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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

LAWRENCE J. WARFIELD)	3:99-CV-571-R
Receiver)	
)	
SECURITIES AND EXCHANGE)	
COMMISSION)	
Plaintiff)	
)	
VS.)	Dallas, Texas
)	
BENJAMIN FRANKLIN COOK,)	
Individually and dba)	
DENNEL FINANCE LIMITED,)	
GERALD LEE PATE,)	
ELLSWORTH WAYNE McLAWS and)	
ALAN CLAGG)	
Defendants)	April 1, 1999
)	
and)	
)	
FPC-1 LIMITED PARTNERSHIP,)	
SAMUEL LIMITED PARTNERSHIP,)	
ALLIANCE INVESTMENTS CORP.,)	
CORNERSTONE MANAGEMENT, LLC,)	
INTERNATIONAL BUSINESS)	
CONSULTANTS LIMITED,)	
HIGHLANDER LIMITED PARTNERSHIP,)	
AND C. KELLY OLSEN)	
Defendants Solely for)	
Purposes of Equitable)	
Relief)	

VOLUME I

TRANSCRIPT OF HEARING

BEFORE THE HONORABLE JERRY BUCHMEYER
CHIEF UNITED STATES DISTRICT JUDGE

1 APPEARANCES:

2 For the Plaintiff:

MR. JEFFREY B. NORRIS
MS. KAREN LUNDSKOW COOK
MS. KAREN W. WHITAKER
Securities and Exchange
Commission
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Fort Worth, Texas 76102

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7 For the Defendant
Benjamin Franklin Cook:

MR. ROBERT T. MOWERY
MR. JIM NELSON
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11 APPEARANCES:

12 For the Defendant
Gerald Lee Pate:

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16 MR. ALAN T. OWEN
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20 For the Defendant
Ellsworth Wayne McLaws:

MR. ARCH C. McCOLL, III
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1 APPEARANCES:

2 For the Defendant Alan Clagg: MR. GARY LANGAN GOODENOW
3 The Goodenow Law Firm
4 440 Northeast 94th Street
5 Miami Shores, Florida 33138

6 MR. HAL R. RAY, JR.
7 Pope, Hardwicke, Christie,
8 Harrell, Schell & Kelly
9 901 Fort Worth Club Building
10 Fort Worth, Texas 76102

11 For the Receiver: MR. KELLY M. CRAWFORD
12 Scheef & Stone
13 5956 Sherry Lane
14 Suite 1400
15 Dallas, Texas 75225

16 MR. PATRICK M. MURPHY
17 Guttilla & Murphy
18 4150 West Northern Avenue
19 Phoenix, Arizona 85051

20 Court Reporter: JOE BELTON, C.S.R.
21 P.O. Box 50909-0909
22 Dallas, Texas 75250

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1 P R O C E E D I N G S

2 THE COURT: This is Civil Action 99-571,
3 Securities and Exchange Commission versus Benjamin Franklin
4 Cook and others.

5 The plaintiff ready?

6 MR. NORRIS: Yes, Your Honor.

7 THE COURT: Okay. And if I could have appearances
8 for the attorneys for the plaintiff? If you would just state
9 your name for the record?

10 MR. NORRIS: Jeff Norris, United States Securities
11 and Exchange Commission.

12 MS. COOK: Karen Cook.

13 MS. WHITAKER: Karen Whitaker.

14 THE COURT: Okay. And then if I could have
15 appearances for the defendants?

16 MR. CONNELLY: Good morning, Your Honor. Thomas
17 Connelly and Alan Owen on behalf of Gerald Pate.

18 THE COURT: Okay.

19 MR. McCOLL: Your Honor, Arch McColl and John
20 Bryant on -- today on behalf of Mr. McLaws.

21 THE COURT: Okay.

22 MR. RAY: Your Honor, good morning. Hal Ray on
23 behalf of defendant Alan Clagg. I also have to present to
24 the court Mr. Gary Goodenow. We would like to -- when the
25 court gets rolling, to present a motion for him to proceed

1 pro hac vice.

2 THE COURT: Certainly.

3 MR. MOWERY: Judge, Rob Mowery and Jim Nelson here
4 for the limited purpose today only for Mr. Cook and for
5 Dennel.

6 THE COURT: Okay. Anyone else? Have any other
7 defendants who are appearing pro se? Okay.

8 MR. CRAWFORD: Your Honor, Kelly Crawford. I'm the
9 attorney for the receiver and Mr. Larry Warfield here.

10 THE COURT: Okay. Let's take up the motion for
11 continuance first that was filed.

12 MR. McCOLL: Your Honor, may I proceed?

13 THE COURT: Yes.

14 MR. McCOLL: Thank you. This was drafted as a pro
15 se motion because that was what we thought how it was going
16 to have to be presented. So that's the way -- that's the way
17 it's styled, Your Honor.

18 But it seems to me that in the scope of things, the
19 court's interested in the integrity of the fact-finding
20 process, accounting, et cetera, et cetera. And the
21 fundamental basis of any due process is notice and adequate
22 time to get ready for a hearing and then a hearing.

23 As stated in Goldberg vs. Kelly, when they cut off
24 welfare benefits or where they repossessed the simplest kind
25 of personal property, such as W. T. Grant vs. Mitchell, the

1 Supreme Court made that clear for years.

2 Here we have had a very, very limited amount of
3 time, and we don't have the records to review, to analyze, to
4 present to the court, to argue. So we're essentially at this
5 hearing with both hands tied behind our back. And as a
6 result, although we've had notice, we certainly haven't had
7 any meaningful opportunity to get at the records. We just
8 don't have them. They have been seized.

9 The United States doesn't even have them, which
10 leads us to other arguments that -- as I understand it, which
11 leads us to other arguments that other counsel and I also
12 wish to press on the court preliminarily, and that is that we
13 are very interested in the court assuming jurisdiction and
14 issuing an order against the attorney general so that they
15 don't continue with the forfeiture proceedings that have been
16 represented by SEC lead counsel to me that are in the process
17 of an ongoing matter so that soon there will be no way
18 available for this court to attach any jurisdiction if they
19 continue to ignore or act as if they are the Lone Ranger and
20 they have exclusive jurisdiction over the matter. So that
21 that's a real fundamental problem. And, of course, we have
22 the notice problem.

23 I'm not sure which one the court wants us to take
24 up. But rather than belabor the issue -- of course, the
25 subsidiary issue is that with the frozen funds that leaves my

1 client essentially counselless. I'm here today, today only,
2 in a limited basis with Mr. Bryant. But obviously there's a
3 lot of legal work that needs to be done. There's two sides
4 to every story. I understand the court's interest in
5 protecting victims, but the opportunity for us to go forward
6 is just not there.

7 THE COURT: Okay. I'm going to deny the motion for
8 continuance. I have time constraints built in under the
9 rules for a hearing on temporary injunction. I need to go
10 forward with the temporary injunction hearing. However,
11 obviously if the temporary injunction is granted, the
12 defendants would have a chance at some later date to ask for
13 relief from the temporary injunction.

14 We respect to the Arizona case, Arizona got there
15 first and they seized the assets. The SEC does not have any
16 of the assets. I was under the assumption that all the
17 assets had not been seized, but I stand corrected now.

18 I certainly can't interfere with an Arizona state
19 court that got there first. And so the -- it appears to me
20 that with regard to the battle for the release of funds, that
21 needs to be fought in Arizona where the funds are and where I
22 understand there will be a proceeding on motion to forfeit
23 all of the assets that were seized. I think it needs to be
24 fought in that battle.

25 I'm sympathetic to the need of the defendants for

1 an attorney. However, a couple of the defendants do have
2 attorneys and I know that they're -- as far as I can tell,
3 the interest would be similar for all of the defendants.

4 There was another motion that was filed, which was
5 a motion to dissolve the pending temporary restraining order.
6 I think that's really moot because we're going to proceed
7 with a hearing on the temporary injunction, and I'll hear
8 whatever you want to present in connection with the temporary
9 injunction.

10 Is the government ready to proceed then?

11 MR. RAY: Your Honor, if we might before the
12 government proceeds?

13 THE COURT: I'm sorry. You had something you
14 wanted to present.

15 MR. RAY: I do, Your Honor. It's a motion to
16 proceed pro hac vice. If I might approach the bench?

17 THE COURT: Yes.

18 MR. RAY: Your Honor, Mr. Norris, counsel for the
19 government, does not oppose this. The clerk wouldn't file it
20 because we didn't have our certificate, Your Honor.

21 THE COURT: That's okay.

22 MR. RAY: Here is the motion. If you would accept
23 it on behalf of the clerk and then here's the order.

24 MR. RAY: Do you want to hang onto it?

25 THE COURT: Why don't you take it by the clerk's

1 office.

2 MR. RAY: Thank you very much.

3 MR. McCOLL: Your Honor, just for the record, then
4 you're saying that you're denying my motion to grant relief
5 with regard to an order preserving the status quo to those
6 funds that you had earlier exercised explicit jurisdiction
7 over?

8 THE COURT: I'm denying that.

9 MR. McCOLL: Thank you.

10 THE COURT: How many witness does the SEC have?

11 MR. NORRIS: Your Honor, we anticipate calling
12 seven witnesses.

13 THE COURT: Okay. And who will they be? What type
14 of witnesses? You've got your investigator.

15 MR. NORRIS: I intend to tell the court about what
16 we -- how we intend to supplement the record today.

17 THE COURT: Okay.

18 MR. NORRIS: If the court will allow me to do so.

19 THE COURT: Okay. I'll do so.

20 MR. NORRIS: May I approach the bench? I'd like to
21 provide the court and the reporter with notebooks of the
22 exhibits that we intend to introduce today.

23 THE COURT: Yes. Have you got copies for the
24 defense attorneys?

25 Have we got enough room for all of the attorneys

1 to sit back there? If you don't we -- why don't you move
2 some of the chairs behind the SEC over to the open space over
3 there? We are having some technical difficulties here.

4 You ready?

5 MR. NORRIS: Yes.

6 THE COURT: Okay.

7 MR. NORRIS: As the court is aware, this matter is
8 before the court on the Commission's request for a
9 preliminary injunction and for continuation of equitable
10 relief to assure the maximum relief to investors who were
11 defrauded through a scheme perpetrated by Dennel and other
12 defendants.

13 The Commission's complaint alleges that from
14 sometime in 1997 until the present, defendants violated the
15 federal securities laws by selling unregistered and, in fact,
16 fictitious securities to more than a hundred investors.
17 Investors were told orally and in writing that their funds
18 would be sent to London for use in an international trading
19 program involving forfeiture transactions.

20 They were also told that their funds would be 100
21 percent safe because they would never be withdrawn from the
22 account in London and would be used only as collateral.

23 These representations were repeated in the written
24 materials that were sent to investors. The record, as we
25 will supplement it today, will show that nearly every

1 investor received a set of six documents among which were --
2 those were included as Exhibit 11 to Mr. Hughes', Sammy
3 Hughes' initial declaration, and they are Exhibits 1 through
4 6 in the exhibit notebook which I've supplied to the court.

5 THE COURT: Okay.

6 MR. NORRIS: Those documents included a document
7 which is Exhibit 2 entitled a restricted private -- Dannel
8 Finance Limited Restricted Private Placement Program, and
9 Exhibit 3 which is entitled Basic Capital Accumulation
10 Systems Summary. And if the court would allow I would just
11 like to refer to certain provisions in those documents that
12 repeat these representations.

13 Exhibit 2 on page 2 contains this statement. "The
14 client-applicant is instructed --"

15 MR. McCOLL: I'm sorry, Your Honor. What paragraph?

16 MR. NORRIS: Paragraph beginning at the end -- the
17 last two sentences of paragraph 6 on page 2.

18 MR. McCOLL: Thank you.

19 MR. NORRIS: "The client-applicant is instructed at
20 that time to wires funds to the placement managers U.S. bank
21 coordinates for acknowledgement and receipt. Those funds are
22 then wire transferred to the London solicitors internal
23 ledger trust bank account on behalf of our placement manager
24 for safekeeping."

25 Paragraph 7. "The solicitor will confirm

1 acknowledgement and receipt, then issue on behalf of our
2 placement manager's account, a certified bank safekeeping
3 receipt in the sum of 100 percent of our applicant's
4 principal investment for a period of 12 months. The
5 investor's funds utilized in the safekeeping account are
6 maintained on a ledger by ledger basis by the solicitor's
7 full fiduciary and custodial responsibility. These funds
8 shall not be placed at risk or transferred to any other
9 accounts while in this program for any reason with no
10 exceptions."

11 Let me ask the court to turn to page 2 of Exhibit 3
12 entitled, Basic Capital Accumulation System Summary. First
13 full paragraph, "There has been a lot of interest expressed
14 by persons seeking to learn more about risk-free capital
15 accumulation by participating in aforesaid trading programs.
16 Essentially we are discussing a money center bank instrument
17 or bank departure purchase and resale program in which these
18 monetary securities are bought at a beneficially lower price
19 and then sold in the money markets at a higher price. Before
20 our traders commit to any transaction, they always insure
21 that they have a guaranteed exit sale (another party willing
22 to purchase the bank debentures at an agreed to higher price
23 at the conclusion of a number of trading cycles). If no
24 customer is available before the transaction commences, then
25 no trade will take place as the trader must always protect

1 his positions."

2 And then page 3, one more provision, the middle of
3 the page under How Are Investor's Funds Protected? "As the
4 funds are deposited into a transaction they are often secured
5 by a bank guarantee safekeeping receipt or certificate of
6 deposits issued by a top money center bank until the
7 completion of the transaction and return of the proceeds to
8 the investor. This feature makes the investment as secure as
9 buying a CD in a major world bank, at least for the investor
10 with sufficient funds to get his own contract."

11 These basic and important representations, the
12 evidence shows and will show, were false. The Commission's
13 complaint alleges that each defendant violated Section 5a and
14 5c of the Securities Act of 1933, the securities registration
15 provisions.

16 I don't believe there is any dispute that these
17 instruments were not registered with the Commission. Mr.
18 Hughes' supplemental declaration has an attestation attached
19 to it from the Commission that no Dannel investments were
20 registered with the Commission. As the memorandum filed by
21 the Commission shows, these instruments on their face, as
22 they were described to investors, were clearly securities.
23 And no one has -- no defendant come forward with evidence or
24 even an argument that these securities, the offer and sale of
25 these securities fit within any exemption to the registration

1 provisions.

2 The Commission's complaint also alleges that each
3 of the defendants violated the anti-fraud provisions of the
4 federal securities laws, Section 17a of the Securities Act,
5 and Section 10b-5 of the -- 10b of the exchange act and rule
6 10b-5 thereunder.

7 Finally the Commission alleges that defendants
8 Ellsworth Wayne McLaws, Gerald Pate and Alan Clagg violated
9 Section 15a of the Exchange Act, the broker-dealer
10 registration provision. Again, there is no dispute that Mr.
11 McLaws, Mr. Pate and Mr. Clagg were not registered as
12 broker-dealers with the Commission. The attestation of that
13 fact is attached to the supplemental declaration of Sammy
14 Hughes.

15 On March 16th this court granted the Commission's
16 request for ex parte relief, including a temporary
17 restraining order, an asset freeze as to the defendants and
18 relief defendants and appointment of a receiver. The
19 Commission supported that request with its complaint,
20 declaration of Hughes and its memorandum in support of this
21 relief. The court granted that relief. Since then the
22 Commission has supplemented the record with supplemental
23 declaration of Sammy Hughes and a supplemental memorandum.

24 Today we intend to supplement the record with
25 additional evidence in the form of live testimony and

1 exhibits. The Commission will present the testimony of five
2 Dannel investors. These investors will testify concerning
3 the false and misleading statements and omissions that
4 induced them to invest in Dannel through the individual
5 defendants.

6 The Commission will present the testimony of Brad
7 Session, the Commission accountant. Mr. Session will testify
8 concerning his analysis of Dannel bank accounts. Among other
9 things, Mr. Session's testimony will support the Commission's
10 contention that Dannel lied to its investors about the use of
11 their investment funds. His testimony will support the
12 conclusion that returns paid to investors were not the
13 product of an international trading program as represented
14 but were merely Ponzi payments. His testimony will also show
15 that Dannel investor funds were being transferred not only to
16 defendants but also to the relief defendants named in the
17 Commission's complaint.

18 Finally, the Commission will present the testimony
19 of Dave Adams an investor with the division of securities of
20 the Arizona Corporations Commission. Mr. Adams will testify
21 concerning evidence uncovered during the execution of search
22 warrants by Arizona authorities on premises associated with
23 defendants. Mr. Adams' testimony will reveal evidence by
24 defendants to conceal evidence and secret assets including
25 movement of assets offshore. His testimony will provide

1 further evidence that Dennel investor funds were diverted to
2 purchase assets in the names of defendants and various relief
3 defendants.

4 The Commission will not offer expert testimony
5 today. The Commission relies on the declarations already
6 submitted to the court of Herbert Burn, associate director of
7 banking supervision of the Federal Reserve and John Shockey,
8 the former chief of the fraud section of the Comptroller of
9 the Currency. Mr. Burn and Mr. Shockey in their declarations
10 agree that the written materials supplied by Dennel describe
11 an inherently fraudulent prime bank offering of the type that
12 federal agencies have been warning about for several years.

13 The Commission's confident that at the end of the
14 day this court will conclude that the evidence is more than
15 sufficient to grant all the relief requested by the
16 Commission in its proposed order.

17 Now, as that evidence is presented, I would ask the
18 court to bear in mind that the Commission sought the
19 testimony of each of these defendants, individual defendants,
20 in order to obtain their side of the story about their
21 participation in this scam. Only Gerald Pate was willing to
22 step forward and give substantive testimony. Each of the
23 other defendants, Ben Cook, Wayne McLaws and Alan Clagg have
24 taken refuge in the Fifth Amendment previous against
25 self-incrimination. The Commission asks the court to draw an

1 appropriate adverse inference against these defendants in
2 this civil proceeding.

3 The Commission also sought to determine the
4 legitimacy of the Dennel program by subpoenaing business
5 records from Dennel and Cook during its investigation. If
6 Dennel had, in fact, sent millions of dollars to a London
7 bank, as represented to its investors, it would have been a
8 simple thing for Dennel to produce documentary evidence of
9 these transfers. If Cook and his partners had, in fact,
10 purchased \$25,000,000 CD's from top European banks, as
11 investors were told, Dennel and Cook should certainly been
12 able to provide the Commission with documents evidencing
13 these transactions.

14 The defendants, however, took a different course.
15 As the testimony of Dave Adams will indicate, after receiving
16 the Commission's subpoenas, Mr. Cook rented a storage locker
17 and with the assistance of Mr. McLaws moved 60 boxes of
18 records of Dennel and other Cook-related entities to a
19 storage locker.

20 MR. McCOLL: Excuse me. Your Honor, could we check
21 and see if there are any witnesses of the government here in
22 the courtroom, and if they are, ask them to be excused until
23 the summary of evidence is finish.

24 MR. NORRIS: I have no objection to that.

25 THE COURT: Okay. If the government witnesses

1 would just wait outside.

2 Okay. Go ahead.

3 MR. NORRIS: Dave Adams will testify that after
4 receiving the Commission's subpoena, Mr. Cook rented a
5 storage locker with the assistance of Mr. McLaws and moved 60
6 boxes of records of Dennel and other Cook-related entities to
7 that storage locker. One day later Mr. Cook represented to
8 the Commission that he had no business records to produce.
9 This is not the conduct of defendants operating a legitimate
10 investment program.

11 The Commission also asks the court to consider the
12 conduct of defendants and relief defendants since the court
13 entered its order on March 16th. This conduct is outlined in
14 the supplemental declaration of Sammy Hughes and the
15 Commission's supplemental memorandum.

16 Each of the defendants have failed to serve or file
17 accountings. Defendants have failed, as of the last time we
18 checked on March 30th, I believe, to surrender their
19 passports pursuant to the order of the court. All of the
20 defendants and relief defendants, thus far, have failed to
21 respond to document requests served by the Commission since
22 the court's order was set forth and served pursuant to the
23 expedited discovery order.

24 Only Mr. Clagg has filed any opposition to the
25 Commission's request for relief. Chiefly Mr. Clagg argues

1 that the Commission has failed to establish that Clagg took
2 part in the fraudulent Dannel offering with the requisite
3 state of mind to constitute scienter.

4 I think the court will be satisfied at the end of
5 today that there is ample evidence of Mr. Clagg's
6 participation in selling -- offer and selling this fraudulent
7 scheme. As for the argument about Mr. Clagg's state of mind,
8 Mr. Clagg fails to reconcile his conclusion with his decision
9 to assert the Fifth Amendment privilege rather than answer
10 the Commission's concerning his participation. In this civil
11 case the court should not permit Mr. Clagg to hide his
12 evidence behind the Fifth Amendment, then argue that the
13 court -- that the Commission should be penalized for failing
14 to find that evidence. At the very least, the court should
15 infer the requisite scienter for Mr. Clagg's assertion of the
16 privilege.

17 I'm ready to call my first witness, Your Honor.

18 THE COURT: Okay. Who is your first witness?

19 MR. NORRIS: P. E. Jones, an investor.

20 THE COURT: I'm sorry. Would you have all the
21 witnesses come back in just for a second and I'll give them
22 all an oath at the same time. If you will wait right there
23 for a second? We're going to bring all the witnesses in and
24 I'll give everybody an oath. If you would just come right up
25 by the swinging doors door there and just -- I'm going to

1 give you an oath and then excuse you again so everybody
2 can -- if you would just come up this way for me? In the
3 back, if you could come up this way for me? Just in the
4 aisle there would be fine.

5 If everybody will raise their right hand.

6 (Seven witnesses sworn)

7 THE COURT: We will start just right here and if
8 you would tell just me your full name and we will just go
9 down the line.

10 MR. SESSION: Freddie Session.

11 THE COURT: Okay.

12 MR. KVAMME: Arlin Kvamme.

13 MR. WHORTON: Larry Whorton.

14 MR. SRIDHARAN: Balakrishnan Sridharan.

15 THE COURT: Okay.

16 MR. JONES: Paul Jones.

17 MR. FITZGERALD: Ken Fitzgerald.

18 THE COURT: Okay.

19 MR. ADAMS: Dave Adams.

20 THE COURT: Okay. Everybody is excused except Mr.
21 Jones. And if you would just have a seat right up there, Mr.
22 Jones. And we will get to the rest of you just as quickly as
23 we can.

24 If you will speak up real loud and tell everybody
25 your name again, let's make sure everybody can hear you.

1 THE WITNESS: Yes. My name is Paul Jones.

2 THE COURT: Okay. Good.

3 PAUL JONES,

4 called as a witness by the Plaintiff, testified on his oath
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. NORRIS:

8 Q. Mr. Jones, there's a notebook in front of you that
9 contains the exhibit that I'll be referring to during your
10 testimony so -- they are tabbed by number, and so when I
11 refer to specific exhibits you should be able to find those
12 conveniently.

13 Mr. Jones, where do you reside?

14 A. Dallas, Texas.

15 Q. What is your --

16 THE COURT: If you would pull that microphone
17 toward you. Okay.

18 BY MR. NORRIS:

19 Q. Where are you presently employed?

20 A. I'm retired, and a financial consultant.

21 Q. Before retirement where were you employed?

22 A. I worked 40 years with oil companies in chief executive
23 type roles.

24 Q. Did you make one or more investments through a company
25 called Dannel Finance Limited?

1 A. Yes, I did.

2 Q. What was the total amount of the funds you invested?

3 A. \$480,000.

4 Q. How did you first hear about Dannel?

5 A. A friend approached me about -- oh, in January of '98

6 and told me about information he was with a program and he

7 suggested that I might want to look into it.

8 Q. Were you subsequently introduced to someone affiliated

9 with Dannel?

10 A. Yes, he asked me to get with Gerald Pate who was the

11 representative for -- or agent for Dannel.

12 Q. Did you subsequently meet with Mr. Pate?

13 A. Yes, I did. I had a meeting with him.

14 Q. Okay.

15 A. I had several meetings with him.

16 Q. When was the first meeting?

17 A. First meeting was approximately June of 1998.

18 Q. How many times did you meet with him before you made

19 your first investment?

20 A. Probably three, four times.

21 Q. What, if anything, did Mr. Pate tell you about the

22 company, Dannel Finance Limited?

23 A. He told me that it was a type of program where I could

24 earn a nice yield on my investments, anywhere from 2 percent

25 to 5 percent.

1 Q. What, if anything, did he tell you about who controlled
2 Dannel?

3 A. He mentioned that a fellow in Scottsdale, Arizona, in
4 that area, Ben Cook, was in charge of Dannel.

5 Q. Apart from the information that he provided you on the
6 potential rate of return that you've already mentioned, did
7 he tell you anything about how your investment funds would be
8 used?

9 A. Yes, he mentioned that these fund would be placed in
10 foreign banks with government guarantees, and they're secure
11 type funds similar to a CD, would not be disturbed. The bank
12 would issue bank guarantees for these funds. And when I
13 mentioned the fact that I would like to see a copy of the
14 bank guarantees he said that was not available.

15 Q. Did he tell you whether those funds would ever leave the
16 account -- strike that.

17 Did he tell you where those funds would be sent?

18 A. He said in foreign banks. He did not mention -- large
19 foreign banks.

20 Q. Did he mention to you what would be done with those
21 funds after they were sent to foreign banks?

22 A. The funds would be used to purchase debenture-type of
23 paper and then those -- that paper would also be traded and
24 they would be earning certain types of percents. Those funds
25 would be rolled over several times a month and generate the

1 type of interest that ought to be paid.

2 Q. What, if anything, did Mr. Pate tell you about the
3 safety of this investment?

4 A. He said it was safe, it would never be -- I would never
5 lose my investment because they did not take those fund out
6 of that security position with those banks.

7 Q. Okay. If they did not take the -- did Mr. Pate explain
8 how those funds would generate returns if they weren't taken
9 out of that account?

10 A. He said those funds would generate 10 times the amount
11 of money that was put into those funds in order to trade
12 these debentures and sell them.

13 Q. Did Mr. Pate mention that there were -- strike that.

14 Did Mr. Pate mention whether there would be any risk to
15 your investment principal?

16 A. He didn't mention any particular risk factor, just --

17 Q. What, if anything, did he tell you about the risk to
18 your investment principal in this investment?

19 A. He said just treat it like a CD.

20 Q. What, if anything, did Mr. Pate tell you about whether
21 this program was sponsored or monitored by an international
22 organization of some kind?

23 A. He did mention the fact that it was very closely looked
24 at and approved or -- not approved, but with interest. IMF
25 liked these types of private funds to be placed in these

1 types of trading programs because it generated funds for
2 undeveloped countries.

3 Q. Did he explain how it developed funds for underdeveloped
4 countries?

5 A. I don't recall.

6 Q. Okay. Did Mr. Pate ever tell you what his compensation
7 would be for selling the Dannel investment?

8 A. He mention that he receives a check of -- he receives an
9 amount of 6 percent per month on the investment and he then
10 allocates that to the investor and anyone else that brought
11 the investor to him a certain percent of those funds.

12 Q. Did you have any discussions with Mr. Pate about how --
13 strike that.

14 Did you have any discussions with Mr. Pate about what
15 Dannel's profits would be on these transactions?

16 A. He did mention it was several times what he was receive.

17 Q. Did you eventually receive offering materials relating
18 to the Dannel investment?

19 A. I received a package of material that explained exactly
20 what the investment was.

21 Q. What did you have to do, if anything, to receive these
22 materials?

23 A. I had a letter that I had to sign saying that I received
24 that package of information.

25 Q. Was that before or after you received it?

1 A. It was before I received the package.

2 Q. Was that letter something through which you requested
3 the materials?

4 A. No.

5 Q. From whom did you receive that package of documents?

6 A. Gerald Pate.

7 Q. Let me ask you to look at the documents that are marked
8 as Exhibits 1 through 6, just ask you to look through each of
9 those documents. I'm sorry, 1 through 7. I take that back.
10 1 through 6.

11 A. Yes, those are the documents.

12 Q. These are the documents you received from Gerald Pate?

13 A. Yes, sir.

14 Q. When did you receive them?

15 A. I received those the latter part of June of 1998.

16 MR. NORRIS: Your Honor, I would move for
17 admission of Exhibits 1 through 6.

18 THE COURT: Admitted.

19 BY MR. NORRIS:

20 Q. After you spoke to -- after you received these
21 documents, did you have any further communications with Mr.
22 Pate about the terms of the investment?

23 A. Yes, we talked about interest, how much yield I would
24 get on my investment, and also I requested a couple of
25 references to contact, do some of my due diligence.

1 Q. Describe the discussion that you had with Mr. Pate
2 about how much interest you would receive.

3 A. He said that if I would contribute or invest \$250,000 he
4 could give me up to 3 percent, but -- and then anything over
5 that would give me more on my yield, up to 5 percent.

6 Q. Did you, in fact, contact other investors?

7 A. Yes, I did.

8 Q. Describe those conversations.

9 A. He gave me a name of a Dr. Rainey. I called him and he
10 told me that he had invested quite a bit of money with
11 Dannel, he had been there for several months, he was very
12 happy with the program, he was getting his checks every
13 month. He said he also visited Dannel's offices in Arizona
14 and he did his due diligence and went through the process of
15 telling me that he was very happy with what he found with
16 Dannel as far as big organizers.

17 Q. Did you speak to any other investors?

18 A. The other investor -- I'm sorry, I forget his name but
19 he is a CPA for Gerald Pate and I talked to him and he -- he
20 made the same kind of comments. He did not tell me that he
21 was an investor but he told me about the company.

22 Q. After your meeting with Mr. Pate, did you make a
23 decision to make an investment through Dannel?

24 A. Yes, I told him I would like to start out investing a
25 portion of my money the first time, and then if I felt

1 comfortable with it then I would make other investments
2 later.

3 Q. What procedure did you follow to make your initial
4 investment?

5 A. Through the -- requested the application, I filled out,
6 so forth, requested that I apply first to become eligible for
7 being an investor with Dannel. And Pate mentioned that it
8 was very important that they check each individual investor
9 to be sure that a person they were going to let invest with
10 Dannel was not a part of the Mafia or some type of
11 organization. Mostly these types of investors were usually
12 generated through references or investors who already were in
13 the Dannel investment program.

14 Q. Let me ask you to turn to Exhibit 7 and look at that
15 exhibit. Look through that exhibit. Do you recognize
16 Exhibit 7?

17 A. Yes, that's a copy of my application to Dannel.

18 Q. And is this document signed by you?

19 A. Yes, it is.

20 MR. NORRIS: Your Honor, I ask that Exhibit 7 be
21 admitted.

22 THE COURT: Admitted.

23 BY MR. NORRIS:

24 Q. After you completed this application what did you do
25 with it?

1 A. Then I received the acknowledge that the funds would --
2 I mean my investment was approved and that I could go ahead
3 and wire my funds.

4 Q. What did you do with the application after your
5 completed filling it out?

6 A. I gave that -- I'm not sure whether I gave it to Pate or
7 sent it to Dannel.

8 Q. And you received an acknowledgement that your
9 application had been accepted?

10 A. Yes.

11 Q. And from whom did you receive that?

12 A. Ben Cook.

13 Q. Let me ask you --

14 A. Dannel.

15 Q. Let me ask you to look at Exhibit 8.

16 A. Yes, sir, that's the --

17 Q. Looking at Exhibit 8, do you recognize this document?

18 A. Yes, that is the -- that was my first investment,
19 approval of private placement participation.

20 Q. And this is a letter that you received?

21 A. Yes, sir.

22 Q. Did you receive it on or about July 10, 1998?

23 A. Yes.

24 MR. NORRIS: Your Honor, I ask that Exhibit 8 be
25 admitted.

1 THE COURT: Admitted.

2 BY MR. NORRIS:

3 Q. At this time had you had any direct contact with Mr.
4 Cook other than this letter? Had you had any oral
5 communication with him?

6 A. Not at this time.

7 Q. After your application had been approved, what did you
8 do next?

9 A. I'm sorry?

10 Q. After your application -- after you received word that
11 your application has been approved, what procedure did you
12 offer?

13 A. I went -- I sent my -- wired my funds, \$170,000, to
14 Dannel as shown in the application where to send it.

15 Q. At the time that you sent those funds in, had you
16 executed a contract?

17 A. Yes.

18 Q. Okay. Let me ask you to look at Exhibit 9. Let me ask
19 you to look through that document and tell me if you
20 recognize what it is?

21 A. Yes, that's a document I signed.

22 Q. This is a contract that you signed on or around July 13,
23 1998?

24 A. That's correct.

25 Q. From whom did you receive this contract at the time you

1 signed it?

2 A. I received it from Dennel.

3 Q. Did you receive it by Federal Express or --

4 A. Yes.

5 Q. At that time did it have -- had it already been executed
6 by the placement manager?

7 A. Yes, sir.

8 Q. What did you do with the contract after you signed it?

9 Did you send it anywhere?

10 A. Yes, this contract, I think, was given to Gerald Pate
11 and he sent it in to Dennel.

12 MR. NORRIS: Your Honor, I ask that Exhibit 9 be
13 admitted.

14 THE COURT: Admitted.

15 BY MR. NORRIS:

16 Q. Let me ask you to turn to Exhibit 10, Mr. Jones. Do you
17 recognize Exhibit 10?

18 A. Yes, I do.

19 Q. What is it?

20 A. It's a transfer of funds, \$170,000, to Dennel's bank
21 account in Arizona.

22 Q. Okay. And is that the -- is this the transfer of funds
23 for payment for the initial contract?

24 A. Yes, that was my first investment out of my NationsBank
25 account.

1 MR. NORRIS: Your Honor, I ask that Exhibit 10 be
2 admitted.

3 THE COURT: Admitted.

4 BY MR. NORRIS:

5 Q. Did you receive any communication from Dannel after you
6 sent your funds in?

7 A. Yes, they acknowledged receipt of my funds with a
8 letter.

9 Q. Who was that letter from?

10 A. That was from Ben Cook from Dannel.

11 Q. Let me ask you to look at Exhibit 11.

12 A. Yes.

13 Q. Do you recognize this document?

14 A. Yes, sir.

15 Q. What is it?

16 A. That's my acknowledgement document.

17 Q. Is this a letter you received on or about July 31, 1998?

18 A. Toward the end of July, yes, sir.

19 MR. NORRIS: Your Honor, I ask that Exhibit 11 be
20 admitted.

21 THE COURT: Admitted.

22 BY MR. NORRIS:

23 Q. Did you make additional investments in Dannel in 1998?

24 A. Yes, I decided that I was fairly comfortable with it. I
25 heard nothing but good reports on Dannel at the time. And I

1 felt like that I would go ahead and put another in \$130,000.

2 In that investment Pate said I would -- I would yield 4

3 percent a month.

4 Q. Did he tell why the yield was changing?

5 A. He said the more money I put in the better yield I would

6 get.

7 Q. Let me ask you briefly look at Exhibit 12.

8 A. Yes, that's the contract I signed.

9 Q. Did you sign this contract on or about September 2,
10 1998.

11 A. Yes.

12 Q. Let me ask to look at the last page of Exhibit 12 which
13 is entitled, letter of intent and request. Do you recognize
14 this document?

15 A. Yes.

16 Q. Does the document -- is this a document that you signed?

17 A. Yes.

18 Q. What were you told was the purpose of this document?

19 A. Well, I think Pate -- well, Pate told me at the time
20 that this is a document required when you make -- want to
21 make a investment in Dannel. And it provided the necessary
22 information for wiring funds and also the bank account.

23 Q. Let me ask you look at the last paragraph of that final
24 page of Exhibit 12. It states, "Internationally accepted
25 standards of noncircumvention and nondisclosure are implicit

1 in this letter of intent." Did you have any discussions with
2 Mr. Pate about what that meant?

3 A. No.

4 MR. NORRIS: Your Honor, I ask that Exhibit 12 be
5 admitted.

6 THE COURT: Admitted.

7 BY MR. NORRIS:

8 Q. Let me ask look at Exhibit 13. Do you recognize this
9 document?

10 A. Yes.

11 Q. What is it?

12 A. It's a transfer of another \$130,000 to Dannel's bank
13 account in Arizona from my bank, NationsBank.

14 Q. Does this document represent transfer of funds for the
15 contract which has been admitted as Exhibit 12?

16 A. Yes, sir.

17 MR. NORRIS: Your Honor, I ask that Exhibit 13 be
18 admitted.

19 THE COURT: Admitted.

20 BY MR. NORRIS:

21 Q. After the investment that is evidenced by Exhibit 12,
22 did you make any further investments in Dannel in 1998?

23 A. Yes, I did. In my meetings with Pate -- I tried to meet
24 with him two or three times a month to get the status of
25 Dannel participating investments, and he said that, you know,

1 if you put another -- any funds you put in now, later or
2 after the first two, I'll give you 5 percent on your
3 investment per month.

4 Q. And that induced you to make a further investment?

5 A. Yes, I did.

6 Q. Okay.

7 A. In September I invested \$80,000.

8 Q. Let me ask you to look at Exhibit 14.

9 A. Yes, that's the contract I signed.

10 Q. And you signed this on or about September 17, 1998.

11 A. That's correct.

12 Q. And those are your initials on each page --

13 A. Yes, sir.

14 Q. -- under investor?

15 A. Yes.

16 MR. NORRIS: Your Honor, I ask that Exhibit 14 be
17 admitted.

18 THE COURT: Admitted.

19 BY MR. NORRIS:

20 Q. Did you send funds in to Dannel for this contract?

21 A. Yes, I did.

22 Q. Let me ask you to look at exhibit -- skip over to
23 Exhibit 16. Do you recognize this document?

24 A. Yes, it's a transfer of my funds out of NationsBank for
25 \$80,000 to Dannel transferred to his bank in Arizona.

1 Q. And is that the transfer of funds for the contract that
2 is represented by Exhibit 14?

3 A. Yes.

4 MR. NORRIS: Your Honor, I ask that Exhibit 16 be
5 admitted.

6 THE COURT: Admitted.

7 BY MR. NORRIS:

8 Q. Did you receive any communication from Dennel after you
9 sent him those funds?

10 A. Yes.

11 Q. What did you receive?

12 A. I received acknowledgment that the funds were received.

13 Q. Let me ask you to look at Exhibit 15. Do you recognize
14 this document?

15 A. Yes, sir.

16 Q. What is Exhibit 15?

17 A. It's a receipt, acknowledgement of my funds.

18 Q. Is this the acknowledgment you received after sending in
19 the funds for the contract that's Exhibit 14?

20 A. Yes.

21 Q. And you received that on or about September 11, 1998?

22 A. Yes.

23 MR. NORRIS: Your Honor, I ask that Exhibit 15 be
24 admitted.

25 THE COURT: Admitted.

1 BY MR. NORRIS:

2 Q. Apart from Mr. Pate's statement that you would be
3 receiving a 5 percent return on this September contract, were
4 there any other additional representations that Mr. Pate made
5 before that investment that were influential to you?

6 A. Yes, there were.

7 Q. Could you describe that?

8 A. Yes. He said that these are one-year contracts. Even
9 though I got 3 percent on the first investment, 4 percent on
10 the second, 5 on the third, that when these contracts came --
11 matured one year after the dates invested, they could all be
12 renewed at 5 percent per month.

13 Q. Did he tell you why he was willing to make that
14 representation or transaction with you?

15 A. He mentioned -- he said you'll probably be putting more
16 even money into this program anyway.

17 Q. Did you ever attend any group meetings for Dannel
18 investors?

19 A. Two meetings.

20 Q. Okay. Describe the first meeting.

21 A. The first meeting was approximately August of 1998.
22 Gerald Pate had a dinner meeting at his home in Dallas and
23 invited several investors or a lot of investors there.

24 Q. How many investors were there?

25 A. Approximately 20, 20 investors.

- 1 Q. How did you learn about this meeting?
- 2 A. He mentioned that he wanted to have a dinner for all of
3 his investors at his house and discuss the program and so
4 forth.
- 5 Q. Did he say what the purpose of this meeting was?
- 6 A. No, just a general review of the programs that Dannel
7 has.
- 8 Q. Apart from Mr. Pate were any other defendants present?
9 Mr. McLaws?
- 10 A. No.
- 11 Q. Mr. Cook?
- 12 A. No.
- 13 Q. Mr. Clagg?
- 14 A. No.
- 15 Q. Were any other employees or persons affiliated with
16 Dannel present apart from investors?
- 17 A. Not that I'm aware of.
- 18 Q. Did anyone make any type of presentation at this dinner
19 at Mr. Pate's house?
- 20 A. Gerald Pate.
- 21 Q. What did he say?
- 22 A. Didn't say too much about the program other than the
23 fact he said it all works, good investment.
- 24 Q. Did you attend any other group meetings?
- 25 A. Yes, I attended a meeting in Scottsdale, Arizona, on

1 December the 18th, 1998.

2 Q. How did you learn about the Scottsdale, Arizona meeting?

3 A. Pate said that they -- that all the agents for Dannel
4 meet once a month, and they have quarterly meetings, and if
5 an investor wants to come to the quarterly meeting they have
6 the right to come, if they like, and sit in the meeting.

7 Q. Did he tell you what the purpose of these quarterly
8 meetings was?

9 A. Just to review the private placement program and meet
10 the people with Dannel and so forth.

11 Q. How many people attended the meeting in Scottsdale,
12 Arizona?

13 A. Approximately 80.

14 Q. Were you ever told whether -- how many of those were
15 investors?

16 A. Only by my own meeting the people that told me they were
17 investors. Majority of the people there were investors.

18 Q. Were?

19 A. Yes.

20 Q. Were any of the defendants present at that meeting?

21 A. Yes.

22 Q. Who was present?

23 A. Ben Cook, McLaws, Clagg, Gerald Pate, Michael Patrick,
24 are the names that come to mind.

25 Q. Did the Arizona meeting involve a presentation by anyone

1 concerning Dannel investments?

2 A. Yes, the meeting started off with a slide presentation
3 by Mr. McLaws.

4 Q. And did Mr. McLaws also describe the Dannel program?

5 A. Yes, he described the entire program of how the money
6 works through the trading program that we were involved in.

7 Q. Now, at some point in time did you -- were you provided
8 with an audio tape of Mr. McLaws' presentation?

9 A. Yes, at the meeting we requested that they -- several of
10 the investors requested they put this on a tape and have a
11 narrative with it so that we could use that as a selling
12 program if we wanted to tell other people about the program.

13 Q. And did you eventually obtain a copy of that
14 presentation?

15 A. Yes.

16 Q. From whom did you receive it?

17 A. I received it from Gerald Pate.

18 Q. Did Mr. Pate give you any other materials at that time?

19 A. He gave us some copies of some slide projections that
20 were slide sheets that were on the slide show.

21 Q. Did you subsequently provide the Commission with a copy
22 of that tape?

23 A. Yes, I did.

24 Q. And a copy of the slides that --

25 A. Yes, sir.

1 Q. You have to wait until I finish my question so we don't
2 upset the reporter.

3 Would you recognize Mr. McLaws' presentation if you
4 heard it?

5 A. I believe so.

6 MR. NORRIS: Your Honor, we have made copies of a
7 tape provided by --

8 THE COURT: Okay.

9 MR. NORRIS: -- Mr. Jones and we would like to play
10 that tape in its entirety for the court.

11 THE COURT: What exhibit?

12 MR. NORRIS: Excuse me?

13 THE COURT: The exhibit number.

14 MR. NORRIS: The exhibit number is 17.

15 THE COURT: Okay. That is admitted.

16 MR. McCOLL: May we inquire as to how long the tape
17 is, Your Honor?

18 MR. NORRIS: About 10 minutes.

19 THE COURT: Okay. 10 minutes?

20 MR. NORRIS: 10 minutes.

21 This one is not rewound. I think we are going to
22 have to mike the tape recorder because it doesn't have a high
23 volume. Unfortunately this tape was not rewound. It takes
24 longer to rewind than it does to play the tape.

25 THE COURT: Okay.

1 MR. NORRIS: Your Honor, as an aid to the court, we
2 have prepared a transcript of the tape.

3 THE COURT: Okay.

4 MR. NORRIS: Exhibit 18.

5 THE COURT: Okay.

6 (Playing Exhibit 17)

7 MR. NORRIS: Your Honor, may I approach?

8 THE COURT: Yes.

9 BY MR. NORRIS:

10 Q. Mr. Jones, did you recognize this as the recording of
11 Mr. McLaws' presentation that you heard in Scottsdale,
12 Arizona?

13 A. Yes, sir.

14 Q. And did you recognize Mr. McLaws' voice?

15 A. I beg your pardon?

16 Q. Did you recognize Mr. McLaws' voice?

17 A. Yes.

18 MR. NORRIS: Your Honor, I ask that Exhibit 17 be
19 admitted.

20 THE COURT: Admitted.

21 MR. NORRIS: I would ask also that the transcript
22 be admitted.

23 MR. McCOLL: Your Honor, we would -- for purposes
24 of this hearing, we would like to not object, but just say
25 that we hadn't had a chance to test the authenticity

1 word-for-word against the tape so we would reserve further
2 objection.

3 THE COURT: Okay. The exhibit is admitted. That's
4 19.

5 MR. NORRIS: 18 is the transcript.

6 THE COURT: 18 is the transcript.

7 BY MR. NORRIS:

8 Q. Mr. Jones, would you please turn to Exhibit 19 which
9 consists of four pages starting with the document that's
10 entitled, Our Money System. Do you recognize these
11 documents?

12 A. Yes, this was part of a slide presentation in that
13 meeting in Arizona.

14 Q. How did you obtain Exhibit 19?

15 A. Gerald Pate gave them to me.

16 MR. NORRIS: Your Honor, I ask that Exhibit 19 be
17 admitted.

18 THE COURT: Admitted.

19 BY MR. NORRIS:

20 Q. Was Mr. Cook, Ben Cook, present at that Arizona meeting?

21 A. Yes, Mr. Cook was there. He came after the presentation
22 pretty close to the time we adjourned to have lunch.

23 Q. Did he make any presentation to the group?

24 A. He met everybody at each table that came up and made a
25 couple of comments about the programs and so forth. And he

1 also wanted to give Mr. McLaws a big hand for such a great
2 job he did on the presentation.

3 Q. What did Mr. Cook -- what specifically did Mr. Cook say
4 himself about the investment?

5 A. He mentioned that they had a real good year in 1998 and
6 he felt like that most of the people that entered their --
7 getting to their one-year contract maturity dates would renew
8 those contracts and he felt like that '99 would be a banner
9 year for them.

10 Q. Did he say anything else that you recall?

11 A. No, not that I recognize.

12 Q. Following the meeting in Scottsdale, Arizona, did you
13 make an additional investment through Dannel?

14 A. Yes, I was very impressed with the meeting and
15 everything that was said to me. And I thought it over and
16 decided that in February of '99 to invest a hundred thousand
17 dollars, and came out of my IRA account to put into
18 another -- rollover into an IRA account in Waco.

19 Q. How did you hear about the opportunity to roll your IRA
20 over into this Dannel-related investment?

21 A. In the beginning in my discussions with Gerald Pate.

22 Q. What did he tell you about it?

23 A. He said that's a good place to put funds in investment
24 through your IRA account because you're deferring. And he
25 said we only pay 2 percent on the IRA investment, but I'm

1 willing to give you, since you're in the 5 percent bracket,
2 give you a 3 percent over and above the 2 percent which would
3 be given to you by me, part of my 6 percent that I get from
4 Dannel.

5 Q. And did he do that?

6 A. I'm sorry?

7 Q. Did he pay you the additional 3 percent?

8 A. I never received any money on this investment.

9 Q. Did he tell you what -- from what source that additional
10 3 percent would come?

11 A. What was the question?

12 Q. What would be the source of that additional 3 percent?

13 A. Would be part of his 6 percent that he received on my
14 investment.

15 Q. Who arranged the IRA investment for you?

16 A. Dannel. I made application through the trust fund there
17 in Waco.

18 Q. Generally what was the procedure that you were required
19 to follow?

20 A. Filled out an application to -- to get an account for
21 that -- with that company and to have a place for the
22 rollover from my IRA account.

23 Q. Let me ask you to look at Exhibit 20. Do you recognize
24 this document?

25 A. Yes, that's the document that I signed in -- to start

1 the process of sending the \$100,000 to the other IRA account.
2 And that was given to me by Gerald Pate. He handled it from
3 there and it went to the Sterling Trust Company.

4 Q. And Exhibit 20 has -- in addition to that, this document
5 called a note servicing agreement, Exhibit 20 also contains a
6 document called an agreement reference. See that?

7 A. Yes.

8 Q. Do you recognize that document?

9 A. Yes, that's the agreement that I signed.

10 Q. And that agreement is between you and an entity called
11 Samuel-1 Limited Partnership, is that correct?

12 A. That's correct.

13 Q. Let me ask you to look at the last page of that second
14 document that's part of Exhibit 20. See the last page?

15 A. Yes.

16 Q. Appears to be signed by JV manager, Samuel LP, Wayne
17 McLaws.

18 A. Yes, sir.

19 Q. Did you talk to -- did Mr. Pate explain what Mr. McLaws'
20 role was in this entity called Samuel Limited Partnership?

21 MR. McCOLL: Objection, Your Honor, hearsay.

22 MR. NORRIS: What role, if any?

23 MR. McCOLL: Got Pate explaining what McLaws' role
24 was.

25 THE COURT: That's overruled. Go ahead.

1 BY MR. NORRIS:

2 Q. The question was did Mr. Pate explain what role, if any,
3 Mr. McLaws played in this entity called Samuel Limited
4 Partnership?

5 A. No, he didn't.

6 Q. Did you ever speak directly with Mr. McLaws about --

7 THE COURT: I should have sustained the objection.

8 Go ahead.

9 BY MR. NORRIS:

10 Q. Did you ever speak directly with Mr. McLaws about this
11 investment through Samuel Limited Partnership?

12 A. No.

13 MR. NORRIS: Your Honor, I ask that Exhibit 20 be
14 admitted.

15 THE COURT: Admitted.

16 BY MR. NORRIS:

17 Q. Did Mr. Pate explain to you what Samuel Limited
18 Partnership was?

19 A. No.

20 Q. Let me ask you to look at Exhibit 21, which consists of
21 a January 27th letter and a couple of documents on the
22 letterhead of Sterling Trust Company. Do you recognize those
23 documents?

24 A. Yes, sir.

25 Q. What are they?

1 A. It's a document from Sterling Trust setting up my
2 account number with them for my IRA account.

3 Q. Did Mr. Pate explain what Sterling Trust was?

4 A. Yes, sir.

5 Q. What did he say?

6 A. He said that was -- that was the trust company that
7 handled all the IRA accounts that the money invested in
8 Dennel.

9 Q. And you received these documents from Sterling Trust?

10 A. Yes, sir.

11 Q. Did you receive them on or about June 27, 1999?

12 A. Yes, sir.

13 MR. NORRIS: Your Honor, I ask that Exhibit 21 be
14 admitted.

15 THE COURT: Admitted.

16 BY MR. NORRIS:

17 Q. Did you arrange to have funds transferred to Sterling
18 Trust from existing IRA?

19 A. Yes. In early February I requested that these funds be
20 transferred or rolled over from my Fidelity IRA account into
21 a bank account requested by Sterling Trust to wire the funds.

22 Q. Let me ask you to look at Exhibit 22. Do you recognize
23 this document?

24 A. Yes, sir.

25 Q. What is it?

1 A. It's a document giving notice that they -- the
2 Fidelity -- my Fidelity account confirmed that they had wired
3 the funds from my account to the Matrix Capital Bank for the
4 benefit of Sterling Trust.

5 Q. And you received this document from Fidelity Brokerage
6 Service?

7 A. Yes.

8 Q. You received it on or about February 5, 1999?

9 A. Yes.

10 MR. NORRIS: Your Honor, I ask that Exhibit 22 be
11 admitted.

12 THE COURT: Admitted.

13 BY MR. NORRIS:

14 Q. Did you make anymore investments through Dennel?

15 A. No.

16 Q. During the period after you made your first investment
17 did you receive monthly returns from the investments that you
18 made?

19 A. Yes, I received all my monthly returns timely during the
20 period and the -- and, of course, in March I did not receive
21 any funds that were required to be paid to me the middle of
22 March.

23 Q. Based on the information you had received from the
24 defendants in this case, what was your understanding of the
25 source of those returns, the source of the returns you were

1 receiving?

2 A. The source?

3 Q. Uh-huh.

4 A. Interest from my investment.

5 Q. Okay. What was your understanding of how those returns

6 were being generated?

7 A. Yes.

8 Q. What was your understanding of how those returns were

9 being generated?

10 A. Through the private placement programs with the European

11 banks.

12 Q. When did you receive your last -- did you receive

13 periodic statements from Dannel?

14 A. Yes, I did. Monthly statements. Excuse me.

15 Q. Let me ask you to look at Exhibits 23, 24 and 25. Let

16 me ask you, when did you receive your last monthly statement

17 from Dannel?

18 A. February the 15th.

19 Q. Did Mr. Pate ever explain to you the process that Dannel

20 went through in sending out the returns to investors?

21 A. No, he did not go through the process of telling me.

22 Q. Do you recognize Exhibit 23?

23 A. Yes, sir.

24 Q. What is it?

25 A. It's a letter sending my monthly check and statement to

1 me the middle of the month of February -- February 15th.

2 Q. And you received these from Dannel on or about
3 February 15, 1999?

4 A. Yes, sir.

5 MR. NORRIS: Your Honor, I ask that Exhibit 23 be
6 admitted.

7 THE COURT: Admitted.

8 BY MR. NORRIS:

9 Q. Let me ask you to look at Exhibit 24. Do you recognize
10 those documents?

11 A. Yes, sir.

12 Q. What are they?

13 A. They were my monthly statement for one of my
14 investments, my 130,000 investment for the month of January
15 received in February, on February 15th.

16 Q. And did you receive these documents from Dannel?

17 A. Yes, sir.

18 Q. Did you receive them on or about February 15, 1999?

19 A. Yes, sir.

20 MR. NORRIS: I ask that Exhibit 24 be admitted.

21 THE COURT: Admitted.

22 BY MR. NORRIS:

23 Q. Finally let me ask you to look at Exhibit 25.

24 A. 25 is letter -- transmittal letter of my disbursement of
25 funds on my -- another one of my investments, \$170,000

1 investment, received February 15th with a statement.

2 Q. And you received this from Dennel?

3 A. Yes, sir.

4 Q. On or about February 15, 1999?

5 A. Yes, sir.

6 MR. NORRIS: Ask that Exhibit 25 being admitted.

7 THE COURT: Admitted.

8 BY MR. NORRIS:

9 Q. Did you ever have any discussions with Mr. Pate about
10 any plans by Dennel to move its operations offshore?

11 A. Yes, on several occasions he mentioned that he felt like
12 that they were going to form an offshore disbursement type
13 activity where the investors would have an account offshore
14 and leave their money offshore, and then at such time as they
15 brought it in would declare it as income. This would have a
16 chance for the monies to accumulate and to be deferred as far
17 as earnings and so forth.

18 Q. When was your last discussion on that subject with Mr.
19 Pate?

20 A. March.

21 Q. March of this year?

22 A. Of this year.

23 Q. Did Mr. Pate tell you whether, in fact, something was
24 being done to fulfill that plan?

25 A. He said that Ben Cook's attorneys were working on it,

1 had been working on it for some time to get that vehicle set
2 up in order to do that for all investors.

3 Q. Did you ever have discussions with Mr. Pate about any
4 intent on his part to move assets offshore?

5 A. Yes, he mentioned that he had already formed a foreign
6 corporation, start putting his money offshore.

7 Q. You understand the Commission filed its complaint on
8 March -- I'm sorry. Let me back up for a minute. Did he
9 tell you anything else about those -- about what he had done
10 concerning offshore corporations?

11 A. No.

12 Q. Now, you understand that the Commission filed its
13 complaint in matter on March 16, 1999?

14 A. Yes.

15 Q. Have you had any discussions with any of the defendants
16 about your investment after the Commission filed its
17 complaint?

18 A. Yes.

19 Q. With whom did you have those discussions?

20 A. Gerald Pate.

21 Q. Describe that.

22 A. We had a meeting discussing --

23 Q. Go ahead.

24 A. We had a meeting discussing what was going on. He had
25 mentioned, you know, that press had put out a big release

1 on -- that this was a Ponzi scheme and so forth, and He told
2 me that was false. He said it was 95 percent false and
3 that -- that he had -- his deposition was taken and all of
4 his records were taken and all of his assets and property was
5 frozen. And he said, don't worry about your money, he said,
6 because it's in safekeeping and you'll probably get a letter
7 in a couple of days from Ben Cook explaining what's going on
8 so that it -- it will give you some feeling of confidence
9 that this is going to happen. And that he was very worried
10 about the outcome of it. I said, why are they doing this if
11 it's not a Ponzi? He said, well, he thinks it's because they
12 were selling securities without a license.

13 Q. Did he say anything else that you recall?

14 A. Not in particular.

15 Q. When was that conversation?

16 A. About one week after the last article in the paper came
17 out about the SEC serving notice on Dennel.

18 Q. Did you have any other discussions with Mr. Pate after
19 the Commission filed its complaint?

20 A. No.

21 MR. NORRIS: Pass the witness, Your Honor.

22 THE COURT: Let's take a 15-minutes break and we
23 will resume with cross-examination.

24 (Break taken)

25 THE COURT: Did we lose our witness? Cross --

1 examination? The first one that stands gets to cross-
2 examine.

3 MR. CONNELLY: Thank you, Your Honor. With the
4 court's permission I'll proceed because I am now counsel for
5 Gerald Pate.

6 THE COURT: Okay.

7 CROSS-EXAMINATION

8 BY MR. CONNELLY:

9 Q. Morning, Mr. Jones.

10 A. Morning.

11 Q. My name is Tom Connelly and I, along with Alan Owen,
12 represent Gerald Pate in this matter. I'd just like to
13 follow up on a couple of your responses that you made to Mr.
14 Norris. Let me start by asking you, you've indicated that
15 you're a retired financial consultant?

16 A. Yes.

17 Q. Did you hold any licenses in that capacity?

18 A. No.

19 Q. You didn't have securities license or --

20 A. I'm not selling securities.

21 Q. What did you do as a financial consultant?

22 A. I worked with a friend of mine with the company I was
23 with set up his company and so forth doing accounting work.

24 Q. Who is that friend?

25 A. Tony Kofp.

- 1 Q. Did you work for anyone else?
- 2 A. No.
- 3 Q. So just this one individual you worked for as a
4 financial consultant?
- 5 A. That's correct.
- 6 Q. Did you ever have any dealings with Ray Hunt?
- 7 A. Yes.
- 8 Q. What were your dealings with Mr. Hunt?
- 9 A. I was an employee.
- 10 Q. Were you, in fact, his business manager?
- 11 A. No, I was chief financial officer.
- 12 Q. Did you give financial advice or assistance to Mr. Hunt
13 or to his entity?
- 14 A. Oh, yes.
- 15 Q. Then is this another client that you also serviced with
16 financial advice?
- 17 A. No, I worked for him as an employee.
- 18 Q. But you provided financial advice?
- 19 A. I was an employee as a financial person.
- 20 Q. How long were you in that capacity?
- 21 A. 13 years.
- 22 Q. What was your business in oil wells?
- 23 A. I'm sorry, I don't understand the question.
- 24 Q. Were you involved in oil and gas exploration?
- 25 A. I was financial personal with Hunt Oil Company who did a

1 lot of financial and oil-type related activities.

2 Q. In your capacity with -- this would be Ray Hunt?

3 A. Yes.

4 Q. Did you --

5 A. Hunt Oil Company.

6 Q. Hunt Oil Company. Did you give advice regarding oil or

7 gas exploration?

8 A. No.

9 Q. Financial advice?

10 A. Financial advice, yes, part of my responsibilities.

11 Q. Let me ask you briefly, the monies that you took out.

12 You thought you had about \$480,000 total invested to date?

13 A. That's correct.

14 Q. And that you're counting as all principal, is that

15 correct?

16 A. What was the question?

17 Q. That's all principal that you put into the -- into

18 Dennel or one of these investment vehicles?

19 A. That's correct.

20 Q. What was your money earning in the IRA, the hundred

21 thousand dollar IRA that you liquidated and put into this

22 investment? What was it earning before you withdrew it from

23 the IRA?

24 A. Different rates of return. It was a money market -- I

25 mean money mutual funds.

- 1 Q. Could you give me an average return?
- 2 A. Probably in the neighborhood of 15 percent.
- 3 Q. Annual?
- 4 A. Annually.
- 5 Q. And when you took out this hundred thousand dollars, and
6 I'm refer now to this IRA account, you were promised 5
7 percent a month, is that right?
- 8 A. Yes, 2 for the IRA and 3 to me individually.
- 9 Q. Okay. So that would be an annual return of 60 percent,
10 is that right?
- 11 A. That's correct.
- 12 Q. I think this point may have gotten a little muddled but
13 you had originally requested an information packet or
14 received one, signed off on it and sent it off for the
15 information on this investment, is that right? Is that how
16 it works --
- 17 A. Yes.
- 18 Q. -- you signed off a request? Let me cover one of the
19 last points that I think you made to Mr. Norris' questions
20 and got additional points from Mr. Pate in this last
21 investment, is that right?
- 22 A. Yes, never received any money.
- 23 Q. Okay. And you indicated that the reason he suggested
24 you were going to get that is because you would probably
25 invest more money, is that right?

- 1 A. The reason I got that is because the last investment I
2 made was 5 percent.
- 3 Q. Well, isn't it the case though, Mr. Jones, that these
4 were actually fees that Mr. Pate was paying you because you
5 were soliciting other investors for the investment vehicles
6 that you were in?
- 7 A. Repeat the question.
- 8 Q. Did you talk to others about investing in this program?
- 9 A. Yes.
- 10 Q. How many other people?
- 11 A. Three or four.
- 12 Q. And what did you tell them about the program?
- 13 A. Told them I was very happy with it.
- 14 Q. Because you had received at least your interest back on
15 your money, correct?
- 16 A. No, I did not receive interest.
- 17 Q. Well, the interest you were promise you received,
18 correct?
- 19 A. Yes.
- 20 Q. Okay. So what did you tell these investors the program
21 was all about?
- 22 A. Go down to Pate's office and get a package and look at
23 the -- what it contained, which had all the information about
24 the Dennel private placement program.
- 25 Q. Is that all you told them?

- 1 A. Yes, I told them I was happy with the returns that I was
2 getting out of my money.
- 3 Q. Did you tell them the kind of returns you were
4 receiving?
- 5 A. Yes.
- 6 Q. I believe you stated that you asked for a bank guarantee
7 from Mr. Pate but he told you that it's not available. Is
8 that what he told you?
- 9 A. That's what Pate said it was not available.
- 10 Q. And yet you went ahead and invested anyway, is that
11 correct?
- 12 A. That's correct.
- 13 Q. Now, Mr. Pate did tell you that he was receiving 6
14 percent and explained to you how much he would get out of it
15 and what you were going to get in terms of your interest on
16 your money?
- 17 A. Yes.
- 18 Q. And you also understood that if you brought investors
19 in, and this is much later in the investment scenario, that
20 you would also get a fee for bringing investors in, is that
21 correct?
- 22 A. That's what he told me, yes.
- 23 Q. Is that what you expected?
- 24 A. That's what I expected.
- 25 Q. That's why you sought other investors?

- 1 A. Yes.
- 2 Q. Now, you asked Mr. Pate for references so you could
3 perform your due diligence.
- 4 A. Correct.
- 5 Q. And Mr. Pate gave you a couple of names. I think you
6 mentioned -- is it Dr. Rainey?
- 7 A. Yes.
- 8 Q. And there was another name I don't think you could
9 recall, but -- and you spoke to Dr. Rainey. Did Dr. Rainey
10 tell you that he had made an investment and that his -- not
11 only his interest but that he had actually received his
12 principal back upon request?
- 13 A. No, he hadn't received his principal back when I talk to
14 him. He was in his first year.
- 15 Q. Did there come a time when you had a conversation with
16 Dr. Rainey when he did receive his principal funding back?
- 17 A. No, I did not.
- 18 Q. So you weren't aware of that?
- 19 A. I was not aware. I was given checks, copies of checks
20 of returned investments, but the names were lined out by Pate
21 so that I didn't know whose checks they were.
- 22 Q. How do you know they were lined out by Mr. Pate?
- 23 A. He gave them to me. He said I have to line these out
24 because I can't tell who these came from.
- 25 Q. What was he referring to? What?

- 1 A. The end of the one-year investment, the return of their
2 investment.
- 3 Q. Okay. He lined out the names of the other investors?
- 4 A. Yes.
- 5 Q. Is that what you're saying?
- 6 A. Yes.
- 7 Q. Okay. Then you indicated that -- well, you indicated
8 that you did your due diligence. Before I ask you what you
9 did, did you also have Mr. Cook's telephone number?
- 10 A. Yes.
- 11 Q. Did you contact Mr. Cook?
- 12 A. Yes.
- 13 Q. And this is early on prior to your making the
14 investment?
- 15 A. Yes.
- 16 Q. Okay. And so you had a discussion with Mr. Cook about
17 the program?
- 18 A. At that time I did not have a discussion but it was
19 later on after I made my first one.
- 20 Q. Well, didn't you understand Mr. Cook to essentially be
21 at the pinnacle of this trading program, that it was
22 essentially a program that he had set up?
- 23 A. Yes, sir.
- 24 Q. But you didn't discuss the investment with him, although
25 you spoke to him, is that right? Is that what you're telling

1 us?

2 A. Yes.

3 Q. What due diligence did you perform with respect to this
4 investment or these investment?

5 A. I talked to the two people that Dr. Rainey and the
6 accountant for Gerald Pate, and I cannot remember his name,
7 and also requested that I go out before I made any other
8 investments to one of the meetings so I could talk to some of
9 the people at Dennel. And I didn't do that until December
10 and that's -- after that time I made another investment.

11 Q. Are you sure that's December of '97 or '98?

12 A. '98, excuse me.

13 Q. So by December of '98, though, you're invested at least
14 \$300,000 into this program, aren't you?

15 A. Unfortunately, yes.

16 Q. And you're telling us that in your mind your due
17 diligence was continuing on even after you had invested. Is
18 that what you're saying?

19 A. Yes, before I make any other investments.

20 Q. But based upon your conversation -- were those
21 conversations with Dr. Rainey and this accountant telephonic,
22 were they over the phone?

23 A. Yes, sir.

24 Q. So based upon two phone conversations, three if you
25 include Mr. Cook, but you didn't ask him about the invest, is

1 that correct?

2 A. No.

3 Q. And you got 300,000 invested in December of '98, is that
4 right?

5 A. 380,000 total.

6 Q. 380. Let me ask you about the meeting. You met with
7 Mr. Cook in December of '98 in Arizona. Do you remember
8 stating that?

9 A. Yes, December 18th.

10 Q. Okay. Was that the seminar? Is that what you're
11 referring to?

12 A. Well, it was a presentation. They had a meeting of the
13 investors there at that time.

14 Q. Was that the only time you went and met with Mr. Cook in
15 December of '98?

16 A. That's correct.

17 Q. Where was that meeting?

18 A. That was at the Venetian Hotel in Scottsdale.

19 Q. Now, you've told us that you asked for a copy of the
20 cassette tape, which we listened to earlier, and you
21 indicated that you wanted that so you could present the
22 investment to other potential investors.

23 A. I thought it would be a good idea to have it.

24 Q. Did you play that tape for other investors?

25 A. No, I did not.

- 1 Q. Did you get a copy of the tape?
- 2 A. Yes, I did.
- 3 Q. I didn't hear Mr. Pate's voice on that tape. Did he get
4 up and speak at all at that seminar?
- 5 A. No.
- 6 Q. There was a reference, I believe by Mr. Norris, where --
7 pardon me. Let me correct that. There was a comment on the
8 tape where the individual speaking indicated to the group and
9 I quote, now you'll remember, and he was referring to the
10 bank notes and subsidizing the IMF. Do you remember that
11 comment? He's speaking to the group and he said, now you
12 will remember my discussion about the bank notes and the IMF
13 subsidies, how the bank process works. Do you remember that
14 part of the tape?
- 15 A. I remember him making that statement, yes, sir.
- 16 Q. Well, that would seem to indicate that he had talked to
17 you at some -- or someone had talked to you at some previous
18 occasion about how this investment vehicle worked. When
19 would that have been?
- 20 A. I'm sorry. I don't have any idea.
- 21 Q. Mr. Pate never discussed with you the specifics of how
22 this investment worked, did he?
- 23 A. Yes.
- 24 Q. What specifically did he tell you about the investment
25 and how this interest was earned?

1 A. Similar to exactly what the tape said, the fact we put
2 them in private debentures overseas and this would earn money
3 through these debentures and return many time what were this
4 paying.

5 Q. How many times?

6 A. He said many times is all I know. He did not give a
7 percent.

8 Q. You understood what debentures were?

9 A. I'm sorry?

10 Q. You understood what he mean by debentures?

11 A. Yes, I do.

12 Q. What was your understanding of a debenture?

13 A. Debenture is some type of bond or some type of
14 information to -- a document to receive interest and so
15 forth.

16 Q. That's your understanding of a debenture?

17 A. Yes, it's a bond-type instrument.

18 Q. Do you believe that correct as to that investment or
19 that instrument?

20 A. Yes.

21 Q. So you didn't make any other inquiries about that,
22 you --

23 A. Other than the fact that I would like to have had one of
24 those bank guarantees. I would like to have seen that so I
25 know my money was safe.

- 1 Q. Before you made your investment?
- 2 A. Yes.
- 3 Q. But you didn't require that, did you?
- 4 A. No.
- 5 Q. If you had required it and they hadn't provided it,
6 would you still have invested the money?
- 7 A. I'm not sure.
- 8 Q. Now, you indicated that as an investor you got a receipt
9 for the funds to show where they went, is that correct? You
10 got some kind of receipt or notice from Dannel showing where
11 the monies had been transferred to?
- 12 A. No.
- 13 Q. Okay. Do you remember commenting that an investor
14 would -- that you were entitled to full recourse on your
15 monies. Do you remember?
- 16 A. Yes.
- 17 Q. Okay. Who was that recourse against if something
18 happened to your money?
- 19 A. Dannel.
- 20 Q. And actually you never paid any monies, any monies to
21 Mr. Pate, did you, directly?
- 22 A. No.
- 23 Q. Your monies went directly to Dannel, didn't they?
- 24 A. That's correct.
- 25 Q. And did they go primarily or wholly by wire transfer?

1 A. Yes, wire.

2 Q. Have you filed your taxes for '98?

3 A. For '98?

4 Q. Uh-huh.

5 A. No.

6 Q. Approximately what interest did you earn in '98 off of
7 the investment program that you were in?

8 A. Approximately \$60,000.

9 Q. And that's for all of '98?

10 A. All of '98.

11 Q. You indicated that you had a conversation with Mr. Pate
12 when these newspaper articles come out. Would you describe
13 his attitude of one as of disbelief when you were having this
14 reference to the newspaper article about the allegation that
15 this was a Ponzi scheme?

16 A. That's the comment he made, it was a Ponzi scheme. It
17 was -- the article was only -- was 95 percent false what he
18 indicated to me.

19 Q. My question is: What was your perception of Mr. Pate's
20 demeanor, his response to that article in your discussion?

21 A. He was very set back.

22 Q. Thank you, Mr. Jones.

23 MR. CONNELLY: Nothing further, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. McCOLL:

- 1 Q. Good morning, Mr. Adams -- or is it Mr. Jones?
- 2 A. Mr. Jones.
- 3 Q. Mr. Jones. Arch McColl. I represent Mr. McLaws. We
- 4 visited a little in the hallway, is that correct?
- 5 A. Yes.
- 6 Q. Let me ask you, you had talked about being a financial
- 7 advisor, CFO, to Hunt Oil Company for 13 years, I think you
- 8 said?
- 9 A. Uh-huh.
- 10 Q. What was your training that qualified you for that job?
- 11 I presume you had a college degree.
- 12 A. Yes, sir.
- 13 Q. From where, please?
- 14 A. SMU.
- 15 Q. SMU?
- 16 A. Yes, sir.
- 17 Q. And what was your degree in?
- 18 A. BBA.
- 19 Q. So that's a business degree?
- 20 A. Business administration, yes.
- 21 Q. So that curriculum included courses in finance?
- 22 A. Oh, yes, sir.
- 23 Q. And banking?
- 24 A. Yes, sir.
- 25 Q. And what else?

- 1 A. Accounting.
- 2 Q. And?
- 3 A. That's it.
- 4 Q. Finance, banking and accounting.
- 5 A. Uh-huh.
- 6 Q. So for four years you studied toward your major of
- 7 finance, banking and accounting to make you into an
- 8 accountant?
- 9 A. They were the major subjects, yes.
- 10 Q. Correct?
- 11 A. Uh-huh.
- 12 Q. Then when you got hired, at some point in your career as
- 13 the CFO for Ray Hunt --
- 14 A. I'm sorry. I was not the CFO. I was chief financial --
- 15 not chief, senior financial officer.
- 16 Q. Senior financial officer. Okay. And in that capacity
- 17 you were responsible for the accuracy of funds flowing in and
- 18 out of the company?
- 19 A. That's correct.
- 20 Q. And about what kind of gross did they do on the average
- 21 over those 13 years?
- 22 A. Gross what?
- 23 Q. Gross income.
- 24 A. Gross income for the Hunt Oil Company?
- 25 Q. Uh-huh.

1 A. That's a private company and I can't disclose that.

2 THE COURT: It was a lot of money. Go ahead.

3 BY MR. McCOLL:

4 Q. A lot of money?

5 A. Yes.

6 Q. You've got to be accurate. Did you do sort of
7 accounting by plus or take 500,000 or plus or take a million?
8 You didn't do it that way, did you?

9 A. No.

10 Q. You were real accurate, weren't you?

11 A. I hope so.

12 Q. Okay. So you dug into records and you made -- you're
13 not a reckless person, are you?

14 A. Don't plan to be.

15 Q. Don't consider yourself reckless, do you?

16 A. No.

17 Q. Okay. So when you did your due diligence in this
18 instance you made what you thought was reasonable inquiry,
19 got references and did the kinds of things you thought a
20 reasonable person would do, correct?

21 A. Yes, sir.

22 Q. Okay. Did you know at the time, or have you since
23 learned, that Mr. Cook started this company years before
24 McLaws ever got involved?

25 A. Yes, sir.

1 Q. And you then had private conversations with Mr. Cook,
2 isn't that correct?

3 A. Yes, sir.

4 Q. And did he seem very knowledgeable to you?

5 A. Yes.

6 Q. Okay. As a matter of fact, after you talked to him you
7 invested further money, isn't that correct?

8 A. Yes, sir.

9 Q. Okay. Did he seem believable to you?

10 A. Yes, sir.

11 Q. Okay. So with a man of your background and training,
12 it's certainly conceivable that he would be believable and
13 sound knowledgeable to somebody who's just been a mere
14 policeman for 17 years and sold insurance. He might be
15 believable to him, too, wouldn't you agree?

16 MR. NORRIS: Objection, calls for speculation.

17 THE COURT: That's sustained.

18 BY MR. McCOLL:

19 Q. In your course of -- you always received a payment until
20 the SEC filed a complaint, isn't that correct, in March?

21 A. Yes, sir.

22 Q. And always timely.

23 A. Yes, sir.

24 Q. And then you started having conversations with the SEC
25 lawyers?

1 A. Yes, I called -- I called the SEC.

2 Q. And had some -- in the course of your conversations did
3 you talk to several lawyers and investigators for the SEC?

4 A. Yes, sir.

5 Q. Okay. Is there anything that you learned in the
6 conversations with them that would contradict the statement
7 that my client himself put his own wife's retirement fund of
8 \$110,000 into this Cook program? Do you have any evidence?

9 THE COURT: No. He can tell me what he knows. He
10 can't tell me what he heard from other people.

11 BY MR. McCOLL:

12 Q. Do you know anything that would contradict that?

13 THE COURT: Well, I've sustained my own objection
14 so ask another question.

15 BY MR. McCOLL:

16 Q. Let me ask you this: Do you have a daughter?

17 A. Yes, sir.

18 Q. Okay. Would you put her into a program that you thought
19 was crooked?

20 A. Not if I thought it was crooked.

21 Q. Right. Is there anything that you've seen here today,
22 any document or anything that could help this judge
23 understand the contention that my client, Mr. McLaws, was
24 insincere when he was giving that tape recorded presentation?
25 Can you point to any specific thing for Judge Buchmeyer to

1 look at and say, you know, that's evidence that he
2 disbelieved the very things he was telling you? Can you
3 think of anything?

4 A. No.

5 Q. As a matter of fact, you believed Cook and you believed
6 the program and you went to that meeting because it was a
7 finder's meeting, isn't that correct?

8 A. What meeting are you talking about?

9 Q. The meeting where you got the presentation by Mr.
10 McLaws.

11 A. In December of '98?

12 Q. Yes.

13 A. Yes. I went to it because it was a quarterly meeting.
14 Investors could come to that particular meeting.

15 Q. Right. But the primary people there were people who
16 wanted to be finders, which is nothing wrong with that if you
17 believe in a program and you want -- assist other people
18 and -- I mean this sounds like a real good deal, doesn't it?

19 MR. NORRIS: Objection, he assumes facts not in
20 evidence.

21 BY MR. McCOLL:

22 Q. Is it correct that the primary people who were there at
23 that meeting were those who wanted to be finders?

24 A. Finders?

25 Q. Majority of the people.

- 1 A. What do you mean by finders?
- 2 Q. Those who would make referrals of this program and sell
3 it, in effect, to other people. That was the primary purpose
4 or an important purpose of that meeting.
- 5 A. I'm not sure that was. I'm not -- I can't answer that
6 question.
- 7 Q. Okay. As you look at the tape recording, Mr. Jones, in
8 fairness he's not explaining to you the program. He's
9 explaining to you how he explains the program. He's teaching
10 you how to be a teacher. Isn't that a fair representation?
- 11 A. I did not take that to be that way, no.
- 12 Q. So when you look at that recording, if I could direct
13 your attention or recall your memory to some phrases such as,
14 and I particularly like to use this exhibit, because they get
15 focused on the 24 percent, which is one whale of a rate of
16 return. Do you remember something to that effect?
- 17 A. Yes.
- 18 Q. Okay. So he's telling you why he likes to use an
19 exhibit in his presentation, correct?
- 20 A. Yes, sir.
- 21 Q. So that you might then follow in his footsteps and use
22 the same or similar presentation when you do it, isn't that
23 correct?
- 24 A. Yes, sir.
- 25 Q. Okay. The CPA that was contacted, did you -- you had a

1 CPA -- there was a CPA for Gerald Pate that you contacted --

2 A. Yes.

3 Q. -- as part of your due diligence?

4 A. Yes, sir.

5 Q. Any reason to think that he's a crook?

6 A. I wouldn't think so.

7 Q. The materials that we talked about this morning, the

8 U.S. attorney -- or rather the SEC attorney, has showed us in

9 the notebooks and talked about said this and that. You went

10 through and read those, did you not?

11 A. Yes.

12 Q. And you read them, I'm assuming, fairly carefully?

13 A. Yes.

14 Q. Because you're talking about putting a lot of

15 hard-earned money into this deal, right?

16 A. That's correct.

17 Q. Okay. Anything outrageous in those materials?

18 A. What do you mean by outrageous?

19 Q. Well, anything that would set off alarms or signal to

20 you, oh, this must be a funny money deal, I better get away

21 from it?

22 A. No.

23 Q. So nothing put you on notice in those materials that

24 would seem inappropriate. And I suppose it's fair that in

25 the course of your history of a businessman, as well as

1 working for Hunt Oil, you had an opportunity to be approached
2 by perhaps people from the outside who wanted the Hunt Oil
3 Company to move money into this account or move money into
4 this fund. Did that come under your purview of analysis?

5 A. No, that came under the treasurer.

6 Q. Okay. Did you complain at all during the existence of
7 this program that you -- while you were in it, to anybody in
8 management, Mr. Pate, for example, that you weren't happy
9 with the program?

10 A. No.

11 Q. So the first time that -- when did you first suspect
12 that anything was wrong?

13 A. When I didn't receive my March check.

14 Q. Okay. And then you found out that that was because the
15 funds were frozen.

16 A. And then I read the article in the paper, yes, sir.

17 Q. Okay. Have you since learned anything from your
18 conversations with the SEC that gives you specific
19 information now to feel like that your investment was not an
20 appropriate investment, that it was a sham deal?

21 A. Yes, sir.

22 Q. And what is that?

23 A. I was told that they did not find any monies transferred
24 overseas for that -- where the contract or the agreement
25 mentioned it would be.

1 Q. Okay. Anything else?

2 A. That's all.

3 Q. Okay. So if there was a way to purchase it without
4 actually transferring overseas, electronically, for example,
5 you have electronic transfers, the money doesn't actually go
6 back and forth, isn't that correct?

7 A. That's correct.

8 Q. So if there was a way to actually have an electronic
9 transfer to a bank overseas that might answer that question.
10 Is that possible?

11 A. I assume that what the SEC told me they've already
12 checked that out.

13 Q. Okay. But in your experience just in terms of your
14 perception, we're not talking about -- I'm not trying to make
15 you an expert and I'm not trying to test your knowledge, I'm
16 just saying in terms of your perception --

17 A. Uh-huh.

18 Q. -- what we know as laymen, nonexperts, would it be a
19 fair statement that if I told you that the money could be
20 transferred electronically without ever physically going
21 overseas could you accept that?

22 A. Sure.

23 Q. Okay. And would that eliminate your concern if that was
24 the only concern you were relying on to think this whole
25 thing was bad?

1 MR. NORRIS: Objection, whole line of questions
2 assumes facts that are not in evidence.

3 THE COURT: That's overruled.

4 BY MR. McCOLL:

5 Q. Remember the question?

6 A. Repeat it.

7 Q. Would that eliminate your concern if that was the
8 primary concern you were having and resting your opinion on
9 if this whole thing was bad?

10 A. It would partially do that if I knew that the funds were
11 available in those foreign banks where they were transferred
12 by electronic mail.

13 Q. Okay.

14 MR. McCOLL: Thank you, Your Honor. Thank you, Mr.
15 Jones.

16 CROSS-EXAMINATION

17 BY MR. GOODENOW:

18 Q. Good morning, Mr. Jones. Thank you for coming. I'm Gary
19 Goodenow for Mr. Clagg.

20 A. Uh-huh.

21 Q. You indicated that you received \$60,000 from this
22 program, is that correct?

23 A. Approximately 60.

24 Q. Has the SEC told you whether you're going to have to
25 give that money back?

1 A. Give the money back?

2 Q. Yes.

3 A. No.

4 Q. Mr. Norris used the noun a few times defendants, plural
5 defendants, in his questioning of you, but let me ask
6 specifically, do you have any personal knowledge of the role
7 of Mr. Clagg in this offering?

8 A. No.

9 Q. Do you have any personal knowledge of the amount of
10 investigation Mr. Clagg might have done prior to becoming
11 involved?

12 A. No.

13 Q. So you don't know whether Mr. Clagg was reckless or not?

14 A. No.

15 Q. But is it your testimony that a doctor, a CPA and the
16 former senior financial officer of Ray Hunt all believed that
17 this was a legitimate and lucrative investment? Is that your
18 testimony today?

19 A. Yes.

20 Q. Thank you.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION

23 BY MR. MOWERY:

24 Q. Mr. Jones, my names is Rob Mowery. Mr. Jones,
25 approximately how many investors do you know in the Dannel

1 program?

2 A. I don't know them by name, but the meeting I had with
3 Gerald Pate at his home, plus the investors I met out at
4 Scottsdale, Arizona, are the only ones I know of.

5 Q. Approximately how many is that?

6 A. I would say probably in the neighborhood of 60 or 80.

7 Q. And since March the 16th have you had discussions with
8 investors regarding the Dennel program and the status of this
9 situation?

10 A. Only Gerald Pate.

11 Q. Now, you received every interest payment on time, is
12 that correct?

13 A. Yes, sir.

14 Q. As promised?

15 A. Yes.

16 Q. Do you know of any investor who did not receive their
17 interest payment on time as promised?

18 A. No.

19 Q. Do you know any investor who did not receive their
20 principal back at the anniversary date?

21 A. I don't know. I don't know of any investor name by name
22 that got a return on their investment after one year.

23 Q. Now, you mentioned a couple of -- I'm sorry. You don't
24 know of any investor who did receive?

25 A. Excuse me. The only one that I am familiar with by name

1 is Gerald Pate. He showed me one of his checks on -- on a
2 one-year return of investment.

3 Q. And you don't know or you haven't heard any investors
4 who were not provided back their investment after the
5 one-year term, do you?

6 A. No.

7 Q. Now, you mentioned a couple of times you read the
8 article in The Dallas Morning News?

9 A. Yes, sir.

10 Q. And did you read the last sentence of that article where
11 the SEC's district administrator in Fort Worth said quote,
12 "Huge sums of money are being lost," he said. Do you
13 remember reading that?

14 A. Yes.

15 Q. Do you know what, if any, sums of money have been lost
16 in this program prior to the government taking the action
17 that they did in March of 1999?

18 A. I know of none.

19 Q. You don't know what he would be talking about there?

20 A. No.

21 Q. Now, do you know -- you understand that you were not --
22 you did not receive any payments in March, correct?

23 A. That's correct.

24 Q. And you understood that there's an order that prohibits
25 those monies being paid directly to the investors at this

1 time?

2 A. Yes, sir.

3 Q. And I take it, Mr. Jones, that you would like your
4 investment back, is that correct?

5 A. I would like my entire investment back, yes, sir.

6 Q. And you would like Dannel to pay that investment back
7 to you, is that right?

8 A. That's correct.

9 Q. Has the SEC told you or given you any information or
10 have you gotten any information from anybody else that Dannel
11 is unable to pay your investment back to you?

12 A. I think the only -- the only item that I remember is
13 that, when they froze the assets of all the people that are
14 in the case here connected with Dannel, that they felt like
15 there was not adequate funds to repay the investors.

16 Q. Now, those funds were frozen in the states here in
17 Arizona. Is that what you understand?

18 A. Yes, in this country.

19 Q. And you understand that part of this investment program
20 dealt with funds being invested out of the country?

21 A. Yes, sir.

22 Q. Is that right?

23 A. Yes.

24 Q. So again, Mr. Jones, do you have any reason to believe,
25 has anybody ever told you, that Dannel has insufficient funds

1 available to pay you and the other investors back in this
2 case?

3 A. Only what the SEC told me.

4 Q. And what did they tell you?

5 A. They say that they recovered enough funds to pay only a
6 portion back of total investors.

7 Q. Those are the funds that they recovered in the --

8 A. In the freezing.

9 Q. Now, on those -- do you understand that the SEC has
10 frozen those or that the Arizona attorney general has those
11 funds?

12 A. It was my understanding that it was just the SEC. I
13 don't know who did it, Arizona or federal.

14 Q. Who told you that, Mr. Jones?

15 A. The attorney here today.

16 Q. Mr. Norris?

17 A. Norris, yes.

18 MR. MOWERY: That's all I have. Thank you, Mr.
19 Jones.

20 THE COURT: Any other cross-examination?
21 Redirect?

22 MR. NORRIS: Just a couple of questions.

23 THE COURT: Okay.

24 REDIRECT EXAMINATION

25 BY MR. NORRIS:

1 Q. Mr. Jones, I believe you mentioned during Mr. Connelly's
2 cross-examination that you had a conversation with Mr. Cook
3 before you made your first investment, is that correct?

4 A. Not before.

5 Q. Okay. When was your first conversation with Mr. Cook?

6 A. Conversation was after I made my first investment.

7 Q. But before the Arizona meeting?

8 A. Yes, sir.

9 Q. Would you describe that conversation?

10 A. The conversation was really kind of talking to him about
11 investing in his programs and it was caused by the fact that
12 I had -- I saw a article on some Ponzi-type activities,
13 trading programs and so forth, and he was on a conference
14 call with Pate, he and I. And I told him, what's so much
15 different about the one that's got in trouble and the Dannel
16 program? He started explaining to me that they did not have
17 the connections for the types of programs that he had in
18 place in Europe and so forth, and everything was find, don't
19 worry about it, your money is secure.

20 MR. CONNELLY: Your Honor, pardon me. I'd ask
21 that the witness identify. He's identified a conference
22 call. I would ask that he identify who made that statement
23 to him in that conference call.

24 A. Who made that statement that I just said?

25 MR. CONNELLY: Yes.

1 THE WITNESS: Ben Cook.

2 BY MR. NORRIS:

3 Q. Mr. Connelly also asked you about a conversation you
4 had with Mr. Pate about a guarantee, about the bank
5 guarantee.

6 A. Yes, sir.

7 Q. Okay. Did Mr. Pate tell you why he couldn't provide or
8 wouldn't provide --

9 A. He said that -- he said that was left overseas and they
10 did not have privy to it in the states and so forth, that it
11 was not available for investors.

12 MR. NORRIS: No further questions.

13 THE COURT: Anything else?

14 MR. CONNELLY: Nothing further, Your Honor.

15 THE COURT: Thank you very much. You may step down
16 and you're excused. You can leave or you can stay in the
17 courtroom.

18 THE WITNESS: Thank you.

19 THE COURT: Next witness.

20 Have a seat for us right up here.

21 If you will tell us your name again?

22 THE WITNESS: Ken Fitzgerald.

23 THE COURT: Okay.

24 KEN FITZGERALD,

25 called as a witness by the government, testified on his oath

1 as follows:

2 DIRECT EXAMINATION

3 BY MR. NORRIS:

4 Q. Mr. Fitzgerald, I have placed before you a notebook of
5 exhibits. They're numbered, and as I refer to a particular
6 exhibit you can turn to the tab of the document that I refer
7 to.

8 A. Okay.

9 Q. Mr. Fitzgerald, where do you reside?

10 A. Visalia, California.

11 Q. What is your occupation?

12 A. I'm an attorney.

13 Q. You practice in Visalia?

14 A. Yes, I do.

15 Q. Did you make one or more investments through a company
16 called Dannel Financial Limited?

17 A. Yes, I did.

18 Q. What is the total amount of funds that you invested?

19 A. My law partners and I had a partnership called BK
20 Investments. I have a trust and also my -- I put some
21 retirement money and also my mom put about 135,000 of her
22 retirement, so the total in this entity was \$530,000.

23 MR. CONNELLY: Your Honor, may we approach the
24 bench?

25 THE COURT: Okay.

1 (Sidebar bar, not reported)

2 THE COURT: You said you had a total of \$530,000.

3 THE WITNESS: 530,000.

4 MR. CONNELLY: Pardon me, Your Honor. At some
5 point before the end of the day I'd like to at least get a
6 very short one or two sentences what that discussion involved
7 and what I called to the court's attention.

8 THE COURT: We will. Next question.

9 BY MR. NORRIS:

10 Q. When did you first hear about Dannel?

11 A. Sometime the first part of January. First part of 1988,
12 January or February.

13 Q. From whom did you hear about him?

14 A. I originally heard about it from my law partner, Bob
15 Aguilar, who is a close personal friend of Craig Boone. I
16 had also known Mr. Boone since Little League. He's an
17 accountant and I've known him for quite some time, so I heard
18 about it through Mr. Aguilar originally.

19 Q. After your initial -- you initially heard about Dannel,
20 did you receive written offering materials relating to the
21 offer?

22 A. After that I filled out a -- talked to Craig I filled
23 out a request for information and I was sent a packet of
24 documents. It was in a green folder.

25 Q. Let me ask you to look at Exhibits 1 through 6. Take a

1 look at each of those documents.

2 A. Okay.

3 Q. Do those appear to be the documents that you received?

4 A. Yes, they do.

5 Q. Prior to receiving these written materials, did you have
6 any conversations with anyone about the nature and terms of
7 this investment?

8 A. I had some conversations. Whether or not -- I probably
9 had had some -- I believe I had some conversation about the
10 fact that people were being paid monthly, and that's what
11 sparked my interest even receiving the documents. And so I
12 was being told through Mr. Aguilar that people were -- Craig
13 had said people that were getting their payments regularly,
14 so I think that's probably what occurred, and then I filled
15 out the request for information.

16 Q. After receiving the request for -- receiving the written
17 materials, did you invest immediately?

18 A. No, I did not. I became -- I wanted to meet with Ben
19 Cook and find out more about this program. I read the
20 materials, but I wanted some explanation. I wanted to meet
21 the person -- I wanted to meet him personally, so I was told
22 about a meeting that was going to occur in April or May of
23 that year and I flew out to this meeting and -- and there was
24 a presentation and I spoke with Mr. Cook.

25 Q. How did you learn about the meeting?

1 A. Craig Boone.

2 Q. Where was that meeting?

3 A. It was in Arizona, would have been Scottsdale, I
4 believe, or Phoenix. It was a hotel, large hotel in Arizona.

5 Q. How many people were in attendance at that meeting?

6 A. There were probably somewhere between 20 and 30 people.

7 Q. How many of them were -- strike that.

8 Did you have an understanding why those people were
9 present?

10 A. To gain more information about the investment and also
11 not only would they be potential investors, but also maybe
12 they would refer people to the program as well.

13 Q. Were any of the defendants in this case present at that
14 meeting?

15 A. Yes, Wayne McLaws.

16 Q. Anyone else?

17 A. Mr. Cook was there, Mr. Clagg was there and I do not
18 know if the other gentleman --

19 Q. Gerald Pate.

20 A. Gerald Pate, I don't recall whether he was there or not.

21 Q. Did the meeting involve a presentation concerning Dannel
22 investments?

23 A. Absolutely.

24 Q. Who made that presentation?

25 A. Presentation was made by Wayne McLaws. He said that Ben

1 Cook was running a little late and that he would be giving
2 the presentation. And then when Mr. Cook got there, he also
3 stood up and made -- continued on with the presentation.

4 Q. Let me ask you about the presentation made by Mr.
5 McLaws. When, if anything, did he say about the rate of
6 return that investors would receive on this investment?

7 A. Said the investors would receive 2 percent per month.

8 Q. What, if anything, did he say about how investor funds
9 would be used in this program?

10 A. What we were told was that there were \$25,000,000 CD's
11 that were purchased by Ben Cook and his associates, that an
12 additional amount of \$3,000,000 of investor money was also
13 used but that money was not used to purchase the CD's. The
14 CD's would be purchased by Cook and his associates and the
15 other \$3,000,000 would be put into a separate account and
16 that that money could not be used, hypothecated, liened or in
17 any way encumbered, that it was -- based on the regulations
18 with the banking -- the European banking and everything else,
19 they couldn't do anything with that money.

20 Q. Where did Mr. McLaws say these investor funds would be
21 deposited?

22 A. They said they used top European world banks. There was
23 one -- Union Swiss sticks out in my mind, something along
24 those lines. I know it was a Swiss bank and had the word
25 union in it, but they mentioned some top European banks.

1 Q. Where did he say or for whom did he say that these CD's,
2 \$25,000,000 CD's would be purchased or were purchased?

3 A. He said that every time that they would put in the
4 \$3,000,000 -- when they had the investor money, the
5 \$3,000,000, at the same time they would purchase one or more
6 \$25,000,000 CD's, and that they had because -- because they
7 had purchased so many of these CD's and were purchasing so
8 many of them, these \$25,000,000 CD's, that they got them at a
9 discount, that they were purchasing them for somewhere
10 between 18 and \$20,000,000 and the difference -- and that --
11 those CD's that were in place is what guaranteed that the
12 investors would receive their 2 percent per month because at
13 the end of the year they cashed these \$20,000,000 CD's in and
14 they would be worth \$25,000,000, plus it's making interest
15 plus the interest on the \$3,000,000, so with that it was
16 perfectly safe and that's how -- that's how the investor got
17 his money.

18 However, he did say, though, that then there was a lot
19 of trading where there would be buys and sells and they never
20 did the trading until they had a buyer on the other end. But
21 that was the part that Cook and his people were involved in,
22 that we didn't really need to concern ourselves with that as
23 an investor. That's where they made their large amounts of
24 money and that our money was protected by the CD's and
25 this -- put in this account and could not be touched.

1 Q. Let me ask you to expand on that. What did he say, if
2 anything, about the safety of the investment?

3 A. He --

4 Q. He being Mr. McLaws?

5 A. Mr. McLaws and Mr. Cook.

6 Q. Why don't we take Mr. McLaws?

7 A. Mr. McLaws said that these investments were 100 percent
8 safe, that our money, it was regulated by the international
9 monetary fund, that the money went into these account, that
10 their contracts with the banks required that they could not
11 touch our money or in any way hypothecate the money or lien
12 the money, all kinds of statements that in no way it could be
13 encumbered, and all that money had to come back, you had to
14 take it out of the program at the end of the year and then
15 you could reinvest but you had to get your money back
16 physically first, but that it was -- all the return and
17 everything was guaranteed by the bank and by these CD's that
18 they were purchasing, these \$25,000,000 CD's.

19 Q. Did he saying anything more specific about the trading
20 activities that Dannel was involved in?

21 A. He did say that the trading activities were -- one, they
22 were given -- what did they call it? They got a certain
23 percentage of these large humanitarian projects, building a
24 dam in India or, you know, a hospital here or roads, you
25 know, here or there. And that they would get an allocation

1 of a certain percent of these multimillion dollars projects
2 and that they would have to fill that allocation. And
3 because a lot Ben Cook and Dannel finances profits -- or like
4 half of their profits they were making from all this bank
5 trading went into these humanitarian projects. That was the
6 reason that they were allowed to trade, do this trading was
7 because a lot of the profits, 50 percent of the profits they
8 were making, were going to fund these humanitarian projects.
9 And so he said that what they basically did was in their
10 trading that they were all computer wire transfers and they
11 always knew they had a buyer before they would buy something
12 and there was always a margin.

13 But the thing they did say was that that's something
14 that we, as investor, don't really need to concern ourselves
15 with because that's what they make their money off of. What
16 we needed to be concerned with is these large CD's and the
17 \$3,000,000 because that would give us the 2 percent return,
18 that that's where we are making our money and that was 100
19 percent safe and there's no risk.

20 Q. You mentioned that there was some discussion of the
21 involvement of the IMF. Would you expand on that? Is that
22 the International Monetary Fund?

23 A. The international Monetary Fund. Basically they were
24 regulated by the International Monetary Fund and some other
25 law, and I can't remember exactly what they mentioned, but

1 that was one that they mentioned and that's what insured,
2 that they had to do exactly what they told us they were
3 doing, that they did not have a choice in the matter to put
4 this money in these accounts and they have no ability to do
5 anything with that money other than leave it there and return
6 it to the investors at the end of the year.

7 Q. Did he tell you about any other regulations to which
8 this program was subject, purportedly subject?

9 A. Yes, it was the International Monetary Fund and
10 something else, but in all honestly I can't recall what the
11 name of it was.

12 Q. Now, at that meeting did Mr. Cook make a presentation?

13 A. Mr. Cook, yes, he did get up and there was a lot of
14 questions about the trading and -- and the CD's. And he made
15 the statement that it was he and his associates that were
16 putting up the money to buy these \$25,000,000 CD's, that the
17 investor money was not used to do that, it was in a separate
18 account.

19 Q. Did he tell you how many of these he had bought or was
20 buying at any particular period in time?

21 A. There was -- basically every time that they would --
22 every month they would be taking money in, so they would buy
23 two or three of these at a time, was my understanding, and
24 that that's why they got these big discounts, where they
25 would buy these things for 18 to \$20,000,000 and they had a

1 value of \$25,000,000.

2 It was my understanding, based on his representations,
3 that this was occurring on a monthly basis, except they did
4 say there was a time when the European banks closed, like it
5 was during the holiday season, December, and that they
6 wouldn't take any money at that time.

7 Q. Did he mention -- did Mr. Cook talk about the
8 relationship between these CD's that were purportedly being
9 purchased and Dennel investors' funds?

10 A. My understanding of the relationship was that that was
11 the money, the \$25,000,000 CD's and the money that those CD's
12 were earning and the fact that they got this discounted
13 price, that's what guaranteed that the \$3,000,000 investor
14 money, which was in a separate account, it wasn't used to
15 purchase the CD, it was kept in a separate account, that's
16 what guaranteed that the -- we would be getting 2 percent per
17 month on that investment.

18 Q. What then did Mr. -- let's go back to Mr. McLaws. Did
19 Mr. McLaws explain then what role that \$3,000,000 account
20 played in the transaction?

21 A. He did, but not very well. And it didn't -- he did,
22 but not very well, but I guess the main thing that I took
23 from that about the CD's, about the 3,000,000 of investor
24 money, was that that money was in a separate account. It
25 allowed them some leverage to be able to do the trading they

1 were doing, yet it could not be -- like I say, in any way
2 encumbered, so it wasn't real clear. The thing I did take
3 from it though it could not be encumbered and it had to be
4 given back to the investors.

5 Q. At the end of the contract?

6 A. At the end of the year.

7 Q. Was there anything else about Mr. Cook's presentation to
8 the audience that was of importance to you, that you can
9 recall?

10 A. No, the main thing was -- the main thing I guess I was
11 really focused on, was his assurances of complete safety for
12 the investor money and the way in which that was done. I
13 guess I believed they were buying these \$25,000,000 -- I
14 believed they was buying these \$25,000,000 CD's and that
15 my -- and that the other money, based on the regulations they
16 had explained, could not -- the investor money could not be
17 encumbered. And that was the main thing that I kind of
18 latched on to.

19 Q. Now, following Mr. Cook's presentation to the room, did
20 you have any private conversations with Mr. Cook?

21 A. Yes, I did. I asked Craig Boone if I could meet with
22 Mr. Cook personally because I wanted to talk to him and I
23 wanted -- I told him I wanted to sit across the table from
24 him and look him in the eye and ask him the questions that I
25 wanted to ask him about the safety of that money. I felt

1 like maybe I was -- since I'm an attorney and I do a lot of
2 depositions, I thought If I looked the guy in the eye and he
3 tells me something, you know, if it wasn't true I might get
4 an idea about it. I guess he's better than people I've
5 deposited in the past.

6 Q. Describe the conversation you had, the private
7 conversation you had Mr. -- I take it -- did Mr. Boone then
8 set up a meeting between you and Mr. Cook?

9 A. Yes, in the same room that they gave this presentation.
10 I was outside. What happened was he gave the presentation
11 and then there was a lunch where he gave out a Rolex and a
12 bonus. And then after lunch there was a meeting with -- you
13 know, Mr. Boone was there, Mr. McLaws, Mr. Cook, Mr. Clagg,
14 all of the -- they all went to separate meetings.

15 Q. Uh-huh.

16 A. We waited outside. And after that meeting I asked -- I
17 told Craig that I wanted to talk to the man personally. So
18 we went back into the room where there was a meeting and we
19 sat down at the table and -- and I asked him the question.

20 Q. Who was present at that conversation?

21 A. I was present, Mr. Cook, and there were other people
22 around the room, but it was basically he and I in a
23 one-on-one conversation.

24 Q. What was said during that conversation?

25 A. I asked him if I invested the money, is my money going

1 into this account that you described? And he said, yes, it
2 is. And I said, and is my money 100 percent safe? And he
3 said, yes, it is. It's a hundred percent safe. I guarantee
4 it.

5 Q. Did he say anything else?

6 A. You know I think there were some pleasantries exchanged,
7 that kind of thing. But it happened, I like I said, in 1998.
8 The main thing that I took from it was I asked him if my
9 money was going exactly where he told me it was going and
10 could he guarantee me that it was a hundred percent safe and
11 he said, yes, it is. And he said it was a hundred percent
12 safe and he guaranteed it.

13 Q. After that meeting -- strike that.

14 Did you have any other conversations with any of the
15 defendants during any of that meeting?

16 A. No, I did not.

17 Q. Okay. After the meeting in Arizona did you make an
18 immediate decision to invest?

19 A. No, I did not.

20 Q. What did you do? Why not?

21 A. Well, I wanted to watch it for a while, watch the
22 program for a while, be sure that everyone was getting paid.
23 It was my understanding that payments were received on the
24 15th of each month. And I also wanted to follow along enough
25 so that I could see if there were investors getting back

1 their principal. And Craig Boone is a friend of mine, I
2 trust him. And he knew the person at Dannel who was involved
3 in the administrative part of getting the checks out. I
4 can't remember his name right now, but they were -- they were
5 close personal friends. And so I knew that Craig had the
6 ability to find out the information about whether or not
7 these checks were going out on the 15th of each month. So I
8 called one a month and I would ask, is everyone one getting
9 their money back? Yep, the thing's working like a T. Money
10 is going out on the 15th of each month. And I followed that
11 until I made the first investment in November.

12 Q. And so you did in November decide to make an investment?

13 A. Based on the representations that were made to me, the
14 written material I received, and following and finding out
15 that people were receiving their money on the 15th of each
16 month, I decided to put in the first hundred thousand.

17 Q. What procedure did you follow in making that investment?

18 A. I was sent some contracts and other documents that I
19 filled out. I went and got a cashier's check and I provided
20 all -- I filled out all the documentation, signed it and gave
21 him a hundred thousand dollar cashier's check.

22 Q. Did you initially fill out an application?

23 A. Yes, I did. I filled everything out that was required
24 to be filled out.

25 Q. After you filled out that application form, what did you

1 do with it?

2 A. Everything was packaged up and it was put into Federal
3 Express and sent to Dennel.

4 Q. Did you subsequently receive an acknowledgement that
5 that application had been approved?

6 A. Yes, I had.

7 MR. NORRIS: Your Honor, Exhibit 27 actually
8 includes two separate documents, and if it's all right with
9 the court I would like to have the November 9, 1998, letter
10 under Dennel Finance letterhead be 27-A. It was mistakenly
11 not marked.

12 THE COURT: Okay.

13 BY MR. NORRIS:

14 Q. Let me ask you to look at the documents that are
15 exhibits -- that are now under the tab Exhibit 27 and turn to
16 the last page of those documents. We're going to refer to --
17 the last page of this document on Dennel Finance letterhead
18 is Exhibit 27-A.

19 A. Yes.

20 Q. Do you recognize this document?

21 A. Yes, document that I received after putting the first
22 investment in in November.

23 Q. Or after -- was it after your -- the investment or was
24 it after your application?

25 A. Excuse me?

1 Q. At what point in the process did you receive this
2 letter? Let me ask you to look at it.

3 A. You know, this could have been before or it could have
4 been after I got the hundred thousand, but probably before
5 based on the date and the fact that they were going to be
6 doing this on November 16th. I know it was right around the
7 middle of the month I sent the money in, so based on date --

8 Q. This is a letter that you received from Dennel?

9 A. Absolutely.

10 MR. NORRIS: Your Honor, I ask that 27-A be
11 admitted.

12 MR. GOODENOW: Your Honor, respect to possibly
13 objecting. He said it's possible. Is it also possible that
14 he got this document from Mr. Clagg? Can you rule that out
15 emphatically?

16 THE WITNESS: Yes.

17 MR. GOODENOW: Thank you.

18 THE WITNESS: I received it in the mail.

19 THE COURT: Okay.

20 A. Let me clarify that. I received this in the mail via
21 Federal Express. I don't know if it came from Mr. Clagg or
22 Mr. Cook. It says Mr. Cook on it, but I can't tell you --
23 you know, I didn't trace the document back to whether it came
24 from Clagg or Cook. I got the document in the -- I got the
25 document via Federal Express.

1 BY MR. NORRIS:

2 Q. Let me just ask you to look at Exhibit 28 and ask you if
3 you recognize that document?

4 A. It appears to be the contract we signed, BK Investments
5 with Dannel Finance.

6 Q. Now, this particular document does not appear to bear
7 the signature of BK Investments. Is there a reason for that?

8 A. There were two of these contracts sent. I signed one
9 and sent it back to Mr. Cook and kept the other one for my
10 record.

11 Q. These were two identical contracts?

12 A. Yes, they were.

13 Q. And so this is a copy of a contract that you received
14 from Dannel?

15 A. Yes, it is, and I signed it and sent it back.

16 Q. Another copy of it?

17 A. Yes, there were two originals.

18 MR. NORRIS: Your Honor, I ask that Exhibit 28 be
19 admitted.

20 THE COURT: Admitted.

21 BY MR. NORRIS:

22 Q. Did you subsequently send funds in to Dannel for this
23 investment?

24 A. I did.

25 Q. Okay. How much did you send?

1 A. BK Investments' first investment was \$100,000.

2 Q. To whom did you send those funds?

3 A. Those were sent Federal Express to Dannel Finance.

4 Q. Did you subsequently receive an acknowledgement those
5 funds had been received?

6 A. Yes, I believe I did.

7 Q. Let me ask you to look at Exhibit 29. Do you recognize
8 this document?

9 A. Yes, I do.

10 Q. What is it?

11 A. It is the confirmation that they had received the first
12 \$100,000 and the date upon which it was credited.

13 Q. Did you receive this letter on or about November 16,
14 1998?

15 A. Yes, I did. That would have probably been the day
16 after, November 17th.

17 MR. NORRIS: Your Honor, I ask that Exhibit 29 be
18 admitted.

19 THE COURT: Admitted.

20 BY MR. NORRIS:

21 Q. Now, did you make any additional investments in Dannel
22 in 1998?

23 A. Yes, in December of 1998, after I received the first
24 return on the money that I provided to Dannel, we put an
25 additional -- BK put an additional hundred thousand in. Some

1 trust money that is -- it is mine, my mom manages, was placed
2 into there in the amount of 155,000. My mother put 135,000
3 of her retirement money in there. I believe I put 10,000 of
4 my retirement. Bob Aguilar, my law partner, put 10,000 of
5 his retirement and his wife put 10,000 of her retirement.
6 Subsequent to that, I put another 25,000 in sometime around
7 February.

8 Q. With respect to the -- let me just take you through
9 these. You can identify them, if you can, certain documents.
10 Let me ask you to look at Exhibit 30.

11 A. Yes.

12 Q. Do you recognize this document?

13 A. Yes, I do.

14 Q. What is it?

15 A. It's the approval of the private placement of the
16 additional \$100,000.

17 Q. Is that the second investment that you made?

18 A. Yes, it is.

19 Q. Did you receive this letter on or about December 12,
20 1998?

21 A. Yes.

22 MR. NORRIS: I move that Exhibit 30 be admitted.

23 THE COURT: Admitted.

24 BY MR. NORRIS:

25 Q. Let ask you to look at Exhibit 31. Do you recognize

1 this document?

2 A. Yes, I do.

3 Q. What is it?

4 A. It is the contract -- this is one of two originals that
5 I received for the second investment of \$100,000.

6 Q. Did you sign the other copy?

7 A. Yes, I did. I signed it and returned it with the check,
8 cashier's checks.

9 MR. NORRIS: Your Honor, I ask that Exhibit 31 be
10 admitted.

11 THE COURT: Admitted.

12 BY MR. NORRIS:

13 Q. Did you subsequently receive an acknowledgment that your
14 funds had been received for this second investment?

15 A. Yes, I did.

16 Q. Let me ask you to look at Exhibit 32.

17 A. Exhibit 32 is the acknowledgement that I received
18 approximately December 16th via Federal Express that they had
19 received my hundred thousand and that it would be credited as
20 of 12-15-98.

21 MR. NORRIS: I ask that 32 be admitted.

22 THE COURT: Admitted.

23 BY MR. NORRIS:

24 Q. Were there any additional -- was there any other
25 additional information you received for the second investment

1 that influenced your decision to invest in Dannel again?

2 A. At the same time I was relying upon the initial meeting
3 I had with Mr. McLaws and Mr. Cook and then my follow-up of
4 finding out that people were being paid.

5 Q. After the investment that's evidenced by Exhibit 31, did
6 you make a further investment?

7 A. Sometime, either January or February, I made an
8 additional investment of 25,000.

9 Q. Okay. Let me talk about 1998.

10 A. Okay.

11 Q. We've talked about two investments you made in 1998?

12 A. Yes, sir.

13 Q. Did you make an additional investment in 1998?

14 A. Yes, there was 155,000 that's called the Mosby Family
15 Trust?

16 Q. What is your relationship to the Mosby Family Trust?

17 A. I am the beneficiary.

18 Q. Do you provide advice? Well, who is the trustee?

19 A. My mother is the trustee.

20 Q. You provide advice to her about investments for that
21 trust?

22 A. We make the decisions together, yes.

23 Q. Okay. And were you involved in the decision to make
24 investments -- to make the investment in Dannel through the
25 Mosby Family Trust?

1 A. Yes, I was. And we discussed it and decided that it
2 appeared to be a safe investment, very safe investment, and
3 the return was very good, and since the money was going to be
4 going to me in the future I wanted the money to grow.

5 Q. Okay. And were you involved -- did you reviewed
6 materials as they were -- as they came in from Dannel for
7 that investment?

8 A. Yes, my mother lives on 20 acres next to the 10 acres
9 that I have and I was at her house during all phases of the
10 investment, including her own, including her review of the
11 documents, her signing the documents, everything.

12 Q. Let me ask you to look at Exhibit 33.

13 A. Okay.

14 Q. Do you recognize this document?

15 A. Yes, it's a document that we received for investing the
16 155,000 from our trust.

17 Q. And were you aware at or around December 12, 1998, that
18 this had been sent to your mother?

19 A. Yes, I saw the document.

20 MR. NORRIS: Your Honor, I ask that Exhibit 33 be
21 admitted.

22 THE COURT: Admitted.

23 BY MR. NORRIS:

24 Q. Let me ask you to turn Exhibit 34. Do you recognize
25 this document?

1 A. Yes, I do. This is the contract that I went over with
2 my mother, and those are her initials where it says investor.
3 I read it with her, she read it and then she initialed it.
4 And those are her initials where it says investor.

5 Q. And you reviewed this with her?

6 A. Yes, I did.

7 Q. Were you there when she signed it?

8 A. Yes, I was.

9 MR. NORRIS: I ask that Exhibit 34 be admitted.

10 THE COURT: Admitted.

11 BY MR. NORRIS:

12 Q. And were funds subsequently sent to Dannel for this
13 investment?

14 A. Yes, we sent a cashier's check in the amount 155,000.

15 Q. And did your mother receive a letter acknowledging
16 receipt of those funds?

17 A. Yes, she did.

18 Q. Let me ask you to look at Exhibit 35?

19 A. Exhibit 35 is a letter that my mother received after we
20 had placed the funds with Dannel.

21 Q. And did you see this letter on or about December 15,
22 1998?

23 A. Yes, I did. In fact, I took possession of it and that's
24 how I provided it to you.

25 MR. NORRIS: I ask that Exhibit 35 be admitted.

1 THE COURT: Admitted.

2 BY MR. NORRIS:

3 Q. I believe you mentioned that in addition to the
4 investments, the other investments that we discussed, you
5 arranged for the rollover of IRA funds?

6 A. Yes.

7 Q. Into a Dannel related investment, is that correct?

8 A. It was rolled over to Sterling Trust and then through
9 Sterling Trust it was placed with Dannel.

10 Q. When did you first learn about this opportunity to use
11 IRA funds in a Dannel investment?

12 A. I don't recall. It was obviously prior to using my IRA
13 funds, but I do not recall.

14 Q. What were you --

15 A. It would have been between the time of the meeting in
16 April and the time I put the money in, but the exact date I
17 don't recall.

18 Q. Were you told what your return would be on this
19 investment?

20 A. I was told that it would be 2 percent. That's what was
21 in the documents and what was represented to me orally.

22 Q. 2 percent per month?

23 A. Per month.

24 Q. Let me ask you to look at exhibit -- did you receive a
25 set of explanatory materials about the opportunity to invest

1 IRA funds in a Dannel related investment?

2 A. Yes.

3 Q. Let me ask you to look at Exhibit 37.

4 A. Okay.

5 Q. Do you recognize the documents that are in Exhibit 37?

6 A. Yes, I do.

7 Q. What are they?

8 A. Those are documents that I received and reviewed prior

9 to investing the retirement account money.

10 Q. From whom did you receive this?

11 A. It would have come from Dannel, but whether it was

12 hand-delivered -- it could have been provide to me by Craig

13 Boone.

14 Q. Let me ask you to turn to the document that is called a

15 agreement reference?

16 A. Which -- is it within Exhibit 37?

17 Q. It's in Exhibit 37, agreement reference.

18 MR. NORRIS: Your Honor, I ask that Exhibit 37 be

19 admitted.

20 THE COURT: Admitted.

21 BY MR. NORRIS:

22 Q. Let me ask you to turn to the agreement reference.

23 A. I see it.

24 Q. This refers to an entity called FPC-1 Limited

25 Partnership.

1 A. Yes.

2 Q. Did you have any discussions with anyone affiliated with
3 Dennel about what FPC Limited Partnership was?

4 A. It was my understanding that that was --

5 MR. McCOLL: Excuse me, Your Honor. The question
6 was did he have a conversation with anyone. The answer is
7 either yes or no and then who.

8 THE COURT: I sustain the objection.

9 A. Yes.

10 BY MR. NORRIS:

11 Q. With whom did you have that conversation?

12 A. It was Craig Boone.

13 Q. Did you speak with any of the defendants about that?

14 A. I don't recall speaking to defendants about this
15 agreement or about FPC-1, no.

16 Q. Okay. Were you given any additional information prior
17 to this investment, this IRA rollover, that influenced your
18 decision to invest additional funds into Dennel?

19 A. I had made up my mind to invest the money that I
20 invested, including my retirement money, based upon my
21 meeting -- the review of the packet that I received, the
22 meeting I had with Mr. McLaws and Mr. Cook, and following the
23 program between that meeting until I made these investments
24 and finding out that people were being paid monthly on the
25 15th and everything was working. However, I was informed

1 that that would have been -- I obtained additional
2 information subsequent to making these investments.

3 Q. Where was the -- where were the funds that were rolled
4 over? Where were they initially, the funds that were rolled
5 over into the IRA investment?

6 A. That would have been in a retirement account. Myself,
7 Bob Aguilar and Linda Aguilar had retirement accounts at
8 A. G. Edwards. My mother's retirement account was at Robert
9 Thomas Securities in the branch offices at Visalia.

10 Q. What was the total of those rollovers, the total amount?

11 A. It would have been 135,000 for my mother, and 10,000 for
12 myself, 10,000 for Bob Aguilar and 10,000 for Linda Aguilar.

13 Q. Now, apart from the Scottsdale meeting that you
14 described earlier, did you attend any other group --

15 A. Yes.

16 Q. -- meetings involving and concerning Dennel investments?

17 A. Yes, I did. I was at a meeting at the Piccadilly Inn in
18 Fresno near the airport.

19 Q. When was that?

20 A. That was, I believe, in January, sometime around that
21 time.

22 Q. How did you learn about that meeting?

23 A. Craig Boone told me about it.

24 Q. How many people were in attendance at that meeting?

25 A. There were probably somewhere between eight -- somewhere

1 around eight, could have been ten, eight to ten.

2 Q. What was the purpose of that meeting?

3 A. That meeting -- what was the purpose of it or what
4 occurred at that meeting?

5 Q. Well, what did you understand was the purpose of it?

6 A. My understanding the purpose of the meeting was to have
7 Mr. Clagg further explain the program and also --

8 MR. GOODENOW: Your Honor, there is no foundation
9 on this. We haven't heard if Mr. Clagg has given any
10 explanation of the program so far and he's using the word
11 further.

12 THE COURT: That's overruled.

13 BY MR. NORRIS:

14 Q. What were you told occurred at this meeting?

15 A. I was told that I would be provided with a further
16 explanation of the program and that Mr. Clagg would be the
17 individual providing that information. It was my
18 understanding that the people at the meeting would be people
19 who would potentially refer other investors into the program.

20 Q. Did the meeting involve a presentation by any of the
21 defendants in this case?

22 A. Yes, it did, involved a presentation by Mr. Clagg.

23 Q. In general what did Mr. Clagg tell the group about
24 Dannel Investments?

25 A. Mr. Clagg had at that time a -- some overheads, some

1 transparancies, that put on an overhead that diagramed
2 what -- how the program worked. One of the things that we
3 were told was that the way this program worked they used the
4 Federal Reserve, and this was also told to me by Mr. McLaws
5 at the meeting in April, and it was again reiterated at this
6 meeting in January, was that a lot of what they were able to
7 do -- banks using the Federal Reserve if they have a hundred
8 thousand dollars, they can go the Federal Reserve and get a
9 million dollars that they can then lend to borrowers and
10 they're receiving, you know, 12 to 18 percent off of this
11 money when it only took them a hundred thousand in the first
12 place. They were receiving -- a hundred thousand dollars the
13 bank had, they were receiving all this money as a result of
14 them being able to go to the Federal Reserve. And they had
15 tied that into what they were doing, how banks make money and
16 the amounts of money that banks can make, and so that was
17 explained again.

18 Q. Let me just ask some questions. What, if anything, did
19 Mr. Clagg say about the rate of return investors would
20 receive in these Dannel investments?

21 A. The investors would receive 2 percent per month.

22 Q. Okay. Did he explain how investor funds would be used?

23 A. Yes, he talked about the fact that the investor funds
24 again were in a separate account, \$3,000,000, that they
25 would -- that they bought these CD's, these \$25,000,000 CD's

1 at a discounted rate. There were some questions from some --
2 another person, other individual who was at that meeting
3 asked, how do we know it's safe? And one, talked about the
4 fact that there were the CD's that insured their safety and
5 that this money could not in way be encumbered, the \$3,000,00
6 investor money, but then they even went further and said that
7 Ben Cook had --

8 MR. McCOLL: Excuse me, Your Honor. Could we have
9 a date or an approximate time of this meeting?

10 BY MR. NORRIS:

11 Q. When did this meeting take place?

12 A. Approximately January of 1999.

13 Q. Okay. Go ahead.

14 A. That Ben Cook had purchased some insurance company,
15 offshore insurance company, and was going to be insuring the
16 investors' money, that he was in the process of doing that as
17 we spoke because this was all being put into place, and also
18 had talked about the fact that Mr. Cook was dealing with
19 Oppenheimer to set up an offshore -- I guess joint venture
20 through Oppenheimer where the 2 percent could then stay in
21 the program instead of being paid out to the investor so that
22 you could receive more of a return because now your 2 percent
23 could also be receiving -- you could be receiving 2 percent a
24 month on your 2 percent so that the money would just continue
25 to roll over and make money.

1 Q. Did Mr. Clagg say anything more about how Dannel
2 generated the returns for investors?

3 A. I'm sorry. He may have -- from the investors?

4 Q. Yes.

5 A. Okay. For the investors, yes. That was the \$25,000,000
6 CD's that they could buy it. It was very specific. He had
7 said we get these CD's, they're \$25,000,000 CD's, we buy them
8 for \$20,000,000 and there's your 25 percent because whenever
9 they cash them out you get that extra 5,000,000 and only
10 costs you \$20,000,000 and there's your margin to be able to
11 pay the 2 percent on this \$3,000,000.

12 Q. What, if anything, did he say -- further did he say
13 about the safety of the investment?

14 A. That it was a completely safe investment, that this
15 Money could in no way be encumbered by Ben Cook, that they
16 were -- again the International Monetary Fund came up and
17 some other regulations, which I don't recall the other
18 regulations, but this money in no way could be touched. He
19 says, Dannel's guaranteeing it, here's the contract. This is
20 a similar contract what we have with the banks and -- which
21 tells you that we cannot encumber the money. He showed some
22 contract, said this is a specimen contract that we have with
23 the banks and that money could not be in any way touched.

24 Q. Was the contract that he showed you with any specific
25 financial institution?

1 A. No, it was a specimen contract. It was not one with any
2 particular institution. It wasn't one, for example --

3 Q. It wasn't an executed contract?

4 A. No.

5 Q. Did Mr. Clagg say anything about whether this program,
6 Dannel program, had a relationship to any kind of
7 international humanitarian effort?

8 A. Yes, that --

9 Q. What did he say?

10 A. That Mr. Cook was getting these allocations, he would
11 get percentages and that this program should be going for at
12 least another five years based on the allocations that Mr.
13 Cook had in place at this time, and hopefully would go longer
14 but at least five years based on the allocations that Mr.
15 Cook had in place for these humanitarian projects.

16 Q. What, if anything, did Mr. Clagg tell you about the
17 compensation he was receiving for selling the Dannel
18 investment?

19 A. I was told that people under him were making
20 approximately \$50,000 per month and that's where he wanted
21 everyone at that meeting to be, if they were going to be
22 involved in this, and that he was making over a hundred
23 thousand dollars per month.

24 Q. Did you ever, in fact, formally refer anybody and get
25 any compensation?

1 A. No, I did not. They had talked to me about that and I
2 said, before I even talked to anyone; one, I'm going to put
3 my own money at risk; two, I wanted to talk to 15 investors
4 who had received their principal back and I wanted another
5 meeting with Mr. Cook. And I was hoping actually to go out
6 there -- I was trying to coordinate around some depositions
7 that I had scheduled in Arizona, and so I was hopefully meet
8 with Mr. Cook again around April 9th. I was told him I could
9 not meet with him on the 15th because he was so busy getting
10 money out, but I was not comfortable with talking to anyone
11 else until I had done further checking with Mr. Cook and
12 talked to him again and talked to 15 investors.

13 Q. Let me ask you to look briefly back at Exhibit 27, the
14 first three pages, which are entitled -- first page is, steps
15 for direct private placement, the next one is steps for
16 nonqualified investments steps and the next one is steps for
17 IRA investments. Do you see those?

18 A. Yes, I do.

19 Q. Are these documents that were provided to you?

20 A. Yes, they were.

21 Q. Who provided them to you?

22 A. These were provided probably through -- I believe these
23 were provided to me by Craig Boone.

24 Q. Okay.

25 MR. McCOLL: I'm sorry. Could you repeat the name?

1 THE WITNESS: Craig Boone.

2 MR. McCOLL: Thank you.

3 BY MR. NORRIS:

4 Q. What were you told about these documents, if anything?

5 A. I don't recall a whole lot being told about these.

6 These were not explained to me individually. I think they
7 were -- they were not explained to me.

8 Q. When did you receive these?

9 A. Would have been sometime around December, right around
10 the time that I made the second investment.

11 MR. NORRIS: Your Honor, I ask that Exhibit 27
12 be admitted.

13 THE COURT: Admitted.

14 We will take a luncheon break and resume at 1:00
15 o'clock.

16 (Lunch break)

17 THE COURT: Who are we missing?

18 MR. CONNELLY: Your Honor, Mr. Owen appears not to
19 be here. Your Honor, Mr. Owen is co-counsel on this matter,
20 Your Honor. I'd ask the court to proceed in his absence
21 since I'm here.

22 THE COURT: We will go ahead then.

23 MR. NORRIS: You say we could proceed, Your Honor?

24 THE COURT: Yes.

25 BY MR. NORRIS:

- 1 Q. Mr. Fitzgerald, did you ever have any discussions with
2 Mr. Clagg about what exactly his position was with Dannel?
- 3 A. At the meeting that I was at in January he was a
4 regional manager, I think is what it was.
- 5 Q. Did you understand or did he just tell you how many
6 other regional manager there were?
- 7 A. It's my understanding there were like four.
- 8 Q. Did he tell who they were?
- 9 A. Let's see. Mr. Pate, himself, at one point I think it
10 was a man by the name of Kelly Olson. The other name escapes
11 me right now. If you told me I would recognize them.
- 12 Q. Were any of the other defendants regional managers.
- 13 A. I believe that the other defendants were regional
14 managers, of course, except for Mr. Cook who was the main
15 guy.
- 16 Q. Mr. McLaws?
- 17 A. Mr. McLaws, yes.
- 18 Q. After you made your investments in Dannel, did you
19 receive monthly returns from Dannel?
- 20 A. Yes, I did.
- 21 Q. What rates of return did you actually receive?
- 22 A. I received 2 percent from Dannel and I received an
23 additional 3 percent from FPC -- I guess FPC-1, I think was
24 the name of it, yes.
- 25 Q. Was that on the non-IRA investments?

1 A. That was on everything that I had invested. I
2 received -- 2 percent would only go -- would go back to
3 Sterling and then -- but I would receive outside of the IRA 3
4 percent FPC. I was aware of the fact that there were some
5 additional compensation being paid to the people above and I
6 said, if I'm going to put in that kind of money I want --
7 this is what I want as far as return.

8 Q. Who did you have that conversation with?

9 A. Mr. Boone. And it was my understanding that he got the
10 approval from Ben Cook.

11 Q. Based on the information that you received from Dannel
12 and from other defendants, what was your understanding of the
13 source of the funds that were receiving as returns?

14 A. My understanding of the source of the funds was through
15 the purchase of the -- the \$25,000,000 CD's and the return on
16 that money, on the 25,000,000. I was also aware of the fact
17 that there was trading that was going on and additional
18 revenues were being generated from that. And it was my
19 belief that that was the excess money that was being paid to
20 people who were bringing investors in.

21 Q. Did you receive monthly statements on your investments
22 from Dannel?

23 A. I received at one point a breakdown of a projection of
24 everything that I should receive, and then, yes, I guess you
25 call it a statement. It was a breakdown of what I should

1 receive and then I also received, you know, the check. I
2 don't know if you call it a statement.

3 Q. Let me ask you to return to -- when's the last time you
4 received anything concerning returns?

5 A. It would have been the month of February.

6 Q. Let me ask you to turn to Exhibit 38. Do you recognize
7 this document?

8 A. Yes.

9 Q. Did you receive Exhibit 38 on or about February 15,
10 1999?

11 A. Yes, I did.

12 Q. What did you understand this document to be?

13 A. That it was a statement telling me what I was receiving
14 as a result of my investment.

15 Q. Okay.

16 MR. NORRIS: Your Honor, I ask that Exhibit 38 be
17 admitted.

18 THE COURT: Admitted.

19 BY MR. NORRIS:

20 Q. Now, let me ask you to turn to Exhibit 39. Do you
21 recognize these documents?

22 A. Yes, I do.

23 Q. What are they?

24 A. Statements for the return on my investment.

25 Q. Is this for a different contract than Exhibit 38?

1 A. I can't tell because I have -- BK has two \$100,000
2 investments.

3 Q. Please look at the first line of each of the cover
4 letters. I'm sorry, the second line.

5 A. Appears to have different numbers. Yes, they do have
6 different numbers, so one would be for the \$100,000
7 investment and the other for the other \$100,000 investment.

8 Q. Did you receive the -- what is Exhibit 39 on or around
9 February 15, 1999?

10 A. Yes, I did.

11 MR. NORRIS: Your Honor, I ask that Exhibit 39 be
12 admitted.

13 THE COURT: Admitted.

14 BY MR. NORRIS:

15 Q. Did you receive similar statements each month throughout
16 the life of these investments?

17 A. Yes, I did.

18 Q. Let ask you to turn to Exhibit 40.

19 A. Okay.

20 Q. What is this document? Do you recognize this document?

21 A. Yes, it's a letter from Craig Boone letting me know that
22 the return on my investment had been placed back into
23 Sterling Trust, the 2 percent on my investment of my IRA.

24 Q. What is the second page of Exhibit 40?

25 A. It is a monthly statement and it -- this monthly

1 statement goes through and projects what I'll be making
2 through 1-15-2000.

3 Q. Did you receive both of these documents from Dennel?

4 A. These, I believe, were generated by Craig Boone.

5 Q. Did Mr. Boone tell you what his position was with
6 Dennel?

7 A. Mr. Boone, yes, he had helped facilitate the IRA
8 accounts. They asked him to help with the tracking and the
9 disbursement and that he was an investor also and then some
10 people that he knew had invested money.

11 MR. NORRIS: Your Honor, I ask that Exhibit 40 be
12 admitted.

13 THE COURT: Admitted.

14 BY MR. NORRIS:

15 Q. Did you have discussions with any of the defendants
16 about Exhibit 40?

17 A. No, I did not.

18 Q. Did you discuss your investment in Dennel with any of
19 the defendants after the Commission filed its complaint?

20 A. Yes, I did.

21 Q. Who did you speak to?

22 A. Alan Clagg.

23 Q. Could you describe that conversation?

24 A. We had a few conversations. One in particular that I
25 recall was he and Craig had come to my office -- he and Craig

1 Boone had come to my office. I told them that I could not
2 represent them. They were going to be in contact with
3 potential attorneys and they wanted an educated ear to hear
4 what the attorneys had to say. I did have those telephone
5 conversations with Mr. Alan Owen and Mr. Connelly. I
6 informed both of those gentlemen before we -- at the
7 beginning of the discussions that I was an attorney but I was
8 not representing these two gentlemen. I think that their
9 big -- both of their concerns were they wanted answers from
10 Mr. Cook as to what was going on. They were receiving
11 assurances from Mr. Cook that everything was going to be
12 fine, that Mr. Cook was going to cancel the contracts and
13 return to the investors all of their money, including
14 interest, up into March.

15 Q. Who told you that?

16 A. It was told to me both by Mr. Boone and Mr. Clagg.

17 Q. Did you have any discussions with Mr. Clagg about
18 whether -- well, did you have any further discussions with
19 Mr. Clagg about whether investors would be paid?

20 A. That was the last discussion I had with Mr. Clagg, was
21 in my office.

22 Q. Did you have any discussions with Mr. Clagg about
23 whether the allegations in the SEC complaint were
24 well-founded or not?

25 A. I did and --

1 MR. GOODENOW: Your Honor, may I please object and
2 move to strike the last two answers as outside of your
3 earlier ruling which was to simply elicit testimony about
4 this witness' own investment and not investments that would
5 have been made by Mr. Clagg.

6 THE COURT: That is what I indicated. If you will
7 respond to that?

8 MR. NORRIS: I didn't understand that that was
9 your ruling. I didn't mean to circumvent what you had said.

10 THE COURT: The matter that you're talking about,
11 the attorneys advised me of that and wanted to put it on the
12 record, which you've done, but you're a witness only for the
13 things that happened to you and your family.

14 MR. NORRIS: That's fine.

15 MR. GOODENOW: Would the Court grant my oral motion
16 to strike the last two answers?

17 THE COURT: Well, it's really not necessary since
18 I'm the judge and I'm the fact-finder and I won't pay any
19 attention to those answers.

20 MR. GOODENOW: Thank you, Your Honor.

21 THE COURT: Okay.

22 BY MR. NORRIS:

23 Q. The pending question is: Did Mr. Clagg tell you
24 anything about whether he believed the SEC -- the allegations
25 in the SEC complaint were well-founded?

1 THE COURT: That was what the objection was to and
2 I sustained that objection.

3 MR. NORRIS: Okay.

4 BY MR. NORRIS:

5 Q. Were you told anything else about what would be done for
6 investors?

7 A. Yes, I have been told that Mr. Owen --

8 MR. GOODENOW: I object, Your Honor, as to who he's
9 referring to or who told him.

10 THE COURT: Who told you?

11 THE WITNESS: Mr. Boone has told me that Ben Cook
12 intends to send a letter and I've also been told this by one
13 of the other investors that he's been told that Mr. Cook is
14 going to be sending a letter to all of the investors telling
15 them that the money would all be returned to the investors,
16 with interest, through the middle of March, and that that
17 letter is supposed to be going out any day.

18 MR. NORRIS: No further questions. I pass the
19 witness.

20 THE COURT: Cross-examination?

21 MR. McCOLL: Your Honor.

22 CROSS-EXAMINATION

23 BY MR. McCOLL:

24 Q. Good afternoon. Your name again, sir, was what?

25 A. Ken Fitzgerald.

1 Q. Mr. Fitzgerald, you're a licensed lawyer, is that
2 correct?

3 A. Yes, I am.

4 Q. In the State of California?

5 A. Yes, I am.

6 Q. When were you licensed, approximately?

7 A. 1989.

8 Q. Okay, sir. And what was your undergraduate degree in,
9 please?

10 A. Psychology.

11 Q. Okay. Have any business courses?

12 A. No.

13 Q. In the depositions that you talked about doing on direct
14 examination in the course of your practice --

15 A. Yes.

16 Q. -- that's for litigation?

17 A. Yes, it is.

18 Q. Any particular area of litigation?

19 A. I do a lot of business litigation, contract disputes. I
20 do some personal injury.

21 Q. Then you can read a financial statement.

22 A. I typically have a -- if there's a financial statement
23 typically, or something complex, I'll typically have an
24 accountant practice as an expert for me.

25 Q. Have you ever prepared a financial statement?

- 1 A. No, I have not.
- 2 Q. For yourself?
- 3 A. No. Are you talking about listing my assets?
- 4 Q. Yes. A financial statement for an institution that says
- 5 we would like to have your current financial statement.
- 6 A. Yes.
- 7 Q. You have done that?
- 8 A. Yes, I have.
- 9 Q. So you know what goes into it.
- 10 A. Yes, I do.
- 11 Q. And you can read one if it was presented to you in the
- 12 course of litigation, not to testify but just examine and
- 13 understand?
- 14 A. Sure.
- 15 Q. Have you received any evidence that the \$25,000,000 CD
- 16 doesn't exist? Have you been shown anything?
- 17 A. I think it's --
- 18 Q. Just focus on shown. Have you been shown anything?
- 19 A. I have not been shown a document that it does exist --
- 20 Q. Or does not exist?
- 21 A. Or does not exist. Either one.
- 22 Q. Some indication that -- that, you know, from a bank
- 23 saying this doesn't exist over here at our bank?
- 24 A. No.
- 25 Q. Or a letter or anything?

1 A. No.

2 Q. So you got all your payments timely?

3 A. Yes, I did.

4 Q. Until the SEC took its action in March.

5 A. Yes.

6 Q. Then you got in touch with the SEC?

7 A. Yes, I did.

8 Q. And you, as a lawyer, took an interest in their

9 pleadings. You probably looked at some of the stuff, they

10 filed the application for restraining order, freeze order, et

11 cetera.

12 A. To a certain extent.

13 Q. Okay. You're aware, for example, that they state that

14 Cook retains all control over the management of Dannel and

15 the investment program?

16 A. Say that again.

17 Q. You're aware, aren't you, that the government has

18 asserted that Cook retains all control over the management of

19 Dannel and the investment program.

20 A. I don't know what the government's asserting.

21 Q. You didn't -- you're not aware of that?

22 A. My understanding is that the government is asserting

23 that there was fraud.

24 Q. Excuse me. That particular sentence I just read to you,

25 you're not aware of that statement?

1 A. No.

2 Q. Okay. So back to my line of questioning before, which
3 was you got your investments timely, March comes, SEC takes
4 action, you understand the freeze order, you then start
5 dialogue with --

6 A. Yes.

7 Q. -- the SEC lawyer?

8 A. Can I correct one --

9 Q. Sure.

10 A. -- answer that I gave. It's not a correction. It's an
11 addition to. When you talked about the documents, it was my
12 understanding from Mr. Boone that Mr. Cook had showed him
13 some documents that he represented to be notes from a bank
14 with seals on them and everything else.

15 Q. And Mr. Boone told you this.

16 A. Yes.

17 Q. Okay. Did the Cook ever show you those himself?

18 A. No, he did not.

19 Q. Okay. Have any reason to disbelieve Boone on that?

20 A. I have reason to disbelieve that these documents -- I
21 have reason to believe these documents were fraudulent and
22 were all part of this scam to get people comfortable with
23 this investment in order to entice people to invest, yes.

24 Q. Obviously somebody is lying, right?

25 A. Darn right they are.

- 1 Q. Yes.
- 2 A. They're lying, yes.
- 3 Q. Okay. So my question to you, sir, was: Do you have any
4 reason to disbelieve Boone's good faith?
- 5 A. No, Mr. Boone -- it is my wholehearted belief that Mr.
6 Boone knew nothing -- knew nothing about the fact that Mr.
7 Cook was perpetrating a fraud on investors.
- 8 Q. Okay.
- 9 A. I would stake my life on it.
- 10 Q. All right, sir. And Mr. Boone's role exactly was what?
- 11 A. Mr. Boone, the person I have known since I was playing
12 Little League, he was a person who looked into this
13 investment, checked it out and he told me about it, and I
14 invested some money and I know he told a few other people
15 about it and he invested some money.
- 16 Q. So he was a fellow investor?
- 17 A. Yes, he was and also a person who received some income
18 from people who had invested money. I knew he was receiving
19 some income from the money I invested and I didn't have a
20 problem with that.
- 21 Q. So, he kind of more or less, quote, sold you on the
22 program, maybe not formally.
- 23 A. He didn't sell me on it.
- 24 Q. Okay.
- 25 A. He told me about.

1 Q. Told you about it.

2 A. Yes.

3 Q. What's his background?

4 A. He's a CPA.

5 Q. And did he tell you what kind of due diligence he had
6 done before he satisfied himself it was a pretty good deal?

7 A. He told me that he had met with Mr. Cook, Mr. Cook had
8 shown him original documents indicating original bank notes
9 and documents; that he had -- he had probably met with Mr.
10 Cook 10, 12 times prior to me making an investment. He's the
11 one that set up the meeting for me to meet with Mr. Cook. He
12 had talked to several people about the investment.

13 Q. Several people, in other words, references, checking it
14 out?

15 A. Yes.

16 Q. So he did the due diligence on it basically?

17 A. Yes.

18 Q. Satisfy himself and satisfied you?

19 A. Yes.

20 Q. Okay. Is he licensed to sell any kind of securities or
21 anything, to your knowledge?

22 A. I don't know what his licenses are.

23 Q. Okay. Would you see anything different from what he did
24 in terms of the information that he presented to you about
25 the validity and safety of this program as different from,

1 for example, one of the presenters, Mr. McLaws or Mr. -- say
2 Mr. McLaws?

3 A. I am 100 percent comfortable that Mr. Boone knew nothing
4 about this fraudulent scheme.

5 Q. Let's talk --

6 A. I do not know what Mr. McLaws knew.

7 Q. I know you don't. Listen to my question, please.

8 A. Okay.

9 Q. My question is: Do you see anything different in terms
10 of objective behavior, not intent, but objective behavior
11 between what Mr. Boone did doing due diligence, coming to you
12 and saying, this is what I found, this why I think it's a
13 good program, and, on the other hand, for example, Mr.
14 McLaws, who made a presentation saying this is how the
15 program works, this is why I think it's a safe program;
16 anything material differences? I'm sure there are
17 differences, any material differences between their two
18 objective behaviors regardless of their intent that you can
19 tell the court?

20 A. On the outside from the appearance I felt like I was
21 being sold something when I went to the meeting in Arizona.
22 In fact, I made the comment, I feel like I'm in an Amway
23 deal. So, yes, I feel like I was pushed a little bit more.

24 Q. Okay.

25 A. Mr. Boone never pushed me.

1 Q. All right. Fair enough.

2 A. I thought I was being sold something when I went there.

3 In fact, I had a little bit of discomfort about that. I feel

4 like I'm in an Amway convention.

5 Q. They were selling you something?

6 A. Yes, they were.

7 Q. You know, it wasn't a secret they were selling

8 something.

9 A. Absolutely.

10 Q. But that's why it helped to get assurance from somebody

11 who wasn't on the salary or in the structure like Mr. Boone?

12 A. I felt comfortable with Mr. Boone, yes. I still do to

13 this day.

14 Q. Okay. Now, you've described how -- what the economic

15 theory is that you buy, for example, a \$25,000,000 CD with

16 bulk funds and you buy it at a deep discount, 22,

17 \$23,000,000, so you've got a spread there. And then there's

18 additional letters of credit that are issued based on the CD

19 that's in the bank for traders who can trade -- maybe do two

20 or three trades within 24 hours so you've got additional

21 revenue. What's wrong with that theory?

22 A. If as -- if this occurred in the way he said it

23 occurred, fine. The problem is that if all this was

24 happening the way he said it's happening, if he's got -- each

25 month he's buying one to three, \$25,000,000 CD's, I don't

1 know why all these gentlemen are here right now because he
2 could cash one of those out and pay us all off.

3 MR. NORRIS: I'm going to object to this line of
4 questioning. He's asking him to basically act as an expert
5 in analyzing the economics of the program.

6 THE COURT: That's sustained. He can tell us what
7 he did. Objection sustained. Another question.

8 BY MR. McCOLL:

9 Q. You were asked on direct examination what was the source
10 of the funds and you proceeded to explain the purchase of the
11 \$25,000,000 CD at a discount. You recall that?

12 A. Yes, I do.

13 Q. And then the letters of credit that were used by traders
14 to do a multiple of trade?

15 A. I didn't say anything about the letters of credit. You
16 did.

17 Q. Excuse me. That the CD was used by the traders in some
18 way to be able to make them have the ability to generate
19 trades and there was increased revenue from that?

20 A. Correct.

21 Q. Now, my question is, based on what you testified to on
22 direct examination, is there anything invalid about that
23 theory, assuming everything is being done, it's not made up,
24 that that's really happening.

25 MR. NORRIS: Same objection you, Your Honor.

1 THE COURT: He obviously believed that if it
2 happened it was a good deal for him to investment in.

3 MR. McCOLL: Okay.

4 THE COURT: That's a legitimate question.

5 BY MR. McCOLL:

6 Q. And so in summary then --

7 THE COURT: And I've already asked him for you and
8 he's already said he invested. Go on to something else.

9 MR. McCOLL: So to put it a different way, if I
10 may, Your Honor.

11 BY MR. McCOLL:

12 Q. That's a valid theory if they were really doing it.

13 MR. NORRIS: Objection.

14 A. I'm not an expert.

15 THE COURT: Ask another question. That's already
16 in the record.

17 BY MR. McCOLL:

18 Q. All right. Now, the documents that have been referred
19 to by government counsel, for example in your notebook there,
20 those were ones that came to you and in your capacity as kind
21 of a watch -- sort of a watchguard or watchdog for these
22 funds that you were going to invest, you looked at them and
23 you read them?

24 A. Yes, I did.

25 Q. Okay. And there wasn't anything that jumped out at you,

1 this is a crazy deal or something like that. It seemed
2 reasonably prudent at the time, is that correct?

3 A. I wouldn't put \$500,000 into something that did not seem
4 to be safe.

5 Q. Okay. So there was nothing in the materials there that
6 you would consider as evidence of recklessness?

7 A. If I thought it was reckless I would not have invested
8 \$500,000.

9 Q. Right. And I understand that. But I'm trying to direct
10 the question to the materials. You didn't read anything in
11 the material --

12 THE COURT: He didn't. He's answered your
13 question. He didn't use your exact words, but he answered
14 your question. Do you have another question?

15 MR. McCOLL: Thank you, Your Honor.

16 BY MR. McCOLL:

17 Q. When you were talking in March with the SEC lawyers
18 after the freeze occurred and they were giving you
19 information about the funds and all that, did they tell you
20 that Mr. McLaws had put \$110,000 of his own retirement money
21 in the deal?

22 A. First time I heard about any money that Mr. McLaws put
23 in was in the hallway with you.

24 Q. So they didn't tell you?

25 A. No. No. Nor do I find it to be anything that would

1 have had any impact on my opinions. My understanding was he
2 was making \$400,000 a month revenues or approximately that
3 much, so him putting a hundred thousand in it doesn't mean a
4 whole lot to me. I put 500,000 in it and I don't make
5 anywhere near 400,000 a month.

6 Q. Would it make a difference to you if they had told you
7 that he directed or encouraged his relatives to put as much
8 as 1.5 million dollars into it?

9 A. No.

10 MR. NORRIS: Assumes facts not in evidence.

11 THE COURT: The objection is sustained.

12 MR. McCOLL: I'm not sure I got this answer, judge,
13 so tell me if you think I did.

14 THE COURT: Okay.

15 BY MR. McCOLL:

16 Q. When you were talking to the SEC lawyers in March, did
17 they give you any facts that informed your judgment to the
18 effect that it was a bad deal, whereas if you had that fact
19 at the beginning you wouldn't have invested in the deal?

20 A. It's my understanding that the money that -- why I
21 believe this was a fraudulent deal at this time is because;
22 one, if this man had --

23 MR. McCOLL: I'm sorry. Object to unresponsive.

24 A. I'm trying to tell you that I don't know where the
25 information came from.

1 THE COURT: You just need to tell us where you got
2 that information.

3 A. I did talk to the SEC and I talked to the AG's office.
4 And it is my understanding, based upon those conversations,
5 that there has been no evidence provided that Mr. Cook has
6 this at minimum 12, \$25,000,000 CD's and probably more. And
7 that in response to requests that this information be
8 provided, he has taken the fifth Amendment. And in my
9 opinion, if this was not a fraudulent deal and I was on the
10 hook for this, I would show evidence that I purchased these
11 CD's and this whole case would be gone.

12 BY MR. McCOLL:

13 Q. I'm with you. Now, assume, if you will, please, that
14 Mr. Cook is lying and fraudulent as to his knowledge and he
15 designed a fraudulent deal --

16 A. That's an easy assumption to make.

17 Q. -- and that he didn't tell people he hired several years
18 later after he had started the scheme what the truth was, and
19 convinced them that it was a good deal because --

20 THE COURT: Mr. McColl, he doesn't know what.

21 MR. McCOLL: Just a predicate phrase, Your Honor.

22 THE COURT: He doesn't know what Cook told anybody
23 else. He can testify from his knowledge but not -- you don't
24 need to make a closing argument --

25 MR. McCOLL: I'm sorry.

1 THE COURT: -- with this witness.

2 MR. McCOLL: It was just prefatory. I'll get to
3 the point, Your Honor.

4 BY MR. McCOLL:

5 Q. Did you see any evidence that you can tell Judge
6 Buchmeyer that would make a reasonable personal feel
7 confident that Mr. McLaws was insincere about the
8 presentation that he was making, that he disbelieved what he
9 was saying? Did you see any evidence?

10 THE COURT: He's already answered that once but he
11 can go ahead and answer it again. That was one of your
12 original questions.

13 MR. McCOLL: Then I withdraw it. I've got my
14 answer.

15 Thank you, Your Honor.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MR. GOODENOW:

19 Q. Good afternoon, Mr. Fitzgerald. My name is Gary
20 Goodenow for Mr. Clagg. Thank you for coming.

21 A. You're welcome.

22 Q. I wonder if you could tell me how much of your
23 investment you got back in monthly payments in total?

24 A. Right off the top of my head, no. I got paid -- I got
25 paid -- on a hundred thousand dollars I got paid in a partial

1 payment in December, and the \$430,000 that my partner and my
2 mother put in, that would have been paid in January and
3 payment in February, so whatever the math is.

4 Q. Do you intend to give that money to the receiver?

5 A. No, I intend to keep that money.

6 Q. Can you tell the court what the level of sophistication
7 as an investor your mother is?

8 A. My mother raised three boys on her own after my dad
9 died. She took care of us on 50 percent of what a man
10 normally makes in the same position, made sure we always had
11 food on the table and clothes on the back, and she worked
12 very hard for her money. And that's why I want Mr. Cook,
13 because my understanding is he's flying around in a jet, my
14 mom while working maybe would fly coach. He's giving out
15 Rolexes while my mother wears a Timex. She worked very hard
16 for the money, so she's kind of come through it hard and
17 honest. This man has taken her money through false
18 representations. She's sophisticated in life, but not in
19 investing necessarily.

20 Q. And what did she say when you said you had an investment
21 that would pay 24, 60, whatever percent it was a year?

22 A. She thought -- she was unsure about the stock market, as
23 we were. And based on the representations that were made by
24 Mr. Cook, Mr. McLaws, and my follow-up finding these payments
25 were made, and my feeling that it was safe, and her having

1 knowledge of everything that I had heard, she felt like it
2 was safe, too.

3 Q. So is your testimony today colored by or antimated by a
4 hate for Mr. Cook?

5 A. I don't like any man who takes from elderly people their
6 last dime so they can fly around in jets and buy their
7 buddies Mercedes and BMW's and live in big homes. I don't
8 like anybody who does that to -- and I've heard some of the
9 stories, some of the horror stories of the people that these
10 people have taken money from, their last dime, so I don't
11 like any of them. I do not like them. And I feel like if
12 what they did, if they had done what they said they had done,
13 that we would all have our money back right now because these
14 guys must have at least \$300,000,000 based on the
15 representations they made to us. They can surely pay back
16 30,000,000 like that.

17 Q. With your testimony colored by this anger, how much is
18 your testimony also colored by shame?

19 A. My testimony is not covered by shame at all. I mean I
20 will make the money back. And I am angry. I don't know any
21 human being who could hear the stories about what this man
22 has done to elderly people. I'm a young man. I can make
23 that money back. But I don't know anybody -- maybe some of
24 you, who wouldn't be angry about this, but I am very angry
25 that a man would take elderly people's retirements. I'm

1 angry that a man would take my mother's hard-earned money so
2 he can live a lifestyle that none of us will ever live.

3 Q. And when your mother was making the decision to invest,
4 you think she was relying more upon Mr. Cook or more upon
5 you?

6 A. She was relying upon the stories that were -- what I had
7 told her about what Mr. Cook had told me, the fact that I sat
8 across the table and looked the man in the eye, and he had
9 promised me that that money was safe, 100 percent safe.

10 Q. And you believed that?

11 A. Obviously I believed that or wouldn't --

12 Q. And you feel now that you have been fundamentally
13 deceived?

14 A. Yes, I have been.

15 Q. Is it possible that Mr. Clagg was also fundamentally
16 deceived?

17 A. You know, I don't know what Mr. Clagg knows or does not
18 know.

19 MR. NORRIS: Objection, calls for speculation.

20 THE COURT: The objection is sustained.

21 MR. GOODENOW: The question is withdrawn.

22 BY MR. GOODENOW:

23 Q. Your law partner Mr. Aguilar, I guess it is.

24 A. Aguilar.

25 Q. Aguilar. What is his level of sophistication as an

1 investor?

2 A. Same as me. We have a few restaurants together. We
3 have some buildings. It's basically stuff that we can
4 control. This is the first thing I really invested in that I
5 didn't control.

6 Q. And is he also friends with the CPA, Mr. Boone?

7 A. Yes, he is.

8 Q. And did he speak with Mr. Boone to satisfy himself it
9 was a good investment?

10 A. Yes, he did.

11 Q. So, from your testimony now we have two lawyers and one
12 CPA who were all convinced this was a legitimate investment?

13 A. Yes, we were.

14 Q. Now, do you have any personal knowledge of the
15 investigation or lack thereof that was done by Mr. Clagg in
16 order to satisfy himself that this was a legitimate
17 investment?

18 A. I don't know what Mr. Clagg did. It's my believe that
19 Mr. Clagg profited from this. I know he profited from it.
20 But I don't know what he actually knew. I have beliefs but
21 those are just speculation.

22 Q. I understand. Do you know whether Mr. Clagg, at all,
23 has obstructed justice? The allegation has been made in the
24 pleadings and papers that he's obstructed justice. Do you
25 have any facts about that?

1 MR. NORRIS: Objection. He cannot answer that
2 question.

3 THE COURT: The objection is sustained.

4 BY MR. GOODENOW:

5 Q. Were there any other people that you consulted in
6 respect to this investment beside the CPA, Boone, and your
7 law partner?

8 A. And the other people that I've mentioned.

9 Q. Who were those again?

10 A. Well, I talked to -- I was there with Mr. McLaws, I
11 talked to Mr. Owen.

12 Q. Anyone else that we haven't heard already?

13 A. No.

14 Q. Thank you.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY MR. CONNELLY:

18 Q. Good afternoon, Mr. Fitzgerald.

19 A. Good afternoon.

20 Q. A couple of comments that I just want to ask you about
21 in response to questions that Mr. Norris put to you, and if
22 you can expand or explain your answer. At one point you gave
23 a response to a question that it was your belief that Cook
24 and his associates were putting up the money to fund the
25 CD's. Do you remember that response?

1 A. Yes, I do.

2 Q. Who are the associates you're referring to?

3 A. Apparently it was man named Burr out of North Carolina.

4 Q. Is that Byrd?

5 A. I thought it was Burr. I remembered it because of

6 Raymond Burr.

7 Q. Burr?

8 A. Yes. I can't remember the gentleman's first name. And

9 then he had mentioned that he has people over in Europe that

10 are involved. He did not give names.

11 Q. So what was it your understanding that Mr. Cook, Mr.

12 Burr and this European contacts, that they were actually

13 putting up money to buy the CD's?

14 A. Absolutely. That's what he represented that it was his

15 and his associates' money that was buying these \$25,000,000

16 CD's. It was not the investor money.

17 Q. What was your money doing, or the investors' money

18 generally, to your understanding?

19 A. Today?

20 Q. Back at the time of the investment.

21 A. Okay. At the time of the investment I felt like -- I

22 was told this money was put into a separate account, it was

23 \$3,000,000, and that, of course, it was whatever interest it

24 was getting they would get, but then there was also interest

25 on the \$25,000,000 CD, and that this money would not in any

1 way be encumbered, that it was used for them to -- if they
2 had it in the account they would have been able to -- without
3 encumbering it, use it as leverage or whatever else for the
4 trading that they were doing.

5 Q. Can you give us any reason why they would need to have
6 that money if they were putting up their money for the CD's?

7 A. They needed that money so they could pay off the next
8 group of -- they needed my money so they could live the
9 lifestyle they were living and --

10 Q. I'm asking about the investment. You've explained that
11 Mr. Cook and his associates were putting up money to buy the
12 CD's and that your money was staying safe in a bank account,
13 is that correct? Let me get to the chase of this.

14 A. Sure.

15 Q. Does all that make sense to you?

16 A. I will tell you that obviously it made sense to me or I
17 wouldn't have invested the money. Also Mr. Cook made the
18 representation that he has done very well in life and he made
19 representations about doing a lot of charitable things, for
20 example, building a hospital on an island in the Caribbean,
21 and that he was, you know, a Christian, you know, didn't
22 drink and that he wanted to see other people do well like he
23 had done. And, unfortunately, I took it hook, line and
24 sinker. I thought the man -- he didn't drink. I should
25 maybe not have trusted him, but he doesn't drink, go to

- 1 church, charitable things. And now he wants to --
- 2 Q. So he's one for three at least there?
- 3 A. Yes, you know, what a guy.
- 4 Q. Would it be fair to say he presented himself as an
5 astute businessperson, is that correct?
- 6 A. Yes, he did.
- 7 Q. Would you also consider yourself an astute
8 businessperson?
- 9 A. No, I wouldn't have invested this money.
- 10 Q. Well, this investment aside --
- 11 A. I do okay.
- 12 Q. You own restaurants?
- 13 A. Yes, I do.
- 14 Q. You have partners in those?
- 15 A. Yes, I do.
- 16 Q. Do you have a controlling interest or are you a
17 principal in those restaurants?
- 18 A. There's six of us who put money up and we backed a buddy
19 of mine and he runs them and we put the money up and now we
20 have a few of them.
- 21 Q. What's the name of those restaurants?
- 22 A. Bobby Salizar's Mexican Taqueria. It's a Mexican
23 restaurant.
- 24 Q. And you also own real estate, is that correct,
25 properties?

1 A. Yes.

2 Q. Are these rentals?

3 A. We are renting one. The other one is the law office
4 that we built.

5 Q. Who structured those financial transactions?

6 A. We just got a loan and built the building. It's not --

7 Q. Do you have any partners in the property investments?

8 A. My law partners.

9 Q. Did you structure documents between yourselves on
10 ownership interests and is there a trust that holds this or
11 is it a partnership or how is it --

12 A. It's a partnership.

13 Q. Who structured that document?

14 A. One of my partners does all the transactional work in
15 the office. He prepared all the documents.

16 Q. You reviewed them?

17 A. I really don't have to. He's an honest man, completely
18 honest and I trust him completely.

19 Q. If you believe somebody's honest you don't feel you've
20 got to do any due diligence in a transaction with them. Is
21 that what you're telling us?

22 A. I didn't tell you that.

23 Q. Okay.

24 A. I told you I trusted this man. I didn't tell you that I
25 don't have to do due diligence before I invest money. I did

- 1 due diligence.
- 2 Q. You've told us that you trusted Mr. Boone and -- and I
3 believe your words were you would stake your life on the fact
4 that Mr. Boone knew nothing about this investment scheme, is
5 that correct?
- 6 A. He knew nothing about it being fraudulent.
- 7 Q. Are you aware that Mr. Boone -- strike that.
8 Are you aware that Mr. Boone received a fee for bringing
9 you into this investment?
- 10 A. Absolutely. He told me.
- 11 Q. He told you that. Did he tell you how much he received?
- 12 A. Absolutely.
- 13 Q. How much?
- 14 A. He would receive -- there was approximately 8 points.
15 My money he probably made one to two points.
- 16 Q. What did he do with the rest of the points?
- 17 A. Well, that Mr. Clagg apparently, who was above him, also
18 made money off of it.
- 19 Q. Do you know that?
- 20 A. It's my understanding, based on the conversations with
21 Mr. Boone and the way in which this thing was structured,
22 yes.
- 23 Q. How many points did Mr. Clagg make, to your
24 understanding?
- 25 A. If I had five there was three left.

- 1 Q. You were getting five points?
- 2 A. Right.
- 3 Q. What's your opinion of Mr. Clagg today with respect to
4 this investment scenario?
- 5 A. My opinion is that Mr. Clagg made a lot of money, that
6 that money should not -- should be used to pay back the
7 investors, because it's a fraudulent deal he should not
8 profit from it. But I also believe that Mr. Clagg did not
9 know of the fraudulent scheme. That is my belief. It's
10 not -- my belief based on Mr. Boone is through my
11 conversation with him, a long-time friendship. Mr. Clagg is
12 just my gut feeling.
- 13 Q. And you didn't have any dealings with my client, Gerald
14 Pate, did you?
- 15 A. Where is your client?
- 16 Q. Do you even know the name?
- 17 A. I know the name.
- 18 Q. Did you ever talk to him?
- 19 A. He could have been at that meeting. I would have to see
20 his face, the meeting I went to in Arizona.
- 21 Q. Well, he's right here in the courtroom in the front row.
22 Gerald, would you stand up, please? Do you recognize Mr.
23 Pate?
- 24 A. I can't tell you if I do or not. He could have been at
25 that meeting. I don't know.

1 Q. You don't remember him speaking at that meeting.

2 A. No, I do not.

3 Q. So you can't speak -- you don't have a feeling, one way
4 or the other, whether Mr. Pate was involved in the same
5 presentation or offering as Mr. Boone or not at this time?

6 A. I have no evidence --

7 MR. NORRIS: Objection, Your Honor. Feeling or not
8 is irrelevant.

9 THE COURT: That is sustained.

10 BY MR. CONNELLY:

11 Q. You don't have an opinion because you didn't know him,
12 correct?

13 MR. NORRIS: Objection. His opinion is irrelevant.

14 THE COURT: You don't know any facts?

15 THE WITNESS: I have no facts.

16 MR. CONNELLY: Thank you, Your Honor.

17 BY MR. CONNELLY:

18 Q. One other response you gave, Mr. Fitzgerald, was that
19 you obtained additional information subsequent to making the
20 investments you made. Do you remember making that statement?

21 A. Yes, I do.

22 Q. Who gave you additional information? What individuals
23 gave you additional information?

24 A. Mr. Clagg and Mr. Boone.

25 Q. And where did that occur?

1 A. There was a meeting at the Piccadilly Inn, Airport
2 Piccadilly Inn, in Fresno. I went to this meeting.

3 Q. Pardon me for interrupting you. When did that occur so
4 the court will have a time frame on this?

5 A. Approximately January of this year.

6 Q. 1999. Okay. I'm sorry to interrupt you. Please
7 continue.

8 A. I was told that Oppenheimer was -- they were already
9 doing a deal with Oppenheimer with some money that was
10 invested through some individuals out of India and that they
11 were in the process of -- they had contracts drawn up and
12 they were in the process of doing a joint venture with
13 Oppenheimer to set up an offshore division of Oppenheimer to
14 handle this investment fund and that would give investors the
15 ability to compound their money by not having to take 2
16 percent out each month.

17 Q. Okay.

18 A. And I was also told that Mr. Cook had purchased an
19 insurance company and that he was going to be insuring the
20 investments, and that way I guess he could raise more and
21 more money.

22 Q. Did you do anything to confirm these statements that
23 were made to you at all?

24 A. Actually I asked to talk to additional 15 investors, who
25 had received their money back, and I had asked for another

1 meeting with Mr. Cook because I wanted to find out what the
2 status was of this purchase of the insurance company, and
3 also the status of this proposed deal with Oppenheimer. And
4 I was going to be in depositions in Arizona in April, first
5 part of April, and I wanted to meet with him while I was out
6 there at these depositions.

7 Q. Had you planned that meeting?

8 A. Yes.

9 Q. That meeting, of course, didn't occur because the
10 Securities and Exchange Commission stepped in, and when the
11 assets were frozen it created an adversarial position in your
12 mind between you and Mr. Cook?

13 A. What's created the adversarial position in my mind
14 between Mr. Cook and myself is the fact that he has not
15 returned the money and clearly --

16 MR. CONNELLY: I'm going to object, Your Honor.

17 THE COURT: Overruled.

18 A. You asked me what my adversarial position was. It not
19 from the SEC's conduct. It's from Mr. Cook's lack of
20 conduct.

21 BY MR. CONNELLY:

22 Q. Okay. Did you ever have a meeting set up in April --

23 A. Yes.

24 Q. -- with Mr. Cook? That meeting didn't occur, did it,
25 sir?

1 A. It has not occurred because it's April 1. It was going
2 to be April 9th.

3 Q. Mr. Clagg and Mr. Boone came to your office in late
4 February or very early March. Do you recall that?

5 A. Absolutely.

6 Q. Do you recall calling my offices to speak with me?

7 A. Yes, I do.

8 Q. And do you recall during the course of that conversation
9 that you identified yourself as counsel but that you only
10 handled civil matters. Do you recall that?

11 A. No. You are misstating what I said. I told you --

12 MR. CONNELLY: I believe that's a yes or no answer,
13 Your Honor.

14 THE COURT: Tell us what you said.

15 A. I told --

16 MR. CONNELLY: I'm not asking what he said, Your
17 Honor.

18 THE COURT: I'm asking.

19 MR. CONNELLY: Okay.

20 A. I told you and I told Mr. Owen, that I am an attorney
21 and I wanted you to be clear that I am not representing these
22 gentlemen in this matter. I have no ability to represent
23 them because I don't do this type of work, I do civil work,
24 but that I was an educated ear and would listen to what you
25 guys had to say about potential representation. During the

1 course of that conversation, there was a request for a
2 million dollar retainer, which just happened to be very close
3 to what the other defendants had in the form of liquid money
4 available. Coincidentally that happened to be also the
5 retainer that was requested by you and --

6 MR. CONNELLY: Your Honor, I'm going to object to
7 this talk about attorney-client privilege information.

8 THE COURT: Well, that wouldn't be attorney-client
9 privilege. But you've told me.

10 THE WITNESS: Okay.

11 BY MR. CONNELLY:

12 Q. You had specific discussions with myself and Mr. Owen on
13 a conference call regarding this case, sir, did you not? Yes
14 or no? Did you have those discussions? I don't want to go
15 into the discussions.

16 A. Regarding this case?

17 Q. Yes.

18 A. We had discussions regarding what potentially could
19 occur to these gentlemen based upon the allegations that were
20 being made, their potential liability.

21 Q. And by educated ear, as you framed it, you were
22 referring to the fact that you're an attorney and that's what
23 your educated ear was there for, is that correct?

24 A. That's absolutely correct, but I was there because I'm
25 Craig Boone's friend and he trusts me as a friend.

1 Q. Craig Boone has not been named in this action, has he?

2 A. No, he has not.

3 Q. Do you know why he has not, if you know?

4 A. Probably because he was not a regional -- I don't know.
5 I'm not the SEC's attorney. I'm not privy to that. Their
6 decisions are their decisions.

7 MR. CONNELLY: Your Honor, I have no further
8 questions of this witness, but when the witness is excused I
9 would like to make a motion to the court before the close of
10 the record today with respect to this witness.

11 THE COURT: Any other cross-examination?

12 CROSS-EXAMINATION

13 BY MR. MOWERY:

14 Q. Mr. Fitzgerald, my name is Mr. Rob Mowery. One of
15 things you mentioned was that you'd asked to talk to 15
16 investors who had been paid back their annual --

17 A. Yes.

18 Q. -- investments, is that correct?

19 A. Yes.

20 Q. Did you talk to any investors who were paid back their
21 annual investment?

22 A. No, that had not occurred. I asked for that probably
23 within the last 30 to 45 days. It is tax season right now
24 for Mr. Boone, plus I have a very busy calendar. I just
25 hadn't got around to it, but that was one of the things that

1 I intended to find when I met with Mr. Cook on the April 9th
2 meeting.

3 Q. Up until today, including your conversations with other
4 investors and the SEC and anybody working on their behalf,
5 have you heard of anybody, any investor who was not paid back
6 their annual investment?

7 A. No, I have not.

8 Q. And until the government took the actions that it did in
9 March, Mr. Fitzgerald, do you know any investor, including
10 yourself, who was not paid on the time and date that they
11 were promised to be paid?

12 A. The only thing I can say to that is I was always told,
13 no, I have not heard of anyone who has not got the money they
14 were told they would get. However, I have been -- It was
15 represented to me that any time I wanted I could ask for my
16 money back before the year was up and receive it all back.
17 And I'd like my money back.

18 Q. Yes, sir. I certainly understand that. Have you read
19 the -- have you read the restraining order that's in place?

20 A. No, I have not.

21 Q. Do you understand that Mr. Cook, couldn't pay you back
22 right now if he wanted to?

23 A. It is my belief that if Mr. Cook had the money that he
24 represented to have that he could contact anyone at the SEC
25 or any government agency and say, look, I've got \$300,000,000

1 sitting over here in this account. You think it's a
2 fraudulent scheme let me put up all the money for all the
3 investors that you have identified and put it into an
4 account. Then the SEC could tell me, we have the money to
5 pay you back. We just want to make sure we've identified all
6 the investors and as soon as that occurs we will get you your
7 money back. I know that something could be worked out if Mr.
8 Cook was going to do it.

9 Q. Other than what I've understood your testimony to be of
10 Mr. Cook taking the 5th Amendment and also I believe in your
11 words is not cooperating with the government, you have any
12 facts that would support that Mr. Cook is unable or Dannel is
13 unable to pay you and the other investors back?

14 A. It's my belief that if the evidence were available that
15 Mr. Cook had the ability to pay back this money, and these
16 \$25,000,000 CD's existed, that he would provide that
17 information to the government. It's my understanding that he
18 has not provided one document evidencing what he has
19 represented that he has done. And if I'm wrong and Mr. Cook
20 gives me my money back and he's got all these things and did
21 with the money what he said he did, I will apologize to him
22 to his face just like he talked to me out of my money to my
23 face.

24 Q. My question was, just so it's clear, Mr. Fitzgerald,
25 other than what I understand your conclusion, based on Mr.

1 Cook's actions or inactions, that he's taken --

2 A. Correct.

3 Q. -- since the government has taken their actions, my
4 question to you, sir, do you have any facts or know of any
5 fact to support that Mr. Cook is unable to pay these monies
6 back?

7 A. The only fact that I have is the fact that I do not have
8 my money back and there's been no attempt. I've tried to
9 contact his attorney, who has not returned my calls, Rebecca
10 Poston. I have tried to find out information about where
11 this money is that he's got, and all I get is roadblocks.
12 So, based on the fact that he has not responded, his attorney
13 has not responded and there's not been anything, anything
14 coming forward, what he knows, that not only are there
15 investors who want to know about getting their money back,
16 he's got people that he called his friends who are facing
17 criminal liability and potentially jail and he hasn't done
18 anything to come forward with the evidence that would get the
19 rest of his friends that he brought into this program off,
20 get the earlier people their money back, he's done none of
21 that. And if he were the man that he represented himself to
22 be, the Christian and the person who is this humanitarian, I
23 would think his concerns would be more in line with trying to
24 protect people and get people's money back than protecting
25 himself. So based on that, common sense tells me he doesn't

1 have that.

2 Q. Mr. Fitzgerald, do you have any reason to believe or
3 facts to support that you would have not received the money
4 that was promised to you to be paid to you in March, a couple
5 of weeks ago, but for the actions taken by the government in
6 this case?

7 A. Yes, I believe, based on all the information that I have
8 received, that this was a fraudulent deal and that the SEC
9 has tried to do all they can to protect my assets.

10 Q. Yes, sir. I'm not asking about -- what I'm asking for,
11 sir, is I want to know of any facts or any evidence that you
12 can provide here to help the judge as to your belief that you
13 would not have been paid in March of this year but for the
14 actions taken by the government?

15 A. Are you asking me to take myself back in time before the
16 SEC did this or are you --

17 Q. No, sir.

18 A. -- talking about right now?

19 Q. I'm asking you for facts you have in your possession
20 that would demonstrate that you would not have been paid,
21 according to the promises that were made to you as to how you
22 would be paid in March of this year, but for the actions
23 taken by the government?

24 A. I may have been paid in March, but I don't know how long
25 this deal would have gone through, and at some point in time

1 I wouldn't have got paid and I wouldn't have got my money
2 back if I had kept it in there with this guy because if he's
3 not doing what he said he was doing with the money, at some
4 time his house of cards are going to fall down. He may have
5 made a payment in March, but at some point this house of
6 cards would come tumbling down and somebody, maybe not me,
7 but there would have been a lot of people who lost a lot of
8 money.

9 MR. McCOLL: Objection, Your Honor. No foundation,
10 no personal knowledge and it's based on no evidence. We move
11 to strike that last answer.

12 THE COURT: That's overruled. It was Mr. Mowery's
13 question.

14 MR. MOWERY: No further questions, Your Honor.

15 MR. CONNELLY: Your Honor, may I ask the court's
16 indulgence to ask one additional question?

17 THE COURT: I'm counting.

18 MR. CONNELLY: Yes, Your Honor. Thank you, Your
19 Honor.

20 THE COURT: Okay.

21 CROSS-EXAMINATION

22 BY MR. CONNELLY:

23 Q. Mr. Fitzgerald, with respect to the conversation that
24 you and I had that was initiated by you from your office that
25 included Mr. Clagg and Mr. Boone with respect to the

1 representation, I don't want to go into the issues discussed
2 with respect to that conversation, but did that
3 representation involve the representation of Mr. Clagg, Mr.
4 Boone, Mr. Pate and Mr. Olson who were deemed to be similarly
5 situated at that time?

6 A. I don't understand your question.

7 Q. Okay. We had a conversation about representation of
8 these individual, correct?

9 A. Yes, we did.

10 MR. CONNELLY: I apologize, Your Honor, I'm moving
11 on only because -- I probably tried to make that compound as
12 well.

13 THE COURT: I expected you were going to ask five
14 when you said one. You still have three left.

15 MR. CONNELLY: Thank you, Your Honor.

16 BY MR. CONNELLY:

17 Q. We had a conversation about representation, and didn't
18 that conversation contemplate representation of four
19 defendants similarly situated as finders of investors; that
20 is, Mr. Olson, Mr. Pate, Mr. Boone and Mr. Clagg?

21 A. I don't know.

22 MR. NORRIS: Objection, Your Honor. I don't
23 understand the relevance.

24 THE COURT: If he knows. Do you know?

25 THE WITNESS: Are you talking about what was in

1 your mind?

2 THE COURT: No.

3 BY MR. CONNELLY:

4 Q. No. Wasn't the contemplated representation that we
5 discussed at that time to include those four finders?

6 A. It was because you said that you wanted a million
7 dollars.

8 Q. I'm not asking you what I said. I don't want to get
9 into the discussions.

10 MR. CONNELLY: And I object to that response.

11 THE COURT: He's just asking you if those four
12 people were in -- to your knowledge, they were in the same
13 position as finders.

14 BY MR. CONNELLY:

15 Q. That's it. And that they --

16 THE COURT: If you know.

17 BY MR. CONNELLY:

18 Q. That they were situated that we are contemplating
19 representing four of them at that time during that
20 conversation.

21 A. You were contemplating representing all of them whether
22 or not --

23 MR. CONNELLY: That's my question, Your Honor.

24 A. I haven't answered your question.

25 MR. CONNELLY: I don't want to get into the

1 discussion because it goes to my motion with respect to the
2 issue --

3 THE WITNESS: I'm not going to talk about the
4 money.

5 MR. GOODENOW: -- of attorney-client privilege.

6 THE COURT: I need for him to finish the answer.
7 You're saying --

8 THE WITNESS: His question talked about whether or
9 not they were similarly situated.

10 THE COURT: Right.

11 THE WITNESS: I don't know if they were similarly
12 situated. All I know is that you were contemplating
13 representing a number of the defendants.

14 MR. CONNELLY: Thank you, Your Honor.

15 THE COURT: You still have one more question.

16 Any questions from the government?

17 MR. NORRIS: Nothing further.

18 THE COURT: Thank you very much. You may step down
19 and you're excused, you're free to go.

20 Who is your next witness?

21 Come right up this way, please. If you will have a
22 seat right up here for us.

23 If you'll tell us your name again, please.

24 THE WITNESS: Balakrishnan Sridharan.

25 THE COURT: Okay. What exhibits are you going to

1 use for this witness?

2 MR. NORRIS: I believe 41 through.

3 THE COURT: 47.

4 MR. NORRIS: 48. 47, you're right.

5 THE COURT: 47. I will admit 41 through 47.

6 If you would pull that microphone back toward you?

7 THE WITNESS: Okay.

8 BALAKRISHNAN SRIDHARAN,

9 called as a witness by the Plaintiff, testified on his oath
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. NORRIS:

13 Q. Is it Sridharan? Is that the correct pronunciation?

14 A. Yes, Sridharan.

15 Q. Sridharan. Mr. Sridharan, where do you reside?

16 A. I live in Arizona; Phoenix, Arizona, in the suburb of
17 Phoenix, Tempe.

18 Q. What is your occupation?

19 A. I'm a doctor of medicine. I am board certified in
20 internal medicine and critical care.

21 Q. What kind of medicine do you actually practice?

22 A. I'm a solo practitioner. My main specialty is internal
23 medicine that I practice.

24 Q. Do you do critical care?

25 A. Critical care also.

- 1 Q. What does that involve?
- 2 A. It is mainly taking care of patients who are in
3 intensive care unit.
- 4 Q. Did you make one or more investments through a company
5 called Dannel Finance Limited?
- 6 A. I made only one investment.
- 7 Q. What was the total amount of the funds invested?
- 8 A. A hundred thousand dollars.
- 9 Q. How did you first learn about the company called Dannel?
- 10 A. I learned about it -- about the investment through one
11 of my friends who introduced this particular investment to me
12 in early part of January, but I didn't know that it was
13 Dannel investment until I met Wayne McLaws.
- 14 Q. Okay. Did your friend introduce you to Mr. McLaws?
- 15 A. Yes.
- 16 Q. Okay. And when did you meet Mr. McLaws?
- 17 A. January 13th was the first time I met him face-to-face.
- 18 Q. How many times --
- 19 A. Wednesday around 12:00 noon.
- 20 Q. Prior to your investment with Dannel, how many times did
21 you meet Mr. McLaws?
- 22 A. I talked to him once or twice on the phone to get an
23 appointment to see him. That's all. I never met him
24 face-to-face before that.
- 25 Q. You spoke to him on the phone, however?

1 A. Phone.

2 Q. How many conversations did you have with him on the
3 phone before you made your investment?

4 A. Twice I talked to him to get the appointment.

5 Q. Okay. You made an appointment to see him?

6 A. Actually he made an appointment to see me in my office.

7 Q. Did you subsequently see him in your office?

8 A. Yes, I did see him on January 13, 1999.

9 Q. How many times did you meet with him personally before
10 you made your investment?

11 A. Twice.

12 Q. During these meetings what, if anything, did Mr. McLaws
13 tell you about Dannel Finance Limited?

14 A. He introduced me to this investment through -- through a
15 computerized program, that he outlined how this investment
16 works. And basically he said that the money that is invested
17 will be in a CD deposit abroad, particularly the Bank of
18 England. And through that investment the Bank of England
19 will finance or -- if I can look at the notes?

20 Q. Why don't you just testify from your memory, please?

21 A. Okay. Through that investment the Bank of England will
22 borrow money and then invest and whatever the profits that
23 they get will be distributed to the investors.

24 Q. What, if anything, did Mr. McLaws tell you about who
25 controlled Dannel Finance Limited?

- 1 A. He did mention about Mr. Cook, but I didn't -- he didn't
2 give me anymore deals about that.
- 3 Q. What did he say about Mr. Cook's role in Dannel?
- 4 A. He is the owner of Dannel Financial.
- 5 Q. What did Mr. McLaws tell you that the rate of return
6 would be on this Dannel investment?
- 7 A. He said it was 24 percent annually and that is 2 percent
8 every month.
- 9 Q. What did he tell you about how funds you provided as an
10 investor to Dannel would be used?
- 11 A. As I mentioned earlier, this was going into the city
12 trust fund in the Bank of England. It will go off-shore.
13 That's what I learned from what he introduced to me. And
14 subsequently that money will be borrowed by the Bank of
15 England and distributed across their investments. That's the
16 way I understood.
- 17 Q. Did he describe for you how Dannel would generate the
18 returns that it was going to provide to investors?
- 19 A. The only way I understood the way he described is that
20 the investment that is done by the Bank of England, whatever
21 the profit is obtained from the investment, will be
22 distributed among the investors.
- 23 Q. What, if anything, did he tell you would happen to those
24 investors' funds after they reached the Bank of England?
- 25 A. The way it was described to me that that money will be

1 in a CD and that will be quite secure as far as the
2 investment is concerned, and the money will be borrowed
3 from -- the bank will borrow the money from that. For
4 example, let me give you an example. A hundred thousand
5 dollars of mine that was invested will be worth about a
6 million dollars for Bank of England to borrow. That's the
7 way it was described to me.

8 Q. So it would be leveraged?

9 A. Leveraged, yes.

10 Q. What, if anything, did Mr. McLaws tell you about the
11 safety of this investment?

12 A. He said that as far as the safety measures are concerned
13 it is 100 percent. There is no risk at all seen in this
14 investment.

15 Q. Go on.

16 A. That is, whatever money that I have contributed will be
17 guaranteed I will get back in case of any other issues that
18 has to come with the investment.

19 Q. Did he tell you how these funds were protected?

20 A. Protected on a CD. That's what he told me.

21 Q. Did he tell you whether there was any risk to your
22 investment principal?

23 A. No. The risk factor that he mentioned was very, very
24 marginal to nil, as I understood what he said.

25 Q. Did he say -- did he tell you that there was -- what did

1 he say that risk was?

2 A. He didn't give me any numbers as far as the risk factors
3 was concerned.

4 Q. Did he say anything -- did he mention anything in
5 particular that might pose a risk to your principal?

6 A. None that I remember.

7 Q. What, if anything, did he tell you about the involvement
8 of any world organizations in this investment?

9 A. He did mention that there is about 10 percent
10 contribution to IMF for situations like, you know, disaster
11 relief and relief in the world, that they contribute about 10
12 percent of the money.

13 Q. Did he say that this investment was regulated by any
14 kind of international organization?

15 A. I think through the World Bank and IMF, then that --
16 that this money would be borrowed by the IMF or the World
17 Bank for distributing to disaster relief. That was how I
18 understood.

19 Q. Did he mention how -- what was the relationship between
20 these investor funds and these world relief projects?

21 A. The only way I understood is through the Bank of
22 England, that the World Bank or IMF can borrow the money
23 through the Bank of England.

24 Q. Apart from the involvement of the World Bank and IMF,
25 did he mention whether this investment was regulated by any

1 governmental entities?

2 A. No.

3 Q. What, if anything, did Mr. McLaws tell you about the
4 compensation he would receive for selling this investment, or
5 that he did receive for selling this investment?

6 A. He didn't mention any figures about it. I don't think
7 he ever mentioned that he was getting any compensation on
8 this, at least he didn't mention it to me. I don't remember.

9 Q. Did Mr. McLaws mention anything about the profits that
10 Dannel Finance Limited would receive or receive from these
11 purported overseas transactions?

12 A. He did not mention anything at all.

13 Q. At some point in time did you received written offering
14 materials from Dannel?

15 A. Yes.

16 Q. From whom did you receive them?

17 A. I have to go back and tell you that when I met him
18 second time -- when I met him first time I could see the
19 packet of papers from him among the Dannel financial. It was
20 like this. And when he came second time to present the same
21 data, I actually signed the papers and gave to him, that is
22 the original papers that he took. Subsequently, after I paid
23 the check -- the check was written on February 5th, then Mr.
24 McLaws came back to my house and we signed some papers, which
25 was already signed by I think Ben Cook and I have those

1 papers here. He left a copy for me and he took the original.

2 Q. Okay. You had received written offering materials prior
3 to signing that contract, is that correct?

4 A. Yes.

5 Q. Let me ask you to look at Exhibits 1 through 6 in the
6 notebook that's in front of you, 1 through 6, and ask you if
7 you can identify those documents as the documents you
8 received, Exhibits 1 through 6.

9 A. Yes.

10 Q. I'm sorry?

11 A. Yes.

12 Q. Yes.

13 A. Yes.

14 Q. And following the presentation that he -- discussions
15 you had with Mr. McLaws you made a decision to invest, is
16 that right?

17 A. Yes.

18 Q. And did you complete an application? I'm sorry. What
19 did you do in order to become an investor?

20 A. The application was filled. The application was there.
21 When he came second time we filled it right in front him and
22 then the application was taken by him.

23 Q. All right. Let me just quickly ask you to just identify
24 these documents which have already been admitted into
25 evidence. Let me ask you to look at Exhibit 41.

1 MR. McCOLL: Your Honor, we would object in the
2 interest of time. These are identical to all the others that
3 have already been admitted.

4 THE COURT: They have been.

5 MR. NORRIS: All right.

6 MR. NORRIS: Okay. If they're willing --

7 THE COURT: I certainly am willing so --

8 BY MR. NORRIS:

9 Q. Did you send money to Dannel?

10 A. Yes.

11 Q. Okay. Is Exhibit 44 a copy of the check that you sent
12 to Dannel?

13 A. Yes.

14 Q. Let me ask you to look at Exhibit 46. It appears to be
15 a Federal Express airbill?

16 A. Yes.

17 Q. Sender, Ben Cook; company, Connection Corporation?

18 A. Yes.

19 Q. What came in this envelope?

20 A. Along with this -- the letter came, the confirmation
21 that my money has been approved.

22 Q. Your application?

23 A. My application.

24 Q. Did you have any conversations with anyone, any of the
25 defendants about what Connection Corporation was?

1 A. No, I didn't.

2 Q. Let me ask you to look at Exhibit 47, also a Federal
3 Express airbill; sender, Ben Cook; company, Connection
4 Corporation. What came in this Federal Express envelope?

5 A. That confirmed that my money has been allocated -- the
6 funds have been allocated for the investment. That is the
7 letter that I got.

8 Q. Did you ever receive any monthly returns?

9 A. None.

10 Q. Apart from Mr. McLaws did you have any discussions with
11 any of the defendants?

12 A. No.

13 Q. Did you discuss your investment with any of the
14 defendants after the Commission filed its complaint?

15 A. No.

16 Q. That was on March 16th the Commission filed its
17 complaint. Did you have any conversations with Mr. McLaws
18 after that date?

19 A. March 18th was the day when I contacted him.

20 Q. Okay. Describe that conversation.

21 A. After March 15th, when I didn't get a check, I waited
22 for about 24 hours. I didn't get the check again. I got a
23 little bit concerned. On March 18th at about 7:30 in the
24 morning I called Mr. McLaws. I said, how come I have not
25 received the check? The answer that I got was that they are

1 reorganizing and they will be forwarding me with some
2 notices. That's all the conversation I had.

3 Q. Did you have any conversation at that time about the SEC
4 complaint?

5 A. No, I didn't know about it.

6 Q. Okay. Did you have any subsequent conversations with
7 Mr. McLaws?

8 A. Only after I came to know about this SEC complaint.

9 Q. Describe that conversation, please.

10 A. He called me -- rather I call him actually, called him
11 to find out what's going on. He basically said that -- by
12 the time I knew that this complaint was there because I
13 talked to my friend, I knew exactly what had happened. And
14 he said, the federal government is now involved in this
15 investment issues, and obviously the way he described it is
16 that -- that false allegations have been made against the
17 company, and hopefully will be able to resolve this and we
18 will be able to return your investment. That's the way.

19 Q. Anything else about that conversation that you remember?

20 A. Nothing at all.

21 MR. NORRIS: Pass the witness.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. McCOLL:

25 Q. Doctor, in that last conversation that you were

1 describing --

2 A. Yes.

3 Q. -- do you recall that Mr. McLaws told you that he
4 understood that plans were being made to return the investor
5 money?

6 A. He assured me that the federal government is involved
7 but it will be -- we're trying to work things out to return
8 the money. That's what --

9 Q. Okay. Now, when you were -- in the initial stages, when
10 you were talking to him, you were referred, I think you
11 testified, by Melvin Tucker?

12 A. Yes.

13 Q. He was a patient of yours?

14 A. Is a patient of mine.

15 Q. He is a patient of yours?

16 A. Yes.

17 Q. He invested in the program?

18 A. Yes. That's how I came to know about this program.

19 Q. What is his business, please?

20 A. He is presently retired. I think he retired from Alaska
21 Airlines. I think he is -- he has a home in Oklahoma and he
22 has a marina, he runs a marina in Oklahoma.

23 Q. Okay. And did he receive a fee for referring you?

24 A. No.

25 Q. Okay. Do you remember telling Mr. McLaws the last time

1 you all met that you wanted to refer some more doctors to the
2 program?

3 A. Well, I did mention that to him, but I also -- I also
4 was cautious to see how things will go before I can refer
5 anybody.

6 Q. Correct. But had you received the March payment?

7 A. No, no.

8 Q. If you had received the March payment on schedule, then
9 as far as you're concerned you probably would have referred a
10 doctor or two to the program, or at least told them about it,
11 wouldn't you?

12 A. I don't know what I would have done. It's a
13 hypothetical question so I cannot answer you that question.

14 Q. Right. Except you had mentioned to him the possibility
15 of doing that?

16 A. That may be true, but I don't know.

17 Q. Right.

18 A. That's a hypothetical question. I might not have done
19 it. I might have waited longer. I don't know. It's hard to
20 say.

21 Q. I understand. You wanted to see how it went, but you
22 had volunteered if things go well I might refer others.

23 A. Because I -- you know, the only reason that I got
24 involved because I saw Melvin Tucker who reassured me about
25 it. That's why I got into this program.

1 Q. Do you know how long Mr. Tucker had been in the program?

2 A. He had -- I think he told me August or September he got

3 into the program.

4 Q. Of '98?

5 A. '98.

6 Q. Do you know if he had done any due diligence to

7 investigate it before he put his money in?

8 A. I have no idea.

9 Q. He didn't tell you?

10 A. He didn't tell that.

11 Q. Okay. Do you remember Mr. McLaws telling you that he

12 thought the program was safe and that's why his own family's

13 money had been put into the program?

14 A. If I remember his conversation clearly, I think he did

15 mention that his brother-in-law or nephew was an orthopedic

16 surgeon in Phoenix had invested money in this program.

17 That's what I remember.

18 Q. And that he had encouraged them to do that?

19 A. I don't know whether he encouraged but he told me he had

20 invested in the program.

21 Q. Those relatives had.

22 A. I beg your pardon?

23 Q. Those relatives had invested in the. Program?

24 A. That particular orthopedic surgeon had invested in the

25 program.

1 MR. McCOLL: Thank you, doctor.

2 THE COURT: Any other questions?

3 MR. MOWERY: Just a couple.

4 THE COURT: Okay.

5 CROSS-EXAMINATION

6 BY MR. MOWERY:

7 Q. Doctor, I just wanted to make sure -- my name is Rob
8 Mowery. You're personal investment was in February of this
9 year, is that right?

10 A. Yes.

11 Q. And your first payment would have been due in March?

12 A. March 15th.

13 Q. And you mentioned Mr. Tucker. Do you know if Mr. Tucker
14 was paid every month the payments that he was supposed to
15 receive?

16 A. Prior to that, yes, he told me.

17 Q. Yes. Prior to March 15th.

18 A. Yes.

19 Q. He had received them as promised every month.

20 A. Exactly.

21 Q. Do you know or have you heard of anybody that wasn't
22 paid payments as promised every month.

23 A. I don't know anybody other than Melvin Tucker who is the
24 only person introduced me to this program.

25 MR. MOWERY: That's all. Thank you.

1 THE COURT: Anything else? Plaintiff?

2 MR. NORRIS: Yes. I don't have any questions. I'm
3 sorry.

4 THE COURT: Okay. Thank you very much. You may
5 step down and you're excused.

6 Let's take a very quick break, 10-minute break and
7 then we will start with this witness.

8 (Break taken)

9 THE COURT: Next witness.

10 MR. NORRIS: Larry Whorton, Your Honor.

11 THE COURT: If you will come forward, please.

12 Just have a seat right up here. If you will just
13 speak into that microphone and tell us your name again.

14 THE WITNESS: My name is Larry Ray Whorton.

15 THE COURT: Okay.

16 LARRY RAY WHORTON,
17 called as a witness by the Plaintiff, testified on his oath
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. NORRIS:

21 Q. Mr. Whorton, sitting in front of you is a notebook of
22 documents. As I refer to certain exhibit numbers, those are
23 the numbers under the number tabs in this note bank.

24 A. Yes, sir.

25 THE COURT: What exhibits are you using?

1 MR. NORRIS: His exhibits are 48 through 51. I'm
2 sorry -- yes, 51.

3 THE COURT: 51. I will admit exhibits 48 through
4 51.

5 MR. NORRIS: Thank you, Your Honor.

6 THE COURT: Okay.

7 BY MR. NORRIS:

8 Q. Mr. Whorton, where do you reside?

9 A. Fresno, California.

10 Q. What is your present occupation?

11 A. I just retired. I sold a small business about a year
12 ago.

13 Q. Did you make one or more investments through a company
14 called -- let me ask you this: What did you do before you
15 retired? You were a small businessman?

16 A. Small businessman, yes, for ten years.

17 Q. What kind of business?

18 A. It was construction sites, put up temporary fencing
19 around construction sites.

20 Q. Did you make one or more investments through a company
21 called Dannel Finance Limited.

22 A. Yes, one.

23 Q. What was the total amount of that investment?

24 A. \$100,000.

25 Q. What is the source of the funds that you put into that

1 investment?

2 A. That was from selling my company. That was the --
3 hopefully that was my retirement money.

4 Q. How did you first hear about Dannel?

5 A. Through a acquaintance I heard that had invested in it
6 in Fresno. And he said -- he said he had been in it for two
7 or three years and told me what it was paying back, money and
8 everything, and said it was a real safe investment and he
9 gave me Alan Clagg's name and phone number and I contacted
10 Clagg.

11 Q. Did you subsequently meet with Mr. Clagg?

12 A. Yes, I did.

13 Q. How many times did you meet with him before you made
14 your investment?

15 A. I met with him twice. The first time he went over the
16 program, showed me, you know, what it was -- the outline of
17 his program. And then the second time I met with him we
18 signed contract papers and I also had my wife with me the
19 second time I went to visit with him and he went through this
20 program again when she was there.

21 Q. What, if anything, did Mr. Clagg tell you about the
22 company Dannel Finance Limited?

23 A. He just told me that it was a type of thing where they
24 invested in these -- they had like program managers that
25 raised pools of 3.3 million per pool, and with that they got

1 money from the World Bank and they would get -- for every 3.3
2 million they could borrow like a hundred million from having
3 that.

4 Q. I'll try to parse that in a moment. What, if anything,
5 did he tell you who controlled Dannel Finance Limited?

6 A. The name escapes me right now. I know he signed the
7 paychecks.

8 Q. We may see it later. I don't want to put words in your
9 mouth so I won't mention any names. But what, if anything,
10 did Mr. Clagg tell you his position was with Dannel?

11 A. He would just -- he would -- the people that had the
12 investments he would line them up and then the money would be
13 sent on to Dannel finance.

14 Q. What, if anything, did Mr. Clagg tell you about the
15 return that investors would receive on the investment through
16 Dannel?

17 A. It was guaranteed 24 percent annually, 2 percent per
18 month.

19 Q. What, if anything, did he say about how investor funds
20 that were paid to Dannel were used?

21 A. That it went into these pools for 3.3 million dollars
22 and it accumulated. Each investor they would accumulate it
23 from there they had these this fund managers and then they
24 would be borrowing money from the World Bank. That's how he
25 explained it. He had it on the blackboard and everything

1 else how it worked.

2 Q. Did he tell you -- what, if anything, did he tell you
3 what was done with the investment funds after they were sent
4 to Dannel?

5 A. They went to these pools. From there they went to like
6 the World Bank. It was used as collateral to the World Bank.

7 Q. What, if anything, did he tell you about the safety in
8 this investment?

9 A. Said that it was guaranteed. The principal would never
10 be touched and all it was used for collateral. It was never
11 touched and never had to worry about the principal being lost
12 or whatever.

13 Q. Did he explain to you how the returns for the Dannel
14 investment program were generated?

15 A. Yes. The way he explained it is -- the seminar, when
16 they formed these pools and they borrowed money from the
17 World Bank, then they would borrow much more and that's how
18 they could pay back such large returns on it. And it had
19 something to do with how they borrowed money from the World
20 Bank from the small pools of money.

21 Q. Did he discuss with you whether this program was
22 regulated or monitored by any particular governmental
23 organization?

24 A. No, he didn't.

25 Q. Did he mention whether it was -- did he tell you whether

1 it was monitored or regulated by any international
2 organization?

3 A. The only thing was mentioned was like the IMF.

4 Q. And what did he say the role of the IMF was?

5 A. Well that would be -- like they work in turn with the
6 World Bank, as I understood it.

7 Q. What did say was the role of the IMF?

8 A. I don't recall.

9 Q. Did Mr. Clagg tell you whether there was a relationship
10 between this Dannel investment and any type international
11 humanitarian program?

12 A. No, he just said these -- when they borrowed money it
13 was for these big projects like where they work, like they do
14 in Russia, you know, Third World countries and everything.
15 That's where the money was used for big construction
16 companies and stuff.

17 Q. And did he explain how that generated the returns for
18 Dannel investors?

19 A. I don't recall.

20 Q. What, if anything, did Mr. Clagg tell you about the
21 compensation he received for selling Dannel investment
22 program?

23 A. That never came up.

24 Q. What, if anything, did he tell you about the amount of
25 profit that Dannel made from this purported trading program?

1 A. He just said they made a couple of percent over -- a
2 couple percent over what they paid the investors.

3 Q. Now, did you receive written offering materials from
4 Dennel?

5 A. Yes, I did.

6 Q. Let me ask you to look at Exhibits 1 through 6 in the
7 exhibit notebook.

8 A. 1 through 6.

9 Q. 1 through 6. If you're looking at this exhibit list
10 look at the first tab where it says 1.

11 A. Okay.

12 Q. Let me ask you to look at 1 through 6 and I'll ask you
13 if those are the materials you received?

14 A. Yes, sir, it is.

15 Q. From whom did you receive these materials?

16 A. Alan Clagg.

17 Q. Approximately when did you receive this package of
18 offering materials?

19 A. I met with him in July and -- July, 1998, and I received
20 some of the materials at that time and I think we signed the
21 application. And then in August we completed it with a
22 letter of intent and the contract.

23 Q. So following -- I'm sorry. Go ahead.

24 A. In August, when I had my wife there, then they had the
25 contract, final contract to sign and agreement.

1 Q. When you completed the application, who did you give it
2 to?

3 A. Alan Clagg.

4 Q. What did he say he would do with it?

5 A. That it would go on to Dannel finance.

6 Q. Did you receive an acknowledgement from Dannel that your
7 application had been approved?

8 A. Yes.

9 Q. And subsequently did you sign a contract?

10 A. Yes.

11 Q. Subsequently did you send funds to Dannel?

12 A. Yes, it was wired. They gave me wire instructions.

13 Q. How much did you send?

14 A. \$100,000.

15 Q. And do you recall which bank account you sent that to?

16 A. I have the records. I have a copy of it.

17 Q. I think it's in the documents that have already been
18 admitted. Did you receive any kind of acknowledgement from
19 Dannel that your funds had been received?

20 A. No.

21 Q. Did you ever receive any monthly returns from Dannel?

22 A. Yes, I did.

23 Q. Over what period of time did you receive those?

24 A. The returns started in -- 15th of September through
25 February 15th.

1 Q. When did you receive your last?

2 A. February 15th.

3 Q. Okay. And you received a statement and -- a monthly
4 statement from Dannel?

5 A. Yes.

6 Q. Since the Commission filed its complaint in this matter
7 on March 16, have you had any discussions with any of the --
8 any of the persons affiliated with Dannel?

9 A. Yes, I have. You want me to go ahead with that?

10 Q. Who did you speak to?

11 A. His wife had called me twice --

12 Q. Who is that?

13 A. -- at my home. Alan Clagg's wife who called me.

14 THE COURT: Who did?

15 THE WITNESS: Pardon?

16 THE COURT: Who did?

17 THE WITNESS: Alan Clagg's wife.

18 THE COURT: Okay.

19 BY MR. NORRIS:

20 Q. What did she say?

21 A. The first time she called was right after it broke in
22 the newspapers, which was like March 19th, I believe, and
23 then she called me again the following week, which was -- I
24 think like about Tuesday or something like that, and just to
25 let me know that the money would be paid, investors shouldn't

1 be worried. And as soon as the money was freed up we would
2 get all of our principal back and wanted to know who I talked
3 to, if anybody had called me and I told her the Fresno Bee
4 and she said, well, it's a personal matter and you shouldn't
5 be talking to them. And I also told her I had spoke to the
6 SEC. She asked me if I was going to be a witness. I said I
7 wasn't sure at that time. And she said, be sure and let me
8 know what your plans are if you're going to be a witness or
9 not. And I haven't talked to her since.

10 I also talked to Alan Clagg. It hit the newspapers
11 March 19th. I talked to Alan Clagg the day before it hit the
12 newspapers. And I was concerned about my not receiving my
13 check for the month. And I asked him if there was a problem.
14 He said, no, there's no problem. He says, they're probably
15 restructuring or something. He said just wait a couple more
16 days and there will be no problem and it was in the newspaper
17 the following day.

18 MR. NORRIS: No further questions.

19 THE COURT: Cross.

20 CROSS-EXAMINATION

21 BY MR. GOODENOW:

22 Q. Good afternoon, Mr. Whorton. Thank you for coming. My
23 name is Gary Goodenow. I'm the attorney for Mr. Clagg.

24 Do you have any personal knowledge of the amount of
25 investigation that Mr. Clagg did before he got involved in

1 this matter?

2 A. I'm sorry. Would you ask that again?

3 Q. Prior to Mr. Clagg becoming part of this Dennel
4 enterprise, do you know if he did any investigation about
5 this company?

6 A. I have no idea.

7 Q. Did you consult with anyone else prior to your
8 investment whose name you haven't mentioned?

9 A. Just the acquaintance that recommended it.

10 Q. What was that acquaintance's name?

11 A. George McMahan.

12 Q. What does Mr. McMahan do for a living?

13 A. He's a retired businessman.

14 Q. Tell me about the business he was in, please.

15 A. I'm not real sure. He's been retired for a couple of
16 years. But I did know that he also received some kind of a
17 bonus after I signed up. I do know that.

18 Q. How do you know that, sir?

19 A. Because he said so, one thousand dollars.

20 Q. Have you spoken with Mr. McMahan since the SEC brought
21 its case?

22 A. No, I haven't.

23 MR. GOODENOW: Thank you, Your Honor.

24 THE COURT: Anything else?

25 CROSS-EXAMINATION

1 BY MR. MOWERY:

2 Q. Mr. Whorton, my name is Mr. Rob Mowery. I think you
3 indicated in your direct testimony that Mr. McMahan had known
4 Mr. Cook for two or three years or known of Dennel for two or
5 three years prior to your involvement?

6 A. He had been investing in the program for two or three
7 years.

8 Q. And over that two- or three-year period, to your
9 knowledge had he been paid according to the promises that
10 were made?

11 A. Yes, he had been.

12 Q. And did he have the type of investment where his
13 principal was paid back on an annual basis?

14 A. Yes, he did.

15 Q. That principal was paid back every year over that two-
16 or three-year period?

17 A. Yes, it was, as far as I know.

18 Q. And interest payments were paid every month?

19 A. As far as I know.

20 Q. Do you know of any investor who has not been paid every
21 month, according to the promises that were made, up until the
22 government took the actions in mid-March?

23 A. No, I don't.

24 MR. MOWERY: No, further questions, Your Honor.

25 THE COURT: Anything else?

1 MR. NORRIS: No.

2 THE COURT: Thank you very much. You may step down
3 and you're excused, you're free to go or you can stay in the
4 courtroom.

5 Just come right up this way. Have a seat right up
6 here for us. You can pull that microphone toward you.

7 THE WITNESS: Okay.

8 THE COURT: And if you will tell us your name
9 again?

10 THE WITNESS: My name is Orlin Kvamme.

11 MR. NORRIS: Mr. Kvamme's exhibits are 53
12 through 59.

13 THE COURT: Okay. Those exhibits are admitted.

14 ORLIN KVAMME,
15 called as a witness by the Plaintiff, testified on his oath
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. NORRIS:

19 Q. Mr. Kvamme, if I do refer you to certain exhibits
20 they're in that notebook and they will probably be -- start
21 with Exhibit 53. There are a number of tabs.

22 A. Uh-huh.

23 MR. NORRIS: Your Honor, may I approach?

24 THE COURT: Yes.

25 BY MR. NORRIS:

- 1 Q. Mr. Kvamme, where do you reside?
- 2 A. Fresno -- Clovis, California.
- 3 Q. How old are you?
- 4 A. 73.
- 5 Q. What's your present occupation?
- 6 A. I'm retired.
- 7 Q. Are you married?
- 8 A. Yes.
- 9 Q. What's your wife's name?
- 10 A. Edith.
- 11 Q. How long have you been married?
- 12 A. 52 years.
- 13 Q. What is your wife's present occupation?
- 14 A. She's retired.
- 15 Q. What did you do before your retired?
- 16 A. I was manager of a co-op.
- 17 Q. And what was your wife's occupation before she retired?
- 18 A. She was a teacher.
- 19 Q. Did you make decisions jointly with your wife about how
- 20 to invest your funds?
- 21 A. Usually, yes.
- 22 Q. Did you invest in an individual retirement account or
- 23 did you and your wife make a decision to invest in an
- 24 individual retirement account sponsored by a company called
- 25 Samuel Limited Partnership?

- 1 A. Yes.
- 2 Q. What was total amount of the funds you invested in that?
- 3 A. 83,000.
- 4 Q. What was the source of those funds?
- 5 A. That was what was remaining of my wife's IRA.
- 6 Q. Are you acquainted with an individual named Alan Clagg?
- 7 A. Yes.
- 8 Q. When did you first become acquainted with him?
- 9 A. In '91.
- 10 Q. Did you and your wife subsequently establish a business
11 relationship with Mr. Clagg?
- 12 A. He started out he made a family trust for us and that's
13 how we got acquainted.
- 14 Q. He formed the Qvamme Family Trust?
- 15 A. Right.
- 16 Q. What when was that?
- 17 A. '91.
- 18 Q. Did he subsequently assist you and your wife in making
19 investment decisions?
- 20 A. Yes.
- 21 Q. Did Mr. Clagg assist you and your wife in investing your
22 wife's IRA funds?
- 23 A. Yes.
- 24 Q. When was his -- when did he first do that?
- 25 A. Well, I don't remember the exact date. It was probably

1 somewhere in the mid-'90's that he invested it in insurance
2 down in Florida, insurance company. They were paying around
3 7 or 8 percent at that time.

4 Q. Did you subsequently roll that IRA over into another
5 one?

6 A. Yes.

7 Q. What was the second one?

8 A. It was rolled over into Midland Ohio which was part
9 of -- well, while they were in co-ops with Pay-Tel. Pay-Tel
10 was telephones for the handicapped.

11 Q. How much money did you have in -- is it Pay-Tel or
12 Cap-Tel?

13 A. Cap-Tel.

14 Q. How much money did you have in that?

15 A. Well, we had, I think, 83,000 in Ohio -- Mid Ohio and
16 83,000 in Pay-Tel.

17 Q. Did there come a time when you rolled funds over from
18 one of those investments to the Samuel Limited Partnership
19 investment?

20 A. That's correct.

21 Q. How did that come about?

22 A. Well, the Pay-Tel organization ran into trouble with
23 selling telephones more than once and the government stepped
24 in and closed them down, so the only money we got back was
25 from Mid Ohio.

1 Q. How much was that?

2 A. 83,000.

3 Q. And did you subsequently roll the remaining funds from
4 Mid Ohio into Samuel Limited Partnership?

5 A. Correct.

6 Q. And was it -- who suggested that you do that?

7 A. Clagg.

8 Q. Did you ever speak to anyone else about making that
9 investment?

10 A. Yes, it was -- I asked -- at the time I was a little
11 skeptical of it because of the interest rates that they
12 were -- said that we could get. So I asked him to get me
13 some references that I could talk to. And there was an
14 Asperson out of Visalia that had been in the organization for
15 at least a year and he had received his payments every month
16 and he got his initial investment back. And at that time
17 he -- I guess he cashed in an annuity for 50,000 and invested
18 200,000 and he never got another check. But I didn't know
19 about him not getting another check at that time.

20 Q. When did you make that decision to --

21 A. I think it was November but it didn't get processed
22 until sometime in December.

23 Q. Did you ever receive any -- strike that.

24 Did Mr. Clagg ever tell you about any affiliation
25 between this Samuel Limited Partnership and a company called

1 Dannel?

2 A. No, we never heard of Dannel.

3 Q. Did you ever receive any documents, written materials
4 concerning a company called Dannel?

5 A. No.

6 Q. What did Mr. Clagg tell you the rate of return would be
7 on this --

8 A. 24 percent.

9 Q. -- Samuel Limited Partnership?

10 A. 24 percent.

11 Q. Let me find finish my question.

12 A. Okay.

13 Q. What did Mr. Clagg tell you the return would be on this
14 Samuel Limited Partnership investment?

15 A. 24 percent.

16 Q. Per year?

17 A. Right.

18 Q. Did he tell you how your funds would be used to generate
19 this return?

20 A. Yes.

21 Q. Did he ever mention anything about a purported
22 international trading program?

23 A. No.

24 Q. Did he tell you what would happen to your -- did you
25 ultimately send funds for this investment?

1 A. Our funds were sent to Sterling investments.

2 Q. Sterling Trust?

3 A. Trust.

4 Q. Did he tell you what would be done with your funds after

5 they were sent to Sterling Trust?

6 A. They were just supposed to be held as security.

7 Q. How would they be used to produce a return?

8 A. Well, they were supposed to be able to loan money or

9 borrow money -- or loan money and use this as collateral.

10 Q. Did he make any statements to you about the safety of

11 this investment?

12 A. No.

13 Q. Did Mr. Clagg tell you anything about whether your

14 principal would be at any risk?

15 A. No.

16 Q. Did you believe you had sufficient information to make a

17 decision about investing in Sterling Trust?

18 A. I did after speaking to that fellow that had been in it

19 for over a year and he had very good success and --

20 Q. Ultimately why did you make the investment in Sterling?

21 A. Well, she had this money that was available and she

22 wanted to invest it, so it sounded like a good deal after I

23 checked it out and --

24 Q. And did you base your decision on the advice that Mr.

25 Clagg gave you?

- 1 A. No, not so much on Clagg. That's why I wanted someone
2 else that had been in the organization because I wasn't sure
3 that he was giving me all the information I should have.
- 4 Q. And did he refer you to this other investor?
- 5 A. Yes.
- 6 Q. Let me ask you to look at Exhibit 56.
- 7 A. 87?
- 8 Q. I'm sorry, Exhibit 56.
- 9 A. 56.
- 10 Q. It's a promissory note for return of principal.
- 11 A. Right.
- 12 Q. Is this a document that you received?
- 13 A. Yes.
- 14 Q. From whom did you receive it?
- 15 A. That was from Sterling Trust.
- 16 Q. Did Mr. Clagg tell you anything about the relationship
17 between Sterling Trust and Samuel Limited 2 Partnership?
- 18 A. We didn't know anything about that until we got the
19 papers back.
- 20 Q. This note is purportedly signed by Wayne McLaws. Did
21 you ever speak directly with Mr. McLaws?
- 22 A. No.
- 23 Q. Did Mr. Clagg ever tell but you about the relationship
24 between Mr. McLaws and Samuel Limited Partnership?
- 25 A. No.

1 MR. NORRIS: No further questions.

2 THE COURT: Cross-examination.

3 MR. GOODENOW: No questions, Your Honor.

4 THE COURT: Thank you.

5 MR. MOWERY: Just a couple.

6 THE COURT: I'm sorry. I keep forgetting.

7 CROSS-EXAMINATION

8 BY MR. MOWERY:

9 Q. Mr. Kvamme, this individual who referred you, what was
10 that person's name?

11 A. A-P-P -- I think it's A-P-P -- my wife --

12 MRS. KVAMME: (Spelling) A-P-P-E-R-S-O-N.

13 A. (Spelling) A-P-P-E-R-S-O-N.

14 THE COURT: Go ahead.

15 BY MR. MOWERY:

16 Q. Is it Mrs. Apperson?

17 A. Mr.

18 Q. Mr.

19 A. The man's 90 years old.

20 Q. Okay. He had invested in the program?

21 A. Yes.

22 Q. Do you know when he had invested?

23 A. Well, he gave me the impression that he invested the
24 year before that.

25 Q. Which would have been in 1997?

- 1 A. Yes. And he told me he invested 150,000 at that time,
2 and then when it came in December or -- I guess it was in
3 December that he received all of his 150 back.
- 4 Q. Right.
- 5 A. And he cashed an annuity for 50 and reinvested 200,000.
- 6 Q. And that was sometime early this year?
- 7 A. Yes, I think that was in either December or January,
8 probably, December.
- 9 Q. And he did not receive any checks?
- 10 A. That's what he said afterwards.
- 11 Q. Yes, sir. And you received checks until March, is that
12 right?
- 13 A. We had received one check.
- 14 Q. So was your investment made in January?
- 15 A. Well, I guess it didn't become active. It wasn't
16 supposed to until February.
- 17 Q. You got the February payment?
- 18 A. Got the February payment.
- 19 Q. Could it have been Mr. Apperson would have been received
20 his first payment on the rollover in March? Did he miss his
21 February payment or was he to get his first payment in March?
- 22 A. I was under the impression that he missed his whole
23 payment. He didn't get a payment back after he invested. I
24 didn't ask him that, but that's the impression.
- 25 Q. You don't know specifically when he invested?

1 A. No, I don't.

2 MR. MOWERY: No further questions.

3 THE COURT: Anything else?

4 MR. GOODENOW: Briefly, Your Honor.

5 Your Honor, may I have a moment to approach the
6 government?

7 THE COURT: Yes.

8 MR. GOODENOW: May I approach the witness, Your
9 Honor?

10 THE COURT: Yes.

11 MR. GOODENOW: Your Honor, I apologize. Probably
12 have had this marked but I took it out of the supplemental
13 filing that the government served on us yesterday.

14 THE COURT: Okay.

15 MR. GOODENOW: May I approach the bench with it
16 first?

17 THE COURT: Yes.

18 MR. NORRIS: Your Honor, could we make sure that's
19 marked as Defense Exhibit 1 so that we don't -- so we don't
20 mess up the order of ours?

21 THE COURT: Yes.

22 CROSS-EXAMINATION

23 BY MR. GOODENOW:

24 Q. Sir, I hand you what's been marked as Defense Exhibit 1.
25 Do you recognize that document?

- 1 A. Yes.
- 2 Q. What is that?
- 3 A. Promissory note.
- 4 Q. And who's that promissory note drawn on or who's
- 5 referenced in that note?
- 6 A. My wife Edith.
- 7 Q. Well --
- 8 A. You mean who's --
- 9 Q. Take a look at that note in front of you actually.
- 10 A. Sterling Trust Company.
- 11 Q. You wife's name doesn't appear on that particular note,
- 12 does it, sir?
- 13 A. No.
- 14 Q. Okay. Just wanted to be clear for the record. But is
- 15 that note identical to the note that your wife's name does
- 16 appear on that you've identified for Mr. Norris?
- 17 A. Appears to be.
- 18 Q. And on that note there's someone listed as a general
- 19 manager and JV partner. Do you see that?
- 20 A. Yes.
- 21 Q. Who's name appears there?
- 22 A. McLaws.
- 23 Q. On the note that you're holding.
- 24 A. On this one?
- 25 Q. Yes.

1 A. There's nothing.

2 Q. Do you see about midway down the page where it has an
3 individual's name?

4 A. Yes.

5 Q. Whose name appears?

6 A. Craig Boone.

7 Q. Craig Boone. What does it say after his name?

8 A. General manager, partner and manager.

9 MR. GOODENOW: I ask for the introduction of
10 Defense Exhibit 1.

11 THE COURT: Admitted.

12 MR. GOODENOW: Thank you, Your Honor. Thank you,
13 sir.

14 May I approach, Your Honor?

15 THE COURT: Yes. Anything else?

16 Thank you very much. You may step down and you're
17 excused.

18 Next witness.

19 Just have a seat up here, please.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: Tell us your name again.

22 THE WITNESS: Fred Session.

23 FRED SESSION,

24 called as a witness by the Plaintiff, testified on his oath
25 as follows:

1 DIRECT EXAMINATION

2 BY MS. WHITAKER:

3 Q. Good afternoon, Mr. Session. Would you please tell us
4 the city and state that you reside in?

5 A. Fort Worth, Texas.

6 Q. Would you describe your educational background?

7 A. I have an accounting certificate from Durham College of
8 the Southwest.

9 Q. What year did you obtain that certificate?

10 A. 1954.

11 Q. Do you hold any professional licenses?

12 A. I'm a certified public accountant in the state of Texas.

13 Q. What year did you obtain that certification?

14 A. 1981.

15 Q. Would you describe your past employment history?

16 A. I worked for Halliburton for 15 years.

17 Q. And what was your title at Halliburton?

18 A. I started as the internal auditor. I was promoted to
19 accountant and promoted to controller.

20 Q. What did you do after your left work with Halliburton?

21 A. I work for a regional CPA Firm in Corpus Christi,
22 Texas.

23 Q. What did you do there?

24 A. I was the audit manager.

25 Q. How are you currently employed?

1 A. Pardon?

2 Q. How are you currently employed?

3 A. With the United States Securities and Exchange
4 Commission.

5 Q. And what is your title?

6 A. Staff accountant.

7 Q. How long have you been employed in this capacity?

8 A. 12 years.

9 Q. What are your duties as a staff accountant?

10 A. I review and schedule bank documents, interview witness,
11 assist in testimony and review filings, 10-K's and 10-Q's
12 that are filed with the Commission.

13 Q. Do you review documents to detect the presence of
14 financial fraud?

15 A. Yes, I do.

16 Q. Approximately how many investigations have you worked on
17 involving financial fraud?

18 A. I would say 25.

19 THE COURT: How many?

20 THE WITNESS: 25.

21 BY MS. WHITAKER:

22 Q. Have you testified before regarding your findings in
23 these investigations?

24 A. Yes, I have.

25 Q. Were you assigned to work on a matter entitled In the

1 Matter of Dannel Finance Limited?

2 A. Yes, I was.

3 Q. Would you please describe your duties with respect to
4 the Dannel investigation?

5 A. I reviewed bank documents, offering documents, investor
6 testimony and documents attached to that testimony.

7 Q. With regard to the bank records that you reviewed, what
8 individual or entity were these records?

9 A. The Bank One, Carefree, Arizona.

10 Q. Whose account records were these?

11 A. Dannel Finance Limited.

12 Q. Were all the account located at Bank One in Carefree,
13 Arizona?

14 A. That is correct.

15 Q. When did you receive these Dannel bank records?

16 A. In March, 1999.

17 Q. And how did you receive them?

18 A. I received them from the Arizona Corporate Commission.

19 Q. Do you have an understanding how the Arizona Corporate
20 Commission obtained those records.

21 A. By subpoena.

22 Q. And where were they subpoenaed from?

23 A. Bank One, Carefree, Arizona.

24 Q. Would you please describe the bank records that you
25 received?

1 A. I reviewed the concealed checks, the bank transfers in
2 and out, the deposit slips.

3 Q. Did you review any account statements?

4 A. Yes.

5 Q. For how many accounts did you review records?

6 A. 18.

7 Q. Are you aware of any other Dannel bank accounts at Bank
8 One in Carefree, Arizona?

9 A. Yes.

10 Q. What is your understanding of how many accounts there
11 are?

12 A. There are approximately 30.

13 Q. Are you aware of any Dannel bank accounts or any other
14 financial institutions besides Bank One in Carefree, Arizona?

15 A. Yes.

16 Q. Do you know where those accounts are located?

17 A. No.

18 Q. Have you obtained any other records beside the 18
19 accounts that you previously testified about?

20 A. Just the offering documents and the bank records.

21 Q. Any other bank records besides those 18 accounts?

22 A. No.

23 Q. So you've not reviewed all existing Dannel bank records,
24 is that correct?

25 A. That's correct.

1 Q. Is it fair to say that the Dennel bank records that you
2 have reviewed appear to be the primary accounts used by
3 Dennel.

4 MR. MOWERY: Objection, Your Honor. That's
5 leading.

6 THE COURT: Overruled. Go ahead.

7 A. Yes.

8 BY MS. WHITAKER:

9 Q. Were investors directed to wire funds into the Dennel
10 account that you reviewed?

11 A. Yes.

12 Q. Did you see actual payments during your review of
13 deposits from investors into the Dennel account?

14 A. I did.

15 Q. Did you see payments from the Dennel account going to
16 investors?

17 A. Yes.

18 Q. Is it your opinion that the Dennel accounts that your
19 reviewed are representative of Dennel's banking activities?

20 A. Yes.

21 MR. MOWERY: Your Honor, object to leading.

22 THE COURT: Overruled. Go ahead.

23 A. Yes.

24 BY MS. WHITAKER:

25 Q. What period of time did the bank records you reviewed

1 cover?

2 A. April of '97 through August of '98.

3 Q. Did you perform an analysis of all the records that you
4 received?

5 A. Yes.

6 Q. How many records did you receive detailed? How many of
7 the bank accounts did you receive detailed records for?

8 A. Nine.

9 Q. And did you perform financial analysis of those nine
10 accounts?

11 A. Yes, I did.

12 Q. Would you please describe the steps you took in
13 performing your analysis?

14 A. I reviewed the checks for the dates, payor, payee, any
15 notations on the check and the endorsement.

16 Q. Did you review deposit slips and items?

17 A. Yes, I did.

18 Q. What did you review those for?

19 A. I reviewed for dates, amounts, payor, payee.

20 Q. Did you review bank transfers?

21 A. Yes, I did.

22 Q. What did you review those for?

23 A. Dates, amount, payor, payee names.

24 Q. Did your financial analysis of the Dennel bank records
25 involve preparing any summary documents?

1 A. Yes, it did.

2 MS. WHITAKER: Your Honor, the records for Mr.
3 Sessions were 60 -- the exhibits are 60 through 68. I'd like
4 to move that those be admitted into evidence.

5 THE COURT: They are.

6 MR. McCOLL: May we have just a minute?

7 THE COURT: Pardon.

8 MR. McCOLL: May I have just a minute?

9 Your Honor, may we know if any of those are created
10 by this witness as opposed to existing prior to.

11 THE COURT: Well, it appears that No. 63, which is
12 called a summary, is done by this witness, is that correct?

13 THE WITNESS: That's correct.

14 MS. WHITAKER: 63 and 64 -- actually 62 and 63.

15 THE COURT: Both of the summaries, 62 also you
16 created?

17 THE WITNESS: 62, yes, sir.

18 THE COURT: Okay.

19 MR. McCOLL: Your Honor, we have an objection.

20 THE COURT: Okay.

21 MR. McCOLL: The government has known that we were
22 going to have this hearing since the last time we were in
23 chambers. And I know they have been busy doing other things
24 so I don't ascribe anything to it, but this is a real
25 important -- it's real important we be able to look at some

1 point at the underlying documents so that if there is an
2 objection we can come back later.

3 THE COURT: You certainly are entitled to do that.

4 MS. WHITAKER: We have brought those records with
5 you us today, Your Honor.

6 THE COURT: But the exhibits are admitted. We will
7 proceed.

8 MR. NORRIS: I sent a letter to counsel that were
9 representing the defendants saying I would make the
10 underlying record available.

11 THE COURT: Okay.

12 BY MS. WHITAKER:

13 Q. Mr. Session, I would now like to direct your attention
14 to Exhibit 62. Did you prepare Exhibit 62?

15 A. Yes, I did.

16 Q. Can you tell me what this document is?

17 A. That's the source and use of the statements from bank
18 records that I reviewed.

19 Q. I would now like to direct your attention to Exhibit 63.
20 Did you prepare this document?

21 A. Yes, I did.

22 Q. Can you tell me what it is?

23 A. That's an analysis of all of the transactions of each
24 individual that was taken from the bank documents that I
25 reviewed.

1 Q. What is the difference between Exhibit 62 and 63?

2 A. 62 is a summary statement of 63.

3 Q. So if I'm understanding you correctly, Exhibit 63
4 contains all of the transactions that appear in the various
5 bank records and Exhibit 62 is a summary of those
6 transactions?

7 A. That's correct.

8 Q. Going back to Exhibit 62, can you tell me what each of
9 the columns on this exhibit represent? The first column is
10 is entitled name.

11 A. The first column is the -- name is the payor-payee.

12 Q. The second column is entitled source. What does that
13 represent?

14 A. That's the funds from the payors.

15 Q. Okay. That's funds.

16 THE COURT: I'm sorry, what?

17 THE WITNESS: That's the funds from the payor.

18 THE COURT: Okay.

19 BY MS. WHITAKER:

20 Q. So that would represent deposit --

21 A. Yes.

22 Q. -- into Dannel accounts?

23 A. That's correct.

24 Q. What about the use column, what does that represent?

25 A. That represents all disbursements to various

1 individuals, payees.

2 Q. Refer back to Exhibit 63. Can you tell me what the
3 columns on this report represent? The first column is
4 entitled account number.

5 A. The first column is account number. That's the last
6 four digits of each Dannel bank account.

7 Q. So the account number would correspond to -- you could
8 identify which account this particular transaction occurred
9 in, is that correct?

10 A. That's correct.

11 Q. Okay. What about the date column?

12 A. That's the date of the transaction.

13 Q. And the column entitled deposits?

14 A. That's the funds received.

15 Q. The column entitled check amount?

16 A. That's the funds disbursed.

17 Q. The column entitled check number?

18 A. That's the sequential numbers of the checks.

19 Q. Okay. And in the column entitled check number, zero
20 appears in some of the columns. What does that represent?

21 A. That's noncheck items.

22 Q. The next column payor-payee, what does that column
23 represent?

24 A. That represents the individuals that the funds were
25 either disbursed to or received from.

1 Q. And the final column entitled category. What does that
2 represent?

3 A. That represents a --

4 MR. McCOLL: Excuse me, Your Honor. Could we have
5 a clarification of the payor slash payee column? I didn't
6 hear the answer.

7 THE WITNESS: That's the funds either paid to an
8 individual or received from an individual or entity.

9 MR. McCOLL: How does one tell on here?

10 THE COURT: You look at the deposit column and the
11 check amount column.

12 BY MS. WHITAKER:

13 Q. The deposit and amount will appear in the deposit
14 column, is that correct?

15 A. That's correct.

16 Q. And if it's a payment an amount will appear in the check
17 amount column, is that correct?

18 A. That's correct.

19 Q. Okay. With respect to the final column entitled
20 category, what does that represent?

21 A. That represents a -- the category that each payor-payee
22 that I designated so that I could sort them and prepare them
23 in the summary statement on schedule A.

24 Q. Okay. So the final column, the category column is
25 something -- this information is something that you

1 created --

2 A. That's correct.

3 Q. -- in preparing the reports, is that correct?

4 A. That's correct.

5 Q. But all the other columns would be information that you

6 took directly from a particular item or a particular bank

7 account record?

8 A. That's correct.

9 Q. Can you describe for the court how you created these

10 reports in Exhibits 62 and 63?

11 A. 62 I entered in the canceled checks, the deposits and

12 those were entered into a computer system that we have.

13 Q. And then did you sort those records and create these

14 reports?

15 A. Sorted the records and created the summary report.

16 Q. Who are the signatories on the accounts that you

17 reviewed?

18 A. Ben Cook and Teri Cook.

19 Q. Who is Teri Cook?

20 A. It's his wife.

21 Q. Whose wife?

22 A. Ben Cook's.

23 Q. Were you able to determine how much money was deposited

24 into the accounts?

25 A. Yes, I was.

- 1 Q. And what was that amount?
- 2 A. That's on page 34.
- 3 Q. 34 of Exhibit 63?
- 4 A. Of Exhibit 63.
- 5 Q. Okay. And the amount is?
- 6 A. 21,883,482.61.
- 7 Q. Were you able to determine the sources of these
- 8 deposits?
- 9 A. Yes, I was.
- 10 Q. And what are those sources?
- 11 A. They're listed in detail on schedule A.
- 12 Q. On Exhibit 62?
- 13 A. Right.
- 14 Q. Were you able to determine how much of the deposits was
- 15 received from investors?
- 16 A. Yes.
- 17 Q. How much?
- 18 A. That's on the summary schedule 62-A, 17,605,746.31.
- 19 Q. This is the approximately 17.6 million dollar figure
- 20 that represents the majority of the deposits into the Dannel
- 21 account?
- 22 A. That's correct.
- 23 Q. How much was expended from the Dannel bank accounts?
- 24 A. 17,688,742.98.
- 25 Q. Of this amount how much was paid to investors?

- 1 A. 2,776,076.29.
- 2 Q. Where did the balance of the funds paid out go?
- 3 A. They were listed to the various individuals and
4 enterprises under investors on Exhibit 62.
- 5 Q. How did you determine which funds were received from
6 investors?
- 7 A. I compared the investors -- the deposits with a Dannel
8 statement, account statement.
- 9 Q. So you just cross-referenced names that appeared in the
10 Dannel records with the account statement?
- 11 A. That's correct.
- 12 Q. Were all investors included on those account statements
13 that you reviewed?
- 14 A. No, they were not.
- 15 Q. What did you do to make the determination that those
16 investors were, in fact, or those individuals were, in fact,
17 investors?
- 18 A. I would take the total deposited amount, compare that
19 with the checks written to an individual, and if it was 2
20 percent, 3 percent of that figure, then I assumed that that
21 was an investor and classified them accordingly.
- 22 Q. So if you saw a deposit coming into the Dannel account
23 from an individual --
- 24 A. Uh-huh.
- 25 Q. -- and subsequently you saw payment going out to that

1 individual in the amount of 2 to 3 percent of their
2 investment, then you would classify that person as an
3 investor?

4 A. That's correct.

5 Q. When did deposits from investors into the Dannel account
6 begin?

7 A. April of '97.

8 Q. Were the deposits from investors continuous during the
9 period of your review?

10 A. Yes, they were.

11 Q. Were investor funds transferred between the various
12 Dannel accounts?

13 A. Yes, they were.

14 Q. Were investor funds commingled in the various Dannel
15 accounts?

16 A. Yes, they were.

17 Q. Did your analysis reveal that the Dannel accounts were
18 segregated by investor program?

19 A. No.

20 Q. In any other manner?

21 A. No.

22 Q. Did your analysis reveal any particular order or
23 structure to the Dannel bank accounts?

24 A. No.

25 Q. Did it appear from your review that investor funds were

1 moved to whichever Dennel account needed funds?

2 A. Yes.

3 Q. Did your financial analysis of the Dennel bank records
4 reveal how investor funds were utilized?

5 A. Yes.

6 Q. And can you tell me were investor funds used to pay
7 monthly returns to other investors?

8 MR. MOWERY: That's blatantly leading.

9 THE COURT: That is sustained. Ask another
10 question.

11 BY MS. WHITAKER:

12 Q. How were investor funds used?

13 A. That's detailed and is listed on detail of Exhibit 62.

14 Q. All right. So in Exhibit 62 under the name column, the
15 first entry you have there is investors?

16 A. That's correct.

17 Q. And in the use column 2.7 million, so would that
18 indicate that approximately 2.7 million dollars in the funds
19 that came in were used to make payments back to investors?

20 A. That's correct.

21 Q. Do you know of this 2.7 million figure, approximately
22 2.7 million figure, how much of that amount was monthly
23 payments versus return of principal?

24 A. No.

25 Q. Were investor funds paid to any individual or entity

1 named as a defendant in the SEC's lawsuit?

2 A. Yes, they were.

3 Q. Were investor funds paid to FPC-1 Limited Partnership?

4 A. Yes, they were.

5 Q. And what was that amount?

6 A. 64,173.33.

7 Q. That would represent a gross figure, is that correct?

8 A. Right.

9 Q. Were investor funds paid to Alliance Investment Corp?

10 A. Yes, they were.

11 Q. What was the amount?

12 A. 2,477,322.03.

13 Q. Is that also a net or gross figure?

14 A. That's a gross figure.

15 Q. Were investor funds paid to Cornerstone Management LLC?

16 A. Yes, they were.

17 Q. And what was the amount?

18 A. 7,270,000.39.

19 Q. Again it's a gross figure?

20 A. Yes.

21 Q. Were investor funds paid to International Business

22 Consultants Limited?

23 A. Yes.

24 Q. And what was the amount?

25 A. 814,553.35 gross.

1 Q. Were investor funds paid to Highlander Limited
2 Partnership?

3 A. Yes, there were.

4 Q. And what was the amount?

5 A. 229,400.

6 Q. Were investor funds paid to Kelly Olson?

7 A. Yes.

8 Q. And what was the amount?

9 A. 432,606.19.

10 Q. Have you reviewed any of the Dennel offering documents
11 in connection with your work on the Dennel investigation?

12 A. Yes, I have.

13 Q. Now, I would like to direct your attention to Exhibit 2.
14 Was this one of the documents you reviewed?

15 A. Yes, it was.

16 Q. Is there a description in Exhibit 2 of how investor
17 funds would be utilized?

18 A. Yes.

19 Q. Can you tell me what your understanding is of how the
20 funds -- how investor funds would be utilized from your
21 review of Exhibit 2?

22 A. They would be transferred to a London solicitor and that
23 was the directions. Let me read it.

24 MR. McCOLL: Your Honor, we can't hear. I'm sorry.

25 THE COURT: Start over again.

1 A. The client-applicant is instructed at the time to wire
2 transfer funds to the placement managers U.S. bank
3 coordinates for acknowledgment and receipt. Those funds are
4 then wire transferred to the London solicitor's internal
5 ledger trust bank account on behalf of our placement manager
6 for safekeeping.

7 BY MS. WHITAKER:

8 Q. Can you tell me from which page you're reading?

9 A. That's page 2.

10 Q. Of Exhibit 2?

11 A. Yes.

12 Q. Which paragraph?

13 A. 6.

14 Q. Okay. So, based on your understanding of that
15 paragraph, are investor funds to be sent to London?

16 A. That's correct.

17 Q. Do you have an understanding from your review of
18 Exhibit 2 whether or not investors were to receive a return
19 on their investment?

20 A. Yes.

21 Q. Now, what is your understanding of how those returns
22 would be generated?

23 A. Oh, on page 3 under the summary section, the program is
24 scheduled to return monthly profits of 2 percent net to the
25 investor on a best-effort basis monthly in exchange for use

1 of funds.

2 And on page 4 in the middle of the paragraph, the last
3 paragraph it says, monthly trading profits shall be paid to
4 the investors' designated banking coordinates within 45 days
5 of the staging of said enhancement activity.

6 Q. During your review of the Dannel bank accounts, did you
7 see any payments going to a London bank?

8 A. No, I did not.

9 Q. Did you see any wire transfers going to any London
10 bank?

11 A. No, I did not.

12 Q. Any checks going to any London banks?

13 A. No, I did not.

14 Q. What about to any other European bank?

15 A. No.

16 Q. Did you see any deposits into the Dannel accounts that
17 were marked or in any way identified as profits generated by
18 a trading program?

19 A. No.

20 Q. In fact, did you see a single deposit related to profits
21 or returns from a European trading program?

22 A. No.

23 Q. Were you able to determine from your review of the bank
24 records how Dannel was able to pay investors monthly return
25 payments and returns of principal?

1 A. Would you repeat that, please?

2 Q. Were you able to tell from your review of the bank
3 records how Dennel was able to make the monthly payments to
4 investors?

5 A. They were taking current funds and paying early
6 investors.

7 Q. So they were taking investments from current investors
8 and using that to pay prior investors?

9 A. That's correct.

10 Q. How do you know that?

11 A. From the schedule that I prepared on -- I believe it was
12 63, exhibit A.

13 Q. Is it 62?

14 A. 62.

15 Q. What on Exhibit 62 leads you to believe that?

16 A. There was no other sources of income or trading profits.

17 Q. So the primary source of deposits into the account were
18 from investors, is that correct?

19 A. That's correct.

20 Q. Is there a name for the practice that you've described
21 where current investor funds are used to pay prior investors?

22 A. Yes, there are.

23 Q. And what is that name?

24 A. It's called Ponzi.

25 Q. Is one of the characteristics of a Ponzi scheme that new

1 investor monies are used to pay and used to pay prior
2 investors and to continue a Ponzi scheme?

3 A. That's correct.

4 Q. Is another feature of a Ponzi scheme is that when new --
5 when the orchestrators are unable to bring in new investor
6 funds the scheme collapses?

7 MR. MOWERY: Judge, it's leading.

8 THE COURT: I really don't need any testimony on
9 Ponzi schemes.

10 BY MS. WHITAKER:

11 Q. Mr. Session, based upon your review of the Dennel
12 accounts, do you believe that investments with Dennel were
13 investments in a Ponzi scheme?

14 A. I do.

15 MS. WHITAKER: No further questions, Your Honor.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MR. CONNELLY:

19 Q. Good afternoon, Mr. Sessions.

20 A. Good afternoon, counsel.

21 Q. You're familiar with Exhibits 62 and 63 that you have
22 been discussing with counsel For the SEC. Exhibit 62 is a
23 summary, I believe you stated, but I want to be clear. 62 is
24 a summary of the source of funds into Dennel and related
25 accounts and then use means the out funds. Is that what

1 Exhibit 62 is?

2 A. That's correct.

3 Q. And 63 is merely a more specific itemized breakdown by
4 account number, date, amount of money and amount of money out
5 and who it went to, whether it was an entity or an
6 individual, is that correct?

7 A. That's correct.

8 Q. And you're basing your opinion that this was a Ponzi
9 scheme on the numbers that you have set forth in Exhibit 63
10 and reduced to the summary in Exhibit 62, is that correct?

11 A. That's correct.

12 Q. If you had not captured all of the deposits or checks
13 out in Exhibit 62, it would affect your summary in exhibit --
14 pardon me, in Exhibit 63, it would affect your summary in
15 Exhibit 62, would it not?

16 A. Repeat that, please.

17 Q. Sure. If you had not captured or picked up all deposits
18 and all checks out to the various payor-payees, as listed in
19 Exhibit 63, it would change your numbers in Exhibit 62 in the
20 summary, correct?

21 A. That's correct.

22 Q. And you're basing your opinion on your position that
23 these numbers accurately reflect monies that were deposited
24 and monies that were paid back to payors or payees, is that
25 correct?

1 A. That's correct.

2 Q. So if there was a sourcing -- a funding in or out that
3 was missed, you would have to change your opinion, at least
4 at this time, with respect to whether or not this is a Ponzi
5 scheme because your numbers wouldn't be accurate, correct?

6 A. Repeat that again, please.

7 Q. You've told us that the summary you prepared in Exhibit
8 62 is prepared from Exhibit 63. If you have not caught all
9 of the numbers, all of the money that came in and all of the
10 money that was paid out, then you would have to at least, for
11 today's proceedings, change your opinion until you were able
12 to review additional documents to come up with this summary
13 sheet, is that correct, because your numbers would be
14 incorrect?

15 A. You're asking me to speculate, counselor.

16 Q. Let's not speculate then. Would you look at page 26 of
17 Exhibit 63, please?

18 A. 63?

19 Q. Let me -- I'm on Exhibit 63.

20 A. Okay.

21 Q. Let me change the page that I'm referring you to. And
22 we will just -- let me ask you, I didn't notice, but did you
23 sit through prior testimony of some of the investors in this
24 case?

25 A. No.

1 Q. Okay. I just wondered if you had heard it or whether I
2 maybe pose a hypothetical to you. Would you look at page 18
3 of Exhibit 63. Tell me when you're there.

4 A. Okay. I'm there.

5 Q. Would you look down on the left column approximately
6 four or five down. Do you see account No. 5187 listed there
7 twice? On the left, see account number --

8 A. 5187?

9 Q. Yes. It's about four or five down the left column from
10 the top.

11 A. Okay.

12 Q. Do you see that?

13 A. Is that a transaction date 28th of August of '98?

14 Q. I don't know. These are your records.

15 THE COURT: He's asking you what line.

16 BY MR. CONNELLY:

17 Q. Oh, you're asking which line across?

18 A. Yes.

19 Q. I'm sorry. First line, account numbers.

20 A. Okay.

21 Q. Correct me if I'm wrong. Did you prepare these records
22 or did I misunderstand that?

23 A. Yes, I prepared the records.

24 Q. Okay. I'm under the first line, account number 5187.

25 They start about 4th or 5th or 5th and 6th numbers on the

1 left. You see those?

2 THE COURT: It actually starts the 3rd, so which
3 date do you want him to look at?

4 MR. CONNELLY: August 28th and July 13th of '98.

5 THE COURT: That was his question back to you a
6 minute ago.

7 BY MR. CONNELLY:

8 Q. Do you see those?

9 A. Yes.

10 Q. Do you see those amounts in 130,000 or 170,000?

11 A. Yes.

12 Q. Were those brought in through Mr. Paul Jones?

13 A. Mr. P. E. Jones.

14 Q. Is that Paul Jones?

15 A. I have no way of knowing that. I put exactly what's on
16 the document.

17 Q. So you didn't identify the individuals beyond, for
18 example in this case, the initials?

19 A. No.

20 Q. Okay. If I told you that Mr. Jones had put in exactly
21 those amounts in his earlier testimony, 130,000 and 170,000,
22 and had testified that he received approximately 60,000 back
23 in interest, show me on Exhibit 63 where it's reflected that
24 Mr. Jones received back 60,000 dollars in interest.

25 A. It's not on there.

1 Q. Well, have you looked through -- would that be the only
2 place it would be contained in Exhibit 63?

3 A. Right next to that at the check column.

4 Q. So either Mr. Jones was incorrect in the fact that he
5 had received interest back on his investment or you have
6 missed an amount out to Mr. Jones, correct?

7 A. That's possible.

8 Q. Mr. Ken Fitzgerald also testified in this case. Would
9 you refer us to the page in Exhibit 63 that identifies his
10 investments and his return on his money of about a half a
11 million dollars.

12 A. It's not on this list.

13 Q. Anywhere?

14 A. Anywhere.

15 Q. So if I tell you that Mr. Fitzgerald indicated earlier
16 in his sworn testimony that he had invested about 50,000 and
17 had received interest back, neither one of those figures are
18 picked up in your specific calculations in Exhibit 63. Is
19 that also true?

20 A. That's true.

21 Q. Without going further into additional investors or
22 entities then, just those two entries or failure to make
23 those entities would necessarily change your calculations in
24 Exhibit 62, correct?

25 A. That's correct.

1 MR. CONNELLY: I have no further questions. Thank
2 you, Your Honor.

3 THE COURT: Cross-examination?

4 CROSS-EXAMINATION

5 BY MR. GOODENOW:

6 Q. Mr. Sessions, my name is Gary Goodenow for Mr. Clagg.

7 A. Nice to meet you.

8 Q. My pleasure to meet you to. Did I hear you testify that
9 there were a total of 30 accounts in total but you only
10 reviewed 18 of them?

11 A. That's correct.

12 Q. So you reviewed a little bit over half of the facts?

13 A. That's correct.

14 Q. Was there some reason you picked 18? Is that
15 statistically significant or something?

16 A. It would be a statistical sampling but that was all that
17 was available to me at the time that I did the scheduling.

18 Q. And when did you do this scheduling?

19 A. In March and April. I mean -- let me back up. February
20 and March of this year.

21 Q. Now, taking a look at Exhibit 62, would you please
22 identify for the court what that nomenclature means where it
23 reads FW-2104?

24 A. 62?

25 Q. Yes, sir. Exhibit 62 in the upper left-hand corner as

1 you look at it.

2 A. What was the question again?

3 Q. I would like for you to identify for the court what is
4 meant by the nomenclature FW-2104?

5 A. That is an identification number that we assign to every
6 case for the Commission.

7 Q. Okay. And does that mean that -- that there was a
8 formal order of investigation in this case?

9 A. We have an open formal order with the Commission for
10 prime bank cases.

11 Q. What I want to know is how long have you been looking at
12 Dennel?

13 A. Since February of '99.

14 Q. Prior to opening of FW-2104, was there a matter under
15 investigation for Dennel or any of the people connected with
16 it?

17 A. Prior to this?

18 Q. Prior to the issuance of FW-2104.

19 A. Not to my knowledge.

20 Q. And do you have to keep time sheets once a week?

21 A. Absolutely.

22 Q. And can you tell the court approximately how many hours
23 it took you --

24 A. 80.

25 Q. -- to do Exhibits 62 and 63?

1 A. 80.

2 Q. Do you have any personal knowledge of the investigation
3 that Mr. Clagg would have done prior to becoming involved in
4 Dannel?

5 A. Asked me that again.

6 Q. Do you have any personal knowledge of the investigation,
7 if any, that Mr. Clagg did prior to joining, becoming
8 involved with Dannel?

9 A. No.

10 MR. GOODENOW: Thank you, Your Honor.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION

13 BY MR. MOWERY:

14 Q. Mr. Sessions, my name is Rob Mowery. You indicated you
15 have been involved with approximately 25 investigations?

16 A. Yes, sir.

17 Q. And approximately how many times have you testified, Mr.
18 Sessions?

19 A. It think this is probably the 7th time.

20 Q. 7th time.

21 A. Yes.

22 Q. And have there been other situations in which you
23 concluded, based on you investigation, there was a Ponzi
24 scheme involved?

25 A. Yes.

1 Q. On how many of the occasions did you suspect that there
2 was a Ponzi scheme, did you conclude in fact it was a Ponzi
3 scheme?

4 A. Repeat the question.

5 Q. Yes, sir. On the various investigations that you have
6 conducted in which you suspected that there was a Ponzi
7 scheme, on how many of those have you concluded, based on
8 your examination, you came to the opinion that there was a
9 Ponzi scheme?

10 A. Two others.

11 Q. You indicated that part of what you reviewed was --
12 investor testimony for preparing your opinions?

13 A. That's correct.

14 Q. What investor testimony did you review?

15 A. That was Mr. Pate's.

16 Q. Any investor other than Mr. Pate?

17 A. There's no other.

18 Q. Now, you also indicated that there were --

19 MS. WHITAKER: Excuse me, Your Honor. I want to
20 clarify something that the witness testified to. The
21 question was did he review investor testimony. I think it's
22 investigative testimony of Mr. Gerald Pate.

23 MR. MOWERY: I wrote down in my direct examination,
24 Your Honor, that he had said he reviewed bank documents,
25 investor testimony.

1 THE COURT: He did say investor testimony.

2 MS. WHITAKER: He said investigative testimony.

3 BY MR. MOWERY:

4 Q. Was it investigative of investor testimony, Mr.
5 Sessions.

6 A. It was investigative.

7 Q. Investigative testimony. And the testimony that you're
8 referring to Mr. Pate's testimony?

9 A. Yes.

10 Q. Any other investigative testimony that you reviewed in
11 preparing your report?

12 A. In this case?

13 Q. Yes, sir.

14 A. No.

15 Q. And do you have work documents that are not included in
16 Exhibits 62 and 63?

17 A. I'm not sure what you're saying.

18 Q. Well, Exhibits 62 and 63 are summaries that you
19 prepared, is that correct?

20 A. That's correct.

21 Q. And do you have working documents or drafts of
22 documents, notes, this sort of thing that are in your
23 possession that you used in preparing those exhibits?

24 A. No.

25 Q. Did you have at one time?

1 A. No.

2 Q. Could you tell us how you went about preparing Exhibits
3 62 and 63 physically?

4 A. Physically I took the canceled checks. We have a
5 computer program that's called Excess, that's entered into
6 that program; each check, each deposit, each transfer.

7 Q. Do you personally enter it in or does someone else do
8 that?

9 A. No, I did it.

10 Q. Okay. Now, you indicated that there were approximately
11 30 accounts?

12 A. That's correct.

13 Q. And these 30 accounts were Bank One accounts, is that
14 right?

15 A. That's correct.

16 Q. And you actually were -- you mentioned 30 and then you
17 mentioned 18 and you mentioned 9, as I recall. I was
18 wondering, Exhibits 62 and 63 are they the results of your
19 detailed analysis of nine accounts?

20 A. That's correct.

21 Q. Nine of the 30?

22 A. We actually received 18.

23 Q. Okay.

24 A. There was nine of the 18.

25 Q. Okay.

1 A. And I have been made aware of 30.

2 Q. So you were aware of 12 that you haven't reviewed?

3 A. I'm aware of 18 that I haven't reviewed.

4 Q. Let me back up so we can communicate. Your analysis is

5 of nine accounts, correct?

6 A. Yes.

7 Q. Physical analysis is nine accounts?

8 A. All right.

9 Q. And there were another nine accounts of which you are

10 aware?

11 A. That I have bank statements only.

12 Q. And you have done no detailed analysis of those nine

13 accounts?

14 A. That's correct.

15 Q. And then are there yet other accounts of which you are

16 aware of which you do not have documentation?

17 A. That's correct.

18 Q. And is that another 12 accounts?

19 A. That's correct.

20 Q. Now, let's talk about the 12 accounts first. Did you

21 see documentation for those 12 accounts?

22 A. No, I did not.

23 Q. Why did you not?

24 A. I just didn't have them. Let's back up. What was the

25 question?

- 1 Q. I'm asking you if you sought any documentation with
2 respect to these other 12 accounts?
- 3 A. They have been subpoenaed.
- 4 Q. Was there any reason that you did not look at those 12
5 accounts?
- 6 A. They weren't available at the time that I scheduled
7 them.
- 8 Q. Now, what about the other nine that you had, not the
9 nine that you did the detailed analysis on, but the other
10 nine?
- 11 A. Just the bank statements?
- 12 Q. Just the bank statements. Why have you not done an
13 analysis?
- 14 A. I have no documentation; no checks, no deposits, no
15 transfers.
- 16 Q. And have you sought those?
- 17 A. Yes.
- 18 Q. And do you know why you haven't received them?
- 19 A. They have been subpoenaed and they're working on them.
- 20 Q. The bank is?
- 21 A. The bank is, yes.
- 22 Q. Now, these 30 accounts were all at Bank One, correct.
- 23 A. That's correct.
- 24 Q. Are you aware of accounts in other financial
25 institutions that Dannel has other than Bank One?

1 A. I have been told that there are other bank accounts.

2 Q. What other bank accounts are you aware of?

3 A. I don't remember what the name of them are.

4 Q. Have you been told how many that is?

5 A. No.

6 Q. So you have no idea of either the amounts going in or

7 the amounts going out of those accounts, correct?

8 A. That's correct.

9 Q. Now, let me ask you, if I could, Mr. Sessions, with

10 respect to Exhibit 62, for example, you have Cornerstone and

11 you have \$7,000,000 being paid to Cornerstone, is that

12 correct?

13 A. That's correct.

14 Q. Now, did you do any analysis as to what Cornerstone did

15 with that money?

16 A. No.

17 Q. You have no idea where the money went to?

18 A. No.

19 Q. For all you know it could have gone to London or

20 overseas someplace, is that right?

21 A. Well, you're asking me to speculate there.

22 MS. WHITAKER: Your Honor, calls for speculation.

23 BY MR. MOWERY:

24 Q. You don't know?

25 A. I don't know.

1 Q. That would be true for -- under Alliance Investment, for
2 example, two and a half millions dollars. Do you know
3 where -- that money went to Alliance Investment, correct?

4 A. That's correct.

5 Q. Do you know where the money went after that?

6 A. No.

7 Q. Could you explain, Mr. Sessions, how you arrived at your
8 opinion that new money from investors was used to pay
9 investors that had invested previously by just going to an
10 example on Exhibit 63, give us an example of your opinion.

11 A. There's no document says that there will be trading
12 profits and there doesn't appear to be any trading profits.
13 Doesn't appear to be any -- there's just absolutely no
14 deposits from any European bank accounts.

15 Q. I'm not focus really on that. I'm asking for -- as I
16 understand it, your opinion was that the money -- the new
17 money that was going into those nine accounts you looked at,
18 was being used to pay for investments that had been made
19 previously. Is that your testimony?

20 A. That's correct.

21 Q. Now, I would like you to give me an example, if you
22 would, please, sir, on Exhibit 63 which is the breakdown, the
23 analysis, if you could show me an instance where new money is
24 used to pay an old investment?

25 A. There is not a specific designated transaction on there.

1 It's just that there is no trading income so there's nothing
2 to even assume about it. There's no income other than
3 investor monies, so the overall whole of the schedule is
4 based on the fact that there is no other sources of revenue.
5 Q. So your analysis is based on the process of elimination,
6 is that right?
7 A. I'm not sure what you mean process of elimination.
8 Q. In other words, you're making a conclusion based on the
9 fact that there's no evidence.
10 A. Of any trading revenues or profits.
11 Q. In these nine accounts --
12 A. That's correct.
13 Q. -- that you looked at?
14 A. Correct.
15 Q. What did you mean by -- on Exhibit 63 you said that the
16 zeros meant a noncheck item?
17 A. That's noncash.
18 Q. Noncash item. Noncheck item. What do you mean by that?
19 A. Where are you?
20 Q. I'm sorry. For example, in the first page of Exhibit
21 63.
22 A. 63. That's bank transfers.
23 Q. Just internal transfers within the bank?
24 A. That's transfers coming in or out from banks.
25 Q. Well, for example, let's take the very first one up

1 there, account No. 5187 on June 17, '98.

2 A. Uh-huh.

3 Q. That shows a deposit of a hundred thousand dollars,
4 correct?

5 A. 110,000.

6 Q. I'm sorry, \$110,000. And the payor there is an investor
7 by the name of Adamson.

8 A. That's correct.

9 Q. And there is no check number there. Its just a zero.

10 A. That's correct.

11 Q. And so what does the zero mean?

12 A. That's a noncheck item which is a -- would indicate that
13 it's a bank transfer, it was transferred to Dennel by bank
14 transfer.

15 Q. A wire transfer?

16 A. That's correct.

17 Q. Have you looked at any records -- as I understand it,
18 Exhibit 62 is dated April 22, '97, through August 31, '98,
19 correct?

20 A. That's correct.

21 Q. Is there any reason you didn't look at the periods
22 either before that time or after that time?

23 A. There's no particular reason. That's just when it
24 started. 4-22 was the first bank transaction that I had that
25 I received based on the subpoena of the records.

1 Q. That is the first transaction within these nine
2 accounts?

3 A. Right.

4 Q. You don't know when the other accounts were -- the other
5 22 accounts, you didn't look at, you don't know when they
6 started?

7 A. No.

8 Q. And then why did you end August of '98?

9 A. The records were subpoenaed through that date.

10 Q. You said you performed your analysis in February?

11 A. February.

12 Q. Do you know why the subpoena only went for documents up
13 through -- or bank records up through August of '98?

14 A. No, I do not.

15 Q. Thank you, Mr. Sessions.

16 THE COURT: Cross-examination?

17 CROSS-EXAMINATION

18 BY MR. McCOLL:

19 Q. It's not a complete analysis, is it?

20 A. What do you mean by complete?

21 THE COURT: He's already covered that. It's not a
22 complete analysis of all the accounts that has been done.

23 BY MR. McCOLL:

24 Q. In fact, it's less than one-third of the accounts, isn't
25 it?

1 A. One-third of what figure?

2 Q. One-third of the accounts. There are 30 accounts?

3 A. That's correct.

4 Q. So it's less than one-third of the accounts?

5 A. That's correct.

6 Q. Can you tell Judge Buchmeyer the total number of dollars
7 that came into the Dennel Limited program?

8 A. From these nine accounts?

9 Q. No, from 30 accounts?

10 A. From the 30 accounts?

11 THE COURT: There's no way he could tell me that
12 because he hasn't seen the records.

13 BY MR. McCOLL:

14 Q. So do we have any idea if in those other missing, more
15 than two-thirds of the accounts, there are transfers; for
16 example, deposits, from European and trading accounts over
17 here to these accounts?

18 A. No.

19 Q. It could be --

20 MS. WHITAKER: Objection, asked and answered and
21 beyond the witness' expertise.

22 THE COURT: Objection sustained.

23 MR. McCOLL: First, if I have already asked him
24 that question I would like to rephrase it, if I could. Maybe
25 I'm asking it wrong, but see if I understand, judge.

1 BY MR. McCOLL:

2 Q. What would they show if I were to go look at these
3 unexamined --

4 THE COURT: He hasn't seen them.

5 BY MR. McCOLL:

6 Q. I'm not asking what they show as a matter of fact, but
7 wouldn't they show, if there had been transfers -- you've
8 come here and told the court there aren't any transfers of
9 trading, therefore it's illegal.

10 THE COURT: What he told me was that there hasn't
11 been any transfers in these accounts.

12 MR. McCOLL: Correct, I understand, but -- if there
13 had been trading --

14 THE COURT: And he doesn't know what's in the
15 other accounts.

16 MR. McCOLL: Correct.

17 THE COURT: He hasn't looked at them.

18 MR. McCOLL: Exactly.

19 THE COURT: Any question you asked he said I
20 haven't looked at those records.

21 MR. McCOLL: It's a hypothetical to this expert, if
22 the court please.

23 THE COURT: If you want to argue that, that's fine,
24 but don't waste time on question like that, Mr. McColl.

25 MR. McCOLL: So if there was exculpatory evidence

1 in those other accounts, I couldn't at least get the answer
2 that it would appear there?

3 THE COURT: He doesn't know what's in those other
4 accounts.

5 MR. McCOLL: I guess I'm just not asking it right,
6 judge. I know that he doesn't know. I'm just saying
7 wouldn't it appear, if it had occurred -- if it had occurred
8 it would be in the accounts. That's what I was trying to
9 establish; in other words, it wouldn't be somewhere else.

10 THE COURT: I understand what you're doing. You
11 have another question?

12 BY MR. McCOLL:

13 Q. We have heard two investors here -- we've had, I think,
14 five investors come today, two of which don't show up in your
15 records. Could you check and see if Dr. Balakrishnan, is in
16 your records? (Spelling) B-A-L-A-K-R-I-S-H-N-A-N.

17 A. Spell that again.

18 Q. B as in boy, A-L as in Lucky, A-K as in kaleidoscope,
19 R-I-S-H --

20 A. I don't see that name in the payor or payee column.

21 Q. If I told you that was one of the witness who testified
22 here today, would there be any other place to look for it in
23 your report?

24 A. No.

25 Q. Okay. Could you tell Judge Buchmeyer where in your

1 report there is interest income listed here?

2 A. There is no interest income.

3 Q. There is no interest income?

4 A. No.

5 Q. So I'm not -- I'm sorry. I just don't understand this.

6 There are millions of dollars here in these accounts and they

7 collected no interest on these accounts?

8 A. I have not seen anything that indicates that.

9 Q. Do you know of a bank that doesn't pay -- what kind of

10 accounts were these that -- in your analysis did you see that

11 they were trust accounts that would not pay interest?

12 A. I'm telling you I did not see any interest income.

13 Q. Okay. Is that the kind of thing you were looking for as

14 part of your audit?

15 A. I was looking for investor deposits.

16 Q. Okay.

17 A. And I did -- I did review for any kind of income such as

18 the trade profits in Europe.

19 Q. I guess what I'm asking, could you tell Judge

20 Buchmeyer -- is it your testimony that there probably is not,

21 in your opinion, any interest income or that it could have

22 been there but it wasn't your task to look for it?

23 A. Exactly what do you mean by interest income?

24 Q. Well, interest earned on capital. It's paid by banks

25 and other financial institutions for the use of the money.

1 THE COURT: He's asking you if these deposits were
2 drawing interest in the banks.

3 THE WITNESS: I saw no evidence of that.

4 BY MR. McCOLL:

5 Q. Did that surprise you?

6 A. Not really.

7 Q. And you think --

8 A. I don't know what their obligations were with the bank.

9 Q. In the other seven investigations that I think You
10 testified to, I think your testimony was that two out of the
11 seven you conclude that there was a Ponzi scheme?

12 A. That's correct.

13 Q. Okay. And in the other seven what was your conclusion?

14 A. Basically the same that I've just stated here today in
15 my testimony.

16 Q. Which is?

17 A. No income, all of the investor -- current investor money
18 is used to pay --

19 THE COURT: You misunderstood his question. He's
20 asking you about the other five.

21 THE WITNESS: Oh. Sorry about that.

22 THE COURT: What was your conclusion in those.

23 BY MR. McCOLL:

24 Q. Was there a uniform conclusion in the other five?

25 A. Yes.

1 Q. And what was that conclusion?

2 A. That conclusion it was a Ponzi scheme.

3 Q. In the other five. So there was seven out of seven that

4 you found there was a Ponzi scheme?

5 A. There were two Ponzi schemes that I've investigated and

6 I concluded, based on my review of the documentation, that

7 they were Ponzi schemes.

8 Q. Yes, sir. And those two were -- two investigations you

9 did, but you did a total of seven investigations.

10 A. Right.

11 Q. So five you didn't find -- you found there was not a

12 Ponzi scheme.

13 A. Five may not have been -- they may have been various

14 other type of investigations.

15 Q. Okay. Do you recall?

16 A. What the type -- it wasn't Ponzi schemes.

17 Q. Okay. Do you recall what they were?

18 A. No, not right off the top of my head.

19 Q. Did you conclude there were some illegality in the other

20 five?

21 A. I don't recall if there was any illegalities in the

22 other five.

23 Q. Now, where did you receive your training to actually

24 specifically be able to state here to this court that there

25 is a Ponzi scheme or there isn't? Where did you receive that

1 training?

2 A. At the Securities and Exchange Commission.

3 Q. When did that occur, please?

4 A. In October of 1998.

5 Q. What did that consist of? Over what period of time did
6 you receive the training, sir?

7 A. I didn't actually receive any training. It was based on
8 the investigation that I had done of the cases.

9 Q. So have you ever received any specific training from a
10 superior about the way to investigate for a Ponzi scheme?

11 A. We have seminars, but it wasn't specifically based on
12 Ponzi schemes.

13 Q. And you started going to these seminars in 1998, October
14 of '98.

15 A. Right, that's correct.

16 Q. And any more than -- is it just one?

17 A. Correct myself there. Our seminars are held over
18 various times and they can be for any particular type of
19 training that has to do with any -- various types of cases.

20 Q. Right. And you know lawyers go to seminars, too and I
21 know sometimes there's a seminar on driving while intoxicated
22 defense or another time on construction law, et cetera. So
23 has there been a seminar just on Ponzi schemes that you
24 recall?

25 A. No.

1 Q. Might be one speaker out of several speakers that would
2 talk about that?

3 A. That has happened.

4 Q. Is there a handbook for you on investigation of Ponzi
5 schemes?

6 A. No.

7 Q. Is there in any publication that you used as a guide,
8 whether it's a handbook or otherwise?

9 A. No.

10 Q. So basically you were told by this lecturer it's a Ponzi
11 scheme if you can't find any other source of income except
12 investor income.

13 A. Want to repeat it again?

14 Q. The definition that you've been taught of a Ponzi scheme
15 is that if you can't see any other source of income except
16 investor income then it is, by definition, a Ponzi scheme?

17 A. That's correct.

18 Q. Is there any other part of the definition, an element
19 that I'm missing that would be part of a definition of a
20 Ponzi scheme? Does that -- isn't that really the essence?

21 A. That is the essence of a Ponzi scheme.

22 Q. Okay. So returning a moment, sir, and I know that
23 you've been pressed for time, but had you had the opportunity
24 to look at these other accounts and seen other sources of
25 income, your opinion could change.

1 THE COURT: Again, he doesn't know.

2 MS. WHITAKER: Calls for speculation.

3 THE COURT: He doesn't know what's in the other
4 accounts.

5 MR. McCOLL: Right.

6 THE COURT: We've beat that to death.

7 BY MR. McCOLL:

8 Q. Is there a guideline for you to look at least 50 percent
9 of the income? Do you know what percentage of the income
10 this is for this company?

11 A. No.

12 Q. So this could be less than a third of the income.

13 THE COURT: He doesn't know. He said he doesn't
14 know.

15 BY MR. McCOLL:

16 Q. Is there a guideline? Are you taught or given a
17 guideline before you come in here and testify that there is a
18 fraudulent activity going on?

19 A. No, it's based on transactions that takes place.

20 Q. Okay. But what I was trying to get to, is there a
21 percentage that you're required to look at before you can say
22 this is adequate for me to extrapolate to the entire
23 organization?

24 A. Based on those nine accounts, all 30 of them are
25 probably the same way.

1 Q. On the five that you found -- remember those five that
2 you found there wasn't a fraud, one of those five we talked
3 about.

4 THE COURT: He didn't say that. I thought he
5 said -- I thought he said he looked at seven to determine if
6 they were Ponzi schemes and he only found two. Now he says
7 he didn't do that. He looked at seven for fraud problems and
8 that two of them were Ponzi and some of the other ones had
9 fraud problems. He doesn't remember the details. And you've
10 already covered that, so we don't need it again.

11 BY MR. McCOLL:

12 Q. Are you a certified fraud examiner, sir?

13 A. No, sir.

14 Q. Have you taken a test?

15 A. No.

16 Q. I missed the answer and I apologize. When you were
17 asked about work documents by another lawyer, did you say
18 those existed, your working documents?

19 A. That's correct.

20 Q. Okay. Would you -- can I ask you to hold on to those
21 and not destroy them, please? Would you do that for us?

22 A. Yes.

23 Q. Thank you. Can you just tell the court briefly -- I
24 think we all know, but what is your opinion of best efforts
25 that you read in that document on direct examination?

1 A. My opinion?

2 THE COURT: He didn't give an opinion.

3 BY MR. McCOLL:

4 Q. When a company say we're going to make our best efforts
5 to get you 2 percent, does that mean it's a guarantee?

6 A. I don't know.

7 Q. You don't know.

8 A. No.

9 MR. McCOLL: I'm in my final area, Your Honor.
10 This is short but it's important.

11 BY MR. McCOLL:

12 Q. Could you tell the court, when you were given these
13 documents do you have a sense of where these documents were
14 kept at the company, at the Dannel?

15 A. Which documents?

16 Q. The documents that you looked at?

17 A. No, I have -- no, I don't.

18 Q. Okay. Do you think they were from the bank or -- as you
19 think back about it, I'm just asking you to try to reflect
20 back because I know you've looked at lot of documents, but is
21 your recollection that these appear to have been subpoena
22 from a financial institution?

23 A. That's correct.

24 Q. And as a follow-up and just -- I think this is my last
25 question, did any of the documents that you looked at in

1 order to come and give your opinion here today, were any of
2 those documents company documents? In other words, I'm
3 talking about the financial transaction part. Were any of
4 the financial documents already in the company and not
5 subpoenaed?

6 A. They were all subpoenaed from the bank.

7 Q. Thank you.

8 THE COURT: Anything else?

9 MR. MOWERY: Could I ask just a couple more
10 questions?

11 THE COURT: No. What about?

12 MR. MOWERY: I just want to make sure on the work
13 documents I thought he testified he didn't have any. I
14 just --

15 THE COURT: He did.

16 MR. MOWERY: He does have them.

17 THE COURT: No, he said he didn't have any work
18 documents except these things that you were looking at. I
19 expect the government to get back up and ask that.

20 Did you understand what you were being asked?

21 THE WITNESS: Apparently not, Your Honor.

22 THE COURT: Tell us again what your work documents
23 were to prepare these two exhibits.

24 THE WITNESS: I believe I did cover that, but it
25 was canceled checks, deposit slips and back transfers.

1 THE COURT: Now, Mr. McColl asked you whether or
2 not you had any workpapers and you gave him one answer, and
3 the other attorney asked you if you had any workpapers and
4 you told him no, so one of them is not right. You have
5 workpapers or you don't have workpapers.

6 THE WITNESS: Maybe I failed to understand the
7 definition of workpapers.

8 THE COURT: You're writing something down.

9 THE WITNESS: Okay. I don't have anything like
10 that.

11 THE COURT: Making notes?

12 THE WITNESS: No.

13 THE COURT: You got ledger papers you're making
14 notes on you. Don't have anything like that?

15 THE WITNESS: Nothing like that.

16 THE COURT: Okay.

17 MR. CONNELLY: Your Honor, may I have that one
18 carryover over question that the court so graciously granted
19 me five on from the previous witness that I might ask.

20 THE COURT: Why don't you save it for the next
21 witness.

22 MR. CONNELLY: I'll restrict it to one question,
23 judge.

24 THE COURT: Okay.

25 MR. CONNELLY: Thank you.

1 THE COURT: Just ask it from there.

2 CROSS-EXAMINATION

3 BY MR. CONNELLY:

4 Q. Mr. Sessions, in my -- in our previous discussion, when
5 we were talking, I asked if you were basing your opinion on
6 that summary, Exhibit 63, and that you were assuming that
7 based upon that summary that all of the amounts and accounts
8 were correct, to your knowledge, at that time. Since they
9 weren't, because you admittedly recognized that you didn't
10 include certain accounts, you wouldn't necessarily have to
11 change your opinion about this until you had done or do more
12 research with respect to those accounts, and I'm talking
13 about an account -- the nine accounts that you clearly did
14 reveal like Mr. Jones, who is listed in there but the money
15 is not listed, so there's an error there. You would have to
16 at least qualify or change your Ponzi --

17 MS. COOK: Objection, Your Honor.

18 MR. CONNELLY: I'll get to the question right now.

19 BY MR. GOODENOW:

20 Q. You would have to qualify your Ponzi opinion until you
21 reviewed more records, correct, sir?

22 MS. WHITAKER: Objection, Your Honor. Counsel is
23 mischaracterizing the witness' testimony.

24 THE COURT: I'm going to ask the court reporter to
25 type up that question for Et Cetera.

1 And I will sustain the objection.

2 THE COURT: Do you have anything else for this
3 witness?

4 MS. WHITAKER: Just a couple of questions.

5 REDIRECT EXAMINATION

6 BY MS. WHITAKER:

7 Q. Mr. Session, are you aware that the SEC has alleged in
8 its lawsuit that approximately -- Dannel raised approximately
9 \$30,000,000?

10 A. Yes.

11 Q. And in the bank records that you reviewed, you have been
12 unable to account for deposits in the amount of approximately
13 \$21,000,000, is that correct?

14 A. That's correct.

15 Q. As you have testified to several times that you -- your
16 analysis did not include the universe of Dannel bank records,
17 is that correct?

18 A. That's correct.

19 Q. And your account, your analysis was for a limited time
20 period, is that correct?

21 A. That's correct.

22 Q. So any transaction occurring before or after the time
23 period of your review would not show up in your documents,
24 your reports, is that correct?

25 A. That's correct.

1 MS. WHITAKER: That's all.

2 THE COURT: Okay. You may step down. You're
3 excused.

4 On the government, you only have one more witness.
5 Government, you have one more witness.

6 MR. NORRIS: Yes.

7 THE COURT: How long is your direct going to take
8 with this witness?

9 MS. COOK: Direct will take 15 minutes.

10 THE COURT: Okay. Let's take a -- we need to give
11 the court reporter a break. Let's take a 10-minute break and
12 finish up.

13 (Break taken)

14 THE COURT: Your next witness.

15 MS. COOK: Mr. Adams.

16 THE COURT: If you will just have a seat up here.
17 If you will tell us your name again?

18 THE WITNESS: My name is David F. Adams.

19 DAVID F. ADAMS,

20 called as a witness by the Plaintiff, testified on his oath
21 as follows:

22 DIRECT EXAMINATION

23 BY MS. COOK:

24 Q. What do you do for a living?

25 A. I'm an investigator for the state securities division

1 Arizona Corporation Commission.

2 Q. Have you been involved in an investigation regarding
3 Dannel Finance Limited?

4 A. Yes, I have.

5 Q. Were you involved in the recent search warrants that
6 were executed at the residence of Ben Cook and at other
7 venues?

8 A. Yes, I was.

9 Q. What was your role in executing those search warrants?

10 A. I was the affiant for the search warrants and I --
11 somewhat I was overseeing the operations.

12 Q. All right, sir. When were the initial search warrants
13 executed?

14 A. On the 10th of March.

15 Q. 1999?

16 A. Yes.

17 Q. And which locations were searched on that date?

18 A. Ben Cook's residence at 35808 North Beamer Road in
19 Scottsdale; Wayne McLaws' residence at -- I believe the
20 address was 8729 or 8249 East Remuda in Scottsdale, and the
21 offices of Connection Corporation located at 36220 North Tom
22 Darlington Road in Carefree.

23 Q. Who do you understand to be in charge of the offices for
24 the Connection Corp on Tom Darlington?

25 A. Ben Cook.

1 Q. Were additional search warrants executed?

2 A. Yes.

3 Q. When were the additional search warrants executed?

4 A. There were search warrants executed on the 11th of March
5 and on the 12th.

6 Q. Which locations were searched?

7 A. On the 11th of March a search warrant was executed at
8 5004 Westin Drive in Cave Creek, which is the residence of
9 Diane Grohmann; a search warrant was executed at Arizona
10 Storage Inns, which is located at 3910 East Greenway in
11 Phoenix, for some storage lockers there; and on the 12th a
12 search warrant was executed at the home of Michael Patrick.

13 Q. Okay. Turning to the search of Cook's residence and the
14 offices on North Tom Darlington, please just generally
15 describe what was discovered during the searches.

16 A. Primarily what was discovered during the searches were
17 computers, a few records. At the Cook residence we found
18 jewelry, very high-priced expensive jewelry, vehicles. As I
19 recall, that was about -- about what we got there at the
20 residence.

21 At the office on Tom Darlington there were a few boxes
22 of records and computers taken out of there as well.

23 Q. Okay. Did you also find any suitcases at the residence?

24 A. Yes, we did. We found -- I think there were about four
25 suitcases there.

1 Q. Where were they located in the house?

2 A. They were located just inside the front door. It's hard
3 to explain. It was sort of a like an entrance foyer.

4 Q. What was in those suitcases?

5 A. Mainly records of the company. There were -- there was
6 one that contained a laptop computer of various CD rom disks,
7 back up 3 point -- what are they, 3.5 drive disks. There
8 were Manila file folders containing records for Highlander
9 Ranches, Highlander Management Trust, Highlander Limited
10 Partnership, Dannel Finance; a large number of records
11 containing stuff on various entities.

12 Q. All right. And are these entities that you understand
13 to be controlled by Ben Cook?

14 A. Yes.

15 Q. While searching the residence, was anybody at the Cook
16 residence interviewed?

17 A. Yes.

18 Q. Who was interviewed?

19 A. A woman who was contracted to do cleaning there.

20 Q. What information did she provide?

21 MR. McCOLL: Excuse me, Your Honor. I think we're
22 going to get into some nonpersonal knowledge here that's
23 conveyed by a person who speaks limited English, and I'd like
24 the foundation laid under personal knowledge rule and a name.

25 THE COURT: Yes.

1 BY MS. COOK:

2 Q. Do you know what her name is?

3 A. I don't recall her name, but she did not speak limited
4 English. She was perfectly American.

5 THE COURT: She's what?

6 THE WITNESS: Yes, sir.

7 THE COURT: I didn't understand you.

8 THE WITNESS: She was 100 percent American. She
9 was Caucasian.

10 THE COURT: Okay.

11 THE WITNESS: She spoke perfect English.

12 BY MS. COOK:

13 Q. Not with an accent?

14 A. No, none whatsoever.

15 Q. Okay. Then my question again is, what information did
16 she provide?

17 MR. McCOLL: I still have my other objection,
18 personal knowledge foundation is lacking.

19 THE COURT: Who was this person?

20 THE WITNESS: She was a cleaning woman. I don't
21 recall her name off the top of my head, sir.

22 BY MS. COOK:

23 Q. Do you understand that she had been a cleaning person
24 for Ben Cook and others some period of time?

25 A. Yes, that's what we understood.

1 Q. And is the testimony that you're about to give
2 information that she had as a result of working at Ben Cook's
3 residence?

4 A. She obtained this information strictly as a result of
5 working at the residence.

6 Q. What did you learn from her?

7 MR. McCOLL: Objection, Your Honor. It's not his
8 personal knowledge.

9 THE COURT: It's hearsay. If he did anything as a
10 result of being told that, he can tell us that.

11 BY MS. COOK:

12 Q. Did you take any action as a result of anything learned
13 from the cleaning person at Ben Cook's residence?

14 A. Based on the information that we obtained from that
15 cleaning woman, we learned that at some point in early
16 February --

17 MR. GOODENOW: Objection. He's just going to go on
18 testifying.

19 THE COURT: You can tell us what you did after
20 talking to her but not what she said to you.

21 THE WITNESS: Fine.

22 THE COURT: Okay.

23 A. As a result of the information we got from her, we
24 executed the warrant following day.

25 BY MS. COOK:

1 Q. At the storage facility?

2 A. At the storage facility and at Diane Grohmann's.

3 Q. Going back to what you found at Ben Cook's residence,
4 you indicated that there were some vehicles. Can you be more
5 specific as to the number of vehicles?

6 A. At Ben Cook's residence?

7 Q. Yes, and also at the Tom Darlington location.

8 A. At Ben Cook's residence there were, to my recollection,
9 three vehicles; a '90 -- I believe there was a '97 Lincoln
10 sedan Towne Car or Continental. There was another one that
11 was a '94 Jeep Cherokee, I believe, and an earlier model
12 Lincoln. I think it was a 1990, somewhere in that
13 neighborhood.

14 Q. As a result of the searches of Ben Cook's house and the
15 offices on Tom Darlington, was any real estate seized by the
16 state of Arizona?

17 A. Yes. As a result of the searches the state of Arizona
18 seized the residence and -- I think it was 9.67 acres of land
19 that the residence sat on that belonged to Ben Cook and an
20 adjacent 23 acres of land to the north and west of that
21 particular lot.

22 We seized the residence and property of Wayne McLaws.
23 And we seized the house and the property of the house on Tom
24 Darlington Road.

25 Q. We've previously referred to that location as offices.

1 Can you just describe for us what the building is on Tom
2 Darlington?

3 A. The building on Tom Darlington was essentially a house.
4 It was converted to become an office. There was an addition
5 put on there. There were modules put in there for computers
6 and desks and so on in the one section that was added on.
7 One part of it was converted to a conference room with a
8 conference table in there and glass doors and windows and so
9 on. But it was effectively a house.

10 Q. Have you learned the name of the purchaser of the Cook
11 residence, the name in which the property is held?

12 A. The property was held in -- by First American Title
13 Company In Phoenix. Title was being held for the benefit of
14 Highlander Management Trust.

15 Q. What about the adjacent 23 acres? Do you know the name
16 of the holder of that property?

17 A. My understanding, I believe that's Highlander Ranches.

18 Q. Who is the holder of the offices on Tom Darlington?

19 A. The Connection Corporation.

20 Q. Also at the Cook residence did you find any cashier's
21 checks?

22 A. Yes.

23 Q. Please explain what you found.

24 A. There were -- I believe it was five cashier's checks.

25 One was made out to a settlement agreement for -- I believe

1 it was some sort of a divorce settlement between Ben Cook and
2 his wife, Teri. And that was in the amount of 200 or more
3 thousand dollars, \$300,000. I don't recall the specific
4 amounts. There were four others that were made out to
5 various entities I believe they were.

6 Q. The entities they were made out to, are they entities
7 that are connected with or associated with Ben Cook?

8 A. Yes.

9 Q. Who was the purchaser of these cashier's checks?

10 A. Ben Cook was the purchaser, I believe, through his
11 entity -- one of his entities. I don't specifically recall.

12 Q. Were bank accounts seized as a result of the
13 searches?

14 A. Yes.

15 Q. How many?

16 A. On the day that we executed the initial warrants, the
17 10th of March, we seized approximately -- I think it was 41
18 accounts at Bank One.

19 Q. What was the total amount of money in those accounts on
20 that date?

21 A. Approximately \$600,000.

22 Q. Did you also locate an airplane?

23 A. Yes, we located an airplane.

24 Q. What is the name of the holder or the owner of the
25 airplane?

1 A. There were three owners on that aircraft. One was
2 Alliance Investments Corporation, the other was Lancer
3 Investments Corporation and the last one I believe was
4 Cybernet.

5 Q. And are these companies that are associated with Ben
6 Cook?

7 A. Yes.

8 Q. Were there any boats discovered and seized?

9 A. There was a cabin cruiser seized out on Lake Pleasant, I
10 believe it was.

11 Q. And who is holder of the title of that boat?

12 A. I believe that one was --

13 MR. GOODENOW: Objection, Your Honor.

14 A. -- Highlander Ranchers.

15 MR. GOODENOW: I would like to get a confirmation
16 what he means by I believe. Is he guessing or is that his
17 yes.

18 THE COURT: Do you know?

19 THE WITNESS: I'm sorry.

20 THE COURT: You're talking about the cabin cruiser.

21 THE WITNESS: Yes, sir.

22 THE COURT: What do you know about that?

23 THE WITNESS: I know that it was seized at Lake
24 Pleasant. The title on all these -- there were so many
25 entities involved in this -- in this that all belong to Ben

1 Cook, that were invented by Ben Cook, that it is very
2 difficult to keep track of what particular vehicle, what
3 particular plot of land, was titled to any specific entity.
4 They were all Ben Cook's.

5 THE COURT: Okay.

6 THE WITNESS: When I say I believe, I believe that
7 it was either Highlander Ranches or it could have been
8 Highlander Management Trust. It could have been Highlander
9 Limited Partnership. He had a slew of these things.

10 THE COURT: Another question.

11 BY MS. COOK:

12 Q. How did you learn about the storage facility?

13 A. We located a business card in Ben Cook's luggage.

14 Q. All right. And did you obtain a search warrant for a
15 storage locker?

16 A. Yes, we did.

17 Q. Did you obtain any information regarding who leased the
18 locker?

19 A. Yes.

20 Q. How did you do that?

21 A. We subpoenaed the information from Arizona Storage Inns.

22 Q. What did you learn when you subpoenaed the information
23 as to the initial storage locker?

24 A. We learned that Patricia Arden was the one who rented
25 the storage units.

1 Q. Did the lease information indicate when she initially
2 leased the storage locker?

3 A. Yes, we obtained documents indicating the first storage
4 unit was leased on about the 7th of February.

5 Q. 1999?

6 A. 1999.

7 Q. Did you also learn anything about who had access to that
8 locker?

9 A. At that time, yes, Patricia Arden and Ben Cook had
10 access to that locker.

11 Q. Did that access ever change? Did you learn something
12 about that?

13 A. Yes, we were told by the owner of the storage lockers,
14 the manager of the storage lockers, that on the 12th of
15 February, 1999, Patricia Arden returned to the storage units,
16 she rented I believe either two or three more units on that
17 date and removed Ben Cook from authorization at the storage
18 lockers.

19 Q. All right. And after approximately February 12, 1999,
20 did Patricia Arden ever lease any other storage lockers?

21 A. Yes, on the 14th of February she leased the remainder of
22 the storage lockers for a total of six storage lockers
23 altogether.

24 Q. What did you find when you opened the first storage
25 locker?

1 A. The first storage locker we found boxes of what appeared
2 to be records of Dannel Finance, Highlander Management,
3 Highlander Limited Partnership, FPC-1, Samuel-1, Samuel-2
4 Samuel-3, Collateral Equity Corporation, a host of other
5 entities that all belonged to Ben Cook.

6 Q. Did you locate or did you see any boxes that contained
7 documents relating to entities in which Wayne McLaws was
8 associated?

9 A. Yes.

10 Q. What were those entities?

11 A. Samuel-1 or the Samuel boxes was our understanding that
12 Wayne McLaws was involved in that, plus a company called
13 Moroni Limited Liability Corporation Company.

14 Q. All right. Did you execute search warrants on the
15 remaining five storage lockers?

16 A. Yes, we did.

17 Q. What did you find when you opened them?

18 A. In one locker we found a 1973 classic Jaguar XKE or XT,
19 or something like that, convertible. In another we found a
20 19 -- I think it was a 1997 Nissan 240ZX. We found -- in one
21 we found a Dodge Viper, 1995 Dodge Viper. In another we
22 found a custom built 1997 McThreat motorcycle. And in
23 another one we found a 1997 BMW sports car.

24 Q. Were all of these vehicles registered in the names of
25 entities Ben Cook controls?

1 A. Yes.

2 Q. Were those vehicles seized?

3 A. Yes, they were.

4 Q. Let's turn to the McLaws residence. What did you --
5 just generally describe what you found when you searched the
6 McLaws residence?

7 A. At the McLaws residence we found records pertinent to
8 his commissions from the clients that he had gotten into the
9 programs for Samuel and FPC and Dannel. There were a
10 whole -- there were sheets for various programs that he was
11 getting commissions from. There were a few records pertinent
12 to Moroni LLC and Samuel, and there was some cash and gold
13 coins.

14 Q. Did you find any computer?

15 A. I don't think there was a computer at Wayne McLaws.
16 That had been -- no, there was no computer there.

17 Q. Did you find an invoice for the purchase of the gold
18 coins?

19 A. Yes, we did.

20 Q. What did the invoice reflect?

21 A. The invoice reflected that the gold coins had been
22 ordered on the 28th of January, 1999, for a price of
23 \$99,999.93. There were 334 \$50 gold pieces that were sent to
24 him on various dates I believe starting around 17th of
25 February, 18th of February, 1999, that he received them.

1 Q. Did you discover any vehicles -- any titles to any
2 vehicles?

3 A. Yes, we found the title to -- I think it was a 1998 BMW.

4 Q. And in whose name is the BMW held?

5 A. That one I'm not sure.

6 Q. Okay. Is it a -- are you sure that it is an entity of
7 over which Mr. McLaws has authority or is associated?

8 A. Yes. If it was anything -- it was one of the Moroni,
9 or Samuel. I just don't remember which it was titled to.

10 Q. Okay. Have you seized that vehicle?

11 A. Not yet.

12 Q. Why not?

13 A. We haven't been able to locate it yet. There was --
14 there have been a couple of attempts by the Department of
15 Public Safety and the Phoenix Prime Bank Instrument Fraud
16 Task Force to seize it, staking out the house and waiting for
17 the car to show up. However, on one occasion, when it did
18 show up, it was described as a rather high speed pursuit to
19 get away from the task force who was there to seize it.

20 Q. Okay. Are you aware that Wayne McLaws appeared at the
21 Commission's Fort Worth offices for scheduled testimony on
22 March 10, 1999?

23 A. Yes.

24 Q. Do you have any knowledge of what, if anything, McLaws
25 did after leaving the SEC's offices?

1 MR. McCOLL: Is that personal knowledge, Your
2 Honor?

3 THE COURT: Do you have personal knowledge?

4 THE WITNESS: After leaving the SEC offices?

5 BY MS. COOK:

6 Q. Maybe not the minute after but do you know what he did
7 next?

8 A. I can only tell you that the following day he showed up
9 in Carson City and was attempting to withdraw some \$8,000,000
10 from the bank up there.

11 Q. In what name was the -- were the funds held?

12 A. In name of Moroni LLC.

13 Q. How many total accounts are at that bank?

14 A. Three.

15 Q. Was Mr. McLaws successful in withdrawing the funds?

16 A. No.

17 Q. Why not?

18 A. Because the funds had been frozen by the bank
19 investigator.

20 Q. Have you learned when those accounts were opened, those
21 three accounts?

22 A. They were opened early in February, around the 4th to
23 7th of February, sometime along there.

24 Q. In 1999?

25 A. Yes.

1 Q. All right. Let's turn to the search of Diane Grohmann's
2 house. What did you generally -- what did you learn when you
3 went to her residence? What was discovered?

4 A. The main thing that was discovered at her house was a
5 1998 Dodge Magnum 4 X 4 pickup truck that was in the back of
6 her house.

7 Q. Was it registered? Who was it registered to?

8 A. That truck was registered to Highland Ranches.

9 Q. What connection does Diane Grohmann have to Ben Cook?

10 A. She was a -- like a bookkeeper or office manager for
11 him.

12 Q. Did you locate any bank accounts during the search?

13 A. Yes, there were three bank accounts located during that
14 search.

15 Q. What is the significance of those bank accounts?

16 A. They were -- they were in the name of Busy People,
17 Incorporated, which is a business that belongs to Diane
18 Grohmann. However, two of those accounts, by her statements
19 to the investigators who were there, were funded specifically
20 by Ben Cook.

21 Q. What did she use those funds for?

22 A. I'm not real sure what she used those funds for.

23 Q. Was she free to use those funds as she chose or were
24 there some limitations?

25 MR. GOODENOW: Foundation.

1 THE COURT: What was the question?

2 MR. COOK: Whether or not she was free to use the
3 funds as she chose or if there were any limitations?

4 THE COURT: Do you know?

5 THE WITNESS: She was not -- she was not free to
6 use the funds in two of those accounts as she chose, no.

7 BY MS. COOK:

8 Q. Can you explain that?

9 A. Well, one of the accounts was her own account that she
10 used to pay her own bills and such.

11 Q. That was a third account?

12 A. Right. The other two accounts were accounts that were
13 set up specifically by Ben Cook for his purposes.

14 Q. Okay. In view of records retrieved as a result of this
15 search warrant, have you seen any evidence of funds going to
16 a London bank?

17 A. No.

18 Q. Have you seen any evidence of funds going to other
19 foreign locations?

20 A. Yes.

21 Q. Can you give some examples?

22 A. There's evidence of funds being transferred to the Isle
23 of Mann, to offshore islands banks, a country called
24 Dominica, British Virgin islands; countries, Switzerland,
25 Germany. I believe there's some going to someplace in

1 Denmark and the Netherlands.

2 Q. All right. And based on the records you've seen, are
3 these funds that Ben Cook controls?

4 A. Yes.

5 Q. In your review of records seized during execution of the
6 search warrants, did you find any evidence that Ben Cook has
7 formed entities in offshore locations?

8 A. Yes.

9 Q. And are these in some of the same locations you just
10 described for us?

11 A. Yes, primarily in the offshore island locations.

12 Q. I want you to turn to the notebook that's in front of
13 you. And you if would review the exhibits marked as 71
14 through 88.

15 A. Okay.

16 Q. You recognize these documents?

17 A. Yes.

18 Q. Were these document retrieved as a result of the search
19 warrant?

20 A. Yes, these documents were in the luggage.

21 Q. At Mr. Cook's home?

22 A. Yes.

23 MS. COOK: Your Honor, I would offer these Exhibit
24 71 through 88.

25 THE COURT: Admitted.

1 MS. COOK: Your Honor, I pass the witness.

2 THE COURT: Cross-examination?

3 CROSS-EXAMINATION

4 BY MR. McCOLL:

5 Q. Is it your testimony you're sponsoring Exhibits 71, et
6 seq, because they were based on items found in the search
7 warrant executed by Arizona law enforcement?

8 A. I'm sorry. Could you repeat that?

9 Q. Exhibit 71.

10 A. Yes.

11 Q. Did you compile that document?

12 A. No, I did not.

13 Q. How do you know about it?

14 A. I have seen that document.

15 Q. Where it did come from, please?

16 A. It came from a folder within the luggage belonging to
17 Ben Cook which was obtained as a result of the search warrant
18 at his house.

19 Q. Do you understand the document?

20 A. Not personally.

21 Q. Have you reviewed it?

22 A. Not in any sort of detail, no.

23 Q. Has anybody reviewed it in your staff at all?

24 A. Not yet.

25 Q. So it's still a mystery, more or less, fairly

1 unexamined? Let me direct your attention to page 2 of that
2 document where it says at the top, sponsor disbursements and
3 wires, February 15, 1999. Do you see down at the bottom
4 where it says wires, Mooney, Ltd., that sort of a grayed in
5 area?

6 MR. McCOLL: May I approach the witness, Your
7 Honor?

8 THE COURT: Yes.

9 BY MR. McCOLL:

10 Q. The second item under Mooney, do you see the acronym
11 P as in Paul, I-L, P as in Paul?

12 A. Yes.

13 Q. The amount \$365,000. What is that entity, please?

14 A. I don't know.

15 Q. Has there been a complaint filed, a criminal complaint
16 filed in Arizona regarding his conduct?

17 MS. COOK: Objection.

18 BY MR. McCOLL:

19 Q. If you know?

20 MS. COOK: Let me state my objection, please.

21 THE COURT: Okay.

22 MS. COOK: The Arizona Corporation Commission has
23 asked that his testimony be protected under the governmental
24 law enforcement privilege as a matter outside the purviews of
25 the search warrant.

1 MR. McCOLL: It's a public record. I just asked if
2 a complaint's been filed.

3 THE COURT: He can testify to a public record but
4 not beyond that.

5 A. I think that a criminal complaint has been filed.

6 BY MR. McCOLL:

7 Q. Yes, sir. Do you know whether or not an indictment has
8 returned by a grand jury?

9 A. Not that I'm aware of.

10 Q. Do you all normally have state indictments in Arizona on
11 felony matters?

12 A. Yes.

13 Q. With regard to the eight million some-odd that you
14 seized in Nevada through the seizure order, do you know
15 exactly what that money was earmarked for within the company?

16 A. Earmarked for?

17 Q. Yes.

18 A. No.

19 MR. McCOLL: May I approach the witness, Your
20 Honor?

21 THE COURT: Yes.

22 BY MR. McCOLL:

23 Q. I show you Exhibit 33. Are you familiar with that
24 stationery or letterhead of Dannel Finance Limited?

25 A. Yes.

1 Q. Okay. And did I highlight a portion of it in yellow?

2 A. Yes.

3 Q. Could you read what appears in my one line single
4 highlight?

5 A. Switzerland, British Virgin Islands, Dominica, Anguilla,
6 Nevis, Washington, D.C..

7 Q. Okay. So that was on their stationery from the very
8 beginning in dealing with investors, wasn't it?

9 A. Yes.

10 Q. They didn't try to secrete that information, did they,
11 or hide it in any way that they have offices there?

12 BY MS. COOK: Objection, Your Honor. It calls for
13 speculation.

14 THE COURT: It's obvious that's on the letterhead.

15 BY MR. McCOLL:

16 Q. In other words, that's obvious, isn't it, agent?

17 A. It's obvious that those words appear on there, yes.

18 Q. And they have been there from the very beginning as far
19 as you know with regard to their letterhead?

20 A. From the first letterhead I've seen, yes.

21 Q. Thank you very much.

22 MR. McCOLL: Pass the witness, Your Honor.

23 THE COURT: Cross-examination?

24 MR. MOWERY: I may not have anything. Would you
25 give me just a moment, Your Honor.

1 THE COURT: Sure.

2 CROSS-EXAMINATION

3 BY MR. MOWERY:

4 Q. You indicated you are the affiant on the search warrant,
5 is that correct?

6 A. Yes.

7 Q. And was the date of the search warrants March 10th?

8 A. The date of the search warrants on the houses, yes.

9 Q. Were the warrants obtained that day on March 10th?

10 A. No, I don't really remember. I think that we obtained
11 the warrants the day before.

12 Q. And what was the basis for your affidavit?

13 MS. COOK: Objection, Your Honor. The affidavit
14 is currently sealed and ask that he not be --

15 THE COURT: Okay. I will sustain that objection.

16 MR. MOWERY: Maybe this will shorten things. If
17 the SEC has a copy of that could the court look at it in
18 camera just to see if there's any impeachment evidence that
19 we should be apprised of a material matter.

20 THE COURT: Do you have a copy?

21 MS. COOK: It's sealed and we do not have a copy of
22 it.

23 BY MR. MOWERY:

24 Q. Mr. Adams, the items that were seized at Mr. Cook's
25 residence or this business office, have any of those been

1 returned? Did you seize any items that you returned?

2 A. None that I -- nothing has been returned that I know of.

3 Q. Now, has the state of Arizona seized this \$8,000,000 or
4 so from this one account -- three accounts?

5 A. Yes.

6 Q. Do you know is there an intent to pay that money back to
7 the investors by the state of Arizona?

8 A. That's the intent.

9 Q. You know of any reason why that wouldn't be done?

10 A. No.

11 Q. Is all of it investor money? Do you know what portion
12 of it, if any, is investor money?

13 A. There's no way for me to determine that. It was all in
14 an account under Moroni LLC. That was one of the entities
15 that was taking investor funds.

16 Q. How did you determine that is a Ben Cook entity, Moroni
17 LLC?

18 MS. COOK: Objection. Actually I don't think he
19 testified to that.

20 THE COURT: Okay.

21 BY MR. MOWERY:

22 Q. Was Moroni LLC a Ben Cook entity?

23 A. Moroni LLC, the signatory on the Moroni LLC account was
24 Wayne McLaws and Dorothy McLaws.

25 Q. Were they the only signators on that account?

1 A. Yes.

2 Q. Do you know anything about the source of those funds
3 other than they were just money sitting in a bank account?

4 A. They were the result of cashier's checks that were taken
5 out of Bank One, cashier's checks that were drawn on Bank One
6 in Carefree. That's what opened the accounts.

7 Q. How many cashier's checks?

8 A. I think there were five, five or seven, something like
9 that.

10 Q. And do you know what accounts they came from, these
11 cashier's checks?

12 A. We don't know what accounts they came from. The
13 remitter of the cashier's checks was Moroni LLC.

14 Q. Do you have any basis as to why -- for concluding that
15 the Moroni account, of which Mr. McLaws was the signatory,
16 had anything to do with Mr. Cook or Dannel?

17 A. It had to do with Wayne McLaws or Moroni or Dannel or
18 Alliance or Highlander or any one of the multitude of other
19 entities that is associated in this case, it had to do with
20 Ben Cook.

21 Q. All right. Let me make sure you understand my question,
22 Mr. Adams. There was an account -- the account that was
23 seized was an account that was in the name of Moroni LLC?

24 A. Right.

25 Q. And Mr. McLaws and his wife are the signatures on that

- 1 account?
- 2 A. Right.
- 3 Q. And that account was opened by four, five, a half dozen
4 cashier's checks, correct?
- 5 A. Right.
- 6 Q. And those cashier's checks, you're not sure where they
7 came from, but Mr. McLaws was the signatory -- was the
8 signatory on those -- excuse me, Moroni was the remitter of
9 those cashier's checks?
- 10 A. Right.
- 11 Q. So my question is: How do you know that Moroni is
12 involved at all with Dannel or Ben Cook?
- 13 A. Because Moroni is Wayne McLaws and Wayne McLaws is
14 associated with Ben Cook and Dannel.
- 15 Q. Well, yes, sir, but a lot of people could be associated
16 with each other that have separate financial transactions,
17 can they not?
- 18 A. Perhaps, but I don't believe in Ben's case.
- 19 Q. And what's the basis for that?
- 20 A. He was a controller.
- 21 Q. Yes, sir. How do you know he was controlling all Mr.
22 McLaws' finances?
- 23 A. He was the source of Mr. McLaws' finances.
- 24 Q. And what's the basis for that?
- 25 A. Mr. McLaws worked for him.

- 1 Q. Yes, sir, but how do you know that it -- all of Mr.
2 McLaws' money came from Mr. Cook or was connected with Mr.
3 Cook or Dannel?
- 4 A. All but his -- perhaps his police retirement came from
5 Dannel or from Mr. Cook.
- 6 Q. How do you know that, sir?
- 7 A. From the records that we have.
- 8 Q. And what records have you reviewed that would indicate
9 that all of Mr. McLaws' financial condition is connected with
10 Mr. Cook and Dannel?
- 11 A. Because the records indicate his commissions. These
12 records were generated by Ben Cook and sent to Mr. McLaws.
- 13 Q. And have you done or somebody else done an analysis of
14 all these commissions that Mr. McLaws has received?
- 15 A. We haven't had time to do a complete analysis of them
16 all, no.
- 17 Q. How about any analysis? Do you know if he received a
18 hundred thousand dollars or a hundred million dollars?
- 19 A. I added up the commissions myself and it appeared to me
20 that he was drawing approximately \$379,832 a month.
- 21 Q. Now, if he had \$8,000,000 that was in his account, he
22 was drawing commission's over 300,000 a Month?
- 23 A. Yes.
- 24 Q. How many months did he do that?
- 25 A. That was just for the month of February that I was --

1 that I compiled those figures from.

2 Q. So you don't have numbers for the other months?

3 A. Going back, no, not yet.

4 Q. So from that analysis of the \$300,000 a month that he
5 received in January, you concluded that the \$8,000,000 that
6 he had in the account was connected all with Dannel and Mr.
7 Cook, is that correct?

8 A. Yes.

9 Q. Any other basis for your conclusion?

10 A. Moroni LLC was one of the entities we're looking into.

11 Q. Are the records that you have seized of Mr. Cook and his
12 various entities that you have talked about, are they
13 available for Mr. Cook or his lawyers to examine?

14 MS. COOK: Objection, Your Honor. I'm not sure
15 this witness is the person who can decide about those.

16 THE COURT: I doubt that he is.

17 MS. COOK: One of the attorneys would --

18 THE COURT: We'll hear what he says though. Do you
19 know?

20 THE WITNESS: I'm not in a position to make that
21 determination, no.

22 BY MR. MOWERY:

23 Q. Do you know how many entities -- how many entities are
24 you aware of that are -- that you believe are connected in
25 some way with Mr. Cook?

1 A. That's a very difficult question to answer.

2 THE COURT: I've heard a lot of names but I don't
3 need to know the exact number.

4 MR. MOWERY: Your Honor, I was just trying to test
5 this witness' -- he's give a lot of summary conclusions here
6 and I'm just trying to test a little bit about what the basis
7 is.

8 THE COURT: Let's go on to something else. We need
9 to close up the testimony here.

10 BY MR. MOWERY:

11 Q. With respect to these documents that have been
12 seized, do you know if those documents have been made
13 available to the SEC?

14 A. Some have been.

15 Q. Excuse me?

16 A. Some have been. Those that you see here in these
17 Exhibits 71 through 88.

18 Q. Are there others that are not in those exhibits that
19 have been made available to the SEC?

20 A. Not to my knowledge.

21 Q. Thank you.

22 MR. MOWERY: Thank you, Your Honor.

23 THE COURT: Anything else? Redirect?

24 REDIRECT EXAMINATION

25 BY MS. COOK:

1 Q. Mr. Adams, in the records that you seized associated
2 with Mr. McLaws, does he operate under the name of a company
3 in connection with operating the Dannel portion of his
4 business?

5 A. Yes, he operates under the name Moroni LLC.

6 MS. COOK: Thank you.

7 THE COURT: Thank you very much. You may step
8 down.

9 MR. McCOLL: Your Honor, could I ask just one
10 question. It's opened up a little bit.

11 THE COURT: Only one question concerning that.
12 That was a pretty simple questions.

13 RECCROSS-EXAMINATION

14 BY MR. McCOLL:

15 Q. With regard to -- you were able to answer that question
16 by studying the records that you seized during the search
17 warrant, is that correct?

18 A. Essentially, yes.

19 Q. And isn't it correct that the records that you claim
20 that Mr. McLaws had there in his house by the door or
21 whatever, had already been turned over to the SEC.

22 MR. COOK: Objection --

23 BY MR. McCOLL:

24 Q. -- in response to their request for documents?

25 THE COURT: Do you know?

1 THE WITNESS: I'm sorry, but we didn't locate any
2 suitcases in Mr. McLaws' house.

3 BY MR. McCOLL:

4 Q. Or any documents that you have referred to earlier in
5 Mr. McLaws' house?

6 A. The documents I referred to earlier that we located in
7 Mr. McLaws' house had to do with Samuel, Moroni and his
8 commissions.

9 Q. Correct. And were you aware that they had already --
10 copy of those had already been turned over to the SEC?

11 MS. COOK: Objection. First of all, I don't know
12 how this witness can know.

13 THE COURT: If he doesn't know he can tell me and
14 that's the end of it. Do you know?

15 THE WITNESS: No, I wasn't aware of that.

16 THE COURT: Thank you very much. You may step down
17 and you're excused. You're free to go.

18 Let's break and we will resume at 8:30 in the
19 morning and we will argue the case.

20 How much time does the SEC need for argument?

21 MR. NORRIS: Very little. I think half an hour.

22 THE COURT: Okay. How much time does the defense
23 need?

24 MR. McCOLL: I would like 15 minutes, Your Honor.

25 THE COURT: Okay. Why don't I just give all --

1 each defense counsel 15 minutes and then we will -- if you
2 want to swap some time feel free to do before we start.

3 We will resume at 8:30 in the morning.

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2	1 thru 6	26	26
3	7	28	28
4	8	29	29
5	9	31	31
6	10	32	32
7	11	32	32
8	12	34	34
9	13	34	34
10	14	35	35
11	15	36	36
12	16	36	36
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18	21	48	48
19	22	49	49
20	23	51	51
21	24	51	51
22	25	52	52
23	27	120	120
24	27-A	102	102
25	28	103	103

	PLAINTIFF'S EXHIBITS	Offered	Admitted
1			
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3	30	105	105
4	31	106	106
5	32	106	106
6	33	108	108
7	34	109	109
8	35	109	109
9	37	111	111
10	38	123	123
11	39	124	124
12	40	125	125
13	41 thru 47	168	168
14	48 thru 51	184	184
15	53 thru 59	195	195
16	60 thru 68	214	214
17	71 thru 88	281	281
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1	DEFENSE EXHIBITS	OFFERED	ADMITTED
2	1	207	207
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C E R T I F I C A T I O N

I, Joe Belton, certify that during the proceedings in the foregoing styled and numbered cause, I was the official Court Reporter and took in stenograph notes such proceedings and have transcribed the same by computer as shown by the above and foregoing pages 1 through 300, and that said transcript is true and correct.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

This the _____ day of _____, 1999.

U.S. DISTRICT COURT REPORTER
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

