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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CR2001-007775
	)	
ROBERT H. BURR,	)	
	)	
Defendant.	)	
_____	)	

BEFORE: THE HONORABLE THOMAS W. O'TOOLE  
Judge of the Superior Court

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
Change of Plea

Phoenix, Arizona  
Friday, May 18, 2001  
8:10 a.m.

Lori Gottschalk  
Certified Court Reporter No. 50592

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APPEARANCE PAGE

FOR THE PLAINTIFF:

JANET NAPOLITANO, ATTORNEY GENERAL  
BY: Sherry K. Stephens, Assistant Attorney General  
and Sydney K. Davis  
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Phoenix, Arizona 85007

FOR THE DEFENDANT:

MARKS & BROOKLIER  
BY: Anthony P. Brooklier, Attorney at Law  
10100 Santa Monica Boulevard  
Suite 800  
Los Angeles, CA 90067

and

Office of Legal Advocate  
BY: James Logan, Attorney at Law  
441 North Central  
Suite 900  
Phoenix, Arizona 85004

## 1 PROCEEDINGS

2

3 THE COURT: Good morning. This is the time set for  
4 proceedings regarding a possible filing of a direct  
5 complaint in the matter of the State of Arizona versus  
6 Robert H. Burr.

7 Counsel, announce your presence, please.

8 MS. STEVENS: Sherry Stephens and Sydney Davis,  
9 appearing for the State.

10 MR. LOGAN: James Logan appearing with  
11 Anthony Brooklier, who is an attorney from California and  
12 has represented Mr. Burr as well. I have an Pro Hac Vice  
13 application for Mr. Brooklier, if I may approach.

14 For the record, I am not terribly familiar  
15 with the facts of the case. Mr. Brooklier has represented  
16 Mr. Burr for sometime and is familiar with the facts and is  
17 available to stand in.

18 THE COURT: If there is no objection, you would be  
19 admitted to practice for purposes of this case. Welcome to  
20 Arizona.

21 MR. BROOKLIER: Thank you, sir.

22 THE COURT: Ms. Stephens, any objection?

23 MS. STEPHENS: No objection.

24 THE COURT: Ms. Stephens has provided the Court  
25 with a draft direct complaint, draft information, and draft

1 plea agreement with attachments. Perhaps counsel can put on  
2 the record exactly what you want to do here today.

3 MS. STEPHENS: Special Agent Kathleen Kempley, who  
4 is a peace officer in Arizona, has the direct complaint to  
5 swear out before the court. And I believe I provided your  
6 staff with a submittal, and an information yesterday.

7 THE COURT: That is correct.

8 Any objection to that procedure,  
9 Mr. Brooklier?

10 MR. BROOKLIER: No, sir.

11 THE COURT: Ms. Kempley, would you come forward and  
12 the clerk will swear you.

13 THE CLERK: State your name, please.

14 MR. KEMPLEY: Kathleen, K-a-t-h-l-e-e-n, Kempley,  
15 K-e-m-p-l-e-y.

16 THE CLERK: Raise your right hand. Do you solemnly  
17 swear the testimony you will give will be the truth, the  
18 whole truth, and nothing but the truth, so help you God?

19 MS. KEMPLEY: Yes.

20 THE COURT: State your name for the record.

21 MS. KEMPLEY: Kathleen Kempley.

22 THE COURT: And as I understand it, you are a peace  
23 officer?

24 MS. KEMPLEY: That is correct. I am a special

25 agent with the Attorney General's office.

5

1 THE COURT: And you have provided a direct  
2 complaint to the clerk which alleges two counts of violating  
3 the Fraudulent Schemes and Artifices provision of  
4 A.R.S. 13-2310 concerning Mr. Burr; am I correct?

5 MS. KEMPLEY: Yes, Your Honor.

6 THE COURT: The information in that complaint is  
7 based on investigations that you and your office have  
8 conducted regarding Mr. Burr and the activities described  
9 therein?

10 MS. KEMPLEY: Yes, it is.

11 THE COURT: And you believe that the facts alleged  
12 constitute probable cause to believe that each of those  
13 alleged offenses has been committed?

14 MS. KEMPLEY: Yes, I do.

15 THE COURT: Does the State have any additional  
16 questions of Ms. Kempley?

17 MS. STEPHENS: No, we don't.

18 THE COURT: Are you satisfied that her avowal is  
19 adequate?

20 MS. STEPHENS: Yes.

21 THE COURT: The court will authorize and approve  
22 the direct complaint. I am signing the direct complaint and  
23 ordering it filed. The direct complaint is filed pursuant

24 to Rule 2.2(B) and Rule 4.2(B).

25 Are you Robert H. Burr?

6

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Mr. Burr, you are here with  
3 Mr. Brooklier; is that correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: He is your attorney.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you retained him?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You do have certain rights, that is,  
10 you have the right to remain silent. You have the right to  
11 counsel. You obviously have counsel, and he filed a notice  
12 of appearance.

13 The Court has just approved a direct complaint  
14 charging you with two violations of fraudulent schemes and  
15 artifices. Have you reviewed a draft of that direct  
16 complaint?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Brooklier, the defendant has a  
19 right to a preliminary hearing on a direct complaint. Have  
20 you discussed this with your client?

21 MR. BROOKLIER: Yes, Your Honor.

22 THE COURT: What is his desire?

23 MR. BROOKLIER: To waive. He wants to enter a  
24 plea.

25 THE COURT: Okay. Any objection to waiving the

7

1 preliminary hearing, Ms. Stephens?

2 MS. STEPHENS: No, Your Honor.

3 THE COURT: It is ordered granting the defendant's  
4 request to waive the preliminary hearing on the direct  
5 complaint, which is -- What is the case number?

6 THE CLERK: 2001-007775.

7 THE COURT: That direct complaint having been  
8 filed, the defendant waives his right to preliminary  
9 hearing.

10 At some point -- and I will mention it now so  
11 I don't forget --- the defendant needs to be booked and  
12 processed before leaving the courthouse here today.  
13 Ms. Stephens, you and Mr. Brooklier can explain how that  
14 works or discuss how it works.

15 The court finds the defendant has made a  
16 knowing, voluntary, intelligent waiver of his right to a  
17 preliminary hearing. I assume, Mr. Burr, you have discussed  
18 that right with Mr. Brooklier before we advised you, that  
19 you wish to waive the preliminary hearing; is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. Let me ask before I forget. The

22 information that I have is you were born November 24, 1962;  
23 is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Your social security is 023-40-3739?

8

1 THE DEFENDANT: Yes, sir.

2 THE COURT: The state has prepared an information.  
3 Is that right, Ms. Stephens?

4 MS. STEPHENS: Yes, we did.

5 THE COURT: Do you wish to file the information?

6 MS. STEPHENS: Yes, we do.

7 THE COURT: It's ordered filing the information. I  
8 assume we will give that the same number as the direct  
9 complaint; correct?

10 THE CLERK: Correct.

11 THE COURT: Okay. And Mr. Burr and Mr. Brooklier,  
12 I assume you both have been provided with a draft of the  
13 information; is that correct?

14 THE DEFENDANT: That is correct.

15 MR. BROOKLIER: Yes, sir.

16 THE COURT: And it basically is a repeat of the  
17 direct complaint. I read them. They look to be the same;  
18 is that correct?

19 MR. BROOKLIER: Yes, it is, Your Honor.

20 THE COURT: Do you waive the reading of the

21 information?

22 MR. BROOKLIER: Yes, Your Honor.

23 THE COURT: Now, Mr. Burr, the Court finds the  
24 information need not be read. The court has also been  
25 provided with a draft of the plea agreement, with an

9

1 attachment, Exhibit A and also Attachment B. Exhibit A is a  
2 factual basis statement. Exhibit B is cooperation  
3 provisions.

4 Perhaps before we go any further, Ms. Stephens  
5 and Mr. Brooklier can outline what the parties wish to do  
6 here this morning.

7 MR. BROOKLIER: I will defer to Counsel, Your  
8 Honor.

9 MS. STEPHENS: We wish to have Mr. Burr enter into  
10 a plea agreement. The State is agreeing that he will remain  
11 out on his own recognizance pending sentencing, under the  
12 terms of the cooperation provisions, waiving the right to  
13 speedy sentencing.

14 We would ask the Court, after the entry and  
15 acceptance of the plea, that you set a status conference for  
16 approximately six months, because the cooperation provisions  
17 provide he will testify against other individuals implicated  
18 in this matter.

19 THE COURT: Is that correct, Mr. Brooklier?

20 MR. BROOKLIER: It is, sir.

21 THE COURT: You discussed this plea agreement and  
22 procedure with your client?

23 MR. BROOKLIER: I have, Your Honor.

24 THE DEFENDANT: Is that correct, Mr. Burr?

25 THE COURT: Yes, sir, it is.

10

1 THE COURT: And do you have the original plea  
2 agreement?

3 MR. BROOKLIER: May I approach your clerk?

4 THE COURT: Yes, please.

5 MR. BROOKLIER: Thank you.

6 THE COURT: Mr. Burr, let me just enumerate what we  
7 are about to do to make sure we are all on the same page.  
8 You executed a plea agreement. I am going to go through it  
9 with you and discuss it with you to make sure that any plea  
10 you enter is done knowingly and voluntarily and  
11 intelligently and in full appreciation of the consequences  
12 of pleading guilty.

13 After I am satisfied that everything is in  
14 order, I will ask how you plead. After you plead, I will  
15 ask you to tell me what happened that makes you believe that  
16 you are guilty of the two offenses that you are pleading  
17 guilty to. We'll review the attachments to the agreement.  
18 And if everything is in order, if I understand from

19 Ms. Stephens, you want the court to accept the plea but  
20 defer a sentencing date as agreed in the cooperation  
21 agreement; is that correct? Is that your understanding?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Is that correct, Mr. Brooklier?

24 MR. BROOKLIER: Yes, sir.

25 THE COURT: Ms. Stephens?

11

1 MS. STEPHENS: Yes, sir.

2 THE COURT: Do you have a copy of the plea  
3 agreement in front of you, Mr. Burr?

4 MR. BROOKLIER: Yes, Your Honor, we do.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. I am not going to read it  
7 chapter by chapter. But I am going to go over it and  
8 discuss the critical provisions. First of all, your name is  
9 Robert H. Burr, and your birth date is November 24, 1962; is  
10 that correct?

11 THE DEFENDANT: Yes, Your Honor, it is.

12 THE COURT: And how far in school have you gone?

13 THE DEFENDANT: I graduated from high school with a  
14 GED at age 16.

15 THE COURT: Any college education?

16 THE DEFENDANT: Other than college courses while I  
17 was in the navy aboard ship, no, sir.

18 THE COURT: You have been in the navy, and you got  
19 honorably discharged?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: How long were you in the navy?

22 THE DEFENDANT: A little more than four years, sir.

23 THE COURT: And you are out of custody. Have you  
24 had any drugs, medication, or alcohol in the last 48 hours?

25 THE DEFENDANT: No, sir.

12

1 THE COURT: And you executed this plea agreement  
2 and the attachments have been signed off on May 18th, which  
3 is today; correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And you initialed each paragraph and  
6 the attachments; correct?

7 THE DEFENDANT: Yes, I have, Your Honor.

8 THE COURT: Before signing and initialing, did you  
9 read these documents over, discussing them with your lawyer  
10 and fully understand them?

11 THE DEFENDANT: Yes, Your Honor, I did.

12 THE COURT: And have you had plenty of time to talk  
13 about the plea agreement with your attorney and the issues  
14 and the charges in the two counts, plus other potential  
15 charges before deciding to sign this plea agreement?

16 THE DEFENDANT: Yes, Your Honor, I have.

17                   THE COURT:  And has anybody threatened or pressured  
18 to you sign this document?

19                   THE DEFENDANT:  No, Your Honor, they have not.

20                   THE COURT:  Other than the attachments, which we  
21 will talk about in a minute, has anybody promised you what  
22 is going to happen --

23                   THE DEFENDANT:  No, Your Honor.

24                   THE COURT:  Okay.  Now, the plea agreement on the  
25 first page says you are going to plead guilty to Count 1 and

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1                   2, fraudulent schemes and artifices, these are each Class 2  
2 felonies under Arizona law, concerning conduct that occurred  
3 between October 24, 1997 and June 4 excuse me -- between May  
4 15, '97 and June 4, 1998.

5                   The second paragraph explains in writing that,  
6 if you are convicted either by a guilty plea or by trial,  
7 you could be sent to prison for as much as twelve and a half  
8 years or as little as three years if the court decided to  
9 send you to prison.

10                   Do you understand that?

11                   THE DEFENDANT:  Yes, Your Honor.

12                   THE COURT:  Probation is available also.  The Court  
13 could fine you up to \$150,000 on each of the two counts,  
14 plus impose a 60 percent surcharge on top of any fine that  
15 is imposed.

16

Do you understand that?

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THE DEFENDANT: Yes, Your Honor.

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19

THE COURT: Continuing in paragraph two, it talks about your agreement with the State as to what type of a sentence is going to be imposed. It says on Count 2 you will be placed on probation. Do you understand that, even though you have an agreement to be placed on probation it could, unless the addendum modifies it, it could include up to one year in jail?

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THE DEFENDANT: Yes, Your Honor.

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THE COURT: You also agree to pay restitution in the amount of \$4,980,060.48 to the receiver of the SEC v. Cook case in the Northern District of Texas. That money to be distributed on a pro rata basis to the victims in this matter; is that correct?

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THE DEFENDANT: Yes.

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MR. BROOKLIER: There is one modification in this case. We discussed this before. I would appreciate and we agreed to, if the court will accept that, if the court will consider that figure a top figure, that would be the highest amount possibly due. We think it's more in the order of \$4.3 million. That is something --

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THE COURT: I can modify the agreement "in an

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amount not to exceed."

15 MR. BROOKLIER: That is perfect. That will handle  
16 it.

17 MS. STEPHENS: Yes.

18 THE COURT: So I added after the word amount the  
19 hand written phrase, "Not to exceed." And I initialed it,  
20 and I am dating it. Any objection?

21 MR. BROOKLIER: Your Honor, thank you. No.

22 THE COURT: The provisions regarding Count 2 also  
23 say that the money paid in restitution will not be used to  
24 pay the fees due to a receiver for administrative costs. In  
25 addition, you are agreeing to cooperate and testify as

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1 described in Attachment B. That attachment is signed and  
2 dated by you and your lawyer today. It's a page plus a  
3 paragraph long.

4 Before you signed that attachment, Mr. Burr,  
5 did you read it over line for line, word for word and fully  
6 understand it?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Did you discuss it with your lawyer  
9 Mr. Brooklier?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And, Mr. Brooklier, are you and  
12 Mr. Burr in agreement that this attachment accurately and  
13 completely outlines all the terms and agreements and

14 understandings regarding cooperation as to this case?

15 MR. BROOKLIER: Yes, Your Honor.

16 THE COURT: I am not going to go through it line  
17 for line, unless counsel wishes that I do it. I am  
18 accepting your signature and your avowals this morning as a  
19 complete incorporation of that attachment in the plea  
20 agreement. Any objection?

21 MR. BROOKLIER: No, Your Honor.

22 THE COURT: Okay. Continuing, Mr. Burr, paragraph  
23 2 of the plea agreement provides that you will complete a  
24 Statement of Personal/Business Financial Condition under  
25 oath on a form approved by the Attorney General. That

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1 document will outline a full accounting of your personal and  
2 business assets, liabilities, and net worth.

3 You also agree to identify -- and there is a  
4 phrase that has been blacked out. I assume that that has  
5 been blacked out by agreement of the State and the defense;  
6 correct?

7 MS. STEPHENS: Yes, it has.

8 THE COURT: Okay. I am going to, just to make sure  
9 there are no ambiguities, put my initials by it. So that  
10 phrase as modified says you agree to identify all assets  
11 owned by, controlled by or held by named individuals. An  
12 additional entry in the agreement provides you will receive

13 credit on restitution for the value of property you turn  
14 over to the receiver; is that correct?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Now, if I understand, there shall be no  
17 agreements regarding sentencing on Count 1; is that correct?

18 MS. STEPHENS: That is correct.

19 THE COURT: I will try it again for clarity. There  
20 should be a statement in writing in the plea agreement that  
21 says there are no agreements as to Count 1. I don't see it.

22 MS. STEPHENS: It's the second sentence under  
23 paragraph one.

24 THE COURT: Thank you. You corrected me.

25 Yes. Mr. Burr, you have two counts. You are

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1 getting an agreement for probation on one count, but there  
2 are no agreements on the first count; is that correct?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And that means the Court could send you  
5 to prison for as much as twelve and a half years on Count 1  
6 to be followed by probation on Count 2, even if you  
7 cooperate and the State is satisfied with your cooperation.

8 Do you understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: That is obviously the worst case  
11 scenario. But it's a possibility.



11 in the last highlighted paragraph, the State is agreeing to  
12 not file any criminal charges for loss resulting from  
13 International Business Consultants Limited and Dannel  
14 Finance, Limited; is that correct?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Now, on the second page there are other  
17 provisions that apply that you have initialed, read, and  
18 understand; am I correct?

19 THE DEFENDANT: Yes.

20 THE COURT: And you obviously agree?

21 THE DEFENDANT: Correct.

22 THE COURT: And you avow you have no prior felony  
23 convictions; is that true?

24 THE DEFENDANT: Yes.

25 THE COURT: You understand, if it turns out you do,

19

1 the State can withdraw from the plea agreement and basically  
2 go full speed ahead with the two charges, and they could  
3 file other charges?

4 Do you understand that?

5 THE DEFENDANT: Yes, sir, I do.

6 THE COURT: Now, going to the last paragraph. This  
7 outlines certain constitutional rights that you have, which  
8 you are giving up by pleading guilty.

9 First, the provision says that you have read

10 the Exhibit A and Exhibit B and agree with those amendments.  
11 We will get into Exhibit A, which is a guilty plea itself in  
12 a minute. And in addition, by pleading guilty to these two  
13 charges, you are giving up your right to have a jury trial.  
14 Everyone charged with felonies has a constitutional right to  
15 a jury trial.

16 You are also giving up other rights that go  
17 along with the right to have a jury trial. You have the  
18 right to have counsel assist you at all times at trial. You  
19 have the right to remain silent at trial.

20 You have the presumption of innocence that  
21 stays with you throughout the trial, which means you don't  
22 have to testify. You don't have to answer any questions.  
23 You don't have to explain anything. You don't have to do  
24 anything. You can sit there and do nothing, and the jury  
25 can't hold that against you in any fashion. It is a

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1 fundamental constitutional right that you and every  
2 defendant has in a criminal case to do nothing.

3 The jury's decision has to be based solely on  
4 its review of the evidence presented by the State. And the  
5 fact that you do nothing, including not calling any  
6 witnesses or putting on any evidence, cannot be taken into  
7 account in any fashion by the jury when it decides whether  
8 or not the State has proved the charges beyond a reasonable

9 doubt.

10 Do you understand that?

11 THE DEFENDANT: Yes, Your Honor, I do.

12 THE COURT: As I said, you have the right to have a  
13 jury hear the evidence and decide whether you are guilty or  
14 not. Any verdict must be unanimous whether it's guilty or  
15 not guilty. And as part of that process, the State is  
16 required to prove your guilt beyond a reasonable doubt  
17 before the jury can convict.

18 So the State has a heavy burden of proving  
19 criminal conduct at trial. And that burden of proof beyond  
20 a reasonable doubt is emphasized by the fact that the  
21 verdict must be unanimous.

22 Do you understand that?

23 THE DEFENDANT: Yes, Your Honor, I do.

24 THE COURT: Now, you have the right to remain  
25 silent, and you are presumed innocent. You can, if you

21

1 wish, call witnesses and present evidence. If you cannot  
2 afford it, they will be called and presented at no cost to  
3 you. You will not be penalized simply because  
4 hypothetically you could not afford to bring the witnesses  
5 or evidence. Witnesses or evidence can be brought in at no  
6 cost if you cannot afford it.

7 Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: You have the right, if you wish to, to  
10 testify yourself at trial. If you do testify, you would be  
11 treated just like any other witness.

12 Do you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: You have the right, if you go to trial  
15 and are convicted, to appeal and ask the Court of Appeals to  
16 review the trial court proceedings. They could affirm the  
17 conviction, or they could grant you some type of relief,  
18 including a new trial.

19 The point is that, if you plead guilty, you  
20 give up your right to appeal because obviously you are  
21 giving up your right to have a trial.

22 Do you understand that?

23 THE DEFENDANT: Yes, Your Honor, I do.

24 THE COURT: You also have the right to question,  
25 confront and cross-examine all the witnesses that are called

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1 by the State and test their credibility so to speak. As I  
2 said, you have the right to bring in witnesses and produce  
3 evidence and exhibits.

4 Again, those rights and all the rights I  
5 outlined, plus as they are described in this last part of  
6 this agreement, are being given up by you.

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Do you understand that?

THE DEFENDANT: Yes, Your Honor, I do. I do.

THE COURT: If you get probation on Count 2, probation could be for as long as seven years.

Correct, Ms. Stephens?

MS. STEPHENS: That is correct.

THE COURT: And if during that period of time you were to have been found to have violated your probation, it could be revoked. And you could be sent to prison for as much as twelve and a half years.

Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: So you are embarking on a long period of some disability including probation, perhaps a prison sentence, payment of restitution, fines perhaps, including your agreement to cooperate as described in the attached cooperation agreement.

Do you understand that?

THE DEFENDANT: Yes, Your Honor.

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THE COURT: Has anybody promised anything other than what is contained in the plea agreement --

Are you okay?

THE DEFENDANT: I was standing with my knee locked, and my leg gave out. My apologies.

6 THE COURT: You have a bad leg or disability?

7 THE DEFENDANT: No. I just had it locked. And my  
8 leg went to sleep and just gave out. I apologize, Your  
9 Honor.

10 THE COURT: You are ready to proceed?

11 THE DEFENDANT: Yes. Yes, Your Honor.

12 THE COURT: Has anybody promised you directly or  
13 indirectly what is going to happen to you other than what is  
14 contained in the plea agreement?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Has anyone threatened or pressured you  
17 to sign the plea agreement?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: You have had plenty of time to talk to  
20 Mr. Brooklier about the options, i.e., going to trial,  
21 pleading guilty and all the agreements you entered into  
22 before signing off on the plea agreement?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Are you satisfied with Mr. Brooklier's  
25 counsel and advice?

24

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And, Mr. Brooklier, you had plenty of  
3 time to investigate the case and the evidence and the legal  
4 options of your client before advising your client in this

5 matter?

6 MR. BROOKLIER: Yes, Your Honor.

7 THE COURT: Mr. Burr, I am now going to ask you how  
8 you plead to Count 1 and Count 2, fraudulent schemes and  
9 artifices as alleged in the information, what are your pleas  
10 to those two charges?

11 THE DEFENDANT: Guilty, Your Honor.

12 THE COURT: Okay. Attached as Exhibit A is a  
13 statement entitled "Factual Basis Statements." You have  
14 read and signed that document; is that correct?

15 THE DEFENDANT: Yes, Your Honor, I have.

16 THE COURT: And is that what you did regarding the  
17 Count 1 and Count 2 allegations that makes you believe that  
18 you are guilty?

19 THE DEFENDANT: Yes, Your Honor. I am responsible  
20 as indicated there.

21 THE COURT: Okay. And you in fact knowingly  
22 obtained the benefits described in Count 1 and in Count 2 by  
23 means of false and fraudulent pretenses, representations,  
24 promises and material omissions; is that correct?

25 THE DEFENDANT: Yes, Your Honor.

25

1 THE COURT: And in your own words, tell me what you  
2 did as to Count 1, that is between May 15, '97 and October  
3 24th of '97, you and Benjamin Franklin, III, and others

4 engaged in certain fraudulent schemes and conduct.

5 THE DEFENDANT: I entered into an agreement with  
6 Benjamin Franklin Cook, III under which moneys were raised  
7 and material omissions were made in the raising of those  
8 moneys.

9 THE COURT: And the moneys raised and the  
10 representations made are as described in Count 1?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And in fact the representations were  
13 not carried out? They were in fact -- The moneys were used  
14 for unauthorized purposes; is that correct?

15 THE DEFENDANT: A large part, correct, Your Honor.

16 THE COURT: As described in Count 1?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Concerning Count 2, you and Mr. Cook  
19 are alleged to have done similar acts between December 3rd  
20 of '97 and June 4, '98, concerning Dannel Finance, Ltd.

21 In your own words, tell me what happened in  
22 that circumstance.

23 THE DEFENDANT: It was a repeat of the original  
24 undertaking with Mr. Cook and his predecessor company IBCL.

25 THE COURT: Which is International Business

26

1 Consultant Limited.

2 THE DEFENDANT: Yes, Your Honor. My apologies.

3 THE COURT: And the money was knowingly obtained by  
4 fraudulent pretenses, representations, promises and material  
5 omissions; is that correct?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And the money was used for purposes  
8 other than promised?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. Is the State satisfied that the  
11 two guilty pleas which incorporate the factual basis are  
12 knowing, voluntary and intelligent and --

13 MS. STEPHENS: Yes, we are. Just so the record is  
14 clear, both counts occurred in Maricopa County?

15 THE COURT: That is correct. Both counts occurred  
16 in Maricopa County, Arizona, significant acts?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: That is what we are talking about; is  
19 that correct?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: The victims were located in Maricopa  
22 County, Ms. Stephens?

23 MS. STEPHENS: The funds came to Maricopa County to  
24 Mr. Cook. And Mr. Cook transferred the moneys to Mr. Burr  
25 from a bank account located in Maricopa County, Arizona.

1 THE COURT: Is that right, Mr. Burr?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And, Mr. Brooklier, you are satisfied  
4 that the pleas are legally and factually sufficient?

5 MR. BROOKLIER: I am, Your Honor.

6 THE COURT: And that they in fact occurred in  
7 Maricopa County as described?

8 MR. BROOKLIER: As described, yes, Your Honor.

9 THE COURT: Okay. Let me ask Ms. Stephens and  
10 Mr. Brooklier if there is anything else the Court needs to  
11 cover before I make certain findings?

12 MS. STEPHENS: No, I don't think so.

13 MR. BROOKLIER: No, Your Honor.

14 THE COURT: Okay. Mr. Burr, the Court accepts your  
15 pleas to Counts 1 and 2 as described in the information.  
16 The Court finds they are knowing and voluntary and  
17 intelligent, and that the facts you admitted shows you did  
18 commit the fraudulent schemes and artifices as alleged.

19 The court finds that the attached Exhibit A  
20 and B have also been entered into knowingly, voluntarily,  
21 and intelligently. And obviously, Mr. Burr, you understand  
22 that you have to comply with the cooperation provisions of  
23 the attached B in order to benefit from this plea agreement.

24 THE DEFENDANT: Yes, Your Honor, I do.

25 THE COURT: If it's determined that you have not

1       cooperated as described, the State may ask the Court to  
2       vacate your pleas and allow them to proceed without any  
3       restrictions on the charges or the penalty amounts you may  
4       be exposed to.

5                       Do you understand that?

6               THE DEFENDANT:   Yes, Your Honor.

7               THE COURT:    Is that correct, Mr. Brooklier?

8               MR. BROOKLIER:   It is, Your Honor.

9               THE COURT:    Now, I have -- I assume that there are  
10       several victims and victim representatives present?

11              MS. STEPHENS:   That is correct.

12              THE COURT:    They have been made aware of this plea  
13       agreement and voiced their position on it?

14              MS. STEPHENS:   There are many victims in this  
15       matter.  The Attorney General's Office sent a written letter  
16       to them last week notifying them about the plea agreement  
17       and about today's court -- actually about yesterday's court  
18       date.  And we notified the individuals that showed up  
19       yesterday that this matter was continued to today.

20              THE COURT:    Is there a representative of the  
21       victims as opposed to victims in general?

22              MS. STEPHENS:   No.  However, the receiver  
23       Larry Warfield is present.

24              THE COURT:    Okay.  Well, I assume that there may be  
25       other charges or indictments filed?

1 MS. STEPHENS: Mr. Cook has been charged and that  
2 is pending currently before Judge Cole, to be reassigned to  
3 Judge Foreman.

4 THE COURT: Okay. I would ask that you alert Judge  
5 Foreman as to Mr. Burr's involvement. And obviously any  
6 victims' representatives should be put into the loop so that  
7 they are properly represented and advised as activities  
8 occur.

9 What is the agreement regarding a sentencing  
10 date. I know it's deferred. Do you wish to have a status  
11 conference set?

12 MS. STEPHENS: Yes, please, in about six months.

13 THE COURT: Any objection?

14 MR. BROOKLIER: No, Your Honor.

15 THE COURT: Mr. Burr, under normal -- under the  
16 rules of procedure, a defendant who pleads guilty is  
17 entitled to be sentenced within a period of no more than 60  
18 days.

19 Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: You are waiving that right because of  
22 your cooperation agreement; is that correct?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: So I will set a status conference --  
25 Before we before I do that, do the parties

1 contemplate that either I or Judge Foreman should do the  
2 sentencing?

3 MR. BROOKLIER: May we conference just a second?

4 THE COURT: Yes.

5 MR. BROOKLIER: It's our collective thought that we  
6 would appreciate it if the Court would do it.

7 THE COURT: You understand that I may be somewhat  
8 handicapped by a lack of all the information Judge Foreman  
9 will have. Do you understand that?

10 MR. BROOKLIER: Yes, Your Honor.

11 THE COURT: Any objection, Ms. Stephens?

12 MS. STEPHENS: No, Your Honor.

13 THE COURT: I will set a status conference for me  
14 in October. Is that a fair time frame?

15 MS. STEPHENS: Yes.

16 THE COURT: Gloria, give us a date.

17 THE BAILIFF: You want Friday?

18 THE COURT: That is fine.

19 MR. BROOKLIER: Judge for your planning purposes,  
20 no one really anticipates this will be done. And we may be  
21 able to resolve this by a pleading rather than a hearing.

22 THE COURT: That is fine. We want to find out the  
23 status. Obviously, once we are in the sentencing mode,  
24 Counsel will notify the court, and we will do that.

25 One of things I am going to defer is ordering

1 a presentence report until we know that sentencing is on the  
2 horizon; correct?

3 MS. STEPHENS: Yes.

4 THE COURT: So that status conference will give us  
5 an opportunity to look at that issue. October when?

6 THE BAILIFF: 12th, Friday.

7 THE COURT: Okay. October 12th. Mr. Burr, I know  
8 it's a long way off. But come that date, you may wish to be  
9 present. But if you and your lawyer and the State agree,  
10 you may waive your presence, since I think you live in L.A.

11 THE DEFENDANT: I live in North Carolina, sir.

12 THE COURT: Okay.

13 MS. STEPHENS: Mr. Brooklier lives in L.A.

14 THE COURT: I am sorry.

15 THE BAILIFF: Judge, 9:00?

16 THE COURT: Okay. The original plea agreement,  
17 attachments and information are filed. The defendant is  
18 ordered released on his o.r. Any conditions and  
19 restrictions -- Does the State have any request for any  
20 conditions or restrictions?

21 MS. STEPHENS: Only that the defendant not have any  
22 contact with Mr. Cook or other witnesses in this matter or  
23 the victims.

24 THE COURT: Any restriction on his travel or other  
25 than that?

1 MS. STEPHENS: No.

2 THE COURT: The court releases Mr. Burr on his own  
3 recognizance. I am imposing certain written conditions and  
4 restrictions which I checked. Mr. Burr, I want you to sign  
5 this document. Give my clerk your address. Any change must  
6 be conveyed to Ms. Stephens and the Court.

7 MR. BROOKLIER: Yes, Your Honor.

8 THE COURT: As I said initially, please go to the  
9 sheriff's office. They need to book you and generate a  
10 fingerprint and photograph record.

11 Do you understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Anything else?

14 My clerk is asking whether the plea agreement  
15 needs to be sealed. Any requests?

16 MS. STEPHENS: No.

17 THE COURT: So it's not sealed. It will be filed  
18 and the case -- What is the relating case? Do we have a  
19 number?

20 MS. STEPHENS: I don't have it with me. I can call  
21 your court with the number.

22 THE COURT: I think it would be helpful to  
23 cross-reference the two so we don't have twelve things  
24 running blindly next to each other.

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MS. STEPHENS: Right.

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THE COURT: Thank you. We are in recess.

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(The proceeding was concluded.)

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1 STATE OF ARIZONA )  
 )  
2 COUNTY OF MARICOPA )

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5 I, Lori Gottschalk, do hereby certify that I am  
6 a duly appointed and acting official court reporter in and  
7 for the Superior Court of Maricopa County, State of Arizona,  
8 and was acting in that official capacity during the hearing  
9 of the foregoing cause.

10 I further certify that the proceedings were  
11 taken down by me in stenotype and thereafter reduced to  
12 computer-aided transcription under my direct supervision,  
13 and that the foregoing is an accurate and complete  
14 transcript of all portions so requested.

15 IN WITNESS WHEREOF, I have hereunto set my  
16 hand in the City of Carlsbad, County of San Diego, State of  
17 California, this 30th day of June, 2001.

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Lori Gottschalk, CSR, RPR  
Official Reporter  
Arizona Certified Court Reporter, 50592

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