir., 1994)	2
Roviaro v. United States, 353 US 53 (1957)	30
S.E.C. v. Lauer, 52 F 3d 667, 669 (7th Cir., 1995)	4
Sorrells v. United States, 287 US 435, 457 (1932)	27
United States v. Bass, 404 US 336, 347-349 (1971)	22
United States v. Fallon, 470 F 3d 542, 549 (3rd Cir., 2006)	15
United States v. Jones, 647 F 2d 696 (6th Cir., 1981)	23
United States v. Levin, 973 F 2d 463, 467 (6th Cir., 1992)	27
United States v. Olis, 450 F 3d 583 (5th Cir., 2006)	16
United States v. Parris, 573 F Supp 744, 751 (E.D.N.Y. 2008)	16
United States v. Rosby, 454 F 3d 670 (7th Cir., 2006)	10
United States v. Sinclair, 321 F Supp 1074 (E.D.Mich. 1971)	21
Universal Oil Products Co. v. Root Refining Co., 328 US 575 (1946)	2
Workman v. Bell, 227 F 3d 331, 335 (6th Cir., 2000)	2
 STATUTES/PUBLIC LAWS	
Public Law 89-901	29
Sarbanes-Oxley Act of 2002	11
5 USC § 556	30
5 USC § 601	1, 30
6 USC § 134	29
18 USC § 4	1
18 USC § 401	20-21

TABLE OF AUTHORITIES (CONTINUED)

STATUTES/PUBLIC LAWS	PAGE
18 USC § 981	29
18 USC § 1341	2, 21-22
18 USC § 1956(a)(1)(A)(i)	2, 22-24
18 USC § 3553(a)(6)	16
18 USC § 3626(c)	1
18 USC § 3771	1, 24-27
26 USC § 83(c)	29
26 USC § 731	24
28 USC § 1291	1
28 USC § 1651	1
28 USC § 2072(b)	1, 16, 19-21
28 USC § 2255	21
28 USC § 3206	1
41 USC § 321	30
41 USC § 322	30
CONSTITUTIONAL PROVISIONS	
Article I	All
Article III	All
Article IV	All
Article VI	All
First Amendment	All
Fourth Amendment	All
Fifth Amendment	All
Sixth Amendment	All
Eighth Amendment	All
Thirteenth Amendment	All

TABLE OF AUTHORITIES (CONTINUED)

CONSTITUTIONAL PROVISIONS	PAGE
Fourteenth Amendment	All
OTHER AUTHORITIES	
Federal Rules Criminal Procedure 16(a)	30
Federal Rules Civil Procedure 60(b)	All
Federal Rules Evidence 401	28
Federal Rules Evidence 402	28
Federal Rules Evidence 501	28
Senate Hearing Report: A Gateway for Money Laundering February 5, 2001	26-27
Tax Division Directive No. 99, Update May, 2001	23
U.S. Attorneys Bulletin, July, 2001	26

IN THE
COURT OF APPEALS FOR THE SIXTH CIRCUIT
A CALL FOR THE RECALL OF THE MANDATE

NOW COMES, Janet Marcusse, by right of intervention, in her own right, to CALL for the RECALL of the fraudulently begotten Judgments and Mandate, obtained in the absence of all substantive due process.

JURISDICTION

Jurisdiction is invoked under the First & Fifth Amendments to the Constitution of the United States; 5 USC §601; 18 USC §§ 4, 3626(c), 3771; 28 USC §§ 1291, 1651, 2072(b), 3206; FRCivPr 60(b)(2)(3)(4)(5)(6)&(d); Notice of Appeal November 4, 2005; as based on the following particulars to be reviewed: Criminal Complaint December 5, 2003; True Bills July 29 and October 27, 2004; Jury verdict June 14, 2005; Personal Money Judgment July 11, 2005; Convictions & Judgment October 28, 2005; Rule 60(b) claims (Docket Record "R" R. 307, 309, 545, 546, 551, 563, 590); Approval to file pro se brief August 8, 2006; Confiscation of legal documents by SIS official, George Williams, FCI Tallahassee, August 21, 2006; Denial of Petition for Writ of Mandamus to strike Melvin Houston's brief from record January 17, 2008; Opinion on appeal February 14, 2008; Denial of Petition for Rehearing May 20, 2008; Internal Revenue Service ("IRS") Notice of Audit August 27, 2008; Denial of Petition for Writ of Certiorari October 6, 2008; IRS Examination Report November 7, 2008; Denial of Petition for Rehearing December 15, 2008; Trial transcript box returned by K. Kaefer, Education, FCI Tallahassee, December 29, 2008.

Chambers v. Nasco, Inc., 501 US 32, 44 (1991), has held a court's inherent power allows it to vacate its own judgment upon proof that a fraud has been perpetuated upon the court. See **Hazel-Atlas Glass Co. v. Hartford-Empire Co.**, 332 US 238 (1944); **Universal Oil Products**

Co. v. Root Refining Co., 328 US 575 (1946). This "historical power of equity to set aside fraudulently begotten judgments", is necessary to the integrity of the courts, for "tampering with the administration of justice in [this] matter...involves far more than an injury to a single litigant. It is a wrong against the institution set up to protect and safeguard the public." *Hazel-Atlas*, 322 US at 246. Moreover, a court has the power to conduct an independent investigation to determine whether it has been the victim of fraud. *Universal*, 326 US at 480.

Where a "judgment may have been reached with the assistance of a prosecutor who may not have had the intention of finding the true perpetrator", the "judgment is inherently unreliable". *Workman v. Bell*, 227 F 3d 331, 335 (6th Cir., 2000). "A judgment is void under 60(b) (4) 'if the court that rendered it...acted in a manner inconsistent with due process of law.'" *Antoine v. Atlas Turner, Inc.*, 66 F 3d 105, 108 (6th Cir., 1995). When rule providing relief from void judgments is applicable, relief is not discretionary matter, but mandatory. *Id*; *Orner v. Shalala*, 30 F 3d 1307, 1310 (10th Cir., 1994). It also is not subject to any time limitation. *Id*.

SUMMARY OF THE CASE

On August 2, 2001, Janet Marcusse, Donald Buffin, and Jeff Visser went to the Hudsonville Police Dept. to file a criminal complaint against associates Diane and Wesley Boss for embezzling \$1.5 million in investor funds (R. 309-3). Det. Crumb responds by contacting the IRS (Transcript Record "TR" 1486).

On December 5, 2003, FBI Agent Samuel Moore files an unsigned Criminal Complaint against Marcusse alleging a ponzi scheme based on prime bank fraud in violation of 18 USC §1341, mail fraud, and 18 USC §1956(a)(1)(A)(i), money laundering (R. 2).

On July 29, 2004, AUSA Gezon signs his True Bill against 8 defendants, including the Bosses, charging 39 counts of mail fraud, and one count of conspiracy to commit mail fraud (Count 40) (R. 24). On October 27, a superseding indictment adds one count of conspiracy to commit money laundering (Count 41), one count of conspiracy to defraud the IRS (Count 42), 40 counts of money laundering, and a civil money judgment for \$10 million (Count 83) (R. 108).

On May 16, 2005, AUSA Schipper attests in his opening statement, "Ponzi scheme. You've heard the word already, Ponzi scheme. That's what this case is about" (TR 41). He alleges the accused made representations the money was invested when instead it was "spent". "It wasn't invested" (TR 50). Marcusse is denied the use of any admitted "bulk" bank records for her defense (TR 8, 13-15, 2049, 3348, 3679).

On June 16, in closing arguments, AUSA Gezon is still defining the "unlawful activity" for money laundering as a "Ponzi scheme" (TR 3570). In response, Kaczor demonstrates where the prosecution's evidence and witnesses showed there were at least \$7.3 million in investments made (TR 2054, 3591, 3599, 3600, 3605, 3614). Marcusse had testified to \$12.2 million in legitimate investments made in good faith reliance (TR 3058, 3120, 3127, 3139).

On June 14, in his rebuttal closing arguments, AUSA Gezon withdraws his ponzi scheme charge from jury deliberations stating, "you will not see the words Ponzi scheme in any of the elements that you have to consider in these crimes" (TR 3713). In his jury instructions, Judge Bell ties the alleged failure to "report significant amounts of gross income" to the money laundering counts and the three conspiracies (TR 3771). His jury, sworn by oath to obey him, whether they agreed with his instructions or not, render guilty verdicts on

all counts. Judge Bell convicts and sentences the accused on a ponzi scheme up to 25 years, all a category I criminal history. He retains jurisdiction of his "personal" money judgment (R. 444, 453).

On April 25, 2007, AUSA Schipper attests in his appellee brief, "This case involves a 'ponzi scheme'". He substantially misrepresents the facts by stating, "[t]he defendant's main claim on appeal, as it was during the trial, is that they did not intend to defraud the victims of this ponzi scheme. The evidence, however, was overwhelming that each defendant did intend to defraud the victims" (App. 8a). A Petition for Writ of Mandamus to strike appellant counsel, Melvin Houston's brief, for substantially misrepresenting the facts and omitting vital issues is denied in Case No. 08-1003 on January 17, 2008, after Judge Bell defaults by not responding as invited by this Court.

On February 14, 2008, in deference to AUSA Schipper's fraudulent representations and Houston's feigned incompetence, the Opinion affirms the convictions and sentences, finding a "classic Ponzi scheme", because "[t]he evidence showed that neither Marcusse nor any of the other defendants ever actually invested the victims' money" (p. 17). This Judgment **cannot** stand, as it rests on the collusive fraud of these attorneys where, in representing the manufactured evidence of prime bank fraud, they ignored the **admitted** "bulk" bank record evidence that proves \$10 million in investments were in fact made.

I. FUNDAMENTAL FRAUDS COMMITTED IN COLLUSION BY OFFICERS OF THE COURT

A. THE PRIME BANK FRAUD CHARGE IS VOIDABLE FOR FRAUD

"Prime Bank Instruments" are "a nonexistent high-yield security" per *S.E.C. v. Lauer*, 52 F 3d 667, 669 (7th Cir., 1995). Leonard Zawistowski, of the Federal Reserve, defined them as a "debt instrument" and admitted "prime bank debentures" are "not stocks" (TR 804-805).

AUSA's Gezon and Schipper, however, pluck a prime bank fraud AUSA Reed Pixler, Arizona, admits was committed against the accused, out of an earlier timeframe (5/99) than the 39 mail fraud counts (10/21/99 to 3/23/01), and deceitfully merge it with a later unrelated stock investment (10/99), to bring criminal charges for prime bank fraud (TR 42), which should have been immune from criminal prosecution and that substantially misconstrue the underlying bank records.

Linguistic trickery and evidence tampering were used to commit this fraud on the Court. Alternatively, a prime bank instrument was called a secret investment opportunity, a high yield investment, a ponzi scheme, and a specialized high return investment. The prime bank charge was used to allege misrepresentations were made to investors, except the offering described in the indictment (R. 108, Items 11-13), and at trial, was created through evidence tampering to fabricate a product never offered to investors, making it a simple matter to make up "misrepresentations" about it. By the same token, however, if it can be established this investment product was created after the fact through evidence tampering and deliberate spin, it would then be impossible to establish the accused had any "intent" to defraud investors over this "investment", because they never saw it before trial, thereby causing any resulting convictions to be voidable for fraud.

This fraudulent scheme was committed by AUSA's Gezon and Schipper submitting Gov. Exh. "GX" 1, a prime bank brochure, as evidence, and then combining GX-1 with the flyer, the "Bahamas CD Program", as GX-2, which was removed from an October, 1999, investor newsletter, GX-33, before submitting it as evidence. This allowed these federal attorneys to falsely assert this stock program, GX-2, was instead a prime bank fraud. GX-33 mentioned various attachments, none of which were

submitted into evidence with it. GX-33 discussed a "stock trading program", which "is not considered to be a standard bank debenture program", letting investors know the prime bank brochure, GX-1, was no longer valid (App. 44a). GX-33 advised "we cannot remove principal funds" regarding liquidity, and indicated the program "performs on movements in the market, either up or down". The C.D. was used as "collateral" for margined stock purchases (TR 2072-73, 3064). It was held at Suisse Security Bank & Turst ("SSBT"), named in the June, 1999, newsletter, GX-31, which also had its attachments removed, one of which contained wiring instructions to it. In closing arguments, Kaczor admits he knew the attachments were removed from the newsletters, yet he does not object to their entry as evidence (TR 3598).

In addition, the characteristics of GX-1 and GX-2 were then merged into a single "high yield" offering. As the result, when the accused made any investment which did not "match" both GX-1 and GX-2, a contradiction in terms (debt vs. equity), "investigator" IRS Agent James Flink testified he did not consider or include it in his "summary" exhibits as an "investment" (TR 2052). Using Flink's irrational and arbitrary definition of an investment, AUSA's Gezon and Schipper were able to disregard all of the investments made, thereby demonstrating their allegations had been designed to ensure such an "irrelevancy". This fraudulent presumption, when taken silent notice of by Judge Bell before the first witness was even sworn, served to eliminate from "relevant" or admissible evidence, all witnesses or evidence that the accused planned to submit to prove they had been defrauded by others. It also denied any presumption of innocence, as such evidence bears heavily on "intent" for purposes of guilt determination, and on who "directly caused" the investors' losses for purposes of

sentencing and restitution, causing the trial to have been inherently unjust and a fraud upon this Court.

When a common word, such as "investment" or "security", is irrationally defined, limited to being only that which is "nonexistent", and further restricted to something fabricated five years after the fact so as to ensure it is the victims of fraud that are convicted, the prosecutor never had any intention of charging the true perpetrators, and the resulting judgment is "inherently unreliable".

This evidence-tampering scam can be proven by reviewing Agent Moore's 12/5/03 Criminal Complaint, Affidavit Attachment D, which contains the 10/99 newsletter (GX-33), with all of its attachments except for the Bahamas program (GX-2), which was removed and made Attachment A (R. 2). GX-33 was submitted at trial with no attachments, therefore, this alone proves it was tampered with before submission. Attachment B to Moore's Affidavit is the prime bank brochure that was made GX-1 at trial, and contains a different program than the Bahamas program. Attachment B's program is a prime bank program offering 10% monthly interest (R. 2; App. 45a). At trial, Attachment B is submitted as GX-1, this 10% program is removed, and page numbers are added to GX-1. Comparing GX-1's page numbers (TR 102, App. 43a), to Attachment B proves the 10% program was deliberately removed for the trial. Marcusse was not permitted to cross examine the first 18 witnesses (17 investors & AUSA Pixler) when this evidence was being entered.

AUSA Schipper's appellee brief admits this 10% program was prior to 1999 (App. 13a). In essence, here he admits that GX-1, which was attached to it, was only used prior to 1999 as well, making GX-1 irrelevant to all 39 mail fraud counts. Agent Moore, a former securities broker (R. 2), admits he was aware of no prime bank program

that would have stocks in it (TR 1675). At the 7/28/04 detention hearing, almost a year before trial, Marcusse had objected to GX-1 as irrelevant (R. 178, TR 19). On 7/9/03, Donald Buffin files litigation concerning the 10/99 newsletter, GX-33, with the SSBT Bahamas program flyer attached to it (App. 46-53a). Buffin also refers to this program as "stock trading" (Item 34, App. 46a).

In his appellee brief, AUSA Schipper persists with his evidence tampering scam by misrepresenting the Bahamas stock program as a "prime bank" program (App. 19a). Schipper further misrepresents the testimony of investors, such as William Sharpe and John Beemer, to tie GX-1 to GX-2 (App. 12a). In reality, Sharpe testified he entered the Bahamas program in early 2000, and that he did not see or receive GX-1 (TR 460-62, 481). Beemer testified the Bahamas program "had to do with the stock market" (TR 349).

Schipper uses Houston to misrepresent the Bahamas program by making it appear to be a prime bank program. Houston states, "Defendant Marcusse testified that one such investment, the Bahamas CD Program, was expected to return \$25 million on a \$350,000 investment", citing p. 3214 (App. 26a). Page 3214 does not state this, indeed, on the page before it, Marcusse specifically denies it (TR 3213-14). Houston also misrepresents the Bahamas program as being a different program from SSBT, which also was not true (App. 26a). Marcusse's testimony clearly stated the Bahamas CD Program, SSBT, and stock trading were all the same program (TR 3043-45, 3053, 3058, 3064-65). She also testified GX-1 was the 10% program (TR 3039). Thus, the admitted evidence establishes that GX-1 and its 10% program were irrelevant to all of the 39 mail fraud and 40 money laundering counts.

On 7/24/06, Marcusse filed a Motion for Removal of Appellant

Counsel, objecting to Houston's misrepresentations as he appeared to be acting in collusion to sabotage her appeal. On 8/21/06, after Marcusse had been granted permission on 8/8/06 to file a supplemental pro se brief, FCI Tallahassee SIS official, George Williams, confiscates her trial transcript. A motion to request the return of her papers was ignored. It is not until the trial transcript is returned on 12/29/08 (App. 54a), she discovers the proof the evidence tampering was deliberate (TR 102; App. 43-45a; R. 2; Supp. Appdx. III).

This prime bank charge is also a violation of an immunity contract made with the federal government in GX-380 over a small diversification of \$400,000 into Valley Boyz LLC of Appleton, Wisconsin, and transfer to the Isle of Mann. According to AUSA Pixler, the funds were seized by the government 5/15/99, and signatory, George Besser, was deemed the "innocent victim" of this "prime bank instrument fraud" in GX-380 (TR 763-64, 770, 773-74). Flink deceitfully ties the Bahamas program to Valley Boyz by swearing a \$490,000 transfer made on 7/1/99, out of \$4,226,000 wired for the SSBT program and listed on her "summary" exhibit, Def. Exh. M-AA (App. 55a), was instead "money that was sent to the Valley Boyz Investment Club" (TR 3377). Because Marcusse was not permitted to attach actual bank records from the admitted "bulk" bank records (App. 55-69 a), Flink was able to fraudulently discredit her exhibit and credibility.

In any event, an uncontested fact at trial, confirmed by the evidence, is that investors signed contracts (GX-63c; Def. Exh. M-C (2), App. 87-89 a). AUSA Schipper neglects to mention it other than to indicate "[p]rospective investors" signed a non-disclosure agreement (App. 12a). All investors signed contracts, which agreed to a "force majeure" clause under Item 7, did "not guarantee any amount of

monies under Item 8, and assigned "full authority in the collection and redirection of funds" under Item 9's "Decision-Making" clause (TR 3592-95). Thus, even if one were to accord Schipper the benefit of the doubt, the contracts clearly grant the investors' permission to invest in non-prime bank investments at the discretion of the accused. Houston misrepresents these investor contracts as the receipts given to investors (App. 27a). These receipts contained a "best efforts" disclaimer (TR 3595). He neglects to mention the receipts prove non-prime bank investments were being made. Receipts from 1998 indicate "High Yield Investment Program", whereas on later receipts the words "High Yield" have been removed, signifying the change in the type of investments (GX-64c, GX-75n, App. 90-91a). The magistrate refused to give Marcusse copies of any trial exhibits (R. 660), making it difficult to find this evidence of deliberate fraud by the attorneys.

"For purposes of a securities fraud claim, if the issuer of securities furnishes an investor with the truth in writing, the investor cannot claim to have been defrauded by an oral misrepresentation; whether the writing actually conveys the truth or just calls the oral statement into question, the investor is on notice". See **United States v. Rosby**, 454 F 3d 670 (7th Cir., 2006).

The motions for judgment of acquittal rested on the investor contracts and that investments had been made (TR 3487-89), but were improperly denied based on the investors having been "promised high-yield investments" (R. 491, p. 4), or in other words, "prime bank" investments, a finding based on evidence tampering and fraud.

In his appellee brief, AUSA Schipper misrepresents these diverse programs as just one program where he states, "From about 1998 to 2002, the defendants promoted and sold a fraudulent high yield

investment program" (App.11a). He also misrepresents it as including 2002 to justify the ex post facto violation of far harsher guidelines past 11/1/01 and Sarbanes-Oxley Act of 2002, as does AUSA Gezon on Count 82 where he "misstates" 11/02/00 as 11/02/01 (R. 108, TR 3482).

Once this fundamental fraud is exposed, it sheds a new light on Schipper's brief where he admits "approximately \$7.3 million was dissipated by the defendants in transfer and payments which had no connection to the promises made to investors" (App. 11a). Here, in so many words, Schipper admits this \$7.3 million was invested, just not in his prime bank product fabricated to win at any cost.

B. THE PONZI SCHEME CHARGE IS VOIDABLE FOR FRAUD

According to the United States Attorney's Bulletin, January, 2003, in order to "maximize restitution", a "scheme provision" is necessary to find as the "offense of conviction". Hence, once the accused were targeted, in order to invent a scheme, misrepresenting and tampering with the evidence became expedient. Vital to the maintenance of a ponzi scheme charge would be to prevent the jury from viewing any actual bank records that would support investments made.

Thus, the first morning of trial, Judge Bell denies Marcusse her intended theory of defense, "bank records show the money was invested with other individuals". He admits it "may be the case" that "other people deceived you", and even that "the government might concede that if you ask them" (TR 8). She could "look" at and "review" those bank records admitted as "bulk" exhibits represented to underlie the federal actors' "summary" exhibits, but he refused to respond to whether she could "use" them (TR 13-15). When Marcusse objected to such overt bias, Judge Bell threatened to remove her from the trial, conditioning her right to proceed pro se on changing her defense

theory, denying her the right to object in front of the jury, cross examine witnesses, or "speak" for herself, in favor of Kaczor, who he was "confident" would "be on the same page" (TR 18, 20, 26-27, 31, 75).

This was a complete reversal from the final pretrial hearing held just 11 days before where Judge Bell stated the accused need not submit their trial exhibits in advance (R. 651, TR 29-30). While it is presumptively biased for this judge to have abruptly reversed in such a manner, suggesting improper ex parte meetings, it is the bias of a criminal nature to deny the defense the use of the **same admitted bank record evidence** the federal actors are materially misrepresenting in their "summary" exhibits for purposes of unlawful imprisonment.

Colorado v. Connelly, 479 US 157, 167 (1986), has held, "The aim of the requirement for due process is not to exclude presumptively false evidence, but to prevent fundamental unfairness in the use of evidence, whether true or false."

In their efforts to suppress bank records from the trial that could establish investments, lawyer Gurmail Sidhu's home and business were raided under falsified drug trafficking search warrants, confiscating the bank and business records of the accused (App. 84-85a). Sidhu would not respond to requests for records or to be a witness, indicating abuse of National Security Letters. Associate Tom Wilkinson was not charged, his bank records were likewise confiscated to suppress evidence of investments he directly made, and he was threatened with prosecution if he testified for the defense (TR 2872-79).

Therefore, collusion amongst all of these officers of the court, including the judge, allowed tampered-with and falsified evidence to be entered without objection and reliable evidence to be suppressed. Kaczor withheld virtually all of the "reams" of evidence Marcusse

intended to prove there was no ponzi scheme, permitting her only 9 ineffectual exhibits to support her testimony on \$12.2 million of investments made (TR 3049, 3897). She refuses to close the evidence, filing "certified" evidence, including some admitted bank records (App. 56-74a), which Judge Bell misrepresents for the record and denies (TR 3348, 3678-82). Schipper lies about it to this Court by claiming, "The records of Access were never located" (App. 20 a; TR 3406). Houston is collusively incompetent by ignoring the issue entirely.

Judge Bell also held that "alleged investments" were "irrelevant" to the charges, apparently referring to any that were not of a prime bank nature, causing Marcusse to be denied 20 defense witnesses (R. 401, App. 92-93a), including all direct witnesses to investments. Houston substantially misconstrues this issue, claiming she was denied only 3 witnesses (App. 35-36a). Even AUSA Schipper's brief admits Marcusse was denied 16 witnesses (App. 9 a), however, as late as oral arguments, Houston continues to argue only the 3 witnesses, including even one that testified. Such incompetence made this vital issue appear frivolous, as no doubt planned, acted to exhaust the issue on appeal, and is a big reason she filed a Petition for Writ of Mandamus to strike his brief and arguments, as the apparent need to create such a deceitful record, just as was done at trial, likewise suggested her pro se brief was not going to be included for consideration.

Thus, Houston's collusion on appeal prevented Agent Flink's one-page "summary" exhibits claiming \$12.1 million had been "spent" by the accused "on themselves and others" from being exposed as having no more substance than references to the admitted "bulk" bank record exhibits (TR 2054; App. 94-98a), with "investments" irrationally limited to only "prime bank instruments". Such deceit constitutes

the entire substance behind Schipper's "overwhelming evidence" upon which this Court's confidence relies.

At trial, Flink's irrational definition of investments is used to deny stock investments are investments (TR 2049, 2052-54, 2058, 2064-66, 2070-73). He denies wire transfers made to SSBT actually went there, claiming the documents stated "to the Bahamas" only (TR 3420-24). He was so contrary to the honest evidence, he even initially refused to admit a human being was needed as a signatory on an account to make transactions (TR 2106-07). Flink and IRS Agent Steve Corcoran conceded not all of the accounts were included in their investigation and exhibits (TR 2106, 2292-93), proving evidence was suppressed. On appeal, Schipper confirms this fact (App. 16a).

In spite of these efforts, the ponzi scheme charge was so lacking in merit that, in closing arguments, Kaczor is able to review the prosecution's evidence and testimony to demonstrate they admitted to at least \$7.3 million in legitimate investments made, thereby proving there could not have been a ponzi scheme.

In further confirmation, in his rebuttal closing arguments, AUSA Gezon abruptly abandons his ponzi scheme charge stating:

"You will not be asked to decide in any of the elements whether Ms. Marcusse committed a Ponzi scheme. I suggest to you that that's a term of art that talks about a generic area of cases that are typically called Ponzi schemes, but that's not what we're here about today".

(TR 3714). Rather than have the ethics to dismiss the charges, he switches to another element of his mail fraud charge, using GX-1 to allege "half-truths" or "misrepresentations" were made to obtain money for investments (TR 3714-15). Gezon misrepresents the "bulk" bank record evidence, claiming no bank records supported Marcusse's "summary" exhibit of investments made for the Bahamas program (TR

3721). Under any definition, this is a bald-faced lie, meant to maliciously torpedo Marcusse's credibility (GX-208, GX-210, App. 55-65, 94-98a). He tells the jury to find the accused guilty for "not paying their taxes" (TR 3744), a charge also based on his "evidence" scam.

Therefore, Schipper lies to this Court when he attests the jury found Marcusse guilty of "operating a ponzi scheme" (App.22a). Judge Bell found this "fact" at sentencing by reaching for his prime bank definition, i.e., "misrepresentations" under the "guise of specialized high return investments" (R. 639, TR 45), for the "crime" of not investing in GX-1's prime bank instruments, an oxymoron. He uses this fraud to commit another fraud of applying sentences as if it were a "classic" ponzi scheme instead. In so doing, he rejects the findings of the jury, he rejects the preponderance of reliable evidence such as the admitted bank records, he protects the true perpetrators of the crime, and he even admits it. Incredibly, he expresses his "perverse pleasure" the accused were "basically scammed" by others, a fact he would not permit the jury or investors to "find", but then he maliciously sentences 67-year-old George Besser to 20 years based on a ponzi scheme (R. 540, TR 31-32). Under such criminal conduct, both Judge Bell and AUSA Schipper violate judicial estoppel, which forbids the use of intentional self-contradiction as a means of obtaining unfair advantage. See *New Hampshire v. Maine*, 532 US 742, 751 (2001).

Investor loss calculations added to the sentencing guidelines, based on their fraudulently salvaged ponzi scheme charge, increased the offense level by 26 levels (PSR, ¶203, ¶204), increasing the guidelines from 33-41 months (Level 20) to life (Level 46). Such treatment conflicts with every circuit court. *United States v. Fallon*, 470 F 3d 542, 549 (3rd Cir., 2006), has held, "we are unaware

of any cases holding that the definition of 'victim' for scheme-based crimes diminishes the requirement that losses be 'directly' caused by the defendant's action". See also 18 U.S.C. §3553(a)(6).

These huge disparities were both local to the same judge (App. 99-100a), and nationwide. For the Bosses, a 2000 guidelines manual was used (R. 687, p. 9). A 2005 manual was otherwise used in violation of ex post facto prohibitions, adding 16 years to the sentence forced on Marcusse (App. 101-103a). When the falsified loss levels are also removed, the guidelines reduce to a Level 26 or 10-16 months from the current 300 month sentence for a 24 year disparity from those applied elsewhere, causing the sentence to be unreasonable as a matter of law. In *United States v. Parris*, 573 F Supp 744, 751 (E.D.N.Y. 2008), the judge and government lawyers worked together to avoid "the utter travesty of justice" resulting from "the harm that guideline calculations can visit on human beings if not cabined by common sense". It listed 36 defendants, including 13 that went to trial, with losses of up to \$14 billion, which with the exception of Bernie Ebbers, were all sentenced to far less time (App. 104-107a), the difference being a competent judge, sane government attorneys (App. 148a), and access to a meaningful review in a fair and public appeal. See *United States v. Ollis*, 450 F 3d 583 (5th Cir., 2006); 28 U.S.C. §2072(b).

AUSA Schipper knew these sentences were unlawful. He boasts to the media the sentences were "really off the charts. There's nothing even close" (App. 108a). To this Court, he attests the judge "fashioned a very substantial downward departure from the sentence range, to reach a reasonable sentence" (App. 7 a). Houston is collusively incompetent, raising only "demeanor", a normal reaction to injustice rather than properly arguing against its author. This Court condones

such lawlessness, burying its collusion in a nonpublished Opinion.

The doctrine of "void for vagueness" also applies. It exists to (1) avoid punishing people for behavior they could not have known was illegal; (2) avoid subjective enforcement of the laws based on arbitrary or discriminatory interpretations of law by government officers; and (3) avoid any chilling effect on the exercise of First Amendment freedoms. See *Grayned v. City of Rockford*, 408 US 104 (1972).

The varying, obscure, and even irrational definitions for "investments" and "ponzi scheme" misled the accused, the jury, defense attorneys (TR 3584), investor witnesses, and this Court.

The Sixth Amendment commands the accused be advised of the "nature" and "cause" of an action, yet the first morning of trial Judge Bell tells Marcusse she did "not understand what this trial is about" (TR 8). He was correct in that she was not made privy to the manner in which the fairness requirements of Fed. R. Evid. 106 would be evaded by his own refusal to permit her to make objections to evidence, cross examine, or submit evidence, thereby aiding his federal actors in constructing a false record to support their "charges". Such tampering for the predetermined judgment of "guilty" renders the verdicts void. It also causes the Opinion of this Court to be void.

C. THE FAILURE TO FILE CHARGE IS VOIDABLE FOR FRAUD

To manufacture motive at trial, Agent Flink uses his evidence-tampering scam, along with the Boss embezzlement of \$1.5 million, to falsely claim unreported income allegations of over \$2 million against the other accused, splitting the Boss's take to suit (App. 109a), "Mr. Besser got a million", "Diane Boss got \$485,000", "Mr. Wes Boss got 826", "Mr. Flynn got 730", "Ms. Marcusse got 940" (TR 1736).

Of the "940" falsely attributed to Marcusse, \$600,000 was for

deposits into Worldwide "E" Capital, LLC, a company Flink deceitfully claimed was hers (TR 2095-96). Per the Nevada Secretary of State, it has always been owned by Winfield Moon (R. 551, Rule 60(b) fraud claim; App. 111-113a). Moon was not permitted by Kaczor to appear even though \$1,861,330 was invested with him (TR 2221-22; Def. Exh. M-U). Tax law was misrepresented where IRS Agent "expert" Darline Goeman swore the funds were taxable merely because Marcusse was a signatory (TR 2378-80). If that were true, bank records from GX-219 show deposits of \$1,538,000, which also should have been taxable to her (App. 110-121a). Flink admits this \$600,000 was added to her after he testified at the first grand jury (TR 2098-99), a grand jury which did not vote to indict (R. 6). Not being able to use admitted bank record documents blocked Marcusse's defense that pass-through funds going into investments are not taxable (TR 3094).

AUSA Schipper deceives this Court where he claims, "Marcusse received \$943,370 in checks payable to her" (App. 17 a). Flink produces no checks payable to her at trial, instead relying on false bald assertions in "summary" exhibit GX-95. While admitting some of these funds were "transferred to accounts she controlled", Schipper withholds the material fact these "transfers" were for funds going into investments. Houston ignores Marcusse's testimony regarding investments made, instead colluding with Schipper to misrepresent "she considered all amounts received to be gifts" (App. 26a).

Someone is questioning the validity of the tax charges, as on 8/27/08, after the Petition for Writ of Certiorari was docketed, the IRS notified Marcusse they intended to audit her for the same years as those charged at trial (App. 122-123a). The IRS already had a \$310,722 judgment (R. 558), which in other cases, causes them to pro-

ceed to collection. Per *Kenner v. Commissioner*, 387 F 2d 689 (7th Cir., 1968), cert. denied, 393 US 841 (1968), generally only fraud causes an IRS case to be reopened after a decision becomes final.

D. THE COURT-APPOINTED APPELLANT ATTORNEY SABOTAGED THE APPEAL

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

Within ten days after Houston filed his proof brief on 6/22/06, Marcusse filed a "Notice of Exception Taken to Appellant Proof Brief" for its "multiple material misrepresentations" and obvious "conflict of interest", indicating Houston no longer had her consent to "represent her in any way, shape, or form" (App. 29-39a). The filing is withheld from this Court's docket (App. 40a).

Marcusse then filed a motion to have Houston removed for cause on 7/24/06. She was instead approved to file a pro se supplemental brief on 8/8/06. After Houston persisted in filing the same outrageously deceitful brief as his final brief, deliberate conduct to persist in sabotaging the appeal process, Marcusse filed a Petition for Writ of Mandamus to strike his brief and oral arguments from the record, causing Case No. 08-1003 to be opened. Judge Bell was asked to respond, but did not, however, the petition was denied on 1/17/08. According to 52 Am Jur 2d, Mandamus, ¶424, "A failure to file an answer in a mandamus proceeding admits the truth of the allegations made by the petitioner." Her petition should have been granted.

Motions filed by Marcusse for an oversized brief were ignored, whereas a similar motion by Schipper was granted. A comparison of issues submitted in her pro se brief with those actually named and addressed in the Opinion, those of Houston's only (App. 1-4, 25a).

demonstrates this Court used his collusive fraud to evade addressing her issues, including those of structural defects requiring reversal.

The accused were entitled to a **complete review**, a response on **all issues**, and **equitable treatment** under the law by a constitutional Article III judge, not a clerk. Instead, Houston was used to deny an appeal through a procedural sleight of hand and forced on Marcusse through a form of legal rape (App. 41-42a). Where judges collude to ignore a pro se brief granted approval for filing on due process concerns, such biased conduct constitutes judicial fraud, a structural defect (App. 124a), requiring the Recall of the Mandate.

Further, because Marcusse's issues bear on a claim of actual innocence, a miscarriage of justice will occur absent a meaningful review on appeal in light of a record that establishes Judge Bell lacks the ethical competency to be near this case. There is a substantial difference between making bad decisions vs. the fraud of misrepresenting bank record and other evidence, favoritism, and ex parte meetings, such as with the jury (TR 1763, 2035), in which Judge Bell engaged. A "contempt" charge was invented by falsifying proper "service" (R. 307, 309, Rule 60(b) fraud claim), and used as the means for unlawful pretrial detention to tamper with the defense, to infer guilt, condone physical abuse, and assert bogus profiling. His concept of a "trial" was to set whatever arbitrary "rules" were necessary to represent the fiction as factual for character assassination.

After his Kangaroo Court achieved the desired result, Marcusse's legal papers were confiscated to prevent any specific written objections to the PSR (R. 494, 509). Based on these criminal processes, a "ponzi scheme" has been affirmed by this Court as the "law" of the case, allowing for this extrajudicial slander and killing to "suspend"

or deny relief in any motion under §2255, however, neither Judge Bell nor his federal actors have ever responded to Marcusse's objections at sentencing or to her Rule 60(b) fraud claims. As the result, they have conceded these claims and defaulted, causing relief to be due.

We are a country of laws and not of men. **United States v. Sinclair**, 321 F Supp 1074, (E.D.Mich. 1971). Abuse of 18 USC §401 is only reviewable on appeal and not be habeas corpus. **Craig v. Hecht**, 263 US 255 (1923); **Bloom v. Illinois**, 391 US 194 (1968).

II. THE DUPLICITY IN THE CHARGING DOCUMENT IS VOIDABLE FOR FRAUD

Every count in the indictment was embedded with a secondary tax offense, apparently through the incorporation of the mail fraud counts (R. 108). Count 42, Conspiracy against the IRS, should have contained within it all of the alleged tax offenses. Instead, this duplicity allowed Judge Bell to usurp the function of the jury.

There was no dispute the Bosses did not pay all taxes due or handle some tax issues correctly. The investor newsletters showed Marcusse did not condone their tax representations (GX-50 regarding GX-40; TR 2077). Judge Bell, however, excused the jury to threaten her that if she did not cease questioning flink about their content, she could not cross examine (TR 2085-89). This violated **Davis v. Alaska**, 415 US 308 (1974), and **Cheek v. United States**, 498 US 192 (1991). Judge Bell also denied a pretrial motion to dismiss the charges based on duplicity (R. 312, p. 2; R. 325, p. 4).

Once the ponzi scheme charge was withdrawn, the mail fraud and money laundering counts should have been dismissed. 18 USC §1341, which includes the two phrases identifying the proscribed scheme in the disjunctive, (1) "any scheme or artifice to defraud", or (2) "any scheme or artifice...for obtaining money or property by means of false

...representations", does not define two independent offenses. **Cleveland v. United States**, 512 US 12, 25-26 (2000). "Every criminal defendant has the right to insist the prosecutor prove to the jury all facts legally necessary to the punishment". **Blakely v. Washington**, 542 US 296 (2004). In general, "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity". **United States v. Bass**, 404 US 336, 347-349 (1971).

III. JURY INSTRUCTIONS SPIN FAILURE TO FILE INTO THREE CONSPIRACIES

Judge Bell's "altered" jury instructions are so vague he never defines his "crime" other than it could be any one overt act described in Count 40 (Conspiracy to commit mail fraud) and committed by two or more "members" of the "conspiracy" (TR 3767-69), which included the Bosses who pled guilty during the trial. Count 40 included Wesley Boss obtaining "commissions" from investor funds via checks written by his wife, Diane (R. 24). Marcusse filed a pretrial motion to sever (R. 144), the only response being a competency exam order for her (R. 150). Thus, the accused were collusively joined to the Bosses to manufacture a "conspiracy" and ensure "guilt".

Judge Bell instructs the jury that if the government proves an agreement to commit just one of the three conspiracies, including against the IRS, it was sufficient to find the accused guilty of all three conspiracies (TR 3773-78). The money laundering counts (43-57) are combined with the IRS count (42) (TR 3762). He gets specific only in regards to his failure to file charges (TR 3770-73). The money laundering counts of 43-57 are distribution checks to investors (R. 108). Tax offenses are not cognizable under the statute charged, 18 USC §1956(a)(1)(A)(i) (R. 108). Twelve of the counts use the same checks as those used in the mail fraud counts (R. 108).

Thus, Judge Bell's instructions were a fraudulent constructive amendment, which is per se prejudicial in the Sixth Circuit, particularly so when his intent appears to have been to convert one-year statutory maximum misdemeanor charges to five and twenty-year felony charges and then stack them for sentencing. See *United States v. Jones*, 647 F 2d 696 (6th Cir., 1981). See also App. 155a.

It is here that Kaczor and Dunn are used to collusively aid Judge Bell. At the jury instruction hearing, defense attorneys object over failure to file, arguing the charge was not made in the indictment, however, AUSA Gezon argues it was the "nature" of the conspiracy (TR 3455). The gross income instruction changes requested, such as "loans, gifts, or monies received to be transferred at another's direction" be excluded from income, are denied by Judge Bell's reasoning, "there would be no criminal prosecution of them because it wouldn't be income" (App. 3457, 3465). In their closing arguments, Kaczor and Dunn both stipulate to guilt on failure to file while claiming their clients were not charged with it (TR 3589, 3642-43), thereby contradicting Marcusse's testimony (TR 2120, 3094, 3209), and deceiving their "clients" who were not allowed to attend the jury instruction hearing to learn otherwise. While Kaczor reduces the amount by \$650,000, he misconstrues the balance as "gifts" (TR 3607). Houston is so collusively dishonest, he indicates "she considered all amounts received to be gifts" (App. 26a).

AUSA Schipper exposes to this Court his true agenda, where for the first time "tax shelter fraud" is raised (App. 22 a). This was an abuse of charging authority. Tax Division Directive No. 99, Updated May, 2001, cautions against using mail fraud to prosecute an "abusive tax shelter". It also clarifies, "Tax offenses are not

predicate acts of RICO or specified unlawful activities for money laundering offenses".

Distributions paid investors were deemed a return of principal up to adjusted basis under 26 USC §731 in newsletter GX-44. This is misconstrued throughout the trial and to this Court as a "tax-free church" scheme (App. 11a). Marcusse had intended to build an alternative health clinic in Branson West through a tax-exempt church (TR 3118). The witness testimony and evidence that her policy on retirement funds allowed only for Mid-Ohio Securities, a qualified IRA custodian, or an investor's corporate profit sharing plan (App. 94a; TR 227, 378, 1440-43, 1447, 1455, 2091-92, 2490), was misrepresented by AUSA Schipper on appeal as the accused claiming to be a "legitimate IRA and 401k roll-over institution" (App. 14a).

IV. SUBROGATION OF INVESTOR CLAIMS VOID WHEN BASED ON UNCLEAN HANDS

It cannot be reasonably argued the case was brought on behalf of investor victims when no one that ultimately obtained investor funds for investments was charged or made to pay restitution, investors were not even invited to the trial, and those investors that wanted to testify for the defense were threatened (App. 125-126a).

One investment made, preferred stock in MLC Development, had as its Chief Financial Officer, Robert W. Plaster. He had strong ties to John Ashcroft and was notorious for expecting value for his campaign contributions (R. 345; TR 2776, 3121, App. 156-183 a). In 2001, attorney Sidhu transacted a \$1.2 million transfer to MLC, from which Plaster admitted he kept \$1 million (TR 2056). Without a property description, witnesses, or filing at the Registrar of Deeds, his claim the funds were a "non-refundable deposit" on \$45 million of real estate (GX-160; TR 2243-44), is not credible, particularly when none of the

accused were party to GX-160. A wire transfer of \$25.5 million due investors for Crawford Ltd. "disappears" after a Power of Attorney for it is given to MLC (R. 345; TR 3156). It was later discovered Plaster had been repeatedly indicted for criminal conduct (App. 184-187a). Ponzi scheme charges against Marcusse served to protect Plaster from even civil liability to the investors (TR 3111). These favors, including even physical abuse, dispensed by judicial abuse of authority to protect such a scumbag constitute unclean hands (App. 126, 130-136a).

SSBT was twice endorsed in writing by FBI Agent Gerard Forrester (R. 563-6, Rule 60(b) fraud claim). The day after SSBT's license is revoked on 3/5/01 and all funds frozen, the IRS announces their "raids" associated with offshore "Tax-Evasion" (R. 563-9, 18). Forrester is seen attending court with Mohammed Harajchi, the former owner of SSBT, after \$31 million goes "missing" (R. 563-9, 10; App. 83a). At trial, Zawistowski, Federal Reserve, admits "we collapsed" several Bahamian banks, but the transcript is tampered with, removing it (R. 563-23, p. 32; TR 806), however, it is neglected to delete later references to it, such as where Schipper responds "Okay", rather than objecting had it not occurred (TR 2107, 2536, 3234). While the Federal Reserve Board of Governors has the right to recall its own defective products, they do not have the right to target the victims of their own deceptive practices, employ a federal judge to prevent a good faith reliance defense or falsify drug warrants in a non-drug case to obtain a civil money judgment (TR 21-25, 807, 1671, R. 369, R. 546, Rule 60(b) fraud claim; App. 70-86a). The "cause" of a charge must be disclosed.

Marcusse is denied Forrester as a witness by Gezon's strange objection his "existence" is of "doubtful validity" (R. 397). With the entire resources of the Dept. of Justice at his disposal, Gezon

should have been able to confirm whether an FBI Agent "existed". After trial, a Miami Herald article is found naming him (App. 75-77a).

The SSBT program required keeping funds in it for reinvestment (GX-33/GX-2). This served to maximize the amount that could be "frozen" in a license revocation. It also served to set up a "crime" when investor distributions were paid from local funds based on profit representations made to the accused (TR 2566, 3055-56). According to the ever-collusive Houston, "Flink denied having authority to follow up" on any Bahamas account (TR 1982-83; App. 26a). If Houston were competent, he would have known that as of 3/10/01, just 5 days after SSBT's license was revoked, Flink's excuse was no longer valid (Refer to U.S. Attorney's Bulletin, July, 2001, pp. 43-44). If Houston had not been engaging in collusion, he would have argued Marcusse should have been permitted the 12 witnesses denied that were related to investments in SSBT, MLC, and Crawford (R. 392-1; R. 401; App. 92-93a).

AUSA Gezon deceitfully denies any wire transfers went to SSBT at trial (TR 3721). Richard Griffis, U.S. Probation Officer, in his PSR carries these lies so far as to recommend an enhancement for "obstruction of justice" over Marcusse's testimony investor funds were lost at SSBT (PSR, ¶191). This defies the public record and the admitted bank records proving otherwise (GX-208, GX-210, App. 55-65a). If the SSBT program truly had been a prime bank program, there would have been no need for them to lie about funds going there as this would have helped to prove their case. Only if SSBT were an entrapment scheme would such deceit be necessary to prevent the unclean hands inherent to the "cause" of the action from being exposed, making it a matter of "national security". While the Senate held hearings wherein SSBT's fraud upon its customers was disclosed, including

falsified investment results and audits (App. 78-80a), the responses to FOIA's sent to the Dept. of Justice refuse to disclose any information about Forrester and said they had no information on SSBT "since 1973", which is not credible given these public hearings (App. 81-82a).

Treasury attorney, James Kramer-Wilt, was another federal government employee used as an advisor, but at trial, Kaczor claimed he could not be located (TR 2644; R. 551, Rule 60(b) fraud claim), suggesting he too was likely hidden from the trial. Disclosure regarding both Forrester and Kramer-Wilt requested in a pretrial Bill of Particulars was first ignored (R. 208, 219), then denied by Judge Bell (R. 225).

"Proof of entrapment, at any stage of the case, requires the court to stop the prosecution, direct that the indictment be quashed, and the defendant set at liberty". *Sorrells v. United States*, 287 US 435, 457 (1932). The **duty** to act remains with the court. *Id.* In the Sixth Circuit, entrapment by estoppel is prohibited as a matter of law. *United States v. Levin*, 973 F 2d 463, 467 (6th Cir., 1992).

V. THE TRUE NATURE AND CAUSE OF THIS ACTION HAS BEEN SUPPRESSED

This situation will arise...where the protection of national security information will collide head-on with the constitutional rights of a defendant in a criminal case...so that the only choice will be either disclosure or abandonment of the prosecution. *Jencks v. United States*, 353 US 657, 670-672 (1957).

AUSA Gezon quit the employ of the Office of U.S. Attorney just 10 days before his appellee brief was due on 2/22/07, thereby allowing him to evade having to "sign" a fraudulent brief to this Court. At the same time, his boss, U.S. Attorney, Margaret Chiara, was fired. According to a 10/5/08 Grand Rapids Press article, a federal investigation ensued, with AUSA Lloyd Meyer blaming the "turmoil on a culture

of lawlessness that pervades the federal judiciary system in West Michigan--from judges to prosecutors" (App. 127a). Chiara had a PowerPoint seminar posted online that encouraged her assistants to "get creative" and use State law if there wasn't a federal cause of action. Fed. R. Evid. 501 indicates that when a federal court chooses to absorb State law, it is applied as a matter of federal common law or non-constitutional common law privilege. Fed. R. Evid. 401 and 402 allow for the judicial construction of "facts".

For an IRS case, federal officers in West Michigan collaborate in the non-constitutional practice of profiling "defendants" as "terrorists" or illegal "combatants", if their target refuses to plead guilty. This pernicious tactic disallows for any presumption of innocence, and is used to strip its victim of the right to due process. The element of violence, which is generally absent in a tax offense, is instead supplied by the "convictions" of Judge Bell, who "constructs" such "facts" when he informs the media "tax rebels" are the source of multiple murders (App. 128-129a), and physical abuse and torture are initiated against the accused, even in open court (R. 307, 309, 346, 545, 575, 583; TR 634-36, 1174-77; App. 126-141a). If the target is a woman, competency exam orders are made without cause to infer mental problems and the media advised (App. 131-141a). Judge Bell calls for an anonymous jury, even though he admits it was "due to no fault of anyone here" (R. 651, TR 9). For an actual murderer, however, he orders a new trial over "improper police questioning" in the defendant's "involuntary" confession his victim was the "Antichrist" (App. 142-143a).

Where no defense is permitted, the source of law from which the rule of law is derived is not disclosed (TR 16-17). Judge Bell enforces Michigan's statutory "unauthorized practice of law" that pro-

hibits a corporate attorney from representing any person other than itself (MCL 450.681). A criminal novation begins when one who isn't authorized to practice law in Michigan is labeled a "defendant" after being brought to the bar and silenced behind unwanted court-appointed defense attorneys through the use of force for the purpose of plea bargaining profiteering during wartime. The turmoil that pervades the lawlessness in Western Michigan is the effort to create equity judgments where there is no equity jurisprudence to effect a remedy to justify the jurisdiction being claimed. There is only the construction of a fictional record by an administrative judge's inferred and controlled "facts" to support his/her own predetermined desired outcome.

There was no legitimate "cause" of action for a "ponzi scheme" or illegal "combatant" absent the accused being charged as the "associate" of their appointed legal representatives in collusion with the federal actors through the abuse of Public Law 89-901 (App. 144-147a). When the "cause" of a "criminal" case is invented after the fact and pursued through violence and the usurpation of power, the "defendants" committed no crime and subject matter jurisdiction did not exist until a "criminal" lawyer was forced on the accused. 18 USC §981 is not cognizable for alleged tax offenses. 6 USC §134 does not allow for a private right or "rite" of action. Judge Bell and his collusive actors reach beyond the law of the land to include extortion of services when commanding a "personal" money judgment for purposes of "enforcing" it (R. 452), however, the Takings Clause requires just compensation as duly noted on the record and accepted by Judge Bell's "Okay" (App. 149-153a). See also 26 USC §83(c) and attached True Bill. An equity court has no jurisdiction to try the issues arising from an indictment, and for it to render judgment in a criminal prosecution is null and

void. The Wunderlich Act renders administrative conclusions of law and findings of fact when fraudulent, arbitrary, capricious, grossly erroneous, or not supported by substantial evidence as not binding on a reviewing court. See also 41 USC §§ 321, 322, and 5 USC §556.

FRCrP 16(a)(1)(E)&(2) are not to be abused by the suppression of an undisclosed plaintiff party, beneficiary, or charge. **Roviaro v. United States**, 353 US 53 (1957), held privilege must give way where disclosure is "relevant and helpful to the defense of an accused, or is essential to the fair determination of a case".

These overreaching Federal public officers and ministers of the commonwealth also give rise to questioning the Executive Orders for Faith-based initiatives in 5 USC §601. Such make it clear that participation in these "initiatives" must be "**voluntary**", not forcibly brought into play. Those who would openly declare a "holy war" on "The People", while conducting their business as money changers or "traders" at the location of #666 (R. 666; App. 137a), did not obtain Marcusse's consent to violate the First Amendment to find "offenses of conviction" for the "conversion" of human beings into live stock.

The Offenses of Conviction, Sentences, Judgments and Mandate are void for abuse of legal process in the procurement of the unlawful condition of peonage by color of office, false writs of attachment, false secret charges, and false subrogation claims over the federal attorneys' actual ponzi scheme in criminal novation.

CONCLUSION

This Court has the Non-Discretionary Duty to Vacate these Void Judgments & Mandate and Release Janet Marcusse Immediately.

Date: 12/12/09

Janet Marcusse

Autograph for Value

All rights and remedies fully reserved
Without prejudice or recourse

CERTIFICATE OF SERVICE

This is to certify that I have served a true and correct copy of the foregoing:

CALL FOR RECALL OF THE MANDATE
FOR ATTORNEY & JUDICIAL FRAUD

upon the following individuals and their addresses, by placing same in a sealed envelope bearing the sufficient postage for delivery via the United States Postal Service to:

Judge William Bertelsman
United States District Court
P.O. Box 1012
Covington, KY 41012

Judge Jeffrey Sutton
260 Kinneary U.S. Courthouse
85 Marconi Boulevard
Columbus, OH 43215

Judge John Rogers
Post Office Drawer 3074
Lexington, KY 40588

Clerk of Court
Sixth Circuit Court of Appeals
100 East Fifth Street, Room 540
Cincinnati, OH 45202

Clarence Maddox, Circuit Executive
Sixth Circuit Court of Appeals
500 Potter Stewart Courthouse
100 East Fifth Street
Cincinnati, OH 45202

and deposited it in the postal box provided for prisoners on the grounds of the Federal Correctional Institution, Tallahassee, Florida 32301, on this 12th day of February, 2009.



Janet Marcusse [#17128-045]
c/o Federal Correctional Institution
501 Capital Circle, NE
Tallahassee, FL 32301

APPENDICES BEING MAILED UNDER SEPARATE COVER OR MAY BE FOUND AT www.ipiw.com (Supp Apdx, Call Mandate) OR www.inmatehope.com