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COURT OF APPEALS

STATE OF NEW YORK

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PEOPLE,

Respondent,

-against-

No. 156

WESTERN EXPRESS INTERNATIONAL, INC.,  
et al.,

Appellants.

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20 Eagle Street  
Albany, New York 12207  
September 5, 2012

Before:

CHIEF JUDGE JONATHAN LIPPMAN  
ASSOCIATE JUDGE CARMEN BEAUCHAMP CIPARICK  
ASSOCIATE JUDGE VICTORIA A. GRAFFEO  
ASSOCIATE JUDGE SUSAN PHILLIPS READ  
ASSOCIATE JUDGE ROBERT S. SMITH  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE THEODORE T. JONES

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1 CHIEF JUDGE LIPPMAN: 156, People v.  
2 Western Express.

3 Counselor, do you want any rebuttal time?

4 MS. HOTH: Your Honor, me and my co-counsel  
5 would each like to reserve thirty seconds for a  
6 combined one and a half minutes, which I will do  
7 rebuttal, not all three of us.

8 CHIEF JUDGE LIPPMAN: You're going to each  
9 take how much?

10 MS. HOTH: Thirty seconds.

11 CHIEF JUDGE LIPPMAN: And that gives you  
12 one and a half.

13 MS. HOTH: A minute and a half for  
14 rebuttal, which I will do, and it gives us each four  
15 and a half minutes.

16 CHIEF JUDGE LIPPMAN: They're each giving  
17 you their two thirty seconds, plus yours?

18 MS. HOTH: They're each giving me thirty  
19 seconds, and trusting me to do a good job with it.

20 CHIEF JUDGE LIPPMAN: Okay.

21 MS. HOTH: Okay.

22 CHIEF JUDGE LIPPMAN: I think the clock  
23 keeper is going to have a lot of problems. But it  
24 sounds good.

25 MS. HOTH: Okay. Although creatively

1 named, there never was a Western Express cybercrime  
2 group. There was no group at all. Instead there was  
3 a series of individuals, like my client, who availed  
4 themselves of a legitimate service provided by  
5 Western Express.

6 JUDGE PIGOTT: Why isn't that a question of  
7 fact for the jury, rather than determining now  
8 whether an indictment lies?

9 MS. HOTH: Because there's no evidence  
10 presented to the grand jury to provide a basis for  
11 concluding that there was enterprise corruption here.  
12 We don't --

13 JUDGE READ: Is the structure a problem?  
14 There's no evidence to show a structure. Is that  
15 what you're arguing?

16 MS. HOTH: There's - - - well, there's no  
17 evidence showing an ascertainable structure distinct  
18 from a pattern of criminal activity. We don't try  
19 people for crimes unless the People can present a  
20 grand jury with - - -

21 CHIEF JUDGE LIPPMAN: So there's a  
22 structure and there's criminal conduct, but they're  
23 not intersecting. Is that what you're saying?

24 MS. HOTH: Not in this case, Your Honor.  
25 Not at all.

1 CHIEF JUDGE LIPPMAN: Does everyone know  
2 what's happening, that this is a vehicle for what one  
3 might call money laundering or carding transactions?  
4 Everyone is aware of what they're doing, right?

5 MS. HOTH: Well, no, Your Honor. In this  
6 case, nobody is aware of what anybody else - - -

7 CHIEF JUDGE LIPPMAN: What anybody else is  
8 doing?

9 MS. HOTH: - - - is doing. If everybody  
10 was aware and working for - - -

11 JUDGE SMITH: Assume that your client - - -  
12 well, assume that Mr. Vassilenko - - - he's the boss  
13 of Western Express?

14 MS. HOTH: Yes, he was the president.

15 JUDGE SMITH: Assume he knows that a lot of  
16 his customer are crooks. Does that mean we have to  
17 uphold the indictment?

18 MS. HOTH: This count of the indictment,  
19 absolutely not, Your Honor. Whether or not Mr.  
20 Vassilenko knows that his clients are crooks, does  
21 not connect him to what my client and the other  
22 defendants here were doing. It's very important to  
23 remem - - -

24 JUDGE SMITH: I'm looking at the definition  
25 of criminal enterprise, and it begins, "A group of

1 persons sharing a common purpose of engaging in  
2 criminal conduct." And then it says, "associated and  
3 ascertainable structure," et cetera. But I guess I'm  
4 asking, do you concede that you even got the fra - -  
5 - have you got a group of persons sharing a common  
6 purpose?

7 MS. HOTH: No. I think it's very - - -

8 JUDGE CIPARICK: So what would make it a  
9 com - - - what would make it a common purpose; if  
10 they were sharing in the profits? If they were - - -  
11 they had knowledge of what each other was doing?

12 MS. HOTH: Sharing profits, clearly, that  
13 would be one of the easiest ways.

14 CHIEF JUDGE LIPPMAN: But what if they all  
15 know that they're doing transactions in stolen credit  
16 cards and that this is the place to do it? They're  
17 all aware that you want to - - - let's assume you  
18 want to engage in stolen credit card transactions;  
19 you go to this outfit and that's how you do it, and  
20 they're all aware of it. And consistent with what  
21 Judge Smith is saying, the person running this  
22 understands that that's what they're doing?

23 MS. HOTH: Okay. There's two points that  
24 need to be - - -

25 CHIEF JUDGE LIPPMAN: Why isn't that an

1           ascertainable - - -

2                   MS. HOTH:   It may be.

3                   CHIEF JUDGE LIPPMAN:   - - - structure?

4                   MS. HOTH:   And in fact, the government has  
5 gone after carder forums such as ShadowCrew where  
6 someone is controlling who's purchasing the stolen  
7 credit card information and how it's being  
8 distributed and what they're doing with it.  First of  
9 all, that was not what Western Express was doing  
10 here.  Even if they were, that's - - - my client  
11 wasn't going through Western Express to purchase  
12 credit card information.  He was buying Egold.  It  
13 was legal to buy Egold.  It was legal to use Egold.

14                   JUDGE SMITH:   Okay, so Western Express, is  
15 it reasonable to see - - - to picture this Western  
16 Express as essentially a currency salesman?

17                   MS. HOTH:   Exactly.

18                   JUDGE SMITH:   And it's selling currency.  
19 Is it fair to say it is selling currency very useful  
20 in criminal transactions to a lot of criminals?

21                   MS. HOTH:   Of course it is, but it's also  
22 very con - - -

23                   JUDGE SMITH:   Yes, but you're saying that  
24 accepting that version of the facts, you haven't got  
25 one enterprise.  You've got one - - - you've got an

1 enterprise plus customers, but they're not all in the  
2 same enterprise.

3 MS. HOTH: Whether Western Express, itself,  
4 constitutes an enterprise, still does not connect  
5 what my client was doing through Western Express - -  
6 -

7 JUDGE CIPARICK: What was your client  
8 doing, exactly?

9 MS. HOTH: My client was purchasing Egold  
10 from Western Express. Then he had no other dealings  
11 with Western Express whatsoever. Western Express  
12 didn't know what he was doing with the Egold.  
13 Whether Vassilenko could surmise it or not is not the  
14 point. My - - -

15 JUDGE GRAFFEO: Was the Egold the final  
16 result or did your client intend to do something with  
17 the Egold?

18 MS. HOTH: Yes. My - - -

19 JUDGE GRAFFEO: Isn't that what the  
20 indictment is - - -

21 MS. HOTH: The indictment - - -

22 JUDGE GRAFFEO: - - - charging?

23 MS. HOTH: - - - alleges that my client  
24 then took the Egold and used it to purchase stolen  
25 credit card information. But - - -



1 JUDGE GRAFFEO: So - - -

2 MS. HOTH: - - - he did that - - -

3 JUDGE GRAFFEO: - - - isn't that something  
4 the jury should determine?

5 MS. HOTH: But he did that totally  
6 independent of Western Express. I have to go back  
7 to, we don't try people for crimes that there's even  
8 insufficient evidence - - -

9 JUDGE GRAFFEO: Well, wasn't the structure  
10 of Western Express accommodating this transaction?

11 MS. HOTH: Absolutely not, Your Honor. My  
12 client could have purchased Egold from any number of  
13 registered traders. If you went to Egold's Web site  
14 they had a list of traders there. He happened to  
15 choose Western Express.

16 JUDGE SMITH: Well, suppose somebody had a  
17 gun store, legal guns, and was selling them to  
18 murderers. Is that enterprise cor - - - are the  
19 murders and the gun store involved in a common  
20 criminal enterprise?

21 MS. HOTH: You'd have to show more - - - I  
22 believe the People would have - - -

23 JUDGE SMITH: Well, I guess, apart from the  
24 - - - I understand that that's kind of a provocative  
25 way of stating the facts. But is that a fair

1 analogy?

2 MS. HOTH: No, Your Honor. And if you look  
3 at way back, there was a trial court case - - -

4 JUDGE SMITH: What's wrong with it?

5 MS. HOTH: - - - of People v. Yarmy where  
6 the guy was selling guns - - -

7 JUDGE SMITH: Well, I mean - - - no, I  
8 mean, I see your point that that's not enterprise  
9 corruption. I guess I'm saying, is it a fair  
10 analogy? Should we view this, apart from the fact  
11 that I know your clients aren't murderers - - -  
12 should we view this as though we had a - - -

13 MS. HOTH: Exactly.

14 JUDGE SMITH: - - - a gun store - - - a gun  
15 store that knew a lot of its clients were using its  
16 guns to commit crimes?

17 MS. HOTH: Exactly. Because knowing or  
18 thinking you know what your clients are doing,  
19 doesn't mean you're directing. You're not sharing  
20 purpose.

21 CHIEF JUDGE LIPPMAN: Yes, but aren't you a  
22 facilitator in Judge Smith's hypothetical?

23 MS. HOTH: But - - -

24 CHIEF JUDGE LIPPMAN: You're a facilitator  
25 of people getting murdered and whatever.

1 MS. HOTH: Well, I think - - -

2 CHIEF JUDGE LIPPMAN: And just like,  
3 couldn't you argue under our statute that Western was  
4 a facilitator of these carding transactions, that  
5 they knew what was happening; you had to hold your  
6 hand over your eyes not to know; and the people doing  
7 it know that this is the vehicle that will facilitate  
8 what they want; why can't that be an arguable  
9 enterprise in this context?

10 MS. HOTH: Facilitating - - - and I'm not  
11 going to concede that that's what Western Express was  
12 doing here - - - but facilitating something doesn't  
13 make an enterprise. The statute requires that this  
14 group of people act with some sort of common purpose,  
15 whether it's a hierarchal structure, whether it's a  
16 common plan. There must be something pulling these  
17 people together other than the fact that they're  
18 engaging in criminal activity.

19 We don't have that here. Again, Western  
20 Express was shut down by the government, and the  
21 allegations against my client and the other  
22 defendants continue. They didn't stop doing what  
23 they were doing. So a facilitator, if I was to  
24 concede that, and I'm not, still wouldn't make it an  
25 enterprise.

1 CHIEF JUDGE LIPPMAN: Okay, counsel. Okay,  
2 counselor, thanks.

3 Counselor, five minutes minus thirty  
4 seconds.

5 MR. GALLUZZO: Right. That's right. Four  
6 and a half minutes, please. Thank you. And thank  
7 you, Your Honor. My name is Matthew Galluzzo. I  
8 represent appellant Angela Perez, also known as Ms.  
9 Ciano at both the trial and the appellate levels,  
10 pursuant to the 18-B felony bar plans.

11 Your Honor, my client is similar to the  
12 other two clients present here today; my client is  
13 alleged to have been a buyer of Egold currency, and  
14 it is alleged that she essentially used this currency  
15 to buy stolen credit card information for - - -

16 CHIEF JUDGE LIPPMAN: Assume it's true.

17 MR. GALLUZZO: Assume that's true for  
18 purposes of sufficiency, Your Honor.

19 CHIEF JUDGE LIPPMAN: Right.

20 MR. GALLUZZO: What the People are trying  
21 to pitch to you essentially, is that there's this  
22 enterprise, this structure, called the Western  
23 Express cybercrime group that includes not only the  
24 Western Express Corporation and Vassilenko at its  
25 center, but buyers and vendors - - - to adopt their

1 terminology - - - as well; the people who were buying  
2 Egold or buying this stolen information.

3 And what we're really looking at is where  
4 to draw the line in the sand and how broad - - -

5 CHIEF JUDGE LIPPMAN: Say there were only -  
6 - - say there were only X people who dealt with  
7 Western. In other words, there were ten people;  
8 they're all doing illegal carding transactions.

9 MR. GALLUZZO: Okay.

10 CHIEF JUDGE LIPPMAN: Everyone knows - - -  
11 those ten know this is the place to go. It's not - -  
12 - there are no innocents in this. Does that matter?  
13 Isn't that an ascertainable structure, or is it?

14 MR. GALLUZZO: Well, no, it's not. I mean,  
15 when you look at - - -

16 CHIEF JUDGE LIPPMAN: If the structure by  
17 which these legal transactions take place, the person  
18 facilitating it knows, and the people using it know,  
19 is that an ascertainable - - -

20 MR. GALLUZZO: I think the key - - -

21 CHIEF JUDGE LIPPMAN: - - - could you say  
22 that's interaction in a sense?

23 MR. GALLUZZO: - - - well, I think the key,  
24 I think you have to find that they're actually part  
25 of the enterprise, the buyers and the vendors. And

1 when you are determining that, you have to look at  
2 the relationships between the parties and what their  
3 motivations are.

4 JUDGE PIGOTT: Well, that's why I asked if  
5 it's not a question of fact for the jury. I mean,  
6 it's alleged that that's the case. Why wouldn't the  
7 People put their proof and you do yours, assuming  
8 that your - - -

9 MR. GALLUZZO: Well, we have two problems  
10 with that, Your Honor. Obviously, you have to  
11 determine, or the court below had to determine, as a  
12 matter of law, whether or not there was sufficient  
13 evidence. But also, I think we're going to have a  
14 problem instructing the jury if we don't have some  
15 clear guidance as to where we draw the line - - -

16 JUDGE READ: You're saying customers - - -

17 MR. GALLUZZO: - - - between whether  
18 structure - - -

19 JUDGE GRAFFEO: Wouldn't they - - -

20 JUDGE READ: - - - are not enough?

21 JUDGE GRAFFEO: I'm sorry.

22 JUDGE READ: To be a customer is not  
23 enough?

24 MR. GALLUZZO: Exactly. That's exactly it.  
25 To be a customer is simply not enough, because you

1 don't have the same - - -

2 JUDGE GRAFFEO: What about the frequency of  
3 being a customer, though? I mean, I could see there  
4 could be a difference if somebody just goes and buys  
5 Egold once and doesn't really know what's going on.  
6 But if somebody goes in and does it two dozen times,  
7 they absolutely know that they're going to get the  
8 stolen credit card information?

9 MR. GALLUZZO: Well, I'd say that that's  
10 just a pattern of - - -

11 JUDGE GRAFFEO: Have they somehow gotten  
12 themselves absorbed into the enterprise?

13 MR. GALLUZZO: Well, I would say no, Your  
14 Honor. I'd say you have a repeat customer that is  
15 engaging in a pattern of criminal activity. But to  
16 have an ascertainable structure, which we have to  
17 have, it has to be something - - - some relationship  
18 between those parties that is separate and distinct  
19 from - - -

20 JUDGE GRAFFEO: Well, they can't - - -

21 MR. GALLUZZO: - - - that pattern.

22 JUDGE GRAFFEO: - - - commit that - - -  
23 they can't commit those crimes without using these  
24 services?

25 MR. GALLUZZO: Well, in this particular

1 case, actually, you would - - - there's been evidence  
2 before the grand jury that the buyers and the vendors  
3 actually continued to transact business after Western  
4 Express, the money mover or the provider of Egold,  
5 had ceased to operate.

6 JUDGE JONES: In your analysis, what more  
7 would have to be presented to a grand jury to bring  
8 this up to a criminal enterprise - - -

9 MR. GALLUZZO: Well, I think if you're - -  
10 -

11 JUDGE JONES: - - - with regard to your  
12 client?

13 MR. GALLUZZO: - - - I think if you're  
14 looking for some kind of rule or some sort of bright  
15 line, you have to show there would be a common  
16 purpose between the parties, that they're basically  
17 the same team, that they're all in it together,  
18 they're all advancing the - - -

19 JUDGE SMITH: Would there have to be some  
20 decision-making apparatus, some way, whether by vote  
21 or authority or hierarchy or something, where  
22 decisions got made?

23 MR. GALLUZZO: Well, that's right. That's  
24 what the dissents in the court below said. And if  
25 you look at, say, for example, Boyle, that federal



1 RICO case, which is somewhat relevant here, although  
2 I wouldn't say it's - - - it's a different statute -  
3 - - what you have in that case is you have a group of  
4 bank robbers, essentially, who would get together  
5 before they robbed a bank, discussed what they were  
6 going to do, whose job is going to be what, and how  
7 they're going to divide the profits. They go out and  
8 they have the same shared common purpose: we're  
9 going to rob this bank tonight. And then afterwards,  
10 they go back and they split up the profits.

11 Here, all you have is people going to a Web  
12 site, conducting a quick transaction and then going  
13 their own independent ways, because they're just  
14 customers. They're not part of the same team, as  
15 Western Express. Let's just put it that way.

16 JUDGE GRAFFEO: Well, I guess that's the  
17 question here. Do we stay within the traditional  
18 view of a hierarchal, you know, joint enterprise, or  
19 in light of computer crime, is there - - - do we need  
20 to adopt a slightly broader view of what's an  
21 enterprise?

22 MR. GALLUZZO: Well, Your Honor, I'm not -  
23 - -

24 JUDGE GRAFFEO: Because they still have - -  
25 - they still have a goal here. They're all making

1 money off these stolen credit cards.

2 MR. GALLUZZO: Well, that's perhaps true,  
3 Your Honor, but - - -

4 JUDGE GRAFFEO: And they're all aware of  
5 it.

6 MR. GALLUZZO: That's right. But their  
7 common - - - their purpose is not the same. You have  
8 people whose purpose is to make money from selling  
9 Egold. You've got people who are there to make money  
10 selling stolen credit card information. You have  
11 people who are there to purchase stolen credit card  
12 information. They have differing purposes.

13 And if you could apply the analogy,  
14 perhaps, to someone who purchases drugs, I suppose -  
15 - - who purchases drugs from a drug seller, those  
16 people are both - - - they both share the common  
17 purpose, so to speak, of committing drug crimes, but  
18 their purposes are very different here. One person  
19 is there to sell, and one person is there to buy.  
20 And that's why the customers and the sellers are not  
21 in the same enterprise together. They would never be  
22 associated as part of the same enterprise.

23 CHIEF JUDGE LIPPMAN: All the buyers have  
24 the same purpose, right?

25 MR. GALLUZZO: Right. The pur - - - their

1 purposes are their own. Their purpose has nothing to  
2 do with that organization. They have no vested  
3 interest in the organization that's selling them  
4 something. They're - - -

5 CHIEF JUDGE LIPPMAN: Well, I mean - - -

6 MR. GALLUZZO: - - - there for themselves.

7 CHIEF JUDGE LIPPMAN: - - - they can't find  
8 it any other place, maybe. They do have an interest  
9 in - - -

10 MR. GALLUZZO: Well, perhaps.

11 CHIEF JUDGE LIPPMAN: - - - and maybe with  
12 Western, maybe they can't find it any other place, so  
13 they all go there.

14 MR. GALLUZZO: Well, when I went to  
15 Starbucks this morning to buy a latte, Your Honor, I  
16 had no vested interest in Starbucks' share price.  
17 It's not part of my - - -

18 JUDGE PIGOTT: Yes, but you're an end user.  
19 I see your point. If the purchaser that you're  
20 talking about is an end user, that's one thing. If  
21 he was buying or she was buying for the purpose of  
22 then selling it to two or three more, then you'd get  
23 into an issue of whether or not that's an enterprise,  
24 wouldn't you?

25 MR. GALLUZZO: Well, you might have an

1 issue there, Your Honor, but you don't have that  
2 evidence before the grand jury in this particular  
3 case.

4 JUDGE SMITH: You say - - - you say that  
5 your client was the end user of the Egold?

6 MR. GALLUZZO: Yes. Yes, that's right,  
7 Your Honor. She was using - - - the allegation is  
8 that she was using the Egold to buy stolen credit  
9 card information and then do whatever she wanted to  
10 do with it. At that point, whatever she did with it,  
11 the other members of this purported enterprise of  
12 this cybercrime group, couldn't really have cared  
13 less. If she wanted to sit on that information or  
14 she wanted to use it - - -

15 CHIEF JUDGE LIPPMAN: Okay, counsel.

16 MR. GALLUZZO: - - - they had no interest  
17 in it.

18 CHIEF JUDGE LIPPMAN: Okay. Thanks,  
19 counsel.

20 MR. GALLUZZO: Thank you, Your Honor.

21 CHIEF JUDGE LIPPMAN: Counselor?

22 MR. FALLEK: Good afternoon, Your Honors.  
23 My name is Allen Fallek. I represent Lyndon Roach,  
24 whose only connection to Western Express was as a  
25 customer. That is, he purchased Egold - - -

1                   CHIEF JUDGE LIPPMAN: Are you any different  
2 than the other two?

3                   MR. FALLEK: No dif - - - just like the  
4 other buyers, perhaps even less of a connection with  
5 respect to Mr. Roach. But analytically the same.

6                   So our point is that because all he did was  
7 use the Egold, that he's really not connected  
8 criminally with Western Express in this transaction,  
9 the pattern crimes, if you will. And so he's much  
10 less than associated with Western Express in an  
11 entity whose scope exists beyond the pattern crimes.  
12 And our position is that analysis simply ends right  
13 there.

14                   But I think it's important to understand  
15 that legally, this discussion also needs a structure  
16 in order to understand what this is. We can't just  
17 assume that for this reason or for that reason that  
18 somehow a structured enterprise exists.

19                   And so I'd like to address the notion that  
20 even if my client and Western Express were associated  
21 in these transactions, which analytically constitute  
22 the pattern crimes, the notion that from that it can  
23 be inferred, therefore, that they also exist in an  
24 entity with - - - a structured entity that exists  
25 beyond the scope of those crimes. That's the crux of

1 the People's argument, that you can infer an entity  
2 with an ascertainable structure from these - - - the  
3 structure that exists between Western Express in the  
4 middle, selling the Egold, and the buyer and the  
5 seller.

6 Yes, under - - - the People rely on the  
7 Supreme Court case, Boyle, which addresses a RICO  
8 structure. And to the degree that it's suggested  
9 that RICO might - - - a RICO structure might have  
10 anything to do with this - - - with an OCCA  
11 structure, I would just like to remind the court that  
12 - - -

13 JUDGE SMITH: But your point - - - the  
14 point you're making now, as I understand it, is that  
15 the state law does not reach - - -

16 MR. FALLEK: Correct.

17 JUDGE SMITH: - - - as far as RICO.

18 MR. FALLEK: Right. RICO basically allows  
19 an enterprise to be inferred from nothing more than a  
20 group associated solely to commit the pattern acts  
21 and whose structure is nothing more than the means  
22 through which the group commits those pattern acts.  
23 RICO allows that - - - under Boyle, allows an  
24 inference that from that alone, we can infer that  
25 there's a separate structure, a structured entity,



1 thoughts that I have is, as Judge Graffeo points out,  
2 the computer age these days is something. And if  
3 Western makes its money by servicing these people,  
4 not necessarily your defendants, but other people,  
5 and the other people are on the Internet, they don't  
6 know each other, other than the fact that they all  
7 know that they're on the Internet, and they're in the  
8 business of child porn, for example; and they start  
9 telling their confreres and buddies, this is where  
10 you can get it. Wouldn't that be an enterprise?

11 MR. FALLEK: Well, it's possible that the  
12 relationship between Western Express and these people  
13 maybe in Russia are selling porn, you know, based on  
14 the relationships, based on how those sellers rely on  
15 Western Express. I mean, there's - - - the People  
16 have all these facts about layering money; if they  
17 engage in that, take advantage of Western Express,  
18 that may or may not comprise enter - - - but we're  
19 simply talking about buyers who were customers of  
20 Western Express, and who were legitimate customers.  
21 I mean, it's one of the areas that Western Express  
22 provides a legitimate service: the Egold.

23 JUDGE PIGOTT: But I mean, isn't that their  
24 burden, then? I mean, they're going to say you're an  
25 enterprise, and your client's going to - - - at the



1 end of the People's case, is going to say there's no  
2 showing that my client ever bought credit card  
3 numbers; ever got into any of this. The Egold was  
4 used to buy Netflix movies, and therefore I move to  
5 dismiss, and it would be granted.

6 MR. FALLEK: Well, I don't quite understand  
7 that. I mean, at least for purposes of analysis  
8 here, there's no question that our clients bought  
9 Egold there for an illicit purpose. Buying - - -

10 JUDGE PIGOTT: Well, my point is, when you  
11 read indictments these days, I mean, they say you  
12 committed grand larceny, and you committed grand  
13 larceny in violation of the appropriate section, in  
14 that you stole money in excess of 250 dollars. I  
15 don't know how much farther you've got to go to get  
16 an indictment. And they do that - - -

17 MR. FALLEK: Well, here, there's a  
18 requirement, an element that there be a structure or  
19 an entity that exists beyond the scope of the crimes  
20 - - -

21 JUDGE PIGOTT: Which they've alleged.

22 MR. FALLEK: - - - and that entity must  
23 have an ascertainable structure. I mean, that's what  
24 - - - there was no evidence of that at the grand  
25 jury.

1           The question is what are - - - what is an  
2           ascertainable structure? Is it what the People say?  
3           Is it simply what RICO requires? And we're arguing  
4           no, that it's not. And then how structured must it  
5           be?

6           JUDGE SMITH: You're also saying that here  
7           we don't even have what RICO requires?

8           MR. FALLEK: No, we don't have the - - -  
9           but I'm conceding for argument's sake that if we  
10          simply had the RICO structure, that is, that this  
11          association for the purpose of buying the stolen  
12          information over the Internet with Egold, if that's  
13          an association, then that's comparable to the RICO  
14          enterprise, which is not close enough to be an OCCA  
15          structure.

16          CHIEF JUDGE LIPPMAN: Okay, counselor.  
17          Thanks.

18          JUDGE READ: I have one - - - I have one  
19          more question.

20          CHIEF JUDGE LIPPMAN: Oh, I'm sorry. Judge  
21          Read?

22          JUDGE READ: It may not be a fair one  
23          either. But one thing that's puzzled me about this,  
24          there are a lot of crimes charged here. And what - -  
25          - why is the People - - - why do you think the People

1 pursue this? I mean, is there a forfeiture element  
2 to this or does it increase the sentencing potential  
3 or - - -

4 MR. FALLEK: It definitely - - - it's a B  
5 felony versus - - -

6 JUDGE READ: But there are other B felonies  
7 too, right, that are - - -

8 MR. FALLEK: I'm not sure if there are  
9 other B felonies.

10 JUDGE READ: No? Okay. So that's why - -  
11 -

12 MR. FALLEK: Maybe the People can answer  
13 that.

14 JUDGE READ: Okay.

15 CHIEF JUDGE LIPPMAN: Okay.

16 JUDGE READ: All right. Thank you.

17 CHIEF JUDGE LIPPMAN: Thanks, counsel.

18 MR. COHN: Good afternoon, Your Honors.  
19 David Cohn for the People.

20 CHIEF JUDGE LIPPMAN: Do you want to answer  
21 Judge Read's question?

22 MR. COHN: Sure. I'll start with Judge  
23 Read's question very quickly. Enterprise corruption  
24 is a B felony. There are enhanced sentencing  
25 provisions. There also are forfeiture provisions for

1 the overseas defendants. And this was an  
2 international ring of identity thieves. There are  
3 extradition advantages to charging enterprise  
4 corruption. And - - -

5 JUDGE CIPARICK: And what's the next - - -

6 JUDGE READ: Extradition advantages?

7 MR. COHN: Extradition advantages.

8 JUDGE READ: Okay.

9 JUDGE CIPARICK: And what's the next level  
10 of crime that's charged in the indictments?

11 MR. COHN: Perhaps the grand larceny or the  
12 money laundering.

13 JUDGE READ: Yeah, it's grand larceny.

14 MR. COHN: Yes.

15 CHIEF JUDGE LIPPMAN: Counsel, why isn't  
16 this just a neutral use of the Internet for the  
17 conduct of business? Why isn't that all it is?

18 MR. COHN: Your Honor, there's a wealth of  
19 evidence here that this is far more than a neutral  
20 use of the Internet. In fact, as the indictment  
21 charged, this was an international ring of thieves  
22 and traffickers facilitated - - -

23 CHIEF JUDGE LIPPMAN: Yes, but are they  
24 connected in some kind of a structure, as what we've  
25 been talking about?

1 MR. COHN: And they are. And in fact - - -

2 CHIEF JUDGE LIPPMAN: How are they - - -  
3 how are they connected and what is the interaction  
4 between the different users?

5 MR. COHN: Absolutely. And I'm glad you  
6 asked that question.

7 CHIEF JUDGE LIPPMAN: Go ahead.

8 MR. COHN: So first we'll start out with  
9 Western Express itself - - -

10 CHIEF JUDGE LIPPMAN: Yes.

11 MR. COHN: - - - which was at the hub of  
12 this charged enterprise, of this alleged enterprise.  
13 And I would also like to reiterate that this is at  
14 the grand jury stage. The People are merely asking  
15 for the opportunity to prove to a jury that there was  
16 an enterprise here.

17 CHIEF JUDGE LIPPMAN: To prove what?  
18 What's the connection between Western Express and the  
19 people who use it?

20 MR. COHN: So first - - -

21 CHIEF JUDGE LIPPMAN: Or these people who  
22 use it.

23 MR. COHN: Well, first, let's start with  
24 the structure, which no one has disputed that Western  
25 Express had a clear structure. They had a physical

1           headquarters - - -

2                   JUDGE SMITH:   Western Express had a clear  
3           structure, but that's not the enterprise you  
4           indicted.

5                   MR. COHN:   Well, it's part of it.   And I  
6           think we have to start with Western Express.

7                   JUDGE SMITH:   Yes, but isn't that the  
8           problem?   It's a - - - you have a clear - - - you  
9           have an enterprise, Western Express, which for all I  
10          know is a criminal enterprise, but you say you've got  
11          the Western Express criminal group, or whatever it  
12          is.   How is that any different from putting - - -  
13          saying that a drug dealer is in the same enterprise  
14          with all his suppliers and customers?

15                   MR. COHN:   Well, this is far different.  
16          Nobody here is a user; nobody here is an addict.  
17          Everyone here - - -

18                   JUDGE SMITH:   That's the difference, that  
19          they're not addicts?   I mean, isn't the question  
20          whether I'm the same enterprise?

21                   MR. COHN:   Well, everyone here - - -  
22          there's a structure.   The question is whether there's  
23          an ascertainable structure.   And in our view - - -

24                   JUDGE SMITH:   Actually, I think the  
25          question, before you get to ascertainable structure,

1 is whether there's a group of people seeking a common  
2 purpose?

3 MR. COHN: Yes, they are. They're a group  
4 of people who are seeking a common purpose of  
5 furthering identity theft, furthering the trafficking  
6 - - -

7 JUDGE SMITH: Exactly. Is the same true of  
8 the drug dealer, who's buy - - - and his customers  
9 and his suppliers. Do they all have the same kind of  
10 a common purpose?

11 MR. COHN: The customer of a drug dealer is  
12 not interested in the traffic. The customer of - - -  
13 the trafficking. The customer of a drug dealer is  
14 simply interested in getting high. None of these  
15 people here - - -

16 JUDGE SMITH: Well, what if he's - - - what  
17 about somebody who buys for resale?

18 MR. COHN: Right. And that person could be  
19 charged with enterprise corruption. If you have a  
20 drug ring, and there are higher level dealers and  
21 there mid-level dealers, and they're selling and  
22 reselling, they could all be part of an enterprise.  
23 And there, in fact, are federal prosecutions of drug  
24 rings on RICO grounds for - - -

25 JUDGE SMITH: But don't you have to show





1           this was different from Boyle. I would argue that  
2           this is a more structured enterprise than Boyle.  
3           Boyle was like a pick-up game of basketball.  
4           Everyone shows up on a particular day and they say  
5           I'm - - - you play point guard, you play forward, and  
6           we're all going to go play this game.

7                         Here, Western Express set up a very  
8           organized scheme - - -

9                         CHIEF JUDGE LIPPMAN: But these guys are  
10          all playing on their own court.

11                        MR. COHN: They're actually - - -

12                        CHIEF JUDGE LIPPMAN: They're not coming  
13          for a pick-up game. Isn't that the issue here? Can  
14          they be shooting baskets individually and have some  
15          relationship to each other and to Western Express?

16                        MR. COHN: Actually not, Your Honor. What  
17          Western Express - - - what Vassilenko and Western  
18          Express did here was they set up a system that made  
19          it easy and safe for all - - -

20                        CHIEF JUDGE LIPPMAN: They were a  
21          facilitator.

22                        MR. COHN: - - - these people - - -

23                        CHIEF JUDGE LIPPMAN: They were a  
24          facilitator.

25                        MR. COHN: They're a facilitator, and they

1 did more than just facilitate. They did more than  
2 just hand off the ball.

3 CHIEF JUDGE LIPPMAN: What more did they  
4 do?

5 MR. COHN: They set up a very organized  
6 system that made it easy and safe for a large number  
7 of people, who were engaged in coordinated criminal  
8 activity - - -

9 CHIEF JUDGE LIPPMAN: Coordinated? How so  
10 coordinated?

11 MR. COHN: So - - -

12 CHIEF JUDGE LIPPMAN: Why is it  
13 coordinated?

14 MR. COHN: So Western Express had Web  
15 sites, and they explained how their entire system  
16 works, and they explained how all their transactions  
17 worked.

18 CHIEF JUDGE LIPPMAN: Yes, but what's the  
19 coordinated activity of the people using - - -

20 MR. COHN: The coordinated activity. Okay,  
21 first, Western Express, for the buyers, converts cash  
22 into Egold. Western Express knows - - - at least we  
23 have to take this as true for current purposes,  
24 because we're just at the indictment stage - - -  
25 Western Express knows that these buyers are going to

1 use that Egold to buy stolen credit card data.

2 CHIEF JUDGE LIPPMAN: Let's say they know  
3 that all their clients are crooks.

4 MR. COHN: Right.

5 CHIEF JUDGE LIPPMAN: They know it. They  
6 know it. They facilitate it. What's the  
7 relationship, though - - - what if they don't know  
8 each other at all, and there's no interaction between  
9 them?

10 MR. COHN: They're all part of a community.  
11 They all post on the same Internet forums.

12 CHIEF JUDGE LIPPMAN: A community of  
13 thieves? A community of thieves?

14 MR. COHN: Yes, they are. They're all part  
15 of a very coordinated community of thieves. They  
16 have Internet forums where they have specific, very  
17 graphic discussions about transactions about how to  
18 steal credit card data.

19 JUDGE SMITH: On this theory, can't you  
20 indict a whole industry? I mean, couldn't you indict  
21 the whole heroin industry in the United States as  
22 being part of the same enterprise, because they're  
23 all buying and selling from each other?

24 MR. COHN: If the heroin industry is  
25 organized around a structure, around a company,

1           around Web sites, where they coordinate with each  
2           other, and they do it over and over and over again,  
3           for years, then the argument is yes, that is an  
4           enterprise.

5                         JUDGE SMITH: Is my analogy of the gun  
6           store a fair one?

7                         MR. COHN: I think your analogy of the gun  
8           store could possibly be a fair one if the gun store  
9           made it clear to everyone that this is where  
10          murderers will come. We will turn the blind eye to  
11          the fact that you're a murderer. In fact, we not  
12          only will turn a blind eye; we know that you're a  
13          murderer; we want murderers to come here.

14                        JUDGE SMITH: So you're saying that under  
15          those circumstances, you can indict the - - - not  
16          just the gun store, but the gun store and its  
17          customers, as part of the same enterprise?

18                        MR. COHN: Well, assuming that they were  
19          more than just customers. Right? Assuming that they  
20          were buying guns because they were engaged in large-  
21          scale criminal activity, too.

22                        JUDGE SMITH: It sounds like a customer to  
23          me. I mean, yes. They're still customers.

24                        MR. COHN: They're were more than end  
25          users. They were more than end users. They were not

1 just the junkie on the street - - -

2 JUDGE SMITH: Well, they were end users of  
3 the guns.

4 MR. COHN: Well, perhaps that would make  
5 this different, because here we have people who are -  
6 - - the so-called buyers are really importers. Maybe  
7 they're - - -

8 JUDGE JONES: Did you present any of  
9 Western Express' legitimate activities to the grand  
10 jury?

11 MR. COHN: There was some evidence, I  
12 believe, of their selling of phone cards. There was  
13 - - - some of the people who posted on Western  
14 Express' own boards, own Internet forums, said that  
15 upwards of ninety percent of their customers were  
16 engaged in credit card fraud. Everyone knew that  
17 Western Express was the place to go for this. And  
18 they all coordinate through Western Express.

19 I think it might be helpful to imagine that  
20 - - -

21 JUDGE READ: Would they coordinate with  
22 each other?

23 MR. COHN: They did. They talked to each  
24 other over the Internet. Western Express posted - -  
25 -

1 JUDGE READ: Is that critical to your case?

2 MR. COHN: I think - - - I think it helps  
3 the case. I think it's - - -

4 JUDGE SMITH: Do you have evidence that  
5 they were actually making deals on the Western  
6 Express Web site to buy and sell credit card  
7 information?

8 MR. COHN: I believe there's some evidence  
9 that Shevelev or Burak, one of the two, posted on  
10 Denge (ph.) forum about selling dumps, about selling  
11 stolen credit card data. Most of that was not done  
12 on the Western Express site. But everyone knew that  
13 Western Express was the place to go. Western Express  
14 allowed all these people to engage in large-scale  
15 financial transactions with no oversight, no  
16 compliance - - -

17 JUDGE JONES: The question is, what was  
18 specifically presented to the grand jury?

19 MR. COHN: Well - - -

20 JUDGE JONES: These assumptions, what  
21 everyone may have known is very difficult to pin  
22 down.

23 MR. COHN: Well, Judge, obviously, the jury  
24 could listen to the evidence at trial and decide  
25 whether to infer that there was knowledge on - - -

1 JUDGE JONES: We're trying to - - -

2 MR. COHN: - - - anyone's part.

3 JUDGE JONES: - - - we're trying to  
4 determine here whether you have a valid indictment.

5 MR. COHN: Yes. Our argument is that there  
6 was certainly a wealth of evidence from which a jury  
7 could infer that everyone knew. Given the volume of  
8 Internet postings, given the volume of transactions,  
9 over a long period of years, even the people who say  
10 they were just minimally involved dealt tens of  
11 thousands of dollars of business with Western  
12 Express.

13 This was a ring of people from which almost  
14 100,000 stolen credit card numbers were recovered; 4  
15 million dollars in fraud was identified from just  
16 about a tenth of the credit cards that were  
17 recovered.

18 JUDGE GRAFFEO: I guess what - - -

19 JUDGE CIPARICK: Was there any evidence  
20 that these three people - - - well, there's a fourth  
21 one too, Mr. Vassilenko - - -

22 MR. COHN: Vassilenko.

23 JUDGE CIPARICK: - - - knew each other?

24 MR. COHN: Well, they certainly - - -

25 JUDGE CIPARICK: Communicated with each

1 other?

2 MR. COHN: - - - did business with each  
3 other. Well Latta and Perez knew each other. Latta  
4 and Perez were, in fact, involved in doing criminal  
5 activity together. Vassilenko knew all of them  
6 because he was the hub of the enterprise.

7 As this court has said in First Meridian  
8 that it doesn't matter in a criminal scheme whether  
9 everybody knows everyone else who's involved in the  
10 scheme. The question is was this coordinated  
11 criminal activity?

12 JUDGE GRAFFEO: Well, I guess what I'm  
13 struggling with is what makes this different because  
14 it's done on the Internet? In an age before the  
15 Internet, if Western Express, say, had a storefront  
16 and these defendants walked in and purchased credit -  
17 - - you know, stolen credit cards, I don't think that  
18 would fall under the enterprise. So what is it, that  
19 once this goes on to the - - - once this scheme is  
20 developed on the Internet, that takes it over that  
21 line between being separate crimes, and this now  
22 becomes a criminal enterprise?

23 MR. COHN: Well, actually, Your Honor, if  
24 we had all the evidence here and it were happening at  
25 a physical location, I believe it still would be an



1 enterprise. Because we have more than just a  
2 storefront. This is not just a store that people are  
3 walking in and out of. It's not just a bazaar.  
4 What's happening here is they are all coordinating.  
5 They all know that it's a very dangerous thing.

6 CHIEF JUDGE LIPPMAN: You keep saying  
7 they're coordinating, but it's hard to picture how  
8 they can be coordinating if they're not - - - if  
9 there's no interaction between them.

10 MR. COHN: Well, they can be coordinating  
11 by reading posts on the Web which says if you want to  
12 do credit card theft, if you want to do identity  
13 fraud, if you want to traffic in stolen credit card  
14 numbers - - -

15 JUDGE GRAFFEO: It's the sharing of  
16 information? Is that what's different?

17 MR. COHN: That is certainly part of it.  
18 And that's unique to the Internet. That's what would  
19 have to happen in the physical world by, say, word of  
20 mouth.

21 CHIEF JUDGE LIPPMAN: So they're all  
22 reading this same information and that makes them  
23 coordinate? Even though they have no particular  
24 interaction with each other?

25 MR. COHN: The buyers might not. Buyer A,

1           buyer B might not have a particular interaction with  
2           each other. You could imagine an organized crime  
3           syndicate that has soldiers in various parts of the  
4           globe that have no interaction with each other.  
5           They're all - - -

6                         JUDGE SMITH: But the soldiers have  
7           somebody deciding for them where they're going to go.  
8           The soldiers in an organized crime ring, have some  
9           central direction. And maybe - - - and in that case,  
10          it's usually hierarchical. In Boyle, it was almost  
11          democratic. But there's still a decision-making  
12          mechanism. Who is making decisions for this  
13          enterprise that you indicted?

14                        MR. COHN: Well, there weren't really  
15          decisions to be made. Vassilenko set it all up.  
16          They all knew what had to happen.

17                        JUDGE SMITH: How can you have a criminal  
18          enterprise that has no decisions to be made?

19                        MR. COHN: They all knew what had to  
20          happen. These were all people who had a common  
21          purpose, which was to facilitate the trafficking of  
22          stolen credit card data. They knew this was a very  
23          dangerous business. They knew that it's easy to get  
24          caught. They knew there are these rules which say if  
25          you engage - - -

1 CHIEF JUDGE LIPPMAN: But it's not a common  
2 purpose in the sense that team, we're going to do  
3 this. Team, we have a common purpose to help our  
4 team. We have a common purpose that each one  
5 individually has the same purpose. Isn't that  
6 different?

7 MR. COHN: I think here they were a team.  
8 They did act as a team.

9 CHIEF JUDGE LIPPMAN: How were they a team?

10 MR. COHN: They did the same thing over and  
11 over and over again for several years. We're talking  
12 - - -

13 CHIEF JUDGE LIPPMAN: So?

14 MR. COHN: - - - tens of thousands - - -

15 CHIEF JUDGE LIPPMAN: So?

16 MR. COHN: - - - of stolen credit - - -  
17 this is - - - this, in our view, is exactly what the  
18 legislature was trying to target when it passed the  
19 enterprise corruption statute. The legislature was  
20 trying to target groups of criminals that organize  
21 together in an ascertainable structure, because they  
22 pose a greater threat.

23 CHIEF JUDGE LIPPMAN: But why aren't they  
24 habitual criminals rather than a team of criminals?

25 MR. COHN: Because here - - -

1 CHIEF JUDGE LIPPMAN: Why aren't each one  
2 individually a habitual criminal? Many transactions.

3 MR. COHN: Our argument, Your Honor, is  
4 here they pose a greater threat, because Western  
5 Express has set up a structure. And I find it  
6 interesting that my opponents today have not actually  
7 really talked about all the elements of the structure  
8 here.

9 They set up a structure which made it  
10 easier for everyone to engage in this large-scale  
11 trafficking in credit card data very safely - - -  
12 relatively safely, because there was no money  
13 laundering protocols at Western Express. There was  
14 no reporting of suspicious activities. In fact,  
15 Western Express was happy to wire hundreds - - -

16 JUDGE JONES: That's like saying - - -

17 MR. COHN: - - - of thousands of dollars to  
18 Shevelev's overseas shell accounts - - -

19 JUDGE JONES: - - - that's like saying you  
20 - - -

21 MR. COHN: - - - in order to help him  
22 launder money.

23 JUDGE JONES: - - - open a store that's  
24 twenty-four hours a day, and it made it easy for  
25 customers to come in. That doesn't necessarily make

1           it a criminal enterprise.

2                       MR. COHN: Your Honor, I would agree with  
3           that if there wasn't a common purpose, if there  
4           weren't common discussions about, look, we're all in  
5           this clandestine business together; how can we do it  
6           better? How can we figure out a safe way to do this?  
7           This is what all these various players in the scheme  
8           were trying to do.

9                       And I agree with Judge Graffeo that the  
10          Internet makes it more organic. It makes it less  
11          hierarchical, because they can come together in a  
12          more organic way. Boyle, in fact, was an organic  
13          sort of organization too, just a different - - -

14                      JUDGE GRAFFEO: I know your red light is  
15          on. But do you see a distinction between the role of  
16          Vassilenko and the three defendants that are  
17          represented at the table today?

18                      MR. COHN: Your Honor, I think that could  
19          be a jury question for the trial. I think the defen  
20          - - - the three defendants at the table who were  
21          buyers or importers of the stolen credit card data,  
22          they could argue to a jury that they didn't have  
23          knowledge of the enterprise or they didn't have the  
24          intent to participate in the affairs of the  
25          enterprise. The argument is that there's enough

1 evidence, certainly enough circumstantial evidence  
2 that a jury could infer that they intended to  
3 participate in the affairs of the enterprise.

4 As far as the question before us today,  
5 that's where the enterprise had a structure. And  
6 that's the only question this court has to answer  
7 today. And the structure was there for everyone  
8 involved. There - - -

9 JUDGE SMITH: Well, did you - - - I think  
10 there's even a question as to whether there's an  
11 enterprise. But you agree that the state statute is  
12 less broad than RICO?

13 MR. COHN: Your Honor, I agree that on its  
14 face, the state statute is less broad than RICO by  
15 its statutory language. The state statute, the  
16 enterprise corruption statute has certain  
17 requirements that RICO does not. It requires three  
18 pattern acts instead of two. It requires that two of  
19 the pattern acts be felonies, where as in RICO - - -

20 JUDGE SMITH: Well, what about the - - -

21 MR. COHN: - - - it must be misdemeanors.

22 JUDGE SMITH: - - - ascertainable structure  
23 and the continuity of existence?

24 MR. COHN: I believe, Your Honor, as we  
25 argued in the brief, that the ascertainable structure

1 element of the enterprise corruption statute is  
2 essentially identical to the way that the Supreme  
3 Court defined the structure element in Boyle. They  
4 said there has to be a structure - - -

5 JUDGE SMITH: So the legis - - - the New  
6 York legislature was wasting its time writing those  
7 words in?

8 MR. COHN: They wrote it in the statute  
9 because they wanted to be clear. In fact, they were  
10 probably relying on federal case law which  
11 interpreted RICO to say that an enterprise had to  
12 have a structure. In fact, they - - - in the  
13 legislative history, the legislature said we're  
14 relying heavily on the RICO experience when we're  
15 drafting the - - -

16 CHIEF JUDGE LIPPMAN: Okay, counsel.

17 MR. COHN: - - - OCCA statute.

18 CHIEF JUDGE LIPPMAN: Thanks, counsel.

19 MR. COHN: Thank you.

20 CHIEF JUDGE LIPPMAN: Okay, counsel, a  
21 minute and a half. It's yours.

22 MS. HOTH: Thank you, Your Honor. I'd like  
23 to take the sports analogy to its obvious conclusion.  
24 Even if it's a pick-up basketball game, there's two  
25 teams. And on a team, when one person scores, that

1 team gets the goal, and that team, if they score more  
2 often than the other team, wins.

3 Here, if my client scores it doesn't help  
4 any of the other defendants here. It didn't help  
5 Vassilenko; it didn't help anybody. He was in it for  
6 himself, as were the other defendants.

7 JUDGE GRAFFEO: I thought Vassilenko got a  
8 commission on all these transactions.

9 MS. HOTH: I don't know if it's a  
10 commission or just a fee. I see it simply the same  
11 as if I go to a bank and buy a money order, the bank  
12 charges me a fee for changing my cash into a money  
13 order. If - - -

14 JUDGE SMITH: Did Vassilenko get  
15 commissions on the actual purchase and sale of the  
16 credit card information?

17 MS. HOTH: No, he had nothing to do with  
18 it. And the district attorney is making a lot of  
19 assumptions and hypothesizing things here. But the  
20 point is, they had an intent to show to the grand  
21 jury a connection between Western Express' Web site  
22 and our client's activities. And there is none.  
23 Whether or not my client bought his Egold from  
24 Western Express or someone else, as he did after  
25 Western Express was shut down, does not make this an



1 enterprise.

2 Again, one person scores, the team should  
3 get the score, not one person, if you're in it. A  
4 pick-up game doesn't require a coach or a captain,  
5 but you still see a team and you still see a  
6 collective reward at the end. Here we had a bunch of  
7 individuals working for themselves.

8 Remember, what they did through Western  
9 Express was legal. Egold was legal. Buying it was  
10 legal. Opening an account under a pseudonym was  
11 legal. It's the same as using PayPal. The  
12 difference is that PayPal voluntarily agreed to  
13 accept government regulations, and Egold did not. So  
14 it was the government's lack of regulation of Egold  
15 that was allowing the anonymity that the DA is  
16 relying on to show a structure.

17 I said it several times and I have to come  
18 back to it, and my adversary didn't mention it at  
19 all. These activities continued after Western  
20 Express was shut down. If Western Express - - -

21 CHIEF JUDGE LIPPMAN: Okay, counselor.

22 MS. HOTH: - - - was central, it could not  
23 have happened that way.

24 CHIEF JUDGE LIPPMAN: Okay. Thanks.

25 MS. HOTH: Thank you.

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CHIEF JUDGE LIPPMAN: Thank you all.  
(Court is adjourned)

C E R T I F I C A T I O N

I, Penina Wolicki, certify that the

