

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	.	Docket No. CR 05-66 (PLF)
	.	
Plaintiff,	.	
	.	Washington, D.C.
v.	.	March 10, 2005
	.	1:45 p.m.
WALTER ANDERSON,	.	
	.	
Defendant.	.	
.....	.	

TRANSCRIPT OF BOND REVIEW
BEFORE THE HONORABLE PAUL L. FRIEDMAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:	United States Department of Justice By: Susan Beth Menzer, Esquire Karen E. Kelly, Esquire 600 E Street, Northwest Washington, D.C. 20004 202.616.3864
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For the Defendant:	Chadbourne & Parke, LLP By: Abbe David Lowell, Esquire Christopher D. Man, Esquire Sarah J. Loope, Esquire 1200 New Hampshire Avenue, Northwest Washington, D.C. 20036 202.974.5651
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Court Reporter:	Linda L. Russo, RPR Official Court Reporter Room 6808, U.S. Courthouse Washington, D.C. 20001 202.408.5222
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P R O C E E D I N G S

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2 THE CLERK: Criminal 05-66, United States of America
3 versus Walter Anderson. Ms. Menzer and Ms. Kelly for the
4 government. Mr. Lowell and Mr. Man for the defendant.

5 THE COURT: Good afternoon, everybody. We're here
6 for a status conference. I also received this morning from Mr.
7 Lowell his motion to impose conditions of release. I've read
8 that and the attachments, I've read the government's motion for
9 detention filed before Magistrate Judge Kay, I've read the
10 transcript of proceedings before Magistrate Judge Kay, I've
11 read the indictment. I read that before. I read the newspaper
12 articles.

13 And I see that I have now a copy of a notice of
14 withdrawal of appearance from Mr. Moustakas. And I think, Mr.
15 Lowell, I've got an entry of appearance for you for purposes of
16 these hearings and the bond question, but I'm not sure whether
17 I have a general appearance from you as yet.

18 MR. LOWELL: Not yet, Your Honor. We indicated that
19 we were making this appearance, and that in short order we
20 would be making a general appearance.

21 THE COURT: Is there any reason why I shouldn't grant
22 Mr. Moustakas' appearance? Is Mr. Anderson going to be in a
23 hiatus period if I grant Mr. Moustakas', well it's a notice,
24 not a motion, but --

25 MR. LOWELL: I don't see any reason why you should

1 not grant the notice motion. We will make sure no matter what
2 happens that our client is not without counsel.

3 THE COURT: Mr. Moustakas, any reason from your
4 perspective?

5 MR. MOUSTAKAS: No, Your Honor. Thank you.

6 THE COURT: Thank you. How does everybody want to
7 proceed this afternoon? I'm going to ask you to speak from the
8 podium because the court reporter will hear us all better if we
9 speak into the microphone.

10 MR. LOWELL: That was going to be my first question.
11 Your Honor, I'd like to proceed -- I think there are three
12 issues for today, probably just two, but they fit into some
13 categories. One is, I'd like to be heard briefly, semibriefly,
14 on the issue of our motion, and there is a pretty extensive
15 record, but I think we now have the ability to focus the
16 Court's attention, and I wish I would have the opportunity to
17 do that.

18 The second thing is, is that following that, I think
19 we were here for a status conference so we should discuss the
20 status, which would include I think at least a preliminary
21 scheduling order of some kind.

22 And I know that there's one more matter I want to
23 raise to Your Honor's attention having to do with the status of
24 the grand jury matters. So those are the three things that I
25 would like to address. I don't know if the government has any

1 others, or if the court has any others.

2 THE COURT: Let me ask the government first.

3 MS. MENZER: No, Your Honor, that's fine.

4 THE COURT: First of all, who's speaking?

5 MS. MENZER: I'm sorry. Susan Menzer, Assistant
6 United States Attorney. And Karen Kelly with the Tax Division.
7 Also at the table with us are Special Agents Matthew Kutz and
8 Thomas Birmingham.

9 THE COURT: Good afternoon. Ms. Menzer, with respect
10 to the bond review, or the bond motion, obviously you haven't
11 had time to file anything in writing, and least I haven't seen
12 anything, since Mr. Lowell's motion, are you prepared to
13 proceed today?

14 MS. MENZER: Yes, Your Honor.

15 THE COURT: Okay.

16 MR. LOWELL: With your permission, Your Honor?

17 THE COURT: Yes, Mr. Lowell.

18 MR. LOWELL: Thank you. First let me for the record
19 again introduce myself. I'm Abbe Lowell, along with Chris Man
20 and Sarah Loope on the brief, representing Mr. Anderson here.

21 Your Honor, I know that you handle motions like this,
22 I don't know, a few times a week or a month, and I do them
23 perhaps just a few times a year. And so my telling you
24 anything about the standard, or telling you anything about the
25 parameters is like my asking permission to tell you how to

1 drive your way home. I won't do that.

2 THE COURT: If you talked to my wife, she'd probably
3 tell you I would need that advice.

4 MR. LOWELL: But as I was coming over here, I
5 realized sometimes it is the frequency by which we deal with
6 these issues that sort of know them, or numb them. That is, we
7 speak about these issues so often that they lose some of their
8 impact. So having said that, I know you know them, I just want
9 to flesh out a few things that I think are repetition before I
10 begin that I think frame the Court's consideration.

11 The first is, we all know that bail is not supposed
12 to be set as a form of punishment. It's in all the cases. But
13 we can't forget that it has a punishing impact when, for
14 example, people are left without any contact, without shower,
15 without the ability to get their medicine for 60 hours, without
16 the ability to talk to their counsel, without the ability to
17 get their records, and with being transferred three times in 30
18 hours for no apparent reason. We know that it's not supposed
19 to weaken the ability of a defendant to make a defense, or make
20 him less available to see his lawyers, or to get his records.
21 But, again, we know that detention has that impact, whether
22 it's what the government intends or not.

23 We all say the phrase that the court is supposed to
24 impose the least restrictive conditions that will reasonably
25 assure appearance, but we often don't stop on the word

1 "reasonably." And then in the conversations that took place
2 below, it almost was looking like the parties were talking
3 about, or at least the government was asserting that it needed
4 to be something more than that.

5 We all know the cases that say that detention is
6 supposed to be a rare circumstance, as in the Motamedi case and
7 others, but we gloss over the word "rare" as if it doesn't mean
8 very infrequently. And we read whether the phrase says no set
9 of conditions that would reasonably assure appearance in the
10 future, and then there's virtually no discussion between the
11 magistrate and the parties below as to what set of conditions
12 might accomplish the very fact.

13 So we're here for a de novo review, Your Honor,
14 because that's what the law says. In fact, Magistrate Judge
15 Kay invited that a number of times as you could tell in the
16 transcript. We're going to get right to the point because Your
17 Honor has said it in framing it in the case we found and put to
18 the Court's attention, the Gloster case, because you know that
19 there's a strong presumption against the very thing that has
20 now been ordered by the Magistrate Judge, and that's detention.

21 So where should I start? I'd like to start with the
22 people that do this even more than Your Honor does, and even
23 way more than I do, and that's of course the people at Pretrial
24 Services. It's been overlooked here that there was an
25 interview, and there was a recommendation, and it was in

1 writing, and it was for release with personal recognizance.
2 And I know the government will respond and say, well, they
3 weren't aware of all the facts.

4 THE COURT: That's what I was about to say, because
5 that's usually the case.

6 MR. LOWELL: But let's do talk about what they were
7 aware of. I agree with you. No, I agree with what the
8 government might say, now that I've just suggested what they
9 might say, that the Pretrial Services didn't know some things
10 that the government calls facts, right? I'm sure they didn't
11 know all the names of the books on the shelves that were
12 seized, perhaps.

13 I don't know that they knew all the issues about how
14 our client for a period of 20 years, for reasons that stem back
15 to his being a pure child of the 60s, used a different name to
16 register his phone. But they did know something, Your Honor,
17 and they knew the most important thing that is in the record of
18 this case. They knew Mr. Anderson's past performances, being
19 charged in another case, they got to look at him, talk to him,
20 eyeball him, interview him, and take a measure of the man. And
21 that's what they're expert in, and that's what they do every
22 day.

23 So while the government will say, well, they didn't
24 know this thing and this thing, I question whether this thing
25 or that thing is any more important than the baseline that

1 Pretrial Services brought to the Court's attention in the best
2 area of their expertise, by knowing what his record was in the
3 past, what he was charged with now, what the norm in the
4 District is, and how he compares to the literally thousands of
5 people who come in the doors of that office over the course of
6 their job.

7 Your Honor, something happened on the way from the
8 first floor of this building to the sixth floor. It seems that
9 the record of facts and the standard by which we apply those
10 facts got muddled. The most important thing that got muddled,
11 as I read the two transcripts, is that the government's
12 presentation and the Magistrate's conversations with counsel
13 seem to focus on a person's ability to flee, successfully or
14 not, as opposed to a person's propensity to flee. In fact, the
15 Magistrate Judge used the word in saying he was not going to
16 grant any conditions that Mr. Anderson had "the wherewithal."
17 And you can find that at the March 3rd hearing on page 62.

18 The case law is very clear that that's the wrong
19 standard, and that the mere opportunity for flight is not
20 grounds for a detention. And that, of course, is in the Himler
21 and other cases. And yet we have glossed over that as if the
22 two were synonymous. And they are very different.

23 In fact, neither the Magistrate nor the government
24 has presented a single instance where they can show somebody in
25 the post 9/11 era who has had the factors that the government

1 says belong in this case to have successfully done what they
2 say Mr. Anderson could do, which is to travel without passport,
3 travel without proper travel documents, travel when he's being
4 monitored, travel in any other circumstance. I don't think
5 that's happened, and I don't think they can raise a case in
6 which it has.

7 But then the government sprinkles the record with
8 what they say facts, and what we say aren't, and what in any
9 case we believe has obscured the critical distinction between
10 somebody's desire to flee and somebody's ability.

11 The government didn't press hard the issue of Mr.
12 Anderson's danger into the community, because we're talking
13 about a tax white collar case. They certainly pressed it in
14 papers, but in the hearing below it wasn't a huge factor. But,
15 nevertheless, Judge Kay found there to be no danger. And
16 certainty on that issue the biggest danger he poses is a back
17 and forth between counsel as to whether or not he was or was
18 not trying to tell witnesses to or to not tell the truth.
19 That's easily handled with conditions that this Court imposes
20 every day.

21 And because the below circumstances and hearing was
22 done by way of an attorney presentation and no witnesses, there
23 are a number of statements that have been allowed to sit in the
24 record now for a little bit more than a week, and in another
25 case two weeks, many of which are just plainly, facially

1 mistaken. It is as if the statement is uttered by the mouth of
2 an attorney, whether in this case it was the government
3 attorney, and I hope I won't do that here today, and people
4 pretend it came down from Mt. Sinai without question as if it
5 was the truth. And it's in the record and it needs to be
6 addressed.

7 So when the government says, as the government
8 attorney did say in the last hearing, that Mr. Anderson has
9 "vast amounts of wealth that he can get to" at a snap of the
10 finger, and doesn't present a shred of current evidence that
11 that's the case, that can't be the basis for the Court's
12 decision. It just can't be.

13 When the government says that he has lots of contacts
14 abroad who he lived with or who would harbor him, with no
15 testimony from anybody that would indicate that anybody he's
16 ever met would risk their lives by violating the law to harbor
17 a fugitive, that can't be the basis for the Court's decision.
18 Or when they say he will not be the kind of person to listen to
19 the Court's instructions because he has a long history of not
20 listening to the Court's instructions, when the record is
21 actually to the contrary where he listens to courts
22 instructions all the time, and has another case to prove it,
23 and has been involved in civil litigation to prove it, and
24 their only evidence is the fact that through counsel he has
25 decided to litigate issues as to whether there should be

1 disclosure or nondisclosure, or whether he should fight
2 something or not fight with advice of counsel, that can't be
3 the basis for a decision.

4 It is in a case of somebody's liberty too important
5 to allow those statements to be made through a presentation
6 without back-up, and yet literally that is what occurred here,
7 and so far has been successful by having the government create
8 a record to support the virtually unheard of pretrial detention
9 in a case like this with what is supposed to be proof of
10 "serious" risk of flight, with these far from serious
11 arguments.

12 Your Honor has said that you have looked through the
13 transcripts, so I won't do all the ones that I wrote down but
14 I'll certainly make sure that the record is clear in this
15 court. This is what the government's attorneys has proffered
16 in order to support that this man should not have any
17 conditions of release.

18 One, he hasn't listened to judges for years. The
19 28th hearing at page 10. The record indicates that that's far
20 from the case. Oh, this is a good one. "Mr. Anderson is not
21 afraid of suing people," as that's probative of any issue that
22 should be considered in a situation like this. Here's another.
23 He has "moved to unseal the affidavits in the searches." Well,
24 the government puts that forward and doesn't recognize that
25 they're actually making Mr. Anderson's case for him, because by

1 unsealing the affidavits and understanding the true nature of
2 the government's investigation, the seriousness, and what they
3 were seeking, he had very well understood what this was about,
4 what his risks were, and still stayed in the United States.

5 Then they argue a very strong argument that "he's a
6 very savvy businessman," on February 28th at page 15. Or,
7 "he's traveled internationally," they argued. The same
8 hearing, page 16. This was one that just basically must have
9 ruled the day. "He has hundreds of business cards from people
10 all over the world." February 28th at 16.

11 Your Honor, this is too important. And I raise these
12 because I find them so flimsy a read on which to build the
13 argument of detention that it's strange that we have to point
14 them out to this Court as if they weren't self-explanatory at
15 the time that the government's attorneys first uttered them.
16 Or when they say he has property rights in Brazil and they then
17 give the Court the very document which shows that that's not a
18 house, it's not a lot, it's not a cave. It's the right to
19 acquire water rights as an investment. It is not a place that
20 somebody can hide.

21 You have seen in the pleading so far that the
22 government proffered that he had "many passports," and at the
23 first hearing held up I guess what were more than one United
24 States passport, only to have the record now be corrected, like
25 me and perhaps like you, and maybe a whole lot of people in

1 this courtroom, I don't know if it's a momento or because we
2 like to remember the times that we traveled, we keep our old
3 passports. They are cancelled, they are cut in the corner, and
4 they are of no use. And yet at the first hearing that was some
5 of the evidence the government proffered to show that he had
6 this propensity, not ability but propensity to flee.

7 And then there was the argument the government put
8 forward that he was the modern day equivalent of James Bond
9 with girlfriends all over the world that would harbor him, I
10 guess. And yet they don't tell the Court that some of them
11 were abroad, and now they're in the United States, like the
12 so-called Indonesian woman. It's hard to flee to a country
13 when the country you would flee to is the country that you're
14 asking to stay in.

15 Or they made a big deal out of the fact that one of
16 the former relationships was with a woman from Spain, and they
17 acknowledged at least in writing that this was an attorney.
18 But then they don't take the next inferential step from that,
19 which is that why would they presume that an attorney in Spain
20 would violate not only the laws of our country, but the laws of
21 her country, to allow somebody who's a fugitive to stay with
22 her. And they make that presumption or argument with no basis
23 whatsoever.

24 Or they point out the books, and I see that the
25 government has brought many of those books here, but they

1 haven't brought the boxes and boxes, and they put in their
2 brief, well, this is very probative. He has a copy of Abbie
3 Hoffman's book, Steal This Book. I went to Columbia College
4 and Columbia Law School, and I can tell you that probably 90
5 percent of my class has the same book on the shelf, and I have
6 it to this day in my law office. And I hope I'm never in
7 trouble, but if the government ever says that my position of
8 Abbie Hoffman's book or anything like it is reason to question
9 my flight ability, then we have come to a very bad place. Or
10 another one like that with Citizens of a Woodstock Nation.

11 I am not suggesting that there aren't books that you
12 can pull out of the boxes the government has brought and wave
13 them in the air and say, oh, my God, this is somebody who's
14 going to leave the country tomorrow because among the books he
15 has is one that says how you can go underground. But in order
16 to really put this in context, as we said in our brief, Your
17 Honor, take the whole context of the book, understand where
18 this man comes from in his business, his political and his
19 philosophical background, and understand that it is every
20 reason the inference that this is a man that is vastly, vastly
21 concerned with his privacy, and all the accouterments of the
22 age in which he lived, and that these books do not mean
23 anything other than the fact that he is a well read person with
24 that background. And when you then look at when the books were
25 purchased or how they were purchased, or whether they have any

1 bearing on this investigation, the evidentiary weight of that
2 point, fact, becomes even less the case.

3 Then they argue that this was a strong reason that
4 shows his likelihood, desire, inclination, intention to flee.
5 That a company, Gold and Appel, had been put in insolvency.
6 Well, even Magistrate Judge Kay looked at the government's
7 attorney on that one and said, what does that have to do with
8 anything? Or they argued that he has millions or will have
9 millions of dollars of civil judgments if he stays in the
10 United States.

11 And, again, they put forward a fact which actually
12 under-cuts what they're saying in support of Mr. Anderson.
13 Because if he's going to stay and fight civil cases to avoid
14 civil judgments, and civil judgments is what they think is
15 going to give him the motivation to flee, when he's not in the
16 United States, and the defaults are against him, that's when
17 he's going to have civil judgments, that's when that remedy
18 will have occurred.

19 So, again, it not only doesn't really bear any
20 probative value on the point about whether he has an intention
21 to flee, but if you think it through to its logical end, it has
22 the opposite.

23 I could tell you others, but I wanted to at least,
24 and I may come back after the government's done, with what has
25 to be the symbolic best point that the government has made as

1 to why it is that we shouldn't have this conversation and it
2 should have been handled below. He actually was told to be a
3 flight risk when the government got up and said, and by the
4 way, Magistrate Judge, he has a map of Spain in his house.

5 Your Honor, it's against those kinds of arguments or
6 facts, or whatever they will be said, there are things which
7 are the concrete ways that courts have found what is a person's
8 legitimate risk of flight, and have crafted conditions when
9 necessary around them. And you have them in this case. The
10 government says this is unique because we have a man who's
11 quirky in his books and this, and he has, you know, this
12 application to be a citizen of Grenada when he was doing
13 business there, which by the way predates the time that this
14 investigation began.

15 Or because he has this camouflage passport which the
16 government and Magistrate Judge Kay entered into a discourse
17 about whether it would or would not be an effective means to
18 deter kidnapping and terrorism, but which on its face is very
19 obviously something that can't be used for real travel, and has
20 made up names as the places in it. And the government puts
21 forward to the Court and in the record that he -- her phrase
22 was, he or someone else has traveled on that passport. They
23 said that. Everybody just sat there and said, yep, he or
24 somebody traveled on that passport. That's not true. No one's
25 traveled on that passport. And all the stamps are made up.

1 But it's in the record, and it supports the predetention
2 argument that the government makes. And it's wrong.

3 So let's talk about the facts that you can rely on,
4 and you don't need counsel to do it and you don't need anything
5 other than the written record. And this is what you know. You
6 know from the government's own pleadings that he's been a
7 successful businessman for decades, often being in charge of
8 publicly owned companies without nary any charge of any
9 fiduciary breach occurring to him ever.

10 You know notwithstanding, and I was saddened by this
11 and I said so in my brief, that the government and the Court
12 says that he has no family. Tell that to his 80-year-old
13 mother that's sitting in the courtroom today who he has every
14 reason to want to stay with for what will be under all the best
15 assumptions the end of her life, as opposed to being able to
16 flee with whatever spouse he might have at the time. And yet
17 we make a distinction that because he doesn't have a married
18 family member, that's less important to him than his elderly
19 mother and his father.

20 The government concedes that he's lived in the
21 District of Columbia all of his life and that he has had
22 property here. And how do they distinguish that for purposes
23 of trying to support no bail? They say, well, he bought his
24 house in the name of a trust. Well, that's sounds very
25 suspicious, except for the fact that that's done all the time

1 for lots of reasons. And more importantly, if you look at the
2 trust, the name of the trustee is none other than Walter
3 Anderson.

4 And then you know some things that are really
5 extraordinary in this case, for example, he and his former
6 counsel had the wherewithal to go report to Pretrial Services
7 before he was arrested and have an interview so that if he were
8 ever to be arrested they would have a full background about
9 him. I have done a bunch of cases; you've done many more. I
10 don't know a single case where a would-be defendant has ever
11 done anything remotely like that.

12 Then as to the issue of the means he has to flee the
13 country, the government has talked about his fortunes. And,
14 after all, it's a tax case, and they're arguing that he used to
15 have millions and tens of millions, and hundreds of millions,
16 but I can point in Fortune magazine and Inc, and any number of
17 magazines, all those people in the United States that used to
18 have hundreds of millions of dollars in the telecommunications
19 world and who are now in bankruptcy. It certainly isn't, as
20 the government said, he has investments in millions that he can
21 "snap his finger at" and get.

22 And the most important thing, and it's odd because
23 Magistrate Kay recognized it is the most important thing, is
24 that Mr. Anderson did not flee when he had knowledge of this
25 investigation, and it wasn't just knowledge that it existed,

1 but it was the kind of knowledge that means that he was fully
2 aware of the ramifications to the same or even more extent of
3 the defendant in the Motamedi case in which the court said
4 there is no greater risk he will flee postindictment than
5 preindictment. This is not just a vague notion that there's a
6 man under investigation. The record is uncontradicted that
7 this is what he knew. He had access to the search warrant
8 affidavits with the allegations that the government was making
9 against him. He knew about grand jury subpoenas that were
10 going to any number of people, including his lawyers and
11 accountants, his friends. His mother was dragged before the
12 grand jury. He knew that, too. He had to give a handwriting
13 exemplar.

14 He knew that the government had been proceeding with
15 grand jury witnesses. There were conversations between his
16 counsel and the government in which the seriousness was
17 discussed and which his indictment was discussed. There were
18 even conversations with his counsel and the government about
19 whether he could self-surrender if he was ever indicted. That
20 is not somebody who is vaguely aware and decides nevertheless
21 that he's going to stay. This is somebody who is intimately
22 involved, let alone the fact that he had that Superior Court
23 drug case in which he had stayed as well.

24 As to the issue the government put forward that spoke
25 so much of the record below as to his having applied for a new

1 passport after his first one was seized, how dare the
2 government raise that as anything but proof of his desire to
3 come back to the United States, because that's exactly what he
4 did. He has a passport seized, he immediately has a business
5 meeting or two actually that he needs to go to within two or
6 three days. We can get into with evidence if the Court finds
7 that necessary what he and his lawyers were discussing at the
8 time, and the lawyers actually called the government and said
9 why are you taking his passport? We'll give you a copy, a
10 color copy. They said, no, we actually need the passport
11 itself because it has independent evidentiary significance.

12 And then after that when they said, well, he has
13 business meetings, the government was fully aware what would
14 happen next. And how do we know that? Well, for example, I
15 already had mentioned the handwriting exemplar. That had to be
16 postponed because counsel told the government that Mr. Anderson
17 had a business trip abroad and was in London and wouldn't be
18 able to come back and give it. This was after the search and
19 after the seizure of the warrant. How do they come into court
20 and raise righteous indignation that something untoward
21 happened? The best proof of the use of that passport is what
22 he did.

23 Now, what did he do? We know from the government's
24 own Exhibit 59 in a period of time from 2003 to the present
25 that he came back and forth to the United States probably 35 or

1 36 times. And, again, it wasn't just at any period of time.
2 After the search, during the grand jury, after the exemplar,
3 after the mother and the grand jury, after he knows what's in
4 the search warrant he is back and forth and back and forth, not
5 once, not twice, not a dozen, not two dozen, but over three
6 dozen times.

7 In fact, the government's own exhibit omits the year
8 2002 to 2003, we suspect there's another 10 or 15 trips abroad.
9 This is a man who may have been back and forth 40 or 50 times
10 in the period of time that he knew everything about the
11 government's intention to indict him. That is the strongest,
12 the most powerful and the most dispositive argument that the
13 cases recognize as to somebody's intention, not ability, but
14 his intention to flee. Every person with means has the ability
15 to flee. Anybody who's been abroad knows where abroad is.
16 Anybody who can go to a book store can get a map. Anybody can
17 do those things. That doesn't address the issue of intent. It
18 addresses the issue of ability.

19 In fact, when he was serving his sentence in the
20 Superior Court, when he was involved in his probationary
21 period, he sought permission to travel abroad. And what did
22 the probation office, the government and the court do? It
23 granted it. His actual record of court appearances, whether it
24 has been in the Superior Court case, the case in front of Judge
25 Hogan, his civil litigation, is unblemished. And as the Battle

1 case said, "There's no better evidence bearing on whether the
2 defendant will appear when required than whether he has
3 appeared in the past." That's the record.

4 And, finally, we're not minimizing the seriousness of
5 the charges against him by any means. It is serious. And he
6 stands to serve serious incarceration if he is convicted. But
7 it doesn't help the record for the Magistrate court to argue
8 that he is going to be exposed to 83 years of jail, when that
9 comes from multiplying the number of counts by the number of
10 years. That's not the way it worked under the sentencing
11 guidelines. It's certainly not the way it works post-Booker.

12 THE COURT: How does it work post-Booker?

13 MR. LOWELL: You know, I was going to get to that,
14 but not in this case. Hopefully never in this case. The
15 government has not begun to explain how they square their
16 pretrial detention request against the release of dozens of
17 other high profile corporate business crime or tax crime
18 defendants. It is certainly good for the government's message
19 to people, don't violate the law, don't fail to pay your taxes,
20 to set an example, and that example is not only of a criminal
21 case but it's a pretrial detention.

22 But setting the example is not the standard for
23 pretrial conditions for release. We have proffered to the
24 Court, and we only had a day to do it, I can do more but I
25 don't think it's necessary, Exhibit 4 which is the chart of

1 people that have in the last few years had to come before a
2 court like this and say we will be here for trial. Whether it
3 is the people whose names roll off everybodys tongues, like Ken
4 Lay or Richard Scrushy, or some of the others we've put in our
5 chart. You know, you look at the government's own factors.
6 Look at their factors. This is what they are as I understand
7 it: Wealth, knowledge of a foreign country, contacts abroad,
8 access to the ability to travel.

9 And that shows I guess what they say is the intention
10 as opposed to the ability. So we'll take their criteria. Each
11 of those individuals not only had as much as Mr. Anderson had,
12 but they had more. Some of them had private jets and yachts.
13 Some of them live right on the coast of the United States, and
14 each and every one of them was released with conditions of bail
15 in some form. Some travel restrictions, some passport
16 confiscations, almost all that, some with bond, based on their
17 properties, some with a call-in, some with an ankle bracelet.
18 We'll come back to the conditions in a second.

19 The government's helpful in citing the cases that it
20 wanted to use as its support because if you look at those cases
21 in which detention was ordered, you see vastly different facts.
22 You see espionage cases in which somebody is a courier for a
23 foreign country, has no ties to the United States. In terms of
24 the "fake passport issue," you see real fake passports in the
25 names of five or six people. Different countries represented.

1 You see those kinds of facts.

2 But if you look at the cases that are instructive,
3 whether it's the Xulam case or the Himler case, or the Motamedi
4 case, the facts are all too familiar to the factors here. In
5 fact, if you look at the Xulam case where a Turkish immigrant
6 falsifying passport information was in the United States for
7 just three years, and where the government put forward the
8 proposition "nothing could stop him if he decided that he
9 wanted to flee." And the court rightfully said that's not the
10 criteria, it's not if nothing could stop him, it's only whether
11 or not he has the inclination, and whether there are factors
12 and conditions that will reasonably assure that that doesn't
13 occur.

14 I wanted to raise two other cases that are not
15 reported but I have in my little repertoire some familiarity
16 with, because I think it's really important that we take the
17 modern day factors. About a year ago I stood before a judge
18 and argued the case for a man from the Philippines who was a
19 House of Representatives member there who was in the United
20 States because he was threatened with extradition, and it was
21 through an extradition process. His family was in the
22 Philippines. His business was in the Philippines. All of his
23 contacts were in the Philippines. And he had to get here by
24 threat of extradition. The court gave him conditions of
25 release, including travel restrictions and monitoring for the

1 reasons that courts do, because they look to see what his
2 inclination is, because when he had the opportunity to flee
3 because he knew the government was against him, he didn't do
4 that.

5 We represent an individual pre-9/11 who was charged
6 with what is now called giving material aid in support to a
7 terrorist organization. This was a political asylee to the
8 United States. By the way, that case is called the Mark
9 Jimenez case, for the record. It's in the Southern District of
10 Florida. In this case, the Roya Rahmani case, which is in the
11 Central District of California, this individual was a political
12 asylee to the United States. She had no contact with family,
13 with friends.

14 THE COURT: Wasn't the Mark Jimenez case or a related
15 case involving a company of Jimenez's?

16 MR. LOWELL: Future Tech?

17 THE COURT: Yes.

18 MR. LOWELL: That was a campaign finance case. That
19 was the underlying charge. And after Mr. Jimenez went back to
20 his homeland and came back, he was given conditions of release.
21 The Roya Rahmani case in the Central District of California is
22 also I think very, very instructive. This is a political
23 asylee with no contacts in the United States whatsoever other
24 than members of the Iranian opposition. She has all of those
25 contacts abroad, and she was arrested here, and the government

1 moved for her detention.

2 And the Court said, no, she has conditions that can
3 occur, because there were a set of areas including her desire
4 to be in the United States, which is why she came here as a
5 political asylee, and the fact that there are people who are
6 willing to stand up for her and post their houses as a sign of
7 how much people believed in her. Something, by the way, that
8 nobody talked about below, for example Mr. Anderson's family or
9 parents doing something of the same, which is not just an issue
10 of money, for example. That's an issue of somebody putting
11 their livelihood on the line for somebody they believe will
12 show up.

13 I want to speak briefly, but only briefly, to the
14 issue of how his incarceration and his pretrial detention will
15 affect his rights to a fair trial and effective assistance of
16 counsel. That is a factor, it's obviously not in the bail
17 statute itself, but it certainly should be considered by the
18 Court. And in a case like this when the balance is how is it
19 going to play out, it's a very important factor. This is not
20 the average case. It's not even the average white collar case.
21 I think the government has identified near 100 boxes of
22 documents spanning perhaps 10 or 20 years.

23 This is the kind of case where Mr. Anderson is going
24 to have to meet daily, literally daily, with somebody working
25 on his defense case if we're going to catch up. The

1 government, I think we know has been investigating this for
2 three years, probably a little longer. They have had three
3 agencies involved. They have had I don't know how many people.
4 Just to play catch up will be an extraordinary feat. He's
5 going to need to have attorneys and accountants, and have
6 access to the records. The last 48 hours has shown that this
7 is not going to work. In the beginning when Magistrate Kay
8 said, well, as some factor, I'll let him go outside the
9 District of Columbia where he could meet with his counsel and
10 get access better. He was brought to Montgomery County. So
11 there I was meeting with him and trying to work in this four by
12 four cubicle with a complete screen and a slit no bigger than a
13 quarter of an inch to exchange papers one at a time. And that
14 was going to be the way that we're going to prepare him for
15 trial, under the circumstances isn't going to work.

16 THE COURT: I don't think Montgomery County wants
17 anything to do with this any longer. They didn't like all the
18 press out there. I don't know how the press all got out there,
19 but they didn't like it.

20 MR. LOWELL: Apparently they didn't, but that's
21 surprising to me, as an aside, without bearing on Mr. Anderson,
22 because I don't know why the inference goes against him that
23 the press was out there. But even so, I don't live far from
24 the jail, and you should have seen it the day that the snipers
25 were caught. I think they have experience dealing with the

1 press. To have three straggling reporters sitting in the
2 parking lot hoping that they'd catch a glimpse of a wood-be tax
3 cheat as he's being brought into the jail seems to be a little
4 bit much for them to not have the ability to handle. But I'll
5 worry about that when I'm arguing with the county executive.

6 The last two days, in addition to what we have said
7 here, you have the letter that we wrote the Court about what
8 happened when we tried to get access to our client. And to
9 make that even worse, Your Honor, we have found additional
10 facts now which, really, I don't want to use hyperbolic
11 adjectives, but "disturbing" is at least the best. When I was
12 cut off after 25 minutes of trying to prepare my client for
13 this hearing told that he was being moved, he was physically
14 removed from our meeting, put into the back, and I was told I
15 couldn't meet with him any more, only to find out today, or
16 last night, I'm sorry, that he actually was sitting in the back
17 for another two and a half hours when I could have met with
18 him.

19 That is not going to be the way that any lawyer can
20 provide effective assistance of counsel to Mr. Anderson, and
21 that's what happens when people are detained. And sometimes
22 it's necessary, but as the courts have said, only in the rarest
23 of circumstances, and only when there are absolutely no
24 conditions that could assure his future appearance. And that's
25 not the case here.

1 What are we afraid of, according to the government?
2 That he has wealth. Well, he doesn't have access to his
3 wealth. They appointed the safety deposit box key that they
4 have, and he's not in a position to go to that safety deposit
5 box, nor does he have the key. And, again, wealth only
6 indicates the ability, not the propensity. They say that he
7 has the ability to generate documents that will let him travel.
8 Well, not in the 9/11 world. But even if possible, there
9 certainly are conditions that prevent that.

10 THE COURT: Such as?

11 MR. LOWELL: Well, part of the conditions can be that
12 he is confined to an area, confined to a kind of task,
13 forbidden to apply for, seek out, prepare himself, be involved
14 with people that are involved with travel documents, any number
15 of restrictions. He's going to assume, we have never said that
16 he shouldn't have some sort of interaction with Pretrial
17 Services on a frequency in which they'll know exactly what he's
18 up to, be able to come to where he's living, be able to inspect
19 as they do in other cases. The idea that he cannot be
20 monitored in this day and age? He can be monitored perfectly
21 well. There are all kinds of ways to do it, ranging from the
22 call-in system to the automatic call-in system, to the famous
23 ankle bracelet, to the more modern GPS systems. There are any
24 number of means that are conditions that will reasonably assure
25 his, not guarantee, not 100 percent, but reasonably assure.

1 And that's if you found him to be a serious flight risk.

2 I guess what I want to therefore say, Your Honor, and
3 I'll listen to the government and then I'd ask for a little
4 brief time to rebut, is that as I understand it, here's what
5 the background is. In light of the presumption of the release
6 which you have talked about, the rarity of detention, the
7 requirement to find the propensity to flee, and not just the
8 opportunity, with the attachment he has to D.C. and his
9 parents, which is not insubstantial as the government cynically
10 puts forward, with his track record of appearances in courts
11 when there has been the need to appear in court, with his
12 specific record of returning to the United States dozens and
13 dozens of times, and with any lack of real proof in the
14 government's best arguments, it is impossible to conclude that
15 he's either "a serious risk of flight," or that there are no
16 set of conditions that can "reasonably assure" his presence.

17 The government should have taken up Mr. Anderson's
18 offer to self-surrender and agree to use these types of
19 conditions, rather than staging a sort of made for TV arrest at
20 Dulles Airport when he was not trying to leave, but he was on
21 his way back. He should not be treated differently than the
22 others who have been given their constitutional right to be
23 released on reasonable bail and the chance to fight back
24 charges for which they have plead not guilty, have appropriate
25 access to the resources he needs, and to have effective

1 assistance of counsel. The record doesn't justify it.

2 And so we are asking this Court to impose those
3 reasonable set of conditions that will reasonably assure,
4 actually it's the least restrictive set of conditions that will
5 reasonably assure his attendance, and there are many of which
6 to choose.

7 Finally, Your Honor, I have done this with you
8 before, and forgive me for doing it again, but sometimes you
9 say it better than I ever can. So in your Gloster case where
10 you talk about in our society liberty is the norm, detention
11 prior to trial without trial is carefully limited, when you
12 talk about there being a strong presumption against detention,
13 when you talk about the need for people to keep their freedom
14 unless it's in that narrow category of cases, those are really
15 strong words. And we ask you to reconsider what you once wrote
16 because they apply to this case. Thank you.

17 THE COURT: Ms. Menzer.

18 MS. MENZER: The Court's indulgence, Your Honor.

19 Good afternoon. Your Honor, I started taking lots of
20 notes and then I just stopped because I think we're losing
21 sight why we are here. What Magistrate Kay saw and what the
22 exhibits clearly show to the Court is, the basic objective of
23 the criminal system is to bring the accused to trial. That is
24 all the government is trying to secure here. We are not trying
25 to punish Mr. Anderson. It was not the government's suggestion

1 at all to move him to Montgomery County. That's number one.

2 We think Mr. Anderson should be treated like every
3 defendant in this system, that he should have stayed at the
4 D.C. jail. That's number one. We are not trying to punish
5 him, but we sincerely believe that he is a risk of flight, and
6 Magistrate Kay looked at the same evidence and came to the same
7 conclusion.

8 I want to touch on a number of, talking about setting
9 the record straight, and I think the record has been muddled.
10 Maybe it's because the press has been involved, I don't know
11 and I don't want to guess. But there are a number of instances
12 here in both counsels motions to the Court that are just not
13 true.

14 THE COURT: Do you mean yours and Mr. Lowell's, or do
15 you mean Mr. Moustakas' and yours?

16 MS. MENZER: Both, because I assume that Mr. Lowell,
17 who hasn't had the benefit of participating in conversations
18 with Ms. Kelly and myself, doesn't have a history, so I don't
19 know where he's getting his information from. But to set the
20 record straight, we never, at least Ms. Kelly and I, never had
21 a conversation with any of Mr. Anderson's attorneys where we
22 said that we would allow for him to turn himself in. Never,
23 ever. In fact, it's a running joke with Ms. Kelly and I, and
24 she'll be embarrassed that I tell you that this issue of
25 detention has been looming in our mind for the past two years.

1 I have done research on it over and over again for the last two
2 years. It has never been a question on this side of the
3 courtroom that we were not going to seek Mr. Anderson's
4 detention. And if Your Honor would like us to put evidence
5 forth to prove that, we will.

6 THE COURT: I don't think that's necessary. I read
7 the filings not to say that there was an agreement, but to say
8 that there was an offer, and that they thought there were good
9 reasons why it should have been accepted.

10 MS. MENZER: I think the offer was, and the offer
11 always has been outstanding, is that the government would meet
12 with counsel at any time of their choosing, not before we
13 returned an indictment, which is what Mr. Anderson apparently
14 believed because that's what he told the Washington Post, is
15 that he believed that we would meet with him before we returned
16 an indictment. To use Mr. Lowell's own words, that argues
17 against his theory to the Court that if he was going to flee he
18 would have had it ready. Frankly, he just did not think it was
19 going to happen now. He had no idea when it was going to
20 happen. There were outstanding subpoenas issued by the grand
21 jury. Mr. Anderson himself had failed to comply with grand
22 jury requests, and we were still negotiating with his counsel
23 to do so.

24 Mr. Moustakas, in fact, called me Monday morning
25 after Mr. Anderson was arrested to express surprise that I

1 would even think about asking for Mr. Anderson to be detained.
2 His first comment to me was, what conditions do you want? When
3 I said, well, the government would like Mr. Anderson detained,
4 he was very surprised. So, Your Honor, the fact that they're
5 putting before you that Mr. Anderson knew that this was going
6 to come down is just not the case.

7 I know the government submitted an awful lot of
8 exhibits and I apologize, but I'd like to take a moment to
9 refer you to I believe it's Government's Exhibit 74. This is a
10 letter from Mr. Anderson, November 14, 2003, which is about a
11 year and a half after he learned of the grand jury
12 investigation. This is what Mr. Anderson wrote. "The
13 government has been conducting an investigation against me in
14 relation to tax issues for over four and a half years. They
15 have found nothing to charge me with. It is possible that your
16 testimony was a value to investigators desperate to convincing
17 a judge to issue another warrant to invade my home and offices
18 for the second time in 18 months."

19 Mr. Anderson is also on record in saying to the same
20 witness, and I believe Your Honor has a copy of those letters,
21 that Mr. Anderson told this witness that there had been 70
22 people called before the grand jury, and she was the only one
23 who testified against him. So by his own words, Mr. Anderson
24 was pretty confident that he was not, one, going to be charged
25 when he was. He had no idea that the government would ask that

1 he be detained. So why didn't he flee? It just wasn't time
2 yet, Your Honor.

3 I think it's very important, obviously the government
4 in its motion argued all four factors under the Bail Reform Act
5 weighed in favor of detaining Mr. Anderson, but I think it's
6 very important that Magistrate Kay focused on two, and those
7 are the two that I'd like this Court to focus on as the nature
8 of the charges, which you have been able to read the indictment
9 now, and the characteristics of Mr. Anderson the person.

10 I know nothing about those people that Mr. Lowell has
11 listed in Exhibit 4. I have no idea if they have wives, if
12 they have families, how long they have been in the United
13 States, that they love the United States of America. I have no
14 idea. And I don't think it's important to this Court to
15 consider, because what the Court needs to consider is not what
16 some person in some other state, in some other courtroom,
17 thinks about the United States of America, or whether or not
18 he's going to stick around for his trial. It's whether Mr.
19 Anderson does.

20 And let's look at Mr. Anderson. Mr. Anderson, the
21 government has not exaggerated, Your Honor, Mr. Anderson has
22 been involved in a scheme, in the indictment the grand jury has
23 found, for more than 15 years using aliases, shell
24 corporations, tax haven jurisdictions, not because he likes
25 privacy, because frankly he didn't want us to know what he was

1 involved in. That's what the indictment charges.

2 And the Court, and Magistrate Kay looked at that, and
3 there is a history of deceit. Oh, it's a joke. Mr. Zzylch,
4 it's a joke. It's the last name in the phone book. Well, Your
5 Honor, Mr. Zzylch may have a better credit rating than a number
6 of people in this courtroom. Mr. Zzylch will probably be able
7 to go down to Bloomingdale's and open up a credit account.
8 From that, Mr. Zzylch will then be able to go and get a
9 driver's license. That's all you need to cross the border.
10 Mr. Anderson knows that. Books tell you that. It's not just
11 the titles. If the court would like, we'd be more than willing
12 to leave these books for your review.

13 This map of Spain, Your Honor, I wasn't being
14 facetious. There was a map of Spain. I was just trying to
15 explain to the Court that one of these books says to live life
16 as a fugitive in another country, the first thing you should do
17 is get a map and study where you're going to be, so that you're
18 familiar with the area, so you look like you belong. And, in
19 fact, the only map we found in Mr. Anderson's possession was a
20 map of Spain.

21 THE COURT: According to your evidence, he's been to
22 Spain. He already has a home in Spain.

23 MS. MENZER: Yes, Your Honor. We have also
24 submitted, and I take issue a little with Mr. Lowell's
25 suggestion that the government has never met any of these

1 women. That's not true. In fact, we submitted as part of our
2 exhibits the deposition of the woman in Spain. She has been
3 deposed. Ms. Kelly and Agent Kutz met her. And although she
4 is a lawyer, she refused to answer a number of questions
5 relating to monies that she had received from Mr. Anderson,
6 which was in the millions. And she acknowledged the fact that
7 no one is living in that home. So it's not a rental property.
8 It's not a business interest. The reference to the property
9 rights in Brazil was not that this was a place that Mr.
10 Anderson could flee, but it was an asset that he had. He paid
11 two and a half million dollars for it. Obviously he's a bright
12 man. It must be worth something. He could turn around and
13 sell it without anyone knowing about it. That's why the
14 government proffered that evidence.

15 There are a lot of assets out there that we just
16 don't know about. And I don't know if Your Honor has had the
17 time to look at the exhibits that we submitted this afternoon,
18 one of them included an affidavit from an attorney which I
19 would ask the Court to keep under seal because it deals with
20 ongoing litigation matters.

21 THE COURT: This was in the packet of materials with
22 a cover letter to Mr. Lowell?

23 MS. MENZER: Yes, Your Honor. It was copied to the
24 Court and provided to Mr. Lowell.

25 THE COURT: All right.

1 MS. MENZER: It has a number of exhibits attached to
2 it which reflect that in the civil case that Mr. Anderson and
3 Gold and Appel are currently involved in, Mr. Anderson has not
4 respected the authority of the Court. And I believe that that
5 affidavit sets forth the government's reasons for saying so.
6 It's not baseless. It's not innuendo. It's not assumption.
7 These are respected attorneys; they've practiced in this area.
8 This is a bankruptcy attorney for many years. And quite
9 frankly, he has never seen anything like this before. So this
10 case is unusual. And are we asking the Court in the rare
11 circumstances to hold a white collar defendant? Yes, we are.
12 Why? Because it's Mr. Anderson.

13 I want to actually ask the Court, I'm going to
14 proffer another exhibit I wasn't going to, but Mr. Lowell
15 brought it up. He talked about the camouflage passport again,
16 and Mr. Moustakas spent a lot of time in that in his brief
17 before Magistrate Kay that Mr. Anderson possessed this passport
18 as a way to get around terrorists. He was afraid of hijackers.
19 And this was a common thing that people did when they traveled
20 internationally, that no one would even honor that to travel
21 with.

22 Again, Your Honor, going back to Mr. Zzylch and
23 Mr. Prospero, first of all, the government's not saying this
24 would be a travel document. This is a form of identification.
25 There are many people who are not as savvy as customs officials

1 who would be able to tell whether or not this was a real
2 passport or a fake passport. Frankly, Your Honor, I didn't
3 know whether or not the country still existed. It looks real.
4 Someone could easily look at it and say, okay, you got a
5 driver's license, it also had a resident card for it, so
6 someone could use that probably to get a District of Columbia
7 driver's license.

8 So that's number one. Number one is, it's not
9 necessarily a travel document. It can be used to obtain
10 identification to get other things. The other thing is, I
11 think there is evidence that Mr. Anderson was not using that,
12 or did not have that because he was afraid of hijackers. Mr.
13 Anderson, I'm going to tender to the Court what I've marked as
14 Government's Exhibit 97 and provide Mr. Lowell with a copy.
15 First let me identify it for the record, Your Honor. This is
16 an e-mail from Mr. Anderson to a number of different
17 individuals dated March 6th, 2003. It's relating to the ITAR
18 issues, the new regulations. And it reflects that Mr. Anderson
19 does not think terrorism is going to affect him at all.

20 And in his own words, this is what Mr. Anderson
21 wrote. "The 9/11 terrorists set out to damage the most
22 prosperous democratic country in the world. They have almost
23 succeeded. The chance of me personally being affected by
24 terrorists is slight. It is certain, however, that the U.S.
25 government will curtail my freedom, invade my privacy, and

1 limit my business activities and opportunities. They already
2 have."

3 Mr. Anderson is not one who believes things like
4 hijacking is going to occur to him. I believe, if I'm not
5 mistaken, and you can correct the record if I am, that Mrs.
6 Heinle, his mother, told me a story when she did have to go
7 before the grand jury that she was upset that Mr. Anderson even
8 traveled after major terrorist events, that he hopped on a
9 plane, and she expressed her concern. He's not afraid. He
10 wasn't afraid of a hijacker. That's just something that he has
11 created to try to explain why he had something that there's no
12 explanation. He had it. He shouldn't have. And he has the
13 ability to create more.

14 I want to turn to another correction of the record.
15 Not that the government thinks that this is, I want to say a
16 big deal, but we have included in our exhibits, and no one
17 seems to have pointed it out, that the drug case that Mr.
18 Anderson was convicted of, Mr. Lowell has stated in his motion,
19 Mr. Moustakas stated it before, he said it in court, what took
20 the government so long? They waited 18 months to bring those
21 charges.

22 Well, if you noticed, Your Honor, with the records
23 relating to the drug charge, that the second search, November
24 of 2003 when he was searched again, the government found drugs
25 again. It was at that time in November of 2003 that the

1 government decided to exercise its discretion and charge Mr.
2 Anderson. You know from being a trial attorney, we have now an
3 individual who not once, but twice, possessed illegal drugs,
4 not just drugs, paraphernalia.

5 THE COURT: And then he took a plea to a misdemeanor?

6 MS. MENZER: Your Honor, all of the charges were
7 misdemeanors. They were simple possession. He was never
8 charged with anything beyond that. There was no, obviously no
9 intent to distribute that the government could point to. But
10 he ended up pleading guilty, and part of the plea agreement was
11 that we wouldn't charge him for the second time that he had the
12 drugs. This is a normal circumstance. And somehow counsel is
13 trying to make it seem like the government has done something
14 evil.

15 Mr. Anderson was treated just like we want this Court
16 to treat him here, like everyone else, every other person
17 charged in the District of Columbia with a crime. He shouldn't
18 get preferential treatment. He's been charged with a crime
19 where he faces over 20 years in prison. That's very similar to
20 the violent criminals that come before Your Honor, to the
21 narcotics dealers that come before Your Honor. Why should he
22 be treated any differently than an 18-year-old?

23 THE COURT: Well, the difference is in the Bail
24 Reform Act. In the Bail Reform Act there's a presumption built
25 in the statute in narcotics cases where the maximum sentence is

1 ten years or more, and it's almost always ten years or more,
2 and it's a presumption that relates both to flight and to
3 dangerousness. So there's no presumption here. The government
4 has a clear direct burden of proof by a preponderance of the
5 evidence to show that there's a substantial likelihood of
6 flight, and that there are no condition or combination of
7 conditions that would suffice.

8 MS. MENZER: I understand that, Your Honor, but I
9 believe that we have gone beyond that. And what I don't want
10 is, I don't want the Court to think that we're picking on Mr.
11 Anderson because he's Mr. Anderson. We are trying to treat him
12 like anyone else. And the evidence that we have submitted to
13 the Court, if we saw anyone with this evidence we'd ask the
14 Court for the same conditions, which are none. Because quite
15 frankly, Your Honor, the government does not believe Mr.
16 Anderson is going to stay around.

17 In Mr. Lowell's Exhibit Number 4, there's many people
18 mentioned, some of them I don't know who they are, I have to
19 admit, but one name isn't there. Mark Rich. Before Mr.
20 Anderson, Mr. Rich's case was the largest tax evasion case in
21 history. And Mr. Rich fled in 1984. He still hasn't been
22 back. He actually was pardoned, so he doesn't even have to
23 face the charges and he hasn't come back. I don't want to
24 throw other people's names, I really don't think it's relevant
25 to the Court's decision, and I do not think Exhibit 4 is

1 relevant for the same reason. Mr. Anderson is not Mr. Rich,
2 but Mr. Anderson has a lot to lose, just as Mr. Rich did, not
3 only in the criminal prosecution but the civil judgments
4 against him, which are substantial.

5 There's just a couple of other points, and then I'm
6 going to sit down because I know Ms. Kelly will kill me if I
7 don't.

8 The first is the safety deposit key. Well, we have
9 it. Your Honor, I have a safety deposit box. I have a key; my
10 husband has a key. Just because we have Mr. Anderson's key
11 doesn't mean there isn't another key out there. We have no
12 idea where that box is. All we know is that it's a safety
13 deposit key. I also will proffer to the Court, and if Your
14 Honor would like to, I will actually get you copies of the
15 transcript, Mr. Anderson was asked during the deposition if he
16 had a safety deposit box and he said no, at a time when the
17 government knew he did.

18 Mr. Lowell makes an argument that Mr. Anderson will
19 not be able to aid his attorneys in his defense. I was, just
20 as you, Your Honor, involved in the fiasco yesterday, and
21 hopefully that won't happen again. And I'm sure that we can
22 find some way to do that. Quite frankly, from what I was told,
23 the D.C. Department of Corrections, the Marshal's Service felt
24 that it was Mr. Anderson's life, or security was at risk.
25 That's not our business. I can't tell if they're right or if

1 they're wrong. All I know is that they were very concerned
2 that the press knew where he was, and that inmates were upset
3 that he, in fact, was able to speak to the press.

4 THE COURT: I'm not sure it was they were concerned
5 about his life. They were concerned about security at the
6 prison and in transporting people back and forth between here
7 and the D.C. jail or Montgomery County, or the third facility
8 that was discussed, because very few prisoners are transported
9 by themselves, they're usually transported in a bus with lots
10 of other people. And they were concerned that information
11 getting out, however it was getting out, might pose a security
12 risk, and I suppose that yesterday posed a particular security
13 risk around here.

14 MS. MENZER: Your Honor -- I'm sorry.

15 THE COURT: So I don't think it was Mr. Anderson's
16 life, and I do think there is an issue that we're going to have
17 to deal with as well, regardless of whether he's housed if he's
18 held, or if he's released, and that has to do with dealing with
19 the press. Because I'm not sure that if I were his lawyer I
20 would be happy with him talking to the press. And as a judge
21 who's got to pick a jury in this case at some point, I think it
22 creates potential problems that we have to deal with. The U.S.
23 Marshal's Service, or I think it's the U.S. Marshal's Service
24 regulations provide that no one can talk to the press without
25 the concurrence of the judge, the prosecutor, the defense

1 lawyer, and the prisoner him or herself. I think the D.C.
2 Department of Corrections regulations are not written the same
3 way.

4 But I think at some point, and I would suspect that
5 Mr. Lowell would probably concur with this, that we need to
6 make sure that there isn't a lot of discussion by either the
7 prosecution side or the defense side that might affect the
8 selection of a jury or the sanctity of the jury once one is
9 selected. But that's something we can all deal with.

10 MS. MENZER: The government obviously agrees with
11 the Court on that. I would point out that the interesting
12 thing about the whole press issue here is that somehow Mr.
13 Anderson was able to secure a two and a half hour interview
14 with the Washington Post.

15 THE COURT: I don't know whether it's because of his
16 creativity or Ms. Leonnig's, because she's pretty creative,
17 too.

18 MS. MENZER: Your Honor, I have been informed and I
19 do not know the circumstances yet, but I also have been
20 informed that the time that Mr. Anderson was housed at the D.C.
21 jail it appears that he talked on the telephone for over 600
22 minutes. Again, Your Honor, I defer to your experience in
23 this, but that seems like an awful long time for an inmate in
24 the D.C. jail to be able to use the telephone. So when Mr.
25 Lowell told you that he was passing papers through a slit --

1 THE COURT: That was not at the D.C. jail.

2 MS. MENZER: I understand that, but it appears that
3 circumstances can be created in which he can assist his
4 attorneys in his defense. And there are a number of cases,
5 cases that the government cited, that that is not a basis to
6 release him.

7 THE COURT: I guess you have to keep coming back to
8 not why I shouldn't release him under conditions, but rather
9 why you can demonstrate or have demonstrated by a preponderance
10 of the evidence why he should be held, and why there are no
11 conditions. Some of these things that you're discussing and
12 some of the things that Mr. Lowell is discussing are sort of
13 asides or footnotes to this whole discussion, as important as
14 they are to you and as troublesome as some of them are to him,
15 you really need to focus on, and you certainly made a lot of
16 those arguments both in writing and orally to Judge Kay and
17 here this afternoon as to why you think there are no conditions
18 that will reasonably assure his appearance.

19 MS. MENZER: Well, Your Honor, I think, again, and
20 I'm going to end with that, that there's really no reason for
21 him to stay. The only thing left for Mr. Anderson in
22 Washington, D.C. is trouble. I do not mean to make light of
23 the fact that his mother and stepfather are here. I know that
24 they have actually visited with Mr. Anderson when he was living
25 in Europe, or traveling in Europe, and other things can be

1 arranged. I'm not saying that he doesn't have family here, but
2 what I'm saying is that arrangements can be made for what
3 little he does have here that he won't lose it if he flees.
4 And he has no home. It's not that it's in a trust, Your Honor.
5 It's been foreclosed upon.

6 THE COURT: This is the apartment that's referenced
7 here. As I understand it, that's one of the things I wanted to
8 ask you about, the Pretrial Services says he's a life-long
9 resident of the District of Columbia or the Washington area,
10 and it talks about a home, and the address of the home, which
11 is, I take it it's an apartment or a condominium. And I know
12 where it is. And has an office which I assume is rented, not
13 owned, within a block or two of that home.

14 MS. MENZER: Yes, Your Honor.

15 THE COURT: And what information do you have or is
16 there in the record about how long he lived there, or how long
17 he or the trust owned it, when he lived there, how many days,
18 months, or years did he actually live there, if you know, a
19 little bit about the office, and then what you were about to
20 tell me about the home being foreclosed upon. We can imagine
21 people that have lived in their home day in and day out for 30
22 years and for whatever reason there was a foreclosure, but
23 that's not this case.

24 MS. MENZER: Your Honor, throughout the prosecution
25 years, I believe the indictment sets forth that Mr. Anderson,

1 in fact, had a home in the District of Columbia, whether it was
2 that one or another condominium that he owned previous to that.
3 I believe, and my agent can correct me if I'm wrong, I believe
4 the indictment states the precise date. I believe he purchased
5 that particular unit in 1998? I got it right. And so he has
6 owned that.

7 The apartment was pledged as collateral for a loan,
8 and the government's submitted those documents to Your Honor
9 that Mr. Anderson was unsuccessful in a civil action in the
10 Eastern District of Virginia, it has gone to the Fourth
11 Circuit, it's been appealed. The plaintiff in that action is
12 seeking, obviously, to get ahold of that property in order to
13 foreclose upon it, and it has been stayed until May. So until
14 May he can still live there, but after May it appears that the
15 plaintiff is going to take possession of that apartment. So he
16 doesn't have a home here any more, so his ties to the community
17 are very small.

18 He has managed, according to the affidavit that we
19 submitted today in the civil lawsuit, to basically bankrupt
20 Gold and Appel. So he's moved all of his assets out of Gold
21 and Appel, out of the United States. There's nothing in the
22 United States any more. Can we tell you how much is left
23 anywhere else? No. Mr. Anderson told you and to the
24 Washington Post, he said there's \$30 to \$50 million. That's a
25 lot of money, Your Honor. There have been numerous cases where

1 people have been held for having assets far less than that.

2 THE COURT: How much restitution are you seeking if
3 he's convicted?

4 MS. MENZER: Your Honor, I tell people all the time,
5 I've been trying tax cases for over a decade, and people ask me
6 how are you going to get the money back? That's not what I do.
7 I'm a prosecutor. I don't work for the IRS. They have their
8 means of getting the money back. But we're here because Mr.
9 Anderson committed a crime, or we believe he committed a crime.
10 The grand jury has alleged that he's committed a crime. So we
11 are not trying to punish him. We want to have our day in
12 court. We want to give Mr. Anderson his opportunity to prove
13 his defense. But the only way that that's going to happen with
14 all this evidence before you is that he's held pending trial.

15 THE COURT: Before you stand up, Mr. Lowell, you were
16 about to sit down, right?

17 MS. MENZER: Yes.

18 THE COURT: I want to take about a ten minute break.
19 I just want to say this before we take the break. I'm not
20 going to decide this matter today. And the question, in
21 addition to whatever you want to say on what I hope will be a
22 reasonably brief rebuttal because I have kept Mr. Rosen in the
23 other case waiting for an hour, the other question I want to
24 ask you is, do you want to discuss scheduling today, and I
25 guess this is a question for both sides, or do you want to wait

1 until you know what decision I make about bond before you
2 discuss scheduling.

3 Because from your perspective, Mr. Lowell, you can
4 think about this during the break, but from your perspective,
5 if I were to hold him on the one hand you'd probably want a
6 speedier trial, and on the other hand it's going to be harder
7 for you to prepare a defense. So it's a real conundrum that
8 you need to think about. My only question is whether you, on
9 your side of the table, and the government on their side of the
10 table, would like to address scheduling in the abstract today,
11 or whether it would be better from each side's perspective to
12 know my bond decision first. So you can think about that
13 during the break. Let's take about ten minutes.

14 (Recess taken)

15 MR. LOWELL: Your Honor, I appreciate your indulgence
16 and the people who are scheduled. I should be five minutes I
17 think. First let me address the Court's last question which is
18 on the scheduling order.

19 What I think makes sense is that we should talk to
20 the government's counsel and come up with perhaps two
21 possibilities, or at least begin that conversation between the
22 two of us, and then come to Your Honor and tell you what we
23 think. And I think that's the best we can do. I have, and I'm
24 sure they have, a fairly standard order that we use that puts
25 in everything from soup to nuts, from pretrial discovery to

1 motions, to whatever. And why don't we try to bang it out and
2 save you time.

3 THE COURT: That will be great. Try to be realistic
4 about it. I don't know how long this trial is going to be, but
5 the government probably has an estimate of how long their case
6 is going to be. You look like you can tell me right this
7 minute, in fact.

8 MS. MENZER: Your Honor, we probably anticipate
9 about at least two to three months.

10 MR. LOWELL: I pity the people in that box, but we
11 will talk about that then.

12 THE COURT: The question really is working out a
13 realistic schedule. Obviously, whether or not Mr. Anderson is
14 detained or not detained, he has a right to a speedy trial.
15 And you and he also have a right to sufficient time to prepare
16 for a trial. The government's had a couple of years at least.
17 So I'm prepared to try to work you all in and block off
18 whatever time you need, and move some civil cases if I have to,
19 to do it.

20 But I think Mr. Lowell's suggestion is a good one,
21 that you all talk to each other first, and you can come up with
22 a couple of alternatives if that makes sense, and we'll pick
23 the months that you all agree upon.

24 MR. LOWELL: Thank you. And I will at the very end
25 raise two more issues with you. Let me start where the

1 government left off, if I could, or actually let me start where
2 the government started and get back to the issue of the record
3 being muddled. It is important that we unmuddle the record
4 because whatever the Court decides should have a record that is
5 as pristine as we can make it.

6 So I'm not going to rebut everything they've said,
7 but when they say something which they believe is influential
8 to their request for no conditions, it behoves me as effective
9 assistance of counsel to make sure that the record and Your
10 Honor knows that what they said is not the basis for what
11 they're asking for.

12 So, for example, when they raise the issue of the
13 prior drug charge as if we're trying to say that something was
14 wrong, I'm not saying anything is wrong. I'm not even saying
15 anything is wrong about the 18 months that they waited, except
16 one could question why after waiting 18 months they decided to
17 pull the plug on him on Christmas Eve of all days, but the
18 point there was, the government goes in front of the Magistrate
19 Judge and talks about vast quantities of drugs, and requires
20 Mr. Anderson's counsel to say no, no, no, it was like two pills
21 and a bit.

22 It's not for the purpose of saying that that has any
23 significance to Your Honor's consideration anyway. It's
24 talking about the integrity of the record, that you're not
25 supposed to do that. They're not supposed to get up here and

1 say there are 600 minutes of telephone talk time without
2 telling you that it's over 11 days, which is an hour a day,
3 when he has family and friends and counsel.

4 They're not supposed to try to create an inference of
5 anything without at least putting it in the context. They're
6 not supposed to say that he has a map of Spain, and then point
7 to a book that says the first thing you do as somebody trying
8 to flee is to get a map of the country, when Your Honor knows
9 enough to point out to the government he's been to Spain. He's
10 not only been to Spain, Your Honor, he's been to Spain dozens
11 of times.

12 It's not enough for them to say, Your Honor, boy,
13 this is a good point, he may have as Mr. Zzylich the ability to
14 get a great credit rating, and then go abroad with that rating.
15 Well, we did some checking today and tried to get a credit
16 rating for Mr. Zzylich because the government put it in their
17 brief. Guess what. It can't be done. You just can't say that
18 you've had a telephone bill paid for a period of time and, ergo
19 give me an identity, a license, a credit card, a bank account.
20 Maybe you couldn't even do that before 9/11, but you can't do
21 it afterwards. They can't just say things like that and then
22 say, Your Honor, you see we've proved our case by a
23 preponderance of evidence.

24 If you stack enough facts on top of each other, or
25 that which you say is facts, it leads you to the conclusion

1 that they've produced facts. But you have to be able to sift
2 through them. When they say that they have spoken to the
3 government -- the government has spoken to the women that I
4 alleged or I spoke about, I didn't say that they didn't talk to
5 them. I said that they have no reason to come forward and say
6 that they would commit a violation of the law to harbor a
7 fugitive. That's different.

8 When they talk about this woman in Spain not
9 providing answers to questions because she asserts the
10 attorney/client privilege, that's not only her duty, it's Mr.
11 Anderson's right. They just can't say it. When they go and
12 talk about the British Guiana passport and say, well, okay,
13 maybe he didn't travel on it, but they don't tell you that he's
14 had in it in his possession from 1993, before there was an
15 investigation. And then they try to say, well, look, this
16 e-mail says he's not really concerned about terrorism.

17 I almost am embarrassed to have to respond to this
18 point. If you, God perish the thought, are captured, then you
19 have it with you. It doesn't mean that you don't have it with
20 you and it's going to prevent you from being captured. You
21 can't just say that stuff. You have to sort through it.

22 They say look at his inability to conform with what
23 he's supposed to do. They ask you to look at the brand new hot
24 off the press affidavit of an attorney that's still under seal
25 so they don't want anybody to know about it. And you say, oh,

1 that may be important, and then you look at what the attorney
2 says, and he says, notwithstanding the Court's orders, Mr.
3 Anderson and his lawyers have done the following things.

4 People have the right to have counsel. They have the
5 right to rely on counsel. And if counsel thinks that there's
6 an appeal, or that the order is off base, or it should or
7 should not be complied with, then lock up the lawyers or
8 sanction them, but it's not a grounds to hold somebody in
9 pretrial detention, and you just can't say that it is, not if
10 you're trying to create a record of substance and integrity.

11 And the last thing that they say is, well, we have
12 that safe deposit box, maybe somebody else has a key. Well,
13 maybe somebody else does have a key, but the inference of
14 what's in a safety deposit box doesn't mean dollars. My safety
15 deposit box only has documents. I don't know about yours, and
16 I don't know about anybody else's, but you just can't say that
17 it has to have the stolen goods. You have to come up with some
18 proof that says it. And saying it is not a preponderance of
19 the evidence.

20 And I want to say two last things, and the last one
21 is most important. She said, well, my chart number four
22 doesn't include the name Mark Rich. And that's very powerful
23 evidence for the government, I suppose. But it's actually very
24 powerful evidence for Mr. Anderson because, you see, what this
25 Court knows is that Mr. Rich wasn't in the United States when

1 the charges were brought. He wasn't let out on conditions of
2 release most apt to keep him here. He was already abroad and
3 he never came back, and he had citizenship in a foreign country
4 at the time in which he has resided. And that is why it's not
5 on the chart because it has nothing to do with those people who
6 were given conditions of release and have shown up for their
7 trial, whether they have openly been found guilty or innocent.

8 Before I get to the very last point, you have
9 mentioned the press. It bears some response. Very briefly. I
10 don't want there to be any more publicity about this case, as
11 counsel for Mr. Anderson. It's not going to help them get the
12 people who are going to be bored stiff for two or three months
13 in that box. So I don't want that to happen.

14 But I'll tell you what, and you know this too, Your
15 Honor. The government was the one who staged the arrest at
16 Dulles Airport for somebody who was coming back after having no
17 sleep and could have easily been arrested at his home. That
18 wasn't our choice. It was done for a reason. The government
19 issued a press release in this. We didn't. Mr. Anderson
20 didn't. So they get to say about him what they want, including
21 that he's the worst tax offender in American history, and
22 expect everybody to say that's the last word. Okay. The last
23 word's been spoken.

24 But they shouldn't get up sanctimoniously and talk
25 about the press when they're manipulating it from the first day

1 that Mr. Anderson comes back.

2 So then finally, I am going to end with the question
3 you asked the government that the government didn't answer.
4 You asked them what are the conditions, or why aren't there
5 conditions of release? And then she said, well, I want to talk
6 about his apartment. His apartment is foreclosed. It will be
7 foreclosed again in May. He has no ties to the community.
8 They can't just say that stuff and be allowed to get away with
9 it.

10 There are liens on the house. There's a foreclosure
11 proceeding. You can't, under the foreclosure laws of the
12 District of Columbia, take somebody's house from them under the
13 Homestead Act. He will be allowed to live there thereafter, no
14 matter what. He's working with bankruptcy counsel, ergo his
15 trillions of dollars, in order to make that happen. The
16 question that should have been answered was, well, he may not
17 have access to that apartment, although that's not true. He
18 certainly is able to live with his parents. They didn't
19 address why that doesn't work.

20 They didn't address any of the issues as to why there
21 aren't conditions. He not only lived in his condo here, which
22 is an ownership for seven years, he had one previously to that
23 in Adams Morgan for five years. And they didn't answer that
24 question, because if you answer on facts, like 12 years of home
25 ownership, life-long resident, ability to live with your

1 parents, then you reach the conclusion, guess what? There are
2 conditions of release that would assure his appearance.

3 But if you talk about nonissues, like girlfriends or
4 1993 documents, well then you don't have to face up to the fact
5 that there are issues.

6 So I end with what I asked for in the beginning. You
7 apply the standards of the law as it is here in the bail act in
8 the District of Columbia and the cases thereof, you find if he
9 is or is not a serious risk of flight, we allege that he's not,
10 not on the preponderance, and then even if you find that he
11 does, we craft those conditions. And you have them in the
12 record, Your Honor. You know what they are. You do it in
13 every case.

14 There are passport withdrawals, there are
15 restrictions to travel in the District of Columbia, there's a
16 monitoring system, there's the ability to travel to do business
17 and see his lawyers. He has to live in the residence or with
18 his family. There's the ability to have a call-in. There are
19 all kinds of things, and nobody in this courtroom thinks that
20 you cannot craft a series of conditions that will not
21 reasonably assure his future appearance. And if that's the
22 case, then that's our duty, that's the requirement of the law.

23 So I understand that you're saying you'd like to
24 ponder this. We ask that you come up with those conditions,
25 please, Your Honor, as soon as possible, because we think that

1 they can be imposed as early as tomorrow. And there's not a
2 reason that he spends another hour when somebody's freedom is
3 not supposed to be taken, especially in a pretrial setting,
4 with a strong presumption against that happening. And that's
5 all I have to say about that.

6 THE COURT: If you want to deliver or fax your idea
7 of what a proposed order would look like with the least
8 restrictive conditions, or for tactical reasons if you want the
9 most restrictive conditions you think you can live with, and
10 send a copy to the government.

11 MR. LOWELL: I will do both. I actually will fashion
12 an order that crafts conditions that are just using all the
13 cases about which I am aware, and that I think anybody looking
14 at it will say, okay, this reasonably assures. It will include
15 the things that I've just said, and then some. And I will do
16 that promptly.

17 Two more housekeeping matters, Your Honor. So we've
18 talked about the schedule. I just have one. I don't want to
19 raise this in open court, but we have a problem with getting
20 Mr. Anderson the medication he's supposed to have. I just want
21 to have somebody in your office be available if I need an
22 order, because I seem not to be able to cut through the people
23 at the detention center. I don't know where he's going to be
24 sent if Montgomery County doesn't want him any more.

25 THE COURT: I know where he's going to be sent.

1 MR. LOWELL: Maybe we can talk off line about that.
2 And then lastly, I have one issue more to raise.

3 THE COURT: The Washington Post wants me to tell them
4 where he's going to be sent.

5 MR. LOWELL: The government asked the grand jury to
6 return an indictment I think on February 28th? Anyway, they
7 returned it. That grand jury by definition found that there
8 was probable cause based on the evidence presented for them
9 that crimes have been committed. I understand the government
10 still has outstanding grand jury subpoenas and are asking those
11 who have those subpoenas to continue to produce documents.
12 That doesn't work. The grand jury is there for a purpose.

13 THE COURT: I understand.

14 MR. LOWELL: Finding probable cause. It's over.
15 They can issue a trial subpoena, but not a grand jury subpoena.
16 Those are all moot. And yet they are asking people to comply,
17 including Mr. Anderson's former counsel. So we would ask that
18 that desist.

19 THE COURT: You may respond to the last point or
20 points if you want to, or anything else that Mr. Lowell just
21 said.

22 MS. MENZER: Your Honor, I believe the record is
23 going to speak for itself in terms of detention. We would like
24 to see and respond to each and every proposal that Mr. Lowell
25 has suggested, because I haven't really heard any that we can

1 respond to and explain to you. I would say electronic
2 monitoring, and we can talk about it generally. I don't think
3 any of them are going to work. That was the reason why the
4 government didn't respond.

5 In terms of the grand jury subpoenas, Your Honor,
6 there's no one who is scheduled to testify before the grand
7 jury with respect to the charges in the indictment. And that's
8 all I can tell you.

9 THE COURT: And documents?

10 MS. MENZER: I'm sorry, Your Honor?

11 THE COURT: Are there subpoenas for documents?

12 MS. MENZER: There were outstanding subpoenas that
13 had not been completely complied with that extensions were
14 granted, due dates were before the return of the indictment.

15 THE COURT: Well, I guess, I don't recall off the top
16 of my head and we don't need to discuss it today, whether or
17 not once the indictment is returned, if that still works for
18 you. If the grand jury doesn't have anything else to do with
19 respect to the case, why are you entitled to use grand jury
20 subpoenas, even ones with extensions to get documents?

21 MS. MENZER: Your Honor, the government has made no
22 overtures for those documents since the indictment was
23 unsealed. In terms of whether or not they relate to other
24 crimes, that's another issue, Your Honor.

25 THE COURT: Well, that may be. I don't know how you

1 want to proceed, Mr. Lowell.

2 MR. LOWELL: I'm willing to take what counsel just
3 said, she's not been pressing for them. I'm not saying that
4 they can't come up some day for the need to investigate
5 something more.

6 THE COURT: She said she hasn't been pressing for
7 them. I suppose if you wanted to move to quash them, you could
8 move to quash them. You figure it out.

9 MR. LOWELL: Thank you.

10 THE COURT: Why don't you both come to the bench for
11 a minute.

12 (Bench conference sealed.)

13 THE COURT: That part of the transcript will be under
14 seal.

15 THE COURT: I think we are all set. Do you want to
16 come back on -- tomorrow is Friday, you all are going to talk
17 to each other. Do you want to set a date to come back? We can
18 do it as early as Monday or Tuesday afternoon.

19 MS. MENZER: Your Honor, I'd prefer Tuesday
20 afternoon.

21 MR. LOWELL: What's the date?

22 THE COURT: The 15th is Tuesday.

23 MR. LOWELL: As long as we're not -- there's nobody
24 with sharp instruments in the courthouse. May I get back to
25 Your Honor?

1 THE COURT: Sure. Why don't you and Ms. Menzer talk
2 to each other about that as well. Call Ms. Montgomery. I'll
3 get something decided on this for then.


4 MR. LOWELL: We will submit to the government today a
5 proposed order, they can respond as they said they would, and
6 we'll get it to you at the same time.

7 THE COURT: If the government wants to respond in
8 writing, you better do it tomorrow also, because I may,
9 depending upon what my schedule is tomorrow, I may try to get
10 this resolved tomorrow. If I can't get it resolved tomorrow,
11 I'll get it resolved on Monday. Okay. Thank you all.

12 (Proceedings concluded.)
13
14

15 CERTIFICATE

16 I, LINDA L. RUSSO, Official Court Reporter, certify
17 that the foregoing pages are a correct transcript from the
18 record of proceedings in the above-entitled matter.
19

20
21 
22 Linda L. Russo, RPR
23 Virginia CCR No: 0313102
24
25