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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, . Docket No. CR 05-66 (PLF)
Plaintiff, .
v. . Washington, D.C.
WALTER ANDERSON, . June 1, 2005
Defendant. . 2:30 p.m.
.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE PAUL L. FRIEDMAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription

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EXHIBITS:

Received

(No Exhibits were received in evidence.)

P R O C E E D I N G S

1
2 THE CLERK: Criminal 05-66, United States of America
3 versus Walter Anderson. Ms. Menzer and Ms. Kelly for the
4 government. Mr. Man, Ms. Loope and Mr. Kim for the defendant.

5 THE COURT: Good afternoon, everybody. Mr. Man, how
6 do you want to proceed?

7 MR. MAN: We'd like to close out the evidence on the
8 risk of flight issue by offering the testimony of two
9 witnesses. The first is Mr. Anderson's uncle who was here
10 yesterday and he had to return back to Minnesota. He's
11 available by phone if there's any need for the government or
12 the Court to ask him any questions.

13 THE COURT: So you're going to make a proffer as to
14 what he would --

15 MR. MAN: Yes.

16 THE COURT: -- testify? Why don't you come to the
17 microphone so I'm sure Ms. Russo can hear you as well.

18 MR. MAN: Okay. Sheldon Anderson is Walter's uncle.
19 He's known him his whole life. He will testify that Walter was
20 raised around six of his eight cousins, and he thinks of them
21 as more brothers and sisters. Walter considers their 12
22 children to be his nieces and his nephews. The family now
23 lives in different parts of the country. They try to get
24 together about two to three times a year.

25 In the recent past, Walter's joined his family for

1 Christmas in Denver, and last year they -- two years ago, the
2 family joined Walter at his home in D.C. for Christmas.

3 Walter regularly attends birthdays and graduations in
4 places like Minnesota and Colorado, wherever he needs to be.
5 These family gatherings have meant a lot to Mr. Anderson. He
6 has done things like cut business trips short in Amsterdam in
7 order to fly home to Minnesota to visit his uncle as he was
8 being inducted into his high school's Hall of Fame, and when
9 family members have been unable to travel to these events, Mr.
10 Anderson has put up the money for the air fare in order for
11 them to attend.

12 Walter is also there for his family when they need
13 him. He has a very sick aunt with Crohn's Disease who has run
14 up very significant medical bills that Walter has taken care of
15 for years. Because of his commitment to his family, his family
16 members have been willing to post their homes and post other
17 money to assist him with his bond and with his case.

18 Finally, Mr. Anderson, Sheldon Anderson, will testify
19 that he's known Mr. Anderson all his life, and has never seen
20 Mr. Anderson run from a fight.

21 THE COURT: And that's the proffer?

22 MR. MAN: Yes.

23 THE COURT: So let me ask Ms. Menzer or Ms. Kelly
24 whether they would like to get Mr. Sheldon Anderson on the
25 phone and put any questions to him or not.

1 MS. KELLY: I don't think there's any point to that.
2 We will accept that proffer.

3 MR. MAN: The second proffer we'd like to make is
4 with respect to Robert Werb. His last name is spelled W-e-r-b.
5 He's a business acquaintance of Mr. Anderson who has known him
6 for 15 years. Mr. Werb is in the courtroom today if the
7 government or the Court has any questions, but I think we could
8 proffer through his testimony quicker.

9 THE COURT: Go ahead.

10 MR. MAN: Mr. Werb is a successful businessman who
11 has a professional relationship with Mr. Anderson for more than
12 15 years. They work closely together in building and running
13 nonprofit organizations that promote the peaceful development
14 of space.

15 Mr. Werb will testify that Mr. Anderson's life
16 revolved around creating and running companies and promoting
17 his nonprofit organizations. Mr. Werb would testify that Mr.
18 Anderson would not walk away from his ability to create such
19 companies and the nonprofit organizations he manages by running
20 away.

21 Mr. Werb would also testify that Mr. Anderson told
22 him before he was arrested that Walter anticipated being
23 arrested in this case, and he never gave any indication that he
24 would try to flee. In fact, he didn't.

25 Mr. Werb would also testify that it's not in Mr.

1 Anderson's nature to flee because he fights back when he feels
2 he's being treated unfairly. And that's exactly how he feels
3 about this case. In all the time he has known Mr. Anderson,
4 Mr. Werb will testify that he has never seen Mr. Anderson run
5 from a fight. Mr. Werb has advised us that he would be willing
6 to put up his home or otherwise assist Mr. Anderson in posting
7 bond in this case. That concludes that proffer.

8 THE COURT: Mr. Werb is here if you want to ask him
9 any questions.

10 MS. KELLY: Since Mr. Werb is here, we would like to
11 cross-examine him.

12 THE COURT: Why don't we do that. Mr. Werb.

13 SHELDON WERB, DEFENDANT'S WITNESS, SWORN

14 THE COURT: Mr. Werb before Ms. Kelly begins, is
15 there anything you'd like to add or expand upon beyond what
16 Mr. Man just said at this point? He will ask you some more
17 questions when she's done probably.

18 THE WITNESS: I think that, you know, covered the
19 essence of what I had to say, yes.

20 THE COURT: Ms. Kelly.

21 CROSS-EXAMINATION

22 BY MS. KELLY:

23 Q. Good afternoon, Mr. Werb. I'm Karen Kelly. I'm here on
24 behalf of the United States. Just a couple of quick questions
25 about the proffer. First of all, you're friends with Mr.

1 Anderson; is that right?

2 A. We've served on boards together. We're friendly. We're
3 not close friends, no.

4 Q. You have a level of gratitude to him for some financial
5 interest he's lent to you?

6 A. No.

7 Q. No? You're on the Space Frontier Foundation; is that
8 correct?

9 A. Yes.

10 Q. In what capacity?

11 A. I'm currently Chairman of the Board.

12 Q. How long have you been affiliated with the Space Frontier
13 Foundation?

14 A. I'm one of the founders of the Foundation.

15 Q. When was it founded?

16 A. In 1988.

17 Q. And Mr. Anderson has some affiliation with the Space
18 Frontier Foundation?

19 A. Like me, he's twice served on the board of the Foundation,
20 and he and I are the two largest donors to the Foundation.

21 Q. And you have worked together through those years?

22 A. Yes.

23 Q. When you say you're the two largest donors, the Space
24 Frontier Foundation, is that a 501(c)3?

25 A. Yes.

1 Q. So the only way it exists is through charitable
2 contributions?

3 A. Yes.

4 Q. You're one of the primary contributors?

5 A. Yes.

6 Q. And you said Mr. Anderson is as well?

7 A. Yes. Well, was.

8 Q. He doesn't --

9 A. He hasn't been recently no.

10 Q. Okay. Do you know how much Mr. Anderson has given to the
11 Space Frontier Foundation over the years?

12 A. Someone could look it up, but, no, I don't know.

13 Q. Would it surprise you if I told you it was \$309 hundred
14 thousand since 1994?

15 A. Yes. I can't imagine it's so much.

16 THE COURT: \$309,000?

17 MS. KELLY: \$309,000 yes. Let me approach the
18 witness, if I may.

19 THE COURT: Do you want to give it an exhibit number?
20 I don't know where we left off.

21 MS. KELLY: Yes. If I may approach, this is
22 Government Exhibit Number 2-50.

23 BY MS. KELLY:

24 Q. Sir, if you could take a moment to look at 2-50.

25 A. Yes, these lump together both donations from FINDS, which

1 Walt had I think exclusively funded, and his personal donations
2 as well.

3 THE COURT: Donations from a combination of what?

4 THE WITNESS: Of another foundation called The
5 Foundation for the Nongovernmental Development of Space.

6 THE COURT: So some of the things on the list are his
7 personal contributions, and some are from this other
8 foundation?

9 THE WITNESS: Yes.

10 BY MS. KELLY:

11 Q. Well, let's be clear. FINDS is Mr. Anderson's personal
12 foundation, correct?

13 A. I believe he endowed it completely.

14 Q. So it's your understanding that all the money that's in
15 FINDS came from Mr. Anderson, correct?

16 A. I don't know the answer to that.

17 Q. But that's your understanding; is that what you stated?

18 A. I would guess it's true, but I don't know.

19 Q. You have never looked at the books and records, of course,
20 but that's what you understand?

21 A. Yes.

22 Q. Okay. So taking a look at this exhibit, in 1994 Mr.
23 Anderson gave the Space Frontier Foundation \$15,875; is that
24 correct?

25 A. That's what it says here.

1 Q. In 1995 Mr. Anderson endowed the SFF with \$9,000; is that
2 correct?

3 A. That's correct.

4 Q. And in 1996 we have a combination of Space Frontier
5 Foundation receiving money from Mr. Anderson and from Gold and
6 Appel which you know that to be Mr. Anderson's affiliated
7 company; is that correct?

8 A. Yes.

9 Q. That was in the amounts of 8,500, \$305, \$7,500, \$5,000 and
10 \$3,750; is that correct?

11 A. Yes.

12 Q. In '97 we have a \$12,500 contribution from Mr. Anderson?

13 A. That's correct.

14 Q. And in '98 we have, maybe could you read them. Your
15 copy's highlighted.

16 A. Yes. It starts at 10,000, and 17,500, 10,000, then a pair
17 of 5,000 ones. Then a \$50,000 donation, two more \$5,000
18 donations, and a \$35,000 donation. All from FINDS.

19 Q. And in '99?

20 A. There's a 5,000, a 30,000, 15,000, two 5,000, a 35 and a
21 ten, all from FINDS.

22 Q. For the total of?

23 A. The total is 309,930 thousand dollars.

24 Q. So it's fair to say there is some gratitude to Mr.

25 Anderson for his financial contributions over the years to SFF,

1 correct?

2 A. Certainly. He's been extremely generous over the years to
3 the Foundation, yes, as well as to other not-for-profits.

4 Q. I'm sorry?

5 A. As well as other not-for-profits.

6 Q. Okay. The two of you share common interests. You're
7 both very interested in space exploration.

8 A. Exactly.

9 Q. Right?

10 A. That's how we know each other.

11 Q. And that's how you're affiliated?

12 A. Yes.

13 Q. But you also have taken trips together.

14 A. Actually, I do recall one.

15 Q. You traveled on his Gulfstream, the Danksgoldreed,
16 D-a-n-k-s-g-o-l-d-r-e-e-d, right?

17 A. I didn't know that was its name, but okay.

18 Q. It was his Gulfstream jet, correct?

19 A. I don't know if it was his jet, but he picked me up in
20 Teterboro and some other people.

21 Q. You went to California together, correct?

22 A. Yes.

23 Q. Did you pay for that flight?

24 A. No.

25 Q. Mr. Anderson picked that up?

1 A. Exactly.

2 Q. Okay. Sir, you say you have never known Mr. Anderson to
3 back off of a fight. I assume you're talking about fights that
4 involve money?

5 A. Any sort of a fight. When you sit on a not-for-profit
6 board, you're always kicking things around, how's the best way
7 to deal with things, and he's always the one who's saying we
8 have to stand up for what we believe. You know, he never wants
9 to back down on any issue.

10 Q. You've never seen him confronted by a federal indictment
11 that carries the specter of more than 20 years in federal time
12 incarceration, have you?

13 A. Of course not.

14 Q. It's fair to say that the Mr. Anderson you know is a
15 person who loves his freedom, fair enough?

16 Well, he's a guy who likes to travel?

17 A. I don't know.

18 Q. Likes to come and go as he pleases?

19 A. Most of his travel is related to his various companies,
20 and he's definitely very passionate about his various
21 companies.

22 Q. Well, you know he's hard to get ahold of because he's
23 traveling so much; isn't that true?

24 A. Occasionally, yes.

25 Q. I mean, he has his own airplane. That's a person who

1 likes to fly, right?

2 A. Yes.

3 Q. So it's fair to say that in this instance, this fight,
4 there's a lot much -- there's much more for him to lose, isn't
5 there?

6 A. What there is to lose is his ability to keep doing what he
7 loves to do.

8 Q. And that's his passion --

9 A. If he were to flee, he would give up the ability to do
10 what he loves to do. I want to be perfectly clear. I can't
11 imagine Walt fleeing from his companies any more than I can
12 imagine me fleeing from my children. He's that attached to
13 what it is he does for a living.

14 Q. So he loves his company and his money as much as you love
15 your children; is that what you're telling this Court?

16 A. I don't think it's about money. I think it's about trying
17 to change the world in the way that he'd like to change the
18 world. People don't form companies for greed. They form
19 companies because they want to do something with it.

20 Q. Well, you know he loves the power of being on the Board of
21 Directors, and being in charge, and telling other people what
22 to do all the time. Do you think that would work well in jail?

23 A. Actually, I've never noticed him to be particularly
24 interested in power.

25 Q. Mr. Werb, it's fair to say that Mr. Anderson has been

1 extraordinarily generous to you and your causes over the years;
2 isn't that true?

3 A. Not to me, but to causes we share in common, yes.

4 Q. And that's why you're here today, because you have a
5 strong affection for him, correct?

6 A. I'm here today because I'm completely convinced that he
7 would not flee.

8 MS. KELLY: I have no further questions for you.

9 THE COURT: What's the purpose of the Space Frontier
10 Foundation?

11 THE WITNESS: We're dedicated to opening the Space
12 Frontier to human settlement.

13 THE COURT: Thank you. I just wanted to know what it
14 was. Mr. Man.

15 MR. MAN: Thank you.

16 EXAMINATION

17 BY MR. MAN:

18 Q. I understood your testimony to be that you appreciate the
19 money that Mr. Anderson and his companies have given to the
20 Space Frontier Foundation over time. Would that kind of money
21 that he's donated influence your testimony in any respect?

22 A. No.

23 Q. You have no reason to lie for him out of gratitude, or
24 anything like that?

25 A. Not at all.

1 Q. I also take it -- my understanding is that you're a fairly
2 wealthy individual in your own right; is that correct?

3 A. I'm comfortable.

4 Q. You don't need Mr. Anderson's money to provide you with
5 air fare to California, for example?

6 A. Goodness, no.

7 MR. MAN: Thank you very much.

8 THE COURT: Anything else?

9 MS. KELLY: No, Your Honor.

10 THE COURT: Mr. Werb, thank you.

11 (Witness excused.)

12 MR. MAN: Your Honor, in light of the housekeeping
13 matter that we had from yesterday, Mr. Lowell alluded in the
14 cross-examination of Agent Kutz there was a declaration of Mary
15 Stutzman in Bart Schwartz's office regarding, she's the one
16 that had done the internet searches and was able to quickly
17 find Mr. Anderson's address. He mentioned the declaration, but
18 he didn't actually introduce it, so we'd like to do that now.
19 Would you like to see a copy, Your Honor?

20 THE COURT: Yes.

21 MR. MAN: Your Honor, that concludes our case as far
22 as the merits and the risk of flight issue. We also have Bart
23 Schwartz here who can testify as to the drastic conditions that
24 can be imposed as conditions of release. We don't know if the
25 Court ever needs to reach that issue because we don't believe

1 that the government has met its burden of showing that Mr.
2 Anderson is a serious flight risk. But Mr. Anderson is -- but
3 Mr. Schwartz is here, and if the Court would be interested in
4 hearing his testimony, we'd like to call him and get that into
5 the record.

6 THE COURT: Yes, I would.

7 MR. MAN: We'd like to call Mr. Schwartz.

8 BART M. SCHWARTZ, DEFENDANT'S WITNESS, SWORN

9 THE COURT: Good afternoon.

10 DIRECT EXAMINATION

11 BY MR. MAN:

12 Q. Hello, Mr. Schwartz. Could you describe your background
13 in law enforcement for the Court.

14 THE COURT: First state your name and spell it, even
15 though you have just given the reporter your card.

16 THE WITNESS: Bart, B-a-r-t, M. Schwartz,
17 S-c-h-w-a-r-t-z.

18 THE COURT: Go ahead.

19 BY MR. MAN:

20 Q. I was asking you if you could describe you background in
21 law enforcement for the Court?

22 A. I started in law enforcement in 1973 when I was appointed
23 an Assistant U.S. Attorney in the Southern District of New
24 York. I served there until 1977 in the criminal division, and
25 had certain executive positions, but mostly was a trial

1 assistant.

2 After that I was in private practice with a white
3 collar defense firm. In 1983 when Rudy Giuliani became the
4 United States Attorney, he asked me to come back to the U.S.
5 Attorney's Office to be chief of the criminal division. I did
6 that for about two years. After that, I left the U.S.
7 Attorney's Office and went into the private sector, although on
8 occasion I've worked on projects or assignments which are
9 related to law enforcement. In the early '80s I was a deputy
10 special prosecutor when the independent counsel statute still
11 existed in the investigation of a cabinet officer of the United
12 States. And I've had other similar assignments over the years.

13 Q. I understand you're at Nardello Schwartz now?

14 A. Yes.

15 Q. Could you describe a little bit about what it is you do
16 there?

17 A. It's a company which specializes in investigations and in
18 assisting law firms, financial institutions and others, in
19 gathering information which they use to make decisions.

20 Q. When you were retained by us, we presented you with a plan
21 that had been prepared by Kroll. Did you feel that that was a
22 strong plan?

23 A. I thought it was a strong plan, although I had some
24 different approaches with respect to that plan. I did not
25 participate in the drafting of the first plan, the Kroll plan.

1 Q. What were the major changes, we'll get into the details
2 later, but what were the big picture ideas that you had for how
3 to change that plan?

4 A. I think probably the major changes were to add some
5 technology to strengthen the plan. I also felt that it was
6 important to move the guards inside the apartment, not have
7 them outside the apartment, and to be sure that there were two
8 guards. And I did not think in the last plan that I've
9 drafted, I do not think that it's necessary to have armed
10 guards. In fact, I think it is better not to have armed guards
11 in that environment.

12 Q. Why is that?

13 A. Well, a couple of reasons. If one is concerned, as I
14 would be about a guard being overpowered, I would not want an
15 armed guard overpowered. And also I do recognize that this is
16 a private building, there are other residents there, and I
17 think it's safer not to have armed guards.

18 Q. I take it if Mr. Anderson --

19 A. Excuse me.

20 Q. Go ahead.

21 A. That's for while he's in the residence. I think it may be
22 different if he leaves the residence.

23 Q. Okay. In coming up with your suggestions for how to
24 modify the plan, did you consult with anyone else?

25 A. Yes. When I first reviewed the plan, I called Drew McKay

1 at Vance, which is a security company that I'm familiar with,
2 and actually for a short period of time they were -- Vance and
3 my old company were owned by the same public company, but I
4 called Mr. McKay, asked him to review the plan and to have
5 other people at Vance review it because they specialize in
6 security, they were founded by a member of the Secret Service,
7 they follow many of the Secret Service protocols, they have
8 assignments for the government, and I felt that their expertise
9 would be helpful to me.

10 Q. And does Vance have any experience in doing anything like
11 this in the past?

12 A. I did not know that when I called, but, yes, as it turns
13 out that they recently finished an assignment in the district
14 of Maryland where they provided security and guarded a
15 defendant who was on bail in the district of Maryland, in
16 federal court, a man named Luigi Ratti, R-a-t-t-i. And that
17 assignment lasted I believe for about eight months. A little
18 different from what we're talking about here, but they were
19 required to maintain security of the defendant at his home, and
20 to maintain security of him when he traveled, which he was
21 permitted to do by the Court order.

22 Q. Do you know whether any of the guards who participated in
23 that detail will be available to guard Mr. Anderson?

24 A. Yes. Mr. McKay has assured me that quite a number of the
25 guards who were used in that detail and who had that experience

1 would be available.

2 Q. And do you have any experience yourself in protecting a
3 federal detainee in a situation like this?

4 A. Yes, although my experience is much more limit limited. I
5 was asked, I think it was last summer, by Judge Owen in the
6 Southern District of New York, who had been asked to release a
7 defendant who was serving a sentence. He was post-conviction,
8 but who wanted to be released to attend his daughter's wedding.
9 I believe he was incarcerated in the south. The wedding was in
10 the northeast. And Judge Owen would not release him unless a
11 plan was submitted, and that I endorse the plan, then oversaw
12 the execution of the plan, which I did. And that prisoner was
13 taken to the wedding, kept secured, and then returned to the
14 facility.

15 My recollection now is that it was about a three or four
16 day matter, not an extended period.

17 Q. The plan that you formatted, do you believe that would
18 reasonably assure Mr. Anderson's presence for trial?

19 A. Yes. What I did is -- what I was asked to do, was to look
20 at the original plan, look at the objections that the
21 government had made, look at the concerns that the Court had
22 expressed in its memorandum opinion, and then design a plan
23 that tried to meet all of those objections and concerns. So
24 that's the plan that I developed.

25 Q. Have you discussed this plan with Pretrial Services?

1 A. Yes.

2 Q. What did they think of the plan?

3 A. Well, generally speaking, I prefer they spoke for
4 themselves, but generally speaking they had no objection to it.

5 MS. KELLY: Objection. This is calling for hearsay.

6 THE COURT: Well, we can have hearsay in detention
7 hearings. Either of you is free to call one of the gentlemen
8 from Pretrial who was here I think on the 17th. Go ahead.

9 THE WITNESS: Generally, there was no objection to
10 it, but clearly Pretrial gave me the impression that they
11 thought it was not their decision to make, that it was for
12 others to decide whether this plan was satisfactory.

13 BY MR. MAN:

14 Q. You know that you have modified the plan in response to
15 some of the concerns the Court had raised, and concerns raised
16 by organizations like the condominium association. Have any of
17 the modifications you've met been designed to address any of
18 those concerns?

19 A. Well, my primary focus was the objections raised by the
20 government and the concerns raised by the Court. I don't think
21 that I was really reacting to the condominium association's
22 concerns, but I had the same concern of having armed people in
23 the apartment house, and I felt that the security could be
24 maintained and the level of security necessary could be
25 realized without having the armed guards, primarily by having

1 two guards, moving them inside the apartment and increasing the
2 technology.

3 If I may, we're talking about the plan that you have
4 seen, Mr. Man, but I'd like the Court to know, the government
5 knows this already, I prepared an addendum because it occurred
6 to me during this process that, if I could use the analogy, it
7 was an unusual situation for a warden to share with the
8 prisoner all the security plans. So there is an addendum,
9 which Chadbourne has not seen, and certainly Mr. Anderson has
10 not seen, which has some additional safeguards. But the
11 government has it.

12 THE COURT: You say the government?

13 THE WITNESS: Does have it. I've shared it with the
14 government.

15 MR. MAN: Your Honor, we could arrange for Mr.
16 Schwartz to submit that to the Court under seal if you'd
17 appreciate that.

18 THE COURT: I think that's probably a good idea.
19 You've seen it, Ms. Kelly?

20 MS. KELLY: Yes, Your Honor.

21 THE COURT: All right.

22 BY MR. MAN:

23 Q. Mr. Schwartz, have you had a chance to discuss this plan
24 with the prosecutors in person?

25 A. It was an evolving plan, so I certainly have met with the

1 Q. Okay. Have you been over to Mr. Anderson's condominium
2 recently?

3 A. I was there I think about three weeks ago.

4 Q. Did you have an opportunity to see the construction that
5 was going on outside and the scaffolding that's outside the
6 windows?

7 A. I don't remember any scaffolding when I was there.

8 MS. KELLY: Your Honor, do you have the photographs
9 that the government submitted yesterday? I can't recall the
10 number.

11 THE COURT: Yes, we have them somewhere from
12 yesterday, I think. Here we are. I don't remember what number
13 we gave them.

14 THE CLERK: 2-45.

15 BY MS. KELLY:

16 Q. I'm told this is Exhibit 2-45. If you could take a look
17 at the scaffolding and the construction that's going on outside
18 of the condominium complex, is that something that you have
19 taken into account in your plan?

20 MR. MAN: Can Ms. Kelly identify the date those
21 photographs were taken.

22 THE COURT: Do you know when they were taken?

23 MS. MENZER: Your Honor, they were provided to us
24 yesterday by the condo association.

25 MS. KELLY: So perhaps the day before yesterday.

1 THE COURT: So it was taken this week?

2 MS. MENZER: It was taken recently, they told me.

3 THE WITNESS: I don't remember seeing the scaffolding
4 when we were there. The plan as we've established it would,
5 for example, and I don't know where the scaffolding is, whether
6 it's on his side of the building, whether it goes to his floor,
7 whether it's three floors below, or whatever it may be, but the
8 plan as envisioned should prevent the opening or use of any
9 windows to get outside to scaffolding, if that's where it is.
10 It has monitoring devices.

11 BY MS. KELLY:

12 Q. So he can't use his patio or his outside area?

13 A. He would not be able to use that, that's correct.

14 Q. At all?

15 A. That's correct.

16 THE COURT: Under the plan?

17 THE WITNESS: Yes.

18 THE COURT: Regardless of whether there's
19 construction going on?

20 THE WITNESS: That's correct, Your Honor.

21 BY MS. KELLY:

22 Q. And it wouldn't be a distraction to your plan in any way
23 to have construction men outside the window, or to have the
24 scaffolding up to his apartment?

25 A. I would want to know about that, and I'd want to know

1 about the construction company, and I'd have a lot of questions
2 about that, yes.

3 Q. Who gave you a tour of his apartment; do you recall?

4 A. I was there with Mr. McKay, and I forget the name of the
5 woman who opened the apartment for us.

6 Q. Are you aware of a little, for lack of a better term, sort
7 of a safe room that's located off of the bathroom behind a
8 mirrored panel?

9 A. I looked at all the rooms.

10 Q. It's a hidden room. Did you go into the bathroom behind
11 the mirrored panel to see that there's a hidden room?

12 A. It was shown to us. I don't think I went into it.

13 Q. So you saw that?

14 A. Yes.

15 Q. When you met with Mr. Anderson to sort of interview him to
16 determine whether or not you wanted to take on this assignment,
17 did he mention to you that there were four stun guns that were
18 removed from his house during the execution of the first search
19 warrant?

20 A. No. I think you told me about that.

21 Q. So you were aware of that?

22 A. Yes.

23 Q. And you took that into consideration when you formulated
24 the plan and when you removed the firearms from the plan?

25 A. Yes. Part of the plan includes a very careful search of

1 prosecutors and have had some conference calls, I think two
2 conference calls.

3 Q. Has the government asked you to speak with anyone other
4 than the Assistant U.S. Attorneys present here, or any security
5 experts on behalf of the government?

6 A. No, I don't believe they did. They asked me whether I had
7 spoken to Mr. Anderson, but I don't think they asked me about
8 anyone else.

9 Q. As part of the plan, you would be acting as a third party
10 custodian, as I understand it?

11 A. Yes.

12 Q. You would have the overall responsibility and
13 accountability for the execution of the plan?

14 A. Yes.

15 Q. I think we'd like to go through the proposal with you.

16 THE COURT: How do you envision, what does it mean to
17 you to be a third party custodian? What happens if Mr.
18 Anderson does disappear? What are your responsibilities and
19 what are your liabilities, if any?

20 THE WITNESS: What I try to do is develop a plan
21 which would motivate Mr. Anderson to stay. And I understand
22 part of that for the Court's satisfaction, and that was in your
23 order, having some comfort that I would be motivated to secure
24 him, so that I would have something at risk. And this is a
25 business proposition for me. This is something that I'm doing

1 through my company. And I've tried to develop a plan, and what
2 I came up with is as follows.

3 The cost of this would be paid by Mr. Anderson in
4 advance, one year in advance. Twenty-five percent of that fee,
5 essentially the last quarter, would be used to put up a bond,
6 which would be forfeited if Mr. Anderson fled. If Mr. Anderson
7 conducted himself in a way which caused me concern as to
8 whether I could continue to secure him, I would come to the
9 Court and report that to the Court. I would assume at that
10 time that he would probably be incarcerated, and he would lose
11 the money that he had paid to me. It would not be returned to
12 him, trying again to motivate him to stay.

13 Also, if Mr. Anderson is permitted to leave the
14 apartment, that would require additional security. And he
15 would have to pay for that each time, my hope being that that
16 would discourage him from leaving the apartment because I think
17 that is the best place to secure him.

18 THE COURT: Again, obviously, I've looked at the
19 plan, but refresh me on this. It may that be Mr. Man was about
20 to take you through this. In terms of the preparation of his
21 defense with his lawyers, under your proposal does that all
22 take place in his apartment then?

23 THE WITNESS: Really, we would follow whatever the
24 Court orders or permits, but certainly if the Court order said
25 that he could never leave the apartment, that's what we could

1 enforce. The lawyers could come in, we would be able to search
2 whatever they brought in probably a little bit easier, and that
3 they could order food in, as opposed to what we heard
4 yesterday. But we would be able to strictly enforce any rules
5 against contraband.

6 Also, we, when I say "we," Mr. McKay and I met with
7 the government and with Pretrial, and one of the things we
8 asked for is rather than a list of who could not come in, we
9 would want a list of who could come in. And we would permit
10 those people to come in, but no one else. I think that would
11 be relatively easy to enforce.

12 MR. MAN: May I approach the witness?

13 THE COURT: Sure.

14 MR. MAN: I'd like to introduce a copy of the current
15 detention plan.

16 THE COURT: It's Mr. Schwartz's plan?

17 MR. MAN: Yes.

18 THE COURT: As opposed to the Kroll plan. Exhibit
19 Number 5.

20 MR. MAN: To clarify, Your Honor, that's a copy of
21 the plan that we have seen that's publicly available. We still
22 haven't seen the addendum.

23 THE WITNESS: That's correct. There's no addendum on
24 this plan.

25

1 BY MR. MAN:

2 Q. Mr. Schwartz, could you walk us through the provisions of
3 the proposal as they relate to the security guards?

4 A. Yes. As I said, I envision two security guards inside the
5 apartment, supplemented with technology such as closed-circuit
6 TV and the like. The way this apartment is set up, there is --

7 THE COURT: You visited the apartment?

8 THE WITNESS: Yes, I did. There's an area when you
9 first enter the apartment that actually makes for a very good
10 guard post, and that's where we would envision setting up the
11 guards and the equipment. We would be using experienced
12 guards, not experienced just because they did the prior
13 assignment, but guards who had -- security guards who are
14 capable of using their judgment reacting to a problem situation
15 and handling it.

16 If I may, I would hope that if this occurs, the Court
17 order would authorize the guards to detain Mr. Anderson if, in
18 their judgment, he was doing anything which was inconsistent
19 with the Court order, and we would ask Mr. Anderson to sign
20 waivers of any liability for any of the guards or anyone else
21 involved.

22 BY MR. MAN:

23 Q. Mr. Schwartz, among the technology you've described, would
24 technology be applied to Mr. Anderson that would allow you to
25 follow him or to track his location if he were to leave the

1 apartment?

2 A. Yes. Of course, there would be a back-up. The plan is
3 for him not to leave the apartment without security, but we
4 have contracted or will contract with a company which makes the
5 ankle bracelets and GPS systems that are used by law
6 enforcement and corrections departments around the country.
7 The company, called BI, I think at any one time monitors about
8 60,000 inmates, or released prisoners, around the country.
9 They monitor the GPS, they monitor the bracelets, both the
10 bracelet and the GPS will signal BI if they're tampered with,
11 and of course they will signal if somebody breaks the
12 periphery.

13 Q. You were present at the hearing yesterday; is that
14 correct?

15 A. Yes.

16 Q. Do you recall Ms. Menzer having a conversation with the
17 representative of the condominium association and asking how
18 they would feel if every time Mr. Anderson opened the wrong
19 window and set off an alarm a swarm of U.S. Marshals would
20 enter the building?

21 A. Yes. Dr. Little was testifying, I think.

22 Q. Right. Would that happen under your plan?

23 A. Well, if it would happen, it would happen only once
24 because that would mean there would be a problem and he would
25 be taken into custody. No, I would expect that the seasoned

1 veterans we would use would be able to recognize the difference
2 between a situation which requires a call to the Marshals and
3 perhaps a call to me, or whatever else may need to be done, and
4 recognize equipment failure from something intentional that Mr.
5 Anderson might do. Obviously, they're important differences.

6 Q. Would a central call system be notified if Mr. Anderson
7 tried to leave the building, or for whatever reason a false
8 alarm indicating that he had left the premises?

9 A. The BI company, as I said, does this for courts around the
10 country. They have a central system, and they have back-up
11 systems, by the way. I would also envision adding a separate
12 system on top of that which would notify Vance and notify me,
13 since we would also immediately try to apprehend him if that's
14 the unfortunate position we were in.

15 Q. So that's a redundant check on the two officers that would
16 be present?

17 A. Yes. I tried to build redundancy into the system,
18 including back-up power.

19 Q. That's great. What steps would you take to oversee the
20 plan and to ensure that it's functioning properly?

21 A. I would take direct responsibility and accountability for
22 the plan. A number of the steps that I plan to take are
23 actually in the addendum and I'd rather not address those, but
24 I would take direct and personal responsibility, and even
25 though I'm in New York I would ensure that it was covered here

1 in the district.

2 Q. Thank you Mr. Schwartz.

3 THE COURT: Who are the, not specific names of the
4 guards, but what do you know about the guards that Vance has
5 employed for this kind of thing in the past?

6 THE WITNESS: I also probably should say, Your Honor,
7 how I know Vance. I alluded to it briefly. I started a
8 company called Decision Strategies a number of years ago, and
9 was bought by a public company. Shortly after my company was
10 bought, that public company bought Vance. And so we were
11 sister companies in related fields, and I worked with the
12 people at Vance, had confidence in them, and that's why I
13 called them.

14 The kind of people we would use are those that have
15 law enforcement or military training, or in our judgment,
16 sufficient training to make the judgments that you need to
17 make. They would not be, and I don't -- this is not a
18 criticism of others, but they would not be the customary
19 security guard that might be used in a mole or department
20 store, or other places that you see. These would be people
21 with experience and would be trained for this particular
22 assignment, and would have to be approved by Mr. McKay and by
23 me.

24 THE COURT: There would be two on the premises at all
25 times?

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: Does your plan suggest that we're going
3 to have three 8-hour shifts or two 12-hour shifts?

4 THE WITNESS: We're thinking about 8-hour shifts.
5 And the government raised this, I thought it was a very good
6 point, we also want to ensure that this isn't the second 8-hour
7 shift for the person coming on board and the chance to rest.

8 THE COURT: It's bad enough when you're taking a taxi
9 to the airport and haven't had any sleep.

10 THE WITNESS: That's right.

11 THE COURT: Okay. Ms. Menzer or Ms. Kelly.

12 CROSS-EXAMINATION

13 BY MS. KELLY:

14 Q. Good afternoon, Mr. Schwartz.

15 A. Good afternoon.

16 Q. Mr. Schwartz, you said that you have been a third party
17 custodian once before; is that right?

18 A. I don't know if I would formally called it a third party
19 custodian, but the judge was holding me responsible. That was
20 enough.

21 Q. And this was for a man who wanted to attend his daughter's
22 wedding feast; is that right?

23 A. Yes.

24 Q. It was a two to three day event, you said?

25 A. That's correct.

1 Q. That man was considered a flight risk?

2 A. I was not involved in the decision as to whether he was a
3 risk or not. He was already a convicted prisoner and so he was
4 serving his sentence.

5 Q. So it's fair to say he was a flight risk, they were afraid
6 he would escape from detention?

7 A. I assume that's why the judge wanted him secured, yes.

8 Q. And you had armed guards with that detainee; is that
9 correct?

10 A. We did not -- I think we did not have armed guards at the
11 wedding. We may have when he was traveling.

12 Q. Well, you certainly had them when he was traveling,
13 correct?

14 A. Yes.

15 Q. He was going from the north, you said, to the south?

16 A. From the south to the north.

17 Q. Okay. And with regards to the Maryland case you were
18 referring to, was that Luigi Ratti?

19 A. Right.

20 Q. That defendant, he was also considered a flight risk; is
21 that correct?

22 A. Again, I don't know what judgment was made, but whatever
23 the Court decided, whether it was a -- what level of flight
24 risk I don't know. But, yes, the Court decided that he had to
25 be secured.

1 Q. In that case he had at least two armed guards with him at
2 all times; isn't that correct?

3 A. He had armed guards, and when he traveled he may have had
4 more than two.

5 Q. In fact, in that case there was a \$17 million bond cash
6 posted by the defendant; isn't that true?

7 A. I believe that's correct.

8 Q. When we first discussed this plan, I think it was over the
9 phone when we first had our conversation, it was in the context
10 of you reviewing the former plan that was submitted, what we
11 referred to as the Kroll plan?

12 A. Yes.

13 Q. Do you recall that you stated that you wouldn't be willing
14 to take this job based on the Kroll proposal, that you weren't
15 comfortable when there was only one armed guard proposed in the
16 Kroll plan?

17 A. I remember saying that, but I certainly remember being
18 concerned if there was only one guard.

19 Q. And that was one armed guard?

20 A. At that time, yes.

21 Q. And then your proposal that you came up with after we
22 discussed the Kroll plan and the shortcomings initially
23 proposed two armed guards, correct?

24 A. Yes.

25 Q. And you felt that that was necessary to meet your

1 obligations to the Court?

2 A. Well, what I felt was that that plan met the objections of
3 the government and the concerns of the Court. But when we
4 spoke the last time and you asked me to submit a final report
5 to you pulling together everything that I recommended, that's
6 when I decided that I should include what I thought was proper,
7 which is to have two guards, having them inside I thought would
8 be better, and therefore they did not need to be armed.

9 Q. The eliminating of the gun, so to speak, from the
10 proposal, was that done as an accommodation mostly to the
11 condominium association's concerns?

12 A. No, it really wasn't. That was not my intention.

13 Q. Okay. Well, at the risk of sounding like kind of an
14 alarmist, how would you envision -- you can pull a lot of
15 things out of your imagination, but how would you envision a
16 scenario where there is potential "kidnapping" of Mr. Anderson
17 at his own apartment, where he perhaps hired somebody to get
18 him out of the detention situation, and they have guns. Is
19 that something that you've thought about?

20 A. Yes. I think that is probably the worst situation that we
21 could think of, although in our discussions, in discussions
22 that I had with you, I think we all generally agreed the most
23 likely problem was not that kind of effort, but was someone
24 trying to bribe the guard, or some subterfuge to confuse the
25 guards. But, yes, if someone attempts an armed break-out, the

1 guards who will be there will not be armed and will be at the
2 mercy of the armed. They won't be kidnapers, but whoever they
3 are.

4 Q. Well, I'm using kidnapers like "hired" people who are
5 there to assist Mr. Anderson in leaving his home.

6 A. Yes, and I had to make some judgments whether I thought it
7 was better to have the guns there all the time and the
8 possibility of someone being overpowered, concerns about
9 creating a situation where guns were fired. Anyone I think in
10 law enforcement, and anyone else really, is concerned any time
11 a gun is fired, and we know that it is -- the percentages of
12 hitting the perpetrator are a lot lower than we'd like them to
13 be.

14 THE COURT: Have you talked about this kind of a
15 scenario with Vance and his people, but that his people would
16 be unarmed in the apartment, and the hypothetical Ms. Kelly
17 raises, armed people coming in?

18 THE WITNESS: I've certainly talked about it with
19 Mr. McKay.

20 THE COURT: I meant Mr. McKay.

21 THE WITNESS: But not the individual guards.

22 BY MS. KELLY:

23 Q. Your plan as you explained it calls for basically judgment
24 calls. You said you had to hire seasoned veterans, correct?

25 A. Yes.

1 Q. They were going to be making judgment calls whether to
2 call the Court, whether to call yourself, whether to call
3 Vance. Is it fair to say that your plan is really only as good
4 as the security people that you hire in any particular day, or
5 for any particular hour?

6 A. Well, I think you're mischaracterizing it a bit. The plan
7 will have protocols, so the guards will have instructions to
8 follow in certain circumstances. It won't only be judgment
9 calls. I was really responding to the question what happens if
10 a window, or the situation -- will the Marshals be called when
11 a window is accidentally opened, or there's a mechanical
12 failure that sets off an alarm, that's not going to happen.
13 But in a situation where the guards believe that there is an
14 escape that's imminent, or there's an incident taking place,
15 they will have a protocol about who to call, as we discussed
16 when we met.

17 Quite frankly, the Court will be probably the last
18 call that anybody makes. The first call is going to be to the
19 Marshals, to the people who are going to get out there and do
20 something about it if there's a problem. And then we would
21 inform the Court.

22 Q. Have you talked to the Marshal's office?

23 A. No, I have not.

24 Q. But you assume that if your seasoned guards call the
25 Marshal's Service to say they're having some kind of trouble,

1 that the Marshal's Service is going to be able to run right
2 over there and intervene somehow?

3 A. I don't know precisely what they will do. I know that we
4 will have the Vance people available, and if he's violating a
5 Court order and is being detained under the Court order, I
6 would think the Marshals would respond to that.

7 Q. But you don't know that?

8 A. I believe they would, it's my experience.

9 Q. And Vance, they're located in Oakton, Virginia, correct?

10 A. Yes, but they have supervisors who are in the District,
11 and actually have a number of assignments in the District.

12 Q. Those people are working on other jobs in the District,
13 those Vance people?

14 A. Supervisors, I think, I'm not sure about this, but I
15 believe supervisors visit many sites, not just one.

16 Q. So they wouldn't be exclusively assigned to the Anderson
17 matter, correct?

18 A. Right.

19 Q. And you'll be in New York?

20 A. Yes.

21 Q. So the phone call to you would be up in New York?

22 A. Yes.

23 Q. And where is BI located?

24 A. Again, referring to the addendum, there is something in
25 the addendum which would cover the area you're asking about in

1 terms of contacting me or me being in New York.

2 Q. Okay. Where is BI located? Where are they headquartered?

3 A. I'm not quite sure.

4 Q. With regard to protocol, who would be eye contact?

5 A. Whoever we told them to.

6 Q. So you in New York, or Vance in Oakton, or the Marshal's
7 Service?

8 A. Yes.

9 Q. Assuming they can get someone to pick up the phone and go
10 over and collect Mr. Anderson, then we'll all be okay.

11 A. Well, that's the business that BI is in, in reporting to
12 the courts if there is a problem with released prisoners
13 violating the release order.

14 Q. But you don't know exactly how they set up accountability,
15 who they contact, who they call, whether BI sends in their own
16 service of Marshals?

17 A. No, I don't believe they send in their own service of
18 Marshals, no.

19 Q. So really we don't know what kind of service BI has other
20 than a couple of phone calls; is that fair to say?

21 A. BI will do what we instruct them to do, and they will do
22 certainly what they do in other cases for other districts and
23 other courts.

24 Q. But usually they're working with Pretrial Services,
25 correct? That's their protocol?

1 A. Yes.

2 Q. In this case Pretrial Services wouldn't be part of this
3 plan?

4 A. They certainly can be.

5 Q. But as the plan sits today, they're not a part of it,
6 correct?

7 A. The notification can be to Pretrial Services. Part of
8 this is to sit down and figure out exactly who should be
9 notified so we get the most impact.

10 Q. I have the detention plan that has your addendum for the
11 Court and the government. I wonder if defense counsel would
12 agree to have it passed up to the Court so he could have the
13 full plan.

14 A. I brought some copies, if that's helpful.

15 MS. KELLY: Can I mark it and pass it up to the Court
16 so the Court can not be in the dark?

17 THE COURT: Sure. But it won't be provided to the
18 defense. One of your colleagues has it.

19 THE WITNESS: That's Mr. McKay.

20 MS. KELLY: We'll mark it 2-51.

21 THE COURT: Under seal.

22 MS. KELLY: Under seal.

23 BY MS. KELLY:

24 Q. Sir, you mentioned that you would be getting all of your
25 funds up-front?

1 A. Yes.

2 Q. All of the fees for this. Can you tell us what kind of
3 costs are we talking about with a system like this?

4 A. My estimate, and it's just an estimate because I'd have to
5 know exactly what we're doing, but including the equipment
6 which would be installed --

7 Q. How much would the equipment be?

8 A. I haven't broken it out separately. I can give you an
9 overall number.

10 Q. Okay.

11 A. I think it could be as high as \$180,000 a month.

12 Q. \$180,000 a month?

13 A. Yes.

14 Q. So for how long would you be contracting?

15 A. One year.

16 Q. So how much would that be?

17 A. I suppose I should have done that number but I haven't.

18 Q. Well, it's --

19 A. It's over \$2 million.

20 Q. \$2.4 million a year, something like that?

21 A. 2.1.

22 Q. 2.1600 I'm told by Ms. Menzer. Does that sound about
23 right?

24 A. Yes.

25 Q. You're going to be getting that fee up-front; is that

1 correct?

2 A. Yes.

3 Q. From Mr. Anderson?

4 A. On behalf of Mr. Anderson. I don't know who it's coming
5 from.

6 Q. I mean, you've been assured that that's what you're going
7 to get for your efforts?

8 A. Well, I'm not going to take on the assignment unless I get
9 that.

10 Q. Because you said this is a business proposition for you?

11 A. That's right.

12 Q. And of that, 25 percent is going to be put into an escrow?

13 A. I think it will be put into a bond, it will be used for a
14 bond. That was my understanding.

15 Q. That 25 percent, that will represent your fee, what you
16 would earn for this service for the 12 months?

17 A. It would represent 25 percent of the total amount.

18 Q. And that's your fee, so if Mr. Anderson appears for all of
19 his court appearances at the end of the 12 month period and
20 when trial starts, you'll receive that 25 percent as what you
21 earned; is that correct?

22 A. Well, I'll receive that 25 percent. I'm not sure if it's
23 25 percent of the profit, if that's what you're asking, and it
24 would also include money that would go to Vance.

25 Q. But it's fair to say --

1 A. And any other subcontractors.

2 Q. I understand. It's fair to say that either way, Mr.
3 Anderson loses that \$2.1 million up-front, whether he stays or
4 flees. He has no incentive. It's your incentive, correct?

5 A. It's certainly my incentive, and, yes, that's correct.

6 Q. I guess if he flees, that's that much less you have to pay
7 the subcontractors?

8 A. Yes.

9 THE COURT: It depends how early he flees.

10 BY MS. KELLY:

11 Q. If he flees the first day, you're golden, so to speak,
12 since it's a business proposition.

13 THE COURT: I'm not sure it does a whole lot for
14 Mr. Schwartz's reputation.

15 THE WITNESS: Especially if I want to make this into
16 a business.

17 BY MS. KELLY:

18 Q. Well, this is an experiment. This is the first time
19 you've really set this whole program up, it's an experiment
20 program; fair to say?

21 A. Not for Vance. For me. I wouldn't call it an expert, but
22 it's the first time I have taken this kind of responsibility
23 other than that brief one.

24 Q. The wedding?

25 A. Yes.

1 Q. Okay. Have you been over to Mr. Anderson's condominium
2 recently?

3 A. I was there I think about three weeks ago.

4 Q. Did you have an opportunity to see the construction that
5 was going on outside and the scaffolding that's outside the
6 windows?

7 A. I don't remember any scaffolding when I was there.

8 MS. KELLY: Your Honor, do you have the photographs
9 that the government submitted yesterday? I can't recall the
10 number.

11 THE COURT: Yes, we have them somewhere from
12 yesterday, I think. Here we are. I don't remember what number
13 we gave them.

14 THE CLERK: 2-45.

15 BY MS. KELLY:

16 Q. I'm told this is Exhibit 2-45. If you could take a look
17 at the scaffolding and the construction that's going on outside
18 of the condominium complex, is that something that you have
19 taken into account in your plan?

20 MR. MAN: Can Ms. Kelly identify the date those
21 photographs were taken.

22 THE COURT: Do you know when they were taken?

23 MS. MENZER: Your Honor, they were provided to us
24 yesterday by the condo association.

25 MS. KELLY: So perhaps the day before yesterday.

1 THE COURT: So it was taken this week?

2 MS. MENZER: It was taken recently, they told me.

3 THE WITNESS: I don't remember seeing the scaffolding
4 when we were there. The plan as we've established it would,
5 for example, and I don't know where the scaffolding is, whether
6 it's on his side of the building, whether it goes to his floor,
7 whether it's three floors below, or whatever it may be, but the
8 plan as envisioned should prevent the opening or use of any
9 windows to get outside to scaffolding, if that's where it is.
10 It has monitoring devices.

11 BY MS. KELLY:

12 Q. So he can't use his patio or his outside area?

13 A. He would not be able to use that, that's correct.

14 Q. At all?

15 A. That's correct.

16 THE COURT: Under the plan?

17 THE WITNESS: Yes.

18 THE COURT: Regardless of whether there's
19 construction going on?

20 THE WITNESS: That's correct, Your Honor.

21 BY MS. KELLY:

22 Q. And it wouldn't be a distraction to your plan in any way
23 to have construction men outside the window, or to have the
24 scaffolding up to his apartment?

25 A. I would want to know about that, and I'd want to know

1 about the construction company, and I'd have a lot of questions
2 about that, yes.

3 Q. Who gave you a tour of his apartment; do you recall?

4 A. I was there with Mr. McKay, and I forget the name of the
5 woman who opened the apartment for us.

6 Q. Are you aware of a little, for lack of a better term, sort
7 of a safe room that's located off of the bathroom behind a
8 mirrored panel?

9 A. I looked at all the rooms.

10 Q. It's a hidden room. Did you go into the bathroom behind
11 the mirrored panel to see that there's a hidden room?

12 A. It was shown to us. I don't think I went into it.

13 Q. So you saw that?

14 A. Yes.

15 Q. When you met with Mr. Anderson to sort of interview him to
16 determine whether or not you wanted to take on this assignment,
17 did he mention to you that there were four stun guns that were
18 removed from his house during the execution of the first search
19 warrant?

20 A. No. I think you told me about that.

21 Q. So you were aware of that?

22 A. Yes.

23 Q. And you took that into consideration when you formulated
24 the plan and when you removed the firearms from the plan?

25 A. Yes. Part of the plan includes a very careful search of

1 the premises before he returns to it.

2 Q. Mr. Anderson is going to waive all of his constitutional
3 rights for privacy. You have that all worked out?

4 A. Yes, he will agree to that, is my understanding.

5 Q. Okay. So you can search him at any time and turn over the
6 contraband to the United States?

7 A. Yes.

8 Q. Is that the plan?

9 A. It depends, I suppose it depends what it is.

10 Q. Would that be left to the discretion of your --

11 A. No, that would be my judgment call.

12 Q. Okay. Sir, did your plan take into account the very
13 likely impending foreclosure of Mr. Anderson's residence?

14 A. Only to the extent that the plan is to secure that
15 apartment. If he's not in that apartment, the plan doesn't
16 apply.

17 Q. Okay.

18 MS. KELLY: Your Honor, if I may approach.

19 THE COURT: I assume the inference would be if the
20 apartment were foreclosed upon, you would immediately say,
21 well, okay, we can't do this any more?

22 THE WITNESS: If he is being evicted from that
23 apartment, then we would be advising the Court that we can no
24 longer secure him. Obviously, we're not abandoning the post
25 until action is taken.

1 BY MS. KELLY:

2 Q. Let me show you Exhibit Number 2-49, which is Palm Beach
3 Mortgage Management versus Red Tulip, Walter Anderson, Junia
4 Hissa Neiva against Don Burns. Are you familiar with this
5 litigation at all?

6 A. No, I'm not.

7 Q. So it hasn't been mentioned to you that Mr. Anderson lost
8 his appeal in this matter, and that Mr. Don Burns is going to
9 be going forward on evicting Mr. Anderson from the property?

10 A. Well, I know there was a reference to it in papers filed
11 in this matter at one of the earlier hearings. I'm not sure I
12 knew there was an issue as to foreclosure.

13 Q. Okay. But having the information regarding this would of
14 course impact your plan in some way?

15 A. Well, it wouldn't impact the systems that I would put in
16 place.

17 Q. They just might be there temporarily?

18 A. I suppose that's right.

19 THE COURT: Do you have any information about the
20 timing of an eviction or foreclosure?

21 MS. KELLY: Your Honor, I think that what we learned
22 most recently is that they were going to be moving for that in
23 the next two to three weeks. We just got notice that the
24 appeal was denied.

25 THE COURT: This is in Superior Court, the lawsuit?

1 MS. KELLY: It's in New York, Your Honor. Let me
2 see. It's my understanding he's going to ask potentially for
3 permission to appeal, and it would be unlikely that it would be
4 granted. And then Mr. Anderson could make a motion for
5 preliminary injunction pending the appeal, but according to the
6 attorneys on the case, they're going to give two to three weeks
7 notice prior to the sale, from May 27th.

8 THE COURT: I take it when somebody is evicted, the
9 Marshals go to the residence in D.C. when somebody is evicted?

10 MS. KELLY: I simply don't know the answer to that,
11 Your Honor.

12 THE COURT: I think that's right. I don't think
13 they're private eviction people. I think it's either the
14 police or the Marshals.

15 If we get to that point, I guess Mr. Schwartz is on
16 notice that he has to find out how that's going to work, and I
17 guess the concerns would be, first, that this whole plan might
18 be short-lived if there was an eviction. And, secondly, if
19 somebody came to physically evict Mr. Anderson and the guards
20 from Vance were there, one would hope that if we knew in
21 advance what law enforcement agency is responsible for
22 eviction, that Mr. Schwartz and Mr. McKay would have an
23 arrangement in place so that there wouldn't be any sort of a
24 confrontation between the Vance guards and the evicting
25 authorities, but rather the Marshals or whomever could be

1 called to take Mr. Anderson back into custody rather than throw
2 him out in the street, if that's the way an eviction happens.
3 But I think we need to know how an eviction happens and who
4 does it.

5 THE WITNESS: I agree. Also, there are protocols for
6 emergencies so that the guards will be able to shackle Mr.
7 Anderson if necessary, and so forth. But it would be better if
8 it didn't come to that, and they didn't show up with a
9 legitimate court order evicting him and we have a court order
10 compelling him to stay. We would have to deal with that ahead
11 of time.

12 BY MS. KELLY:

13 Q. How long would it take to install all of the equipment
14 that would be necessary?

15 A. Approximately a week, maybe ten days at most.

16 Q. It's fair to say that a lot of the details in this plan
17 are still sort of in the process of being worked out?

18 A. No. I think we have most of the details down pat. We
19 have looked at the facility. We know which doors and windows,
20 how to secure them, what we want to secure, what kind of
21 sensors we want to use, what equipment we want to buy. We have
22 the guards from the last assignment. I think we have a lot of
23 the details set.

24 Q. Those are the technical details, but the details of
25 accountability are still being worked out.

1 A. In part I would hope to work it out with the government
2 and all parties if the Court decides that this is a viable
3 option, so that we are reporting to the people that you would
4 want us to report to, and doing it the right way.

5 Q. Well, obviously, we would want you to report to the U.S.
6 Marshal's Service, but perhaps it will surprise you if I tell
7 you that the Marshal's Service said that they don't have
8 resources to respond to private security systems. Does that
9 surprise you?

10 A. I'm not sure, you call it a private security system, maybe
11 I will talk to the Marshals, but if there's a court order that
12 he's violating, and under that court order we have authority to
13 detain him and hold him --

14 THE COURT: I think that, Mr. Schwartz, you probably
15 should talk to the Marshal's Service, and if I were to grant
16 the defense motion, or conclude that the government hadn't
17 proved its case by a preponderance, then I would talk to the
18 Marshal's Service, too. But you probably should do that.

19 It seems to me, Ms. Kelly, that what you reported
20 that the Marshal said is probably 100 percent accurate. On the
21 other hand, it sort of depends how the question is asked,
22 because as I understand the plan, if there were a need for the
23 Marshal's Service, it would be a one time need. It would
24 happen once, and the plan would be terminated because Mr.
25 Schwartz would say, that's it, I'm out of here. And I would

1 certainly say you're out of here.

2 THE WITNESS: I agree.

3 BY MS. KELLY:

4 Q. Okay. And with regards to this plan, is it the type of
5 thing that you envision coming back and asking the Court to
6 mitigate the order in a way to sort of denigrate the
7 protection, you know, less guards, less restrictions, fewer
8 hours, you know, more privileges, no curfew, that kind of
9 thing?

10 A. I don't think that's my role in this process.

11 THE COURT: I think if there were a plan in place,
12 that would be the plan, we would have a court order, that would
13 be it. And if Mr. Anderson's lawyers wanted to come back at
14 some point and say look how well it's going, please modify it,
15 that would be a litigation between Mr. Lowell and you. And Mr.
16 Schwartz is doing the job and he -- I would not expect, and I
17 would think he would be in violation of my order if he
18 unilaterally made any modifications. Would you agree with
19 that?

20 THE WITNESS: I agree, yes, Your Honor.

21 THE COURT: If there is an order.

22 MS. KELLY: I don't have any more questions for this
23 witness. Thank you.

24 THE COURT: Mr. Man.

25

1 REDIRECT EXAMINATION

2 BY MR. MAN:

3 Q. Mr. Schwartz, we didn't expect to ask you to address real
4 estate and property issues associated with foreclosure, but I
5 take it from your testimony that if there were an eviction, you
6 would not abandon the post, would you hold on and maintain
7 custody of Mr. Anderson?

8 A. Of course we would not abandon.

9 Q. In your experience as a lawyer, if you have a judgment
10 against you, can you satisfy a judgment either with a
11 foreclosure against assets or by paying money?

12 MS. KELLY: Your Honor, I'm going to object. This is
13 way beyond what he's called to testify to.

14 THE WITNESS: Thank you.

15 THE COURT: I'll sustain the objection. He probably
16 doesn't remember the answer from the Bar exam. It was so long
17 ago.

18 BY MR. MAN:

19 Q. Ms. Kelly asked you some questions about call time and
20 response time associated with an alarm going off, and
21 electronic security. In the typical security situation when
22 somebody is on house arrest and it's just electronic
23 monitoring, I understand call time is important because the
24 alarm goes off and there's a certain period of time in which
25 somebody has to respond. But what is the response time if you

1 have two guards on site at the time?

2 A. Well, I understand what you're asking, but you're really
3 asking me to speculate. The response time should be immediate
4 if the guards see something going on that is suspicious.
5 That's the reason you have the guards there. That's the reason
6 you have the electronic surveillance. It's the reason you have
7 the things which you have not seen in the addendum.

8 Q. So guards are good, the electronics are good. Combining
9 them is better?

10 A. I believe so, yes.

11 Q. And Ms. Kelly identified what she kind of described as an
12 alarmist situation with respect to a kidnapping. Do prison
13 breaks take place also?

14 A. Yes.

15 Q. And is it still reasonable to -- does the plan still
16 provide reasonable assurance even if it's not total assurance?

17 A. Yes, I believe this plan will secure Mr. Anderson.

18 Q. As a lawyer, you know that's a standard under the Bail
19 Act, right, reasonable assurance?

20 A. Yes.

21 Q. And we addressed the situation involving guns. You
22 testified that when guns are used, they often don't hit the
23 target. Could you elaborate on that?

24 A. I'm not sure that I can. As I said, unfortunately, we all
25 know, hear the stories, and I've heard of studies but I

1 couldn't cite them to you, that when law enforcement officers
2 fire their weapons, more times than not they do not hit the
3 intended target. That's why civilians are hurt and property
4 damage is done.

5 Q. If you were to use armed guards on this mission or for any
6 of them, when you're assigned to guard or protect a detainee
7 would you instruct your guards to shoot Mr. Anderson or any
8 detainee if they were to try to flee?

9 A. That's part of the problem of having armed guards, what do
10 you tell them to do. Get into a shoot-out with someone who
11 comes to effect an escape? Shoot Mr. Anderson? I don't think
12 you would do that.

13 Q. So you think it would be a safer situation if there were
14 an attempted kidnapping by armed kidnappers to have guards
15 without guns or guards with guns?

16 A. I think that it would be a dangerous situation to have a
17 shoot-out at that apartment complex.

18 Q. Ms. Kelly made a good point that part of the success of
19 the plan depends on the quality of people and hiring good
20 people. Could you describe what your hiring protocols are and
21 the hiring protocols for Vance are in relation to what CTF
22 hiring policies would be for hiring guards?

23 MS. KELLY: Your Honor, I'm going to object. I'm
24 certain he can't opine on CTF.

25 THE COURT: Do you mean the Central Treatment

1 Facility?

2 MR. MAN: The CCA type of guards.

3 THE COURT: I don't think it's a relevant analogy,
4 Mr. Man. I'm well aware of some problems that have existed at
5 CTF and at the D.C. Jail, but nevertheless that's what we've
6 got. The question is on some objective scale, the quality of
7 the personnel that Mr. Schwartz and Mr. Vance are going to
8 provide. And they may well be better than the people at CTF --
9 than some of the people at CTF. I won't say that. Mr. Paul
10 isn't here today.

11 I had a case a couple of years ago where ten of them
12 were indicted for bringing contraband into the -- I think it
13 was CTF. It wasn't the D.C. Jail, it was CTF. So, yeah,
14 there's some bad apples occasionally that go into the
15 corrections profession. I think I can take judicial notice of
16 that.

17 BY MR. MAN:

18 Q. Without comparing them in relation to CTF or any other
19 facility, I understand that a lot of the people that are hired
20 by Vance are former law enforcement officials. Of those who
21 apply, how many are accepted? Do you have a sense?

22 A. No.

23 Q. Is it your understanding from Mr. McKay that he typically
24 takes a very few of those who actually apply?

25 A. I don't know the answer to that. I just know my

1 experience in working with Vance, and I have a lot of respect
2 for the organization. I know their quality control, and that's
3 why I turned to them.

4 Q. But would you use rigorous background checks?

5 A. Certainly we would do background checks, absolutely. In
6 fact, that was in the Court's order, was one of the issues that
7 you raised, background checks.

8 Q. We addressed the issue of whether or not the Marshal
9 Service would be willing to respond. I take it if there were
10 an instant, your guards would stop Mr. Anderson, they'd notify
11 the Marshal's Service. If the Marshal's Service doesn't come,
12 what happens?

13 A. The guards would be authorized to surrender Mr. Anderson.

14 Q. So they wouldn't abandoned him and just give up?

15 A. Of course not.

16 MR. MAN: Thank you.

17 THE COURT: Do you envision the guards would have
18 restraints or handcuffs or something?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: So that if Mr. Anderson tried to escape
21 and they couldn't get somebody to respond promptly, they could
22 handcuff him, or handcuff him to a pole or something?

23 THE WITNESS: Absolutely, yes.

24 THE COURT: Have you looked at the apartment? What
25 about the bedroom, the room in which he sleeps, does that open

1 up onto a balcony?

2 THE WITNESS: Yes. There's a window there, and we
3 would secure that as well. We would also have a camera in
4 there.

5 THE COURT: And I don't know whether you've gotten
6 down into this sort of detail, but you would have a camera in
7 there, I don't know whether you envision him sleeping with his
8 bedroom door open so that the guards would be able to
9 physically observe him at all times, or whether you would do it
10 through the camera and the television set?

11 THE WITNESS: It would probably be a combination, I
12 would think, Your Honor.

13 THE COURT: Obviously the guards who are there during
14 the nighttime hours would not be sleeping. They would be
15 awake?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: They would sleep on other hours when they
18 weren't in the apartment?

19 THE WITNESS: Correct.

20 THE COURT: Ms. Kelly.

21 MS. KELLY: No follow-up, Your Honor.

22 THE COURT: Anything else?

23 MR. MAN: No.

24 THE COURT: All right, Mr. Schwartz, thank you.

25 (Witness excused.)

1 THE COURT: Anything else?

2 MR. MAN: We have no further witnesses.

3 THE COURT: Ms. Kelly, Ms. Menzer, anything else you
4 want to present either through witnesses, through proffer or
5 evidence, or do you want to take a little break and think about
6 it?

7 MS. MENZER: I do have a couple of additional
8 proffers to make if I may, your Honor.

9 THE COURT: Sure.

10 MS. MENZER: Before coming here today, I realized
11 that -- I don't know how you were going to handle, Mr. Lowell
12 asked that if we have argument that he be allowed to do it
13 through the telephone. So I was assuming we weren't going to
14 have argument.

15 THE COURT: Right.

16 MS. MENZER: But I do have additional evidence that
17 we have been learning of recently that I think is important for
18 the Court to know about.

19 Before when we responded to the motion we didn't know
20 this, but part of the allegations that Mr. Anderson's counsel
21 made that we misrepresented to the Court is his assets, and
22 whether or not he has the ability to take some of those
23 investments that we allege that he has invested all that money
24 in, and make it liquid. We do have evidence now, we don't have
25 details, I can tell you what we do have and pass it up to the

1 Court, that Mr. Anderson within the last month has sold a
2 number of properties in Spain, or companies associated with Mr.
3 Anderson.

4 We also do have information, if the Court would like
5 me to elaborate any more, that Sylvia Rubio deMolina has, in
6 fact, transferred money to Mr. Anderson in the United States.
7 And it appears that it has to do with One World Properties. So
8 the fact that his assets are illiquid is just not accurate.
9 Unfortunately, most of the documents that we have are in
10 Spanish and they're very lengthy. We've done a cursory
11 translation of them through the property records, but it
12 appears that there have been at least three, and it looks like
13 four, that have been sold.

14 THE COURT: Properties that have been sold?

15 MS. MENZER: And we don't know how much, because we
16 haven't been able to get all those records at this point.

17 THE COURT: Let me make sure I understand this. Is
18 it your suggestion that these two events are related? In other
19 words, the properties were sold within the last month or so,
20 and that the proceeds of those sales were transferred by Ms.
21 Molina, or that you don't know where the monies came from that
22 she allegedly transferred?

23 MS. MENZER: Your Honor, I'll just summarize it for
24 you, and if you'd like I can have the agent play it for you.
25 We have a telephone conversation between Mr. Anderson and his

1 secretary assistant in which they are discussing the fact that
2 Silvia Rubio deMolina is, in fact, sending money. And he
3 mentions One World Properties in a deal that he had arranged
4 with her while he was on his trip, the trip that he was
5 returning to when he got arrested.

6 And the agent, if you would like to take a break, he
7 can set up the machine so that you can hear it.

8 THE COURT: Where is the money supposedly being sent?

9 MS. MENZER: To his office here.

10 THE COURT: Does the tape indicate how much money
11 they're talking about?

12 MS. MENZER: It's not that clear, Your Honor, but
13 the fact is, is that there have been allegations made that he
14 does not have the ability, although he has made all these
15 investments, but he doesn't have the ability to gain access to
16 these funds.

17 One of the issues that the defense has not brought
18 up, and I'm curious about it, and I think it's something that
19 has to be resolved especially if the Court's going to consider
20 any sort of release in this plan is, where are these funds
21 going to come from? Because you just heard from Mr. Schwartz
22 just to set this plan up it's well over \$2 million. And we
23 haven't heard, and we did put in our pleading, that it is his
24 obligation at least to say where these monies are going to come
25 from.

1 THE COURT: It's whose obligation? Mr. Anderson's
2 obligation?

3 MS. MENZER: Mr. Anderson's obligation under Nebbia
4 to at least proffer where the source --

5 THE COURT: Under what?

6 MS. MENZER: Under, I cited a case Nebbia,
7 N-e-b-b-i-a. I have a copy of it for the Court.

8 MR. MAN: Your Honor, I can represent what I know
9 about that phone call. Mr. Anderson has been in a position
10 where he's in pretty dire straits. He's lost his money. He's
11 in a tough situation. He needs to hire security and he needs
12 to hire counsel. What he's done is reach out to friends and
13 family and ask them if they have any assets they can
14 contribute, if they would be willing to post their homes as
15 bond, and so forth.

16 He put in a request to Silvia, and they were
17 discussing whether or not she would lend him money for his
18 defense. Ms. Rubio deMolina has chosen not to do that. We
19 have not received any money from her, and that's what I can
20 tell you about that.

21 As per the Nebbia hearing, the Nebbia case applies to
22 what -- the Court's being able to get assurances about the
23 source of funds for a bond. It doesn't allow them to make
24 inquiries into where the money goes to pay for a defense. The
25 issue is where someone's posting a bond for the Court as

1 assurance, the Court needs to have the ability to look behind
2 that money and figure out if is this is money people can simply
3 walk away from, is this a bond people can ignore and be willing
4 to forfeit. It doesn't apply to legal fees.

5 MS. MENZER: Your Honor, I think it would be helpful
6 to take a break and have the agent set up.

7 THE COURT: And I'll read the Nebbia case. One of
8 the thoughts that's crossed my mind from time to time, maybe
9 you can't do this in this kind of a case, is why the government
10 hasn't taken steps to freeze some of his assets.

11 MS. MENZER: Unfortunately, Your Honor, we have to
12 find them. That's been our problem, and that's been Mr. Litt's
13 problem, and that's why he testified the other day. Mr.
14 Anderson, if you've read Agent Kutz's affidavits that we have
15 submitted a number of, over the last few years keeps moving his
16 assets from entity to entity to entity. When we find another
17 one, another one pops up. If you saw how many subpoenas were
18 issued to Mr. Anderson from the grand jury.

19 There also is no forfeiture count in the indictment.
20 Unfortunately for tax charges, we don't have that ability. The
21 government is owed over -- according to the indictment, he's
22 charged with owing over \$200 million to the federal government
23 and to the D.C. government. And there's got to be some way
24 that he needs to be able to say where this money is coming
25 from. When we're talking about posting bond, that's exactly

1 what Mr. Schwartz is saying. He's saying that money is going
2 to be a bond, I'm going to forfeit it. So that case does
3 apply.

4 I think it would be helpful for the Court to hear
5 this conversation, so a break now would probably be
6 appropriate.

7 THE COURT: If somebody posts a bond for him, or puts
8 up their property for him, and he flees despite that fact, and
9 therefore the property, somebody's home or somebody's money is
10 forfeited, if you at some point develop any evidence that Mr.
11 Anderson, or hypothetically Mr. X in my hypothetical, then is
12 paying those people back for the money they lost through the
13 forfeiture of their home or the forfeiture of their bond, I
14 assume that that money is seizable, freezable, or that
15 receiving such funds -- would receiving such funds itself be a
16 crime?

17 MS. MENZER: I haven't researched that issue, but I
18 did find it interesting that the defense, and I guess we could
19 have called them because they are here, but the people that
20 have the money to post their homes weren't called to the stand.
21 I can give you an example.

22 Mr. Kenifeck (phonetic) who I believe is in the
23 courthouse today, he was going to post his home which had
24 \$300,000 equity. Mr. Kenifeck, according to documents that Mr.
25 Anderson has submitted to the civil litigants, owes Gold and

1 Appel millions and millions of dollars. So what's \$300,000 to
2 him? I'm just giving you an example. We don't know behind
3 those things, and I think it's the defendant's burden to at
4 least establish some of it. We're talking about for those
5 people, yes, it's a lot of money. For Mr. Anderson, he told
6 again the Washington Post that he had \$30 to \$50 million.

7 THE COURT: I understand that, but for the people
8 that are posting their homes, if it's a lot of money and he
9 takes steps which causes them to lose their money or to lose
10 their homes, I'm asking you whether or not there are
11 consequences if somebody puts up their home, his mother puts up
12 her home, or somebody puts up a million dollar bond, or a
13 \$300,000 bond, or whatever the number is, shouldn't you be able
14 to tell them, or shouldn't I be able to tell them if he goes
15 away and you lose your home, it is illegal for you to accept
16 reimbursement from him, or we will take it again.

17 There has to be an answer to that question, so the
18 people to whom it matters, to whom \$300,000 or \$500,000
19 matters, even if it doesn't matter to Mr. Anderson, it seems to
20 me we ought to be able to tell them up front that before you
21 put up your home, before you put up your money, you ought to
22 know that if he disappears, you're going to lose your home,
23 you're going to lose your money, and there is no way that he
24 will be able to pay you back no matter where he is, because we
25 we'll take it again from you, or any money that comes into the

1 United States will be frozen, or it is a federal crime, I don't
2 know if it is, I'm asking, to accept money in such
3 circumstances. Is it a fraudulent transfer? I don't know.
4 I'm asking.

5 But it seems to me that one of the concerns -- you're
6 concerned about his fleeing, and because he has loads of money
7 and homes and art and everything else, it doesn't matter to
8 him. But if I believe the people who testified and for whom
9 proffers were made and the representations that were made on
10 his behalf, there are people, friends, business acquaintances,
11 relatives, parents, who do matter to Mr. Anderson. And he
12 ought to know, and they ought to know, if it's a fact, that if
13 he walks away, they will suffer big time. And it would seem to
14 me the government ought to have an answer to that question, or
15 ought to be able to get an answer to that question before this
16 matter is finally resolved.

17 MS. MENZER: I will get you an answer to that
18 question.

19 THE COURT: I think it's a common sense question. I
20 don't know what the law is, which is why I'm putting it on the
21 table. But it seems to me that those who are willing to go out
22 on a limb for Mr. Anderson ought to know the answer to that
23 question pretty definitively. And it's either going to make
24 them step back from the limb, or if they don't, they will at
25 least be forewarned.

1 MR. MAN: I think I can answer some of the questions.
2 One of them is that the Court, in setting the conditions of
3 bond, can set the conditions however you want them to be. If
4 you're requiring them to post their home as security, you can
5 also post the condition that they agree they will not be
6 compensated in the event of flight by Mr. Anderson or
7 remunerated in any way for the loss of the value of their
8 homes.

9 I think all of the -- everyone that we've spoken with
10 about giving the home has understood the consequences of that.
11 No one has been under any delusions that anyone was going to
12 compensate them in the event of flight.

13 But, again, as far as the Nebbia issues go, it really
14 means just identifying the source of funds. If Walter's
15 parents put up their home, you know the source of the home is
16 Walt's parents. If Bart is putting up 25 percent of the
17 revenue he's received and he's getting it up-front, that's
18 Bart's money, it's Bart's 25 percent, and you know the source
19 of that. And that's what Nebbia addresses.

20 These broader questions about where the money is,
21 we've been chasing that from hearing after hearing after
22 hearing. And they tell you about Swiss accounts, we find that
23 there's no money. The accounts are closed, the money belongs
24 elsewhere. The answer to where the money went is that it's
25 gone. We showed you in the papers -- the government claims he

1 made \$435 million, which we think is inflated. We can show you
2 quickly how it all disappeared. He invested money, we can show
3 you the money went, and the companies he invested in for the
4 most part are bankrupt. So the money's gone. That's why after
5 six years of investigating they haven't been able to find the
6 assets. That's why Mr. Litt hasn't been able to find the
7 assets. They're gone.

8 THE COURT: Why don't we take a break and I'll listen
9 to the tape, and then you also should talk about what we're
10 going to do next. Does either side want to submit something in
11 writing, or do we just want to set a date and time where we can
12 have sort of a final argument on this with Mr. Lowell on the
13 phone, and when are we going to do that.

14 (Recess taken)

15 THE COURT: Okay.

16 (Thereupon, an audiotape was played.)

17 MS. MENZER: That's just the part of the
18 conversation about Ms. Rubio, Your Honor. If you would like to
19 hear the rest.

20 THE COURT: I don't know what's in the rest.

21 MS. MENZER: The rest is just more conversation about
22 asking his assistant for things to do, and other things like
23 that.

24 THE COURT: Is there anything anybody wants to say
25 about the audiotape? How do you want to proceed? I have heard

1 all the testimony I'm going to hear. I've got all the exhibits
2 I'm going to get over the course of many days before and after
3 May 17th. Do you want to have an argument? Do you think
4 everybody has already said everything they want to say? Do you
5 want to file anything in writing? What do you want to do?

6 MS. MENZER: Your Honor, I realize you have a lot of
7 exhibits. You've heard our arguments a number of times.

8 THE COURT: Not to mention that.

9 MS. MENZER: There's probably more. I can sum up
10 what the government's argument is if they'd like to do so now,
11 or we can do it by telephone with Mr. Lowell. I believe Mr.
12 Lowell has some suggestions when we can do that. We're
13 available whenever the Court is.

14 THE COURT: Mr. Man?

15 MR. MAN: Your Honor, we'd like to wrap these
16 hearings up as quickly as possible. Mr. Anderson has been
17 incarcerated for three months. We're ready to proceed at
18 whatever pace would be best. I think cumulatively, the Court
19 has received everything that we have to say. If it would help
20 you for us to distill it a little bit by further briefing, or
21 by having some supplemental argument, we'd be happy to do it.

22 THE COURT: It's really up to you all. It's really
23 up to you. I don't know that distilling it, other than making
24 sure I have a copy of the Nibbia case, I'm not sure that
25 distilling it or writing another brief is going to accomplish a

1 whole lot on either side, but if you want to, you may.

2 In terms of oral argument, the real question is
3 whether Mr. Lowell wants to sum up for your side, or whether he
4 wants to let you guys do it, or whether he wants to, and you
5 want to, just leave the record without any further argument.
6 I'm happy to find a time soon when we can do it and get Mr.
7 Lowell on the telephone, if that's what you want to do.

8 MR. MAN: We'd be content to leave the record the way
9 it is. Mr. Lowell's view would be that if we are going to have
10 further hearings, he would like to participate in them, but
11 again his time is limited. He's in trial so he could really do
12 it before trial there or at lunch time, which may not be
13 convenient for anyone. And if that's the case and the Court
14 wants argument, we can provide other counsel to handle that.

15 THE COURT: I don't feel that I need argument. I
16 don't feel that I need argument, so I'm really putting the ball
17 back in your court. If you feel that you and your colleagues
18 who are here, I'm not saying do it this afternoon. If
19 everybody wants to regroup and come back in a day or two, we
20 can all come back to court and have a brief final argument or
21 summation, or we can try to do it at a time when Mr. Lowell is
22 available.

23 And other than the fact that I have a pretty heavy
24 schedule, I'm at your pleasure. Whatever you want to do. I
25 don't want to deprive anybody of the opportunity to sum up

1 their positions, if that's what they want to do, and I don't
2 want to deprive anybody of the opportunity to have the lawyer
3 of their choice sum up their positions, if that's what they
4 want to do. Is it the same time zone?

5 MR. MAN: I think it's an hour behind us,
6 Mississippi.

7 THE COURT: An hour behind us, so he's an hour
8 earlier? An hour later?

9 MR. MAN: An hour later. I'm sorry, they're an hour
10 earlier.

11 THE COURT: An hour earlier. So it's now quarter to
12 four there, which means that if we convene here some day at
13 9:00, it would be 8:00 for him, and presumably before he went
14 to court, or we could do it over a lunch hour. Do you have a
15 particular day in mind, or do you just want to pick one?

16 MR. MAN: We can just pick one, Your Honor. We'd
17 like to do it as soon as possible.

18 THE COURT: If you want to do it 9:00 on Friday, it
19 will be 8:00 for Mr. Lowell. If you want to do it at lunch
20 time on Friday, I can do that. If you want to do it at 9:00 on
21 Monday. Actually, I think I'd prefer Friday, but that's up to
22 you.

23 MS. MENZER: We're available any time, Your Honor.

24 MR. MAN: 9:00 Friday would be fine.

25 THE COURT: Why don't you tell Mr. Lowell to be at a

1 phone at 8:00 on Friday morning, 9:00 our time, and get the
2 phone number, and Ms. Montgomery can get him on the phone.
3 It's very easy. I guess it's very easy so long as we all speak
4 into a microphone Mr. Lowell will be able to hear us.

5 MR. MAN: Okay.

6 THE COURT: I don't know whether or not you were able
7 to work out any arrangements with the jail. The problem is
8 that to work out special arrangements often means requiring a
9 separate mode of transportation from other prisoners at a
10 different time from the other prisoners. So the question also
11 is whether or not if we're going to do it that early in the
12 morning, it's going to affect, once again, Mr. Anderson's
13 wake-up call. And I don't know whether if we did it at another
14 time it would be easier. I just don't know. But maybe you've
15 looked at that.

16 And the other question is Mr. Anderson could waive
17 his presence for the argument if he wanted to, but Mr. Anderson
18 seems to be pretty actively involved so he may not want to
19 waive his presence. But that's his call, not yours. It's his.
20 Why don't you and Mr. Kim and Mr. Anderson talk.

21 (Mr. Man and Mr. Kim conferred with the defendant)

22 MR. MAN: Mr. Anderson would like to waive his
23 appearance at the Friday hearing.

24 THE COURT: Mr. Anderson, why don't you stand up for
25 a second. I just want to hear it from you. Are you prepared,

1 and do you want to waive your appearance for the oral argument?

2 THE DEFENDANT: I do want to waive it.

3 THE COURT: Okay. It's just going to be legal
4 argument. I'm not going to hear any more testimony, proffers,
5 it's going to be lawyers arguments and I hope it will be brief.

6 THE DEFENDANT: I may ask him to tape it so I can
7 review it later, but I don't want to wake up at two in the
8 morning just to hear ten minutes of the telephone call.

9 THE COURT: Just to hear Mr. Lowell and Ms. Menzer
10 again. It's hardly worth it.

11 THE DEFENDANT: It may affect my freedom, but --

12 THE COURT: I didn't mean to make light of it. It
13 may affect your freedom, but it's not testimony, it's not
14 evidence.

15 THE DEFENDANT: Right. I'm willing to waive it.

16 THE COURT: Okay. You can sit down. Mr. Man and
17 Mr. Kim, if you want to bring a tape recorder in to tape it, I
18 guess -- tell Ms. Montgomery or tell my secretary that you're
19 going to bring a tape recorder in, and we'll do a memo to the
20 court security officers to allow you to bring a tape recorder
21 in on Friday morning. Oh, you don't need it any more. It's
22 only for cameras?

23 THE CLERK: They haven't been requesting it.

24 THE COURT: I'll tell my secretary to talk to people
25 just in case. Okay. So Friday morning at nine, oral argument,

1 and I think both sides should try to be brief because we have
2 been over this ground many times in many different ways. I
3 found it useful to hear it through live testimony this time
4 instead of just the documents, and to allow both sides a chance
5 to cross-examine people they wanted to cross-examine.

6 Other than the Nebbia case -- if there are any other
7 cases that you want to cite during this argument, they're
8 probably in your briefs, but why don't I say this. If there
9 are any key cases you want bring me copies of, fine. Or if
10 there are reported cases, just give me the cites so I don't
11 have to search them in the briefs, find them again in the
12 briefs while you're in the midst of the oral argument.

13 And tell Mr. Lowell, I know he's got other
14 obligations as well, we all do, that I think that the arguments
15 on both sides can be brief. I'm not going to cut anybody off,
16 but I think we have been over some of this ground before, and I
17 think highlighting what's important, making your strongest
18 arguments is the best thing to do.

19 Anything else? Okay. So I'll see you at 9:00 on
20 Friday.

21

22 (Proceedings concluded.)

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CERTIFICATE

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


Linda L. Russo, RPR
Virginia CCR No: 0313102