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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action  
No. 05-10192-WGY

\* \* \* \* \*  
UNITED STATES OF AMERICA, \*  
 \*  
Plaintiff, \*  
 \*  
v. \*  
 \*  
ONE STAR CLASS SLOOP SAILBOAT \*  
BUILT IN 1930 WITH HULL NUMBER \*  
721, NAMED "FLASH II", \*  
 \*  
Defendant. \*  
 \*  
\_\_\_\_\_  
KERRY SCOTT LANE, M.D. \*  
 \*  
Claimant. \*  
\* \* \* \* \*

BENCH TRIAL  
(Volume 1)

BEFORE: The Honorable William G. Young,  
District Judge

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE (By Nancy  
Rue), 1 Courthouse Way, Suite 9200, Boston,  
Massachusetts 02210, on behalf of the Government

LAW OFFICE OF BRENDA GRANTLAND (By Brenda  
Grantland, Esq.), 20 Sunnyside Avenue, Suite  
A-204, Mill Valley, California 94941, on behalf of  
the Claimant

1 Courthouse Way  
Boston, Massachusetts

May 24, 2007

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I N D E X

WITNESS:                   DIRECT    CROSS       REDIRECT    RE CROSS

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1           THE CLERK: All rise. Court is in session, please  
2 be seated.

3           Calling Civil Action 05-10192, the United States v.  
4 the Flash II.

5           THE COURT: Good morning. Would counsel introduce  
6 themselves.

7           MS. RUE: Good morning, your Honor. Nancy Rue for  
8 the United States.

9           MS. GRANTLAND: Brenda Grantland on behalf of  
10 Dr. Kerry Lane.

11          THE COURT: All right. And good morning and thank  
12 you.

13          This is a forfeiture proceeding brought by the  
14 government against a certain vessel and it's coupled with a  
15 counterclaim under the Federal Tort Claims Act. It presents  
16 four discernible evidentiary issues. And they are, first,  
17 is this personalty, personalty properly forfeited; does the  
18 government have the right, did they have the right to seize  
19 the property and forfeit it. Second, if they had the right  
20 to forfeit it, then what was the propriety of the procedures  
21 used in forfeiting the personalty and reducing it to cash.  
22 Third, depending upon how the Court rules on the first two,  
23 what's the value of the forfeited res since now we're  
24 talking about money. And fourth, is Dr. Lane an innocent  
25 owner, a defensive matter as to which he bears the burden of

1 proof.

2 I'm not clear on this last point, and indeed I'm  
3 not clear on the first one, whether there's any real  
4 dispute. But I cite those points because they all may be  
5 the subject of evidence.

6 Now, the second point, the propriety of the  
7 procedures used in forfeiting the vessel and reducing it to  
8 cash, has been resolved on summary judgment in favor of the  
9 government. So if the vessel was forfeitable, a matter as  
10 to which I've not expressed an opinion, the procedures of  
11 the government followed here and the money that it received  
12 after the auction of the --

13 MS. GRANTLAND: Your Honor, I'm sorry, I don't  
14 understand what you're saying about that point.

15 THE COURT: Well, I have explained it as well as I  
16 can. That was the issue in summary judgment. They  
17 properly -- if they could seize the vessel to begin with, if  
18 there's drug money in the vessel, their procedures  
19 thereafter are appropriate. I ruled on that. Summary  
20 judgment. So lest there be any doubt, I'm saying that.

21 Now, the first issue, let's get to the first issue.

22 MS. GRANTLAND: But, I'm sorry, your Honor, but  
23 didn't you rule earlier that the judgment was void because  
24 my client had not been given notice because the government  
25 didn't make reasonable --

1           THE COURT: I didn't. I follow the Court of  
2 Appeals and that's law of the case. No. On the contrary,  
3 if the vessel was forfeitable, I have ruled under the  
4 discretionary function test that the government acted  
5 properly in this case to reduce it to cash. You have all  
6 the rights that you have.

7           What I don't know as I come on the bench is whether  
8 the government could forfeit the vessel at all, and I need  
9 to resolve that.

10           Now, it's suggested to me I don't need to have a  
11 trial on that. The government says that given the statement  
12 of facts relative to summary judgment, I can make that  
13 determination on the recitation in what I believe is its,  
14 well, it's not its most recent brief, the recitation in its  
15 brief entitled Government's Memorandum Noting the Facts  
16 Establishing Forfeitability Have Been Judicially Admitted by  
17 Claimant. And then they cite, they cite Lane's statement of  
18 facts at Paragraph 40. And they recite it.

19           Now, what I, just trying to go in an orderly way,  
20 what I need to know is, and I think I'll start with Ms. Rue,  
21 I mean, I called this on for trial on this issue and I'm  
22 going to try to get through as much of this as I can.

23           MS. GRANTLAND: Your Honor, I'm sorry to interrupt.  
24 But before you go on, I just received this this morning and  
25 I did not bring with me our motions for summary judgment. I

1 believe this is a quote from the complaint. I don't believe  
2 it's a factual admission. I think it's something I quoted.

3 THE COURT: It's a matter I can --

4 MS. GRANTLAND: I need to see the context and I was  
5 wondering if --

6 THE COURT: Well, Ms. Grantland.

7 MS. GRANTLAND: -- I could see our --

8 THE COURT: Ms. Grantland, you seem to have the  
9 idea that you can just talk here. Listen to what I say.  
10 And this is a matter for quick ascertainment because  
11 electronically I can look at all the pleadings in the case.  
12 And I will ascertain where this came from. At the same  
13 time, this is called for trial and I'm rather surprised you  
14 don't have a working copy of your own file. But we'll take  
15 it step by step. Please always address the Court, not the  
16 other side.

17 Now, let me go to Ms. Rue. Assuming that what you  
18 say is correct here, Ms. Rue, something which we have to  
19 check, but this is in her statement of facts, this is the  
20 trial. I'm not now stepping back and saying, oh, yes, I'm  
21 going to hear further argument on summary judgment and if  
22 you lose you get to put on evidence. The way I'm prepared  
23 to take this brief subject to what Ms. Grantland argues, is  
24 you say she submitted all the relevant issues on whether the  
25 government had the right to initiate forfeiture proceedings,

1 and if you take those, we'll rest.

2 Are you saying that?

3 MS. RUE: I am, your Honor.

4 THE COURT: All right. All right. Now, let's  
5 assume, but we'll check it, let's assume that this is in Dr.  
6 Lane's statement of facts here. Because I don't -- I try to  
7 be transparent. I haven't made up my mind on this. I want  
8 to get argument on it. But suppose this and she says in  
9 effect this is our evidence, we rest, for the government.

10 Now, I'm not clear that that's enough to -- it's  
11 glib when I say get drug money in the boat. But it may be  
12 enough. I want to hear argument as to whether under the law  
13 of forfeiture that's enough, if those are the facts.

14 So, Ms. Grantland, my question to you is, have you  
15 got any other evidence as to the propriety of the government  
16 seizing the vessel in the first instance?

17 MS. GRANTLAND: Your Honor, my entire motion for  
18 summary judgment and actually going all the way back to  
19 briefs in the Court of Appeals had to do with, we covered  
20 the fact that even under the government's allegations they  
21 never could show, number one, that the money actually, that  
22 the money that the informant gave to Ole Anderson ever  
23 actually was invested in the boat, and in fact we can prove  
24 backwards that it wasn't.

25 THE COURT: How, how are you going to prove that it

1 wasn't?

2 MS. GRANTLAND: Because my client has a contract  
3 showing where he purchased his interest and the consortium  
4 that owned this boat altogether owned a hundred percent.  
5 And in order for someone else to buy into the consortium,  
6 one of the other partners in the consortium would lose part  
7 of their interest. And the contract showed who owns what.

8 THE COURT: All right.

9 MS. GRANTLAND: And that's how. And number two,  
10 this is very clearly a quote from the complaint because I  
11 don't capitalize the word Anderson.

12 THE COURT: I'm going to, I'm going to check it.

13 MS. GRANTLAND: I have it on my hard drive on my  
14 computer which I brought with me but --

15 THE COURT: Well, that's helpful.

16 MS. GRANTLAND: -- it would take too long to look  
17 it up. But I'm certain this is out of context, your Honor.  
18 Because we're arguing the opposite. We were arguing that  
19 even under the government's own admissions the, under the  
20 informant's theory of the case he had been paid back before  
21 the boat was seized.

22 THE COURT: All right, let's just take a moment and  
23 check the point. I can check the point. And so I'll check  
24 it.

25 MS. RUE: Your Honor, if it's convenient I did

1 bring several copies.

2 THE COURT: That's fine. Won't you give one then  
3 to Ms. Grantland and give a copy to the Court.

4 (Pause in proceedings.)

5 THE COURT: Yes, look at Page 12 and 13. So I can  
6 take judicial notice of pleadings in my own Court and I take  
7 judicial notice of this. It appears to be properly cited.

8 And, you say, notwithstanding this, that you've got  
9 proof of -- I understand your argument here. And you want  
10 to adduce that proof.

11 Is the bottom line that Anderson did not have an  
12 interest in the vessel? Ms. Grantland?

13 MS. GRANTLAND: No, your Honor, before you go on, I  
14 don't understand your question first of all. But to show  
15 you the context of the statement, if you look at, at  
16 Paragraph 37, the government's theory of forfeiture is that  
17 drug proceeds were invested in Flash II. And all of these  
18 statements below that shows that this is about what the  
19 government's theory of the forfeiture was, not what we're  
20 saying was true. This is all the government's statements,  
21 hearsay statements from their own pleadings. And I'm  
22 arguing in the summary judgment motion that even under their  
23 theory that's not enough.

24 THE COURT: Thank you. Now, I understand that.  
25 That I understand. So you don't admit these in any way.

1 You're saying this is not, even though she's willing to rest  
2 on it, this is no sort of judicial admission by you.

3 MS. GRANTLAND: Correct, your Honor.

4 THE COURT: All right. Now, let's -- she's  
5 prepared to back this up, I guess, with evidence. That's  
6 what I understood. Let's suppose that she does. What  
7 evidence -- and your evidence to the contrary is the  
8 contract, the consortium contract.

9 MS. GRANTLAND: We have a number of documentary  
10 evidence, pieces of documentary evidence showing who  
11 purchased the boat, who owned it. We have pictures showing  
12 the boat in my client's garage. We have a number of things  
13 that are concrete, in addition to my client's testimony. We  
14 also believe in cross-examining this informant we can show  
15 that his, his hearsay statements from Ole Anderson are not  
16 even accurate.

17 THE COURT: All right.

18 MS. GRANTLAND: In addition to not being  
19 admissible.

20 So, the government has a missing gap here between  
21 the informant saying he gave money, loaned money to Ole  
22 Anderson and this boat. There's nothing showing that Ole  
23 Anderson actually invested any of that money in the boat.  
24 The boat had already been purchased several months before  
25 that by my client.

1           THE COURT: All right, let's -- well, Ms. Rue, it  
2 looks to me like we're going to have to take evidence to  
3 sort this out. I think, I think Ms. Grantland's right.  
4 She's -- her argument here is that even if this were  
5 admitted it would not be enough. It's not that she's  
6 admitting it.

7           So I'll allow you to put on evidence to support  
8 this and I'll allow you to cross-examine, Ms. Grantland, and  
9 then we'll see your contrary evidence and we'll see where we  
10 stand when we're done with that.

11           You can proceed.

12           MS. RUE: Your Honor, I'm certainly prepared to  
13 proceed and to call Gary Milo as my first witness.

14           THE COURT: Yes.

15           MS. RUE: I do, however, have a response, if I may.  
16 And that is --

17           THE COURT: Briefly.

18           MS. RUE: -- the document that I've provided,  
19 document 45-1, is not her memorandum of law, it's not her  
20 argument. These were under the local rules supposed to be  
21 the stipulated facts. And if they're facts, they're facts  
22 whether they help her or hurt her. These were the facts  
23 that were submitted on behalf of Dr. Lane.

24           THE COURT: I see what the document is. I'm  
25 hesitant to tab these as judicial admissions against her

1 challenge, and I much prefer evidence, so call your witness.

2 MS. RUE: Thank you, your Honor. The government  
3 calls Gary Milo.

4 THE COURT: He may be called.

5 MS. RUE: Your Honor, I believe he is outside in  
6 one of the conference rooms. If I may --

7 THE COURT: Yes.

8 MS. RUE: -- I'll just take --

9 THE COURT: You take a moment to get him.

10 MS. RUE: Thank you.

11 (Pause in proceedings.)

12 THE CLERK: Right up here. Right up here, sir.

13 And, sir, would you raise your right hand.

14 Do you solemnly swear that the answers you will  
15 give to this Court will be the truth, the whole truth, and  
16 nothing but the truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Please be seated.

19 GARY MILO

20 DIRECT EXAMINATION

21 BY MS. RUE

22 Q Could you state your name, please, and spell your first  
23 and last name for the court reporter?

24 A Sure. It's Gary Milo. That's G A R Y M I L O.

25 Q Mr. Milo, where are you currently employed?

1 A Thatcher Glass and Aluminum in Dade, Florida.

2 Q Do you have other employment?

3 A I have some income from my company, G.M. Design  
4 Building.

5 Q And what do you do at those two jobs?

6 A I'm in the construction related business. I do  
7 supervision mainly, do some sales, estimating, and some  
8 design work.

9 Q You've met with me in advance of this proceeding; is  
10 that right?

11 A Yes.

12 Q And, in fact, you're wearing a U. S. Attorney's office  
13 badge allowing you to be in our space?

14 A Yes.

15 Q Because you came in this morning just to check in before  
16 you came down here; is that right?

17 A That's correct.

18 Q Mr. Milo, prior to your current job with G.M. Design and  
19 with the hurricane sales window company, did you have  
20 another vocation?

21 A Another location?

22 THE COURT: Vocation, I think she said.

23 A Oh, vocation. Yes.

24 Q What was that?

25 A Well, I was also in real estate development.

1 Q You were also a marijuana seller, weren't you?

2 A Correct.

3 Q In the course of your marijuana sales were you  
4 successful?

5 A Yes, I was.

6 Q How successful?

7 A I would consider it successful.

8 Q How long were you involved in marijuana sales?

9 A Ah, I pleaded guilty to being involved for, I believe it  
10 was four years.

11 Q In --

12 MS. GRANTLAND: Your Honor, I'm having a little bit  
13 of trouble hearing from the flight yesterday; if everyone  
14 could just talk a little bit louder.

15 THE WITNESS: Sure.

16 MS. GRANTLAND: I would really appreciate it.

17 THE WITNESS: I'll get a little closer.

18 THE COURT: Yes, that would be helpful. Or you can  
19 pull it closer to you.

20 THE WITNESS: Okay.

21 MS. RUE: And if I may, your Honor, I'll move over  
22 to the podium, perhaps that will help.

23 THE COURT: Sure.

24 Q Mr. Milo, were you ultimately arrested for marijuana  
25 distribution?

1 A Yes, I was.

2 Q What happened?

3 A I pleaded guilty.

4 Q How did you plead guilty?

5 A I don't understand the question.

6 Q Did you agree -- did you admit your guilt immediately?

7 A Yes, I accepted responsibility and admitted guilt and  
8 cooperated.

9 Q You offered to work with the government?

10 A I did.

11 Q Did you provide the government with the names of your  
12 suppliers?

13 A I did.

14 Q Did you provide the government with the names of your  
15 customers?

16 A I did.

17 Q Did you agree to work proactively?

18 A Yes, I did.

19 Q What does that mean?

20 A I take it to mean that, proactively would mean  
21 immediately. I accepted responsibility within the first  
22 three weeks or so after being arrested and I worked with  
23 them on, first of all, accepting responsibility and  
24 explaining all the details of my business, all the people  
25 that I was involved with, and working with them to try to

1 get other people to, to admit their responsibilities.

2 Q You were a liar?

3 A I did, on occasion.

4 Q You made phone calls?

5 A I did.

6 Q You engaged in meetings?

7 A Yes.

8 Q You set up drug buys?

9 A Correct.

10 Q And the people that you were doing this with were people  
11 that you had previously been conspiring for the distribution  
12 of marijuana with?

13 A That is correct.

14 Q One of those persons was Ole Anderson?

15 A That is correct.

16 Q Have you been sentenced?

17 A Yes, I have.

18 MS. RUE: Your Honor, may I approach the witness?

19 THE COURT: You may.

20 Q Mr. Milo, I've handed you what's been marked for  
21 identification as Exhibit No. 1. Is this the information  
22 under which you pleaded guilty?

23 A Yes.

24 Q That alleges and you admitted that you were involved in  
25 a conspiracy to distribute more than a thousand pounds of

1 marijuana?

2 A That's correct.

3 Q You've been sentenced?

4 A Yes, I have.

5 Q During the course of the sentencing proceeding did the  
6 government move for a reduction in your sentence?

7 A Yes, they did.

8 Q During the course of that proceeding was the government  
9 still recommending several years in jail for you?

10 A Yes, they were.

11 Q What was your sentence?

12 A Five years' probation, time served, and six months in a  
13 community corrections institute.

14 Q Time served in your case was several days; is that  
15 right?

16 A It was 18 days to be exact.

17 Q Is that sentence on appeal?

18 A Yes, it is.

19 Q Did you appeal?

20 A No, I did not.

21 Q The government appealed?

22 A Correct.

23 MS. RUE: Your Honor, may I approach?

24 THE COURT: You may.

25 Q Exhibits 2 and 3, respectively, are your judgment of

1 sentence, judgment and conviction document and the  
2 government's notice of appeal; is that right?

3 A Yes.

4 Q So you are currently on probation as a matter of  
5 supervised release and the government is trying to put you  
6 back, my office is trying to put you back in jail; is that  
7 right?

8 A That's correct.

9 Q In addition to incarceration, Mr. Milo, were you  
10 sentenced to forfeiture?

11 A Yes, I was.

12 Q Do you recall how much?

13 A Yes. It's approximately \$9.7 million.

14 MS. RUE: Your Honor, may I approach?

15 THE COURT: You may.

16 Q Exhibit 4 is the judgment of forfeiture; is that right?

17 A Correct.

18 Q Order of forfeiture, this was incorporated into your  
19 sentence?

20 A I'm sorry?

21 Q This was incorporated into your sentence?

22 A Yes, it was.

23 Q And you have an obligation to disgorge assets and to  
24 continue disgorging assets to the government until you have  
25 repaid \$9,967,000; is that right?

1 A Correct.

2 MS. GRANTLAND: Your Honor, I would object to this  
3 continuing line of leading questions.

4 THE COURT: And I think that's right. You're  
5 leading the witness. But so far we haven't come to anything  
6 that's relevant, though you may want to establish that the  
7 witness has various reasons to be adversary to you and that  
8 deals with his credibility. Let's jump to relevant  
9 testimony from this witness and then I'll let you work back.

10 MS. RUE: Thank you, your Honor.

11 Q Mr. Milo, how were you first involved with Ole Anderson?

12 A Ah, I originally met Ole through his brother.

13 Q What was his brother's name?

14 A Jim.

15 Q How did you know Jim?

16 A I met Jim when I was working as a salesperson at a  
17 kitchen cabinet, a kitchen cabinet business down in South  
18 Florida.

19 Q Did you continue to have a relationship with Jim beyond  
20 your kitchen cabinet business?

21 A Yes.

22 Q What was that relationship?

23 A We started -- he started getting marijuana from me and  
24 then I started getting marijuana for him.

25 Q You started getting marijuana from him?

1 A Initially I bought a small amount of marijuana from him.  
2 And then we ended up talking about the business and  
3 eventually getting involved in the business together.

4 Q In the marijuana business?

5 A Correct.

6 Q What was your involvement with Ole Anderson, Jim's  
7 brother?

8 A Well, Ole and Jim are quite close and we ended up  
9 getting to know each other. I got to know Ole. And he  
10 got -- eventually we got involved in the marijuana business  
11 together. But prior to that Ole and I -- Ole came to me  
12 with several propositions which included, one of them  
13 included the Kennedy sailboat, but there were some others  
14 that I got involved with him in.

15 Q Do you recall what some of the others were?

16 A Well, the other, one of the other ones, one of the main  
17 other ones was another boat which was, his proposition was  
18 to put together a boat with a submarine and to go look for  
19 sunken treasures in the Caribbean, including Cuba.

20 Q Ultimately did you invest money in the treasure boat?

21 A I did.

22 Q Approximately how much money?

23 A It was approximately a hundred thousand dollars.

24 Q With regard to the Kennedy sailboat, were you involved  
25 in the Kennedy sailboat?

1 A I was.

2 Q What was your involvement there?

3 A Again, he came to me with a proposal which was that I  
4 would invest some moneys and that the moneys were to be used  
5 to refurbish the boat and then when the boat was to be sold,  
6 I would receive a percentage of the profit.

7 Q Did you initially think that you had an ownership  
8 interest in the boat?

9 A I did.

10 Q Was there at some point an attempt to auction the  
11 sailboat?

12 A Yes, there was.

13 Q What was that?

14 A It was my understanding that it went to auction up in,  
15 with Guernsey's with some other Kennedy memorabilia.

16 Q When you say up, are you referring to Manhattan, New  
17 York?

18 A That's what I'm referring to.

19 Q Approximately when?

20 A I believe it was the early 1990's. 1991 or something  
21 like that.

22 MS. RUE: Your Honor, may I approach?

23 A No, wait a minute. I'm sorry. 2001.

24 THE COURT: When you said you would invest, how  
25 much did you invest?

1           THE WITNESS: I ended up investing approximately  
2 \$16,000.

3           THE COURT: And where did that money come from?

4           THE WITNESS: It came from my marijuana business;  
5 it was cash.

6           MS. RUE: Your Honor, may I approach the witness?

7           THE COURT: You may.

8           Q Mr. Milo, I've handed you what's been marked for  
9 identification as Government Exhibit 5. Is that of  
10 assistance to you in placing the date of the auction?

11          A It should be.

12          Q Why do you say it should be?

13          A Well, it should have a date on it. It's, yes, it's  
14 1998. So I was off on the dates. I'm actually a little  
15 fuzzy on all the dates to be honest with you.

16          Q Could you describe for the Court, what is Government  
17 Exhibit 5?

18          A It's the, it looks like the catalog for Guernsey's for  
19 the auction.

20          THE COURT: I'm confused here. I'm confused just  
21 in procedure. You're referring to various things as though  
22 they were in evidence. Nothing's been offered yet. So --  
23 and I'm not big on government exhibits and Lane exhibits. I  
24 like letters for identification and then numbers for  
25 exhibits. But I won't press the point. But you're going to

1 have to offer it if you want it in the record here.

2 MS. RUE: Forgive me, your Honor. At this point I  
3 would move Government -- move Exhibits 1 through 5 as  
4 previously marked into evidence.

5 THE COURT: Any objection to 1 through 5?

6 MS. GRANTLAND: One moment, your Honor. No  
7 objection to those, your Honor.

8 THE COURT: Thank you. 1 through 5 are admitted.

9 (Exhibits marked in evidence.)

10 THE COURT: Proceed.

11 Q What is Exhibit 5, please?

12 A Exhibit 5 is a catalog of Guernsey's which shows the  
13 items of memorabilia which include John F. Kennedy's  
14 sailboat, Flash II.

15 Q When you say it's a catalog of Guernsey's, this is a  
16 catalog of items that were up for sale at a particular  
17 auction; is that right?

18 A Correct.

19 Q Is this the auction that you were referring to earlier?

20 MS. GRANTLAND: Your Honor, once again we're --

21 THE COURT: Yes, sustained. You're leading the  
22 witness, Ms. Rue. There's no need to lead the witness.

23 MS. RUE: Forgive me, your Honor.

24 THE COURT: Go ahead.

25 Q Could you describe more fully the auction?

1 A Well, there appears to be a list of items here that were  
2 up for auction that were Kennedy memorabilia. But the item  
3 that I see here, Flash II, is the one that I was more, more  
4 interested in and actually had an investment in.

5 Q When was the date of that auction?

6 A The exact date of the auction according to this catalog  
7 is, let's see --

8 MS. GRANTLAND: Your Honor, I think this is  
9 improper impeachment -- I mean refreshment of a witness's  
10 recollection.

11 THE COURT: No, no, that's not a problem. That's  
12 appropriate to put it before him. But now it's in evidence.  
13 If it has a date that's some evidence of when the auction  
14 was. We don't need to take time to ask him about it. I'm  
15 unclear as to how the date is relevant. But it may become  
16 clear to me.

17 I really think we ought to focus here. I've heard  
18 him say 16,000 cash from his marijuana business went to Ole  
19 Anderson. He thought it was going to be used to refurbish  
20 the vessel. Now, can we get that cash into, by any  
21 competent evidence into the refurbishment of the vessel.  
22 We'll see. That's what is interesting me.

23 Go ahead, Ms. Rue.

24 MS. RUE: Thank you, your Honor.

25 Q Ms. Milo, you indicated that you initially thought that

1 was an ownership interest in the boat; is that right?

2 A That's correct.

3 Q After the auction did that change?

4 THE COURT: Your understanding, I take it she's  
5 asking.

6 Q Your intention.

7 A Did my interest change? Well, it changed eventually  
8 because I realized that after the auction that he apparently  
9 was not motivated to sell it at less than a certain price.  
10 And I felt as if, eventually that I was going to lose my  
11 interest in the boat. So I eventually worked out a deal  
12 with him where he worked it off, worked off the money owed  
13 to me. Because at that point I realized I may not get any  
14 of the money back and I just wanted to get my original  
15 investment back.

16 Q So what did you do?

17 A He and I worked out a deal where he drove some marijuana  
18 for me in exchange for partial payment, and part of that  
19 payment was to go towards his debt towards me. And we did  
20 that over two trips.

21 THE COURT: All right, now, let me see if I  
22 understand.

23 The deal as you conceive it was -- you had parted  
24 with \$16,000 that had gone to him?

25 THE WITNESS: Correct.

1           THE COURT:  And after all this auction business,  
2   you were worried about whether you were going to see any of  
3   that money back, much less some profit from it, correct?

4           THE WITNESS:  That is correct.

5           THE COURT:  So your deal with him was he'd work in  
6   your marijuana business, a couple of trips?

7           THE WITNESS:  Uh-huh.

8           THE COURT:  And that would go toward, the value of  
9   those services would go toward reducing or extinguishing the  
10  debt that you thought he owed you from your putting up  
11  \$16,000?

12          THE WITNESS:  That is correct.

13          THE COURT:  Anything else for this witness, Ms.  
14  Rue?  Go ahead.

15          MS. RUE:  Yes, your Honor.

16          THE COURT:  Go ahead.

17  Q   Mr. Milo, after all this occurred did, did you ever  
18  discuss it again with Ole Anderson?

19  A   Yes.  During, during -- I'm sorry.

20  Q   Forgive me.  You had addressed this deal that you had  
21  worked out.  Did Mr. Anderson in fact take marijuana trips  
22  for you?

23  A   He did, he did several trips for me.  Two of those  
24  trips, we divided the amount of money that he owed me into  
25  two payments, and they were partial payments, because I

1 actually ended up paying him a partial payment. But we  
2 subtracted \$8,000 per trip was to the best of my  
3 recollection the amount of money we subtracted for two  
4 trips. And then we basically called it even. He didn't owe  
5 me anymore money after those two trips. And then the  
6 further trips he did for me I paid for in cash.

7 Q How much were you paying per trip?

8 A I was paying him approximately \$50 a pound, depending on  
9 how much he drove. And --

10 Q How much was he driving?

11 A They were averaging anywhere from 800 to 1,300 pounds.

12 Q Could you do the math for us? What does that end up  
13 being?

14 A Well, 800, at 800 pounds it would be, \$50 a pound would  
15 be \$40,000.

16 Q So from the \$40,000 per trip that you were paying him in  
17 marijuana, for distributing marijuana, you paid him less?

18 A We subtracted \$8,000 per trip.

19 Q For two of those trips?

20 A Correct.

21 Q Can you put an approximate date on that?

22 A It was the year of 2001, the year that he got arrested.

23 Q When you say the year that he got arrested, what  
24 happened?

25 A Ah --

1           THE COURT: Well, you know, really, unless this is  
2 going to get to some relevant evidence, relevant to this  
3 proceeding, I'm not terribly concerned about this periphery.  
4 What have you got from this witness that puts any of that  
5 16,000 into the vessel? Could you come to that. If this  
6 witness can testify to anything like that.

7 Q Mr. Milo, have you listened -- did you have any tape  
8 recorded conversations with Ole Anderson?

9 A I did.

10 Q Have you listened to those conversations recently, a  
11 portion of them?

12 A Yes, I have.

13 MS. GRANTLAND: Your Honor, I object on --

14 THE COURT: Yes.

15 MS. GRANTLAND: I believe she's trying to introduce  
16 hearsay and I'm objecting to these statements of Ole  
17 Anderson.

18 THE COURT: The statements of Ole Anderson. How  
19 are you going to get them in?

20 MS. RUE: Your Honor, I believe that they're  
21 appropriate as statements of an agent, because Mr. Anderson  
22 was Dr. Lane's agent for purposes of the ownership of the  
23 boat, under Lane's own documents. I believe also they come  
24 in under the residual hearsay exception, 807.

25 THE COURT: Well, I'm not putting them in under any

1 residual hearsay exception. But you say -- and the  
2 statement of facts is helpful. Take me through there.  
3 Where -- because this witness can't prove he's an agent of  
4 Dr. Lane. You say that from the record I have before me, I  
5 can conclude that he is an agent of Dr. Lane and that this  
6 statement was in the course of that employment, I take it.

7 So where is the proof of Ole Anderson's agency to  
8 Dr. Lane?

9 MS. RUE: Ole Anderson's supplemental affidavit  
10 Paragraph 1 at Page 2.

11 MS. GRANTLAND: I'm sorry, what?

12 MS. RUE: His supplemental affidavit.

13 MS. GRANTLAND: Ole Anderson's?

14 MS. RUE: I'm sorry, Dr. Lane's supplemental  
15 affidavit.

16 THE COURT: Yes. May I have it.

17 MS. RUE: Yes, your Honor.

18 MS. GRANTLAND: Could you tell me again what page?

19 DR. LANE: Two.

20 MS. GRANTLAND: Page 2.

21 MS. RUE: Page 2, Paragraph 1.

22 And that document, your Honor, last two sentences:  
23 I told Ole to keep me posted on any new developments. In  
24 the nine years we have been business partners in the  
25 ownership of this sailboat, I had relied on Ole to consult

1 me about any matters that needed our attention. I expected  
2 him to continue to do so.

3 THE COURT: Let me read the entire affidavit here  
4 because it's helpful.

5 (Pause in proceedings.)

6 THE COURT: Do you have a transcript of this tape?

7 MS. RUE: I do, your Honor.

8 THE COURT: It would be a lot faster if I -- may I  
9 have the transcript of the tape that you wish to introduce.

10 MS. RUE: Yes, your Honor.

11 THE COURT: And have you got a copy for Ms.  
12 Grantland and you can parse it.

13 MS. RUE: Of course, your Honor. And the  
14 transcript, your Honor -- the portion of the tape that I was  
15 going to play is quite audible and it's only 50 seconds.

16 THE COURT: Well, let me have a transcript, and if  
17 you've got it set up maybe we could play it without my  
18 determining whether I'm going to admit it.

19 Why don't we do that, Ms. Grantland. We'll all  
20 listen to it and then we'll see if any of it's actually  
21 admissible so we can have -- we're playing it subject to  
22 your objection which is a hearsay objection. So let's see  
23 here.

24 (Whereupon the tape was played.)

25 THE COURT: All right. Where's Anderson today?

1           MS. RUE: We believe, your Honor, that he's in  
2 Cuba.

3           THE COURT: But he's unavailable.

4           MS. RUE: He is unavailable.

5           THE COURT: And you agree that Ole Anderson is  
6 unavailable?

7           MS. GRANTLAND: Yes, your Honor, Ole Anderson's  
8 unavailable.

9           THE COURT: All right. Well, is any of this -- I  
10 have some problem with this agency theory. Perhaps  
11 something here is a statement against pecuniary interest. I  
12 suppose so much of the transcript on the second page where  
13 Anderson says, I'm paying storage, I pay \$500 for good  
14 storage, \$500 other storage, and \$300 for summer storage,  
15 that's a statement against pecuniary interest. He's laying  
16 out financial obligations. So, if that is in fact germane  
17 to anything, if I can infer anything from that, I would be  
18 disposed to admit that. But you want the whole thing in,  
19 Ms. Rue, because it's the statement of an agent of Dr. Lane.  
20 But this is not a discussion in any way within the scope of  
21 that agency, even though there appears to be an agency from  
22 the supplemental affidavit. It's only things that have to  
23 do with the work that Anderson was doing for Lane that's  
24 admissible, and this has to do with the monetary  
25 relationship as between Mr. Milo and Mr. Anderson.

1           I'll hear you. I don't understand it, but I'll  
2 hear you.

3           MS. RUE: Your Honor, I believe that it has to do  
4 with several things. It has to do with the ownership of the  
5 sailboat. So to the extent --

6           THE COURT: Yes, he speaks as to the ownership of  
7 the sailboat. But that doesn't sound like it's within the  
8 scope of any, any agency relationship with Dr. Lane. He's,  
9 he's saying that he owns it. So now the Flash is yours  
10 again? Yes, says Anderson. But that has to do with his  
11 financial dealings with Mr. Milo.

12          MS. RUE: Your Honor, it also has to deal with the  
13 financial dealings of a party here, which is the vessel  
14 itself. The vessel is the defendant res. And the ownership  
15 of the defendant res, it's a party. It's a boat. And it's  
16 part of the case.

17          THE COURT: Well, yes, fine.

18          MS. RUE: So I think that --

19          THE COURT: What does that mean?

20          MS. RUE: I think that Mr. Anderson is also an  
21 agent of the boat, and it comes in as an admission there.

22          I would further ask your Honor --

23          THE COURT: Have you got any authority for that?

24          MS. RUE: Absolutely none, your Honor.

25          THE COURT: All right. No. I'll admit so much of

1       it as on the second page where he states, and in context,  
2       and I'm prepared to draw the inference that as of the time  
3       of this September 27, 2004 meeting Mr. Anderson is  
4       acknowledging that on behalf of the res he was incurring and  
5       had been incurring storage charges. If that's relevant so  
6       be it. And the admission is under 804(b)(3).

7               All right, anything else for this witness?

8               MS. RUE: Your Honor, may I be heard on the 807  
9       issue?

10              THE COURT: You may.

11              MS. RUE: With regard to 807, your Honor, a  
12       statement is not hearsay if there are, if it's offered as  
13       evidence of a material fact. And here I would submit that  
14       this is being offered as evidence of a material fact that  
15       Anderson now believed himself to own the interest in the  
16       boat that Milo had previously owned because he, he had ceded  
17       that back during a drug transaction. It's more probative on  
18       the point because it's a contemporaneous statement by  
19       somebody who wouldn't have a motive to lie on that. He's  
20       talking to somebody who's part of his drug conspiracy. And  
21       he's telling him no, remember you don't own that anymore  
22       because you gave it back to me. And he's making a statement  
23       against his own penal interest because he's admitting his  
24       drug relationship with somebody who in fact is wearing a  
25       wire.

1           THE COURT: But if it's an admission against his  
2 penal interest, it must be accompanied by substantial  
3 guaranties of trustworthiness. I don't find those here.  
4 It's excluded save insofar as I admitted it.

5           Anything else for this witness?

6           MS. RUE: May I have just a moment, your Honor?

7           THE COURT: You may.

8           Q Mr. Milo, after Anderson transported marijuana for you,  
9 did you continue to have any further interest in the Flash  
10 II?

11          A No, I did not.

12          Q Why?

13          A Because we had exchanged, he had basically worked off  
14 the amount that I had invested in exchange for his driving  
15 marijuana for me.

16          MS. RUE: Your Honor, may I approach?

17          THE COURT: You may.

18          MS. GRANTLAND: What exhibit is this?

19          MS. RUE: Your Honor, would you prefer that if it's  
20 marked for identification I use letters?

21          THE COURT: No, it's just -- we'll use numbers.  
22 It's just -- well, offends me is too strong. My protocol is  
23 not to call it a government's exhibit because people don't  
24 own exhibits. We'll use your numbers.

25          What's this?

1 MS. RUE: Okay. Exhibit 6, your Honor.

2 THE COURT: Any objection to 6?

3 MS. GRANTLAND: I would like to see whether --  
4 could I respond to that after I hear what the witness has to  
5 say about it?

6 THE COURT: No.

7 MS. GRANTLAND: I might object to it, your Honor.

8 THE COURT: She's, she's offering it.

9 MS. GRANTLAND: She's offering it into evidence,  
10 but I'm not certain that it --

11 MS. RUE: Your Honor, perhaps --

12 THE COURT: I have to rule now --

13 MS. RUE: This is --

14 THE COURT: -- when it's offered.

15 MS. RUE: Forgive me. This is from Dr. Lane's  
16 document responses, your Honor. It's been filed in this  
17 court by Dr. Lane as item 45-13.

18 THE COURT: Yes.

19 MS. GRANTLAND: In that event, your Honor, we won't  
20 object to it.

21 THE COURT: Thank you. All right, 6 is admitted.

22 (Exhibit marked in evidence.)

23 Q Mr. Milo, have you ever seen this document before?

24 A Yes. In your office.

25 Q A third of the way down under item C it has your name

1 and \$16,000; is that right?

2 A Correct.

3 Q Prior to seeing it in my office do you believe that you  
4 had seen this document before?

5 A I'm not sure. I just -- what rings a bell is the  
6 amount. But other than that, no.

7 Q During the course of your investment in the Flash II had  
8 you ever seen documents evidencing, in writing, your  
9 interest in the Flash II?

10 A No.

11 Q Why not?

12 A We had a verbal agreement.

13 Q With regard to your investment in the pirate treasure  
14 boat, did you have documents evidencing your interest?

15 A I did not.

16 Q Why not?

17 A Again, it was a verbal agreement.

18 Q With regard to your distribution of marijuana and  
19 Mr. Anderson acting on your behalf, did you have a written  
20 agreement there?

21 A Did not.

22 MS. RUE: Nothing further, your Honor.

23 THE COURT: Now, do you have any questions for this  
24 witness?

25 MS. GRANTLAND: Yes, your Honor.

1 THE COURT: Proceed.

2 CROSS-EXAMINATION

3 BY MS. GRANTLAND

4 Q Mr. Milo, according to the docket you were arrested on  
5 December 18th, 2003?

6 A I believe it was earlier than that. It was around  
7 December 18th.

8 MS. GRANTLAND: May I approach, your Honor?

9 THE COURT: You may.

10 MS. GRANTLAND: Can I have this marked, please.

11 THE COURT: Marked as what --

12 THE CLERK: A.

13 THE COURT: Are you offering it or just for  
14 identification?

15 MS. GRANTLAND: No, I'm offering it as evidence,  
16 your Honor.

17 THE COURT: All right. Any objection?

18 MS. RUE: May I take a minute to review it, your  
19 Honor?

20 THE COURT: Yes.

21 MS. GRANTLAND: What docket number -- I mean, what  
22 exhibit number would that be?

23 THE COURT: Well, it's nothing yet.

24 MS. GRANTLAND: Okay.

25 THE COURT: Let's see what it is.

1 MS. GRANTLAND: Exhibit 7?

2 MS. RUE: No objection, your Honor.

3 THE CLERK: No. 7.

4 THE COURT: It may be admitted Exhibit 7 in  
5 evidence.

6 (Exhibit marked in evidence.)

7 THE CLERK: I --

8 MS. GRANTLAND: Oh. Okay.

9 Q So if you could consult the docket. If you would look  
10 on Page 4. I'm sorry, Page 3, next to the date 12-18-2003.

11 Does that refresh your recollection of when you  
12 were arrested?

13 A I pretty much know when I was arrested. I was arrested  
14 before that. But that was the hearing.

15 Q Okay. So you said you did how many days?

16 A I did 18 days. I was arrested in Florida and then I had  
17 a hearing down there, and then I had to travel via various  
18 detention centers until I got to Boston.

19 Q Oh, so that's why you did more days than just the five  
20 that show on this docket?

21 A That's correct.

22 Q Okay. Now, in your guilty plea you pled guilty, you  
23 admitted trafficking between 1,000 and 3,000 kilograms of  
24 marijuana; is that correct?

25 A That sounds correct, yes.

1 Q And the government stated that they would in one of  
2 their motions, I believe their -- I'm sorry -- their motion  
3 for issuance of preliminary order of forfeiture and money  
4 judgment that they were able to establish that you actually  
5 were responsible for approximately 5,034 kilograms of  
6 marijuana during your conspiracy. Is that correct?

7 A That sounds correct.

8 Q And that equals approximately 11,075 pounds?

9 A Does it? I don't have that.

10 Q 2.2 pounds per kilogram times 5,000.

11 A Okay.

12 Q So about five times, is that about correct?

13 A I guess so. Again, I don't have the calculations in  
14 front of me but --

15 Q And they calculated that during your conspiracy the  
16 price of marijuana varied between 900 and a thousand dollars  
17 per pound?

18 A That sounds about right.

19 Q And based on that they computed the total proceeds of  
20 that 11,000 pounds was worth \$9,967,000?

21 A That's correct, yes.

22 Q In your plea bargain did you agree to forfeit the full  
23 amount of the proceeds?

24 A I did.

25 Q And did you agree to cooperate with the government in

1 setting up other assets for forfeiture?

2 A I'm not sure I understand the question. To set up other  
3 assets?

4 Q Cooperating with the government and establishing the  
5 forfeitability of other assets other than your own.

6 A No, just my assets.

7 Q So you didn't cooperate with the government in relation  
8 to the Flash II?

9 A Oh. I agreed to cooperate with the government and  
10 whatever assets that they forfeited from somebody else, I  
11 guess goes along with the territory. But there wasn't an  
12 agreement that I, there wasn't an outward agreement that I  
13 had.

14 Q So your cooperation included both criminal prosecutions  
15 and forfeiture prosecutions, didn't it?

16 A Yes, it did.

17 Q Now, on June 29th, 2006 you were sentenced to time  
18 served and that was all you did so far as the 20, whatever  
19 it was, 18 days you said?

20 A Time served plus five years' probation, the first six  
21 months being served in a detention, I'm sorry, a community  
22 correction center.

23 Q Now, in the course of the proceedings against you did  
24 you learn what the penalty in trafficking over a thousand  
25 kilograms of marijuana was?

1 A Yes, I did.

2 Q And isn't it true that the maximum sentence is life  
3 imprisonment and there's a mandatory minimum sentence of ten  
4 years?

5 A That's correct.

6 Q Do you have any prior felony convictions?

7 A I do not.

8 Q Now, under the federal sentencing guidelines an offense  
9 involving, involving over 3,000 kilograms of marijuana would  
10 have given you a base offense level of 34, wouldn't it?

11 A Yes, I believe so.

12 Q Did you get three points off for acceptance of  
13 responsibility?

14 A I did.

15 Q So that makes it 31.

16 Did you get any additional points added for  
17 organizer/leader or manager/supervisor?

18 A I don't, I don't recall.

19 Q So under the guidelines you were facing approximately  
20 ten years, weren't you?

21 A Initially, yes.

22 Q At your sentencing hearing did the government talk about  
23 your efforts in helping in the forfeiture case of the Flash  
24 II?

25 A No.

1 Q Did you get any credit for the dollar value of the Flash  
2 II at your sentencing?

3 A I did not.

4 Q Where did Ole Anderson live when you, when you loaned or  
5 gave him that money?

6 A I don't, I don't recall exactly where he lived, but I  
7 remember him living in Florida.

8 MS. GRANTLAND: One moment, your Honor. I'm trying  
9 to eliminate the questions that we've already asked him.

10 Q During your cooperation with the government in this case  
11 you spent a lot of time talking to Ole Anderson about Flash  
12 II, didn't you?

13 A Yes, I did.

14 Q And, in fact, that was basically the focus of the  
15 investigation against Ole at this point, wasn't it?

16 A Well, there was, there was some other areas that we were  
17 interested in.

18 Q Like what?

19 A Ole had approached me about supplying marijuana and he  
20 said he had a contact. So the area of our focus was, was on  
21 that as well as Flash II.

22 Q But mostly it was about Flash II, wasn't it?

23 A I'm not sure I would say mostly because I think we came  
24 to a point where we realized that he was not able to make  
25 that connection with the marijuana. So we then went and

1 focused on the Flash II.

2 Q Now, in your conversations with Ole and in your  
3 statements to the, to Agent Willoughby you consistently  
4 called this a loan, didn't you?

5 A Ah, I do not recall.

6 Q I'm trying to -- okay.

7 Now, what year did you say that Ole paid you back?

8 A I believe it was 2001. It was the same year that he got  
9 arrested.

10 Q Now, you stated earlier that you gave, you gave Ole some  
11 money to invest in a boat to search for sunken treasure; is  
12 that correct?

13 A That is correct.

14 Q And how much money did you give Ole for that?

15 A I believe it was approximately 90 or a hundred thousand  
16 dollars.

17 Q And did you ever see that boat?

18 A I saw it, yes.

19 Q Were you ever on it?

20 A I was on it in the boatyard when it was being fixed up  
21 in Florida, and I was on it one time in Cuba, in port.

22 Q Now, would you say that Ole Anderson always had some  
23 kind of get-rich-quick scheme?

24 A Would you repeat that question, please?

25 Q Would you say that Ole Anderson always had some kind of

1 get-rich-quick scheme?

2 A Ah, I don't know if I would call it get-rich-quick  
3 schemes. He had a lot of unique, creative schemes to try to  
4 make some money, yes.

5 Q And you invested in how many other than these two boats?

6 A The two is all I can remember. There were some others  
7 that he proposed to me that I didn't get involved in.

8 Q And according to your plan you and Ole were going to be  
9 making money off treasure that this boat would be recovering  
10 from Cuba, Havana Harbor; is that correct?

11 A That's correct.

12 Q And you were going to either share it with some  
13 Canadians who had a contract with the Cuban government. Is  
14 that, is that one of the things that you were going to do?

15 A That sounds about right, yes.

16 Q And then later it got, that scheme got changed and you  
17 were going to smuggle them out of Cuba. Smuggle the  
18 artifacts out of Cuba?

19 A I was never involved in that.

20 MS. GRANTLAND: One moment, your Honor.

21 Q Did you ever see the police reports that Agent  
22 Willoughby prepared in this case?

23 A Yes, I have.

24 Q Have you ever reviewed them recently?

25 A Yes.

1 MS. GRANTLAND: I'm sorry, I only have one copy of  
2 this. I'm not introducing this as evidence. I just want to  
3 refresh his recollection.

4 MS. RUE: Your Honor, he hasn't indicated that he  
5 has a recollection deficit.

6 THE COURT: She may show him --

7 MS. GRANTLAND: I'm sorry.

8 THE COURT: Just a moment. She may show him a  
9 document and proceed with it. We'll see where we are.

10 (Whereupon counsel conferred.)

11 MS. GRANTLAND: May I approach the witness, your  
12 Honor?

13 THE COURT: You may.

14 Q Let me see if that's the right page. Just a minute.

15 If you could look at Paragraph 6 starting in the  
16 bottom of that page and continuing to the next page.

17 A Okay, what was your --

18 Q Could I get that back.

19 Does that refresh your recollection?

20 A It refreshes my recollection of him presenting that to  
21 me. That was the first time I ever heard of it.

22 Q So, did this strike you as odd that all of a sudden  
23 Canadians are no longer in the picture?

24 A No. Nothing would strike me as it being unusual.

25 Q Is that because Ole Anderson was always involved in

1 schemes like that?

2 A Ah, it just was not unusual. I hadn't heard of anything  
3 about the boat in so many years.

4 Q Did you ever make any money off that?

5 A I did not.

6 MS. RUE: Your Honor, could we have clarification  
7 on what the thats are?

8 MS. GRANTLAND: The treasure hunting boat.

9 THE COURT: And that's how you understood the  
10 question, she's asking about this treasure --

11 THE WITNESS: Yes.

12 THE COURT: -- hunting boat?

13 THE WITNESS: Yes. I understood it.

14 THE COURT: Thank you. That clears it up.

15 Q Did he ever pay you back for the money that you invested  
16 in that treasure hunting boat?

17 A I don't believe he ever did. No, I don't think he ever  
18 paid me back.

19 Q After a while didn't you come to realize that Ole  
20 Anderson and his schemes were not entirely believable?

21 A Ah, I wouldn't know if I would use that word. I lost  
22 confidence in his, in his schemes. So I did not invest in  
23 anymore, if that's what the question is.

24 Q Did you know Chuck Fitzgerald?

25 A No.

1 Q What about Sailorman New and Used Marine Emporium?

2 A I've heard of them.

3 Q But you don't know them?

4 A Personally, they're a business that I'm aware of. I've  
5 been there before.

6 Q Did you know Eddie Crosby?

7 A No.

8 Q Do you know --

9 THE COURT: Could I interrupt just --

10 MS. GRANTLAND: Sorry.

11 THE COURT: And forgive an interruption. But it  
12 would be helpful to me to get a time line here. And we'll  
13 just hit key points.

14 When, if you recall, did you first meet Ole  
15 Anderson?

16 THE WITNESS: Ah, I can give you a rough period.

17 THE COURT: Best you can.

18 THE WITNESS: I remember working with his brother  
19 in the early, when I first moved to Florida which was the  
20 early 1990's, and I met Ole soon thereafter.

21 THE COURT: All right. When was this treasure boat  
22 scheme?

23 THE WITNESS: Ah, let's see. It's, it's tough for  
24 me. But it was many years after I first met him. It was  
25 probably in the mid to late 1990's.

1           THE COURT:  When did he first become involved in  
2 your marijuana shipping illegality?

3           THE WITNESS:  He had -- in the shipping portion of  
4 it?

5           THE COURT:  In any portion of it.

6           THE WITNESS:  Well, his brother was, and I were,  
7 had done business together.

8           THE COURT:  Illegal business?

9           THE WITNESS:  Illegal business.

10          THE COURT:  Marijuana business?

11          THE WITNESS:  Correct.  And then he had always  
12 wanted to get involved in the business in one way or  
13 another.  His brother didn't really want him to get  
14 involved.  So he approached me kind of on the side and said  
15 is there any way I can get involved.

16          THE COURT:  When?

17          THE WITNESS:  Ah, for many years in the late 1990's  
18 through to early 2000.  2001.

19          THE COURT:  And when was he arrested?

20          THE WITNESS:  In December of 2001, I believe.

21          THE COURT:  So late 1990's until 2001 he was either  
22 constantly or sporadically engaged in the illegal marijuana  
23 business?

24          THE WITNESS:  Correct.

25          THE COURT:  All right.  When did you first hear

1 anything about any involvement in Flash II?

2 THE WITNESS: Ah, Flash II was prior to him being  
3 involved in the marijuana business and prior to the treasure  
4 boat. It was prior to all that involvement.

5 THE COURT: All right. And now maybe the date --  
6 thank you. The business about when the auction of the Flash  
7 II took place?

8 THE WITNESS: Again, I'm a little fuzzy on the time  
9 period, but I believe it was late 1990's, 1998, the first  
10 one.

11 THE COURT: All right. When was this -- and  
12 probably it's revealed here -- when was this discussion  
13 about paying back the \$16,000?

14 THE WITNESS: The discussion that became an  
15 opportunity for him to drive and he had asked me if he could  
16 take advantage of that opportunity. And I gave him the  
17 opportunity to drive marijuana from Arizona to  
18 Massachusetts. And during that period, one of the, my  
19 requirements was that he work off the amount of money that  
20 he had, that I had invested in the Flash II.

21 THE COURT: Yes. When was that?

22 THE WITNESS: We came to that agreement, ah,  
23 sometime in 2001. And I don't recall whether he worked in  
24 the spring or whether it was just the fall. But I know he  
25 did it, he worked for me in the fall of 2001. And sometime

1 prior to that we came to that agreement.

2 THE COURT: Yes. Well, now, he's arrested in --  
3 when were you arrested?

4 THE WITNESS: 2003. December of 2003.

5 THE COURT: Okay. But he's arrested in 2001. What  
6 happened to him, if you know?

7 THE WITNESS: He pled guilty and he served some  
8 time.

9 THE COURT: Some time.

10 THE WITNESS: Yes.

11 THE COURT: But then in 2004 --

12 THE WITNESS: Uh-huh.

13 THE COURT: -- you're having this conversation with  
14 him, and though I didn't admit this part of it, he says,  
15 there he says to you he's back as the owner of Flash II. Is  
16 that what you got from that?

17 THE WITNESS: Correct.

18 THE COURT: Okay. So what did you think, once the  
19 auction took place in late '98, who was it, who was it  
20 auctioned off to? It was auctioned off to these folks we've  
21 been talking about, right?

22 That's a very poor question, excuse me.

23 When you first heard about the Flash II who owned  
24 it?

25 THE WITNESS: It was my understanding that Ole was

1 the primary owner, and I was told from the beginning that he  
2 had a doctor involved.

3 THE COURT: Okay.

4 THE WITNESS: From the beginning I was told that  
5 there was an original investor in the boat, because Ole  
6 didn't have the money.

7 THE COURT: That's pre-auction.

8 THE WITNESS: Correct.

9 THE COURT: Then it's auctioned.

10 THE WITNESS: And during the auction it was my  
11 understanding that I was a percentage owner with my  
12 investment. And that I would get a piece. I wasn't told  
13 exactly what the piece was, but I was told that I was going  
14 to get a percentage of whatever they got at auction, in  
15 addition to my original investment.

16 THE COURT: Based upon what you understood, what  
17 happened at the auction? It never was successfully  
18 auctioned because he wouldn't set the price right?

19 THE WITNESS: It was my understanding that he felt  
20 the value of the boat was higher than what he got offered at  
21 auction.

22 THE COURT: And it was one, I don't know auction  
23 terms, but it's one of those ones where he doesn't have to  
24 let it go, he, Ole Anderson, unless the bid price gets up  
25 where he wants?

1 THE WITNESS: Correct.

2 THE COURT: Thank you. All right. Forgive the  
3 interruption, Ms. Grantland. And do you have any other  
4 questions for the witness?

5 MS. GRANTLAND: Yes, your Honor, I do.

6 Q First I had a follow-up to a question that you asked  
7 that I didn't quite understand his answer.

8 So the Flash II you loaned Ole, or the money you  
9 gave Ole for the Flash II was prior to, several years prior  
10 to your hiring Ole as a driver; is that correct?

11 A That's correct.

12 Q Okay. I just wanted to make sure because I think you  
13 might have said it a little bit differently.

14 Now, when you gave Ole this money where were you?

15 A That's a real good question. I don't remember, but I  
16 would assume it was in Florida.

17 Q Were there other people around?

18 A I do not recall.

19 Q Now, you said it was in cash.

20 A Uh-huh.

21 Q Was it, was it in a suitcase full of cash? Was it an  
22 envelope? How much cash was it?

23 A I don't recall whether I gave it to him in lump sums.  
24 It's my belief that I gave it to him in installments. I  
25 don't remember exactly what the installments were. It might

1 have been two or three installments.

2 Q And it was always in cash?

3 A It was always in cash, yes.

4 Q Was it in small bills?

5 A It most likely would have been in larger bills, I would  
6 assume. I really do not remember.

7 Q And you said it might have been in two or three  
8 installments?

9 A Yes.

10 Q Over what period of time?

11 A You're asking for dates?

12 Q Well, if you know the dates but --

13 A I don't know the dates.

14 Q But, what, you know, months, weeks?

15 A I would say it would be over months.

16 Q And I believe you said in your affidavit it was the fall  
17 of '96?

18 A That sounds --

19 THE COURT: What was the fall of '96?

20 MS. GRANTLAND: I'm sorry?

21 THE COURT: I've just lost the thread.

22 MS. GRANTLAND: Okay.

23 THE COURT: You two seem to understand what you're  
24 talking about.

25 What do you think she's asking you --

1 THE WITNESS: She's asking me --

2 THE COURT: -- whether it was in the fall of '96?

3 THE WITNESS: I'm thinking that you're saying I  
4 gave him the money in the fall of 1996.

5 Q Is that what you said?

6 THE COURT: Well, is that your best recollection?

7 THE WITNESS: That's the best of my recollection.

8 Q All right. So you don't know for sure?

9 A I do not know for sure.

10 Q Okay. But it was after my client had purchased his  
11 interest in the boat because you already knew about him,  
12 right?

13 A Correct.

14 Q And you don't remember what the denominations of the  
15 money were?

16 A I do not.

17 Q Did you go with Ole to his bank to deposit the money?

18 A I did not.

19 MS. GRANTLAND: No further questions.

20 THE COURT: Nothing further for this witness, Ms.  
21 Rue, is there?

22 MS. RUE: No, your Honor.

23 THE COURT: You may step down, thank you.

24 (Whereupon the witness stepped down.)

25 THE COURT: Is that the government's case on

1       forfeitability?

2               MS. RUE:  No, your Honor, I would move into  
3       evidence Exhibit 8 which is a certified copy of the record  
4       of conviction of Ole Anderson.

5               THE COURT:  Any objection?

6               MS. GRANTLAND:  I haven't seen it before.

7               THE COURT:  We'll take a moment and look it over.

8               MS. GRANTLAND:  I have no objection, your Honor.

9               THE COURT:  It may be received, Exhibit 8 in this  
10       proceeding.

11               (Exhibit marked in evidence.)

12               THE COURT:  All right.  Let me, because I think  
13       it's helpful, let me give you an impressionistic, and that's  
14       all it is, an impressionistic -- oh, before I do that, let  
15       me ask a question.

16               Trials are always helpful, that's where you really  
17       begin to understand what's going on.  You have no dispute,  
18       Ms. Rue, but that Mr., Dr. Lane is an innocent owner.  He  
19       wasn't --

20               MS. RUE:  We have no dispute with regard to  
21       innocence, your Honor.  We have no evidence indicating that  
22       he had any knowledge of Mr. Anderson's activities at the  
23       time with regard --

24               THE COURT:  Thank you.

25               MS. RUE:  -- to proceeds in the boat.

1           THE COURT: Thank you. That's very helpful and  
2 your candor is always appreciated.

3           Now, I think it is appropriate that I ruminate  
4 about this case. Because I take it that, they having rested  
5 on forfeitability, you move for a directed, it wouldn't be  
6 directed, you move for a finding in Dr. Lane's favor that  
7 they had no right to forfeit the boat.

8           MS. GRANTLAND: Correct, your Honor.

9           THE COURT: And I understand that.

10           Now, because I want you to talk settlement, let me  
11 ruminate. I haven't made up my mind. I am disposed, I'll  
12 hear argument after you, I give you a chance to talk, but  
13 I'll hear argument.

14           As things stand now, my reaction is that the  
15 government's case is alive. It's alive. I'm not -- I don't  
16 think I can -- I'm not disposed to, since I'm the fact  
17 finder, on this record to say that the government had no  
18 right to forfeit the boat. I have to look both at this  
19 alleged investment of Milo and also the conduct of Anderson.  
20 The government isn't depending just on Milo, they're  
21 entitled to depend on Anderson who, subject to rebuttal  
22 evidence, I'm inclined to think was involved at some stage  
23 in the late '90's as a drug dealer. And Anderson is all  
24 over this. Anderson is the one who's apparently putting  
25 this together, or keeping the records. I'm struck by this

1 handwritten document which he signs, which we have marked as  
2 Exhibit 6 in this proceeding. And that's fairly  
3 self-evident as to, at least I think the natural inference  
4 as to who's in on this boat, and who's in on it among other  
5 people is Ole Anderson. And from, from Dr. Lane's statement  
6 of facts, from the supplemental affidavit of Dr. Lane, it's  
7 pretty clear that Anderson was the one who was living on or  
8 near the boat, taking care of it, dealing with it. Those  
9 are all reasonable inferences. The 2004, that pales,  
10 because I'm not clear when he was putting up the money for  
11 storage, even the portion that I admitted. But, if, if the  
12 time line, and he's pretty vague on the time line, but I can  
13 take judicial notice of any appropriate document, and I can  
14 do that at any time, even after the government has rested.

15 So, the areas of issue here are, it sounds to me  
16 like Ole Anderson is an innocent man but one who's eager to  
17 make money quick, and at some stage in the late '90's he  
18 goes over to the dark side and starts running marijuana to  
19 make some quick money. And also I will tell you it's a  
20 reasonable inference that once he does that that money is  
21 used indiscriminately for his various get-rich-quick  
22 schemes, one of which is Flash II.

23 So, at least while the inference would be thin, I  
24 must say, but I'm prepared to take judicial notice even now,  
25 if there's anything that will help me with respect to time,

1 the evidence would be thin but it may be sufficient to say  
2 that there was, some of that money went for the upkeep of  
3 the vessel, and then there's this whole business about the,  
4 if the auction took place in late '98, clearly whatever  
5 Milo's involvement was, it preceded the auction date and,  
6 and it's unclear to me whether any of that money got into  
7 the boat. It's also unclear to me, perhaps -- well, I don't  
8 know as he could tell, whether at the time the money went  
9 into the boat -- well, probably the more reasonable  
10 inference was that, because Mr. Milo said it was all  
11 earlier, that the Flash II investment at its inception was  
12 not illegal and was not with -- well, it certainly wasn't  
13 while Mr. Anderson was involved in drug dealing if Mr. Milo  
14 is believed that the Flash II was a scheme earlier, indeed  
15 earlier than the treasure.

16 Now, I say all that to show that my mind is  
17 wobbling in this area and here's what difference it makes.  
18 If the government makes it then I've already ruled the  
19 forfeiture was appropriate. So the most we're talking about  
20 is a hundred thousand dollars. It doesn't look like Dr.  
21 Lane was the only owner so I don't know what -- but it's now  
22 clear he was innocent. So apparently he gets some or maybe  
23 all of that. I don't know.

24 MS. RUE: Forgive me, your Honor.

25 THE COURT: That remains to be seen.

1 MS. RUE: Your Honor?

2 THE COURT: Wait a minute. Well, all right,  
3 interrupt me. Yes?

4 MS. RUE: We concede that he's innocent.

5 THE COURT: I know.

6 MS. RUE: We do not concede that he's an owner.

7 THE COURT: Oh, fine. But this would lead you to  
8 believe that, and I'm placing a fair amount of -- this is  
9 Exhibit 6 -- a fair amount of weight on this. This makes  
10 sense to me and it seems to indicate who the, if you will,  
11 the equitable owners were and who the investors who were  
12 entitled to be paid back were and what their relative  
13 interests are, and Lane is right up there. He's, he's going  
14 to be paid out 60,000 first, and then, or 30,000 of the  
15 total. But that's neither here nor there. We'll get to  
16 that.

17 I simply spoke at length both to sharpen your  
18 arguments when I come back, but also to see whether, because  
19 I enjoin you now, I'm going to take a 15 or 20 minute  
20 recess, and I enjoin you to talk together to see if this  
21 can't be resolved. If it can, fine; if it can't, we'll go  
22 on, Ms. Grantland, and we'll see what evidence you have on  
23 the issue of forfeitability. And then we'll, we'll go as  
24 far as we can go and I'll make up my mind with respect to  
25 whatever I can.

1           Very well. I do want to see you at the side bar,  
2 both of you, for just a moment, and this does not need to be  
3 on the record.

4           (Side bar conference off the record.)

5           THE COURT: And I'll see -- Bonnie, we'll bring  
6 back my next appointment. We'll recess for 20 minutes.

7           THE CLERK: All rise. Court is in recess.

8           (Recess.)

9           THE CLERK: All rise.

10          THE COURT: Court is in session, please be seated.

11          Before you call Dr. Lane, Ms. Grantland, I'm going  
12 to give back this document that Ms. Rue has proffered at my  
13 request, this Asset Forfeiture Policy Manual dated  
14 January 2005. And I would like to see something else. I  
15 would like to see, and it's on the first page, A Guide to  
16 Interlocutory Sales and Expedited Settlements 2003. It's  
17 referred to as a stand-alone publication.

18          Can you get me that, Ms. Rue?

19          MS. RUE: Your Honor?

20          THE COURT: Yes.

21          MS. RUE: Ms. Grantland and I were actually just  
22 discussing that. I have it. I would ask the Court to  
23 review it in camera because this is not a document that's  
24 submitted for external publication. And I think when the  
25 Court reviews it you will find it includes model, model

1 documents that the government uses. And so, it's an  
2 internal document. I'm happy to supply it to the Court. It  
3 states on its front page that it is not intended to give  
4 rights to any --

5 THE COURT: Any objection to that?

6 MS. GRANTLAND: Yes, your Honor, I --

7 THE COURT: Then I won't, I won't --

8 MS. GRANTLAND: I had asked her to see it myself  
9 because I believe it's relevant to this case. And I  
10 certainly want you to see it, your Honor. But I also would  
11 like to see it. And I would like a chance to brief the  
12 discretionary function exception based on my having just  
13 gotten last week my copy of the policy manual which is not  
14 clear-cut the way the government had represented it.

15 THE COURT: All right, now, wait a minute. Any  
16 objection to her looking at it?

17 MS. RUE: I don't have the authority to release  
18 that, your Honor.

19 THE COURT: That's fine. I'm not looking at it ex  
20 parte. So it's not in, it's not in the record. I'll have  
21 to do without it.

22 All right, call your witness.

23 MS. GRANTLAND: I'll call Dr. Lane.

24 THE COURT: He may be called.

25 THE CLERK: Please raise your right hand.

1                   Do you solemnly swear that the answers you will  
2                   give to this Court will be the truth, the whole truth, and  
3                   nothing but the truth, so help you God?

4                   THE WITNESS: I do.

5                   THE CLERK: Please be seated.

6                                   KERRY SCOTT LANE

7                                   DIRECT EXAMINATION

8 BY MS. GRANTLAND

9 Q Dr. Lane, could you state your name?

10 A Kerry Scott Lane.

11 Q And what do you do for a living?

12 A I'm a physician anesthesiologist.

13 Q And where do you work?

14 A St. Mary's Medical Center, West Palm Beach, Florida.

15 Q How long have you been employed as a doctor?

16 A I graduated from medical school in 1980.

17 Q Are you familiar with the sailboat known as Flash II?

18 A I am.

19 Q And what was your relationship to Flash II?

20 A I was the principal owner, and I purchased it with my  
21 funds.

22 Q When did you first obtain your interest in Flash II?

23 A July of 1996.

24 Q And who did you obtain your interest from?

25 A I was introduced to Mr. Ole Anderson and he induced me

1 to --

2 Q No, I'm talking about -- the question -- let me ask the  
3 question again.

4 Who did you purchase your interest from?

5 A Sailorman, Chuck Fitzgerald, Sailorman Used Boat  
6 Emporium, Fort Lauderdale, Florida.

7 Q And how did you meet Sailorman?

8 A I was introduced to him through Mr. Anderson.

9 Q And where were you when you purchased your interest?

10 A I was living in Delray Beach, Florida. I physically  
11 took cashiers' checks with Mr. Anderson to Fort Lauderdale,  
12 Sailorman's Used Boat Emporium. We exchanged funds.

13 Q And whose cashiers' checks were those?

14 A Ah, one was a \$5,000 cashier's check where I was the  
15 remitter. The other one was a \$5,000 cashier's check my  
16 girlfriend remitted to Mr. Anderson. Mr. Anderson went to  
17 the bank to put his name on it.

18 Q No, just, just answer just the question I asked.

19 MS. RUE: Your Honor, I don't think these  
20 instructions are appropriate.

21 MS. GRANTLAND: I'm sorry.

22 THE COURT: Well, I would also give that  
23 instruction, so I'm not troubled.

24 All right, how much was the girlfriend's check?

25 THE WITNESS: \$5,000.

1           THE COURT: All right. And so Ole Anderson goes to  
2 the bank and comes up with what?

3           THE WITNESS: Nothing. \$5,000, but it was from my  
4 girlfriend. And I produced \$5,000.

5           THE COURT: But once he ran it through the bank  
6 he's got \$5,000?

7           THE WITNESS: His name was on the cashier's check,  
8 yes.

9           THE COURT: Okay. And then what happened to those  
10 two checks?

11          THE WITNESS: They went to Sailorman.

12          THE COURT: Go ahead.

13 Q And were you physically present that day?

14 A Yes. Fort Lauderdale.

15 Q Did you obtain any documents that day?

16 A I believe I received a receipt that has been introduced  
17 in evidence.

18          MS. GRANTLAND: I would like to have these  
19 documents, I think I'm going to just use these for  
20 identification for right now because some of them we might  
21 not introduce. Could I --

22          THE COURT: We'll give them to the clerk. Shall  
23 we -- there are four separate documents? We'll mark them  
24 with A, B, C -- well, these -- the response to the request  
25 for production of documents, has that been filed in Court?

1 MS. GRANTLAND: Yes, your Honor.

2 THE COURT: Well, then I can take judicial notice  
3 of it.

4 MS. GRANTLAND: Okay.

5 THE COURT: I don't need to mark it. It's in  
6 evidence.

7 MS. GRANTLAND: Okay.

8 THE COURT: Or it's sufficiently identified --

9 MS. GRANTLAND: Okay.

10 THE COURT: -- to be precise. It's sufficiently  
11 identified.

12 MS. GRANTLAND: Okay.

13 Q So, Dr. Lane, if you look at your response to the United  
14 States request for production of documents, can you look  
15 through that and tell me the page numbers -- I have a set  
16 for the Court, too, your Honor. -- the page numbers of the  
17 documents you received the day you purchased your interest  
18 in Flash II. When you first purchased an interest.

19 A In this set of documents it's Page 5. It's the receipt  
20 from Sailorman. It's dated 7-12-1996.

21 Q Could you speak a little louder.

22 A It's Page 5. It's the receipt from Sailorman. It's  
23 dated 7-12-1996.

24 Q Did you get anything else from him that day?

25 A I don't recall offhand.

1 Q Well, in these documents.

2 A I don't recall offhand.

3 Q You don't recall.

4 Can you look at the documents and see if there are  
5 any others you got that day?

6 A Well, here on Page 6 I see where Mr. Anderson  
7 handwritten, had handwritten a note where he had Chuck  
8 Fitzgerald sign his interest over to the consortium headed  
9 by Ole Anderson for the sum of \$22,000.

10 Q Oh, so you did not -- did you receive that that day?

11 A I may have. I probably did.

12 THE COURT: Do you recognize the handwriting on  
13 that?

14 THE WITNESS: That's Mr. Anderson's handwriting.

15 THE COURT: And the handwriting by that, there's a  
16 signature, but the handwriting is I, Chuck Fitzgerald, et  
17 cetera.

18 THE WITNESS: Yeah, that's Chuck Fitzgerald's  
19 signature there but --

20 THE COURT: But do you recognize the text?

21 THE WITNESS: The text is Mr. Anderson's  
22 handwriting.

23 THE COURT: Thank you.

24 And because this -- I'm showing you what we've  
25 marked as Exhibit 6. I take it that's Mr. Anderson's

1 handwriting as well?

2 THE WITNESS: It is.

3 THE COURT: Thank you.

4 Q At some point did you sign a written agreement with the  
5 consortium regarding ownership?

6 THE COURT: Well, let's go step by step. We come  
7 back to your question.

8 You hear about this Flash II. It's owned, I take  
9 it, by this Sailorman boat brokerage or boatyard, correct?  
10 That's what you understand?

11 THE WITNESS: Yes.

12 THE COURT: And do you hear about it through this  
13 Mr. Anderson, Ole Anderson?

14 THE WITNESS: That's correct.

15 THE COURT: Okay. And I know she's trying to save  
16 time, but the sense I have is you decide to buy it?

17 THE WITNESS: Yes.

18 THE COURT: Now, you referred to yourself as the  
19 principal owner. Who else was going to have an ownership  
20 interest, step one here, where you decide to buy it?

21 THE WITNESS: Mr. Anderson.

22 THE COURT: Okay. So you and he are going to buy  
23 it?

24 THE WITNESS: Yes.

25 THE COURT: But if I believe your testimony --

1 well, and what was Sailorman selling it for?

2 THE WITNESS: Ah, I believe it went for \$22,000.

3 THE COURT: But if I believe you, you put up ten.

4 THE WITNESS: No, actually the ten was just the  
5 initial down payment. I showed up at some point later, a  
6 week later, with another cashier's check for \$20,000 in  
7 addition to the 10,000. So within two or three weeks  
8 Mr. Anderson had received \$30,000 from me. So the two 5,000  
9 initial payments were just a down payment to hold it.

10 THE COURT: All right. But those two \$5,000 down  
11 payments, they went to Sailorman?

12 THE WITNESS: Yes.

13 THE COURT: I mean you saw that?

14 THE WITNESS: Yes.

15 THE COURT: But the vessel stayed there in the  
16 boatyard?

17 THE WITNESS: Only for a week or so; it ended up in  
18 my house.

19 THE COURT: Okay. So at the end of the week  
20 Sailorman wants another 20?

21 THE WITNESS: Something to that effect.

22 THE COURT: Where does that money come from?

23 THE WITNESS: My bank account.

24 THE COURT: And did you deliver the check?

25 THE WITNESS: I don't recall offhand. I think at

1 that point I gave Mr. Anderson the money, he must have  
2 handled the transaction. All I know is that Anderson took  
3 the money and the boat ended up in my garage.

4 THE COURT: Okay. So now you're into this  
5 transaction for \$30,000.

6 THE WITNESS: Yes.

7 THE COURT: And the boat's in your garage.

8 THE WITNESS: Yes.

9 THE COURT: And this is a couple of weeks after  
10 July 12, 1996.

11 THE WITNESS: I believe so, yes.

12 THE COURT: Okay. Then -- when's the first time  
13 you saw this document?

14 THE WITNESS: It's dated 7-12-96.

15 THE COURT: But my question is -- I can see what  
16 it's dated -- when did you first see it?

17 THE WITNESS: I don't recall.

18 THE COURT: All right. Go ahead, Ms. Grantland.

19 MS. GRANTLAND: I'm sorry, the one you just said as  
20 this is that --

21 THE COURT: Is Page 6.

22 MS. GRANTLAND: Okay.

23 THE COURT: And forgive me, I should be precise.

24 Q When you, when you made the additional \$10,000 payment,  
25 or \$20,000 payment, I think you said, that exceeded the

1 amount that was owed to Sailorman. Where did the rest of it  
2 go?

3 A To Mr. Anderson -- to fund Mr. Anderson's restoration  
4 efforts.

5 Q And did you pay additional money over time to restore  
6 the boat?

7 A I did.

8 Q And did you submit in your response to the United States  
9 request for production of documents documentation showing  
10 your payments?

11 A Yes, I did. Canceled checks.

12 Q Can you identify those in the --

13 A It looks like they start on Page 17 and run  
14 consecutively, I'm guessing to Page -- 17 through 26.

15 Q And did there come a time when you signed a written  
16 contract with Ole Anderson regarding your, your purchase of  
17 an interest in the consortium?

18 A I don't know that I signed anything. I mean, if there's  
19 something here that has my name or my initials. I guess it  
20 would be Page 13 and 14 and my initials --

21 Q Well, let me ask you this instead. Can you identify the  
22 documents on Pages 10 and 11? I'm sorry, there's an earlier  
23 one, too. Pages 7 -- I'm sorry, it's 10 and 11. Pages 10  
24 and 11.

25 MS. RUE: Your Honor, for clarity, please, these

1 documents are double numbered. There's a relatively big  
2 number at the bottom of them, and then there's an additional  
3 number Lane Doc Request Response with lots of zeros --

4 MS. GRANTLAND: Oh, I'm sorry.

5 MS. RUE: -- down below.

6 THE COURT: I'm -- and that's helpful, Ms. Rue.  
7 I'm looking at the big numbers.

8 MS. GRANTLAND: I couldn't even see the little  
9 numbers. I remember that now.

10 THE COURT: No, no, I'm following it. All right.

11 A Yes, big numbers, it's Page 10 and 11, and I did sign it  
12 on Page 11 and it's not dated.

13 THE COURT: Well, when did you sign it?

14 THE WITNESS: I can't say for sure.

15 MS. GRANTLAND: Maybe we can --

16 THE COURT: Excuse me. Here's what I'm missing.

17 You put, if I'm following you, you put up \$30,000,  
18 and it's your money. Now, Anderson may be helping you out  
19 and the like. And so that gets you the vessel from  
20 Sailorman for 22, you've put up another eight which you  
21 expect Anderson to use to refurbish and put it back in  
22 shape, and in fact the vessel's sitting there in your  
23 garage. And I look at a photo here and that's supposed to  
24 be the photo of you and the vessel in your garage.

25 Have I got that?

1 THE WITNESS: It is.

2 THE COURT: All right. Now, that's fairly  
3 straightforward. Now, at some stage here's this agreement  
4 which comes from you, and you say you sign it, and now it's  
5 starting talking about consortiums and the like.

6 How did this document come to be?

7 THE WITNESS: I'm speculating but I imagine --

8 THE COURT: No, you can't speculate.

9 THE WITNESS: It was typed by someone.

10 THE COURT: Of course. I mean, do you recall the  
11 circumstances under which you signed it?

12 THE WITNESS: It was at my home. I'm assuming that  
13 Mr. Harper, the attorney, drew up the document. And it's  
14 not dated so I can't say for certain when I signed it. But  
15 I would say it would be within a week or two or three of  
16 purchasing the boat.

17 THE COURT: And why did you sign it?

18 THE WITNESS: To protect my interest in the  
19 consortium.

20 THE COURT: What consortium?

21 THE WITNESS: The consortium Mr. Anderson created.

22 THE COURT: When did you first hear there was some  
23 consortium going to be created?

24 THE WITNESS: After we had purchased the boat.  
25 After I had purchased the boat.

1 THE COURT: Okay. What did he tell you?

2 THE WITNESS: He said we're going to refurbish the  
3 boat and auction it off and this is, we're going to divide  
4 up the funds.

5 THE COURT: Who did you think he was talking about  
6 we?

7 THE WITNESS: Myself and whoever else was involved.

8 THE COURT: Well, am I understanding this  
9 correctly. That it was going to take more than \$8,000 to  
10 put this boat in topnotch form to be auctioned off. Is that  
11 how you understood it?

12 THE WITNESS: Obviously it was more than that  
13 because I invested \$60,000 or so in the whole enterprise.

14 THE COURT: Okay. Now, what I'm getting from this,  
15 and we'll give it back to Ms. Grantland, is here's this  
16 run-down, junky looking boat but it happens to be JFK's Star  
17 boat and it's discovered here, or so Anderson says, in  
18 Sailorman. Sailorman's going to let it go for \$22,000. You  
19 and Anderson think this is really going to be a killing here  
20 because this is JFK's Star boat and we can auction it off  
21 for a big pile of money.

22 Have I roughly got that right?

23 THE WITNESS: You do.

24 THE COURT: So in order to get it quickly out of  
25 the hands of Sailorman you put down a deposit of ten, you

1 put up another 20, and you know that at least \$8,000, and  
2 it's going to go to Anderson for whatever has to be, and the  
3 boat gets to your garage. So there she is, but she's a  
4 rather run-down old Star boat and if I looked at I wouldn't  
5 think much of it unless, of course, I knew that JFK once  
6 owned it.

7 Have I roughly got that right?

8 THE WITNESS: Yes, you do.

9 THE COURT: But then you also know, or Anderson  
10 tells you that to get this in absolutely tiptop refurbished  
11 form it's going to take a pile of money, and I don't mean to  
12 be glib, but let me say it in other words, it's going to  
13 take a lot more than the \$8,000 which you've already put up  
14 to refurbish it. And he's proposing -- is he the moving  
15 force here? Or are you?

16 THE WITNESS: He was the gentleman that was going  
17 to carry the venture forward. I was a practicing physician.  
18 I was not involved in boat restoration.

19 THE COURT: Okay. Now I think I -- and the vehicle  
20 by which investors were going to put money into the  
21 restoration and participate in the proceeds of the sale was  
22 a consortium?

23 THE WITNESS: Yes.

24 THE COURT: And you had retained an attorney, a  
25 fellow by the name of Harper, to set that up?

1           THE WITNESS: Oh, I didn't. Mr. Anderson retained  
2 Harper.

3           THE COURT: I think -- thank you. Go from there.  
4 Now I understand and go from there, Ms. Grantland.

5 Q Okay. And if you look at Pages 15 and 16 of this same  
6 document, the document request --

7 A Yes.

8 Q -- there's another version of the agreement?

9 A Yes.

10 Q And what is the date on that?

11 A 12-24-96.

12 Q Now, can you compare that to the other one and see which  
13 one came first?

14           THE COURT: It's obvious which one came first in  
15 terms of the dates on them. The question is, you're asking  
16 him which one really came first.

17           MS. GRANTLAND: Well, I believe he said that the  
18 first one doesn't have a date on it.

19           THE COURT: I'm sorry. I stand corrected.

20           MS. RUE: Your Honor, he did testify that it was  
21 within a few weeks.

22           MS. GRANTLAND: Oh, he did?

23           THE COURT: He did say that.

24           THE WITNESS: Well, I said that. But I can't be  
25 certain because now when I see this other one it has a

1 different date on it. It could have been any time period  
2 between the time I got involved and December 24th, 1996. I  
3 don't know in fact when it was. It's not dated. I don't  
4 have any specific recollection.

5 Q Now, if you could compare --

6 A They are two different agreements.

7 Q I'm sorry?

8 A They are two different agreements because one has K.  
9 Lane and the other one has Dr. Kerry Lane.

10 Q Now, looking at Page 10 -- I'm sorry, Page 10,  
11 Paragraph 2. Who are the other members of the consortium as  
12 of the date of that contract?

13 A I see here it says Anderson/K. Lane.

14 THE COURT: Well, let's not have him take time to  
15 just read documents.

16 MS. GRANTLAND: I'm sorry.

17 THE COURT: I can read.

18 MS. GRANTLAND: Okay. Let me move on.

19 Q Did there ever come a time when, when Gary Milo took an  
20 interest in this consortium?

21 A Not to my knowledge.

22 THE COURT: Well, let me ask you this. Have you  
23 ever seen -- this document apparently came from your files  
24 because you produced it in this litigation.

25 When did you first see it?

1           THE WITNESS: Probably here, 12-4-97, that's when  
2           Anderson dated it. That's when he wrote it and I believe he  
3           wrote it in my home.

4           THE COURT: All right.

5           THE WITNESS: So that was a year later.

6           THE COURT: Thank you.

7           Now, as of this date -- this document actually  
8           makes some sense to me. When was the auction? Or the  
9           attempted auction?

10          THE WITNESS: March of 1998.

11          THE COURT: So now -- in March of 1998. And this  
12          document is before the auction, 12-4-97. All right.

13          So at this stage, the way I understand this is,  
14          the, the equity owners as of this date are Eddie Crosby,  
15          Kerry Lane, Jean Anderson.

16          THE WITNESS: That's his mother. Or his sister.

17          THE COURT: Thank you.

18          THE WITNESS: Homer Earnest.

19          THE COURT: Homer Earnest. Thank you. Chuck  
20          Fitzgerald, Ole Anderson, and their respective equity  
21          interests are set forth.

22          THE WITNESS: That's correct.

23          THE COURT: And was it correct?

24          THE WITNESS: That was Mr. Anderson's  
25          interpretation.

1           THE COURT: But you weren't challenging it at that  
2 time, you thought that was as --

3           THE WITNESS: I wasn't happy with it, but I was  
4 resigned to accept it.

5           THE COURT: All right. And then as I read this,  
6 from the proceeds of the boat, by auction or otherwise,  
7 there were going to be payouts in sequence, and the first  
8 payouts were going to go to you, Mr. Crosby and Jean  
9 Anderson in the amount set forth here on page, under  
10 subparagraph B.

11          THE WITNESS: That's correct.

12          THE COURT: All right. So you were going to get  
13 your 60,000. And by then is it correct you had put up  
14 another 60,000 or a total of 60,000?

15          THE WITNESS: A total of 60,000.

16          THE COURT: So you've already put up 30, you put up  
17 another 30, you're into the project now for 60?

18          THE WITNESS: That's correct.

19          THE COURT: You get your 60 back. Then under  
20 paragraph C these other folks, of which you're one, assuming  
21 you have enough money to pay the first three out under  
22 figure B, all these folks are going to get whatever is set  
23 forth here, correct?

24          THE WITNESS: That's correct, yes.

25          THE COURT: And you're one. So what, did you put

1 up another ten?

2 THE WITNESS: No, this was just Mr. Anderson's  
3 repayment schedule. This is how he decided to divvy up the  
4 funds under a scheme that he concocted.

5 THE COURT: I see. So you were going to get 60,000  
6 off the top, but then assuming there were profits of another  
7 108,000, this is where they go?

8 THE WITNESS: That's what Mr. Anderson wrote.

9 THE COURT: Right. And is it sort of the same  
10 thing, you didn't challenge it, so far as you knew that was  
11 proper, so far as you knew?

12 THE WITNESS: Correct.

13 THE COURT: Then if anything was left over the  
14 equity owners were going to get their equity percentages  
15 with the deductions for what they had already been paid?

16 THE WITNESS: That's correct.

17 THE COURT: Thank you. All right, Ms. Grantland.

18 Q How much money did you put up altogether during the  
19 entire time that you were a member of the consortium?

20 A I haven't totaled it up exactly, but it exceeded 60,000.  
21 It was probably closer to 70,000.

22 Q And how much did the Marblehead bills come to, if you  
23 know?

24 A I don't know for certain. I have seen some documents  
25 that reflect a significantly lesser amount.

1 Q And do you know of any other expenses other than  
2 Marblehead that were paid with the money you supplied?

3 A Well, there were shipping costs, shipping the boat back  
4 and forth between Florida and Massachusetts. Storage costs.  
5 Jimmy's Yachting in Newport, we had to make an honorarium, a  
6 donation. There are many expenses.

7 Q So, do you think that -- do you have any knowledge of  
8 how much expenses there were in relation to how much money  
9 you paid?

10 A Not in absolute terms, no.

11 Q I'm sorry?

12 A No, not in absolute terms.

13 MS. GRANTLAND: Okay, no further questions.

14 Q Oh, one more thing. The storage costs, weren't those  
15 part of, were those part of Marblehead's bills?

16 A I'm sure they were.

17 Q What about transportation?

18 A Generally, I paid those, to my knowledge.

19 MS. GRANTLAND: No other questions.

20 THE COURT: Ms. Rue.

21 MS. RUE: Thank you, your Honor.

22 CROSS-EXAMINATION

23 BY MS. RUE

24 Q Dr. Lane, let's stay with this document for a moment and  
25 turn to Pages 17 through 26.

1           When you were making payments that you say were  
2           toward this boat you were making them to Ole Anderson; is  
3           that right?

4           A    That's correct.

5           Q    When Ole Anderson presented you with a document,  
6           Page 15, that is signed, or dated December 24th, 1996, it  
7           says that there's a consortium and it says that the original  
8           two members of the consortium are Eddie Crosby and Ole  
9           Anderson, doesn't it?

10          THE COURT:  You're on Page 15?

11          MS. RUE:  Page 15, Paragraph 2, Line 1, your Honor.

12          THE COURT:  Thank you.

13          MS. RUE:  The consortium shall consist of the two  
14          present members.

15          THE COURT:  Thank you.

16          MS. RUE:  Anderson and Mr. Eddie Crosby.

17          THE WITNESS:  We have different documents.  That's  
18          not the one I see.

19          THE COURT:  Here, she's, she's -- I didn't see it  
20          either.  She's reading down here on Paragraph 2.  Page 15,  
21          Paragraph 2.

22          THE WITNESS:  Yes.  I see that, yes.

23          Q    So the document that you signed on Page 16 that was  
24          within six months of your initial payments to Mr. Anderson  
25          was something that said the original two members, members of

1 this consortium, whatever that is, are Ole Anderson and  
2 Eddie Crosby?

3 A That's what it says.

4 Q And you signed it?

5 A I did.

6 Q That's your signature on Page 16?

7 A It is.

8 Q And you agreed that what you're contributing is \$25,000  
9 for five participation units, whatever that means, under  
10 this document?

11 A Yes.

12 Q And you signed that, you agreed to it?

13 A Yes.

14 Q So all of your payments are to Ole Anderson and you sign  
15 an agreement with Ole Anderson where he says that the first  
16 two owners of this boat are himself and Eddie Crosby?

17 A That's what it says.

18 Q And, in fact, on Page 10 and 11, the other document that  
19 you've referred to, this is the one where initially you  
20 testified you signed this within a few weeks?

21 A I may have been mistaken.

22 Q You testified to it in court, but you're not sure if it  
23 was really true?

24 A It's not dated so -- it's ten years ago. My  
25 recollection is vague.

1 Q Your recollection as to the ownership documents are  
2 vague?

3 A My recollection as to the date this was signed is vague.

4 Q In that document, Paragraph 2, contribution of funds for  
5 the purchase and refit, Page 10, the consortium shall  
6 consist of the two present members, Anderson and Mr. Eddie  
7 Crosby.

8 So that document, too, said there were already two  
9 members at the time that you got in and those members were  
10 Ole Anderson and Eddie Crosby. Is that right?

11 A That's what it says.

12 Q And you signed that one also, Page 10? Page 11?

13 A I did, but it's not dated.

14 Q But you signed it. It's your signature?

15 A It is.

16 Q And, in fact, you produced a document, Pages 7 and 8,  
17 where Charles Fitzgerald, the original owner of the boat,  
18 Sailorman, is signing a document. You produced it, it's  
19 Lane Document Request Response, and it's notarized, and in  
20 that document where Mr. Fitzgerald has an interest it says  
21 that the consortium shall consist of the two present  
22 members, and it's Anderson and Eddie Crosby, you're not  
23 named. Is that right?

24 A Yes.

25 Q And this was one of your documents?

1 A Came from my files.

2 Q Okay. It came from your files. It was one of your  
3 documents; is that right?

4 A It came from my files, but I'm not sure when I became  
5 aware of this document, it may be months later, after I  
6 visited Sailorman.

7 Q When Judge Young asked you about Page 29, receiving this  
8 document, you said it was signed in your home and you said,  
9 I was not happy but I was resigned. You were resigned to  
10 the existence of this document because Ole Anderson was the  
11 one controlling this, weren't you?

12 A I don't necessarily agree with that. What do you mean  
13 controlling it?

14 Q He gave you a document and you were resigned to the fact  
15 that this is what the ownership interests were now, weren't  
16 you?

17 A There were extenuating circumstances.

18 Q Well, what were those?

19 A Mr. Anderson threatened me with physical violence.

20 Q When did that happen?

21 A Sometime in this time period.

22 Q Did you report those threats?

23 A No.

24 Q Have you ever reported them until today?

25 A No.

1 Q You continued to be associated with Mr. Anderson; is  
2 that right?

3 A Yes.

4 Q In March 1998 you went to the auction with Mr. Anderson;  
5 is that right?

6 A Yes.

7 Q You stated in your response to document requests that  
8 you paid for the lodging for Mr. Anderson when he went to  
9 that auction; is that right?

10 A I did. I did.

11 Q So, you now tell us that he was threatening you, but it  
12 didn't cause you to change your behavior with respect to  
13 your association with Mr. Anderson, did it?

14 A I'm not sure that's entirely correct.

15 Q You continued to give him checks; is that right?

16 A I did. But I'm not sure of the time frame and the time  
17 sequence.

18 Q Well, let's turn to those. Page 23. You say that this  
19 threat occurred in December '97, but you're making payments  
20 to him, \$500, May 1998; \$1,500, May 1998; \$300, July 1998; a  
21 thousand dollars, September '98. You're turning over checks  
22 to him left and right after he had threatened you.

23 September of 1998, \$2,000. \$3,000 in October of '98, months  
24 after the auction, so presumably -- the boat's already  
25 refurbished, isn't it?

1 A Yeah. But there were transportation costs moving the  
2 boat from Manhattan to Newport, Rhode Island, back to my  
3 garage. There were maintenance, ongoing maintenance costs.

4 Q And you are paying those costs to Ole Anderson and he's  
5 doing something with them?

6 A One would infer that.

7 Q Okay. And, in fact, you don't have the faintest clue  
8 what he was doing with them, do you? You don't know if he  
9 was buying drugs with the money that you provided him? You  
10 don't know if he was buying food --

11 MS. GRANTLAND: Objection, your Honor.

12 Q -- with the money that you provided him?

13 THE COURT: Well, it's --

14 Q You don't know?

15 THE COURT: With all -- it is argumentative. And  
16 the fact is you didn't know how he was disbursing funds?  
17 That's a neutral way of putting it.

18 THE WITNESS: That's correct.

19 THE COURT: He represented to you we've got to ship  
20 the boat, we've got to keep the varnish right up to snuff  
21 and the like, or things like that, and you paid.

22 THE WITNESS: That's correct.

23 Q But you have now concluded, have you not, that the money  
24 that you gave to Ole Anderson far exceeded the money that  
25 Marblehead Trading Company invoiced; is that right?

1 A I've come to understand that in the last couple of  
2 weeks. I didn't know it in the time frame you're referring  
3 to.

4 Q Dr. Lane, could you turn, please, to Page 29.

5 A Yes.

6 Q And Page 30. Reviewing those documents, do you see the  
7 name Anne Kleinrichert on those documents?

8 A I don't see it. Maybe I'm missing it. I don't know.

9 Q Well, take your time. Please review them carefully.  
10 You are testifying under oath.

11 A I don't see it. I don't have my glasses.

12 THE COURT: Well, I don't see it. So where are we  
13 going? Is this person --

14 Q Well, you testified that your girlfriend, Anne  
15 Kleinrichert, was an investor in your supplemental  
16 affidavit; is that right?

17 A That's correct.

18 Q But in December 1997 you received a document asserting  
19 that it had all the investors, and in that document she's  
20 not present?

21 A That's correct.

22 THE COURT: Well, was this investment the original  
23 \$5,000?

24 THE WITNESS: I had, I had --

25 THE COURT: She put in more money?

1           THE WITNESS: I had a side agreement with Anne  
2 Kleinrichert, who was my girlfriend at the time, and that  
3 document has been submitted in evidence, I believe.

4           THE COURT: But what was her investment?

5           THE WITNESS: \$5,000.

6           THE COURT: And it's -- that's where your testimony  
7 started, that was the 5,000 that went into the original down  
8 payment on the boat?

9           THE WITNESS: That's correct.

10          THE COURT: So -- all right. I understand.

11 Q Dr. Lane, you said that there was a document submitted  
12 in evidence, an agreement between you and Ms. Kleinrichert?

13 A I believe so. I don't know. Perhaps it wasn't.

14 Q I'm unfamiliar with that document, perhaps your counsel  
15 could locate it.

16          THE COURT: Well --

17          MS. GRANTLAND: I don't have it. We couldn't find  
18 it.

19 Q So it's not in evidence?

20          THE COURT: It's not in evidence. Go ahead.

21 Q Dr. Lane, is it your testimony that the document at  
22 Pages 29 and 30 is the statement as it existed in December  
23 '97 of who owned the boat?

24 A As far as Mr. Anderson is concerned, yes.

25 Q Is it the only statement that exists of who owned the

1 boat?

2 A There may be other statements out there. I'm not aware  
3 of them.

4 Q Do you have any statements in your records as to who  
5 owned the boat?

6 MS. GRANTLAND: Excuse me. What do you mean by  
7 statements?

8 MS. RUE: Records, documents.

9 MS. GRANTLAND: I'm sorry.

10 THE COURT: All right. She may press the point.  
11 Put a question to the witness.

12 Q Do you have any other documents that indicate who owned  
13 the boat in 1997?

14 A I don't believe so.

15 Q Do you have any documents that indicate any additional  
16 changes in who owned the boat after this document, Pages 29  
17 and 30?

18 A I can't say for certain, but that appears to be the last  
19 document.

20 Q That's the last document you had? That's the last  
21 document you know of?

22 A I believe so, but I can't be certain.

23 Q Dr. Lane, you filed a lawsuit in federal court; is that  
24 right? You filed a claim in this suit?

25 A That's correct.

1 Q You were asked to produce all the documents that you  
2 have regarding ownership. I assume you made a diligent  
3 search; is that right?

4 A That's correct.

5 Q And searching your files, do you know of any document  
6 beyond this that shows who owned the boat?

7 A No.

8 Q Do you believe that you ever received any document  
9 beyond what's constituted in document 29 and 30 that showed  
10 who owned the boat, who had put money in the boat?

11 A Other than the two consortium agreements we also saw,  
12 those are pretty much the documents that existed.

13 Q So after 1997, as far as you know, nothing existed?

14 A The '97 document exists; after that, there were no other  
15 documents.

16 Q No additional amendments?

17 A No.

18 Q And you continued paying lots and lots of money  
19 according to your checks to Ole Anderson for what you  
20 believed was money going into the boat?

21 A That's correct.

22 Q But you don't have an accounting of how he spent that?

23 A No.

24 MS. RUE: If I could just have a moment, your  
25 Honor.

1 THE COURT: You may.

2 MS. RUE: Your Honor, if I may, I'm cannibalizing  
3 my files, but these are items that have already been marked  
4 and that are on the record in this case, document 45-14  
5 filed by Ms. Grantland in this case on behalf of Dr. Lane,  
6 Pages 1 through 32.

7 THE COURT: All right, we'll mark it in -- there's  
8 no objection to receiving this, is there?

9 MS. GRANTLAND: No, your Honor.

10 THE COURT: We'll mark it in this proceeding as  
11 Exhibit 9.

12 MS. RUE: And I have the originals of those records  
13 with me in court today, your Honor.

14 THE COURT: A copy is sufficient.

15 MS. RUE: Thank you, your Honor.

16 (Exhibit marked in evidence.)

17 Q Dr. Lane, handing you what's been marked as Exhibit 9,  
18 there are little, tiny numbers at the very bottom. And I  
19 would ask you to turn to Page 12, and then to Pages 172, 173  
20 and 174.

21 A I'm sorry, those last numbers? They seem to be  
22 renumbered at the top 1 to 32. Could you refer me to --

23 Q Oh, thank you. Yes. And let me take it back for a  
24 moment because I have cannibalized my files with this copy.

25 MS. GRANTLAND: Would you give me a set of those.

1 MS. RUE: No, I showed it to you, I'm sorry.

2 (Whereupon counsel conferred.)

3 MS. RUE: Could we have just a moment, your Honor?

4 THE COURT: Of course.

5 (Whereupon counsel further conferred.)

6 Q As you pointed out, Dr. Lane, there are page numbers at  
7 the top that are marked as page numbers of 32, 1 of 32, 2 of  
8 32, 3 of 32. I would ask you to turn to Page 13, 25, 26 and  
9 27 and look at those.

10 A Thirteen is barely readable because the Xerox is poor.  
11 It talks about storage. So that's 13. I'm sorry, what was  
12 the next page?

13 Q Thirteen. There's an introduction to it; is that right?  
14 It shows who it's being sent to.

15 A Is that a question? It looks like it's Mr. Ole  
16 Anderson.

17 MS. GRANTLAND: Could you use the numbers on the  
18 bottom so I could follow along.

19 Q Page 13, it's addressed to Mr. Ole Anderson, 718 South  
20 Lake Avenue in Florida, and it's dated October '98. Is that  
21 right?

22 A Yes.

23 Q And Page 23, referring again to 23 of 32 of what's  
24 document number 45-14 in an earlier record, or Exhibit 10.

25 A Is that a question?

1 Q The yellow exhibit sticker on the front.

2 A It says 9 here.

3 Q Exhibit 9.

4 A This is the first time I've ever seen any of these  
5 documents.

6 Q Well, they were filed on your behalf by your counsel.

7 THE COURT: Well, that's not a question. His  
8 testimony is this is the first time he's ever seen them. So  
9 let's ask questions.

10 Q Marblehead Trading is invoicing Ole Anderson for the  
11 storage of the Flash II; is that right?

12 A That's what it says.

13 Q And that's July --

14 THE COURT: But more than that, that's what you  
15 understood? You understood that for a time the vessel was  
16 up in Marblehead and you were paying storage to that  
17 Marblehead Trading?

18 THE WITNESS: Absolutely.

19 THE COURT: Yes.

20 Q And invoices weren't being sent to you; is that right?

21 A That's correct.

22 Q Invoices were being sent to Ole Anderson?

23 A It appears that way.

24 Q You weren't receiving them?

25 A I don't get Mr. Anderson's mail. Correct.

1 Q They were going to him or somebody else?

2 A Assumedly.

3 Q And to the extent that you were paying anything towards  
4 that it was because you were paying Ole Anderson?

5 A That's the way Mr. Anderson wanted it.

6 Q That's the way he wanted it so that's the way it was.

7 Have I got that wrong?

8 A That's the way it was.

9 Q That's the way it was. You were paying Ole Anderson and  
10 he was doing something with the money and maybe somebody's  
11 being paid for storage and maybe not, you don't know.

12 I'm sorry, the court reporter can't record a  
13 gesture.

14 A That's your statement.

15 Q Is it accurate?

16 A Yes.

17 Q Yes, it's accurate. You don't know what Ole Anderson  
18 was doing with your money?

19 THE COURT: Really, Ms. Rue, I think you've made  
20 your point.

21 Anything else for this witness?

22 MS. RUE: Yes, your Honor.

23 THE COURT: Go ahead.

24 Q Dr. Lane, did you ever insure the boat?

25 A We considered it.

1 Q We considered it. Who?

2 A I considered it. Mr. Anderson and I considered it. We  
3 discussed it.

4 Q Did you ever insure the boat?

5 A It was uninsurable.

6 Q Is that a no?

7 A Repeat the question, please?

8 THE COURT: Well, let's try --

9 Q Did you ever insure the boat?

10 THE COURT: -- to save time. The sense that I'm  
11 getting is, the truth is you didn't insure it?

12 THE WITNESS: I did not insure the boat.

13 THE COURT: And so far as you know it was not  
14 insured by anyone else?

15 THE WITNESS: During the time frame that we're  
16 involved it was not. Apparently there was an insurance  
17 policy later on.

18 THE COURT: I see. And when? When?

19 THE WITNESS: I've come to understand when the boat  
20 was shipped from Boston by the Marshals Service to New York  
21 that they took out, someone took out an \$800,000 policy on  
22 the boat.

23 THE COURT: After, after the forfeiture  
24 proceeding --

25 THE WITNESS: Correct.

1                   THE COURT:  -- had begun?  All right.  But you  
2 never insured it.

3           Q    You understand the marshals did that?

4           A    Yes, that's what I understand.

5                   THE COURT:  That's what he testified.

6           Q    Okay.  Did you ever pay personal property taxes on the  
7 boat?

8           A    No.

9           Q    Are there personal property taxes in Florida?

10          A    Personal property taxes.  I don't know.

11          Q    But you never paid it?

12          A    No.

13          Q    Did you ever register the boat anywhere?

14          A    No.

15                   MS. RUE:  Your Honor, the government seeks to admit  
16 under the business records exception a business record of  
17 the International Star Class Yacht Racing Association.  And  
18 you'll see that the certificate of business authenticity is  
19 attached.

20                   THE COURT:  Any objection?

21                   MS. GRANTLAND:  No, your Honor.

22                   THE COURT:  It may be received, Exhibit 10.

23                   (Exhibit marked in evidence.)

24                   MS. RUE:  May I approach the witness, your Honor?

25                   THE COURT:  You may.

1 Q The sailboat we've been talking about is a Star Class  
2 Sloop; is that right, Dr. Lane?

3 A That's correct.

4 Q And Ole Anderson registered this Star Class Sloop in his  
5 name; isn't that right?

6 A It appears so.

7 Q And you never registered it in your name, did you?

8 A I did not.

9 Q Revisiting Page 7, the agreement, the original  
10 consortium agreement. And, I'm sorry, I should turn to the  
11 one that you signed which is at Page 10. The purpose of the  
12 consortium: To obtain legal title to and possession of said  
13 vessel, Flash II.

14 This is the consortium to buy the Flash II Kennedy  
15 sailboat that we're talking about; is that right?

16 A Yes.

17 Q The last sentence of Paragraph 1: Anderson has the sole  
18 discretion on whether to sell the boat. Is that right?

19 A Anderson has the sole --

20 MS. GRANTLAND: I object; that's not what it says.

21 A Anderson has the sole discretion to reject any offers,  
22 is that what you are referring to?

23 Q Yes.

24 A That's what it says.

25 Q He had the right --

1                   THE COURT: Please. There's been an objection.

2                   But as he rephrases it your objection is withdrawn.

3                   Go ahead.

4                   Q He had the right to decide whether or not an offer on  
5                   the boat would be accepted?

6                   A That's what it says.

7                   Q That's what it says, and you signed it?

8                   A I did.

9                   Q Turning to Page 15 and 16: Anderson has the sole  
10                  discretion to reject any offer. And you signed that one?

11                  A I did.

12                  Q And the vessel was to be restored and it was to be  
13                  restored to the satisfaction of Mr. Anderson, same  
14                  paragraph; is that right?

15                  A If you want to read it in front of me, I can't find it.

16                  Q How about a third of the way into the paragraph: The  
17                  appropriate value of the vessel is not now known, but may be  
18                  determined after by a qualified appraiser.

19                  A That's what it says.

20                  Q The sentence before that: The vessel will be resold  
21                  promptly upon completion of refitting and restoration to the  
22                  satisfaction of Mr. Anderson.

23                  A That's what it says.

24                  Q It doesn't say to the satisfaction of Mr. Kerry Lane,  
25                  Dr. Kerry Lane, does it?

1 A It does not.

2 Q It does not. Is there any document that says that?

3 A No.

4 Q On Page 14 whose handwriting is that, please?

5 A This appears to be the back of page, it says back of  
6 Page 2 of 2, and that is my handwriting.

7 Q So where it says I get \$50,000 or 25 percent after  
8 costs, whichever's greater, that's your handwriting?

9 A That's correct.

10 Q The I refers to you?

11 A Correct.

12 Q You thought at this point that you were a one-quarter  
13 owner of this boat?

14 A You're making a conclusion. It just says I get 25  
15 percent after costs.

16 Q You expected that if the boat were sold you were going  
17 to get 25 percent after costs?

18 A At this point in time, yes.

19 Q This point in time refers to Christmas Eve, 1996; is  
20 that right?

21 A That's what it's dated.

22 Q Crosby is on that document, he's going to get 10,500?

23 A That's correct.

24 MS. RUE: Could I have just a moment to review my  
25 notes, your Honor.

1 THE COURT: Yes.

2 (Pause in proceedings.)

3 Q Turning to Page 20, there's a check included in the  
4 documents that you turned over in response to the document  
5 requests, cashier's check on the logo of Sun Trust.

6 Are you familiar with that document?

7 A Yep.

8 Q It's a check for \$3,000. And it's payable to Marshall  
9 Chapman?

10 A Yes.

11 Q Who's Marshall Chapman?

12 A He was one of the principals at Marblehead Trading  
13 Company.

14 Q So where it says remitter, Ole Anderson, what's the  
15 significance of that?

16 A Perhaps Mr. Anderson didn't want to see my name on this  
17 document.

18 Q You bought the check; is that right?

19 A That's correct.

20 Q You bought the check with your money?

21 A It says right on here in my handwriting on the bottom  
22 KSL for JFK boat.

23 Q Was that on the face of the check, or is that a legend  
24 that you added when you were providing it to the government?

25 A I believe it was on the receipt. I don't know honestly.

1 Q So, you bought the check and you put it in Ole  
2 Anderson's name?

3 A That's what it says, yes.

4 Q And then it was sent to Marblehead?

5 A If it was cashed, I would assume so.

6 Q You don't know?

7 A It's made out to Marshall Chapman.

8 Q But you don't know what Marshall Chapman did with it?  
9 You don't know if he gave it to Marblehead or kept it for  
10 himself?

11 A I have no idea.

12 Q You have no idea.

13 MS. RUE: If I could take just a moment to confer.

14 (Pause in proceedings.)

15 MS. RUE: Your Honor, if I could beg the Court's  
16 indulgence, I've made quite a mess of my table and I think  
17 there's one additional page of notes.

18 THE COURT: Go ahead.

19 Q On that document, Page 29 --

20 MS. GRANTLAND: Which document is that?

21 MS. RUE: His document request response.

22 MS. GRANTLAND: Okay.

23 Q Page 29, which is the same, I believe, as Government  
24 Exhibit, I'm sorry, as Exhibit 6 marked in the record  
25 previously; it's the handwritten statement of who the

1 investors are.

2 Do you know who Pete and Carole Walker are?

3 A No.

4 Q Do you know who Homer Earnest was?

5 A I've heard the name.

6 Q Who is he?

7 A Don't know.

8 Q Don't know.

9 Where did you hear the name from?

10 A I don't know that I ever heard the name. I've read the  
11 name before, on this document.

12 Q On this document?

13 A Yes.

14 Q Did you read it separate and apart from this document?

15 A The name Homer Earnest? Not that I can recall.

16 Q Prior to getting this document, did you have any idea  
17 that Homer Earnest was an investor in this sailboat?

18 A No.

19 Q But he's shown in item D of Page 30 as having a  
20 one percent interest. Is that right?

21 MS. GRANTLAND: Objection. I don't believe it says  
22 that.

23 THE COURT: Well, he's shown, he's shown us  
24 whatever he's shown.

25 A I see Homer Earnest and \$2,000, the number 2,000 next to

1 it, that's all I see.

2 Q But turning to the next page.

3 THE COURT: The next page is the one percent  
4 interest, with some little squiggly in front of it that I  
5 can't make out.

6 Q Mr. and Mrs., perhaps, Homer Earnest?

7 A Yeah, probably.

8 THE COURT: But you don't know who those people  
9 are?

10 THE WITNESS: No.

11 Q Jim Anderson, did you know who he was?

12 A I'm assuming it's Ole Anderson's brother.

13 Q You're assuming but you don't know?

14 A I'm fairly certain for purposes of this document that's  
15 who it is.

16 Q Did you know him?

17 A I met him once or twice.

18 MS. RUE: Nothing further, your Honor.

19 THE COURT: Nothing further? Anything further for  
20 this witness?

21 MS. GRANTLAND: Yes, your Honor, I have some  
22 redirect.

23 REDIRECT EXAMINATION

24 BY MS. GRANTLAND

25 Q Looking at Page 16 of your documents request. First let

1 me ask you, did Ole Anderson ever invest any of his money in  
2 the boat?

3 A Any of his own money?

4 Q Yes.

5 A Not to my knowledge.

6 Q What did he -- how did he acquire his interest in the  
7 boat?

8 A Sweat equity I suppose would be the way to put it.

9 Q Now, if you can look at Paragraph 4, what were his  
10 responsibilities under this sweat equity investment?

11 A I can read it to you if you would like.

12 Q Well, just, if you could just glance at it and enumerate  
13 them briefly, or if you already know?

14 A Well, it says here general director and general manager  
15 of the entire project.

16 Q Did he actually get involved in the refurbishing of the  
17 boat himself?

18 A Yes.

19 Q And what about the coordinating of media?

20 A That was something Mr. Anderson wanted to be responsible  
21 for.

22 Q What about setting up auction details and things like  
23 that?

24 A That was Mr. Anderson's responsibility.

25 Q And who did the bills go to?

1 A Mr. Anderson.

2 Q Did any of the bills go to anyone else?

3 A I may have received something. I don't recall offhand.

4 Q Who was, who was responsible for making sure the bills  
5 were paid?

6 A Both myself and Mr. Anderson, I assume.

7 Q Now, you described earlier a time in which you and  
8 Mr. Anderson had -- well, I think you said something about  
9 he threatened you or something. Do you remember when that  
10 was?

11 A It may have been around Christmastime when this document  
12 was produced.

13 Q And after that why did you continue paying money into  
14 this project?

15 A Why?

16 Q Yes.

17 A I wanted to see it come to fruition.

18 Q Did you try to get out of the consortium?

19 A The thought occurred to me but, ah, I really didn't see  
20 how I could get out of it.

21 Q Anne Kleinrichert, did she have any contracts with the  
22 consortium?

23 A She only had a contract with me.

24 Q Was she an actual owner or did she loan you money to buy  
25 your interest?

1 A The contract that she and I had said that she would  
2 receive five percent of the sale price. And that -- how  
3 these documents got bumped up, that's how I went from the 25  
4 percent interest to the 30 percent interest.

5 THE COURT: You're talking as though there was a  
6 written contract. You had a written contract with her?

7 THE WITNESS: It was on my stationery, yes. I  
8 signed it and she signed it.

9 THE COURT: But now it's lost?

10 THE WITNESS: It can be -- I can probably find it,  
11 but it's somewhere.

12 Q Where were you living in 1997?

13 A Delray Beach, Florida.

14 Q What about in 1998?

15 A Delray Beach, Florida.

16 Q Where was Ole Anderson living during that time?

17 A Delray Beach, Florida.

18 Q And where is Marblehead Trading Company?

19 A Marblehead, Massachusetts.

20 THE COURT: Ms. Grantland, it's one o'clock. Now,  
21 I have to go and do a naturalization. We'll convene again  
22 at 2:15. I've got three matters -- I assume they are short  
23 matters -- that will be in front of you. And we'll continue  
24 with this.

25 MS. GRANTLAND: Your Honor, I could probably finish

1 up in less than one minute.

2 THE COURT: Yes. But don't you want to argue?

3 MS. GRANTLAND: Oh, yes. Okay, we'll come back.

4 THE COURT: 2:15. We'll recess --

5 THE CLERK: All rise.

6 THE COURT: -- until 2:15 this afternoon. We'll  
7 recess.

8 THE CLERK: All rise. Court is in recess.

9 (Recess.)

10

11 AFTERNOON PROCEEDINGS - 2:45 P.M.

12

13 THE COURT: All right, calling Civil Action --  
14 yes -- 05-10192, the Flash II.

15 You were about done, and do you really want to  
16 recall your witness?

17 MS. GRANTLAND: I'm sorry?

18 THE COURT: Ms. Grantland?

19 MS. GRANTLAND: I'm sorry, I didn't hear what you  
20 said.

21 THE COURT: Do you really have anything else?

22 MS. GRANTLAND: Yes, your Honor, just one more, one  
23 or two questions.

24 THE COURT: He may be recalled.

25 THE CLERK: I remind you, sir, that you are under

1 oath.

2 THE WITNESS: I'm sorry?

3 THE CLERK: I remind you that you are under oath.

4 THE WITNESS: Yes, sir.

5 THE COURT: Go ahead, Ms. Grantland.

6 MS. GRANTLAND: I need to find the exhibit again.

7 One moment, please.

8 Exhibit No. 6. It's either Exhibit No. 6, or it's  
9 also, if you don't have it as Exhibit No. 6, it's in the  
10 claimant's response to the documents request. If I can find  
11 the page number of that.

12 THE COURT: He has it. I've given him my copy.

13 THE WITNESS: Thank you.

14 MS. RUE: Pages 29 and 30.

15 THE COURT: Yes, it's 29 and 30.

16 REDIRECT EXAMINATION (Cont'd)

17 BY MS. GRANTLAND

18 Q Under part C on Page 29, Marblehead Trading Company has  
19 a notation of \$14,500 listed after it. Was Marblehead  
20 Trading Company a co-owner of the boat?

21 A Not to my knowledge.

22 Q Was Marblehead Trading Company owed money on the boat  
23 during that period of time?

24 A Not to my knowledge.

25 Q Did all of the members of the consortium -- never mind,

1 I'm sorry, I'll retract that.

2 MS. GRANTLAND: I have no further questions, your  
3 Honor.

4 THE COURT: This is redirect. You have nothing  
5 further?

6 MS. RUE: Very briefly, your Honor.

7 THE COURT: Ms. Rue. Go ahead.

8 RECROSS-EXAMINATION

9 BY MS. RUE

10 Q Dr. Lane, when was the last time you had any  
11 communication at all with Ole Anderson?

12 A Perhaps October of 2004.

13 Q The time when he called you to tell you that the boat  
14 had been seized?

15 A Yes.

16 Q You stated in your interrogatories, I expected Ole  
17 Anderson to contact me if any new developments occurred  
18 regarding the sailboat; is that right?

19 A That's what I stated, yes.

20 Q And you said he had always been reliable in keeping me  
21 informed about matters relevant to Flash II; is that right?

22 A That's what I stated.

23 Q And you expected him to continue communicating with you  
24 about the sailboat; is that right?

25 A I hoped he would.

1 Q He had always been good about it in the past?

2 A To the best of my knowledge.

3 Q Even after he threatened you?

4 A Yes.

5 Q In December of 2001 he told you he was convicted for  
6 drug dealing, didn't he?

7 A He told me he was going to do prison time.

8 Q You didn't think he was doing prison time and not being  
9 convicted?

10 A I guess the answer to your question is yes.

11 Q He told you he had been convicted?

12 THE COURT: Respectfully, Ms. Rue, this is all  
13 beyond the scope. Ms. Grantland is not objecting. But  
14 there's been about one question you've asked that's been  
15 within the scope of her examination.

16 MS. RUE: Nothing further, your Honor.

17 THE COURT: Anything within the scope of her  
18 examination?

19 MS. RUE: Nothing further, your Honor.

20 THE COURT: Very well. Nothing further for this  
21 witness, Ms. Grantland?

22 MS. GRANTLAND: No, your Honor.

23 THE COURT: All right, that's the parties evidence  
24 on forfeitability and on innocent -- well, he is an innocent  
25 owner, but on ownership, correct? Correct, Ms. Rue?

1 MS. RUE: No, your Honor.

2 THE COURT: Okay.

3 MS. RUE: My understanding is that the whole  
4 ownership question had been bifurcated.

5 THE COURT: Well, we'll see as to that. Please --  
6 you may step down.

7 (Whereupon the witness stepped down.)

8 THE COURT: But there is no reason now to resolve  
9 that issue, and I don't want anyone to be sandbagged. So  
10 just on forfeitability then, do you wish to be -- since I've  
11 got the evidence on forfeitability, correct, Ms. Grantland?

12 MS. GRANTLAND: Yes, your Honor. We had --

13 THE COURT: All right.

14 MS. GRANTLAND: -- thought we might bring Mr.  
15 Harper in. But that is going to be very difficult. He  
16 lives in Florida. So, I think we're willing to submit on  
17 this evidence.

18 THE COURT: All right, forfeitability then. Ms.  
19 Rue, I'll hear you.

20 MS. RUE: Your Honor, there's no reasonable dispute  
21 on the record in front of you that the person who put money  
22 into this boat, the person who is in charge of this boat,  
23 the person who was at least the nominal owner of this boat  
24 was Ole Anderson. And there's no question on this record  
25 based on Dr. Lane's own documents that Gary Milo had had

1 money in this boat. Gary Milo testified that --

2 THE COURT: Well, wait a minute. Here's --  
3 candidly, I have a lot of trouble with approaching it at  
4 that level of conclusoriness. And I'll tell you where my  
5 mind is. But I want to hear your argument.

6 I do agree that you've got two ways to get at it.  
7 One of it -- one way is Ole Anderson. Now, the time line to  
8 me makes a lot of difference. Ole Anderson, apparently this  
9 Flash venture started before Ole Anderson got into illegal  
10 drug conduct. I'm not clear when he did get into illegal  
11 drug contact -- conduct. And you've rested. The best, if I  
12 give, if I believe Mr. Milo, the witness, it's late 1990's,  
13 whatever that is. I've thought of one way that you could  
14 skin that cat, or something that interests me, but it's a  
15 matter that we would have to be very careful about the  
16 evidentiary implications, and Ms. Grantland, we'll see if  
17 she has, what objections she has.

18 I suppose I can take judicial notice, and I've  
19 thrown this out, that I could take judicial of court  
20 records. Not only court records in this Court, but court  
21 records. Certainly court records of federal district  
22 courts.

23 Now, in 2001, if I credit Mr. Milo, and I do, Ole  
24 Anderson was arrested and did some time on some charge. I  
25 assume it's a drug charge.

1 MS. RUE: It's in evidence, your Honor.

2 THE COURT: It's in evidence.

3 MS. RUE: I put it in evidence, his certified  
4 conviction.

5 THE COURT: All right. Fine.

6 MS. RUE: I moved it into evidence with the offense  
7 date of December 2001.

8 THE COURT: Yes. But a conviction -- and what was  
9 the charge?

10 MS. RUE: Transporting, transporting marijuana.

11 THE COURT: All right. And when did that, when was  
12 that supposed to take place?

13 MS. RUE: That is what Mr. Milo testified about,  
14 that the transportation of marijuana was being done on  
15 Mr. Milo's behalf.

16 THE COURT: No, no. All I care about in answer for  
17 a moment is when.

18 MS. RUE: In 2001.

19 THE COURT: All right, in 2001. Well, everything  
20 we've seen here, and apparently the only thing of which  
21 Anderson has been convicted, is, in 2001, transporting  
22 marijuana to pay back \$16,000 which, if I credit Milo, has  
23 gone from Milo to Anderson. And the only involvement of  
24 Milo with the boat is this Exhibit 6, the key exhibit here,  
25 I think. And that, respectfully -- I'm going to give you

1 time to brief this. I don't think that shows an ownership  
2 interest in the boat. What it shows is that there's a  
3 variety of people for whom the proceeds of this sale, which  
4 in Anderson's mind is going to make them all wealthy, will  
5 be used to pay off Milo his \$16,000. That of course doesn't  
6 work. And later on, 2001, Anderson pays off Milo by running  
7 more drugs.

8 I don't -- I'll hear you argue this. But other  
9 than the people who are listed here as equity owners of the  
10 boat, Ms. Grantland was exactly right, no one suggests  
11 Marblehead Trading had an interest in the boat. What it  
12 had, perhaps, was a lien against the boat. This may be an  
13 informal security interest that the boat was going to be the  
14 source of paying back Milo.

15 So, if that's what it is -- it's much too glib to  
16 say the money went into the boat, though there may be law  
17 that suggests that such an interest does make the boat  
18 forfeitable.

19 Now, that's -- those are my concerns. I'll hear  
20 you on those.

21 MS. RUE: That is exactly our argument, your Honor.  
22 That by reacquiring Gary Milo's interest, whether it's an  
23 ownership interest or a debt, the fact that Ole Anderson  
24 reacquired it in the midst of a drug transaction, as a drug  
25 transaction, as payment for a drug transaction, that is our

1 proof of drug money in the boat.

2 THE COURT: Okay. That's a factual difference. I  
3 mean, she'll argue no, that didn't happen or something. But  
4 assume -- I follow that. You've put on evidence of that.  
5 My mind can get around that. And stating all the inferences  
6 your way, here's, here's this \$16,000, goes from Milo to  
7 Anderson, again crediting the witness, and whatever else  
8 there is here, that this was an investment in the boat, so  
9 Anderson says. Now, certainly Anderson doesn't come across  
10 here as a very credible individual. He's filled with these  
11 Ponzi-like schemes. But at least he says this to Milo if we  
12 give you everything. This is going to be an investment in  
13 the boat, you'll get a lot more. And at least as of  
14 late '97 it looks like Anderson thinks that Milo has some  
15 interest. I'm not clear whether it's an ownership interest,  
16 in fact, I don't think it is. But he's got some interest in  
17 the boat. Then later on, again taking all inferences your  
18 way, they're never going to get this type of money out of  
19 the boat. So, Anderson pays off the interest in the boat,  
20 and, if it is an interest even, pays off the debt by drug  
21 running.

22 That's everything your way. All right?

23 MS. RUE: Yes, your Honor.

24 THE COURT: Now, now I guess what I need is legally  
25 does that make the boat forfeitable?

1 MS. RUE: Yes, your Honor, we submit that it does.

2 THE COURT: What's your best law on that point?

3 MS. RUE: 21 U.S.C. 881(a)(6).

4 THE COURT: Which reads in relevant part?

5 MS. RUE: Which reads: All moneys, negotiable  
6 instruments, securities, or other things of value furnished  
7 or intended to be furnished by any person in exchange for a  
8 controlled substance, all proceeds traceable to such  
9 exchange, all moneys, negotiable instruments, and securities  
10 used or intended to be used to facilitate any violation of  
11 this subchapter, this subchapter being the Controlled  
12 Substances Act.

13 THE COURT: Of course. And of those various  
14 clauses you're talking about proceeds?

15 MS. RUE: Your Honor, I believe that we have  
16 proceeds and I believe that we have security going into the  
17 boat. We have Gary Milo's drug proceeds initially going  
18 into the boat. We have --

19 THE COURT: Oh, well, wait a second. Gary -- what  
20 do you mean going into the boat? Where is the evidence that  
21 Anderson, during a period when he was dealing drugs, during  
22 a period when he was dealing drugs, took one penny of the  
23 16,000 that Milo transferred to him and used it in any way  
24 for the boat.

25 MS. RUE: Your Honor, respectfully, it's not during

1 the period as far as that goes when Anderson is doing drugs.  
2 It's during the period when Milo is doing drugs. Milo says  
3 that was drug money that I gave Anderson.

4 THE COURT: I'm with you. Okay. So now we have  
5 drug money in Anderson's hand. All right. Now I'm  
6 following. So now we've got drug money in Anderson's hand.  
7 Whether he's innocent or not, or giving you all the  
8 inferences, he's a wannabe then. He knows that Milo's up to  
9 no good and he's got drug money.

10 Where is your evidence that one penny of that,  
11 despite Anderson's representations, was used in any way with  
12 respect to the vessel?

13 MS. RUE: Exhibit 6.

14 THE COURT: What is it?

15 MS. RUE: Exhibit 6 is the document that Dr. Lane  
16 had in his files which --

17 THE COURT: I see. And so you say this is  
18 comparable -- I follow. So you say the natural inference is  
19 we know what Marblehead Trading was doing, it was storing  
20 the boat. And so, the likelihood is that in Anderson's mind  
21 the 16,000 was used in some respect with respect to the  
22 boat.

23 MS. RUE: No, sir. It's simpler than that.  
24 Underneath Marblehead Trading, Gary Milo.

25 THE COURT: But of course this is the money he got

1 from Milo.

2 MS. RUE: Yes.

3 THE COURT: That the money he got from Milo was  
4 used with respect to the boat.

5 MS. RUE: Was used, whether it was for paint,  
6 whether it was for storage, for anything.

7 THE COURT: I understand.

8 MS. RUE: That --

9 THE COURT: I understand. And now I think I  
10 understand, I now understand the argument.

11 MS. RUE: Ole Anderson is himself saying through  
12 this document.

13 THE COURT: Yes. Now I grasp the argument.

14 Ms. Grantland, what do you say?

15 MS. GRANTLAND: First of all, your Honor, there's  
16 an inference that can be raised from the fact that Mr. Milo  
17 gave cash to Ole Anderson that -- first of all, Ole  
18 Anderson, Ole Anderson and Gary Milo both lived in South  
19 Florida at the time that the cash was transferred. The boat  
20 was in Marblehead, in Massachusetts. The bills were being  
21 mailed to Florida and were being paid by check presumably.  
22 My client was applying money for those checks at all times  
23 to pay those expenses during that period of time. That was  
24 the period of time when my client contributed \$60,000 in  
25 just one year, I believe it was; maybe not even a year.

1 There's no room there to infer that he would have taken  
2 cash -- I mean, if he did it for -- the government has the  
3 burden of proof, not just an inference, that it could have  
4 happened this way.

5 THE COURT: Interesting point that the clerk has  
6 spotted and, the law clerk, and which we've discussed and I  
7 may need briefing on it.

8 The government does have the burden of proof of  
9 proving forfeitability in sort of a Fifth Amendment sense.  
10 They just can't take people's property unless they've got  
11 some basis for it. But on the Federal Tort Claims Act  
12 counterclaim, you have the, Dr. Lane has the burden of  
13 proof.

14 MS. GRANTLAND: Your Honor, at this point our  
15 counterclaim is still an exhibit to our motion to amend to  
16 add the counterclaim.

17 THE COURT: It never has been allowed?

18 MS. GRANTLAND: I'm sorry?

19 THE COURT: It's never been allowed?

20 MS. GRANTLAND: It hasn't yet.

21 THE COURT: All right. I see.

22 MS. GRANTLAND: And we are intending to do that  
23 and --

24 THE COURT: All right.

25 MS. GRANTLAND: -- hoping that you are going to do

1 that but --

2 THE COURT: So the point -- I follow the point.

3 It's their burden and you say they haven't met it.

4 MS. GRANTLAND: They haven't met it.

5 THE COURT: Go ahead.

6 MS. GRANTLAND: And the other thing is just because

7 Milo's name appears on this list of people that would be

8 paid off doesn't mean that he had a legitimate lien of any

9 sort against that boat.

10 THE COURT: I'm not suggesting he did. I think

11 that might be stretching it too far. But that's not Ms.

12 Rue's arguments. This is her argument, which I, which I had

13 trouble grasping it. But now I've grasped it. I'm not

14 saying I accept it, but I've grasped it.

15 Milo -- you can disagree with factual. But if I

16 take all inferences her way, the government's way, this is

17 her argument. Milo's a drug dealer. This 16,000 was drug

18 money. This 16,000 was transferred to Anderson. Because

19 Milo's name appears on Exhibit 6 and also because Anderson

20 seems to be a rather pie-in-the-sky individual, it is a

21 reasonable inference that part at least of that \$16,000

22 went, in an undifferentiated amount, into the maintenance

23 and restoration of the boat. This is not like we have some

24 audit here. And so she says at least to make the boat

25 forfeited -- forfeitable, she's traced the proceeds

1       adequately, some proceeds, she can't tell how much, but some  
2       of them went into the boat. That makes the boat  
3       forfeitable. That's what she says.

4               Have I properly stated your argument?

5               MS. RUE: Yes, your Honor.

6               THE COURT: Yes. And that's a simple argument.

7               MS. GRANTLAND: Well, the problem is, your Honor,  
8       that if what, as we suspect, Ole Anderson is using this boat  
9       out here, this asset he has as a security such as, as, you  
10      know, a lawsuit that he has against somebody that he's going  
11      to get a lot of money from in the future and I'm going to  
12      borrow money from you and I'll pay you back when I get that  
13      money, this list of people, including Marblehead, could just  
14      be debtors, except that Marblehead had a mechanic's lien on  
15      the property under state law. The rest of these people did  
16      not have legitimate lienhold interests under state law. And  
17      for that reason, your Honor, the government would not have  
18      standing -- if they're standing in Gary Milo's shoes, Gary  
19      Milo has a debt owed to him by Ole Anderson, that doesn't  
20      taint specific pieces of property that Ole Anderson has  
21      unless that, the tracing of proceeds has to go into that  
22      actual asset in order to taint it. And that's the problem  
23      the government has. They can only show that there's this  
24      undifferentiated debt that Ole Anderson owed to Gary Milo.

25              THE COURT: You know that -- that's right.

1 MS. GRANTLAND: That's our argument, your Honor.

2 THE COURT: Well, legally though. And I understand  
3 that argument. And that's helpful. But their simple  
4 argument, and the one that I understand, they say we've got  
5 a drug dealer. Milo, not Anderson. We've got Milo, drug  
6 dealer then. We've traced his 16,000 to Anderson.

7 Now, what's the burden of proof? It's a fair  
8 preponderance, isn't it?

9 MS. GRANTLAND: Yes, your Honor.

10 THE COURT: Okay. So she says we traced the 16,000  
11 of drug money. You can have forfeiture actions even without  
12 underlying criminal actions. So she reads me the statute.  
13 She says I'm following the proceeds. So I follow it from  
14 drug dealer Milo to Anderson. And then given what we know  
15 about Anderson, and how he's so indiscriminate with moneys,  
16 he's taking more money from Lane than the legitimate debts  
17 of the boat, he's getting all these other consortium, this  
18 is, the boat's become a moneymaker for him. So money's  
19 coming in. Who knows where it's going. Except that given  
20 Exhibit 6 it looks like these people, in his mind, his,  
21 Anderson's, mind, have something to do with the boat, that  
22 they've got some claim on the boat. I'm not saying they're  
23 lienholders. I'm not saying they're owners. I'm not saying  
24 that they have any legally enforceable rights to the boat.  
25 But I'm suggesting, or rather she's suggesting, and I'm

1 wondering about it, I'm wondering whether if, by a fair  
2 preponderance, some of that \$16,000 drug money in fact was  
3 expended on paint, varnish, storage, advertising for the --  
4 well, advertising wouldn't work. It would have to be  
5 something directly on the boat. On the boat.

6 Now, there's an evidentiary issue. It's thin. Is  
7 that by a fair preponderance? Well, I have to think about  
8 that. But if it is, you're saying legally that's not  
9 enough.

10 MS. GRANTLAND: Legally that's not enough under the  
11 forfeiture laws. Because this is an in rem action against  
12 the boat itself. And in a forfeiture, an in rem forfeiture  
13 action the only parties who have standing to claim that boat  
14 in a forfeiture case -- let's look at it backwards. There's  
15 a lot of case law from the other side. The only people that  
16 have standing to claim, to file a claim and litigate the  
17 forfeiture case would be someone with a legitimate lien on a  
18 property.

19 THE COURT: Right. As we know from the First  
20 Circuit, Dr. Lane.

21 MS. GRANTLAND: And --

22 THE COURT: But that --

23 MS. GRANTLAND: And actual co-owners. Anyone else,  
24 an unsecured creditor gets kicked right out of court. They  
25 say they do not have standing. So if they had no standing,

1       how can the government obtain standing to forfeit the boat  
2       based on an unsecured claim between Ole Anderson and, and  
3       Gary Milo.

4               THE COURT:  I don't, I don't think the law works  
5       that way.  The government says drug money.  The law allows  
6       us to trace the proceeds of the drug money.  We've traced  
7       them into the boat.

8               MS. GRANTLAND:  They haven't traced them into the  
9       boat.  They've traced them into Ole Anderson.

10              THE COURT:  Well, that's a factual issue.

11              MS. GRANTLAND:  And Ole Anderson, the rest of these  
12       people could, for all we know, just be people that Ole owes  
13       money to for other things.  Because there's no proof from  
14       this -- my client didn't know who these people were or why  
15       their name is on this list.  These are just people that Ole  
16       had been probably pressured to pay back and here was, all  
17       right, when I get my money you're going to be paid back.  
18       This is the kind of thing -- especially since Mr. Milo  
19       talked about how he tried to get his money back and then had  
20       to put him to work selling drugs.  Or transporting drugs.  
21       And it's just not enough.  That's our argument, your Honor.  
22       I've looked and there are no cases coming from this other  
23       way.  But I don't think the government has ever tried to  
24       forfeit property before based on a taint that arises from an  
25       unsecured, from an unsecured creditor.

1           THE COURT: All right. If I look at the checks  
2 there are numerous checks over this same period, the period  
3 of the latter half of '97, which suggests that -- I mean,  
4 don't those checks stand on the same basis, the checks that  
5 Mr., or Dr. Lane wrote. These are the checks that were  
6 supposedly being used to refurbish the boat. And it's a  
7 fair inference that the checks, that the boat was in fact  
8 refurbished to some extent because it was put up for auction  
9 at a fairly high price.

10           MS. GRANTLAND: There are two things, your Honor,  
11 that trace Dr. Lane's checks into an ownership interest.  
12 Actually more than two. But this Exhibit 6, his \$60,000  
13 total appears up under section B with the other equity  
14 owners as you noted earlier, not down here with the other  
15 people who will be paid off a flat, flat amount. And Dr.  
16 Lane as you can see not only would be paid back \$60,000, but  
17 also got percentages of the profits.

18           Also, though, some of these checks are signed over  
19 to, one of them is signed over to Marshall Chapman who --  
20 this one right here? On Page 22, the second check down,  
21 Gregory O. Anderson, pay to the order of Marshall Chapman.  
22 Marshall Chapman was the shipbuilder at Marblehead who did a  
23 lot of the fine restoration.

24           THE COURT: Oh, that's helpful. Let's --

25           MS. RUE: There's no evidence of that.

1 THE COURT: I know there isn't.

2 MS. GRANTLAND: Well, he talked about Marshall  
3 Chapman.

4 THE COURT: Please. Please. Wait, wait one  
5 second. Wait one second. Wait one second.

6 I know what the record is. But let's just see --  
7 where's this Chapman?

8 MS. GRANTLAND: Page 22; it's the second check  
9 down.

10 THE COURT: All right.

11 MS. GRANTLAND: It's the back side of the check.

12 THE COURT: Yes. And you say he did fine work on  
13 the boat.

14 MS. GRANTLAND: I'm sorry?

15 THE COURT: You say he did fine work on the boat.

16 MS. GRANTLAND: Dr. Lane testified at some point, I  
17 don't know if it was during direct or cross, that Marshall  
18 Chapman was a -- I'm trying to think in what context it came  
19 up -- was a shipbuilder at, I mean a restorer or whatever at  
20 Marblehead Trading Company.

21 THE COURT: Yes.

22 MS. GRANTLAND: And there's a cashier's check made  
23 out to Marshall Chapman. I believe that's the context it  
24 came up in. It was probably during cross, on Page 19, that  
25 it was made out to Marshall Chapman.

1           So, this -- these are two of the larger, or some of  
2 the -- I don't know which one of those endorsed checks that  
3 goes to. Do you?

4           THE COURT: All right. I think I've heard enough.  
5 Here's how we're going to proceed.

6           Now, the Court's in a position to find the  
7 following facts. I'm going to need briefing as to the law.  
8 The Court's in a position to find the following facts. And  
9 I credit this by a fair preponderance of the evidence.

10           At all times material to this litigation, Gary Milo  
11 was engaged in illicit drug transactions involving  
12 marijuana; that on a date prior to December 4, 1997,  
13 Mr. Milo transferred to Ole Anderson the sum of \$16,000 upon  
14 Anderson's representation that the funds secured for Milo an  
15 interest, an ownership interest, or an interest at least in  
16 a consortium as something akin to a limited partner, in the  
17 venture to restore Flash II and auction her off at a  
18 significant profit.

19           The government, the Court finds by a fair  
20 preponderance of the evidence, has successfully moved the  
21 16,000 in drug money from Milo to Anderson sometime during  
22 the last six months of 1997.

23           The Court further finds that during that period the  
24 restoration of Flash II was proceeding and that legitimate  
25 expenses of Flash II for storage, for restoration work, were

1 being incurred, and I think it's a fair inference were being  
2 paid by Anderson. Ole Anderson. During that period as  
3 well, Kerry Lane, a legitimate, though I'm not deciding the  
4 extent, but I think it's a fair inference, he was an owner  
5 of that vessel, during that period as an owner of the vessel  
6 he, Lane, was incurring at Anderson's behest, or was paying  
7 at Anderson's behest various sums purportedly to restore  
8 Flash II.

9 The Court credits Exhibit 6 to this extent. I  
10 don't think Anderson is a particularly credible individual,  
11 though we've received various data and representations as to  
12 what Anderson may have said without objections and they're  
13 evidentiary. But I do take Exhibit 6 as Anderson's belief,  
14 his fond wish as to how the proceeds of a successful sale of  
15 Flash II would be divvied up.

16 Now, that leaves the crucial finding up in the air.  
17 And I candidly admit it's up in the air. In order for the  
18 government to prevail on the issue of forfeitability at a  
19 minimum factually, and maybe more than this is required, but  
20 at a minimum factually, I would have to find by a fair  
21 preponderance of the evidence that some of that \$16,000 in  
22 drug money that went from Milo to Anderson was expended by  
23 Anderson on the upkeep or storage of the boat. Not for  
24 advertising for this scheme or communicating. I see there's  
25 a letter here from Senator Kennedy. No. Something went

1       into, as we say, the boat. It's clear to me that the  
2       evidence is deficient in deciding in any way, it would be  
3       sheer speculation to try and figure out how much, if  
4       anything did go into the boat, how much went into the boat.  
5       The parties take differing positions as to whether on this  
6       record I can find by a fair preponderance of the evidence  
7       that something went into the boat, some sum of money which  
8       constitute proceeds under the forfeiture statute went into  
9       the boat.

10               We're going to agree upon a time for briefing that.  
11       And what I'm looking for is your best argument, once you've  
12       had a chance to reflect on it, as to whether I should or  
13       should not make that crucial finding by a fair preponderance  
14       of the evidence.

15               I'm also looking for legal arguments that if I did  
16       make that finding that nevertheless, because I cannot figure  
17       out how much, it may be a minimal amount, that nevertheless  
18       some sum, by a fair preponderance of the evidence, went into  
19       the boat, the boat is nevertheless not forfeitable because  
20       the government doesn't have standing or on any other  
21       grounds.

22               So we need to agree upon a date to receive those  
23       briefs. Once I have the briefs, I think I'll be in a  
24       position to make a finding and go from there.

25               So, unfortunately, the crucial issue is still open

1 and the, and the two courses that the litigation could take  
2 cannot be determined this afternoon. If I find that the, if  
3 I find that the vessel is properly forfeited, I have ruled,  
4 because I did that on summary judgment, that there's no  
5 dispute but what the procedure of forfeiture was appropriate  
6 and that the amount in controversy here is a hundred  
7 thousand dollars. If I find that the government had no  
8 right to forfeit the vessel, the value of the vessel at the  
9 time the government seized it, that's the crucial time, is  
10 open.

11 And my questions are how long do we need to brief  
12 it. Well, this is a June trial. I would press on with the  
13 issue of ownership interest except I think that's unfair  
14 given what I said. But if I can find a day in June and  
15 you're not on trial, I'm going to be looking for you, and I  
16 want to know about ownership interest here.

17 Also, improvidently, because I think it's bad case  
18 administration, but it's my responsibility, I've extended  
19 the period of discovery three weeks after I made my ruling  
20 on summary judgment.

21 So, I guess the first question I want to ask is,  
22 with the case in this posture, what more discovery do you  
23 want, Ms. Grantland?

24 MS. GRANTLAND: I'm sorry, did you ask me?

25 THE COURT: I did. Yes, ma'am.

1           MS. GRANTLAND: Your Honor, I had thought that we  
2 might need to call Mr. Harper, the attorney for the  
3 consortium.

4           THE COURT: But do you -- as to what, valuation?

5           MS. GRANTLAND: Well, the reason -- no, as to  
6 ownership, because he was the attorney for the consortium  
7 and he would have known who the other people were.

8           THE COURT: All right. And since you can't get him  
9 here, what, are you going to go take his deposition?

10          MS. GRANTLAND: Well, I guess that would be the  
11 only way we could do it. And so that's why I needed  
12 discovery to be open.

13          As far as valuation --

14          THE COURT: Well, I've already ruled, I'm not  
15 taking it away from you, you've got three weeks from the day  
16 of our --

17          MS. GRANTLAND: I understand.

18          THE COURT: -- telephone conference.

19          MS. GRANTLAND: I understand.

20          THE COURT: Valuation? It may be moot.

21          MS. GRANTLAND: Are you saying that we should go  
22 ahead with discovery on valuation because --

23          THE COURT: I'm saying you've got three weeks to do  
24 what you want to do --

25          MS. GRANTLAND: Okay.

1           THE COURT:  -- from the date of our telephone  
2 conference, because I entered an order that said that and  
3 I'm not taking that away from you.

4           MS. GRANTLAND:  Okay.

5           THE COURT:  I'm certainly not encouraging it.  It  
6 may be a waste, because maybe we're talking a hundred  
7 thousand dollars here.  But I'm not foreclosing it.  And I'm  
8 not delaying this anymore.  When I call you back I'll want  
9 evidence.  I'm, of course, happy to accept, this is jury  
10 waived, I'm happy to accept it by deposition.  No one need  
11 come.  I'll read the depositions.  But you say you want  
12 Harper on ownership, and I can see that's possible.

13           What else?

14           MS. GRANTLAND:  And Arlan Ettinger from Guernsey's.

15           THE COURT:  On valuation.

16           MS. GRANTLAND:  Yes, your Honor.  Well, not only on  
17 valuation.

18           Your Honor, in relation to that we --

19           THE COURT:  What else would he testify to?

20           MS. GRANTLAND:  We just got a document from him in  
21 preparation for his deposition that is the contract that the  
22 government signed with Guernsey's and --

23           THE COURT:  Respectfully --

24           MS. GRANTLAND:  -- it has, it has representations  
25 about warranties which ties in actually, your Honor, with

1 the policy manual that we got last week. And when you  
2 compare the two you see that there's, this is not falling  
3 into the pattern of --

4 THE COURT: I'll let you brief it.

5 MS. GRANTLAND: I understand, your Honor.

6 THE COURT: I'll let you brief it. But that's not  
7 what I invited this afternoon. What I decided on summary  
8 judgment is decided. Now, I can always reconsider, but  
9 you're asking me to reconsider. So you want those two  
10 witnesses.

11 Now, what, what more will I be able to hear -- I'm  
12 going to Ms. Rue now -- what more will I be able to hear on  
13 ownership from you that I haven't already heard?

14 MS. RUE: Your Honor, I would ask again that the  
15 Court admit the tape recording and I would ask it under  
16 801(d)(2)(D) as I proposed earlier. And --

17 MS. GRANTLAND: As what?

18 MS. RUE: 801(d)(2)(D) as I proposed earlier. And,  
19 your Honor, I did, with the help of my esteemed colleague,  
20 Ms. Barclay, locate a case that I think is extremely  
21 relevant on this.

22 THE COURT: Oh, I'm all -- I'm happy -- we're going  
23 to have to have briefing. I'll take under advisement a  
24 renewed effort to get this in.

25 But suppose I let it in. This is from Anderson.

1 Now, Anderson's not the most -- and you're depending on: So  
2 now the Flash is yours again? When was it seized?

3 MS. RUE: It was seized after that conversation  
4 took place, your Honor.

5 THE COURT: Okay. But the question is not the good  
6 faith of the government. It's not that they did anything in  
7 bad faith. It's that as matter of fact was he just, is this  
8 just, from Anderson just puffery. But I'll, I'll take it  
9 under advisement.

10 And how long do you want to brief it? Brief all  
11 these questions that we have?

12 MS. GRANTLAND: Your Honor, there are two reasons  
13 why I need a little bit more time than normally I would ask  
14 for. One is that I have a brief due in the Fifth Circuit on  
15 the 11th of June that I haven't been able to work on because  
16 of this case.

17 THE COURT: I've got no problem giving you lots of  
18 time for briefing.

19 MS. GRANTLAND: Okay.

20 THE COURT: Just understand if I find a day in June  
21 to take evidence, even before this three weeks is up, on  
22 valuation, I never continued the trial date.

23 MS. GRANTLAND: Well, my --

24 THE COURT: I appreciate your coming. I appreciate  
25 your advancing it for me into May. But if I want you in

1 June, you're either on trial, that's my deal, and I'll wait,  
2 or you're here and we're receiving evidence on valuation.

3 MS. GRANTLAND: Well --

4 THE COURT: But briefing is something else. We  
5 don't have to decide it that day.

6 MS. GRANTLAND: I --

7 THE COURT: How long do you want?

8 MS. GRANTLAND: Oh, I have this brief due on the  
9 11th. I would say sometime in late June for the briefing  
10 would be great. Because the other thing we really --

11 THE COURT: I'm easy. That's fine. When I'm  
12 crowding you it will be obvious.

13 MS. GRANTLAND: And the other thing I want to tell  
14 you, your Honor, is that I don't believe we can get Ettinger  
15 here either because he's in New York. So we'll have to do  
16 him by deposition, too, I believe.

17 THE COURT: You do what you want to do.

18 MS. GRANTLAND: So, for that reason I don't believe  
19 we're going to need to have anymore of your days for an  
20 evidentiary hearing.

21 THE COURT: Well, maybe, maybe not.

22 MS. GRANTLAND: In my opinion. Unless Ms. Rue has  
23 something.

24 THE COURT: But you can work that out. Late June,  
25 I'll give you the whole of June, the 29th of June.

1 MS. GRANTLAND: That would be fine, your Honor.

2 THE COURT: Do you want that?

3 All right. Now, in this briefing, I want you to  
4 consider this burden of proof with the counterclaim, that's  
5 right, the counterclaim not filed, I think -- and the burden  
6 of proof is crucial here. Or it may well be crucial.  
7 Because as to the last finding that I'm saying is crucial,  
8 in all honesty, I have some hesitancy about that. Real  
9 hesitancy. And I need to reflect, I need your best  
10 arguments in brief and, naturally, if you have cases like  
11 this where rather, for the government, where rather  
12 attenuated proceeds have been traced out, that will help the  
13 government. Or if, Ms. Grantland, you've got cases where  
14 the courts have said proceeds means X, a more restrictive  
15 analysis, that would help you.

16 So, the 29th of June to brief the open issues. No  
17 findings or rulings will be entered before then, if in fact  
18 they can be -- could be. And I'm not saying they could.

19 Are there any questions before we adjourn this  
20 afternoon? We'll start with Ms. Rue.

21 MS. RUE: I don't believe so, your Honor.

22 THE COURT: Ms. Grantland?

23 MS. GRANTLAND: I just have one more request. I  
24 know that the government has turned it down. But I believe  
25 that this interlocutory sale manual is crucial to our

1 briefing the discretionary function exception to the Tort  
2 Claims Act.

3 THE COURT: They, they say it's internal and I --

4 MS. GRANTLAND: Well --

5 THE COURT: -- have no showing why I should order  
6 them to produce it.

7 MS. GRANTLAND: It may be internal and if that is  
8 the case then I don't mind signing something saying I won't  
9 show it to anyone but myself. But I need to be able to  
10 argue. Because this -- their policy is at issue here.  
11 Not -- this is not just a general thing. This is the  
12 government saying we have the discretion to do it, see here  
13 in this manual where our policies are. We can't show you  
14 that manual, but we have the discretion, you have to take  
15 it. And for that reason we either have to assume -- well, I  
16 think if --

17 THE COURT: Argue why I should draw an adverse  
18 inference.

19 MS. GRANTLAND: I'm sorry?

20 THE COURT: Argue why I should draw an adverse  
21 inference. I'm not going to order them on this record to  
22 peruse something they say is internal.

23 MS. GRANTLAND: Okay, your Honor, that's fine.

24 THE COURT: In fact, maybe I'm analyzing the case  
25 wrong, but I thought, as I was looking for it, if I had any

1       hesitancy at all, it was that I'm, in effect, bolstering the  
2       record, having already said I think it's within the  
3       discretionary function, I'm bolstering the record.  If I  
4       have any hesitancy it is why should I be asking the  
5       government for specific things, why shouldn't they be  
6       proffering it.  Once she says I don't want to give it to  
7       you, well, I hear that.  Fine.  If they don't want to give  
8       it, they don't want to give it.  I don't have it.  I'm not  
9       suggesting I'm rethinking anything.  I keep clinging to the  
10      fact I've already ruled.  But I'll certainly entertain your  
11      briefs.

12                 Nothing's over until judgment enters.  But I'm not  
13      inviting an expanse of the litigation.  And I think -- I've  
14      done the best I can here.  I think this is a case that  
15      surely warrants a resolution as a commercial matter.  But  
16      I'll do my duty.

17                 MS. RUE:  Your Honor, before we recess, could I  
18      confer briefly with my colleagues since they were kind  
19      enough to come down --

20                 THE COURT:  Yes, of course.

21                 MS. RUE:  -- in case there's something else that  
22      should be on the record.

23                 THE COURT:  Yes, some other question, of course.

24                 And while she's doing it, Ms. Grantland and  
25      Mr. Lane, I appreciate your both attending on this session

1 of the Court. I advanced this part of it. And I never do  
2 that unless the parties agree. So, I'm sensitive that this  
3 was jumped up a week and-a-half. It's all very well for me  
4 to huff and puff about June. This isn't June. And I  
5 appreciate your attendance on this session of the Court.  
6 It's been very helpful.

7 DR. LANE: Thank you, your Honor.

8 MS. GRANTLAND: Thank you, your Honor.

9 THE COURT: Nothing else is there, Ms. Rue?

10 MS. RUE: No, thank you.

11 THE COURT: Fine. Thank you all. We'll recess.  
12 If we need further evidence, fine; if we don't, and there  
13 are submissions of an evidentiary nature, depositions are  
14 such a submission, simply notify Ms. Smith and they can be  
15 incorporated into the record.

16 MS. GRANTLAND: Thank you, your Honor.

17 THE COURT: We'll recess.

18 MS. RUE: Thank you, your Honor.

19 THE CLERK: All rise. Court is in recess.

20 (Adjournment.)  
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C E R T I F I C A T E

I, Donald E. Womack, Official Court Reporter for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

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