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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

THE HONORABLE STEPHEN V. WILSON, U.S. DISTRICT JUDGE PRESIDING

THE UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	No. CR 2013-00062-SVW
)	
SHERMAN MAZUR,)	
)	
Defendant.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
MONDAY, MAY 20, 2013

APPLICATION FOR REVIEW/RECONSIDERATION OF ORDER SETTING
CONDITIONS OF RELEASE/DETENTION

DEBORAH K. GACKLE, CSR, RPR
United States Courthouse
312 North Spring Street, Room 402A
Los Angeles, California 90012
(213) 620-1149

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APPEARANCES OF COUNSEL:

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ALSO PRESENT: JEREMY TARWATER, FBI AGENT

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1 **LOS ANGELES, CALIFORNIA; MONDAY, MAY 20, 2013; 11:30 A.M.**

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3
4 THE CLERK: Item 1, CR 2013-00062-SVW, USA v. Sherman
5 Mazur.

6 Counsel, please state your appearances

7 MR. BOWMAN: Good morning. Jim Bowman and Ariel
8 Neuman on behalf the United States. Present is FBI Special
9 Agent Jeremy Tarwater.

10 MR. HARRIS: Good morning, Your Honor. Marc Harris
11 on behalf of Sherman Mazur, present, in custody.

12 THE COURT: This is the time for review of the order
13 of Magistrate Judge Chooljian, and I'll hear from you,
14 Mr. Harris, if you wish.

15 MR. HARRIS: Thank you, Your Honor.

16 Your Honor, may my client stay seated at counsel
17 table?

18 THE COURT: Yes.

19 MR. HARRIS: Your Honor, in a very brief nutshell,
20 just about everything the government said to Magistrate Judge
21 Chooljian in connection with the original motion for detention
22 was wrong. They described the case as a massive international
23 pump and dump scheme; they said that the defendant opened
24 several -- excuse me -- runs several fraudulent deals each
25 year; that the present scheme defrauded thousands of victims;

1 that the defendant put millions in profits into his own pocket
2 or into hidden overseas accounts; that they had, quote,
3 overwhelming evidence of the scheme and these transactions;
4 that the likely sentence for the defendant was life in prison.
5 They calculated his offense level at level 45; and that they
6 also said that he had little, if anything, tying him to the
7 Central District. All of that was wrong, Your Honor. And as
8 we've noted in our papers -- we called them out on each one of
9 these issues -- we pointed out that there is no pump and dumb
10 scheme here; that the likely sentence isn't life in prison;
11 their Sentencing Guidelines were all wrong; he does have
12 substantial ties to the Central District: His kids are here --
13 three of his four kids live here full time, his grandkids are
14 here, his wife is here, all of his ties are here.

15 The idea that the evidence is overwhelming was
16 aspirational, at best. If the government wants to think they
17 have a strong case, that's fine, but they shouldn't be able to
18 have a person detained for 16 months pending trial in a
19 sophisticated fraud case in which his presence and assistance
20 is necessary to defend the case.

21 THE COURT: What strength should be given to the
22 factor regarding the evidence the government has? In other
23 words, at this juncture. You seem to be emphasizing that
24 point, and what is the legal argument? In other words, how
25 should the court view your argument about the weight of the

1 evidence?

2 MR. HARRIS: The court says that -- the Ninth Circuit
3 authority says that it's to be considered, but it's the least
4 important factor.

5 THE COURT: That was my understanding; otherwise,
6 there would likely be a fairly full-blown trial on every bail
7 hearing, and that can't be. I mean, certainly that's a factor,
8 but here, for example, just staying for the moment with your
9 argument, the government has snippets of the wiretaps, and
10 you've examined those in the pleadings, and while there may be
11 explanations for them -- and very often when wiretaps are
12 edited, there are other parts of the wiretaps that explain more
13 fully the parts that are quoted; nevertheless, the parts that
14 are extracted do have a ring of incrimination.

15 MR. HARRIS: Well, a ring. That's the problem here,
16 that -- on their face.

17 THE COURT: What parts of the wiretaps would you
18 offer that would make those that are extracted appear more
19 benign?

20 MR. HARRIS: There's one example, Your Honor, and
21 then I also want to get back to the court's question about why
22 I'm stressing this.

23 THE COURT: Yes.

24 MR. HARRIS: One example: They cite three times in
25 their opposition brief a quote by the defendant that he was

1 "playing the stock game" for 15 or 20 years, and they cite that
2 for evidence of the fact that he is a serial stock manipulator,
3 that he is an ongoing danger to the community, that he has been
4 doing this and continuing to do this for decades since he was
5 released from prison in connection with the prior. That's a
6 quote. Those are words they take.

7 Well, on their face, they don't have the ring of
8 anything, but when you look at the context -- and I took the
9 time, and it may have been a little too much time, in the reply
10 brief to really layout what was happening in that conversation.
11 The defendant is talking to someone who is purported -- he is
12 an informant, but he is purporting to have an interest in
13 investing in the company that the defendant is trying to help
14 grow, and at the beginning of the call, the person who is
15 introducing them says to Mr. Mazur, Sherman, why don't you give
16 him a little bit of your background, and he begins from
17 college -- maybe even high school; then college; getting is
18 accountancy degree; working as an accountant at a major firm;
19 going to law school, moving to California. He goes through his
20 entire history. He worked for Drexel back in the day putting
21 together real estate portfolios, in great detail about his
22 history. Then at that point he says -- and then -- he says, I
23 was retired for a bit, and then I came back and I started
24 investing in companies and "playing the stock game" for 15 or
25 the last 20 years. And then he goes on to talk about how he

1 had a bond fund and so on.

2 And then the discussion turns to this investing in
3 companies. How does that work? Well, it's basically a venture
4 capital model, and he describes how he takes these small
5 startups, tries to get money in, seed capital and grow the
6 numbers. And it's in that context that this quote -- these
7 four words, "playing the stock game," is dropped in there. Has
8 nothing to do with stock manipulation, has nothing to do with
9 the pump and dumb scheme, but the words, when picked out by the
10 government and put with its gratuitous characterization of "He
11 admitted that he's a stock manipulator because he said he's
12 been playing the stock game," it's just wrong. It's not a fair
13 characterization; it's not the kind of thing the government
14 should be doing in a plea --

15 THE COURT: How would you deal with the other factor,
16 that is, flight risk? You have mentioned his ties to the
17 community, family and so forth, but the government also argued
18 that he claimed to have substantial assets overseas, most
19 noteworthy, I think, was a hoard of copper powder; and the
20 argument is that given the fact that he has a prior -- a prior
21 felony fraud conviction, a conviction here would make him
22 eligible for a substantial sentence if that occurred, given his
23 age and so forth. There's an incentive not to be here, and the
24 government also noted that the electronic monitoring has its
25 limits and cited a number of cases where there was electronic

1 monitoring, and it didn't prove an adequate deterrent.

2 So how would you argue that prong of the factors?

3 MR. HARRIS: Well, Your Honor, just about everything
4 that we're arguing about here -- or that they've raised and
5 we've countered goes to the flight risk. They raised danger to
6 the community, but it's really not a -- it's a frivolous claim,
7 and I can address that. Really everything goes to flight.

8 THE COURT: Danger to the community would mean here
9 that his behavioral pattern is such that he would have -- to
10 borrow a phrase from a different discipline -- an irresistible
11 impulse to keep on doing what the government says he had been
12 doing. So you say that's not likely because, obviously, he'll
13 be watched closely, even if he had that inclination.

14 MR. HARRIS: Well, yes, but what -- also what I'm
15 saying is that the pattern -- the court properly characterized
16 their position -- there's no pattern. The pattern consists of
17 a 20-year-old conviction. That is the pattern. They called an
18 unbroken string of criminal conduct; they called an established
19 and longstanding criminal record. It's not. It's old.

20 THE COURT: You may have a point in the sense that
21 the gap between the tax conviction and today, I think, in large
22 part, are the government's allegations that the defendant
23 avoided efforts of the bankruptcy trustee.

24 MR. HARRIS: They say that.

25 THE COURT: That's not criminal activity. I mean, in

1 the sense that it resulted in a conviction. They're describing
2 it as a type of criminal activity in terms of avoidance.

3 MR. HARRIS: They do say that.

4 THE COURT: Yes.

5 MR. HARRIS: On the flight issue, though, Your Honor
6 the -- this ties back to the court's very first question -- why
7 are we talking about the strength of the case? Because we
8 shouldn't have to have a mini trial in this context. We're
9 talking about it because that has become the centerpiece of
10 their flight-risk argument, that he is a flight risk because
11 our case is overwhelming, and he's going to have incentive to
12 flee; and I have to take that on and say the case isn't
13 overwhelming, the case is not even what they allege it to be,
14 and when I said that in my motion, putting the question to
15 them, where is the evidence that supports this overwhelming
16 case, and they blinked, Your Honor. They didn't come up with
17 anything. They moved on to something else.

18 THE COURT: Let me get their response.

19 How do you respond? In other words -- I've said this
20 before, so it's not an effort to be cute, but there is this
21 expression I like very much from a singer of some years ago
22 named Pat Benatar. She had a song called "Hit me with your
23 best shot," so hit me with your best shot.

24 MR. BOWMAN: Yes, Your Honor, in terms of the
25 strength of the evidence against the defendant?

1 THE COURT: Yes.

2 MR. BOWMAN: Yes, Your Honor.

3 THE COURT: Give me your best Pat Benatar response.

4 MR. BOWMAN: I will try, Your Honor. I will focus --
5 and this is what we did, really, in our opposition brief, is we
6 focused on one meeting -- or one series of meetings and calls
7 between the informant and Mr. Mazur, and the defense then said
8 we abandoned all the other evidence in the indictment; we have
9 not done that. We simply focused, for the benefit of the court
10 and for clarity purposes, really into one series of meetings,
11 and here's what was discussed.

12 THE COURT: Is that something that I should refer to
13 once again in your opposition?

14 MR. BOWMAN: Yes. Your Honor.

15 THE COURT: What page would that be?

16 MR. BOWMAN: Sorry, Your Honor.

17 THE COURT: There is a section here where you have
18 a -- I think it's page four.

19 MR. BOWMAN: Three through four.

20 THE COURT: Yeah. Let me once again just review
21 that. As I read the quotations -- these are all quotations,
22 correct?

23 MR. BOWMAN: Yes, Your Honor.

24 THE COURT: The last one seems the most clearly
25 incriminating. Defendant explained -- I'm now quoting --

1 "Defendant explained that they had to be careful how they
2 liquidated the stock so they would not attract the scrutiny
3 from the SEC."

4 MR. BOWMAN: Your Honor, that is not a quote. That
5 particular portion is a paraphrase. I believe --

6 THE COURT: What is the quote then?

7 MR. BOWMAN: With the court's permission, I believe
8 that the quote was a discussion about how, if they trade too
9 quickly, the SEC will get suspicious because -- in the context
10 of discussing how quickly they should trade or not trade in
11 dumping their shares, he says, "Yeah, if the company" --

12 THE COURT: They never use the word "dumping," do
13 they?

14 MR. BOWMAN: They use the word "liquidate."

15 THE COURT: Yes.

16 MR. BOWMAN: Where they would liquidate their shares.
17 He says, "You have to be careful because if one day the SEC
18 comes looking and they say, Every deal you're in, in 30 days it
19 dies, you're not looking for an SEC problem."

20 So he is trying to say -- and Mr. Kaplan said, "If
21 the SEC ever came looking, management would never say that
22 we're the bad guys, and then they laughed and pointed to their
23 co-conspirator, Colin Nix, who's the one who actually does the
24 sale of the shares.

25 THE COURT: And why is it that they're telling the

1 informant that if he joined the deal, he would be paid a
2 portion of Nix's share? What is the informant going to do?

3 MR. BOWMAN: Your Honor, maybe with the court's
4 permission, if I could provide a little bit of context for this
5 meeting.

6 THE COURT: Yes.

7 MR. BOWMAN: Again, this is simply one example. I
8 can then talk about the previous deal --

9 THE COURT: I'm having trouble hearing you; you're
10 speaking so quickly.

11 MR. BOWMAN: I'm sorry.

12 Your Honor, I can give context to this particular
13 meeting. This was a planned meeting -- or a planned
14 manipulation campaign that didn't take place because they were
15 arrested before it could be carried out. After discussing this
16 one, I can discuss the GenMed campaign, which was actually
17 carried out, where you see some of the things that are
18 discussed in this meeting played out in that particular
19 context.

20 So the informant was an individual with -- that they
21 believed to have a fair amount of money, hedge fund manager,
22 who Colin Nix had represented to them had helped with other
23 manipulation campaigns in the separate indictment, because
24 Mr. Nix was charged in both cases.

25 THE COURT: When you say "manipulation," that's a

1 word you're using, not a word that was used.

2 MR. BOWMAN: Your Honor, that is correct. It is
3 important to be careful. They say "deals" usually, talk about
4 particular deals.

5 THE COURT: Yes.

6 MR. BOWMAN: Or "campaigns." They never sit down and
7 say, Okay, here's our illegal fraud scheme. Let's -- hear's
8 what we're going to do. Instead they say --

9 THE COURT: People don't speak that way, do they:
10 Here's our legal fraud scheme or illegal fraud scheme?

11 MR. BOWMAN: Exactly, Your Honor, but here's what
12 they do say. They say, Look, we have company control. That is
13 important to someone coming in being willing to give money to
14 them to assist in their campaign because if the company is not
15 onboard, then the company can do things that don't -- that are
16 contrary to their effort to move up the price of the stock.

17 THE REPORTER: To what?

18 MR. BOWMAN: To move up the price of the stock. If
19 the company is not onboard, they may not be effective in
20 artificially inflating the price of the stock. So it's very
21 important for someone putting in money that they be reassured
22 that they have company control. And they say, "The CEO is a
23 long-term, long-time friend of ours, so we installed him."
24 They're telling this informant, We have control over the
25 company. You don't have to worry about that. Now, the defense

1 said that is not true, that was never said; they never said
2 they installed him because he is our friend, but that is the
3 quote: "The CEO is a long-term, long-time friend of ours, so
4 we installed him."

5 So they're telling the informant company control is
6 not going to be a problem; they're onboard. Then the next
7 question is you have control over all the shares? Because,
8 Your Honor, if I'm going to do a pump and dump scheme and I
9 have 10 million shares and Your Honor has 10 million shares and
10 I move the price up artificially, you're going to look at it,
11 if you're not in the scheme, and say, Wow, this stock's going
12 up --

13 THE COURT: Let me just ask this: In the indictment,
14 how many companies are alleged to have had their stock
15 manipulated and over what period of time?

16 MR. BOWMAN: Your Honor, the period of time, I
17 believe, is from mid 2009 through January 2013, and the overt
18 acts focus on just two companies because those are the
19 companies during which we are on the wiretap when either
20 planned or carrying out what we believe to be -- or allege to
21 be manipulation campaign; but the allegations are not limited
22 to those two companies, and so the defense has tried to
23 downplay --

24 THE COURT: When you say "the allegations," stock of
25 other companies are also alleged in the indictment to have been

1 manipulated?

2 MR. BOWMAN: Yes, Your Honor.

3 THE COURT: How many?

4 MR. BOWMAN: Your Honor, I don't have the -- I don't
5 think we allege a specific number. There is a call where
6 Mr. Mazur is talking with Mr. Kaplan and references other
7 companies and says, We'll have five going at once and lists the
8 names of those companies. A prior deal, Matech, where they
9 actually got the bulk of their profits, took place within that
10 time scheme.

11 THE COURT: What was the price swing on the stock of
12 the companies that were alleged in the indictment?

13 MR. BOWMAN: Your Honor, Biostem was a deal that they
14 were planning, and so it had not taken place, and so the overt
15 acts in the indictment relate to the planning calls. For
16 GenMed, which was the deal that was carried out while they
17 were -- while we were up on the wiretap, there's two things to
18 look at: It's not simply the price but the liquidity, because
19 if no one is trading in the stock and I hold all the free
20 trading shares, I can make the price whatever I want. I can
21 make the price \$2, but that doesn't mean it's worth \$2.

22 THE COURT: But what amount of money did the
23 defendants extract from the trading?

24 MR. BOWMAN: I believe from the GenMed deal, all of
25 the co-conspirators collectively received approximately

1 2 million from selling shares of GenMed stock, which eventually
2 went down to --

3 THE COURT: How many defendants were there?

4 MR. BOWMAN: Your Honor, for the GenMed one in
5 particular, Mr. Kaplan, Mr. Mazur, Mr. Nix, I believe also
6 Mr. Harris was involved in the promotion of that campaign.

7 MR. HARRIS: Not me, Your Honor.

8 MR. BOWMAN: Sorry. Correct. There is another Mark
9 Harris, a defendant in the case, which leads to some confusion.
10 Mr. Harris here has no exposure.

11 MR. HARRIS: Yet.

12 MR. BOWMAN: Your Honor, what is significant is that
13 after they stopped promoting that company, the stock price
14 dropped down to two cents; there was no market for that stock.
15 The company received no revenue in 2011 and \$800 of revenue in
16 2012. The whole part of this is that once they stop promoting
17 the company, it drops to nothing.

18 THE COURT: But this is only one --

19 MR. BOWMAN: It's only one --

20 THE COURT: -- one company, but it seems that the
21 indictment alleges the manipulation specifically of two
22 companies, the stock of two companies, one of which was
23 Prospective and one with Gen -- what was it?

24 MR. BOWMAN: GenMed Your, Honor.

25 THE COURT: -- GenMed, which actually, according to

1 the indictment, occurred, and it occurred over what period of
2 time?

3 MR. BOWMAN: Your Honor, I believe GenMed was in
4 early 2011 through the end of fall of 2011.

5 THE COURT: Early 2011 through the fall of 2011, so
6 it was about --

7 MR. BOWMAN: Yes, Your Honor.

8 THE COURT: -- about seven months, eight months.

9 MR. BOWMAN: Yes, Your Honor.

10 THE COURT: And the defendants extracted illegally,
11 so you allege, \$2 million.

12 MR. BOWMAN: Yes, Your Honor.

13 MR. HARRIS: Your Honor, on that, if I may add one
14 point.

15 THE COURT: Yes.

16 MR. HARRIS: I believe -- and we put this in our
17 pleadings and the government hasn't responded -- that Mr. Mazur
18 is accused of selling less than \$100 worth of GenMed stock.

19 MR. BOWMAN: I can --

20 THE COURT: Is that true?

21 MR. BOWMAN: That's actually not true, Your Honor.

22 THE COURT: What is the fact as you see it?

23 MR. BOWMAN: What the defense did in reaching that
24 number is they simply looked at trades that were provided in
25 the overt acts. The overt acts are not a summary of our

1 evidence in the case, it's simply different instances of
2 trading provided as examples to show the conduct during
3 different time periods.

4 THE COURT: So what did the defendant -- this
5 defendant gain from the GenMed stock?

6 MR. BOWMAN: By my recollection, Your Honor, it would
7 be approximately -- his take -- or London Finance Group,
8 because he doesn't trade in his own name -- was approximately
9 \$1 million of those 2 million.

10 THE COURT: I see.

11 MR. BOWMAN: And the indictment specifically alleges
12 that for the campaigns that were carried out during the time
13 period of the scheme alleged in the indictment, that the
14 proceeds from those campaigns were over \$13 million. Now, the
15 overt acts focus on two companies because we were on wiretaps
16 during those two campaigns, but the government's case is not
17 limited simply to the two during which we were on wiretaps --

18 THE COURT: What makes up the evidence on the other
19 transactions?

20 MR. BOWMAN: One other transaction that I would focus
21 on, Your Honor, would be Matech, which was probably the largest
22 campaign they did during the time period that we allege in the
23 indictment, and there you can see the trading records and see
24 who sold the shares, who profited. We have that analysis. You
25 also see historical discussions.

1 THE COURT: So is it -- with regard to the
2 transactions, other than those specifically described in the
3 indictment, a case of circumstantial evidence showing a trading
4 pattern that the government alleges mirrors the pattern of the
5 transactions in the indictment?

6 MR. BOWMAN: Your Honor, I would say it is that, with
7 additional evidence. It is --

8 THE COURT: Are there any witnesses?

9 MR. BOWMAN: Your Honor, on the wiretaps and in
10 recorded meetings with the informant, the defendants, including
11 defendant Mazur, referenced that they did the Matech campaign.
12 They reference back to Matech OneFi. They said, We did that
13 deal. So they acknowledge the fact that they had done that
14 deal. They reference different promoters who were involved in
15 that deal who had been involved or brought in to move up the
16 price of the stock. So it's not simply just looking at trading
17 records and saying, See that pattern. That's the same with
18 what they did with the ones allege in the indictment. It's
19 more than that.

20 THE COURT: What is the more?

21 MR. BOWMAN: The more is the defendant's own
22 statements and the statements of other co-conspirators in the
23 case who say, Oh, that was Mazur's deal. He brought me in to
24 do x, y and z, or Mazur saying, Yeah, Matech was my deal. We
25 did it four times.

1 THE COURT: We did it "four times" meaning what?

2 MR. BOWMAN: Meaning we moved up the price and sold
3 the shares and started again, different promotion -- it's in
4 the context of discussing the promotion campaign they planned
5 to do for Biostem.

6 So it's not as strong as the evidence for GenMed or
7 for Biostem, but it would be inaccurate to say that the
8 allegations or this defendant's exposure is limited solely to
9 evidence that is contained or described in the overt acts of
10 the indictment, which is simply meant to be a charging document.

11 THE COURT: What about the flight risk? How do you
12 argue that?

13 MR. BOWMAN: We think it's important to look at who
14 this defendant is. That is one of the factors in assessing
15 flight risk, and the government has not said he has a long and
16 established criminal record, the government has said he has a
17 long and established record of concealing assets. You look at
18 his --

19 THE COURT: He does have a criminal conviction for
20 fraud.

21 MR. BOWMAN: He does, Your Honor. And, in fact, he
22 was charged with 70 counts of fraud related to concealing
23 assets from the IRS and from bankruptcy. He served six years
24 for that conviction, and after he got out -- it's instructive
25 to look at what he did when he got out. He was under

1 bankruptcy at the time. The bankruptcy lasted nearly 17 years,
2 and in that time, not just the bankruptcy trustee or the
3 bankruptcy court, but the Ninth Circuit found fraudulent
4 transfers of assets from the defendant to the other people.

5 THE COURT: What -- do you have any indication of
6 what his income was in those years? Did he have a job?

7 MR. BOWMAN: Your Honor --

8 THE COURT: Because you mentioned in your opposition
9 that he lived in an \$11,000 a month condo on Wilshire
10 Boulevard, and he drove a Bentley.

11 MR. BOWMAN: That's correct, Your Honor --

12 THE COURT: So is that consistent or inconsistent
13 with what his reported financial condition was?

14 MR. BOWMAN: Your Honor, my understanding of the
15 bankruptcy was that they were not trying to acquire current
16 income but instead assets that had existed at the time the debt
17 was incurred. So their interest was historical. The interest
18 of the IRS, however, which was attempting to collect millions
19 in back taxes, interest and penalties, was prospective, and
20 they looked for income that the defendant had.

21 THE COURT: Did he own the Bentley, or was it --

22 MR. BOWMAN: The Bentley was in the name of Scoff,
23 LLC; his bank account was in the name of RTO Solutions.

24 THE COURT: How do you know that -- was it Scoff?

25 MR. BOWMAN: Scoff, LLC, Your Honor.

1 THE COURT: How do you know -- was that an entity
2 that the defendant controlled?

3 MR. BOWMAN: Your Honor, my understanding is that
4 that was an entity in the name of Julia Vaccina, his
5 then-girlfriend, his now-wife.

6 THE COURT: Well, I mean, how do you make the
7 connection? You argue that he drove a Bentley. I mean, you
8 know, I could drive a Bentley if someone allowed me to.

9 MR. BOWMAN: That's correct.

10 THE COURT: What is the point?

11 MR. BOWMAN: I think you look at the overall pattern.
12 His -- at the same time that he is claiming to the IRS he makes
13 \$1,000 a month, currency transaction reports show that he is
14 doing hundreds of thousands of dollars in transactions at
15 casinos in Las Vegas. On recorded calls, his --

16 THE COURT: What income is he showing in these years?

17 MR. BOWMAN: Your Honor, I don't believe he is
18 showing income, personal --

19 THE COURT: Have you looked at his tax returns?

20 MR. BOWMAN: I'd have to talk with the IRS about
21 whether I'm able to disclose information about his tax return
22 information in court.

23 THE COURT: Why can't you? What is the prohibition?

24 MR. BOWMAN: I think, Your Honor, tax returns have
25 certain privacy restrictions.

1 THE COURT: Even in a criminal case like this?

2 MR. BOWMAN: Yes, Your Honor. That is my
3 understanding.

4 But, Your Honor, I think really the focus is this is
5 who is at least telling the IRS in response to inquiries
6 related to the lien --

7 THE COURT: But you're not telling me what income he
8 reported in the relevant time frame and comparing that to how
9 he lived, you're telling me that his girlfriend, now wife, owns
10 the Bentley.

11 What income does she have?

12 MR. BOWMAN: Your Honor, I don't know Ms. -- my
13 understanding is that the money that goes into Scoff comes from
14 the sale of stock.

15 THE COURT: Why don't you know more about this? I
16 mean, I'm not necessarily agreeing with Mr. Harris' conclusion,
17 but you don't seem to have as much of a grip on this as I would
18 expect. I mean, in other words, it's not my position to be
19 moved by generalities unless they have some support.

20 Now, the defendant can't deny a serious criminal
21 conviction, and that is a factor, and it is true that the
22 charges are serious and the weight of the evidence is a less
23 important factor; but some of the things that you're saying are
24 not as supported as they might be.

25 MR. BOWMAN: Your Honor, I think --

1 THE COURT: Why wouldn't you, for example, have
2 submitted in camera the tax information?

3 MR. BOWMAN: I believe we probably should. I believe
4 that if we can obtain a waiver from the defendant to provide
5 that information or otherwise apply ex parte to do that, I
6 think we would like to.

7 THE COURT: Well, I mean, aside from his prior
8 conviction and the seriousness of the charges, you're
9 essentially saying that he spent the last decade avoiding the
10 bankruptcy trustee, and he has lived a high life.

11 MR. BOWMAN: Yes, Your Honor.

12 THE COURT: But you have to more than tell me he
13 drove a Bentley that was in someone else's name.

14 MR. BOWMAN: Let me give more specifics on the IRS
15 and the lien. The IRS calculated the amount of back takes that
16 he owed as high as 70 million. In response to inquiries to the
17 defendant and to the entity that he worked for -- or worked
18 with, the predecessor to London Financial Group, the response
19 was that he made \$1,000 a month as a financial analyst at that
20 firm.

21 THE COURT: What is the date of that disclosure?

22 MR. BOWMAN: I believe that was approximately -- and
23 this is from memory, Your Honor -- I believe 2005, 2006, at the
24 same time that he was spending hundreds of thousands of dollars
25 in Las Vegas according to the currency transaction reports.

1 THE COURT: What is the support for that? The
2 records of the hotels?

3 MR. BOWMAN: Your Honor, yes, currency transaction
4 reports are filed by the casinos.

5 THE COURT: And what is your information about his
6 reported income from 2006 to the events in this case and his
7 expenditures?

8 MR. BOWMAN: Your Honor, I can address the ladder.
9 As I addressed before, in order to provide the information to
10 the former, I believe that I would need to obtain a waiver or
11 file in camera, which I'm happy to do.

12 Regarding his expenditures, the government can trace
13 hundreds of thousands of dollars into accounts that he
14 controlled from stock sales, and there's discussions --

15 THE COURT: Stock sales in the --

16 MR. BOWMAN: For example, from GenMed, Your Honor.

17 THE COURT: I see. So you're saying that the
18 profits, the approximately \$1 million you claim he received
19 from GenMed, went into a bank account that he controlled.

20 MR. BOWMAN: Yes, Your Honor.

21 THE COURT: Is that right?

22 MR. BOWMAN: Yes, Your Honor.

23 THE COURT: How did -- what bank account was it, and
24 what is your evidence that he controlled it?

25 MR. BOWMAN: Your Honor, it goes into various

1 accounts. It goes -- because you can't have too much stock in
2 the name of one entity, so it's broken down --

3 THE COURT: How do you tie up the defendant's control
4 of those bank accounts?

5 MR. BOWMAN: Because you see first the entities that
6 control the LLCs that are selling those stocks are the
7 defendant's children, which a former employee has said from the
8 company -- two former employees from the company have said that
9 he controls entities in the names of his children. You see
10 transfers from the stock sales in those LLC accounts into bank
11 accounts that then go to RTO Solutions --

12 THE COURT: Who?

13 MR. BOWMAN: RTO Solutions, where then there are
14 personal expenditures out of that account for the benefit of
15 Mr. Mazur.

16 THE COURT: To what extent? Who's the signatory to
17 the RTO account?

18 MR. BOWMAN: I believe Mr. Mazur, and it may also be
19 his wife, Your Honor, or his assistant, Ms. Guerrey.

20 THE COURT: Is that something you note --

21 MR. BOWMAN: I know Mr. Mazur is a signatory on the
22 account, Your Honor.

23 THE COURT: You're saying that the profits from the
24 GenMed transactions were nominally made by the LLCs controlled
25 by his sons and that these LLCs deposited the monies to this

1 RTO account.

2 MR. BOWMAN: Some of the funds, Your Honor --

3 THE COURT: How much of the funds?

4 MR. BOWMAN: I don't know how much specifically for
5 GenMed, Your Honor. I don't know how much went into RTO
6 Solutions. Some of the proceeds also went to the defendant's
7 partner, Mr. Ari Kaplan. He controlled other LLC entities --

8 THE COURT: How much approximately went into the RTO
9 account that the -- you say the defendant was a signatory to?

10 MR. BOWMAN: I don't know that.

11 THE COURT: If money went into the RTO account and if
12 the defendant had control over that account, wouldn't that be a
13 fund that the trustee should get?

14 MR. BOWMAN: Your Honor, my understanding of the
15 bankruptcy law is that that actually would not be a fund that
16 the bankruptcy trustee would get because the bankruptcy
17 trustee's inquiries is historical assets that existed at the
18 time the --

19 THE COURT: What about the IRS?

20 MR. BOWMAN: The IRS, that would be, Your Honor, and
21 actually the IRS ended up seizing funds from that account at
22 the time of the arrest.

23 THE COURT: How much did they seize?

24 MR. BOWMAN: I believe approximately \$300,000, Your
25 Honor.

1 THE COURT: Do you have any response to that?

2 MR. HARRIS: Yes.

3 With respect -- I'll start at the end -- the RTO
4 account is Mr. Mazur's account. The IRS did seize money.
5 That's going to be a battle for other day because that IRS lien
6 has expired or been discharged in bankruptcy, but even the --
7 Mr. Bowman's statement just now about that account --

8 THE COURT: Wait a second. Are IRS ever discharged
9 in bankruptcy?

10 MR. HARRIS: Yes, Your Honor.

11 THE COURT: They are.

12 MR. HARRIS: I believe --

13 THE COURT: Maybe the fraud penalty that is never
14 discharged.

15 Was there a fraud penalty in this case?

16 MR. HARRIS: I know that the underlying taxes were
17 about \$12 million, and it's grown to 73. I don't know how much
18 of that is interest versus penalties but obviously quite a bit.

19 THE COURT: My recollection is that there are certain
20 types of penalties that are never dischargeable in bankruptcy,
21 tax penalties, but I don't know.

22 Go ahead.

23 MR. HARRIS: Again, that is -- may be for another
24 day, but it goes to -- there's several things that Mr. Bowen
25 said about the strength of the case that I could take issue

1 with, and I will take -- point out a few of them; but we're not
2 here to prove Mr. Mazur's innocence today. There is going to
3 be a trial in this case --

4 THE COURT: Let's start with this: Why did his sons
5 have LLCs and why did these LLCs trade the shares of GenMed and
6 why did those profits go to the defendant's account? Why
7 didn't they go to the sons' accounts?

8 MR. HARRIS: I don't know that they did go to -- from
9 the children. It's not just the sons, daughters as well. The
10 kids had LLCs, and as far as I know --

11 THE COURT: How old are the children?

12 MR. HARRIS: They are adults, Your Honor.

13 THE COURT: So why -- if they're trading stocks, why
14 are they then depositing the profits of those trades into their
15 father's account?

16 MR. HARRIS: I don't know that they are.

17 THE COURT: The government said they --

18 MR. HARRIS: I don't believe that that's the case.
19 I've not analyzed the financial records, but I believe that the
20 LLCs that were in the names of the children own stock and
21 traded stock.

22 THE COURT: One thing I do need: I've read the
23 pleadings, but somehow or other I don't have the last
24 recommendation of the Pretrial Services.

25 Was there one?

1 MR. BOWMAN: I don't believe for this hearing, Your
2 Honor. The last recommendation before Judge Chooljian was for
3 detention.

4 THE COURT: Let me see that recommendation.

5 MR. BOWMAN: Your Honor, we're not allowed to keep
6 the reports.

7 THE COURT: Why is that? I don't have it here.

8 THE CLERK: It might be in the file.

9 MR. HARRIS: We've served Pretrial with all the
10 papers, Your Honor, but we've not seen a recommendation either
11 since the original hearing --

12 THE COURT: I want to see the original
13 recommendation. Where is that? Usually I have that.

14 The recommendation was for detention, correct?

15 MR. HARRIS: That is my understanding. Yes, Your
16 Honor.

17 (Pause in the proceedings)

18 MR. HARRIS: It was indeed for detention, and I would
19 submit -- and the court will see when the report is
20 delivered -- that it relies heavily on several of the
21 allegations that the government made below that, again, it's
22 abandoned --

23 THE COURT: What about Judge Chooljian? You're
24 seeking to have me overturn her ruling. This is a de novo
25 review, of course, but what is it that you claim she relied on

1 erroneously?

2 MR. HARRIS: It wasn't her error, it was the
3 government putting forward inaccurate and misleading
4 information that she relied on.

5 THE COURT: Same set of arguments they're making
6 today?

7 MR. HARRIS: They were different then; they've
8 evolved. Back then, for example, the central argument that
9 Judge Chooljian relied on, and we had an evidentiary hearing on
10 this issue, was the government's allegation that millions -- by
11 the way -- now today he says thousands, hundreds of thousands,
12 before it was millions of dollars from the stock trades went
13 into the defendant's hidden, secret foreign bank accounts.
14 That is what their contention was, that he had accounts
15 overseas, and millions from the transactions at issue went to
16 those accounts. And they put forward six wiretap calls that
17 they said supported that. Same thing: Snippets, words out of
18 context that allege that there were foreign bank accounts to
19 which the profits were transferred.

20 When the agent took the stand at the hearing, he
21 acknowledged -- we went through each one of those calls, and he
22 acknowledged that none of the calls referenced foreign bank
23 accounts in Mr. Mazur's name, that he had no evidence at all of
24 funds being transferred from the stock sales to any foreign
25 bank accounts. So that was then.

1 THE COURT: I forgot to ask you one thing before I
2 forget: What about the \$3 million of copper powder?

3 MR. HARRIS: Yes. In fact, I was just going to go
4 there.

5 Now they're not talking about foreign bank accounts
6 anymore, now they're talking about the copper powder and
7 Brazilian bonds, again taking snippets from the phone calls
8 they know are inaccurate. They've got all the tapes. They
9 have listened to all these types. I'm trying to catch up here,
10 and I'm trying to listen --

11 THE COURT: What is inaccurate about the copper
12 powder allegation?

13 MR. HARRIS: What's inaccurate is the allegation or
14 the characterization that somehow the defendant today has
15 access to millions or billions of dollars of copper powder.
16 That is not true, and the government knows it.

17 THE COURT: But are you saying today or -- is your
18 argument that he doesn't have access today but he did at an
19 earlier time?

20 MR. HARRIS: Yes. We --

21 THE COURT: How much earlier?

22 MR. HARRIS: In 2009 -- I think between 2009 and
23 2011 -- we've laid it out in our papers, and we've given the
24 court some documentary evidence that supports this -- what the
25 defendant was doing in that time frame was he was given access

1 to certain assets by individuals who are trying to monetize
2 these assets and said, If you can monetize these, you can have
3 a piece of the action; you can have some money. And there was
4 copper power that was sitting in a vault in Switzerland that
5 apparently, according to documents the government produced,
6 people have been trying to monetize for years and no one -- it
7 wasn't really marketable, and the defendant and his colleague,
8 co-defendant in this case, Mr. Kaplan, said, We think we might
9 be able to monetize that.

10 THE COURT: How was that done?

11 MR. HARRIS: Mr. Kaplan met with Goldman Sachs as
12 alleged in government's papers. He had several meetings where
13 he said, Here's the powder. Here's the certificates of
14 authenticity. We'd like to put this forward for a line of
15 credit or some other, sort of, financial vehicle. And Goldman
16 Sachs wasn't interested. And there are other phone calls that
17 the government has -- they've listened to, they gave them to
18 us -- in which it's discussed that we're trying to find someone
19 who would be interested in this powder, and we could trade off
20 of it or maybe make some sort of transaction, and we can use it
21 as collateral. Ultimately, those efforts were unsuccessful,
22 and the copper powder reverted to the true owners of it.

23 THE COURT: But how did the defendant acquire the
24 copper powder in the first place?

25 MR. HARRIS: Only through these joint venture

1 agreements, which we provided to the court, in which the owners
2 of the powder said, We will, for purposes of your attempt to
3 monetize this asset, give you legal, not beneficial, ownership
4 of the asset --

5 THE COURT: In other words, he was a broker of sorts.

6 MR. HARRIS: Yes, yes.

7 THE COURT: I see.

8 How does the government respond?

9 MR. BOWMAN: Your Honor, the defense is saying that
10 we came forward to the court saying he currently holds \$3
11 billion of copper powder; we never said that. We said that
12 when the defendant claims there are no foreign bank accounts
13 and no assets hidden overseas, that is contradicted by
14 statements in a number of wiretap calls, including his
15 statements regarding copper powder where he discusses
16 controlling assets overseas, including copper powder,
17 controlling \$1.2 billion in bonds and maintaining accounts
18 overseas where he discusses this is how we set up our accounts.
19 We set it up with an entity where 51 percent of the ownership
20 is not a U.S. passport holder. By doing that, you can avoid
21 U.S. reporting requirements. He's intercepted on a call with
22 Ari Kaplan where they discuss using his wife's mother because
23 she is not a U.S. citizen or have a U.S. passport, that she is
24 the only person they can trust to put on the account.

25 THE COURT: What account?

1 MR. BOWMAN: On a bank account overseas.

2 THE COURT: Do you know -- have you found that
3 account?

4 MR. BOWMAN: No, we haven't, Your Honor. I would be
5 surprised if we could where even here in the United States he
6 doesn't keep accounts in his name. Overseas, he's intercepted
7 in conversations discussing overseas accounts saying --

8 THE COURT: You have the actual exchange that you can
9 read to me or --

10 MR. BOWMAN: I believe we quote from it in the -- is
11 it Tarwater's declaration?

12 THE COURT: What exhibit is that?

13 MR. BOWMAN: Your Honor, specifically regarding the
14 overseas reporting requirements, in paragraph eight of
15 Mr. Tarwater -- Agent Tarwater's declaration --

16 THE COURT: One moment.

17 MR. BOWMAN: I would add to that, Your Honor --

18 THE COURT: One moment.

19 MR. BOWMAN: Yes, Your Honor.

20 THE COURT: That allegation, or that part of the
21 transcript, speaks more to tax fraud than what's alleged in the
22 indictment, but you're saying it's deceptive conduct
23 nonetheless.

24 MR. BOWMAN: Your Honor, it's describing how to keep
25 accounts overseas to avoid U.S. reporting requirements.

1 THE COURT: Sounds like tax requirements.

2 MR. BOWMAN: Yes, Your Honor. And he's also not
3 saying this is one way you can do it, he's saying, I believe,
4 this is how we do it, and in an intercepted call described in
5 Agent Koepke's declaration in support of our original motion,
6 the defendant and Mr. Kaplan discussed who they could use as a
7 signatory for a certain foreign account. Defendant said he
8 could use the mother of his girlfriend, Ms. Vaccina, to open
9 the account because, quote, "She is the only person we can
10 trust who doesn't have a U.S. passport." So it doesn't look
11 like this is simply just an intellectual exercise or discussion
12 of --

13 THE COURT: Like I said, it does sound like deceptive
14 conduct, but it's geared more toward what appears to be tax
15 evasion.

16 MR. BOWMAN: Yes, Your Honor. This is not
17 evidence -- we're not proffering this as evidence supporting
18 the charges in the indictment. This goes to flight risk in
19 terms of does he likely have assets overseas or the means to
20 flee if -- should he choose to do so, and here he is discussing
21 Here's how we have done it. He's giving advice to this other
22 person, Here's how you can avoid having to report funds you
23 have in overseas accounts.

24 MR. HARRIS: Your Honor, here is the problem here:
25 Everything Mr. Bowman said about these foreign assets is

1 untrue, and they know it's not true. They have the context.
2 We had to go through in our papers, and we did in the reply
3 brief, we walked through that transaction that's described in
4 paragraph eight of Agent Tarwater's declaration, and we
5 explained what that was all about. That evidence is available
6 to them. They know it. They know that there's no copper
7 powder right now; they know that there are no foreign bank
8 accounts right now that he has access to. They know --

9 THE COURT: Why is "right now" the proper time frame
10 for analysis?

11 MR. HARRIS: Because the fact -- because given what I
12 described to you regarding the copper powder, for example, the
13 fact that in 2010 he had, as a broker, access to certain assets
14 that he could try to monetize, but he couldn't, and that
15 expired, and those assets are gone. That says nothing about
16 his danger of flight or risk of flight today, which is all that
17 we're supposed to be talking about here.

18 THE COURT: I mean, you're saying that if he engaged
19 in substantial foreign monetary transactions a few years ago,
20 that shouldn't be relevant to whether he has that ability now.

21 MR. HARRIS: Well, the argument is that he has the
22 means and the incentive to flee. The incentive goes to the
23 strength of the case, and we've talked about that. The means
24 goes to does he have money, does he have assets overseas that
25 could allow him to leave his family, leave his friends, leave

1 everything he has here, jeopardize his health and his life in
2 order to live overseas as a fugitive, and the government knows
3 that he can't because they've heard tapes within the last year,
4 year and a half in which he -- the same time that they're
5 saying he is flush with all of this cash, they've heard tapes
6 in which his friends, colleagues are saying -- or he's saying
7 he doesn't have any money. Mazur has no money. These are
8 surreptitious calls that they're listening to. They listen to
9 all his phone calls. They know he doesn't have money --

10 THE COURT: These are calls of friends who say on the
11 wiretap that they don't believe the defendant has money.

12 MR. HARRIS: They know he doesn't have money.

13 THE COURT: I don't know how they know or don't know.

14 MR. HARRIS: The person I have in mind of this
15 particular call -- and they've got many of them -- is defendant
16 Kaplan, who is Mr. Mazur's nephew, and he is discussing -- in
17 fact, it's the very phone call that the government relies on
18 for this whole thing about the Bentley --

19 THE COURT: What the context of the phone call?

20 MR. HARRIS: The context of the phone call is the
21 nephew lamenting to a mutual friend, Sherman is spending too
22 much money. He is incurring these expenses. He doesn't have
23 any money.

24 THE COURT: Where does defendant get the money to
25 spend?

1 MR. HARRIS: He is incurring --

2 THE COURT: You know, people -- rich people
3 overspend, too.

4 MR. HARRIS: Well, he is incurring expenses on behalf
5 of their company that -- he is writing checks he can't cash. I
6 don't mean that in a literal sense, but the notion that he is
7 taking on office space or doing things that he doesn't have the
8 funds to support, and the friend says to the nephew, But
9 doesn't he have money? He says, No, he has not money.

10 THE COURT: Let me ask the government this.

11 I started to ask you about some sort of source and
12 application of funds analysis. Granted, this isn't a tax case
13 but to some extent on the flight risk you're arguing that the
14 defendant -- the defendant reported no income or little income
15 and yet purchased assets or lived a certain lifestyle that was
16 inconsistent with what he reported.

17 You haven't provided me with any information about
18 what he said his income was other than his disclosure to a
19 bankruptcy trustee in 2005 or '06 that he had a thousand
20 dollars a month income.

21 MR. BOWMAN: That was actually to the IRS, Your
22 Honor.

23 THE COURT: To the IRS?

24 MR. BOWMAN: Yes.

25 THE COURT: So that's -- you know, where is that

1 report? Where are those papers?

2 (Discussion held off the record)

3 THE COURT: That is eight years ago or seven years
4 ago. I mean, it would be helpful to know what the contention
5 is as supported by some argument in the last seven years.

6 MR. BOWMAN: Yes, Your Honor. Actually, someone is
7 here from the IRS, if I could consult with them briefly.

8 THE COURT: I'm not going to waste the time now. I'm
9 going to give you a chance to make a submission, and I'll
10 continue a ruling until I have your submission. I want it
11 within two days, and I'll give you two days to respond.

12 MR. HARRIS: Yes, Your Honor.

13 THE COURT: And then I'll make a ruling.

14 MR. BOWMAN: Your Honor, to be clear, the purpose of
15 the submission is regarding income that defendant may or may
16 not have reported to the IRS?

17 THE COURT: Well, it isn't necessarily what he
18 reported to the IRS; I'm not interested in his tax situation.
19 I'm interested in what kind of lifestyle and expenditures he's
20 had over the last five, six, seven years and what his reported
21 income has been or what he is represented to have had. That
22 would be some circumstantial evidence of his having access to
23 assets that would enable him to flee.

24 MR. BOWMAN: "Two days" meaning --

25 THE COURT: I don't have that. I mean -- yes.

1 MR. HARRIS: Also important, Your Honor, the
2 government is aware, based on these phone conversations --
3 again, they've had the opportunity to listen to all his
4 personal calls, and so they know, for example, when they say he
5 was supporting ex-wife and giving her all this money, they know
6 from the phone calls she was evicted from her home. They know
7 that the children were evicted from their apartments. They
8 have evidence of --

9 THE COURT: You have those transcripts?

10 MR. HARRIS: They have that, and we're working
11 through the calls now, and we can --

12 THE COURT: No. Have you seen that in the
13 transcripts?

14 MR. HARRIS: We've seen the call in which they're --
15 the nephew is talking about his situation. We know the facts
16 of who was evicted and so forth.

17 THE COURT: Put it in your opposition, and then if I
18 need further hearing, I'll let you know. Thank you.

19 MR. HARRIS: Your Honor, while we have the court,
20 there's one thing about our proposed bond conditions because I
21 think the court should be aware of that. We've proposed a
22 million-dollar fully secured bond.

23 THE COURT: I know that.

24 MR. HARRIS: There was an issue with the government
25 about us not disclosing the sureties and so forth, and I did

1 disclose the name of the primary surety to the government, and
2 I did not put that surety's name in the papers for security
3 concerns, and I would be willing, if the court -- if it's
4 appropriate and the court deems it necessary, to meet with the
5 court either at sidebar or in chambers to disclose the reasons
6 why we can't on the record have the person's name and address
7 revealed.

8 THE COURT: All right. If we get to that, I'll allow
9 you to do that.

10 MR. HARRIS: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. BOWMAN: The time frame for the brief would be
13 close of business, then, Wednesday for the --

14 THE COURT: Yes, and then you're to make an
15 opposition by close of business Friday.

16 MR. HARRIS: Yes. Thank you, Your Honor.

17 MR. BOWMAN: Yes, Your Honor. Thank you.

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C E R T I F I C A T E

I hereby certify that pursuant to Section 753,
Title 18, United States Code, the foregoing is a true and
correct transcript of the stenographically reported proceedings
held in the above-entitled matter and that the transcript page
format is in conformance with the regulations of the Judicial
Conference of the United States.

Date: 11/20/13

/s/ _____

Deborah K. Gackle
CSR No. 7106

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