IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
vs.	:	Criminal No. 05-0066
WALTER ANDERSON aka Mark Roth	:	
Defendant	:	
	:	Washington, D.C.
	:	March 3, 2005

TRANSCRIPT OF CONTINUATION
OF DETENTION HEARING
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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P R O C E E D I N G S

THE CLERK: Criminal Case Number 2005-66, the United States of America versus Walter Anderson, also known as Mark Roth. Susan Menzer and Karen Kelly representing the Government; John Moustakas representing the Defendant. The Defendant is present in the courtroom. This is a continuation of the detention hearing.

THE MAGISTRATE JUDGE: Good afternoon. Counsel, Mr. Moustakas --

MR. MOUSTAKAS: Yes, good afternoon.

THE MAGISTRATE JUDGE: -- thank you for your, which the Court found helpful. I think you've done a good job. And Ms. Menzer, the Court went through the documents that you provided. So is there anything -- Mr. Moustakas, you were sort of -- without the benefit, I guess, of fully digesting the Government's memorandum in favor of detention, so if there's anything either counsel would like to add by way of supplementation, and Ms. Menzer, you now have had the benefit of Mr. Moustakas's brief. So is there anything you would like to say, Ms. Menzer? I assume you've had an opportunity to read Mr. Moustakas's --

MS. MENZER: Yes, Your Honor. I got it about 10:00 o'clock this morning.

THE MAGISTRATE JUDGE: Good. Anything you'd like to supplement --

MS. MENZER: Yes, there's a number of exhibits that I'd like to supplement, based upon Mr. Moustakas's motion. First of all, Your Honor --

THE MAGISTRATE JUDGE: Does the Defendant have copies of those exhibits?

MS. MENZER: I will, I will, as soon as I've tendered them to the Court. Your Honor, I apologize not going through the exhibits one for one for you, and I noticed in Mr. Moustakas's brief that he commented on that. The Government believed that those exhibits are very self-explanatory, and if you have any questions or if you'd like to hear from any witnesses to explain them, we're more than willing to report that evidence. That's number one.

In terms of lack of documentation, there were some issues that the Government just felt that they were not in dispute. And that there was no documentation required, that Mr. Anderson wasn't going to dispute any of the facts alleged in the Government's motion. So just to make the record clear, I'm going to tender to the Court and provide counsel with a copy, this is an assignment and assumption of the deed of trust. I'm going to mark it as Government Exhibit 85, regarding Mr. Anderson's home.

According to this document, Your Honor, Mr. Anderson no longer owns that property.

THE MAGISTRATE JUDGE: Well, I'm not going to

take the time now --

MS. MENZER: I understand.

THE MAGISTRATE JUDGE: -- Ms. Menzer, but essentially this is what, assigning ownership of this property from where to where?

MS. MENZER: The Government asserted in its motion that Mr. Anderson no longer owned property in the District of Columbia.

THE MAGISTRATE JUDGE: I see.

MS. MENZER: And that is an assignment of his property, and I also have a motion here where it has been moved into foreclosure; however, Mr. Anderson has stayed it until May. I'm going to tender it to the Court as Government Exhibit 86.

Your Honor, I learned yesterday -- and I received the documents to confirm the fact -- that Gold & Appel has officially been put into insolvency. I'm going to tender an exhibit to you for that, which is Government Exhibit 87. In support of our assertion that Mr. Anderson has moved his funds and no longer controls Gold & Appel, which will have many implications in the future for him. He will no longer be able to control the records of Gold & Appel, the civil litigants will have access to the records and try to determine where the assets of Gold & Appel have gone. So that's another incentive for Mr. Anderson to flee.

THE MAGISTRATE JUDGE: I'm not sure I understand.

MS. MENZER: I'm sorry, Your Honor. The fact is, now Gold & Appel has been put into insolvency. A liquidator has been appointed.

THE MAGISTRATE JUDGE: Right.

MS. MENZER: In our country, trustees in bankruptcy have the right, they step into the shoes of the company. And therefore they will have the right to get all the records of Gold & Appel, waive Gold & Appel's attorney/client privilege, _____ that, there are many other implications that's going to occur that will severely impact Mr. Anderson's ability to control the situation, which is what he's tried to do over the years.

THE MAGISTRATE JUDGE: To control Gold & Appel.

MS. MENZER: Gold & Appel has assets. According to --

THE MAGISTRATE JUDGE: Which means he would not have access to those assets.

MS. MENZER: It would mean that the evidence that he was actually Gold & Appel would now be available to the civil litigants. That wasn't available to the civil litigants before.

THE MAGISTRATE JUDGE: Oh, I understand the issue -- we're not trying the case.

MS. MENZER: I understand that.

THE MAGISTRATE JUDGE: The limited function of this Court is to ascertain whether or not Mr. Anderson poses a risk of flight were he to be released prior to trial. So whether or not some other judgment creditor will now have a better opportunity to look more closely into what appears to be purported assets of Mr. Anderson, it seems to me perhaps supports to some limited extent the Defendant's argument that he does not or will not have the assets to flee the country.

MS. MENZER: I understand, Your Honor. But I think what the argument the Government was trying to make, and I'm sorry if I wasn't clear the first time, is that the Government clearly believes that Mr. Anderson has the assets. He's just hidden them. He successfully has moved them out of Gold & Appel into other entities. And as the exhibits show, he has put money in Swiss bank accounts, in Spanish bank accounts, he's invested --

THE MAGISTRATE JUDGE: The Government know that for a fact, that they are --

MS. MENZER: Yes, Your Honor.

THE MAGISTRATE JUDGE: -- assets in Switzerland and Grand Cayman, or --

MS. MENZER: Your Honor?

THE MAGISTRATE JUDGE: -- Channel Islands.

MS. MENZER: As we've stated in our motion, we

know for a fact that $20 million was transferred to a Swiss account. We know for a fact the Swiss account was closed right after -- well, approximately after the search warrant was executed the first time. We have made numerous requests of the Swiss authorities, we have been unable to have the Swiss authorities disclose the identity of the account holder. What the Swiss authorities did do is they required the Government to notify Mr. Anderson of the procedures that were going on in the Swiss courts in order to provide him the ability to make a motion to prevent the disclosure. And all of a sudden Switzerland was no longer willing to provide us with the documents _____ beforehand. That's all I can tell Your Honor. So, for a fact, no, I don't know where the $20 million is.

But the point is, there's a big black hole there. We don't know where the money went. We know, and the liquidator will soon know from Gold & Appel that Mr. Anderson has funneled out all the money to other entities. Yesterday I actually learned about a new one that has been created.

What's important is that Mr. Anderson is trying to create the appearance that he has no money because he has these civil judgments. But that's not the case. He has many assets that he can liquidate. Who knows where they may be? We know that there have been pieces of art

work that have been sold. We don't know where the money went. We know that it was art work, millions of dollars worth of art work, sent to Switzerland, to Zurich. We have no idea what happened to those documents.

THE MAGISTRATE JUDGE: When you say the art work has been sold, you mentioned that earlier at the other hearing, the valuable art work that was sold. I mean, is there some sort of documentation? Did this go through an auction house? Where --

MS. MENZER: Yes, it went through Christie's, Your Honor.

THE MAGISTRATE JUDGE: I see.

MS. MENZER: And I do believe the liquidator was trying to find that information from another seller of the art work in New York, is continuing to try to do that. So we have no idea what happened to it. The bottom line is we can't tell you. We do know at one point in time, Mr. Anderson had hundreds of millions of dollars. The Spain mansion cost 6 million euros.

THE MAGISTRATE JUDGE: Who owns that mansion?

MS. MENZER: One World -- it was bought in the name of One World Properties, which was a wholly-owned subsidiary of Gold & Appel. Mr. Anderson's handwriting is on the documents. I believe they're part of your exhibits. He was the representative of Gold & Appel. He's a property

acting as attorney-in-fact for Gold & Appel.

THE MAGISTRATE JUDGE: And Gold & Appel is now not under the control of Mr. Anderson, is that correct?

MS. MENZER: Well, no, it appears that during this whole reorganization, Mr. Anderson has now transferred One World Properties to Iceberg Transport, and it has, as I stated in my motion, changed the form of Iceberg Transport and now has created a whole 'nother entity. And Your Honor, just like you said, we're not trying the case yet. He may very well have a defense to the charges. That's fine, he can have his day in Court. The Government wants the opportunity to be able to try him. He is an extreme risk of flight. There is nothing holding him here. Absolutely --

THE MAGISTRATE JUDGE: No, I understand that, but the Government's position is, Ms. Menzer, as I understand it, is that Mr. Anderson has the wherewithal to leave the country and live handsomely offshore. Is that correct?

MS. MENZER: That's correct, Your Honor.

THE MAGISTRATE JUDGE: Now, clearly the United States has treaty relationships with many countries in the world which permit him to extradited. And you recall in the brief submitted by Mr. Anderson there was an indication that he would be -- might be -- I am assuming that it was an offer -- to waive any objection to him being extradited

back to the United States. I don't know, from a legal standpoint, whether or not that waiver would hold. There are certain countries in the world, obviously, where there's no extradition relationship. But whether or not his waiver would, in other words, be honored by those countries -- would the Government have any answer to that?

MS. MENZER: I do have a position, Your Honor, if I may respond.

THE MAGISTRATE JUDGE: Yes.

MS. MENZER: Actually, two responses. The first is, even if he signs a waiver of extradition, just as the Court recognized, the other jurisdiction, wherever he may be, does not need to recognize it. We know that --

THE MAGISTRATE JUDGE: So it's discretionary? With that country?

MS. MENZER: Well, it depends on where he is. I mean, we'd have to look at the terms of the treaty and try to decide whether or not it applies.

Second problem that we have with extradition, and it's a fact, we have tried to extradite -- first of all, we have to find him. Let's find an easy proposition. He has many places, the Court can see _____. He's got a girlfriend in Spain, he has a property in Spain, he has money in Spain, and they've been together for fifteen years. He's got a girlfriend from Brazil. He has property

rights in Brazil. He can go -- he has a girlfriend from Taiwan, he has a girlfriend from China, he has a girlfriend from Indonesia. All of these women are indebted to him. He's given them lots of money over the years, they apparently care about him, and they probably are more than willing -- there are many, many, many places for him to go. So the first question about extradition is, we have to find him.

The second problem with extradition is that the Court has to follow through the procedures. And I'm going to just use Spain, because we've been talking about Spain, as an example. According to the Office of International Affairs at the Department of Justice, which handles the extradition, the last three attempts to extradite someone from Spain, they were arrested, the extradition proceedings went forward, and the person was released on bond pending the extradition. In all three circumstances, those three individuals left. And one of those cases is in this courthouse. The person was indicted in 2002, and they're still gone. We have been unable to try them.

The Government, Your Honor, deserves its right _____ as well, and understands Mr. Anderson's rights. But the Government here believes that he is an extreme flight risk.

The other --

THE CLERK: Excuse me just one moment, Ms. Menzer. Let me turn this -- I don't think the people in the back can hear you. I'm not sure, but I doubt it. I'm going to turn this closer to you, so -- they want to hear what you're saying (inaudible). Can you hear the Judge?

MS. MENZER: Can you hear me?

(Miscellaneous conversation.)

THE MAGISTRATE JUDGE: As long as I can hear you. Go ahead.

MS. MENZER: So I think that's what's very important about the extradition. Is first, whether or not we can even get the Court to agree.

And something I want the Court to realize here. We've had a number of proceedings with Mr. Anderson. He has his rights, he has his rights to challenge our efforts to get evidence, and I don't begrudge him for doing that. But you also have to look at his conduct. At a time we requested from Mr. Moustakas that Mr. Anderson sign a consent directive. It's a very unusual process, and we use it in order to convince jurisdictions that will not -- that do not have treaties, as we were able to use with other things -- to waive the disclosure provisions. In some countries, like Cayman Islands, it's actually a crime for the trust agent to disclose anything to us.

So we served Mr. Anderson with this consent directive, and like his right -- he has a right to do, he challenged it. We filed motions and we briefed it. There is Supreme Court law on it, that it is not a waiver of your 5th Amendment privilege, and before we went in front of the Chief Judge Mr. Anderson complied and he signed it.

However, one of the people that we intended to use that consent directive, send it to in order to get the records, was a law firm in Panama. Who no longer has a _____ with us. And Mr. Moustakas notified the law firm that it intended to seek a counsel in Panama to determine whether or not if they honored the consent directive it would violate the law in Panama. So of course these people were afraid they were going to be sued, and they weren't going to cooperate.

So the question is, this could be going on and on and on. Yes, he has a right to challenge what we do. But every step we take, he's not cooperating. When you have Supreme Court case law that says, "This is what the law is." He has a right to challenge it, but at a certain point. Then he signed it. He told the Chief Judge he signed it. But then he turned around and he told the people not to honor it.

So you need to look at what Mr. Anderson has done in this investigation, and I think it's very -- it is hard,

Your Honor. There's a lot of exhibits there. And just like Mr. Moustakas's brief said, this has been a three-year investigation. That indictment is not based on suspicions and innuendoes. Three years of investigation, two search warrants at four different locations. It is not innuendoes and suspicions. Grand jury found by probable cause that he had committed these crimes. And they involve a very high level of deceit. And I think the Court needs to recognize that.

The other thing that I couldn't tender to the Court the other day which I'd like to now, is at the time of Mr. Anderson's arrest he had his keys with him. I'll show them to counsel.

THE MAGISTRATE JUDGE: His arrest was what, at Dulles Airport?

MS. MENZER: Yes, Your Honor. Since Saturday the agents have been able to determine -- and I will tender to the Court how they did so -- but have been able to determine that this is a safe deposit key. Mr. Anderson, as you know from the records I've already submitted to the Court, opened a safe deposit box in London after the first search warrant, and closed it after the second.

We have no idea where the safe deposit box key goes. I'm going to tender to the Court Government Exhibit 88A, which is a copy of _____ key. This is

the pamphlet which one of the keys listed on there, if you look at the labeling on the key, this is one of the keys which confirms it is in fact a safe deposit key.

And I'm (inaudible) the Court Government Exhibit 88, which is a series of e-mails provided to counsel, Agent Cooks and the Serious Fraud Office in the United Kingdom.

Your Honor, as you can tell from the e-mail correspondence, the Serious Fraud Office confirmed that that was not the key to the safe deposit box that we already knew about. So there's another one somewhere. We just don't know where it is.

Mr. Moustakas's brief made mention of the fact that we haven't proved anything about these fake identifications. We haven't proven he used them. That's just not what your evidence shows. What we submitted to the Court were electric bills, phone bills, the names of Mr. Zzylch, the names of Mr. Prospero, Mr. Prospero is the INS document was used in order -- according to one of the witnesses, to get electric bill. Mark Roth's name was used in order to form Iceberg. So Mr. Anderson, he has used these aliases. It's not that just had documents with their names on it.

And these people -- what happens when you get an account with the electric company? Well, Mr. Zillich has

really good credit right now. He could probably turn around, get a credit card, open a bank account. Now he has something that has an address on it, he could probably go get a driver's license. I mean, there are so many different things that Mr. Anderson can do with the fact of creating a new alias and building a credit history. Which is what he's done with those names. It's not just a piece of document. And the allegations the Government made were not empty. He is prepared to flee. And he has the evidence to do so.

Your Honor also asked Government whether or not we had his passport application, and I did get it for you. So I'd like to tender it to the Court. As Government Exhibit (inaudible). It's very hard to read, Your Honor. But on the second page where it says, "Lost, Stolen Passport Information," which is how he got another passport three days after --

THE MAGISTRATE JUDGE: Now, this was an application for a passport following what, the seizure of -

MS. MENZER: Yes.

THE MAGISTRATE JUDGE: -- his other passport?

MS. MENZER: Uh-huh.

THE MAGISTRATE JUDGE: And that occurred when?

MS. MENZER: March 19th. As you can see, he certified -- he applied for this on March 19, 2002. Was

the same exact day.

THE MAGISTRATE JUDGE: And what was the occasion that his passport was seized?

MS. MENZER: His residence and office were searched. And they were among the documents seized.

THE MAGISTRATE JUDGE: I see. This is back in 2002.

MS. MENZER: Two. Your Honor, it is very difficult to read on this --

THE MAGISTRATE JUDGE: No, no, no. I can see that -- it appears to say the reason under the "Lost Stolen Passport Information" section, it appears to say, "Document was removed from my home, passport was part of those documents." Is that --

MS. MENZER: That's what it says, Your Honor.

THE MAGISTRATE JUDGE: That's correct. Very well. Yes.

MS. MENZER: So there's no mention there of a seizure or anything like that.

It then goes on to say, "What did you do to recover the passport?" and Mr. Anderson wrote, "Tried to contact the person with the documents.

THE MAGISTRATE JUDGE: Based upon those representations the Passport Office issued him another passport?

MS. MENZER: Unfortunately, Your Honor.

THE MAGISTRATE JUDGE: They didn't seek to contact the person who had the document, I take it.

MS. MENZER: Your Honor, I agreed with the first comment that you made to me, is that we really do need to stay focused. That the issue he's here is not whether Mr. Anderson has a defense, not whether his all --

THE MAGISTRATE JUDGE: No. No, I understand. I understand.

MS. MENZER: You know, all of the issues that Mr. Moustakas raised regarding his defense are irrelevant for purposes of this hearing, that were stated in his motion. What's important here is that there is substantial evidence that Mr. Anderson is going to flee. He has -- this is totally different from being a target of a grand jury investigation. There is an actual charging document. He now knows that he's facing more than 20 years in prison if convicted. Hundreds of millions of dollars in civil liability if he stays around. And he has no reason to stay. He has no family, no money here, he has his mother and stepfather and that's it, he's never been married and he has no children that we know of.

So for those reasons, Your Honor, I'd ask that he be detained.

THE MAGISTRATE JUDGE: All right. Thank you,

Ms. Menzer.

Mr. Moustakas?

MR. MOUSTAKAS: Let me start where Ms. Menzer left off, because the representations that I've heard -- and I don't know why I don't have these documents. I'd bet my bottom dollar they didn't just get them. We get these documents handed to us at the last possible moment. We're up until four in the morning getting things, as best we can, to the people who need to see them, but the Government never extends us the same courtesy.

But this document is -- I would say that this document elegantly shows everything that is wrong with the Government's case. Mr. Anderson --

THE MAGISTRATE JUDGE: What document are you referencing, so the record knows.

MR. MOUSTAKAS: This application for a passport.

THE MAGISTRATE JUDGE: All right.

MR. MOUSTAKAS: Let me be very clear. When his house was searched and when seizures were made from that house, there is no question and we do not deny that the Government did it by lawful means, we haven't seen both of the search warrants and we don't know whether they are subject to challenge, but ostensibly under lawful authority. That lawful authority does not entitle them to keep things. In fact, there is something called a Rule 41

motion for return of property. The Court -- no Court ever justified taking -- this man was not part of the criminal justice system. He was a target of an investigation. No judge ever said that his travel rights could be circumscribed in any way.

THE MAGISTRATE JUDGE: That's not the issue before the Court. You're getting to the document itself.

MR. MOUSTAKAS: I am getting to the document itself, because what -- the entirety of the Government's evidence with respect to risk of flight, dangerousness and obstruction is innuendo. It's throwing together a bunch of stuff and hoping that some of it sticks. And it's not analyzing it carefully.

THE MAGISTRATE JUDGE: Are you talking about the evidence with respect to the charges?

MR. MOUSTAKAS: No, now I'm talking about the evidence presented in support of the Government's request that this man be detained pretrial.

THE MAGISTRATE JUDGE: All right, all right. All right.

MR. MOUSTAKAS: So what I'm talking about specifically is, first of all, this is a terrific document and I thank the Government for getting it. Because --

THE MAGISTRATE JUDGE: It's an application for --

MR. MOUSTAKAS: The application -- I forgot the

exhibit number. Mine isn't --

THE MAGISTRATE JUDGE: I've never heard it referred to as a "terrific document," I think, ever, but --

MR. MOUSTAKAS: It's a terrific document for us.

THE MAGISTRATE JUDGE: I see. All right.

MR. MOUSTAKAS: And here's why it's a terrific document. Mr. Anderson said the document was taken from my house and I asked for it back, and lo and behold that's exactly what he did. As with all of the documents -- and we can bring in a stream of lawyers from the Swidler Berlin law firm -- the Government was asked to reproduce all the documents and return them. But Mr. Anderson had international travel shortly after the search. No Judge had ever intervened and had taken the position that as the target of a grand jury investigation, as to whom no probable cause to believe he'd committed a crime had been found by a grand jury --

THE MAGISTRATE JUDGE: What's the caption of that section, Mr. Moustakas?

MR. MOUSTAKAS: "Lost or Stolen Passport Information." Judge, I take it there isn't going to be a heading for, "Government Seizure."

THE MAGISTRATE JUDGE: Well, what Mr. Anderson said is true, but I don't know if it's reflective of what really happened. That's why we make witnesses say, "The

truth, the whole truth." It seems to me that he's making reference to the fact that, "It was removed from my house." Well, you know. It was removed, that's an accurate statement, but it doesn't really tell the State Department, does it, as to why or where the document is. He knew exactly where that document was, and yet he neglected to pass that on, did he not?

MR. MOUSTAKAS: The only alternative that is implied by the Court's questioning and statements, is that Mr. Anderson should have put in the application, "My house was searched, my passport was taken by the FBI or the IRS, and I'd like you to give me a new one." What would have happened to Mr. Anderson? With no prior judicial decision, he would have been deprived. He would have had to apply and go through all kinds of rigmarole. We've never talked about this before, but the idea that in the absence of any order that he couldn't travel, this man couldn't do what he needed to do to replace his travel documents at a time that he was under no compulsion to stay in this jurisdiction and, in any case, returned repeatedly on the new passport, is, in our view, perfectly reasonable. Could he have given more detail --

THE MAGISTRATE JUDGE: But didn't he have a legitimate remedy of going to -- well, was it the Chief Judge of this Court and seeking return of his passport

because he was in need of traveling? You say he was not a -- was he aware of the fact that he was a target of the investigation?

MR. MOUSTAKAS: Of course he was.

THE MAGISTRATE JUDGE: He was aware of that. So he well knew that the likelihood of the passport being returned was remote. True or not?

MR. MOUSTAKAS: I don't agree with that.

THE MAGISTRATE JUDGE: All right.

MR. MOUSTAKAS: I think that's untrue.

THE MAGISTRATE JUDGE: All right.

MR. MOUSTAKAS: I don't believe that implicit in the authority to search someone's premises is the ability to take original documents that cannot be replicated and keep them. For example, if they had taken the original title to his automobile -- all they're entitled to do is have the evidentiary value of the document. So if he said, "Hey, listen, I need to apply for new car insurance and they won't accept a copy. I need my original." The Government would be duty-bound, in our view, to turn it over.

But whether that's the case or not, we're not suggesting we're going to get in the reeds here on the question that that level of granularity about whether he is supposed to be a law professor and decide what he has to

do. It was a reasonable thing to do. It doesn't evince any evidence of flight. And the Government's reliance on that -- and I'll give you a list of other things upon which the Government relies -- that folks ought to be boggled by.

They tell you that Mr. Anderson ought to be held without bond because he despises the U.S. government. And the only evidence that they give you for this proposition is that he wrote a letter. And you know what that letter says? That letter says, "This government lies, it cheats, it murders. In the name of religion, it does X, Y and Z. It doesn't let people live with -- it doesn't respect people's rights to live peaceably." Essentially it says, "I laud you for what you did, young man. Keep up the good work, be proud that you made some small-minded people angry."

The Government doesn't tell you, Judge Kay, what is that letter about. They know what it's about. It's about a young man named Nick Becker. Nick Becker was a senior -- graduating senior from Calvert County School System. The Washington Post wrote a story about him. He fought very hard, fought very hard to have the plan to have a prayer at his graduation reversed. And he succeeded, I believe, in having it reversed. Notwithstanding the school board's decisions to reverse the prayer, during a moment of silence some county officials, instead of respecting the

silence, they started belting out the Lord's Prayer, and what does Nick Becker do? He walks out of the graduation.

Well, when he tries to come back in and get his diploma, the police threaten to arrest him for breach of the peace. Well, when Mr. Anderson hears that story he writes the letter that is included.

The idea, the mere idea that these people sitting at that table think that that is the kind of thing that ought to be brought to your attention to decide whether he ought to be held is reprehensible. I know I'm not supposed to say that in a proceeding like that because it's off-color, it's offensive, it's rude. But it is mystifying that anyone thinks that that's a basis that when the Supreme Court in Salerno says the norm is released in our system of constitutional laws, it doesn't mean that that's some kind of technical exception. That's the norm. And the idea that a man, patting a young man who, maybe like himself, has a little bit of an independent streak, patting him on the back, has engaged in some kind of extremist act, is laughable. And it's shameful.

And so are the citations -- the Government spends all this time citing these cases. And I was scratching my head as I read them. They cite the Watson case. Watson is the nut job who drove a tractor into the Reflecting Pool, strapped, he said, with organo-phosphate and threatening to

blow himself up. He had such an outrageous outburst before Magistrate Judge Facciola that Magistrate Judge said, "He's lost his control completely." The Government cites that in defense of its motion here, that Mr. Anderson should be held. That's a person that Judge Thomas Penfield Jackson called a "one-man weapon of mass destruction."

They cite the Cannoly case, involving Hawaiian militiamen who threatened federal agents with physical violence. Ku Klux Klan members who threaten people with physical violence. People who have disrespected the court and absconded and threatened judicial officers. People who stop people from coming in to court and threatened prosecutors and judges in the Cannoly case. That's what those people did.

This case is inflammatory -- I absolutely concede that the Government is entitled to have its day in court on the underlying charges. The Government may be right, Mr. Anderson may be right, there will be an orderly trial at which a jury will be set, the jury will decide who's right, and they'll have to find, if they do, that Mr. Anderson is guilty beyond a reasonable doubt. That's our system. He'll be presumed innocent. But to come in here and throw a mass of documents -- Ms. Menzer tells you, "I'm just going to come up, Judge, because I want to respond to some things Mr. Moustakas --" nothing I see is

responsive. Keys, passport -- none of it's responsive to our motion. Our motion is about the cases and what they mean, the law and what it means.

We went to great length in our brief to suggest that the Government, in defying Salerno, in ignoring Salerno and the Supreme Court's ruling in that case, didn't say one word in its brief -- and remarkably, after receiving our brief, didn't say one word today about whether -- why it believes there are no conditions or combination of conditions that could reasonably -- not "guarantee" -- reasonably assure Mr. Anderson's return and the safety to the community.

THE MAGISTRATE JUDGE: Why don't you address that, Mr. Moustakas?

MR. MOUSTAKAS: I will address it. Thank you, Judge.

With respect to the risk of flight, let me say -- first of all, I want to be clear. With respect to the allegations of dangerousness, the Government's obligation is to prove by clear and convincing evidence. With respect to risk of flight, preponderance. They fail on both scores.

With respect to risk of flight, the Court is familiar with the taxonomy of factors that the Court looks at, the nature and circumstances of the offense, the weight

of the evidence, the history and characteristics of Mr. Anderson himself, and the danger posed to the community.

With respect to the nature and circumstances of the offense, the offense obviously is not an offense of violence. No one has been harmed or threatened with threats of physical violence by Mr. Anderson. The amounts that the Government alleges are staggering. Undeniably, they are large amounts of money. We will show, at trial, that those are exaggerated in the extreme, they do not represent realistic figures, but we do not dispute that the funds were, for a time, extremely successful. There is no disputing that.

But what's crucial about the nature and circumstances of the offense are not only that it's not an offense of dangerousness, not an offense of violence, it's a white-collar offense, but that notwithstanding his knowledge -- and this is very unusual. Mr. Fitch brought him to Pretrial Services Agency to do a report. That's how sure, after these search warrants, they were that he would be indicted. Ms. Menzer has, to her credit, pulled no punches. She said from day one, since I've been involved in the case, "He will be indicted." And I do not mince words with my client, and I have said, "She says you will be indicted, I believe her." So there is -- this is sort

of the golden thread that the Government hopes to snip off, this sort of myth that's crucial to its argument on risk of flight, that Mr. Anderson only now, through some epiphany, for the first time ever, realized the charges were serious. Untrue.

He realized the charges were serious, it was impressed upon him by the allegations --

THE MAGISTRATE JUDGE: When did that occur, Mr. Moustakas, that he went before Pretrial Services?

MR. MOUSTAKAS: That occurred when Mr. Fitch was in the case. Mr. Fitch tells me, more than a year ago.

THE MAGISTRATE JUDGE: And was the matter being -- was it in Superior Court? He was on probation at that time. He was not?

MR. MOUSTAKAS: No. No, he was not. Had nothing to do with that.

THE MAGISTRATE JUDGE: This was prior -- nothing to do with the drug charges.

MR. MOUSTAKAS: Let me give you some of the background.

THE MAGISTRATE JUDGE: Right.

MR. MOUSTAKAS: In November, 2002 -- I'm sorry, strike that. In March of 2002, early March of 2002, search warrants were executed at Mr. Anderson's home and at Mr. Anderson's place of business. From that moment on, he

knew that there was an investigation. It turns out, through other documentation, that the Government was looking at him as a target well before that. Now --

THE MAGISTRATE JUDGE: Did he have any sense of what the charges might be, or --

MR. MOUSTAKAS: Yes.

THE MAGISTRATE JUDGE: He was the target of what?

MR. MOUSTAKAS: Yes. The affidavit in that case was unsealed and provided to counsel, to predecessor counsel Mr. Fitch, Mr. Levy, Mr. Hamilton at the Swidler Berlin law firm. So he knew exactly what the offenses were that were alleged.

During the course of that search warrant, because the search warrant was sweeping and although it was a document search warrant it permitted the agents to look in the refrigerator, in tiny boxes, jewelry boxes, small quantities of narcotics were found. Extremely small quantities, as I've detailed in our brief. Nothing ever happened with respect to that or with respect to a Denver boot, one of those boots that they put on your car when you don't pay your tickets. The Government alleged that that was a receiving stolen property offense, even though it was on a marble pedestal and said something like, "Public Works." It was a piece of quirky art that Mr. Anderson had displayed, and it was a charge that was ultimately

dismissed. But notwithstanding the seizure of those materials and MPD's coming to the IRS search and seizing those materials, nothing ever came of it.

Then, in November of 2003, a full year, year-plus, almost two years, I guess, 19 or 20 months had passed, a second search was executed, on November 4th or something, 7th, something around the early time of November, a second search of his home and his business again.

Now, let me say that in the interceding time, I understand from my predecessor counsel that there was a request for a production in toto of all the documents, because Mr. Anderson was operating ongoing businesses and was a fund manager for a number of different businesses. That request was denied, although the Government did allow Mr. Anderson and his lawyer to come in and ask for individual documents and to come in and look through documents.

After what was described to me as a very expensive endeavor of putting together a second set of documents, much smaller than the first, that were the operating documents for these businesses, they were taken again.

The difficulty getting these -- the great difficulty getting these originals back may have been a big

motivating factor in taking some of the original documents, share certificates, vehicle registrations, things where the original matters, title, and putting those offshore, remembering that the companies themselves are offshore, the companies are foreign companies. And Mr. Anderson has a fiduciary obligation to those companies not to unnecessarily cause them to have to replicate their documents over and over and over again. And so although there are allegations about the safety deposit box -- and by the way, just sort of a side track on the safety deposit box.

Mr. Anderson, by the Government's own exhibits and the Government's own lights, opened that safety deposit box not as William Prospero or Robert Zzylch, or any other name that the Government associates with Mr. Anderson, but opened it under the name of Mr. Anderson with the passport of Mr. Anderson, with the driver's license of Mr. Anderson.

The important thing to remember, and I heard her say it again -- she talked about how he hid his role in Gold & Appel. We've given you SEC filings, there were Hart-Scott Rodino filings, all detailing his deep involvement in Gold & Appel. That was never a matter of secrecy. Everyone who worked with him understood what he did for Gold & Appel. The only dispute -- and the Government has only learned this recently -- is that he was

not the beneficiary of the eventual trust that owned all the intervening structures.

Now, so just to finish back on the history. There was another search in November, and it wasn't until December of '03, on Christmas Eve, that the drug charges and the charge relating to the Denver boot from the car were made the subject of a misdemeanor case over in Superior Court.

Mr. Anderson's recollection is probably that he was to Pretrial on three occasions. One, in connection with the misdemeanor case, but another one prior to that because as a result of the search Mr. Fitch was concerned that an arrest warrant would be coming down the pike and wanted to ensure that the Pretrial Services Agency had the necessary information to minimize the likelihood that Mr. Anderson, his client, would have to be unnecessarily or longer than necessarily -- longer than necessary detained. That was inelegant, but I think the Court knows what I mean.

So, with respect to sort of the history of the investigation, I think I've laid that out for you.

Ms. Menzer talks about the consent directives, and I think that's important because in a sense it implicates the conduct of my law firm and myself. I never -- you know, a consent directive could have fell on my head

and I wouldn't have known what it was. And when the Government furnished us with authority, we reviewed that authority and we had protracted discussions, because, consistent with its pattern in this case, when a case says you're entitled to A, B, C and D, the Government says, "I want E, F, G and all the way to Q."

And so we said, "We absolutely agree with you that the case you've cited provides this authority, and we will do it."

And they said, "No, we want this in addition," and we went back and forth and ultimately he signed and he signed exactly what the Supreme Court required him to sign, on the advice of counsel. And I'm responsible for that advice, and I stand behind that advice today. We didn't have to go before Judge Hogan, and that is a perfect example, in my mind, of how the system is intended to work.

When Mr. Anderson stands on his right at the advice of counsel, he does nothing disrespectful to the law, he shows the utmost respect for the law because he avails himself of the law and requires the Government to meet its obligations. There's nothing wrong with that. And there is a suggestion all throughout this case that by doing that he has somehow demonstrated disrespect for the system, and I just don't see that.

With respect -- in a related fashion, with

respect to the history of some of the document productions about which the Government makes much hay in its brief, they say, "We asked Mr. Anderson as the custodian of records to provide documents belonging to collective entities -- Gold & Appel, Iceberg, and some other entities that are escaping me at the moment, I think Space, Incorporated, might be among them, Converge, Galatec. Galatec was a U.S. company, and the documents were provided. With respect to the -- this is now at the time that the Swidler Berlin law firm represent -- before the recusal, when Swidler represented Mr. Anderson.

Swidler took the position that there was no jurisdiction, didn't produce the other documents. The Government acceded to that, and we cite I think in our brief in a footnote or maybe in the text, their concession at that time. That doesn't mean they said they weren't entitled to it, but they've put it on the shelf.

They came back to us in the summer of 2004 for the same documents, and we actually gave them authority, In Re: _____ Iran Contra 832 F.2d., 1268, D.C. Circuit, 1987, for the proposition that the grand jury can only subpoena documents from collective entities that are of foreign domicile if those foreign entities have minimum contacts. And we cited that authority on numerous occasions in letters that went back and forth, the kinds of

letters lawyers write to one another all the time, and said, "If you have contrary authority, please let us know." Ultimately, there was a dispute over the obligation. That dispute was, correctly in my view, reduced. The issue was joined and put before Judge Hogan. Judge Hogan held a hearing and I think we detail that in the brief with sufficient clarity that if the Court has any further questions I'll explain, but essentially the most important point about all of this is that prior to the Judge's -- contrary to the Government's suggestion, there are people here who are actually trying to follow the rules.

And so we understood -- we believe that Judge Hogan, to be frank, was wrong. But it's a hard issue to appeal. And reasonable minds could differ about minimum contacts analysis. And we produced the documents.

But let me just make it very clear that before Judge Hogan ruled, we didn't wait for Judge Hogan. We sent letters to the places we thought had the documents, and the custodians that had possession of those documents, and said, "We are in a legal dispute over whether there's jurisdiction over these entities. We may win, we may lose. If we lose, we'll be required to produce these documents. Please gather the documents so that they can be produced." Essentially. And we did that prior to getting any ruling from the Court.

So, again, we were trying, as we went forward, to comply with the rules and make sure to put Mr. Anderson -- to assert his rights, but more importantly to assert his rights or obligations as a fiduciary with respect to these companies that he owes a fiduciary obligation to, to assert defenses that they would be entitled to have.

THE MAGISTRATE JUDGE: My understanding, Mr. Moustakas, is that I think the emphasis that Ms. Menzer was seeking to convey to the Court, was that there had been a consent by Mr. Anderson with respect to production of documents, and I think she mentioned Panama.

MR. MOUSTAKAS: Right. Let me speak to that.

THE MAGISTRATE JUDGE: And that subsequently a letter was sent -- and I'm not suggesting for any moment that it was not within the rights of the attorney to so send that letter -- but they sent a letter which, in effect, had a chilling effect on the production of those documents, and that was inconsistent with the consent and that it appeared to be a device or ruse, if you will, "I'm going to consent but, on the other hand, I'm going to come through the back door and scare them off."

MR. MOUSTAKAS: Right. Let me just --

THE MAGISTRATE JUDGE: That was the import. I don't know if you agreed with that, but that's what she was suggesting to the Court.

MR. MOUSTAKAS: My nodding was only a polite way of saying, "I hear you."

THE MAGISTRATE JUDGE: All right.

MR. MOUSTAKAS: But I don't agree with that.

THE MAGISTRATE JUDGE: All right.

MR. MOUSTAKAS: I made those calls, and some of the gentlemen at counsel table, Mr. Poppian (phonetic) and Mr. Oppenheimer are here with me today, were involved in some of those conversations with a lawyer named Jonathan Etra, who's an American lawyer in Miami that represents -- you know, the Government was a little bit unclear about Morgan & Morgan. The company, the Panama company, is not a company. The company is a law firm, and it is a law firm that represented Mr. Anderson and Gold & Appel and other entities.

And I may have that -- one piece of that fact wrong. It may have only represented Gold & Appel. And Iceberg and Mr. Anderson. Thank you. There are a lot of facts and keeping them straight sometimes is difficult for me.

So it wasn't quite as easy as the Government suggests.

We were unequivocally clear that that was a consent directive and it was to be respected. I was informed that Gold & Appel might obtain an opinion about

obligations under Panama law. I made that clear to Mr. Etra and I subsequently said, "I understand that that's not going to happen. But from our perspective, or from our perspective representing who we represent, Mr. Anderson, you should produce the documents."

And let me just cut to the chase. After privilege review and logs and making sure that no attorney-client materials were improperly produced, those documents were all produced to the Government because of letters that we sent saying, "Produce those documents."

So there are, I am sure, a number of difficulties that the Government faces when it tries to procure documents from other countries. I'm very sympathetic, I spent six and a half years of my life in that office that Ms. Menzer works at, and I understand the difficulties of being a prosecutor. But I also understand that there's nothing improper about assuring that documents that do get produced are reviewed by lawyers, particularly when they are produced by law firms that represent clients. And I guess that's an important point that needs to be made.

In the final analysis, I think it's unfair to say that any of that rises to the level of the kind of obstruction that justifies pretrial detention.

THE MAGISTRATE JUDGE: Can I ask you, Mr. Moustakas, I asked earlier on, if you could perhaps

focus in a little more narrowly on conditions of release that you believe the Court should consider in lieu of detention, because that, in the final analysis, is what this Court --

MR. MOUSTAKAS: Sure.

THE MAGISTRATE JUDGE: -- has to worry about. Many of these other arguments perhaps will appropriately become much more relevant before Judge Friedman.

MR. MOUSTAKAS: Let me say that from the outset, and I think we've cited the case law about this, the Government made a point --

THE MAGISTRATE JUDGE: Well, no, I understand the case law. I need some factual basis -- in other words, my comfort level as a judicial officer has to be such that I feel that releasing Mr. Anderson under certain conditions would assure his appearance in Court before Judge Friedman at some future date.

MR. MOUSTAKAS: Right. Right.

THE MAGISTRATE JUDGE: Specifically, I think the 11th of this month.

MR. MOUSTAKAS: Right. Okay, so number one, the most important decision that the Court can make, in our view, with respect to securing -- is the Court most interested in me focusing on risk of flight?

THE MAGISTRATE JUDGE: Well, that's the primary

basis for the Government's request that Mr. Anderson be detained. I'm certainly very sensitive and aware of the fact that statute -- the Bail Reform Act provides for the least restrictive mechanism to assure the safety of the community and risk of flight. This, as you so aptly observed, is not a crime of violence. So risk of flight, which, as you well know, does not fall under a clear and convincing standard for the Court, but a preponderance, which is a, as you well also know, is a tipping of the scales, so the Government's hurdle is much less than a clear and convincing standard.

Within the context of risk of flight, I think the statute again refers the judicial officer back to the four elements, which one of them does include dangerousness. But my concern is less with dangerousness. I'm not concerned that Mr. Anderson poses a danger to the community. While the Government raises the specter of potential obstruction of justice, I think conditions could be fashioned, as you so well put forward in your brief, that would preclude that.

But I am concerned, I must tell you, whether or not, under all the circumstances or all the proffer made by the Government and certainly your response to that, as to whether or not Mr. Anderson, under all these circumstances, will show up at the next Court meeting, and the Court

meetings thereafter.

MR. MOUSTAKAS: Well, that's very helpful to me, Judge, because it allows me to focus in on what is concerning the Court.

I've actually addressed this recently with Judge Kessler, and I think I cited --

THE MAGISTRATE JUDGE: Not in this case..

MR. MOUSTAKAS: No, no, no.

THE MAGISTRATE JUDGE: Oh, no. In another case.

MR. MOUSTAKAS: In a case called United States against Sabriacko (phonetic), it's cited in the footnote. This is someone that the Government alleged was an arms dealer for --

THE MAGISTRATE JUDGE: The arms dealer in Iraq. I'm familiar with that case.

MR. MOUSTAKAS: Right. I think that the way to start this analysis is to look at Magistrate Judge Facciola's decision in the Battle case.

THE MAGISTRATE JUDGE: Yes, I'm familiar with that case.

MR. MOUSTAKAS: That case I found to be very helpful when I read it. It's cited by the Government. It is a case in which Magistrate Judge Facciola focuses on a combination of two things, and that is that the Defendant had been arrested -- this was a felon in possession of a

semiautomatic pistol -- had been arrested on five separate occasions, and on each of those five occasions, I guess -- I'm sorry, on four of those occasions, he had been on release in other cases. That's a terrible fact. And the reason that's a terrible fact is, it shows a disrespect for the system and it shows someone who ostensibly is out of control because even when under Court supervision this person cannot follow simple rules not to get in trouble again.

We don't have that with Mr. Anderson. There is absolutely -- if you take anything, if you reduce Battle to its irreducible core, the thing that it means, the thing that it smells of and stands for, it's this idea that past is prologue. That's what Magistrate Judge Facciola said. Some people don't like that in the context of 404(b) evidence, but what it means here is, I look at a guy based on his history. Does he have a history of not showing up or does he have a history of showing up.

Now, the Government can say, "Well, jeez, we don't know, because we don't have a long history of this guy because he hasn't been in trouble."

Well, that's part of the point. Part of the point is he hasn't -- he's 51 years old, he hasn't been in trouble, he's led a --

THE MAGISTRATE JUDGE: Again, the significance of

that? That he's 51 years old. The Government's position was he's not going to be comfortable with looking at, potentially, the long sentence that could be imposed on the statute.

MR. MOUSTAKAS: I don't think --

THE MAGISTRATE JUDGE: Are you using it in that context?

MR. MOUSTAKAS: I think -- I don't think anybody likes looking at a long sentence, if they're 18 or a hundred.

THE MAGISTRATE JUDGE: I agree with you on that.

MR. MOUSTAKAS: I mean to say, and I've heard judges say it from the time I was trying misdemeanor cases in Superior Court all the way up to trying cases in front of Judge Hogan, that judges focus on a person's history. And so if someone makes it to 51 years without a lot of blemishes in their record, that's a significant mitigating factor --

THE MAGISTRATE JUDGE: All right.

MR. MOUSTAKAS: -- that says, "Here's a good guy, who --"

THE MAGISTRATE JUDGE: I just wanted to know the context you were using it. Very well.

MR. MOUSTAKAS: That's where I'm going. Yes. So I guess what I'd say is if you focus on Battle, and I think

you ought to do that, that the result in this case is absolutely clear. You know, they cite Battle, and I don't understand why because what Battle is, you know, when you read a case you really get the sense for what really made the judge rule the way he did? Well, what made Judge -- with all due respect, some prognosticating here, what made Judge Facciola decide to hold the fellow in Battle is he jumped bail twice. So that's a bail-jumping case.

And the only thing we can point to, and we can't be punished by the fact that he hasn't been in trouble before, the only thing we can point to is here's a fellow who's known for three years -- yeah, exactly three years, in fact, early March 2002 and we're in early March 2005 -- that before -- by the way, before he had less money, when he had, according to the Government more money, and more means, knew that serious charges were being levied against him, knew that his mother was dragged into the grand jury two times, that his lawyers were dragged into the grand jury several times, that his accountants, his friends, his lovers, his -- you know, basically his postmaster and his dogcatcher.

So he understood with the kind of precision that many members of our community who are targets of investigations unknowingly, he understood with a significant amount of confidence and precision what it was,

what the scope of the Government's inquiry was, among other reasons, as I say, because his mother was examined and interviewed on a number of occasions. I do want to say, because they're quite kind to have come here today, asking after their son, both -- and I'd rather not use their names because they have a different name and I'd like them not to be harassed by members of the press, but Mr. Anderson's parents are in the courtroom today to support their son, and I'm sure would be happy, among other things, to tell you that the name Robert Zzylch is a name that Walt has used for 20 or 30 years, it's a joke sort of, and when I asked the mother, she said, "Well, it puts him at the end of the phone books," and she's known that for 20 years. So this isn't some new scheme to defraud Verizon out of its due.

THE MAGISTRATE JUDGE: Does one get credit cards? I mean --?

MR. MOUSTAKAS: As I understand it, a utility bill alone will not do that. In any event, Mr. Anderson didn't do that. I've never said this before and I need to say it. These folks have rifled through his trash on a number of occasions, I'm sure. They have searched every nook and cranny. If someone came to my house and they looked on my computers and they looked on my bookshelves and they went in my drawers and they found things that sort

of looked screwy, things I've collected over the year, I believe that anyone can be made to look strange. What we have is a sliver of a 51-year-old man's life. Many of these documents dating from the '70s, by their own admission. And the Government comes in here and sort of just with its alchemy puts them together and says, "Presto, here's what you got." I don't -- I contest that. I don't believe that's what you got.

But let me make it clear that they don't have evidence of credit cards or passports with the name of Robert Zzylch. They don't have -- and let's just be honest. Let's not be dishonest. Let's be honest. That since 9/11 everybody knows that that British Guiana passport is getting you nowhere. The idea that since 9/11 everyone in this country doesn't know that travel documents have become very important and that the government is vigorous and careful in the way it deals with those documents -- the Government just sort of splashes by that. I think we've knocked that allegation about the British Guiana passport so far out of the box that I'm ashamed that the Government, on its own, didn't say, "We withdraw the allegations about that, because they're so patently ridiculous."

But to come back --

THE MAGISTRATE JUDGE: Application for a Granada

passport?

MR. MOUSTAKAS: I don't remember an application. I remember an application for citizenship.

THE MAGISTRATE JUDGE: Or for citizenship, yes. Yes.

MR. MOUSTAKAS: I do remember that, and --

THE MAGISTRATE JUDGE: Yes, I misspoke. It's a Granada citizenship.

MR. MOUSTAKAS: And I remember that that was a decade, a decade before Mr. Anderson realized he was under any investigation. I can't tell you -- I will tell you, I will proffer for the record that I have gone to the Greek Embassy and inquired about getting a Greek passport. Because you can --

THE MAGISTRATE JUDGE: There's such a thing as dual citizenship, is there not?

MR. MOUSTAKAS: Right. And you're entitled to --

THE MAGISTRATE JUDGE: I'm not referencing that, Mr. Moustakas. Dual citizenship is an accepted thing, but was Mr. Anderson born in Granada?

MR. MOUSTAKAS: No, he was not.

THE MAGISTRATE JUDGE: Or Guyana? Before it was -- after it became --

MR. MOUSTAKAS: No, the Guyana thing, I think I've made very clear, it's a camouflage passport. We've

provided you with documentation that it can be bought off the Internet and we've provided you documentation that its purpose is to avoid the grim results of folks who have turned into terrorists their American passports. But I do want to address --

THE MAGISTRATE JUDGE: But you say there's no country as British Guiana because the name has subsequently been changed, has it not?

MR. MOUSTAKAS: Since '66 it's been Guyana.

THE MAGISTRATE JUDGE: So you couldn't use that since 2001. I think British Guiana was not in existence as such prior to 2001, was it not?

MR. MOUSTAKAS: As I understand it, British Guiana was out as of 1966.

THE MAGISTRATE JUDGE: The name was changed -- I think that's true.

MR. MOUSTAKAS: Remember, Guyana is the place with Jim Jones and all that.

THE MAGISTRATE JUDGE: I'm well aware of that.

MR. MOUSTAKAS: And these passport companies, specifically say, "We take these names that are no longer good, so that it's clear you're not trying to use this as a travel document but as a ruse." But as a permissible ruse, a ruse to -- the stamps, we detail this in our brief. The stamps are for cities that don't exist, Dewhurst, Samstead,

where there are no international airports.

THE MAGISTRATE JUDGE: So you're looking for dumb hijackers.

MR. MOUSTAKAS: Look, if you're a hijacker on an airplane, you're looking at the cover. I don't believe you're looking at the stamps.

THE MAGISTRATE JUDGE: I don't know. I've fortunately not been in that situation.

MR. MOUSTAKAS: Right. But, so you've asked me to direct my attention --

THE MAGISTRATE JUDGE: Yes.

MR. MOUSTAKAS: -- and I do get diverted and I do apologize for that, but you've asked me to direct my attention to the risk of flight, and I guess what I've said about that is that notwithstanding all of the stuff that's been thrown Mr. Anderson's way, there's no evidence that he's used anything other than his own travel documents when he has traveled, there's no evidence that he's ever -- you know, the Government said, "Oh, he's got drawers of pass -" you know, at that last hearing, I wish I could have gotten a transcript quickly enough, but the Government's implication, and it scared me because it was inconsistent with what I've learned, that there were all these American passports. But that wasn't true.

Now, what I have to say is going back to Battle,

that the proof is in the pudding with Mr. Anderson. Because he had every reason, if he was intent upon running from these charges, he would have done so by now. I think it's absolutely obvious that he understood the severity of the offenses. I can vouch for what I told him, without disclosing confidential communications, but you can assure yourself that he was made to understand what the Government communicated to his lawyers about the seriousness with which they took the case, and the investment that they've made in the case in time and expense.

So I think the principal argument arising out of the Battle case is, he knew he was under investigation, just like -- I can't remember, we cite a case, I believe, from the 9th Circuit, Motammadi (phonetic), where the fellow knew that he was under investigation and didn't flee, and the Court said, "We agree with that and we find that to be a powerful factor." I believe it's a 9th Circuit case. Mota Mehdi (phonetic). So that is really the crux.

Now, with respect to the conditions of release, I think the most critical one -- and I'm glad that I've prefaced my views about the world post-9/11, because they relate to this. And that is telling Mr. Anderson, a, "We're taking away your travel documents," and b, it is in violation of a Court order to attempt to get any travel

documents, which is what we asked Judge Kessler -- I'm sorry, strike that. Thinking of another case. Because our guy _____ allowed to travel eventually.

The most significant way to reasonably assure, if you believe -- if you don't believe my first argument, which is Battle shows us that this person is not a danger to flee, and you think -- I'm a judicial officer worried about this case, worried about the incentives, even though I think Mr. Anderson has shown that he hasn't left yet I still want more security, the more security is take his travel documents, make it a violation to get any other ones, because it is, in my view, and I've paid attention to this because I've had cases involving foreign nationals, very difficult to move in and out of this country without proper travel documentation any longer.

To address the Government's concerns, I would tell Mr. Anderson that I have spoken on his behalf, he will agree not to talk to -- even though I think it's an unfair request -- other than through counsel, to talk to any witnesses who've been before the grand jury. We'll do that. We'll do that.

He will agree to waive extradition. As a good faith showing that he has no intention to flee.

And I think that's enough. I think it's enough to take his passport, to order him not to get any other

passports.

I have spoken with Pretrial -- let me just mention, because I sometimes don't cover everything I intend to -- I talked to Mr. Schumacher, who did the Pretrial Services Agency report, and found that this was a defendant susceptible of release on personal recognizance. I know what the Government will say, "He doesn't have the benefit of all the investigation." But I did call Mr. Schumacher, who informed me about a program I know about, the High Intensity Supervision program, and although it is a significant infringement on liberty, it's nothing like being in the D.C. Jail.

This is a case, Your Honor, that I cannot imagine, given the Government's claims, it's the largest tax prosecution, they say, in the history of the world. They have more than 90 boxes of documents, computers -- I can't imagine how I can competently defend this Defendant in a case of that complexity on facts that do not -- you know, one of the things -- that do not merit detention.

One of the things that Ms. Menzer said is, broken down, stripped away of all the bells and whistles, is that because the French screw up, he can't be released. I don't know why the French put people on bond. I'm sorry, the Spanish, thank you. I like blaming the French for everything.

The truth is, if he needs to execute an additional waiver saying if he's in extradition proceedings in Spain, he'll waive the right to be -- he'll agree to be held without bond, he'll do that. Because none of that scares Mr. Anderson. And the reason none of that scares Mr. Anderson is Mr. Anderson has no intention to leave. Mr. Anderson intends to have his behind sitting next to my behind at a conference table, reviewing the Government's evidence for the next several months so that he can be vigorously defended against the charges in this case.

Some Courts find that persuasive. Some don't. Some say, "That's your problem, Lawyer. Figure out how to defend your client."

I believe it's a factor that the Court should take into consideration. I believe it will affect the quality of his defense. And I don't believe that having to suffer that degradation in quality of representation is fair under the circumstances of a case where all we have from him -- and I have to say, we have been in Court before Judge Hogan on sealed matters more than I am in Court on my civil matters, one of which the Court is aware of. We have been once a month litigating novel issues, interesting issues sometimes in fact, oftentimes in a very friendly way but interesting and significant legal issues about jurisdiction. So it's not always as heated as you might

think here today. But it is, I think, crucial to think about the record.

And I want to talk a little bit -- and I haven't read them carefully because I only got them today, but those letters. And the reason I say so easily, you know, I didn't read them, but you can read them instead, I've read some of those letters when I prepared a sentencing memorandum for Mr. Anderson in the Superior Court case. And the theme was always the same. He was a peace lover, he was a decent man, he was of high moral character, he helps people. Nothing like the picture painted by those cases that Government cites. And I'm very confident that when the Court reviews those letters it will see a gentle person who is truly a self-made man, who with no start but his own sort of genius, managed to make very sound decisions in business and managed to really do something special.

I would like an opportunity for a jury to hear about that. I'd like an opportunity to tell them about who Mr. Anderson is, and what he's done and the character that he's shown over the years, and the things that he's accomplished. And I'd like to have an opportunity to do that with Mr. Anderson helping me prepare his defense.

So, in sum, I really think that, you know, you're looking at a person, notwithstanding the Government's

allegations that he can't be trusted, he's a big fat liar, he's a bad actor, he's a bad guy, don't trust him, who's a guy who most people who I've met and who know him and who've dealt with him, only have the best things to say about him, and a person who by their conduct in the cases that we know about has been prompt to show up in Court, always there without signed notice, not required to be there sometimes but always there, always interested in the progress of his case.

Let me just confer with my colleagues to make sure that I haven't missed something that we want to be saying.

THE MAGISTRATE JUDGE: Surely.

MR. MOUSTAKAS: And my client. Mr. Anderson may well be right that I may have not emphasized an important point, which is obviously Mr. Anderson went to see Pretrial Services in December, December 23rd or 24th, when he was brought -- when the misdemeanor charges were brought against him for which he received 14 days of home detention.

But before that, Mr. Fitch brought him down there, again in antici -- and I only say that because it bears on risk of flight, that he was seeing something big coming down the pike and was voluntarily coming in and telling the Pretrial Services people about himself.

THE MAGISTRATE JUDGE: So you're recommending the Court place Mr. Anderson on some sort of Heightened Supervision program, is that --

MR. MOUSTAKAS: If the Court thinks that that -- I believe that the least restrictive condition or combination of conditions is taking the passport and ordering him not to get any other passports. Because given that, I don't believe he could flee. I don't believe any of it's necessary because I don't believe he will flee. I understand that it gives the Court, understandably, a measure of comfort, having removed the access of easy migration, but I have to say, given the record of his international travel and the more the Government proves Mr. Anderson has friends abroad -- and some of those allegations are just not true -- he dated an Indonesian woman doesn't mean he has a place to stay in Indonesia, by the way. But the more he knows about Europe or has access to places, the more it proves that he didn't intend to leave, because he could have left at a time that he knew the charges were very serious.

So, but if it's required and if it's the only way that the Court can see to feel that it has given the community a reasonable assurance that Mr. Anderson will be in this chair or the equivalent of this chair in Judge Friedman's courtroom, then we would submit to heightened

supervision. We don't think it's necessary, and if you order it I was going to this point earlier when I allowed myself to get diverted, I've mentioned Mr. Schumacher at the Pretrial Services Agency, he explained to me that you can go straight into the community-based portion. The Judge can order that he doesn't have to do three weeks in, I think a halfway house, and with drug testing.

He has tested for drugs in connection with his misdemeanor case on several occasions, never been found positive for drugs. And during that three-week time period where there's a period of incarceration, it is very, very difficult for him to carry on his very legitimate business enterprises and to help us prepare his defense.

So if the Court is inclined to put him in heightened supervision, I would ask -- and that includes electronic monitoring at night -- I would ask that it be in the community-based portion of the program, and waiving the drug -- there are drug treatment seminars, and they're not indicated for him, and that's clear from the Pretrial Services --

THE MAGISTRATE JUDGE: That's not an issue.

MR. MOUSTAKAS: Is there anything else I can --

THE MAGISTRATE JUDGE: No. I think not. I think -- I must commend you. I think you've done a commendable presentation, albeit --

MR. MOUSTAKAS: Thank you very much.

THE MAGISTRATE JUDGE: -- long.

MR. MOUSTAKAS: And I've had terrific help from my colleagues.

My client would like to address the Court. Is that permissible, Your Honor?

THE MAGISTRATE JUDGE: Briefly, yes.

THE DEFENDANT: Thank you, Your Honor.

THE MAGISTRATE JUDGE: Yes.

THE DEFENDANT: My lawyers have made some points, but I think I need to say this myself. In spite of the Government's inflammatory allegations and efforts to inflame the Court's opinion about him, I've spent 51 years living and working in Washington. I've never been involved in any criminal proceedings of any nature and serious nature until this tax investigation occurred. And it's gone well towards ruining my life.

In spite of that, I've continued to do my job. I've continued to support my community. I've continued to work with my colleagues and to do honest business. And every business I've done and operated has been done with the intention of taking care of its employees, shareholders and customers. And I've succeeded in doing that repeatedly.

I have no intention of leaving, because the

Government has made a fundamental error in their case by mixing the assets of another organization, which is based outside the U.S., with my assets. And I'm not going to go into the merits of the case further, but they have made a fundamental error and I'm very aware of exactly what I've done and not done, why I've done it and not done it in relation to my business, and I'm very comfortable that I can prove my innocence if I'm given the chance.

I expected and anticipated, based on my attorney's agreements with the Government, that when the Government was ready to indict -- and I knew for sure that there would be an indictment, I had no question in my mind -- I believed that they would call us up and I would appear voluntarily for an arraignment in a civilized way. Instead I was taken off an airplane after an eight-hour flight. I was sick, I was put into the D.C. Jail system and not allowed access to a phone for 60 hours, and I've been moved around since then. And it's been very, very difficult, almost a form of torture. I have been asleep with the lights on, being woken at 1:00 in the morning. It's very, very difficult.

I certainly can't pursue my case in that circumstance. I barely can scribble notes on the back of sheets of paper to -- and I don't have access to a computer, and if I'm not released, it will be impossible

for me to effectively pursue a case involving hundreds of maybe thousands -- many thousands of documents. But I want to assure Your Honor I have no intention of going anywhere, because my reputation has been built up over 51 years, and I've worked very hard for it, and I don't intend to let the Government ruin it. I intend to be here to defend it.

Thank you.

THE MAGISTRATE JUDGE: Thank you. Counsel, I also thank the Government for its presentation to the Court. Again, to reemphasize the role of this Court.

It's to make a determination as to whether or not, based upon what has been presented to this Court would fall within the parameters of the statute with respect to whether or not Mr. Anderson should be released as a risk of flight.

And the Court has given a lot of thought to this case and does not come to its decision lightly. I think it must be emphasized and recognized, I think it was, maybe it was a passing comment made by Mr. Moustakas that locking him up would be a punishment. I think the Supreme Court has addressed that. I think in considering whether or not it's a predictable event, or Mr. Anderson's conduct would be predictable, I think the Court has -- Supreme Court, actually, has viewed pretrial detention as a regulatory, not a penal sanction. I think this goes back to 1979, the

Bell case of the Supreme Court.

What are the factors as I weigh them, that one normally considers in determining whether an individual is a potential risk of flight. Well, first and foremost is the contact with the community. While Mr. Anderson has indicated that he spent most of his 51 years in and around the Washington, D.C., area, he has no real contacts, as I see it, with the District of Columbia. He doesn't have a home any more that he owns. He doesn't have family, children here. So he is an individual who is a world traveler, he has a house in Madrid according to the Government, and so that factor certainly weighs heavily with the Court.

Does he have the wherewithal to leave the country? And I think that clearly is an issue that is in dispute. The Government points out that there is monies located around the world, they're not sure of where they are, and I don't know whether the Government's representation will prove to be accurate, but certainly they've made a persuasive case that Mr. Anderson has access to monies around the world.

Now, Mr. Moustakas has made an impassioned argument that Mr. Anderson would not leave the area, and Mr. Anderson so advised the Court. But the Court has to weigh whether or not there are means available to him.

And to some degree, Mr. Anderson, I think your own conduct gives this Court some concern in terms of the fact that a passport was seized by the Government authorities. Whether or not they did that lawfully obviously is not for this Court to decide, but it seems to me that if you were being very honest in your application for another passport, you would have been more candid, and as Mr. Moustakas so aptly pointed out, you well knew that if you put that this was "seized pursuant to a search warrant," that the likelihood of them issuing another passport would have been remote, at best, and I don't disagree with that.

But you let it be inferred, if you will, that somewhere along the line someone took your passport and they haven't returned it. No suggestion that this was taken by a governmental authority so that the Passport Office would know that you had a valid extant passport at that time. It wasn't lost. It wasn't stolen. It was taken by governmental authorities. So you knew -- you're just too intelligent a man not to know that to go and tell or suggest to the government that your passport was lost or stolen, to get another passport, was not being candid. And the Court weighs that fact in its consideration.

The fact that you had in your -- seized all these books, which I don't know what's in those books, but they certainly reflect, on your part, an individual who somehow

is fascinated with hiding their identity, how to disappear. None of those factors give this Court any great assurance that you would necessarily stay here to go forward with this trial.

The events that occurred prior to the indictment, the fact that you went to Pretrial Services, were all pre-indictment. You know, when someone is indicted it takes on a different cast. I'm not sure who said it, I think maybe Samuel Johnson said that when a person has been told by the Judge that they're to be taken to the gallows, it has a focusing impact on them. And I think it may well be that an indictment in this case will get you more focused as to whether or not you should stay.

So having considered these factors, the Court is going to find at this time that the Government has met its burden by a preponderance of the evidence that you have the means and the interest in avoiding a trial in this case.

Now, this is my decision. Judge Friedman is the Trial Judge. Judge Friedman will have an opportunity to review my decision and modify in any way he sees fit whether or not you should be released. And I think counsel, I certainly appreciate Mr. Moustakas's need to converse with his client, to review the documents. He should be given every opportunity to prepare a defense for his client, and the Court would be amenable to recommend

that he be places perhaps in a different facility, maybe in one of the adjourning jurisdictions, which might facilitate Mr. Moustakas's ability to meet with his client and go over the documents. I think that would be important for him to do that. So I would be amenable to doing that.

But I think, under the circumstances, the Court finds by a preponderance of the evidence that there are no conditions or combination of conditions that would, in my judgment, assure the appearance of Mr. Anderson. I think Heightened Supervision, Mr. Moustakas, would not serve the purpose. The Court has considered a monetary bond, but I have the Government saying that you have unlimited funds and then, on the other side, I have representations that suggest that maybe Mr. Anderson is on the verge of bankruptcy. Plus a monetary bond would be as restrictive as the finding of the Court.

And I just might add, in conclusion, that the fact that the Court could retain or direct that his passport be retained, I think the availability of fake documents is so prevalent now, you do not always need a passport to exit the country. I think you can go across some of the border cities, with Mexico, with just a driver's license, and disappear. And Mr. Anderson certainly has demonstrated that he's no stranger to using fictitious names.

So when you consider all those factors, that is the basis for this Court's decision. The Court will incorporate its views in a detention memorandum, and that will be passed on to Judge Friedman, and Mr. Moustakas, you can certainly revisit that issue obviously at any time, but certainly on March the 11th, I think it is, when you appear before Judge Friedman for a status hearing, or if you wish to do it before then, I think Judge Friedman is not available until around the 9th, but the Chief Judge would be available to appeal this decision of the Court.

Thank you, counsel. Nothing further.

All right. Counsel, I'm advised by the Courtroom Deputy that the Courtroom Deputy of Judge Friedman has requested that the March 11 date for a status hearing be changed to one of two dates at the election of counsel. One is March the 17th, at 9:15 in the morning, and the other one is March 18, the following day, at 10:00 a.m. in the morning.

MS. MENZER: Either day is fine with the Government, Your Honor.

MR. MOUSTAKAS: Is that at the Government's request or the Court's request? Because I've got a question --

THE MAGISTRATE JUDGE: I think it's at the Court's request, Mr. Moustakas.

Oh, at the Government's -- I'm sorry, yes. At the Government's request.

MR. MOUSTAKAS: Can we be heard on that? I'm not willing to have him detained any longer than is necessary.

THE MAGISTRATE JUDGE: No, I appreciate that, Mr. Moustakas. The only thing I can suggest to you is contact Judge Friedman's chambers or Judge Friedman. I think he's due back in Washington on the 9th. But in the interim I would assume that if you wish to revisit the issue of Mr. Anderson's bond status, the Chief Judge or the Motions Judge would be amenable.

MR. MOUSTAKAS: Sure, and I'll just put on the record that a request was made of me by the Government counsel, the Government have many lawyers available to them for a status conference. I made it very clear that I would have no problem moving that status date if Mr. Anderson were released, but I would have a very serious problem -- so it's troubling to me that there was an ex parte contact with the Court about a scheduling matter that I was not involved in. I object to it on the record.

Finally, my client has asked if his parents can come back to see him, and I informed him I did not believe that was possible.

THE MAGISTRATE JUDGE: That, Mr. Moustakas, I leave to the discretion of the Marshals' Office, and --

they are responsible for the safety and custody of Mr. Anderson while he's in the courthouse. So if they are amenable to that, either here or in the cell block, I leave it exclusively up to their discretion.

MR. MOUSTAKAS: And I promise this is my last question. I've been informed that it may be possible that I would be able to produce an affidavit from a former lawyer that Mr. Anderson was informed that he was entitled, because the passport was being kept for evidentiary purposes, to obtain another passport. Would it change the Court's view if I submitted such an affidavit from a member of the bar and an officer of this Court?

THE MAGISTRATE JUDGE: Well, I'm certainly not going to preclude you filing -- I think every piece of information that you've presented and the Government's presented certainly should be made available to the Trial Court. So I'm not going to discourage you. I'm going to hold by my decision on that, and again, you're saying an affidavit from a lawyer. Are you talking about an affidavit from a lawyer who was Mr. Anderson's lawyer, or -

MR. MOUSTAKAS: Prior lawyer.

THE MAGISTRATE JUDGE: Yes. That he -- and this is rank hearsay --

MR. MOUSTAKAS: That a request was made about the passport, and I'm not sure, I'll have to verify that.

THE MAGISTRATE JUDGE: But the lawyer advised Mr. Anderson that he was --

MR. MOUSTAKAS: No, that the passport was sought from the Government, the Government said, "We have to hold it, it has evidentiary value."

THE MAGISTRATE JUDGE: "And you may apply for another --"

MR. MOUSTAKAS: Correct.

THE MAGISTRATE JUDGE: I see.

MR. MOUSTAKAS: If those facts turn out to be true, because the Court has placed --

THE MAGISTRATE JUDGE: Are you going to get a statement from the representative of the Government who made that statement also?

MR. MOUSTAKAS: I would imagine --

THE MAGISTRATE JUDGE: Because I don't know if -- Mr. Moustakas, whatever you submit to the Court certainly I will review. But my jurisdiction in this case is limited obviously to this detention hearing.

MR. MOUSTAKAS: Thank you, Your Honor.

THE MAGISTRATE JUDGE: Now, I should state, as of today the status hearing is before Judge Friedman on the 9th. It has not been changed. And this was given to my courtroom deputy as two alternatives by Judge Friedman's courtroom deputy. So unless you both agree to it, it's

still the 9th.

MS. MENZER: The 11th.

THE MAGISTRATE JUDGE: Excuse me, the 11th. Yes.

MR. MOUSTAKAS: Very well, thank you.

THE MAGISTRATE JUDGE: Judge Friedman will be back on the 9th, and at that point the two of you can make contact with Chambers. Thank you.

MR. MOUSTAKAS: Thank you.

THE MAGISTRATE JUDGE: Counsel, can you come to the bench?

(Bench conference; off the record.)

THE MAGISTRATE JUDGE: Thank you, counsel. Nothing further.

And as I say, with respect to Mr. Anderson being permitted to visit with his parents, the Marshal's Office, I assume, will --

(Whereupon, proceedings were concluded.)

UNITED STATES OF AMERICA)
) Criminal No. 05-0066
DISTRICT OF COLUMBIA)

I, PAUL R. CUTLER, do hereby certify that a recording of the foregoing proceedings in the above matter was duplicated from an original recording by the Office of the Clerk, United States District Court for the District of Columbia, and that said duplicate recording of the proceedings was transcribed under my direction to typewritten form.

PAUL R. CUTLER

I do hereby certify that the foregoing transcript was typed by me and that said transcript is a true record of the recorded proceedings to the best of my ability.

BONNIE FURLONG