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"DET 050228 TRANSCRIPT"

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----x
: UNITED STATES OF AMERICA :
: :
vs. : Criminal No. 05-0066
: :
WALTER ANDERSON :
aka Mark Roth :
: :
Defendant :
: Washington, D.C.
-----x February 28, 2005

TRANSCRIPT OF RETURN ON BENCH WARRANT
AND ARRAIGNMENT
BEFORE THE HONORABLE ALAN KAY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: SUSAN MENZER, ESQ.
KAREN KELLY, ESQ.
Assistant United States Attorney

For the Defendant: JOHN MOUSTAKAS, ESQ.

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1 a plea to the twelve counts in the indictment in which you
2 have been charged.

3 Now, Mr. Moustakas, you have a copy of the
4 indictment, sir?

5 MR. MOUSTAKAS: I do, Your Honor.

6 THE MAGISTRATE JUDGE: All right. If you'd take
7 the plea, Ms. Kay.

8 THE CLERK: Yes, Your Honor. Walter Anderson,
9 also known as Mark Roth, in Criminal Case Number 2005-66,
10 in which you are charged in a twelve-count indictment, do
11 you wish to waive the formal reading of the indictment at
12 this time and enter a plea?

13 THE MAGISTRATE JUDGE: Mr. Moustakas?

14 MR. MOUSTAKAS: Your Honor, at this time we'd
15 waive a formal reading of the indictment. Mr. Anderson
16 enters pleas of not guilty on all twelve counts. He
17 reserves and asserts all of his constitutional rights,
18 including those under the 5th and 6th Amendments to the
19 United States Constitution. He asserts his right to a
20 Speedy Trial.

21 THE MAGISTRATE JUDGE: Thank you, Mr. Moustakas.
22 Plea of not guilty will be entered on behalf of
23 Mr. Anderson to each of the twelve counts in the
24 indictment.

25 Counsel, Judge Friedman has set a status hearing

1 in this matter for the 11th of this month -- excuse me, of
2 March, which is a Friday, at 11:30 in the morning.

3 Now, Ms. Menzer, is the Government requesting a
4 detention hearing in this matter?

5 MS. MENZER: Yes, it is, Your Honor, and we filed
6 a motion before the Court and we supplied your courtesy
7 copy with you, it has gone through the process yet. We
8 also sent it to Mr. Moustakas, before --

9 THE MAGISTRATE JUDGE: All right.

10 MS. MENZER: -- so I don't know whether or not
11 he's had an opportunity to review it, but we're ready to
12 proceed.

13 THE MAGISTRATE JUDGE: All right. Mr. Moustakas,
14 we can set it down tomorrow or the day after, but have you
15 had a chance to go through that?

16 MR. MOUSTAKAS: We received it at about 1:10
17 while I was visiting with Mr. Anderson. We're prepared to
18 -- I'd like to confer with the client, but obviously we'd
19 like to obtain his release as soon as possible, and let me
20 just confer with him about whether he'd like to go forward
21 today.

22 THE MAGISTRATE JUDGE: Well, I'd like you to at
23 least have an opportunity to go through this.

24 MR. MOUSTAKAS: I have read the motion.

25 THE MAGISTRATE JUDGE: Yes.

1 MR. MOUSTAKAS: I understand that it was prepared
2 this morning, and asked for a copy of it but was not given
3 a copy.

4 THE MAGISTRATE JUDGE: I would like an
5 opportunity to read it too, Mr. Moustakas, if I'm going to
6 be ruling on it. But anyway.

7 MR. MOUSTAKAS: Let me confer with my client.

8 THE MAGISTRATE JUDGE: Yes. Mr. Moustakas.

9 MR. MOUSTAKAS: Your Honor, we're prepared to go
10 forward.

11 THE MAGISTRATE JUDGE: All right. Ms. Menzer?

12 MS. MENZER: Your Honor, as we said in our
13 motion, we are going to submit our evidence. I've got
14 rather voluminous evidence for the Court to review. And
15 I'm going to ask the Court, I'm going to give you a copy
16 of it as well, and what I was going to do was go through it
17 with you, in terms of each individual characteristic under
18 3142(g). If the Court would like to take a short recess to
19 review the evidence first and then we can go through it and
20 make argument? Whatever the Court sees fit.

21 THE MAGISTRATE JUDGE: You say you're going to
22 review what's contained in the Government's motion?

23 MS. MENZER: I actually have a number of --

24 THE MAGISTRATE JUDGE: You have live --

25 MS. MENZER: I have no witness, Your Honor. I

1 have all documentary evidence.

2 THE MAGISTRATE JUDGE: Counsel, we have two other
3 matters that are not going to be too long. Why don't we
4 pass this matter, give Mr. Moustakas an opportunity perhaps
5 to more fully review the Government's motion, and we'll
6 take up this matter at 3:00 o'clock or shortly thereafter.

7 (Whereupon, a brief recess was taken.)

8 THE CLERK: Recalling Criminal Case Number
9 2005-66, the United States of America versus Walter
10 Anderson.

11 THE MAGISTRATE JUDGE: Mr. Moustakas, we're
12 a little late in getting back, but I assume you had an
13 opportunity to review the Government's motion.

14 MR. MOUSTAKAS: I have, Your Honor.

15 THE MAGISTRATE JUDGE: Very well. Ms. Menzer?

16 MS. MENZER: Thank you, Your Honor. Good
17 afternoon.

18 Just for the record, I'd like to identify the
19 people at the Government's table. It's Karen Kelly,
20 K-e-l-l-y, and she is an attorney with the Department of
21 Justice, and my agents are at the table if they're allowed
22 remain, is Thomas Birmingham and Matthew Cooks.

23 THE MAGISTRATE JUDGE: All right. Thank you,
24 Ms. Menzer.

25 MS. MENZER: First of all, Your Honor, since this

1 has happened rather quickly and I don't know if you've had
2 a chance to review my motion, I'd like to briefly go
3 through it.

4 THE MAGISTRATE JUDGE: We scanned it, Ms. Menzer,
5 but you may go through it.

6 MS. MENZER: Your Honor, the Government is quite
7 concerned that Mr. Anderson is an extreme flight risk in
8 this case. The Commissioner of the Internal Revenue
9 Service actually confirmed this morning that this is the
10 largest individual tax case in history. According to the
11 allegations in the indictment, Mr. Anderson has evaded
12 approximately \$170 million in federal income taxes.

13 THE MAGISTRATE JUDGE: Over what period,
14 Ms. Menzer?

15 MS. MENZER: From 1995 through 1999. Your Honor,
16 his history, though, with the Internal Revenue Service has
17 dated back for over 20 years. Mr. Anderson has failed to
18 file, he's filed late, he's filed he hasn't paid -- there's
19 many things, if you look at the indictment, which I'm going
20 to ask the Court to do before ruling. I'm not going to go
21 through it with you.

22 THE MAGISTRATE JUDGE: What has the IRS done
23 since 1995?

24 MS. MENZER: Your Honor, frankly, the IRS civilly
25 tried to resolve these matters with Mr. Anderson for many,

1 many years, and it's all through the indictment that the
2 grand jury found. He ignored them. There's allegations in
3 the indictment that he lied to them. There's allegations
4 that he submitted false documents to them.

5 And he basically -- one of the things that we've
6 put in our detention motion about his lies is the fact he
7 said he lived in Florida. According to his own counsel
8 in the Superior Court case that evolved out of this,
9 Mr. Moustakas represented that Mr. Anderson is a lifetime
10 resident of the District of Columbia. But Mr. Anderson
11 wrote on his federal income tax returns that he resided in
12 Florida. I'll proffer to the Court that that address that
13 he used in Florida, one was the home of a friend, the
14 second was actually a Mailbox Etc. address. And that's
15 where he told the IRS that he lived. So just for a
16 hypothetical, Your Honor, the IRS goes to look for him and
17 they want to try to collect the money that he owes them.
18 What do they find? A mailbox.

19 He's used every means possible to try to evade
20 and obstruct the Internal Revenue Service's ability to
21 collect taxes from him.

22 And additionally, which I'm going to go through
23 with the Court, what took so long? It's a very good
24 question. Since 2002, when Mr. Anderson learned that he
25 was a target of a grand jury investigation through searches

1 of his home and residence here in the District of Columbia,
2 Mr. Anderson has sought to obstruct the grand jury. The
3 Government has a number of exhibits that it's going to
4 submit to the Court to show you that he's tampered with
5 witnesses, he's restructured his entire corporate
6 structure, where before it had two entities, one with the
7 British Virgin Islands and a Panamanian company stacked on
8 top of one another. He then, after he learned of this
9 investigation, set up a whole other series of companies in
10 the Cayman Islands, in the Bahamas, in Panama, in the
11 British Virgin Islands -- all these places, Your Honor, are
12 places where it's very, very difficult for the Government
13 to get evidence. And he knew it.

14 In fact, some of the letters that I'm going to
15 submit to the Court, Mr. Anderson actually told witnesses
16 in those countries, he told them, "Remember what the law
17 is in your country." He subtly threatened them. "Don't
18 provide any information to the Government."

19 So that's where we're standing here, Your Honor,
20 with two main arguments. The first is risk of flight. If
21 you had a chance to look at the motion -- I'm going to go
22 over those with you. First of all, if we look just at the
23 statute -- I'm not going to go through the law with Your
24 Honor, since I know you're probably much more familiar with
25 it than I am -- but under the risk of flight part of the

1 statute, we're dealing here with a preponderance of the
2 evidence. So that's all the Court needs to find, is that
3 by a preponderance of the evidence that Mr. Anderson will,
4 one, not return to the Court; and two, which I think is
5 very important, if you release him, he will not follow the
6 orders of this Court. And that being, he won't leave the
7 witnesses alone.

8 There's evidence in here that I'll go through
9 with Your Honor -- I'm going to give you a notebook so that
10 you can have it with you and go through it with me, I'm not
11 going to go through every exhibit, I'm going to assume that
12 the Court can do that itself -- that shows he has tried,
13 from March 19, 2002, to control this investigation. He has
14 done everything in his power to delay and impede the grand
15 jury from returning an indictment in this case and to find
16 out what the truth is. And for those reasons, he can't be
17 trusted.

18 So not only is he an extreme flight risk, he's
19 not going to listen to the Court. He hasn't listened to
20 Judges for years, including Judge Bates in this courthouse.

21 So I'm going to ask if we can go through one by
22 one, Your Honor. Mr. Anderson is charged --

23 THE MAGISTRATE JUDGE: If he was a risk of
24 flight, why didn't he leave the country?

25 MS. MENZER: Excuse me? First of all --

1 THE MAGISTRATE JUDGE: If he was a risk of
2 flight, why didn't he leave the country?

3 MS. MENZER: Mr. Anderson has said to many
4 people, and has continued to say since he learned of this
5 investigation, that the Government has nothing on him.
6 And now, he in fact is going to see what the Government
7 has. See that the Government has been able to get foreign
8 countries, who historically would not assist law
9 enforcement officers, we have gotten those countries to
10 cooperate in this case. We have gotten individuals to
11 cooperate in this case. We compelled Mr. Anderson to sign
12 a consent directive, waiving his rights against those
13 people, to hold them harmless and not sue them in this
14 country.

15 THE MAGISTRATE JUDGE: Did he do that?

16 MS. MENZER: He did, Your Honor, under -- we had
17 to fight through it and go through it, and he finally
18 signed it. However, he notified those people, after he
19 signed the consent directive, that he was going to see
20 whether or not their cooperation with the United States
21 Government was going to violate their law. So he subtly
22 again said to them, "Well, you know, they made me sign
23 this. Do what you want, but again, I'm going to sue you if
24 you do." That was the undertone of what he said. And
25 Mr. Anderson is not afraid of suing people. He in fact

1 sued one of our witnesses. And he sued her and we had a
2 hearing before Judge Hogan, on the exact allegation that he
3 sued her for her to recant her grand jury testimony because
4 he believed her grand jury testimony was not favorable to
5 him. And he actually told her that, "Seventy witnesses
6 have come before in the grand jury, and you are the only
7 one who testified against me."

8 Mr. Anderson thinks we have nothing. He thinks
9 this case is a bunch of baloney. Well, now he's going to
10 see. And Your Honor probably will remember, because I know
11 you've been involved in it, that Mr. Anderson, each and
12 every time, has moved to unseal the affidavits in our
13 searches. And the second search warrant has never been
14 unsealed, the second search warrant the Government applied
15 for based upon this obstructive conduct. And the
16 Government fought hard not to release that information out
17 of fear that Mr. Anderson would misuse it. He has, and we
18 have plenty of evidence that he misused it before and he
19 will continue to do so.

20 If I could just go through it real slowly with
21 you.

22 THE MAGISTRATE JUDGE: All right.

23 MS. MENZER: First of all, Mr. Anderson is
24 51 years old.

25 THE MAGISTRATE JUDGE: And what's the

1 significance of that, Ms. Menzer?

2 MS. MENZER: The significance of that is he's
3 very highly successful, he's been around, he's not an
4 18-year-old guy that just got himself in trouble.

5 THE MAGISTRATE JUDGE: So you're saying 51 years
6 of age connotes success, or -- I must have missed something
7 as I passed through that.

8 MS. MENZER: Well, I'm not saying -- I will say
9 he's a success, and I think that we all can say that he is
10 a success. He's a very, very astute and successful
11 business man. This man made \$450 million in five years.
12 Four hundred and fifty million dollars. It's mind-boggling
13 to me. And he decided he wasn't going to pay any income
14 taxes on that. Either to the federal government or to the
15 District of Columbia, where he's lived all his life.

16 So he's 51 years old --

17 THE MAGISTRATE JUDGE: What was that five-year
18 period?

19 MS. MENZER: 1995 to 1999. He made \$450 million.

20 THE MAGISTRATE JUDGE: All right. All right, go
21 ahead.

22 MS. MENZER: According to the indictment, because
23 the amount of tax is so high, if the Court considers the
24 Sentencing Guidelines at the time of sentencing in this
25 case, Mr. Anderson is looking at approximately 19 to

1 24 years in prison just under the Federal sentence. And
2 as well, we have six counts for the District of Columbia
3 of fraud, because he didn't pay any taxes to the District
4 of Columbia, as well, on this income.

5 THE MAGISTRATE JUDGE: Does the Government have
6 an estimate of the amount of taxes that he owes?

7 MS. MENZER: In both jurisdictions?

8 THE MAGISTRATE JUDGE: Well ...

9 MS. MENZER: 170 million in federal, approximately
10 40 million in D.C. income taxes, and at least 250,000 in
11 use taxes.

12 THE MAGISTRATE JUDGE: All right.

13 MS. MENZER: So 51 again is not just that he's an
14 intellectual, seasoned businessman, it's also 20 years is
15 a significant part of his life. And courts have held that
16 where people are facing sentences so great, that this is
17 going to deserve great weight from the Court on this
18 particular issue of nature.

19 Also, if you read the indictment you'll see that
20 this indictment is all fraud, deceit, lies. That's all he
21 does. That's what he's done for 20 years. Mr. Anderson
22 comes up to you and he says, "I promise, Magistrate Judge
23 Kay, that I will stay here, that I won't do anything." He
24 can't be trusted. He has lied to so many people over the
25 last 20 years that the Government's proffering to you that

1 he can't be trusted, just by the nature of the offenses.

2 Look at them. Look what he's done. He set up
3 this corporation, using an alias. "Mark Roth." The
4 Government has proof that Mr. Anderson actually wrote the
5 application which is one of your exhibits. We have a
6 handwriting expert who will say Mr. Anderson signed the
7 name "Mark Roth." It was him. There is no Mark Roth.

8 Mr. Anderson has spent the last 15 years,
9 13 years of his life, saying that there's all these other
10 people out there that control this corporate structure.
11 Well, Your Honor, what's taken the Government so long --
12 you asked that. What's the Government so long is we're
13 trying to find out were there any other people out there.
14 And every single person the Government has spoken to, every
15 single document the Government has looked at, has said the
16 same thing, "No." The only person is Mr. Anderson. He's
17 the only one.

18 So, yes, were we sent on a wild goose chase?
19 Perhaps. But who sent us on that chase? Mr. Anderson.
20 So if you let him out, that's exactly what he's going to
21 do again. He has tried to control every step that we've
22 taken.

23 The fact that he is a savvy businessman is very
24 important for risk of flight. And why? Mr. Anderson --
25 I've gone through them, Your Honor. We have about, I'd

1 proffer to the Court maybe 90 boxes of evidence that we've
2 seized from Mr. Anderson over two search warrants.
3 Mr. Anderson has hundreds and hundreds and hundreds of
4 business cards. He has traveled internationally, and I
5 have a document to show you --

6 THE MAGISTRATE JUDGE: You say he has hundreds
7 of business --

8 MS. MENZER: Hundreds of business cards of people
9 from all over the world.

10 THE MAGISTRATE JUDGE: Oh, I see.

11 MS. MENZER: He has made contacts in every
12 continent in this world.

13 THE MAGISTRATE JUDGE: But there's nothing
14 intrinsically illegal about having business cards.

15 MS. MENZER: Nothing. Most of the things I'm
16 saying, there's nothing intrinsically illegal about them.
17 But the fact is, you need to look at the person that you're
18 dealing with. You're dealing with a person that uses those
19 contacts, and he uses people and he uses names. He has
20 identification, which we'll go through too with you to show
21 exactly his entire scheme has been to try to trick people,
22 to trick people. Even his mother. Even his girlfriends.
23 Even his business associates. Even his lawyers and his
24 accountants -- they've all been lied to.

25 So how can you expect that he is going to come

1 here, Your Honor, and tell you, and you should accept what
2 he's going to say that he's going to return to this Court.
3 He won't. And you know why? Because he's got plenty of
4 places to go, and he has plenty of money to spend.

5 The Government tried --

6 THE MAGISTRATE JUDGE: Does he have a passport?

7 MS. MENZER: I'm sorry?

8 THE MAGISTRATE JUDGE: Does he have a passport?

9 MS. MENZER: He has many passports.

10 THE MAGISTRATE JUDGE: The same name or a
11 different name?

12 MS. MENZER: He has different name passports, he
13 has three days after -- three days after we seized his
14 first passport on March 19th, 2002, he had a new one.

15 THE MAGISTRATE JUDGE: You say he had a new one
16 issued by which --

17 MS. MENZER: A United States passport. I'm
18 saying he has many United States passports, as well as
19 other jurisdictions. I'm going to proffer to the Court --

20 THE MAGISTRATE JUDGE: How did he get numerous --
21 using the same name?

22 MS. MENZER: Yes, Your Honor.

23 THE MAGISTRATE JUDGE: And how did he get those?

24 MS. MENZER: He tells them it's lost. I mean,
25 he did the same thing with everything that we seized, it

1 was lost, stolen. He writes letters and such, and he makes
2 representations.

3 THE MAGISTRATE JUDGE: But when the Government
4 seizes a passport, it doesn't advise the passport office
5 that they've seized --

6 MS. MENZER: Not in this particular circumstance,
7 because Mr. Anderson was still just under investigation.

8 THE MAGISTRATE JUDGE: I see.

9 MS. MENZER: We do have the passport that he was
10 traveling on Saturday. We do have that here.

11 But, Your Honor, he had fake passports. He had
12 an abundance of evidence to show that he knows how, and if
13 I can, I will get it for you.

14 THE MAGISTRATE JUDGE: All right. Well, no, I'll
15 accept your representation as an officer of the Court,
16 Ms. Menzer.

17 MS. MENZER: Well, it's actually because the
18 agent won't let me ever part with these -- I would like the
19 Court to look at them. They're his passport here from
20 British Guyana with Mr. Anderson's picture, and it actually
21 reflects, if the Court would like to look at it, that he
22 traveled or someone traveled on this passport. There's
23 also a registration certificate for British Guyana.
24 There's copies of that actually in the exhibits, which I'll
25 give to counsel.

1 Your Honor, I'm going to pass it up so you can
2 see the frequency of Mr. Anderson's travel in the two other
3 passports that we seized from his office.

4 Your Honor, also I have copies -- Mr. Anderson
5 has various visas for Russia. He's got many other travel
6 documents that are in fact in his own name. And that
7 Mr. Anderson has spent the last 20 years -- he made all
8 that money traveling, investing overseas.

9 What is unusual, and you asked me, "Well, that's
10 not illegal to do that." Of course it's not illegal to
11 travel around the world and making money in international
12 affairs and do that type of stuff. But Mr. Anderson is not
13 the type of person -- Mr. Anderson has a distaste for the
14 government, there's plenty of evidence of it. I've put it
15 into the book.

16 THE MAGISTRATE JUDGE: Again, not in and of
17 itself, an illegal --

18 MS. MENZER: Exactly. Your Honor, views are one
19 thing. Actions are another. And Mr. Anderson put his
20 views into action. If I may, I'd like to get some other
21 evidence.

22 Your Honor, I'm just going to go through a couple
23 of them with you, but we seized from Mr. Anderson numerous,
24 numerous books and literature and everything about how to
25 disappear, how to live life as a fugitive. One of my

1 favorites, "Poof: How to Disappear and Create a New
2 Identity." "Who Are You?" "How to Legally Obtain a Second
3 Citizenship and Passport, and Why You Want To." How about,
4 "The I.D. Forger"?

5 Some of these books, which the Government would
6 like the Court to note, these books in particular, all of
7 these books, "Who are You?" "Bulletproof Privacy," "The
8 I.D. Forger," "Steal This Book," "A Handbook of Survival
9 in Warfare for the Citizens of Woodstock Nation," it goes
10 on and on, were all purchased by Mr. Anderson after
11 March 19th, 2002.

12 THE MAGISTRATE JUDGE: What was significant about
13 that date?

14 MS. MENZER: That's when he learned he was a
15 target of this investigation.

16 THE MAGISTRATE JUDGE: I see.

17 MS. MENZER: He had the books before, and then he
18 even bought more afterwards.

19 This one in particular, "Learn Exactly How to
20 Travel Like a Ghost, Relocate and Disappear, Not Leave a
21 Paper Trail, Use the Mails Privately, Buy and Sell Without
22 a Trace, Make Encrypted Phone Calls, Become Invisible to
23 Databanks, Live Hid and Happy and Free." Mr. Anderson not
24 only just read about this. I mean, you can have one or two
25 books, people maybe have some curiosity, Your Honor, but he

1 had boxes full. And he continued to obtain them.

2 And not only that, as we've alleged in our motion
3 -- well, actually, it's a fact -- we found documents that
4 appear that Mr. Anderson was in fact trying to create a new
5 identity. One of them -- again, the agent will only allow
6 me to let you look at it -- is a certificate of baptism,
7 and we talked about it in our motion. And if you look at
8 it, it's been whited out, kind of hard to see with the
9 photocopy, but as you look in the light, you can see that
10 some other names have been whited out and some people --
11 some other names have been typed in, and we've alleged that
12 in the motion.

13 The person actually was found whose birth
14 certificate this is, and knows Mr. Anderson. He worked for
15 him --

16 THE MAGISTRATE JUDGE: That's a birth
17 certificate, ostensibly?

18 MS. MENZER: It's a real certificate of baptism.
19 I didn't even know there was, but there's an Archdiocese
20 for the Military. And it's for a real person. And for
21 some reason Mr. Anderson, who met this person in the 1970s,
22 had this in his files. And it was whited out.

23 THE MAGISTRATE JUDGE: Well, I don't know what it
24 says now, so --

25 MS. MENZER: Oh, well, now --

1 THE MAGISTRATE JUDGE: If the agent would let me
2 look at it for a few moments --

3 MS. MENZER: Okay.

4 THE MAGISTRATE JUDGE: -- I promise to give it
5 back.

6 MS. MENZER: He's very possessive.

7 THE MAGISTRATE JUDGE: Well, this ostensibly
8 appears to be a certificate of baptism, with everything
9 whited out.

10 MS. MENZER: Yes, Your Honor. And if you can
11 hold it up to the light you can see there's some typing --

12 THE MAGISTRATE JUDGE: Underneath, yes.

13 MS. MENZER: Underneath.

14 THE MAGISTRATE JUDGE: And the significance of
15 this is?

16 MS. MENZER: That why would someone have this?

17 THE MAGISTRATE JUDGE: I don't know.

18 MS. MENZER: Well, Your Honor, I don't know
19 either. Only Mr. Anderson does, because it was his, but it
20 looks like to me that here's a person who has books on
21 making fake identification, and here he is trying, in fact,
22 to use something. If you read these books, and I have,
23 they tell you, "Get birth certificates, get driver's
24 licenses, get any form of identification you can, and then
25 you can have --" I mean, in today's technology, Your Honor,

1 we all know how easy it is to make travel documents.

2 He has an American Press Association badge with
3 his picture on it. He has an investigator's template. He
4 has international driver's license templates that we found
5 with all of his --

6 THE MAGISTRATE JUDGE: With his name on it?

7 MS. MENZER: Not yet.

8 THE MAGISTRATE JUDGE: I see.

9 MS. MENZER: But his pictures, he had numerous --
10 some of them, in fact, have his picture on them, some of
11 them have not been made yet.

12 THE MAGISTRATE JUDGE: I see, so you're saying
13 they're blanks, ready for use, essentially.

14 MS. MENZER: Ready for use, and he had the means
15 to do it. Some of them, in fact, he had put his picture
16 on. And if you read these books, it's exactly what they
17 teach you to do. So not only do we have someone who is
18 knowledgeable, we have someone who looks like he was trying
19 to do that. That's number one.

20 He also even had an INS document that was one of
21 his girlfriend's, that he had manipulated, changed the name
22 -- she's from France -- changed the name to William
23 Prospero, and put his picture instead of hers. And if you
24 compare the two, which is one of the exhibits that I'll
25 submit to the Court, if you compare the two you can see

1 that they're the same document. And she actually told the
2 grand jury that, yes, they had manipulated that document
3 for him.

4 So the question is, that this man has lived --
5 he's never -- I was quite surprised, I have to say, in the
6 Pretrial Services report, to see that he actually gave
7 where he lived. He's never done it before. He actually
8 gave his home address. When he was charged in the District
9 of Columbia Superior Court, and before sentencing, he gave
10 the mailbox as his address. He told the pre-sentence
11 report writer that's where he lived. This was the first
12 time I've ever seen him write down exactly where he lives.

13 THE MAGISTRATE JUDGE: So what is he -- you say
14 he owns a house in the District of Columbia?

15 MS. MENZER: Well, "owns" I think would be an
16 inappropriate term. Mr. Anderson purchased that house in
17 the name of a trust. That piece of property has been
18 subject to a number of outstanding judgments, loans that
19 he owns to people, so I don't personally think that
20 Mr. Anderson owns any of it. We'd have to know from him.
21 But it appears that it's been pledged numerous times --
22 according to the records that we have, it's been pledged
23 numerous times to different individuals in satisfaction of
24 loans.

25 Mr. Anderson, as we stated in the motion, has

1 over \$40 million in civil judgments against him and Gold &
2 Appel. Which the Government alleges is actually
3 Mr. Anderson. And most of the property in the United
4 States has already -- civil litigants have already tried
5 to get that property. So there's nothing, nothing in the
6 United States to keep him here.

7 However, Your Honor, as we stated in our motion,
8 we attempted to trace a half a billion dollars running
9 through one account in the Channel Islands. Mr. Anderson
10 was the sole signatory on the account since the moment it
11 opened since 1994. He has moved a half a billion dollars
12 back and forth and all over the place. There's an exhibit
13 that I've put in the book for you that shows that
14 \$85 million went to bank accounts outside the United
15 States, many of which we have been unable to trace. Twenty
16 million dollars went to two bank accounts in Switzerland
17 that we have attempted to seek the cooperation of the Swiss
18 government. The Swiss government made us provide
19 Mr. Anderson with our request and to give him any
20 procedural rights that he was due before the information
21 was released. Afterwards, the Swiss government refused to
22 provide us with the information.

23 Mr. Anderson, although I explained to his lawyer
24 that if he had made any filings with respect to the
25 Government's filing in Switzerland that he was under a

1 legal obligation to notify us of, we've never been notified
2 what's happened to the \$20 million that went to
3 Switzerland.

4 Mr. Anderson, almost immediately upon the first
5 search, had all of his expensive art work, which is listed
6 in the indictment under the sales tax count, shipped to a
7 vault in Switzerland. We've since learned that some of
8 those pieces have been sold. Others, no idea. Absolutely
9 no idea. It's just a black hole. And those pieces are
10 worth millions and millions of dollars.

11 Mr. Anderson, through a corporate entity, owns
12 a 19,000 square foot mansion in Madrid. In 1999, when he
13 purchased it, he paid --

14 THE MAGISTRATE JUDGE: In his name, or in --?

15 MS. MENZER: In a corporate name, Your Honor.

16 THE MAGISTRATE JUDGE: Corporate name of a
17 Spanish corporation?

18 MS. MENZER: A Spanish corporation that was a
19 wholly-owned subsidiary of Gold & Appel.

20 THE MAGISTRATE JUDGE: And does his name show up
21 on any of the corporate documents?

22 MS. MENZER: Yes, Your Honor, and they're
23 submitted in the official corporate documents he submitted,
24 but he's not listed as an owner. He's just, according to
25 Mr. Anderson, he's always just been the manager. He's an

1 attorney-in-fact. He never has any ownership rights in any
2 of these pieces of property.

3 So in 1999 -- there's a picture of it I'll tender
4 to the Court -- that property was approximately, I think,
5 \$6 million euros. It's now -- we know what happens to real
6 estate, it's now, a number of years later, according to a
7 girlfriend of Mr. Anderson's, who was deposed in Spain, no
8 one lives in that home, and the company still owns it.
9 She and Mr. Anderson had been romantically involved for,
10 probably almost fifteen years. She's a trained lawyer, she
11 lived here in New York for a while. Mr. Anderson invested
12 another \$20 million, 15-20 million dollars, I don't know
13 the exact figures, it's in the motion, Your Honor, in other
14 companies in Spain.

15 One of the things that I found when I was going
16 through the search records was a map of Spain. And again,
17 Your Honor's going to say, "Well, there's nothing illegal
18 about having a map." Well, there's not. But until you
19 read these books. The first thing it tells you how to live
20 as an expatriate is to learn where you're going, to learn
21 how to live in that place and to act like you belong.

22 Mr. Anderson --

23 THE MAGISTRATE JUDGE: That's not very
24 sophisticated, Ms. Menzer, is it, if you're going to go and
25 live somewhere else, to get a map and find out where you're

1 going to live?

2 MS. MENZER: No, but it was very interesting that
3 all the places -- well, Your Honor, all the places that
4 he's traveled over the years, so that was one of the few
5 maps that we found. According to his girlfriend in Spain,
6 other property has been purchased by Mr. Anderson. Other
7 monies are unaccounted for in Spain. It's a very easy
8 place for him to go, according to his -- excuse me, I also
9 forgot to mention, it's in the motion, that Mr. Anderson,
10 it appears, has sought citizenship in other countries.
11 There is a citizenship application, handwritten by
12 Mr. Anderson, for Granada. So it appears -- and many of
13 these books also explain how to gain citizenship by
14 marrying someone from the town.

15 THE MAGISTRATE JUDGE: You indicate in your
16 motion that there have been instances of Mr. Anderson
17 obstructing justice and intimidating witnesses. You
18 indicated that he has attempted to intimidate them by suing
19 them, you say?

20 MS. MENZER: One in particular, yes, Your Honor.

21 THE MAGISTRATE JUDGE: One in particular? Yes.
22 And these were witnesses who appeared before a grand jury?

23 MS. MENZER: Yes, Your Honor.

24 THE MAGISTRATE JUDGE: I see.

25 MS. MENZER: We have another two witnesses, and

1 I've submitted the evidence in your exhibit book. If I
2 may, I'll pass it up to the Court.

3 THE MAGISTRATE JUDGE: All right. All right.

4 MS. MENZER: In particular, Your Honor, I'd like
5 to direct your attention to Government Exhibit 76 --

6 THE MAGISTRATE JUDGE: Does Mr. Moustakas have a
7 copy of this?

8 MS. MENZER: Yes, he does.

9 THE MAGISTRATE JUDGE: I see. All right.

10 MS. MENZER: Government Exhibit 76 through 83.
11 76, and to protect -- because there are people here and we
12 really do not want to disclose who our witnesses are at
13 this time in public, but 76 through 83 are documents --
14 with the exception of 81 -- are documents that were
15 retrieved by Special Agent Cooks from this witness's home.
16 And when Your Honor has a chance to review them, you will
17 see the Government has -- first of all, it's very difficult
18 because as you can tell the documents are half-written in
19 Chinese. And the Government had to have them translated.
20 But there are a number of pieces of evidence in there that
21 suggest that Mr. Anderson and this witness were actually
22 concocting a story to tell the grand jury.

23 This witness wrote her story over and over and
24 over again. There are documents in the exhibits that show
25 that she, on a number of occasions, wrote the laundry list

1 of questions, and in front of the laundry list of questions
2 was, "Ask Hau," H-A-U, which according to our translation
3 is "Walt," which is Mr. Anderson. It appears that
4 Mr. Anderson was coaching her on what to say. It appears
5 that Mr. Anderson debriefed her after every meeting with
6 the grand jury.

7 It even appears that Mr. Anderson has a
8 handwritten note by Mr. Anderson in one of those -- I
9 think, Your Honor, it's a single exhibit which the
10 Government proffers Mr. Anderson's handwriting, that
11 Mr. Anderson told her the things that she should do. One
12 of them was to ask the grand jury, ask the prosecutors, to
13 have copies of her former grand jury transcripts before she
14 went before the grand jury. She had appeared before the
15 grand jury multiple times. Which is another tactic that
16 another grand jury witness, another one of Mr. Anderson's
17 girlfriends, used, which is Government Exhibit 81.

18 Again, another one of Mr. Anderson's girlfriends,
19 on Exhibit B84 -- we're going to go by B-A -- testified on
20 her second or third appearance before the grand jury, she
21 asked to change her testimony when she started, and after
22 Ms. Kelly questioned her, she admitted that the reason why
23 she had decided to change her testimony was after she had
24 discussed it with Mr. Anderson, Mr. Anderson had told her
25 that she needed to correct her testimony before the grand

1 jury.

2 Numerous times, the other one that has been an
3 issue of a lot of litigation before the Chief Judge, is a
4 woman who lives in Virginia, the initials S.R., and she in
5 fact would not listen to Mr. Anderson's coaching, and she
6 testified contrary to what he wanted her to do. There are
7 numerous letters. I'd ask the Court to read them. There
8 are numerous letters telling her, "These are the facts.
9 You've got it wrong." Your Honor, that's harassing.
10 Witnesses should not have to be put through that. And we
11 tried, the Government tried, we notified Mr. Anderson's
12 counsel, to tell him, "Stop. Leave her alone." And it
13 didn't stop. I will proffer that to the Court.

14 So we've got here a person who is facing a lot of
15 time in jail. A lot of time in jail, Your Honor. And he
16 never thought this was going to happen.

17 THE MAGISTRATE JUDGE: All right. Now, according
18 to the Pretrial Services report, Ms. Menzer, I see that
19 Mr. Anderson is currently on probation, is that correct?

20 MS. MENZER: Yes, Your Honor. Those are the
21 charges that developed -- in the first search warrant, in
22 Mr. Anderson's home on March 19th, 2002 -- I've included
23 the documents in there for the Court to review -- the
24 Government seized a large quantity of drugs. They seized
25 drugs, various types of drugs, cocaine, marijuana, Ecstasy,

1 a number of other -- if you look at the DEA-7. They also
2 seized four stun guns, which are illegal in the District of
3 Columbia. And a parking boot that, you know, the police
4 officers use and put on your car. It appeared that someone
5 -- and it belonged to the Metropolitan Police Department.
6 So he was charged with those crimes in Superior Court.

7 In addition he was charged after the second
8 search warrant.

9 THE MAGISTRATE JUDGE: The question I was leading
10 up to is, is there any indication of his compliance while
11 on probation? He was on probation from 6/17 of last year,
12 and will remain on probation until June of this year.

13 MS. MENZER: Your Honor, I have no idea.

14 THE MAGISTRATE JUDGE: All right.

15 MS. MENZER: I know he's on unsupervised
16 probation.

17 THE MAGISTRATE JUDGE: I see.

18 MS. MENZER: So I don't know.

19 THE MAGISTRATE JUDGE: I see.

20 MS. MENZER: I do know, though, that
21 Mr. Anderson, the second time that his home was searched,
22 drugs were found again. And I did notice on the Pretrial
23 Services Agency's report that Mr. Anderson has indicated
24 that he never used illegal drugs.

25 In addition to the drugs, Your Honor, there were

1 glass pipes, there were wood pipes, there were -- trying to
2 think of every other type there were -- but there were --
3 and he even had a scale. So the fact that, you know, I
4 don't know how much weight I would put in Mr. Anderson's
5 statement right here that he's never used illegal drugs.

6 THE MAGISTRATE JUDGE: All right. Well,
7 obviously everything that you have been discussing is
8 contained in this book, I assume.

9 MS. MENZER: That's true, Your Honor.

10 THE MAGISTRATE JUDGE: All right. And in the
11 motion.

12 MS. MENZER: And we feel that -- I've harped on
13 the risk of flight as well, and pointed out to you a number
14 of cases that basically -- the intimidating the witnesses,
15 I think you can consider under risk of flight. I also
16 would ask the Court to consider the intimidation and the
17 obstruction of this investigation when you read the
18 evidence, under the obstruction part of the statute. And
19 I refer the Court to our footnote 11, asking the Court to
20 consider detaining him as well on the dangerousness prong
21 of the bail statute, based upon the obstructive conduct,
22 the obstruction to the grand jury investigation, as well as
23 the witness intimidation.

24 As you'll see from the exhibits, many of these
25 witnesses have been served with grand jury subpoenas, and

1 Mr. Anderson attempted to prevent them from giving
2 evidence, and also coached them in what to say before the
3 grand jury in testimony that he believed was favorable to
4 him. So, for those reasons, and the documents that we've
5 submitted to the Court, we'd ask that he be detained
6 pending trial.

7 THE MAGISTRATE JUDGE: All right. Thank you,
8 Ms. Menzer.

9 Mr. Moustakas, I'll hear from you, sir.

10 MR. MOUSTAKAS: Your Honor, I was wondering if I
11 can see the exhibits that were handed up to the Court, the
12 passports. I'd like to view those?

13 I'm going to apologize in advance for what will
14 be a scattershot response. Obviously, I'm not in a
15 position to give an eloquent, point by point, response
16 but I think a response is required here.

17 THE MAGISTRATE JUDGE: Well, I would have
18 afforded you the opportunity for an eloquent response,
19 Mr. Moustakas. You were the one who indicated that you
20 wanted the hearing this afternoon.

21 MR. MOUSTAKAS: Sure. At the expense of my
22 client's liberty, and so for that reason, Your Honor, as
23 you can understand, I want to be prepared to say some
24 things, and if we have evidence to counter this we may ask
25 for the hearing to be reopened to present that evidence,

1 but it seems to me appropriate, given the very high stake
2 that Mr. Anderson has in his liberty interests, and
3 particularly in light of what we've heard today, for me to
4 make a response and not to allow the innuendo and rumor
5 and, in my view, information that lacks, in many cases,
6 any indicia of reliability.

7 Let me say a couple of things, and I'll just sort
8 of say them by way of free thinking.

9 I want to start with these camouflage passports.
10 I invite the Court, and I'm sure -- what the Government
11 doesn't tell you is, it tells you, you know, it tells you
12 half of what it's learned and it doesn't tell you the other
13 half of what it's learned. What is remarkable, if you read
14 the indictment, and if you read their motion, you don't
15 hear anything about the fact that Gold & Appel, and Iceberg
16 Transport, two companies, one of which held a number of
17 assets that grew tremendously with the telecom boom and
18 fell precipitously with the telecom bust, that those were
19 owned -- and the Government knows this to a moral and
20 absolute certainty -- by a trust.

21 First, the trust was formed, as I believe under
22 the laws of the British Virgin Islands, and later under
23 the laws of Panama. That trust has, as its grantor,
24 Mr. Anderson. That trust has, as its trustee, a corporate
25 entity that appointed Mr. Anderson to manage the funds, as

1 a fund manager. And that's right, he managed those funds
2 very successfully. And he was paid a fee for that
3 management, and he declared that fee as income.

4 THE MAGISTRATE JUDGE: Where?

5 MR. MOUSTAKAS: Where?

6 THE MAGISTRATE JUDGE: Yes, where.

7 MR. MOUSTAKAS: He paid federal tax on that, and
8 he declared -- as I understand --

9 THE MAGISTRATE JUDGE: What time period is this?

10 MR. MOUSTAKAS: During the time period relevant
11 to the Government's investigation.

12 THE MAGISTRATE JUDGE: 1995 through the present?

13 MR. MOUSTAKAS: Correct.

14 THE MAGISTRATE JUDGE: I see. So Mr. Anderson
15 did pay taxes, that's what you're representing.

16 MR. MOUSTAKAS: That is correct, on his personal
17 income. The Government's theory -- but it hasn't sort of
18 cued you in on this -- is that there is this trust and the
19 trust should somehow be collapsed and the corporate form
20 of the trust should be ignored, but what the Government
21 doesn't tell you is that although he was the grantor of the
22 trust and although he had some management authority by
23 virtue of his position with respect to companies that were
24 owned by the trust, that he was and could never -- he was
25 never and could never be a beneficiary of the trust. It is

1 undisputed. There is no evidence. The Government can
2 search anywhere they want till the end of the world, and
3 they will never find, because it was never the case and it
4 was never the intention --

5 THE MAGISTRATE JUDGE: All right, so, but --

6 MR. MOUSTAKAS: -- to do anything --

7 THE MAGISTRATE JUDGE: But you're saying that he
8 was the grantor of the trust or trusts, but he was not the
9 beneficiary, he was the trustee of the trusts?

10 MR. MOUSTAKAS: There was a company that was, as
11 I understand it --

12 THE MAGISTRATE JUDGE: Yes, that he managed.
13 Was the trustee. And so there was no beneficiary to this
14 trust, is that correct?

15 MR. MOUSTAKAS: There were beneficiaries to the
16 trust.

17 THE MAGISTRATE JUDGE: There were beneficiaries.
18 All right. Does the Government know who the beneficiaries
19 are?

20 MR. MOUSTAKAS: I'm not sure whether the
21 Government knows who the beneficiaries are or not.

22 THE MAGISTRATE JUDGE: I see. Does anyone know
23 who the beneficiaries are?

24 MR. MOUSTAKAS: Yes, I believe so. There are
25 other jurisdictions --

1 THE MAGISTRATE JUDGE: Now, this is not a trial,
2 so I don't --

3 MR. MOUSTAKAS: I understand that.

4 THE MAGISTRATE JUDGE: So I'm certainly not going
5 to require of you to tell me who the beneficiaries or if
6 you feel it would be inappropriate, but would it be
7 inappropriate to disclose who the beneficiaries are of the
8 trust?

9 MR. MOUSTAKAS: Court's indulgence. The trust
10 was set up to have essentially an eleemosynary purpose.

11 THE MAGISTRATE JUDGE: I see. So that there are
12 eleemosynary institutions out there who are receiving the
13 benefits of the trust.

14 MR. MOUSTAKAS: That will. There is a date set
15 forth in the trust at which there'll be a distribution to a
16 number of causes, not all of which the Government would
17 consider to be charitable in nature.

18 THE MAGISTRATE JUDGE: Yes. Now, Mr. Moustakas -
19 - yes.

20 MR. MOUSTAKAS: But some of which are unpopular.

21 THE MAGISTRATE JUDGE: Yes, I don't want to cut
22 you off. I do have other things, other matters. There are
23 people who are waiting.

24 But what I need to know -- and this is not a
25 trial, this is something that Judge Friedman will have to

1 probably address down the road. The Government is moving
2 to have Mr. Anderson held without bond pending a trial in
3 this case, based upon a risk of flight.

4 MR. MOUSTAKAS: Right.

5 THE MAGISTRATE JUDGE: And they have alleged to
6 the Court that he does indeed pose a risk of flight. For
7 instance, I was shown two passports, all right? Both in
8 the name of Mr. Anderson. One passport, as I saw -- and I
9 was only given very limited access to it, you have actually
10 more time than I had looking at the passports -- but it
11 appeared to me that the American-issued passports indicated
12 that Mr. Anderson was born in Virginia, and maybe you can
13 look at that and confirm that, and I think with a 1953
14 birth date, is that correct, sir?

15 MR. MOUSTAKAS: You've got it, Judge.

16 THE MAGISTRATE JUDGE: Yes. And if you look at
17 a Guyanian passport that is there, that shows Mr. Anderson
18 and his picture in there, and it indicates that he was born
19 in British Guyana, does it not? With a birth date of 1953.
20 So obviously he's making himself a little older, I guess
21 as you become a little older you become more successful,
22 according to Ms. Menzer. Does it not say that? If you
23 look at the top line, Mr. Moustakas, does it say, "Place
24 of birth"?

25 MR. MOUSTAKAS: British Guyana.

1 THE MAGISTRATE JUDGE: Right. So I have an
2 individual who's coming before this Court, looking to be
3 released to be compliant with all the conditions, and I see
4 that he has two passports, and according to the Government
5 ostensibly has more passports, where he has, to speak
6 euphemistically, lied. And if you can dress that up in any
7 other way you want, I'd appreciate hearing about it.

8 MR. MOUSTAKAS: Sure. What I started to talk
9 about was something called, and I'm sure that the
10 Government's investigators know about this well, because
11 you can search it on Google. After the Achile Lauro
12 incident where you'll remember Mr., I think it was
13 Klingerhoffer was thrown off the boat --

14 THE MAGISTRATE JUDGE: Yes, I remember that.

15 MR. MOUSTAKAS: -- a handicapped man. You may
16 also remember a Navy seal or a Navy diver called Robert
17 Stedham, I believe, who was --

18 THE MAGISTRATE JUDGE: No, I don't remember.

19 MR. MOUSTAKAS: -- thrown on the tarmac in Beirut
20 back in 1984, during the Reagan administration, that
21 caused -

22 THE MAGISTRATE JUDGE: Mr. Anderson was involved
23 in both of those incidents?

24 MR. MOUSTAKAS: No, he was involved in neither of
25 those, but a lot of international travelers, after that,

1 and a lot of international travelers today, after 9/11,
2 have engaged -- have gotten what are called "camouflage
3 passports," and they're passports that you carry so that
4 if ever there is an incident, you hide your American
5 citizenship. There is no evidence that this passport's
6 ever been used. There's no evidence that any of the
7 identifications that the Government relies on through rumor
8 and innuendo -- not even rumor -- through innuendo, have
9 ever been used.

10 Robert Zizzilige (phonetic)? It is the last name
11 in the phone book. It is a name that goes back to when
12 Mr. Anderson lived in a group house in Fairfax County with
13 a number of other fellows, and they wanted an unlisted
14 number -- they didn't want an unlisted -- they didn't want
15 to pay for an unlisted number, so they used this name as
16 sort of a gag, because it was the last name that you'd find
17 in the phone book. He's kept it ever since. He only uses
18 it for his phone account, ever since he first used it.
19 It's never been used to defraud anyone. He's current on
20 his Verizon bill.

21 THE MAGISTRATE JUDGE: So you're telling me that
22 the Guyanian passport was used because he was flying or
23 traveling into countries what -- Middle Eastern countries
24 or countries --

25 MR. MOUSTAKAS: Sometimes into Asia, sometimes

1 into --

2 THE MAGISTRATE JUDGE: So do the visas reflect
3 that in the Guyanian passport, as opposed to the two
4 American passports that also were used extensively, were
5 they not?

6 MR. MOUSTAKAS: Yes. I think the idea behind it
7 -- this has never been used. I think the idea of this is
8 you keep it in the breast pocket. If somebody starts
9 checking the passengers, you give them this. You don't
10 give him a visa.

11 THE MAGISTRATE JUDGE: Well, there's no
12 indication that that was ever used for travel purposes.

13 MR. MOUSTAKAS: I'm not an expert in this. I
14 don't see --

15 THE MAGISTRATE JUDGE: I understand. So you have
16 a sophisticated businessman traveling on a plane that
17 ostensibly might be vulnerable to being hijacked, and so
18 you show any potential -- or any hijacker who comes upon
19 you, this unused passport.

20 MR. MOUSTAKAS: Right.

21 THE MAGISTRATE JUDGE: That's a theoretical --

22 MR. MOUSTAKAS: That's the theoretical
23 justification for -- that's right.

24 Now. With respect to these. These are canceled
25 passports. And I'm sure that the Government can tell you

1 that the State Department officials or _____
2 officials, whoever it is, I can't remember now, they clip
3 the passport when it's canceled. You present this
4 passport, you cannot use this passport, but it's record
5 of your travel.

6 THE MAGISTRATE JUDGE: What's the significance
7 of that? I'm not sure I understand.

8 MR. MOUSTAKAS: The significance of it is there
9 was a representation by the Government that he has multiple
10 passports. So, in other words, he might have another one
11 of these. But to the extent he has multiple U.S.
12 passports, they're canceled passports, and there's
13 nothing --

14 THE MAGISTRATE JUDGE: No, I understand.

15 MR. MOUSTAKAS: There's nothing improper about
16 their possession.

17 THE MAGISTRATE JUDGE: I didn't understand that
18 was the Government's point, that he kept old passports,
19 therefore he has multiple passports. A canceled passport
20 is not a valid passport.

21 MR. MOUSTAKAS: Right. And so I wouldn't have
22 known what the point was.

23 THE MAGISTRATE JUDGE: Yes.

24 MR. MOUSTAKAS: Let me just address, because I
25 think it's crucially important, the idea that Mr. Anderson

1 may have told people that there's no case against him is
2 inconsistent with his own actions in this case. He has
3 understood since way before I've come into this case --
4 he was represented originally by a law firm called Swidler
5 Berlin, and by Jim Hamilton, Michael Levy, and Tony Fitch
6 over at that law firm. As a result of that law firm's
7 prior corporate transactional work, the criminal lawyers
8 were ultimately disqualified or were asked to step out of
9 the case and I was brought into the case at a late date.

10 Now let me just say to you that -- and because
11 I think it's crucially important. Mr. Fitch, shortly, as
12 I understand, after one or both of the search warrants,
13 believed that an arrest might be imminent and explained
14 that quite clearly to Mr. Anderson, and Mr. Anderson and
15 Mr. Fitch came to this Court and went to Pretrial Services
16 and did a work-up so that if there was an arrest there
17 would be paperwork showing his contacts, verifications, to
18 minimize the chance that he would be detained.

19 Now, I think Ms. Menzer cannot deny -- we have
20 been before Judge Hogan on a number of occasions since I've
21 been in the case, I know on a number of occasions Mr. Fitch
22 was with Mr. Anderson. A number of unusual -- I should say
23 non-run-of-the-mill proceedings occurred, sealed
24 proceedings, some that were completely novel to me. But in
25 each case, we made good faith arguments. In one case,

1 there were some corporations that were of foreign origin,
2 over whom the grand jury sought to exercise jurisdiction,
3 and we recommended to Mr. Anderson that he -- he was
4 subpoenaed as a custodian of records, and asked to go and
5 ask those entities to produce documents, and relying on
6 valid legal authority by our own circuit, we advised him
7 that he didn't have to comply and that we should engage in
8 litigation over that, and we had some litigation over
9 whether these entities had minimum contacts for due process
10 purposes with the United States, and eventually Judge Hogan
11 considered the briefs and held a hearing and determined
12 that those documents should be turned over. Before the
13 resolution of the hearing, we had sent letters and
14 explained who we were, our relationship to the custodian,
15 and we asked everyone to collect the documents so they'd be
16 ready in the event that we lost. And we did lose. And
17 then we asked for the documents, we produced them, I
18 believe very dutifully as we've done with everything else
19 we've been asked to do in this case.

20 But to equate assertion of one's legal rights as
21 in any way improper or evidence of obstructive behavior is
22 outrageous. And I will say another thing that is unfair is
23 the characterization of the lawsuit that Mr. Anderson
24 brought against a grand jury witness. A grand jury witness
25 went into the grand jury. She testified that a particular

1 financial transaction was a gift and not a loan. That has
2 some legal significance in the Government's eyes, because
3 it may make it look more likely if it's a gift that he
4 treated the funds of Gold & Appel as his own. Ostensibly,
5 that's their theory.

6 That woman told her accountants that she intended
7 to pay Walt back. Inconsistent with a gift. She executed
8 a loan document, inconsistent with a gift. So there was a
9 lot of evidence that it was a loan and not a gift, but
10 there was some evidence that it was a gift. She said it
11 was a gift.

12 When she went in the grand jury, her lawyer --
13 this happens every day -- we're pretending today --
14 Ms. Menzer is pretending this doesn't happen -- witnesses
15 go in the grand jury and their lawyers talk to the defense
16 lawyer and say, "Here's what they asked and here's what I
17 said." That's not unusual.

18 Carol L. DeBroosh (phonetic) represented this
19 witness and she made a call, a documented call, we see
20 e-mails about the call, to Mr. Fitch, saying, "Here's what
21 my witness said." And for the first time Mr. Anderson
22 heard that a witness who he believed he had lent money to,
23 repudiated the loan and subsequently he sued on that. And
24 here's what Judge Hogan said.

25 "I'm not here to resolve the merits of that, as

1 I've said before. It seems to me that there is a, quote,
2 'legitimate,' unquote, basis for Gold & Appel, through
3 Mr. Anderson, to bring a lawsuit against Ms. Rocky --"
4 Stephanie Rocky, S.R., "to bring a lawsuit against
5 Ms. Rocky and her company for repayment of these monies
6 from the evidence that has been produced before this
7 Court."

8 That's not my words. That's Judge Hogan's words.

9 And so we've got a guy who has known for at
10 least, well, we're going on three years now, that he is in
11 the Government's crosshairs. I have told him, when you get
12 to this level you're going to be indicted. He's understood
13 that from me, and I believe he understood it from
14 Mr. Fitch, and he has come for every single Court date that
15 there has been. He has complied with his probation. He
16 has never tested positive for drugs.

17 I cannot believe, and I invite you to call the
18 Judge, and I don't remember his name now, in Superior
19 Court, but the Judge said this was a minuscule quantity of
20 drugs. There were two pills of Ecstasy, there was
21 .020 grams of cocaine, barely a measurable amount. And so
22 when the Government gets up here and just makes these
23 statements, I'm dumbfounded because I was -- she wasn't
24 there. Or if she was, she's not remembering. I was there
25 at the sentencing hearing where Mr. Anderson got fourteen

1 days home detention from 8:00 p.m. to 8:00 a.m. That's
2 what the Judge thought about that case. And one more thing
3 about that case. Those drugs were recovered and the stun
4 guns and the boot --

5 THE MAGISTRATE JUDGE: And placed on probation,
6 was he not?

7 MR. MOUSTAKAS: Probation, right. Were recovered
8 --

9 THE MAGISTRATE JUDGE: Which is still extant.

10 MR. MOUSTAKAS: Right. I'm sorry, I didn't hear
11 that last. I said, "All right," but I didn't hear you.

12 THE MAGISTRATE JUDGE: No, no, I said and it's
13 still extant, I mean the --

14 MR. MOUSTAKAS: Correct.

15 THE MAGISTRATE JUDGE: It doesn't terminate until
16 June.

17 MR. MOUSTAKAS: June, that's right, Judge. And I
18 will also represent to the Court that during the time
19 between the sentencing and the -- the guilty plea and the
20 sentencing, Mr. Anderson had business to conduct in Europe
21 and asked for and received permission from the Judge, and
22 of course he returned for sentencing. So one of the
23 factors you have to look at is what's the history of his
24 contacts with the Court. And the history of his contacts
25 with the Court is, he always returns to Court.

1 And he has been under the threat of this
2 indictment and been spending money to respond to myriad
3 requests, he's had all of his business documents, including
4 original share certificates, taken from him, including
5 original vehicle registrations, including original
6 passports. There was an implication that somehow he
7 improperly went to the State Department or the INS and got
8 a new passport. He wasn't prohibited. They wouldn't
9 return his passport, just like they wouldn't return any of
10 his documents. So there's nothing improper about --

11 THE MAGISTRATE JUDGE: When he notified the State
12 Department that he needed a new passport --

13 MR. MOUSTAKAS: I don't know the answer to your
14 question.

15 THE MAGISTRATE JUDGE: Well. Do you know what
16 the question is?

17 MR. MOUSTAKAS: The question is what did he
18 represent about it.

19 THE MAGISTRATE JUDGE: Yes.

20 MR. MOUSTAKAS: I don't know the answer to that.

21 THE MAGISTRATE JUDGE: That it was lost in the
22 bowels of the Department of Justice or something like that.
23 No. Mr. Moustakas, let me just say -- and again, I don't
24 want to cut you off, but it seems to me I've been given a
25 lot of material here by the Government to review. You

1 question some of it. It seems, in fairness to you that I
2 should give you an opportunity to perhaps respond, because
3 I don't know if I can make a decision this afternoon with
4 the Government telling me I should look at these documents
5 before I make a decision. It's a very serious matter. The
6 threshold, as you well know, with respect to risk of flight
7 is a preponderance of the evidence, which is a much lower
8 standard than the clear and convincing that one uses for a
9 dangerousness situation.

10 I'm going to have to review these documents to
11 make a determination as to whether or not Mr. Anderson
12 should be released or not, and then obviously Judge
13 Friedman will be the Trial Court and will always have an
14 opportunity to revisit the issue of Mr. Anderson's bond
15 status.

16 So I would like to give you perhaps a fuller
17 opportunity, and I'm not suggesting that you file an
18 extensive brief, but at least highlight those points that
19 you feel rebut the Government's position that Mr. Anderson
20 would not prove a risk of flight. And clearly, the
21 obstruction of justice is a serious concern. And perhaps
22 you can even make reference to the fact, with respect to
23 the Guyanian passport that you say Mr. Anderson obtained
24 for purposes as a ruse in case of all the threats of
25 hijacking, and you say there's nothing in there, and I'm

1 just wondering how a hijacker, who is not necessarily an
2 unsophisticated person, would view a passport with nothing
3 in it if the person was coming from a country other than
4 Guyana. How would that show up, that he was visiting
5 another country and doesn't have anything stamped in it.

6 MR. MOUSTAKAS: Well, if I said it I hope I
7 didn't say it, because I don't think I said it. I said I
8 don't know how to read one of these things.

9 THE MAGISTRATE JUDGE: I see.

10 MR. MOUSTAKAS: I don't know whether it has
11 stamps in it or not.

12 THE MAGISTRATE JUDGE: I see. All right.

13 MR. MOUSTAKAS: And I don't know if there are
14 pre-printed stamps to make it look more realistic or not.

15 THE MAGISTRATE JUDGE: I don't know.

16 MR. MOUSTAKAS: I do want to say one last thing,
17 because the Government was given an awful lot of time to
18 make its arguments and I take the Court's point.

19 It was clear to me, frankly, based on what I know
20 about the standard, and I know about the Court's obligation
21 to impose the least restrictive conditions available to
22 assure his appearance, and one of the most obvious is to
23 take his passport. He's got a history of reporting back to
24 this Court when he was under these very same restrictive
25 conditions. He's complied with Court orders before. So

1 when the Government gets up here and says he disrespects
2 the Court, it's an incendiary remark, intended to incite --
3 and fortunately, it's not going to incite you -- but it has
4 that purpose, to tell a Judge, "This guy doesn't have any
5 respect for the Court." The evidence is clear that he has
6 respect for the Court, because he has always returned to
7 both Courts that he's been involved in.

8 But I have to say, what's remarkable is, these
9 drugs that -- this unbelievable quantity -- were recovered
10 in March of 2002, and Mr. Anderson was not processed on
11 those drugs until December 24th, Christmas Eve, of 2003.
12 I've never heard -- I practiced in that Court as an
13 Assistant United States Attorney, I've never heard of an
14 18-month delay between the time the drugs are recovered and
15 the time that they are processed and a case is brought.
16 And I submit to you, if anything it shows the Government's
17 spite in this case, and not Mr. Anderson's disrespect of
18 the system.

19 THE MAGISTRATE JUDGE: "Spite" in the drug
20 charge, you're saying.

21 MR. MOUSTAKAS: Bringing those drug charges
22 18 months or what -- I haven't done the calculation, but
23 very unusual circumstances, Judge. Very unusual.

24 The other thing about this obstructive conduct
25 is, we've indicated with respect to one of the most

1 important aspects what Judge Hogan has already said about
2 the legitimacy of that lawsuit and I've already talked, at
3 least anecdotally about the idea that it is very common in
4 a pre-indictment investigation for defense attorneys to try
5 to talk to witnesses and find out what the witnesses have
6 said. There's nothing wrong with that. And to try to
7 convert that into something wrong, is to further attempt to
8 erode every protection Defendants have in these kinds of
9 proceedings.

10 With respect to the obstructive conduct alleged,
11 which we think we've dealt with here, I do have to say that
12 it is hard for me to understand in a historical tax case
13 where they've made their indictment, they've got their
14 documents, they have 90 boxes -- we're taught, when we were
15 litigating associates in the law firm, that a box of
16 documents is about 3,000 documents, 2500 to 3,000
17 documents. So we're talking about an astronomical number
18 of documents. We have produced another several tens of
19 thousands of documents through subpoenas. We know that
20 accountants have produced boxes and boxes of documents. We
21 know that the Swidler Berlin law firm -- hold your breath,
22 because you'll find this unbelievable -- that the Swidler
23 Berlin law firm was asked to turn over its criminal files,
24 including all memoranda that it drafted to Mr. Anderson,
25 all attorney client privilege material, everything.

1 And so the idea that the Government has been
2 deprived of access to information and that we've somehow
3 been obstructive when it has all the documents, it's like
4 pulling teeth to get our documents back. We once said,
5 "Make us a copy of all the documents, send them to us, so
6 we can conduct our business." Didn't happen. So the idea
7 that there's some obstruction that's going to happen going
8 forward, that's going to affect this case, is hard to
9 imagine.

10 And the final thing, and the reason I think that
11 the Court can, without any further information -- and the
12 Court is welcome to look at those -- but what the Court
13 heard here today and what I believe I'm proffering in good
14 faith to the Court, there is no basis for believing that
15 holding this man on this offense, which involves no
16 dangerousness, no one being hurt, no one being threatened,
17 no one being told they're going to be killed, and no risk
18 of flight, because all the evidence is contrary, all the
19 evidence is of return, that the final sort of piece of this
20 that there is some kind of obstruction doesn't make sense
21 because Mr. Anderson isn't in a position to affect the
22 historical evidence in this case. And if he does, Your
23 Honor can say, "Mr. Anderson, I am now ordering you, you
24 are not to have contact with the following people, and
25 you're to stay away from them, and if you do have contact

1 with them, I will revisit the bond decision and I will
2 revoke your conditions of release."

3 But in a case like this, with the profile this
4 presents with, and I will tell you that since the search
5 warrant, which they use as marking the time from which he
6 knew he was under investigation, he has traveled more than
7 30 times internationally, and returned every time. And so
8 when the Government tried to cutely suggest that he didn't
9 really understand that this was a serious case until now,
10 that's just nonsense.

11 And if I can just take one moment to confer with
12 my client before I conclude for now, but if the Court
13 insists on deferring decision, then we will ask to come
14 back and with a more substantial written proffer. But if
15 I might just take a moment?

16 THE MAGISTRATE JUDGE: Surely.

17 MR. MOUSTAKAS: Mr. Anderson --

18 THE MAGISTRATE JUDGE: Would you bear with me for
19 a second, Mr. Moustakas.

20 MR. MOUSTAKAS: Sure.

21 THE MAGISTRATE JUDGE: All right, go ahead.

22 I had another matter that was scheduled earlier, and I
23 understand it's been canceled or moved, so if you want to
24 go ahead, you may proceed.

25 MR. MOUSTAKAS: Thank you, Your Honor.

1 Mr. Anderson informs he's been 60 hours without a shower,
2 that he had to go to the infirmary on two occasions to get
3 antibiotics. The Government has his passport. I would ask
4 that you release Mr. Anderson to return upon a date
5 certain, two days, if the Court wants to give us two days
6 to have a brief filed, we'll work night and day to have
7 that done.

8 I'd like to see my client released. I think he's
9 entitled to release, at least pending the continuation of
10 this hearing. I think he's earned that by virtue of the
11 many returns he's made while under investigation, by his
12 compliance with Judge Hogan's orders in the grand jury
13 matters, with his faithful compliance with all the rules of
14 his probation in the Superior Court case, with his negative
15 drug tests on every occasion that he was asked to take a
16 drug test in that case, and I would ask that the Court give
17 him an opportunity to demonstrate to you that,
18 notwithstanding the fact that he may feel animosity towards
19 the government and notwithstanding the fact that he may
20 have a difference of opinion with the government over the
21 facts of this case, and that he has obviously a vested
22 interest in the case, and will return to vigorously defend
23 it. Defend against it.

24 THE MAGISTRATE JUDGE: Thank you. Ms. Menzer?

25 MS. MENZER: Your Honor, I'm just going to

1 briefly respond because as I've stated in my motion, this
2 is not supposed to be a trial. We're not supposed to get
3 into the matter to that. Just as Judge Hogan found --
4 Mr. Moustakas quoted him over and over and over again about
5 that hearing -- Mr. Moustakas didn't tell you something.
6 Judge Hogan found that Mr. Anderson, what he had done to
7 Ms. Rocky, was considered harassment. By a preponderance
8 standard. The same standard that you have in this
9 courtroom today. That's number one. He didn't tell you
10 that.

11 I'm not going to make this into a trial. I'm not
12 going to go through all the evidence with you. We feel
13 that our evidence supports asking this Court to detain
14 Mr. Anderson on a risk of flight, just to point out,
15 because I'm going to give it back to the Clerk because I
16 realize I didn't let you see it long enough, but inside the
17 Guyana passport is a registration certificate, with a
18 picture of Mr. Anderson.

19 THE MAGISTRATE JUDGE: I saw that.

20 MS. MENZER: And it lists him living in
21 Washington, D.C. So I don't know how this is going to
22 deter a terrorist, thinking that he's not an American.
23 Just look at him. I mean, I hate to say that, but that's
24 what -- you know, I mean, terrorists, I understand they're
25 gathering all the terrorists, I mean, he has - it says

1 right in here that he's living in America. Washington,
2 D.C. At an address, by the way, Your Honor, we've pointed
3 out, doesn't even exist.

4 These are phonies. They're phonies because he's
5 going to use them. He has no respect. Yes. Has he come
6 to Court? Of course he's come to Court. Grudgingly. Do
7 you know what's in his calendar for the day that he was
8 compelled to give handwriting exemplars? He's written,
9 "Extortion day." When he came to review the search records
10 at the IRS, "Review stolen material." When he told Judge
11 Hogan, when he was supposed to be before the grand jury,
12 that he was traveling in London, the Government has
13 submitted evidence to show you that he was in the British
14 Virgin Islands.

15 So, Your Honor, he has no respect for this Court.
16 When Judge Bates ordered him to say who is Gold & Appel, he
17 wouldn't do it. Now he's come up with this trust theory?
18 Your Honor, we're not going to get into the details, but I
19 will assure the Court that this has happened after the
20 March 19th, 2002, search.

21 So, Your Honor, this isn't something that the
22 Court should bother with. What the Court needs to look at
23 is the man, and what he has done and what he has the
24 ability to do. He has investments in companies worth
25 millions and millions and millions of dollars. That he

1 could sell in a snap of a finger. He's got a place to
2 live, he's got people to live with and to take care of him
3 and to enjoy the rest of his life outside the United States
4 of America, and that's what he's been planning to do.

5 So again, I'd ask the Court to review all the
6 documents.

7 MR. MOUSTAKAS: Just to respond. Mr. Anderson
8 tells me that after he went to the British Virgin Islands
9 on that trip he went to London and came back to D.C. He
10 went to the British Virgin Islands to meet with counsel.
11 I don't think there's anything improper about that. It is
12 true that he was traveling in London. I don't know why he
13 didn't mention that he was traveling also in the BVI, but I
14 don't see that that has any merit. He had a preexisting
15 business trip scheduled, and maybe he didn't want the
16 Government to know that he was conferring with counsel
17 somewhere, but he traveled to London and, if necessary,
18 we'll produce evidence to that effect.

19 There are a number of ways that the Government --
20 and the Government's entitled absolutely to have its day in
21 Court and have an opportunity to present its evidence to a
22 jury and make sure that that opportunity isn't squandered
23 by someone fleeing the jurisdiction. I don't quibble with
24 that. That's obviously correct.

25 By the same token, when you measure the man,

1 measure him on his conduct in this case. As I say, he's
2 returned time and time again, even though at the same time
3 he's come to the Pretrial Services Agency and filled out
4 paperwork in anticipation of the very indictment that
5 ultimately took place. And so with that, I have to say
6 that I think that given the legal requirement that the
7 least restrictive conditions of release be imposed, and
8 taking the passport or electronic monitoring, or now they
9 have the GPS system, there are a number of ways that the
10 Government can assure, if it be telephone, you know,
11 monitoring daily, there are numerous ways short of putting
12 this man in the D.C. Jail for the next however long, and I
13 don't know how I am supposed to litigate on his behalf,
14 and I suspect that this has something to do with the
15 Government's motion for detention, a case of this
16 remarkable complexity -- Ms. Menzer comes up here and says,
17 "You know, I don't want to have a trial on this, I just
18 want you to look at all my evidence."

19 Well, I mean, that's like a trial without any of
20 the arguments. You know, "Here, look at the documents that
21 I would admit if this were a trial, but let's not have the
22 other side have a chance to respond."

23 So I appreciate that the Court wants to give me
24 an opportunity to respond. I submit, Your Honor, with all
25 respect that this is not a close case on risk of flight

1 because he has such a history of returning and there are so
2 many ways to assure that he does return. And with respect
3 to obstruction, there are so many ways for this Court to
4 craft an order that is unambiguous about what he can and
5 cannot do, and I assure you that so long as I'm standing at
6 this podium he will do everything that's required of him to
7 make himself available to me and to follow your rules so
8 that I can litigate this case vigorously on his behalf,
9 because I don't know how I will go through 90 boxes of
10 documents with him in jail. And I understand there are
11 cases where people do have 90 boxes of documents and they
12 have to be defended, notwithstanding the fact that they're
13 in jail. But those cases, I submit, are drug conspiracies,
14 cases involving presumptive dangerousness under the federal
15 statutes. This is not that case.

16 We are entitled to release. I ask the Court to
17 give us release until Friday and bring us back on Friday
18 for a continuation of this hearing.

19 Thanks, Judge.

20 THE MAGISTRATE JUDGE: Counsel, as I indicated,
21 I'd like to go over these documents. I'd like to go over
22 more carefully the Government's motion. I had a few
23 minutes to scan it. These are serious allegations made by
24 the Government in terms of Mr. Anderson's risk of flight.
25 I would like to give you, Mr. Moustakas, additional time.

1 I would like if maybe you could get something in writing,
2 or even if it's just a cursory outline, if you could get
3 that to me by close of business on Wednesday.

4 I'd like to set this down for a continuation at
5 which time I'll make a determination, on Thursday at
6 2:00 o'clock, if that's convenient for Government counsel?
7 Is that correct?

8 MS. MENZER: (Inaudible) Your Honor.

9 THE MAGISTRATE JUDGE: All right. And
10 Mr. Moustakas?

11 But in the interim, I'm going to direct that
12 Mr. Anderson be held without bond pending the Court's
13 determination. I'm taking this matter under advisement.
14 Thank you, counsel. Nothing further.

15 MR. MOUSTAKAS: Your Honor, if I may suggest one
16 other matter --

17 THE MAGISTRATE JUDGE: Now, I would be prepared
18 under the circumstances, Mr. Moustakas, if you made a
19 motion to have Mr. Anderson placed at CTF, which may be --

20 MR. MOUSTAKAS: I will make that request. I am
21 told now that Mr. Anderson has some business dealings which
22 require him to make some telephone calls, and he hasn't
23 been given access to a phone. He has employees who are
24 going to lose their jobs or be imperiled if they're not
25 able to do that, so he would like -- and he went about 16

1 hours without water. He'd like to be assured that he'll
2 have access to water, a shower, and telephone so he can
3 continue to conduct his business.

4 THE MAGISTRATE JUDGE: I'll make a directive that
5 he be placed in the CTF. You know what I mean by that?

6 MR. MOUSTAKAS: I do know what you mean, the
7 Central Treatment Facility.

8 THE MAGISTRATE JUDGE: Yes. And whatever rights
9 he has, obviously -- and I would assume that he would have
10 access to water, if nothing else, in this courthouse,
11 Mr. Moustakas. But just to be on the safe side, there'll
12 be a notation on the commitment order, but a brief order to
13 that effect which I will sign as soon as you get it, you
14 can fax it to me, Ms. Kay will give you the fax number,
15 that will assure his placement over there. And we'll see
16 you at 2:00 o'clock on Thursday.

17 Thank you, counsel.

18 (Whereupon, proceedings were concluded.)

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