UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	**Criminal No. 05-66 (PLF)**
WALTER ANDERSON,	)	
	)	
aka Mark Roth,	)	
	)	
Defendant.	)	

WALTER ANDERSON'S SECOND BRIEF IN SUPPORT OF RECONSIDERATION OF HIS MOTION TO IMPOSE CONDITIONS OF RELEASE

Defendant Walter Anderson submits the following additional brief in response to the Court's March 16, 2005 Order concerning conditions of release:

INTRODUCTION

The initial detention hearings in this case demonstrate just how wrong an impression or finding can be and how a wrong result can occur when prosecutors are allowed to create a record that is inaccurate. Mr. Anderson has spent more than two months in jail -- despite the fact that he has not been convicted of any crime -- based largely on the untested words of prosecutors who accuse him of being a flight risk. The finding that the Magistrate Judge and this Court made concerning risk of flight came largely from "facts" that were presented by the government. Now that there has been time to investigate the prosecutors' claims, a much clearer record can be presented which

should in itself give the Court grounds to review the pre-trial detention orders in this matter.

Some of the government's claims seem to have been exaggerations or innocent mistakes. It does appear, however, that on other occasions, the government's misstatements to the Court had to be intentional because records in the government's possession clearly demonstrate the opposite of what was presented to the Court. Fair play by the government in detention hearings is of the utmost importance not only because a presumptively innocent person's liberty is at stake, but also because there is a great risk of error due to the fast pace of the proceedings and defense counsels' limited opportunity to prepare. The government has a long head start in investigating its case and preparing for an arrest and in presenting its side of the record. Often, as in this case, a defendant responds to seek his freedom back with very little time. The lack of parity between the government and the defense was particularly great in the initial proceedings in this case. The government evidently had secretly planned to seek pretrial detention of Mr. Anderson for more than two years.[1] The government's attorneys are too experienced

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[1] Ms. Menzer told the Court that the government has planned to detain Mr. Anderson for years: "In fact, it's a running joke with Ms. Kelly and I, and she'll be embarrassed that I tell you that his issue of detention has been looming in our mind for the past two years. I have done research on it over and over again for the last two years. It has never been a question on this side of the courtroom that we were not going to seek Mr. Anderson's detention." (3/10/05 Hrng. at 32.) By contrast, Mr. Anderson and his

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not to know such pre-trial detention in a complicated white collar case with millions of documents impairs an accused's ability to defend himself. Yet, that was their tactic and they have been successful thus far, at least in part, based on the creation of an inaccurate record.

By contrast, while Mr. Anderson and his counsel were well aware that an indictment would be forthcoming at some point, they were not aware that the government would make the unusual demand for pretrial detention in this white collar case. Conversations between his then counsel and the government did not reflect this intent, and Mr. Anderson's actions, such as submitting to a pre-indictment interview with Pre-Trial Services, underscored his belief (and desire) that he could remain free to fight the allegations against him. When the arrest was orchestrated (and leaked to the press), defense counsel had only a limited amount of time to investigate the government's claims and only a limited opportunity to confer with Mr. Anderson, who had been arrested and was being bounced between various penal institutions in the greater Washington area, before having to respond.

With the benefit of this additional period of time to investigate the government's accusations, a much more accurate record can be made. Mr. Anderson can show that the

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prior counsel believed they had an understanding with Ms. Menzer that Mr. Anderson would be allowed to voluntarily surrender.

government never met its burden of proving that Mr. Anderson poses "a serious risk" of flight, 18 U.S.C. § 3142(f)(2)(B), or of proving that there are no set of conditions that would "reasonably assure" Mr. Anderson's presence at trial.

ARGUMENT

I. MR. ANDERSON IS NOT A FLIGHT RISK

While Mr. Anderson has accomplished a great deal in his life, he has not -- as the government has suggested -- become a master of disguise or developed an irresistible charm that would cause women around the world to risk criminal prosecution to do his bidding. Nor is Mr. Anderson the wealthy man the government portrays him to be. There is no question that the strategic investments in the telecommunications industry made by the companies Mr. Anderson managed created hundreds of millions of dollars in revenue for these companies and benefited Mr. Anderson, who as an officer of two of those companies, earned a salary and stock options commiserate with his position there. But there also is no doubt that much of this great fortune vanished when the telecommunications market crumbled. Mr. Anderson no longer is a man of great means, and he certainly is not a man who is well-suited to live life on the run being able to hide from the U.S. government and its allies. In fact, for Mr. Anderson to succeed at the only work he knows and have any basis to produce income, he must collaborate with a large number of individuals, professionals, corporations, legal advisors and accounting professionals. Furthermore, while not married with children, he is a man with strong ties to the community who needs his family and lifelong-friends now more than ever.

A. The Government Has Misrepresented Mr. Anderson's Wealth

1. Mr. Anderson And The Companies He Formed Lost Their Fortunes

The government misrepresented the facts when it advised the Court that Mr. Anderson and the companies he formed earned more than $450 million and then suggested those funds were available because very little of that money could be accounted for. The government knows all too well that most of that money was lost almost as fast as it was made. The companies that Mr. Anderson formed and managed, accumulated great wealth. As with a number of such companies, that wealth was invested and then reinvested in the companies and others in the telecommunications industry. The companies made a fortune riding the telecommunications wave up, and then lost virtually everything when that wave came crashing down. The great earnings that occurred were, for the most part, reinvested and so were vulnerable when the downturn occurred.

It made great headlines for the government to tell the Court only the half of the story about how Mr. Anderson and the companies he managed "generated more than $450 million in income through buying and selling telecommunications companies and

other investments,"[2] without also telling the other half of the story about how much of that great fortune was lost. When the overall telecommunications market collapsed, capital markets lost more than $2 trillion in value. See, e.g., Robert E. Litan, The Telecommunications Crash: What To Do Now?, at http://www.brookings.edu/comm/policybriefs/pb112.htm (Dec. 2002). The value of many once high-flying stocks fell to zero, including many that Anderson managed. This occurred in many of the companies with which Mr. Anderson was associated.

While this is not the place to provide the Court with a full accounting of how $400-plus million was made and lost over the past decade, identifying just a handful of unfortunate transactions easily demonstrates how quickly the assets of the companies managed by Mr. Anderson disappeared.

Many of the venture capital holding companies that Mr. Anderson managed suffered enormous losses by investing in companies that lost all of their value by becoming bankrupt or otherwise becoming non-viable. The most significant losses in the funds managed by Mr. Anderson (principally Gold & Appel) are the losses associated with the investments in the following companies:

Company Name	**Amount Lost**

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[2] The government has not provided a breakdown in any of its briefs or exhibits to support its claim that more than $450 million was made.

World xChange[3] (merged with World Access & bankrupt)	-$118,500,000.00
Net-Tel[4] Corporation (bankrupt)	-$60,000,000.00
Western Telecom[5] (bankrupt - in France)	-$12,000,000.00
Rotary Rocket[6] (wound down)	-$35,000,000.00
Comanco (wound down)	-$5,000,000.00
Teleport[7] UK Limited (in receivership)	-$18,000,000.00
Mircorp[8] (wound down)	-$24,000,000.00
Total Lost:	**-$272,500,000.00**

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[3] World Access, Inc. (Nasdaq: WAXS) acquired Communication TeleSystems International d/b/a WorldxChange Communications on Feb. 18, 2000. See http://www.thedigest.com/113/113-98.html. Subsequently World Access, Inc. and its affiliates filed for chapter 11 protection on April 24, 2001 (Bankr. N.D. Ill. Case Nos. 01-14633, 01-14635, 01-14637, 01-14642, 01-14643, 01-14645).

[4] See Net-Tel Corporations Inc. bankruptcy proceeding - United Sates Bankruptcy Court for the District of Columbia (Case No. 00-01771 (Chapter 7)).

[5] See http://bankrupt.com/TCREUR_Public/010402.mbx.

[6] Rotary Rocket ceased operations on Feb. 2001. See http://www.globalsecurity.org/space/systems/roton.htm. Rotary Rocket asset ceased. See http://www.spaceandtech.com/digest/sd2001-01/sd2001-01-017.shtml.

[7] On Jan. 4, 2005, D. J. Whitehouse and S. Wilson (IP Nos 8699, 8963) have been appointed joint administrators for telecommunications company Teleport UK Limited in U.K. See http://bankrupt.com/TCREUR_Public/050112.mbx.

[8] Mircorp was wound down after decommissioning of Mir Space Station. See http://www.reentrynews.com/Mir/back1.html; http://www.spaceflightnow.com/news/n0010/03mir/

The companies Mr. Anderson managed also had substantial losses from investments in companies that did not go bankrupt. For example, those companies lost an additional **$70 million** of investments in Covista[9] (CVST NASDAQ) and U.S. Wats/Capsule Communications[10] (formerly CAPS NASDAQ). In addition, this

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[9] Gold & Appel and Revision LLC (a subsidiary of Gold & Appel) bought shares of Covista (f/k/a TotalTel) ranging from **$27 ~ $39** per share. See, inter alia, SEC filings Schedule 13D (from Jan. 6, 1998 to April 6, 1998) at:
http://www.sec.gov/Archives/edgar/data/34497/0000950169-98-000033.txt
http://www.sec.gov/Archives/edgar/data/34497/0000950169-98-000074.txt
http://www.sec.gov/Archives/edgar/data/34497/0000950169-98-000033.txt
http://www.sec.gov/Archives/edgar/data/34497/0000950169-98-000227.txt
http://www.sec.gov/Archives/edgar/data/34497/0000950169-98-000283.txt
http://www.sec.gov/Archives/edgar/data/34497/0001026777-98-000019.txt
http://www.sec.gov/Archives/edgar/data/34497/0001026777-98-000026.txt

By March 1, 2001, Gold & Appel owned 1,241,708 common shares and Revision LLC owned 1,353,896 Common Shares (total shares being 2,595,604). The total purchase price of these shares were over **$64,000,000**. Of these Common shares 2,454,661 of these shares were pledged as security interest pursuant to a loan agreement with Donald A. Burns. See Schedule 13D (Mar. 1, 2001) - http://www.sec.gov/Archives/edgar/data/34497/000102677701000034/0001026777-01-000034-0001.txt. These common shares were then ultimately sold by Burns for mere **$5,635,403**. See unpublished opinion of US Court of Appeals for the Fourth Circuit No. 03-2162 - Appeal from U.S. District Court for the Eastern District. (CA-02-1326-A). Gold & Appel and Revision's combined loss for this investment is therefore around **$65 million**.

[10] Gold & Appel bought shares of U.S. Wats from Jan. 1997 to Sep. 1999. By Sep. 1999 or so, Gold & Appel accumulated 12,927,034 Common Shares at prices ranging from $1.05 ~ $1.75. See SEC filing Schedule 13D (Sep. 23, 1999) at http://www.sec.gov/Archives/edgar/data/862025/0001026777-99-000074.txt. In a private transaction all those shares were sold to Henry Luken at **20 cents** per share. See

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cumulative loss of more than **$340,000,000** does not include the loss of several million more dollars in legal fees, accounting fees and other substantial transaction costs. Other investments in privately held corporations still owned by the Foundation Mr. Anderson manages have lost substantial value, which is difficult to value as the stock is not traded.

The government, of course, has all the corporate records for these companies, including brokerage records, SEC and HSR filings, and financial statements. While dissecting corporate financial records can be complicated in some cases, the substantial losses identified above are so glaring they literally leap off the pages. Indeed, the numbers provided above were possible simply by doing the math from publicly available sources. After spending five and a half years investigating these transactions, the government surely understood that the vast majority of these assets have been lost. Nevertheless, by explaining that hundreds of millions of dollars were made, without explaining that hundreds of millions of dollars were later lost, the government has constructed a misimpression that has been reported by the media as if true and has certainly provided the background to the government's inaccurate assertion that Mr. Anderson or the organizations that he manages have hundreds of millions of dollars

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http://www.sec.gov/Archives/edgar/data/1030949/000102677701500047/caps13d.txt. Even calculating the full value of Gold & Appel's investment as though all the shares were purchased at $1.05 (we have not yet been able to determine the average price per share), the investment was at least $13,573,386. The current value of that investment is $2,585,407. Consequently, at least another **$11 million** was lost on this investment.

available for him to live as a fugitive, pay people to hide him, pay people who put up property to secure his release, post unlimited bonds himself, etc.

2. The Government Misstated Facts About The So-Called Swiss Bank Accounts To The Court

To support its assertions that Mr. Anderson has the means to flee and can do so successfully, the government has made much of its claim that Mr. Anderson has "access to an unknown number of foreign bank accounts" that would "make it very easy for him to flee and remain abroad indefinitely." (Gov't. Det. Mot. at 11.) Again, in no brief or exhibit did the government substantiate this claim. Indeed, on its face, the statement contradicts other statements the government has made -- Mr. Anderson has some great fortune in foreign bank accounts, despite the fact that the very existence of such accounts is "unknown" even after the government has investigated Mr. Anderson for more than five and a half years. Significantly, the only substantial foreign bank account the government has identified as an example of Mr. Anderson having the means to flee are Swiss bank accounts the government suggests hold $20 million.

Assistant U.S. Attorney Susan Menzer stated that there is a great deal of money the United States has been "unable to trace," and specifically explained:

> Twenty million dollars went to two bank accounts in Switzerland that we have attempted to seek the cooperation of the Swiss government. The Swiss government made us provide Mr. Anderson with our request and to give him any procedural rights that he was due before the information was released. Afterwards, the Swiss government refused to provide us with the information. . . . we've never been

> notified what's happened to the $20 million that went to Switzerland.

(2/28/05 Hrng. at 25 (statement of Ms. Menzer).) Ms. Menzer further advised the Court: "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." (3/3/05 Hrng. at 7 (statement of Ms. Menzer).) In its initial motion for detention, the Government made the same claims and emphasized that "[t]o date, the Swiss government refuses to provide the records." (Gov't Mot. for Detention at 12 n.5.)

To put it bluntly, Ms. Menzer either was misinformed herself or misinformed the Court. Long before the hearings in this case, the government provided Swiss authorities with Mr. Anderson's name, the names of all known so-called aliases, and all companies Mr. Anderson managed. The Swiss government responded to our government's request that no funds exist in those names. (Ex. A.) Indeed, the Swiss government actually identified the EU national who had owned the bank account by name. That person has been deposed recently by Ms. Kelly and Agent Kutz.[11]

On April 1, 2004, the Swiss government responded to a request from the United States for information concerning those Swiss accounts. (Ex. A.) In the letter, the Swiss

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[11] In deference to the Swiss government's interest in protecting the privacy of that person and that person's rights under Swiss law, we have not identified that person by name and have filed documents that identify that person by name under seal.

government explicitly told the United States that there were no accounts at the Swiss bank in question held by Mr. Anderson, any of what the government described as Mr. Anderson's "aliases," or any of the companies associated with Mr. Anderson. Instead, the Swiss authorities explained that the "beneficial owners" of the accounts in question are "third parties" who are "residents of Europe." (Id.) A subsequent letter from the U.S. Department of Treasury to the Swiss government explains that the Swiss authorities had previously identified an EU national by name as the owner of the accounts in August and September 2004. (Ex. B (filed under seal).) Moreover, the Swiss government told the United States that the money owned by that third party is no longer in the account and that the account was closed more than two years ago. (Ex. A.) Nevertheless, Ms. Menzer created the misimpression that this money was sitting in the bank account waiting to be spent by Mr. Anderson, when she knew the account had been closed years earlier. (See 2/28/05 Hrng. at 25 (statement of Ms. Menzer); Gov't Mot. for Detention at 12 n.5.)[12]

Consequently, the government plainly stated things that its attorneys knew or should have known were not the case. The government simply misinformed the Court when it suggested that the Swiss government refused to cooperate at all with the United

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[12] The government did not state that people in Europe held this or any other money for Mr. Anderson (which is not the case). It told the Court it was unaware of facts then in its possession.

States, when it suggested that the United States had never been notified of what happened to the money, and when it improperly suggested that Mr. Anderson was the beneficial owner of these accounts (or has the funds from them).

Ironically, the only reason the true facts have come to light is that the Swiss government became concerned that U.S. officials were misusing the information the Swiss Federal Tax Authority provided. Accordingly, the Swiss government provided Mr. Anderson's counsel with the correspondence to clarify what had occurred. Had this not occurred, Mr. Anderson could not correct the misimpression made by the prosecution.

The government built a great deal of their request for detention on its assertion that Mr. Anderson had the means to escape and live a fugitive. It is hard to undo these misimpressions, but just the beginnings of setting the record straight should provide the Court with enough basis to reconsider its this conclusion. Those "numerous" foreign bank accounts that the government claims are not numerous at all. The one that government has paraded in court has never been owned or accessed by Mr. Anderson and has been closed for years. The ends of achieving pre-trial detention with its debilitating effect on Mr. Anderson's ability to mount the best defense possible do not justify the government making statements it knows or should know are not true or to cast the facts it has in a light that leaves a misimpression.

3. Mr. Anderson No Longer Has $75 Million Invested In Privately Held Companies

In another instance of half-truth, the government told the Court: "Between 1995 and 2004, Mr. Anderson invested more than $75 million in privately held companies. These companies are still viable and could provide additional means for Mr. Anderson's fugitive life." (Gov't Det. Mot. at 12 n.5.) Ms. Menzer also has advised the Court: "He has investments in companies worth millions and millions of dollars that he could sell in the snap of a finger." (2/28/05 Hrng. at 58-59.) The government again neglected to substantiate its claim. Mr. Anderson can now tell the other half of the story -- that Mr. Anderson was acting as a manager of venture capital and making these investments on behalf of corporations, rather than himself, and that many of the companies he invested in have gone bankrupt or no longer are trading. Only six of the companies in which Mr. Anderson directed the investments remain viable and those investments are worth approximately $13 million. (See Ex. C (providing a chart of these investments).)

The worth and access to it are two different things. Mr. Anderson does not have any access to this money. Like most venture capital investments, the investments are illiquid and cannot be obtained at the "snap of a finger." Nor is Mr. Anderson in any position to liquidate these assets as neither he nor the companies he manages has a controlling interest in these companies. Consequently, neither he nor the companies he manages could direct the Board of Directors of those entities to liquidate the assets. They are completely passive investments with no immediate or short term cash value.

The government has investigated the companies that the offshore funds managed by Mr. Anderson had invested in and the government undoubtedly discovered that more than 95% of these investments was lost due to the bankruptcies or failed operations. It is also hard to believe that the government with all of its resources and agents working on this case did not understand that the remaining investments are illiquid. Nevertheless, the government made statements that gave the opposite impression.

4. Mr. Anderson Does Not Have Expensive Artwork Abroad

The government claims that Mr. Anderson sent valuable artwork to a warehouse in Zurich, Switzerland; that some of the pieces were sold; and that "[w]hat Mr. Anderson ultimately did with the proceeds is unknown." (Gov't Det. Mot. at 12-13.) Again, the specter being painted by the government is of a vast cache of money to support Mr. Anderson as a fugitive. The government knows precisely what was done with these proceeds.

The government has the corporate and bank records showing that the art work belonged to corporations that Mr. Anderson managed, and not to Mr. Anderson personally. The bank records show that most of the art pieces were liquidated through auction or sale. (See Ex.D (excerpt of Gold & Appel's Barclays Bank account showing receipt of sales proceeds from auctioneer Christie Manson ("Christie's")).) Of the three pieces not sold by Christie's, two are currently held by ACG Credit Company, LLC (980 Madison Ave., New York, NY 10021) as a security interest pursuant to a loan agreement dated November 5, 2004 with Space Incorporated and the other was sold by ACG with

the proceeds wired to Barclays Bank account. (See Ex. E.) The proceeds from the Christie's and ACG sales were deposited in corporate bank accounts and the bank records in the government's possession show that the money was spent on corporate endeavors. Consequently, Mr. Anderson does not have access to valuable art assets that could be sold and he has not received the proceeds from the art sales identified by the government.

5. Mr. Anderson Does Not Own A House In Spain or Water Rights In Brazil

In suggesting that Mr. Anderson has substantial assets abroad that he could live off of, the government claims he owns valuable water rights in Brazil and a house in Spain. While the government does not appreciate the distinction between Mr. Anderson and the companies he has formed, the water rights and house in Spain are corporate assets and not his personal assets. He does not have the right or ability to sell them "with a snap of his finger" and then get the proceeds as a way to live as a fugitive. In addition, water rights[13] and real estate are hardly liquid assets. Moreover, as the government has found these assets, it is not as if they can be disposed of without notice.

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[13] It is not clear that anyone would buy the Brazilian water rights. The corporation that acquired the water rights had planned to turn these water rights over to Aquarius Holdings Limited which planned to build a bottled water plant, but no plant was built and Aquarius has no intention of building such a plant at this time due to limited cash flow of the company. It is doubtful that anyone else is interested in pursuing such a venture at this time. While these rights may someday have a cash value, they remain worth very little right now as no buyer appears interested in building a bottled water facility.

6. Mr. Anderson Has No Money In Safety Deposit Boxes Abroad

Another of the headline inducing claims made by the government was to suggest that there was a safety deposit boxes here or abroad and that must contain money. (See, e.g., 3/10/05 Hrng. at 43.) As to the one deposit box for which the government attorney waved a deposit key in dramatic fashion in court, Chadbourne & Parke's London office has retrieved the contents of the safety deposit box, and has provided an affidavit confirming that it did not contain cash or other valuables. (Ex. F (Affidavit of T. Khutsoane).) Again, it turns out that the drama hyped by the government and reality are two very different things.

B. Mr. Anderson Respects The Authority Of The Court

The government then supported its claim for detention by contending that Mr. Anderson would not obey an order by this Court for conditions of release. They argued that he has disregarded court orders in that past. After investigating each claim with prior counsel and the records in those proceedings and reviewing the pertinent records, it is clear that there is no merit to these claims.

1. Mr. Anderson Did Not Ignore A Court Order From Judge Bates

Ms. Menzer has told the Court that Mr. Anderson is "not going to listen to the Court. He hasn't listened to Judges for years, including Judge Bates in this courthouse." (2/28/05 Hrng. at 10.) She has said: "When Judge Bates ordered him to say who is Gold & Appel, he wouldn't do it." (Id. at 58.)

Neither we, nor Mr. Anderson's prior counsel, have been able to identify any instance where Mr. Anderson has ignored an order from Judge Bates or any other judge. In particular, we have not been able to identify any instance where Judge Bates ordered Mr. Anderson to identify who owns or controls Gold & Appel or where Judge Bates issued any order to Mr. Anderson whatsoever. Had Mr. Anderson ignored a court order, we would expect that the court would hold Mr. Anderson in contempt, but Mr. Anderson has not been held in contempt by Judge Bates or any other judge.

2. Mr. Anderson Has Not Ignored Grand Jury Subpoenas

The government also charges that "Mr. Anderson was served with numerous grand jury subpoenas seeking the production of corporate records for several entities . . . . He did not comply." (Gov't Det. Mot. at 18.) It is an awful tactic of the government to support a request for detention by using a person's decision to fight the breadth or privileges involved in a subpoena as an example of his failing to obey a court order. The prosecutors know all too well that Mr. Anderson was following the advice of counsel in not producing all documents called for by the subpoenas. Once the Court ruled that some additional categories of documents needed to be produced, they were produced. It is not a sign of bad faith, but of good judgment that Mr. Anderson deferred to the legal advice of his lawyers on legal matters. While the prosecution may be frustrated that Mr. Anderson did not immediately comply with all they requested in the form of grand jury subpoenas, Mr. Anderson did immediately comply with the directions from the Court as to what had to be produced.

3. Mr. Anderson Did Not Lie To Chief Judge Hogan

Ms. Menzer told the Court: "When he told Judge Hogan, when he was supposed to be before the grand jury [to provide a handwriting exemplar], that he was traveling in London, the government has submitted evidence that he was in the British Virgin Islands." (2/28/05 Hrng. at 58.) The government is greatly distorting what had occurred.

Ms. Menzer had contacted Tony Fitch, Mr. Anderson's attorney at the time, about scheduling a handwriting exemplar, and Mr. Fitch fully cooperated in trying to set a date and provided her with several dates and also informed her of the schedule when Mr. Anderson would be out of the country and unavailable. (Here Mr. Anderson knew that government wanted him in the grand jury and he came back to the U.S. in any event). Nevertheless, Ms. Menzer had the grand jury issue a subpoena for the handwriting exemplar on a specific date that Mr. Fitch had told Ms. Menzer that Mr. Anderson would be out of the country. It was Ms. Menzer's scheduling of the handwriting exemplar in apparent bad faith, on a date when she knew Mr. Anderson would be unavailable, that triggered the hearing before Chief Judge Hogan. Mr. Fitch explained the situation to the Court, but he did not know Mr. Anderson's entire itinerary. He knew that Mr. Anderson was going to London and he mentioned that fact. The only issue that was relevant at the hearing was that Mr. Anderson was out of the country and the government knew that would be the case when it subpoenaed him. Mr. Anderson never asked Mr. Fitch to tell the Court he was in London. Mr. Fitch simply misspoke because he was unfamiliar with Mr. Anderson's entire itinerary.

It also is important to reiterate that Mr. Anderson did not have this conversation with Judge Hogan. The discussion was between Mr. Fitch and Judge Hogan. The government is grossly distorting the truth in suggesting that Mr. Anderson lied to Judge Hogan because Mr. Fitch made a misstatement on an immaterial point by not disclosing that the British Virgin Islands was also part of Mr. Anderson itinerary, as well as London.

C. Mr. Anderson Has Not Planned An Escape

In claiming that Mr. Anderson is a flight risk, it is telling that the government has acknowledged that Mr. Anderson was well aware that he was under investigation, but has no evidence that Mr. Anderson had made any plans to flee. The government does not even suggest where they think Mr. Anderson was planning to flee to or how. Instead, they can document that Mr. Anderson had left the country and returned more than 40 times even after he knew that he was under investigation. He was so certain that he was going to be indicted that he met with Pretrial Services before he was ever indicted to streamline the process, but yet he never attempted to flee. His prior attorney, Tony Fitch, assured him he would be indicted, as did his subsequent attorney, John Moustakas. Mr. Anderson plainly had every reason to believe an indictment was imminent, but again and again, he left the country only to return. This is perhaps the strongest evidence that Mr. Anderson is no flight risk. The Court should recall that Mr. Anderson was arrested when he was coming back to the country, not leaving it.

1. Mr. Anderson Should Not Be Punished Because of His Reading Habits

The government makes much of the fact that Mr. Anderson has several books relating to false identification, living as a fugitive and structuring foreign corporations. The Court should not infer that Mr. Anderson was preparing to live as a fugitive merely because he had these books.

Mr. Anderson is a voracious reader who often reads a book a day. As the government is well aware, he has an enormous library in his house. Ever since he was a child Mr. Anderson has been fascinated by stories about outlaws like Jesse James, Jewish families that lived underground to avoid Nazi persecution in World War II, Nazis who fled to Latin America after the war, and others who have had to live underground. The claim that he has books on these subjects makes him a likely fugitive is no better than stating that a person who reads books about murders is training to be a killer. Murder novels and real crime books on real murder cases are among the best selling works in America. It really was a stretch to paint Mr. Anderson as a likely fugitive based on his book collection (including the counter-culture books of the 1960's) in light of his having turned into a mainstream businessperson with interests in mainstream industries, becoming a strong advocate of corporate responsibility and a constant resident in the United States.

Mr. Anderson is a man who has lived an exemplary life. Mr. Anderson has never run away from challenges or problems and has been a responsible leader for-profit and

not-for-profit organizations for over thirty years. The books the government has seized describe life as a fugitive in stark terms. Those people walk away from everything they had before and cannot work any job of a higher station than busboy for fear of drawing attention to themselves. Mr. Anderson is ill-suited to live a life of poverty or to begin a new career as a manual laborer at his age.

The books concerning fake identification and structuring foreign corporations interest Mr. Anderson for many of the same reasons, as well as others. He is interested in how people who have chosen to live underground do what they do and understand how such people get by day-to-day is understandably intriguing.

He also is very concerned about his privacy and the threat of identity theft. Mr. Anderson wants to understand how people steal another person's identity, so that he can prevent his own from being stolen. His concerns about life in the information age and privacy guide much of his personal and professional dealings.

Similarly, Mr. Anderson wants to understand the games people can play with foreign corporations because Mr. Anderson does not want to be victimized by those who play such games. He is an international businessman, who has done business with a number of foreign persons and entities. Mr. Anderson wants to understand how he could get hurt by people who operate out of certain jurisdictions so he can guard against them. In addition, Mr. Anderson has set up a number of foreign corporations himself and wants to make sure that he is up to date on how to set them up and is operating them correctly and legally.

2. Mr. Anderson Does Not Have False Travel Documents

Ms. Menzer has repeatedly claimed that Mr. Anderson "has many United States passports, as well as other jurisdictions." (2/28/05 Hrng. at 17.) She claims he has "fake passports." (Id. at 18.) As we have clarified before, Mr. Anderson has only one valid passport. He has held onto his old, cancelled passports for sentimental reasons, like many Americans do. There is nothing illegal about retaining them, and because they have clipped corners signifying that they have been canceled, he cannot travel on them.

The government also has claimed that he had a passport from British Guyana and that he appears to have traveled on it: "They're his passport here from British Guyana with Mr. Andersons picture, and it actually reflects . . that he traveled or someone traveled on this passport." (2/28/05 Hrng. at 18). As we have explained before, and as should have been obvious to the government, this is a camouflage passport used by American citizens in the event they are kidnapped or being held by terrorists. British Guyana has not existed as a country for decades and all of the "stamps" in the back of the passport are printed (not stamped) and are from fictitious places. Despite the assertion by the government to the contrary, no one has ever traveled or could ever travel with the passport. No country would let anyone travel on such a document. There were no false documents in Mr. Anderson's possession that could have been used for international travel.

D. Mr. Anderson Has Strong Ties To The Community

The government has repeatedly charged that "there is nothing, nothing in the U.S. to keep him here," (2/28/05 Hrng. at 25) and that "[o]ther than his Mother and Stepfather, Anderson has no family tie to the community." (3/10/05 Hrng. at 18.) This too is incorrect.

Mr. Anderson is, of course, very close to his aging and infirm mother and stepfather who live in Annandale, Virginia, but they are hardly the only ties Mr. Anderson has to the community. Mr. Anderson grew up here and has lived here all his life. Despite having seen the world and having had the money and choice to live anywhere he would have liked, Mr. Anderson chose to stay in Washington, D.C. This is the only home he has ever known. Also ironic is the fact that the longest Mr. Anderson has been away from a home in Washington in 24 years is his current detention.

Mr. Anderson did not grow up with any brothers or sisters, but his family was very close-knit and he has six first cousins who are like siblings to him. He is very close to their spouses and 12 children as well. Mr. Anderson also remains very close to his aunt, Abigail Almer who is very ill and often hospitalized. All of Mr. Anderson's family live in the United States and he sees his aunt and his cousins each at least two to three times a year. And many of Mr. Anderson's closest friends also live in Washington, D.C. (See Ex. G (chart of Mr. Anderson's friends and family).). Mr. Anderson would not walk away from the family and friends he has made over the lifetime he has spent in Washington, D.C.

The Court should be reassured that the people who are closest to him have every assurance that Mr. Anderson is not a flight risk. In this regard, his parents; his cousins, Judy and Tom Lallier; and his close friend, Jim Kenefick, have such great confidence in Mr. Anderson that they are willing to post their homes as bond. There can be no better example of a person's ties to the community and no better security than when people other than the defendant will put themselves at risk to assure his presence. The value of these homes (which is not insubstantial) is irrelevant; it is the fact that these people would be willing to lose the homes in which they live if Mr. Anderson was to flee. This is compelling proof that he is not a risk of flight, and it is compelling security for a court to use to assure someone's appearance.

II. MR. ANDERSON HAS A STRONG DEFENSE TO THE GOVERNMENT'S CASE AGAINST HIM

Although this is not the place for a mini-trial on the merits of the case, it is important for the Court to understand that the case against Mr. Anderson is not one-sided and is certainly not as strong as the government suggests. The government's case against Mr. Anderson is based on the false premise that there is no difference between Mr. Anderson and some of the companies that he managed and so he failed to report as income a great deal of the companies' funds. But the evidence will show that the corporations were validly established and maintained their corporate distinction from Mr. Anderson. Mr. Anderson did not own the corporations, but merely managed their assets. There will be issues of the advice of professionals and a great deal more to make this a

real case with real issues to be decided. The charges are indeed serious, but he is anxious to defend himself and has numerous defenses to put forward.

III. CONDITIONS OF RELEASE CAN BE IMPOSED TO ASSURE MR. ANDERSON'S APPEARANCE AT TRIAL

Based on this better understanding of the facts, we believe it should be clear to the Court that Mr. Anderson does not pose a "serious risk" of flight. 18 U.S.C. § 3142(f)(2)(A). The accurate record actually supports Pre-Trial Service's first conclusion to release him on his own recognizance, subject to the usual conditions. Notwithstanding the fact that he has been detained, there is every reason to release him now without resort to the house arrest model that has been proposed. This Court actually should consider this type of release. Nevertheless, a misimpression of Mr. Anderson has occurred and he understands he has to change it and that takes time. So, if it takes time to accomplish a complete revision of the misimpression, there are conditions that have been suggested and that can be imposed that more than provide a basis for his release.

In its March 16, 2005 Order, the Court made observations about deficiencies it found in the proposal that was made at the time. Mr. Anderson and his counsel have now gone back to review each of the conditions suggested, obtained guidance from the leading security experts in the field and have been able to address each of the Court's concern. Each of these is now set forth, with an eye to addressing the Court's concerns:

1) Mr. Anderson would be released into the custody of Bart Schwartz, former Chief of the Criminal Division to the then-U.S. Attorney for the Southern District of New York,

Rudolph Giuliani, and who has extensive experience in security through his work at his firm, Nardello Schwartz & Co. Mr. Schwartz also has experience in managing a release such as being proposed in this case. Mr. Schwartz, whose more detailed plan and resume are attached as Exhibit H, will post a substantial financial bond and supervise the guaranteeing of Mr. Anderson's appearances at trial.

2) Mr. Anderson will be relegated to house arrest and two armed off-duty law enforcement officers will be with him at his home, and whenever he travels with the permission of the Court, at all times.[14] The officers will be familiar with the conditions of release established by the Court and under orders to arrest Mr. Anderson and notify Mr. Schwartz if those conditions are violated.[15]

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[14] Current law enforcement officers, like those Mr. Schwartz seeks to retain in this case, already have cleared a background check. In addition, Mr. Schwartz and the security companies he turns to, such as Vance, independently review the background of each officer and typically only a small percentage of those who apply meet their standards. As Mr. Schwartz indicates in his letter, Pretrial Services is free to conduct their own background check before they are retained.

[15] By placing the officers within the home, the Condominium Association's objections to Mr. Anderson's use of the common areas in the hallway is resolved. Counsel has reviewed Mr. Anderson's rights under the condominium by-laws and can assure the Court the Condominium Association would have no basis for objecting to Mr. Anderson installing security equipment in his home or inviting off-duty law enforcement officers into his home. Indeed, many other residents have installed security system and employed private security that has been stationed both inside their homes and in the common areas.

3)   Mr. Anderson will have a bracelet attached to his ankle that he cannot remove that will sound an alarm is he leaves the home and that incorporates GPS technology to allow him to be tracked when he is outside the home. Video and electronic surveillance also will be established within the home to verify Mr. Anderson's location and to detect when anyone enters or leaves the apartment. Mr. Schwartz and the officers he retains will be responsible for monitoring Mr. Anderson.

3)   Mr. Anderson will raise and post up to a $1,000,000 cash bond.[16]

4)   In addition, the following individuals will post their own homes as surety that Mr. Anderson will appear for trial and other proceedings:

Name	Relationship	Equity Value of Home
Beverly & Glenn Himmele	Parents	$500,000
Judy & Tom Lallier	Cousin	$250,000
Jim Kenefick	Friend	$300,000

The financial bond Mr. Anderson will post, along with the commitment of his family and friends to post their own homes as security, should be more than sufficient to assure the Court that Mr. Anderson has strong ties to the community and is fully committed to standing trial. Mr. Anderson has worked too hard and has accomplished

[16] This is an enormous sum of money for Mr. Anderson in his current financial situation. Based on the outstanding losses identified above and his current liabilities, Mr. Anderson owes more money than he is presently worth.

too much to see his reputation tarnished by the spurious allegations the government has made against him and he is eager to refute the charges at trial. (The first proposed order attached incorporates these conditions).

In the event the Court decides that more is required, we have suggested an extreme set of conditions that goes well beyond what anyone could deem necessary to "reasonably assure" Mr. Anderson's presence at trial. (Obviously, the Court is free to set conditions that are less onerous.) Those conditions were devised by the leading security companies in the world and the leaders in providing home confinement in the United States. (The second proposed order attached incorporates these conditions). In particular, they have successfully completed similar assignments to ensure that other criminal defendants attend their trials in federal court. (See, e.g. Ex. I (order of the U.S. District Court in Maryland authorizing similar conditions).) There is no reason that such a proposal would not be effective here.

Dated: May 2, 2005

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May, 2005, copies of the foregoing Walter Anderson's Second Brief In Support Of Reconsideration Of His Motion To Impose Conditions of Release were served by facsimile and ECF to:

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