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1 PROCEEDINGS

2 THE COURT: Have a seat, please.

3 We're ready for closing arguments.

4 Plaintiff.

5 MR. NORRIS: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. NORRIS: Your Honor, I'm somewhat at a loss
8 about what to say today. Yesterday morning I described what
9 I believed was the state of the record in this case and I
10 told the court what I believed the state of the record would
11 be after yesterday proceedings. And everything I said has
12 come to pass, so I'm in danger of repeating myself, but I'll
13 try to be brief and avoid repetition.

14 As I stated yesterday, the record in this case
15 clearly supports the relief requested by the Commission in
16 the proposed order granting preliminary injunctions and other
17 equitable relief.

18 Is there proof beyond a reasonable doubt of every
19 element required of the Commission? Admittedly not. Is
20 there evidence that is more than sufficient, however, to
21 support provisional relief against each of the defendants to
22 prevent further unlawful activity and protect evidence and
23 assets to make sure justice can be attained for investors?
24 Absolutely there is.

25 What does the evidentiary record reflect? The

1 Dannel investment was a security which was not registered
2 with the Commission. That's undisputed. Dannel issued these
3 securities and Cook, Pate and McLaws and Clagg each took part
4 in the offer and sale of this unregistered security. That's
5 undisputed.

6 There's no evidence in the record of any exemption
7 from registration. Accordingly, these Defendants violated
8 Section 5(a) and 5(c) of the Securities Act, securities
9 registration provisions as described and set forth in the
10 Commission's original memorandum.

11 Individual defendants, Pate, McLaws and Clagg acted
12 as broker-dealers in offering and selling the Dannel
13 investment. None of them were registered with the Commission
14 as broker-dealers. That's undisputed. According, these
15 defendants violated Section 15(a) of the Securities Exchange
16 Act, the broker-dealer registration provisions as described
17 more fully in the Commission's memorandum.

18 The record also reflects that each of the
19 defendants violated the antifraud provisions of the federal
20 securities laws. Dannel and individual defendants made
21 numerous false and misleading statements and omissions to
22 investors concerning the Dannel program.

23 Among other things, defendants told investors,
24 orally and in writing, that their funds would be sent to
25 London or other international locations for use in an

1 international trading programs. Defendants told them -- told
2 investors that their funds were absolutely 100 percent safe
3 because the funds would be kept in a bank account and used
4 only as collateral.

5 Defendants McLaws, Clagg and Cook told investors
6 that Cook and his partners produced investors returns by
7 purchasing multiple \$25,000,000 CD's from top European banks
8 in addition to trading activities sponsored by the World Bank
9 and IMF.

10 The Court heard investor witnesses testify that
11 they received documents from Dannel, sometimes distributed by
12 the individual defendants making these representations.
13 Yesterday I read excerpts from Exhibits 2 and 3 which were
14 part of the initial offering package supplied to investors.
15 I won't requote those documents here, but I will remind the
16 court that four of the five investor witnesses yesterday
17 testified that they received this initial offering package
18 from Dannel.

19 The investors testified that the individual
20 defendants repeated these representations and their oral
21 descriptions of the Dannel program, both in one-on-one
22 conversations and in mass meetings.

23 In the case of McLaws, the court heard many of
24 these representations directly from the defendant's mouth.
25 The record establishes that Ben Cook controlled Dannel, was

1 primarily responsible for developing the Dennel investment
2 program and was the ultimate source of most of the
3 information that reached investors. The record establishes
4 that most of the basic and essential and material
5 representations made by Cook and other defendants about
6 Dennel and its investment program were false.

7 Fred Session, the Commission accountant, testified
8 concerning his analysis of Dennel bank accounts. He
9 concluded that Dennel lied to investors about the use of
10 Dennel investor funds. He concluded that the accounts did
11 not reflect transfers to a London bank, that there was no
12 evidence of transfers into the accounts from a trading
13 program aboard and that the source of payments to investor
14 were made from new investor funds.

15 Now, let me anticipate the arguments of defense
16 counsel concerning this testimony. They will emphasize that
17 Mr. Session's analysis of the evidence is incomplete because
18 Mr. Session analyzed records of only a portion of the Dennel
19 bank accounts. Admittedly, Mr. Session did not have access
20 to all Dennel bank records when he did his analysis.
21 Sometimes the need to shut down fraudulent conduct outstrips
22 the ability or even the willingness of banks to respond to
23 subpoenas even from the federal government. However, there
24 is no reason to believe that these nine Dennel bank accounts
25 analyzed by Mr. Session are not an accurate reflection of

1 Dannel's financial activities.

2 The Commission is uncertain at this point how
3 much -- how much in investor funds Dannel collected. The
4 best evidence on this issue came from Michael Patrick, a
5 Dannel insider. Mr. Patrick gave a statement to the
6 Commission, which is set forth in the declaration of Sammy
7 Hughes. Mr. Patrick was subpoenaed to give testimony, give a
8 deposition after the -- under the expedited discovery order
9 that the court issued on March 6. He took the Fifth,
10 asserted the Fifth Amendment privilege as set forth in the
11 supplemental papers filed with the Commission. Among Mr.
12 Patrick's duties with Dannel were the preparation of
13 documents relating to accounts, including monthly statements
14 and checks. Mr. Patrick estimated that funds collected from
15 investors totalled \$30,000,000.

16 The bank accounts analyzed by Mr. Session totaled
17 \$21,000,000. Therefore, the best evidence at the moment is
18 that those bank accounts represented the lion's share of
19 investor funds collected by Dannel.

20 There's another point that's worth making. There's
21 one person who could have filled the lacuna on the financial
22 information about Dannel. There's one person who could have
23 supplemented the Commission's Dannel financial records prior
24 to the filing of this complaint and provided a more complete
25 picture of Dannel's use of investor funds. That person is Ben

1 Cook.

2 Indeed, the Commission sought this evidence from
3 Mr. Cook long before the Commission filed its complaint in
4 this matter. The Commission issued subpoenas to Cook or his
5 and Dannel's documents and for Cook's testimony on January
6 21st and January 22nd of this year. This is nearly two
7 months before the Commission filed its complaint. Among
8 other items, these subpoenas demanded bank records relating
9 to Dannel.

10 Rather than produce these documents, as described
11 in the testimony of Dave Adams, Mr. Cook chose to secrete
12 them. Rather than testify about Dannel's use of investor
13 funds, Mr. Cook chose to assert his Fifth Amendment
14 privilege. Based on this conduct, it is reasonable to draw a
15 negative inference concerning what additional financial
16 information would have revealed.

17 The Commission has also submitted to the court
18 declarations of Herbert A. Burn, associate director of
19 banking supervision of the Federal Reserve; and John Shockey,
20 former chief of the fraud section of the Comptroller of the
21 Currency. Both Mr. Burn and Mr. Shockey agree that the
22 written materials supplied to Dannel investors describe an
23 inherently fraudulent prime bank scheme.

24 What of the other individual defendants, Gerald
25 Pate, Wayne McLaws and Alan Clagg? Let me again anticipate

1 the chorus from the defense. Their theme was sounded again
2 and again in their cross-examination of investors yesterday.
3 Defense counsel will argue that these investor witnesses,
4 these investors were sophisticated people, they did their due
5 diligence and yet they were still deceived and were convinced
6 that the Dennel investment was genuine. Therefore, they will
7 argue, isn't it conceivable that these defendants were also
8 deceived by Mr. Cook? This analogy fails for many reasons.

9 The investors, unlike defendants, did not sell
10 millions of dollars of the Dennel program to the general
11 public or reap millions in compensation. They were not
12 regional managers as defendants were of Dennel. And they did
13 not, as defendants did, have constant and continuous access
14 to Mr. Cook. Even more importantly in my opinion, these
15 investors stood forthrightly before this court. They raised
16 their right hands, swore an oath and told the truth, the
17 whole truth and nothing but the truth.

18 In contrast, Alan Clagg and Wayne McLaws, when
19 subpoenaed or noticed to give testimony, hid behind the Fifth
20 Amendment privilege against self-incrimination. Again, we
21 submit that this court should not permit these defendants to
22 hide their evidence behind the Fifth Amendment then argue
23 that the Commission and the investing public should be
24 penalized for failing to present that evidence. In this
25 civil proceeding the court should draw an appropriate adverse

1 inference against these defendants.

2 Mr. Pate did provide the Commission with
3 investigative testimony. However, the Commission submits
4 that Mr. Pate's own words revealed that he failed to perform
5 any due diligence relating to the Dannel investment program.
6 His own testimony establishes that Mr. Pate, a former
7 licensed securities broker, was at least severely reckless in
8 making representations he made to investors. In our
9 memorandum we have cited to the specific portions of Mr.
10 Pate's testimony that are pertinent to this. I'm not going
11 to repeat those here.

12 The record reflects that the conduct of defendants
13 in operating and selling the Dannel program continued until
14 at least early March of this year. The recentness of this
15 conduct, the egregiousness of this fraud and the duration of
16 the scheme all suggest a future likelihood of future
17 violations.

18 Finally, the record reflects that both defendants
19 and relief defendants received assets and funds derived from
20 Dannel investors totaling millions of dollars. This is clear
21 from Dannel account statements attached to the Hughes
22 declaration, the Session account analysis, the testimony of
23 Gerald Pate and the testimony of Dave Adams. The Adams
24 testimony indicates strongly that there is a severe danger
25 the defendants and relief defendants will dissipate these

1 funds and assets unless they remain frozen and are
2 transferred to the control of the court-appointed receiver.

3 The Commission submits that this evidentiary record
4 strongly supports relief set forth in the Commission's
5 proposed order granting preliminary injunctions and other
6 equitable relief. The Commission asks the court to enter
7 this order in the interests of the investing public to
8 prevent further violations of the federal securities laws and
9 secure some hope of meaningful relief to defrauded investors.

10 Thank you.

11 THE COURT: Thank you.

12 Who would like to open for the defendants?

13 MR. CONNELLY: Good morning, Your Honor.

14 May it please the court, counsel.

15 Your Honor, may I approach?

16 THE COURT: Yes.

17 MR. CONNELLY: Thank you, Your Honor. Your Honor,
18 I've handed Mr. Norris and handed the court a letter with a
19 copy of Mr. Pate's passport. We attempted to turn that over
20 this morning to the clerk's office but it hadn't opened yet,
21 but I can avow to the court that at the conclusion of the
22 hearing, that will be --

23 THE COURT: Okay.

24 MR. CONNELLY: -- put on file with the court.

25 Let me correct a few things before I make some

1 brief statements regarding Mr. Pate's particular
2 circumstances.

3 First of all, I think Mr. Norris is, at best, a
4 little confused about Mr. Pate's alleged securities license,
5 and I'll attribute that to the amount of time that's elapsed
6 in this investigation of a month or two.

7 Mr. Pate was required to obtain a securities
8 license when he got into the insurance industry 35 years ago.
9 He never used that license. He was required to get it, and I
10 believe that it only stayed active approximately three or
11 four years. So to suggest that Mr. Pate held a securities
12 license and violated securities laws, is just inaccurate.
13 And I'm sure that when Mr. Norris is able to resolve that
14 issue he won't make that assertion again.

15 I'm also in possession, Your Honor, of what's been
16 titled Supplemental Declaration of Sammy Hughes dated March
17 30th which we were handed, I believe on that date or on the
18 31st actually, Your Honor. I just want to address a couple
19 of issues from Mr. Hughes' declaration.

20 With respect to Mr. Pate, at page 3 in the
21 second -- or in the first full paragraph, paragraph 6, Mr.
22 Hughes, the investigator for the Securities and Exchange
23 Commission states, "In spite of the order providing for
24 expedited discovery, none of the defendants or relief
25 defendants have provided any documents responsive to these

1 requests. Pate, through his counsel, stated that he would
2 provide documents but has not yet done so." That is just
3 false. That's inaccurate.

4 We provided all the documents in our possession,
5 that is Mr. Pate's possession or control, to the SEC, and Mr.
6 Pate voluntarily appeared for a deposition and answered every
7 question that was put to him by the SEC well over a month
8 ago. The only documents that weren't provided at that time
9 were the bank records, which we have advised Mr. Norris we
10 have made the request of the banks to get complete records.
11 We have some. We're compiling them and we're going to turn
12 them over.

13 We also have -- the only other issue that's
14 outstanding, is their request for tax returns, and while we
15 could ask for a protective order or assert Mr. Pate's Fifth
16 Amendment, which is his right to do so, we are not. Those
17 will be provided this morning to the SEC as well. So Mr.
18 Pate, from the inception, has cooperated fully except with
19 respect to records that we are still marshalling and hope to
20 be able to provide by week's end next week. We're also in
21 the process of attempting to put together an interim
22 accounting for Mr. Pate and we have had discussions with Mr.
23 Norris with respect to those matters.

24 I cite this because if Mr. Hughes is going to
25 continue to issue these statements, which find their way to

1 the press or the SEC is talking to the press, as they have in
2 this case, painting Mr. Pate as somebody that was soliciting
3 charities or his church organizations, it's just improper to
4 do that. Yes, there were investors from organizations.

5 What the government failed to state is that Mr.
6 Pate rolled money that he had earned through this program
7 back into the program. That's not somebody that's
8 perpetrating or consciously perpetrating a fraud on investors
9 when they're putting the very money that they have earned
10 back into the program. But that's not mentioned either by
11 the government or by Mr. Sessions. He also had family
12 members heavily invested into these programs and reinvested
13 into the programs.

14 Your Honor, I don't believe the court -- let me
15 address one other issue for the record. Yesterday, Your
16 Honor, the government called Ken Fitzgerald, an attorney from
17 California, to testify. Prior to his testimony I requested a
18 sidebar to inform the court that Mr. Fitzgerald had contacted
19 me and had discussed this case and the SEC's investigation
20 and other matters with defendants Clagg and Boone, and then
21 went on to discuss the matter with me for purposes of
22 possible retention. I'm just want to call to the court's
23 attention on the record. The court decided to go forward.
24 Mr. Fitzgerald was called and there was a discussion there
25 where he acknowledged that conversation occurred. I will

1 leave it at that. I thought it was my duty to call that
2 issue to the court's attention and I think that I've complied
3 with my responsibility with respect to that.

4 Your Honor, I don't think the court has sufficient
5 information at this time to decide whether or not the SEC's
6 action in this matter is prudent or otherwise. What I think
7 the court can decide with respect to Mr. Pate is that when he
8 was notified that the Securities and Exchange Commission was
9 pursuing this matter and prior to a complaint he cooperated.
10 He came in and gave a full day's testimony and provided all
11 the records within his control except for those couple that
12 I've mentioned, which are going to be turned over, but the
13 bulk of the records that the SEC has regarding this matter,
14 were provide by Mr. Pate.

15 He reinvested monies he had earned through the
16 program in the program and his family invested in the
17 program. More importantly, Mr. Pate has over 35 years in the
18 insurance industry. He's been at the current location at his
19 agency for over 10 years. His wife has been in Iran and is
20 currently a registered nurse in the surgery unit at Baylor
21 Hospital. He's raised a family, many of whom are here in the
22 state of Texas and they've enjoyed an upper-middle-class
23 income for well over 15 years. To just put a blanket freeze
24 on their assets in this case on the strength of these
25 allegations and under Fifth Circuit law, is just

1 inappropriate and improper.

2 We will -- and in that vein I would like to make a
3 suggestion to the court. They have frozen every asset of Mr.
4 Gerald Pate. All I'm asking this court to do today, until we
5 provide the interim accounting on the sourcing of funds for
6 those other accounts, is to release Mr. Pate's insurance
7 agency and account from this freeze. His agency account has
8 approximately \$13,000 in it. The other accounts that have
9 been frozen probably have excess of 350,000 or 300,000 in
10 those accounts. The 13,000 in the insurance agency account
11 is our client's monies.

12 Now, Mr. Norris might suggest that he be required
13 to go open another account and then fund that account and
14 provide an interim report. Your Honor, I submit that they
15 cannot tie up a person's livelihood completely. He has a
16 long-term position in the insurance industry. We ask that
17 his account, that's been established for a number of years,
18 be released and that he be allowed to conduct business so
19 that he can pay his mortgage and his utilities and feed his
20 family until these other accounts are resolved by way of an
21 accounting and either a stipulated agreement between the
22 government and Mr. Pate or we have to come back in front of
23 this court and put the matters before you.

24 Thank you, Your Honor.

25 THE COURT: Thank you. Yes. I'm sorry.

1 MR. GOODENOW: Good morning, Your Honor. May it
2 please the Court. Gary Goodenow for defendant Clagg.

3 Your Honor, I will get right to where the rubber
4 hits the road. My sense is that the court want facts and not
5 argument. The facts are that under the established case law
6 the SEC must show a prima facie case of securities law
7 violations and a likelihood of future violations.

8 As to the prima facie case, the facts are, gleaned
9 from the SEC's own evidence, that two lawyers; Mr. Fitzgerald
10 and his part mere Mr. Aguilar; two CPA's, Mr. Pate and Mr.
11 Boone; two doctors, Sridharan and Rainey; and the senior
12 financial officer for one of the Hunt brothers; all of these
13 professionals, educated people, felt that this was a
14 legitimate investment.

15 The facts are that the SEC itself took one and a
16 half months to determine that this was a scam and come before
17 this court, and it took their own trained expert, Mr.
18 Sessions, 80 hours to reach his expert opinion that this is a
19 Ponzi scheme. Yet, notwithstanding this, the SEC alleges in
20 its papers, particularly page 15, quote, "Had Mr. Clagg
21 conducted any meaningful due diligence, he would have learned
22 the Dannel program, like all prime bank schemes, is a scam,"
23 yet the SEC's own investor alert doesn't call all prime bank
24 schemes scams. It says they are possibility fraudulent.
25 This is critical, Your Honor, because this is the gravamen of

1 their basis for scienter, which they must show, for the
2 anti-fraud provisions. The gravamen is that Mr. Clagg was
3 reckless.

4 Let's look at the witness that they presented. The
5 fact is that Mr. Jones testified that he had no knowledge of
6 the role of Mr. Clagg in this offering and he had no
7 knowledge of the role of any investigation or lack thereof
8 done by Mr. Clagg. The facts are that Mr. Fitzgerald
9 testified that he had no idea what investigation was done by
10 Mr. Clagg, and he generously offered his own belief that Mr.
11 Clagg didn't know that there was a scam going on.

12 Dr. Sridharan, it's a fact, had no contact with Mr.
13 Clagg and offered no evidence on him. Mr. Whorton had a
14 great deal of dealings with Mr. Clagg, but the facts are he
15 explicitly said he had no idea of the level of investigation
16 of due diligence done by Mr. Clagg.

17 Mr. Kvamme, the last investor witness, is a very
18 fascinating witness because Mr. Clagg put him in an
19 investment, that's one of the relief defendants, which has
20 not been alleged to be in violation of the federal securities
21 laws. Their own complaint says right on the front, solely as
22 relief defendants. Mr. Kvamme further testified that he went
23 into a promissory note investment, and we haven't heard any
24 analysis of how that promissory note is even a security under
25 the federal securities law. But more importantly, Mr. Kvamme

1 testified he never heard of Dannel, he got no documents on
2 Dannel, he knew nothing about any trading program, nothing
3 about safety and nothing about his principal being at risk.

4 That's the five witnesses they put on. Not a word
5 about the level of due diligence or investigation done by Mr.
6 Clagg, notwithstanding the bold headline that if Mr. Clagg
7 had conducted any meaningful due diligence he would have
8 learned it was a scam.

9 And Mr. Sessions and Mr. Adams offered no testimony
10 concerning Mr. Clagg, again, about his investigation or his
11 role. That's critical I think, Your Honor, because Mr.
12 Adams, as the Arizona authority, brought nothing to this
13 court with respect to Mr. Clagg. All of his evidence
14 concerned the other defendants.

15 I respectfully submit that overall there is such a
16 difference in degree as to the evidence with Mr. Clagg as to
17 be a difference in kind. Given this evidence, a search for
18 the real basis of the SEC's case shows it to be this. Clagg
19 sold investments. Clagg took the Fifth. You've heard over
20 and over he took the Fifth. Mr. Clagg did take the Fifth.
21 After he produced documents, but as I understand from his
22 counsel at the time, after he considered the raids in Arizona
23 he decided to take the Fifth.

24 This whole basis of an inference in a civil
25 proceeding, based on taking the Fifth, is just that. It is

1 an inference. It is not the scarlet letter. There is no
2 case law for the proposition that scienter is proven just by
3 taking the Fifth. That cannot be the law, Your Honor,
4 because it would render the privilege absolutely meaningless.
5 In fact, all of the case law says that the inference kicks in
6 after the prima facie case is made, not the opposite. That's
7 what they're suggesting that the Fifth makes the prima facie
8 case, that taking the Fifth meets the element of recklessness
9 for purposes of scienter under the antifraud provisions.
10 That is not the case. That's the tail wagging the dog.

11 The second prong, and to my mind, Your Honor, the
12 easiest for the court to grapple with, is the whole issue of
13 the likelihood of future violations. Quite frankly there has
14 been no evidence presented on this at all. There's no
15 evidence shown under the factors that are to be considered in
16 respect of likelihood in some fairly well-settled case law.
17 There has been no showing of misuse of assets by Mr. Clagg.
18 As I pointed out in my memorandum, they have a section in
19 their memorandum of law called use and misuse of funds and
20 Mr. Clagg isn't mentioned at all. We haven't heard anything
21 about a risk of flight by Mr. Clagg. Nobody found packed
22 luggage by his door.

23 Mr. Adams' testimony does not apply to Mr. Clagg at
24 all. In fact, all we really have on likelihood is what Mr.
25 Norris said at this podium when he said in his memo which is

1 that the egregiousness of the scheme and the recurring nature
2 of the violations indicate likelihood. As former
3 Vice-President Mondale said, where's the beef? Where's the
4 beef as to Mr. Clagg? Where are the facts? Where are the
5 discussions about the factors that this court has to consider
6 with respect to likelihood of future violations? The
7 egregiousness of this fraud? An alleged fraud that fooled
8 educated professionals, that the SEC had to consult experts
9 to determine whether it was a scam, that it took 80 hours for
10 their own expert in-house to determine it was a Ponzi scheme?
11 That's not egregious. The recurring nature? Mr. Clagg comes
12 before this court with no history of criminal or civil
13 liability. The only thing that recurred were the sales, same
14 old same old, as we heard yesterday.

15 The most important factor I'd like the court to
16 consider though, beyond the prima facie case and the
17 likelihood of future violations, is that if this court grants
18 the preliminary injunction that the SEC requests, this is not
19 going to be a simple obey the law admonition. Being honest,
20 intellectually honest, we all know that this asset freeze
21 destroys all ability for Mr. Clagg to reach the merits in
22 this case. It destroys all ability for him to fund a legal
23 defense to fully examine the issues like the degree of his
24 scienter, the degree of his recklessness, the degree of due
25 diligence investigation that he did and the factors on

1 likelihood of future violations that are in the circuit case
2 law.

3 If the court denies the preliminary injunction,
4 then there will be funds whereby he can defend himself and we
5 be able to examine all of these issues when we have all of
6 the bank records, when all counsel will be able to review all
7 records.

8 Finally, Your Honor, not even God can change the
9 past. It has happened. But we cannot reach an understanding
10 of that past if there is an asset freeze. I feel that the
11 SEC rushed in too early with respect to Mr. Clagg to make the
12 kind of showing that's necessary for this court to render a
13 preliminary injunction. Your Honor, we should not rush to
14 judgment, especially in Dallas.

15 THE COURT: Thank you.

16 MR. GOODENOW: Thank you.

17 THE. COURT: Next.

18 MR. MOWERY: Judge, I'm going to do my best
19 not to repeat some of the arguments that the other defense
20 counsel have made, particularly Mr. Goodenow, because I think
21 some of those arguments equally apply to Mr. Cook. The issue
22 really today, judge, is what relief, if any, should you
23 entered here. And the bottom line is that the government
24 simply has not given you sufficient evidence to support the
25 broad relief that they're requesting here.

1 Looking at their injunction, for example, the TRO
2 that they obtained, they gave various reasons for good cause
3 as to why the injunction should be issued. One is there's
4 good cause to believe that investor funds and assets will be
5 misappropriated, wasted or otherwise used improperly to the
6 detriment of defendants' investors.

7 One of the other standards they give is that there
8 is good cause to believe that Dennel does not have sufficient
9 funds or assets to satisfy its obligations to defendants'
10 investors, and then good cause that Cook and other defendants
11 will continue to engage in these acts.

12 Now, first of all, Your Honor, as to
13 misappropriated, wasted or otherwise using property, as the
14 court heard yesterday from each investor, there is no
15 evidence to the contrary, every investor was paid back on
16 time for as long as these programs have been going on. One
17 of the investors yesterday testified that the reason he got
18 into the program was because another individual had been in
19 it for two or three years, two or three years and had been
20 paid back timely.

21 And there is not one suggestion that there has
22 every been any investor that has lost any money in these
23 programs. The government hasn't put on one bit of evidence
24 on about that. The fact is, if that were the case presumably
25 they would have put some evidence on.

1 And I know Your Honor is familiar with Ponzi
2 schemes. And it's my belief and understanding that in most,
3 if not all Ponzi schemes, investors lose money and there's
4 evidence of that. And there has been no evidence here that
5 any investor has lost any money. In fact, every investor here
6 testified that they are happy with the program. They had no
7 complaints. It wasn't until this month, or last month now,
8 March, when the government, SEC, Arizona, took the actions
9 they did that the problems have arisen.

10 Judge, I would like to address Mr. Session's
11 report. And it also is in conjunction with what Mr. Adams
12 testified about. First of all, he said there were 30
13 accounts at Bank One. Now, there are other accounts he
14 testified to but he only knew of 30 accounts at Bank One. He
15 did this investigation of nine accounts. He had bank records
16 as to eight others, but he chose not to provide any
17 information with respect to those. I think his testimony
18 was, or at least it was implied, I didn't have complete
19 information so I didn't want to provide anything.

20 THE COURT: He testified that he just had the
21 monthly statements.

22 MR. MOWREY: Yes, sir. But he could have had --
23 there could have been some analysis of those which he chose
24 not to do.

25 Secondly, Your Honor, Mr. Adams -- so as to Mr.

1 Sessions, you have nine accounts that he looked at. He has
2 no idea where the source or where the funds went to from the
3 various entities that monies were wired to; for example, the
4 Cornerstone. He can't say where that money went to from
5 Cornerstone. Did it go to London? Did it go somewhere in
6 Europe or offshore? He has no idea where it went to.

7 What did Mr. Adams testify about yesterday? He
8 said, we know that there's funds that are going offshore. We
9 know they're going to all these various places out of the
10 country. That is consistent, Your Honor, with what this
11 program was about, that these monies were going overseas. He
12 said in these accounts -- he looked at these nine accounts,
13 and as Mr. Norris said this morning, we now there's about
14 \$30,000,000 and we know these accounts were for investor --
15 that investors had put in, and there was 22 or 23,000,000 in
16 these accounts, therefore, that's most of the accounts.

17 Your Honor, just supposing that there were great
18 sums of money being made on these investments, then there are
19 other accounts with other monies in them and that would
20 explain other accounts that are offshore and in Europe. Just
21 because they've got these nine accounts that showed those
22 monies, is -- for Mr. Norris to say we can conclude,
23 therefore, that's the majority of them, that's sheer
24 speculation. They simply don't have any evidence of that.
25 And they haven't presented any evidence of it.

1 Now, another part of the injunction that I read a
2 moment ago, and that is that Dannel does not have sufficient
3 funds or assets to satisfy its obligations to defendants.
4 Your Honor, there is simply -- they have put no evidence on
5 of that. They put no evidence on that Dannel has
6 insufficient funds. If this were a situation where investors
7 had not been being paid, that would be evidence that they
8 didn't have sufficient funds, but that's not the case here.
9 They have put no evidence. And it's their burden, Your
10 Honor.

11 As Mr. Goodenow says, the order here -- think about
12 it from any of our standpoints. It completely freezes one's
13 life. Under this order, I'm not sure if one of the
14 defendants can actually go and buy a McDonald's hamburger
15 here across the street. And for that kind of action to be
16 taken, Your Honor, there needs to be more evidence than this
17 court has seen yesterday.

18 You look at the cases, Your Honor, that are cited
19 by the government themselves with respect to freezing assets.
20 One of those cases is the SEC versus Manor Nursing case, they
21 cite, Second Circuit case. In there the court says that,
22 "Freezing assets might thwart the goal of compensating
23 investors if the freeze disrupts the business operations to
24 the point they are destroyed." That's precisely what the SEC
25 wants to do here is to thwart the efforts to repay these

1 investors.

2 Your Honor, let me get to it in terms of where I
3 see where we are right now. First of all, we have only
4 recently been contacted by Mr. Cook. I do not have knowledge
5 of the actions that have been taken over the last two months
6 with respect to Mr. Cook, and frankly I cannot comment on
7 actions that he's taken, the government has alleged in terms
8 of not cooperating.

9 I thoroughly agree with Mr. Goodenow's statements
10 about the Fifth Amendment. I mean this man has been -- he's
11 being criminally investigated in Arizona, and for him not to
12 take the Fifth Amendment just would not make sense at this
13 point. The government knows a lot more about what's going in
14 terms of their investigation than we do on our side. So for
15 them to draw the inference that we are unwilling to cooperate
16 because of taking the Fifth Amendment is simply unfair.

17 I will represent to the court that if we are
18 involved in this case, that with respect to documents that
19 are available, we will work with the government to make those
20 documents that we feel should be produced, they will be
21 produced. And in that regard, the fact is the government has
22 many of these documents. One of the problems we've got here,
23 Your Honor, is the chicken and egg situation. The government
24 wants all of these accountings but yet they have frozen
25 everything. They have taken over his house, taken over his

1 office, Arizona has; they have taken all these records and
2 yet they want a full accounting.

3 What we would like to do, Your Honor, we would like
4 some time, not a lot of time but some time to do the
5 following things. First of all, we would like to get
6 together an accounting of all the funds that are owed to the
7 investors in these programs, principal and interest and we
8 would like to work with the government in terms of agreeing
9 with respect to those amounts so that we're clear on that.

10 Secondly, Your Honor, it has been represented to
11 me, and I certainly cannot -- I can only tell you what has
12 been repeatedly represented to me and that is that Mr. Cook
13 has every intention of demonstrating to the court that he has
14 sufficient funds or has access to sufficient funds to pay all
15 the investors back. And he is in the process now of
16 attempting to arrange for that. And what we would request,
17 Your Honor, is a period of time, not a long time period of
18 time but a period of time, in order for him to arrange for
19 those funds to be gathered and to be put into escrow and then
20 be disbursed to investors. And we'll work with the
21 government with respect to -- and with the court with respect
22 to interim reports as to where we are in that process. But
23 at this juncture, Your Honor, it is simply unfair, and the
24 government has not proven their case, to put this freeze on
25 all the assets worldwide of Mr. Cook's.

1 Your Honor, the last thing I want to say, and this
2 goes to the merits of this thing and has to do with issue of
3 scienter and I'm not going to repeat all that, but I would
4 like to say this with respect to scienter. There is no
5 evidence here that Mr. Cook or any of these defendants were
6 defrauding someone in terms of not -- having the mind-set not
7 to pay every person back. They have not presented one bit of
8 evidence as to that. And again, the strongest evidence to
9 their mind-set is the fact that these people were being paid
10 back. And this was not something -- I don't know how long it
11 was going on, but we know from one investor testified it's
12 been at least two or three years.

13 So for those reasons, Your Honor, we believe that
14 the injunction is overbroad and should not be put in place as
15 the temporary restraining order has been.

16 THE COURT: Thank you.

17 Next. Mr. McColl.

18 MR. McCOLL: May it please Your Honor. I had a
19 misunderstanding of the time of beginning.

20 THE COURT: That's all right.

21 MR. McCOLL: Glad you went ahead and started.

22 Your Honor, may I approach the bench?

23 THE COURT: Yes.

24 MR. McCOLL: What I have is proposed findings of
25 fact and conclusions of law which I'm going to follow in my

1 address to the court.

2 THE COURT: Okay.

3 MR. McCOLL: If the court please, I think that
4 we're dancing around the proof here. There has been probable
5 cause shown in my opinion. That is not the standard. The
6 government needs more time to bring this court the quality --

7 MR. NORRIS: May you went ahead move the chart.

8 MR. McCOLL: I'm sorry.

9 THE COURT: It just says burden shifting.

10 MR. NORRIS: I'm sorry.

11 MR. McCOLL: While the court has heard evidence
12 clearly of probable cause, which you have not heard, is the
13 kind of quality that this court that rises to the dignity of
14 having a court impose an order, which co-counsel is correct,
15 if you look at it, it says that using any asset. I mean you
16 cannot go by a hamburger under this order if you follow it
17 strictly, cannot that I think of. It's sweeping and it would
18 be appropriate if the government had met its burden.

19 It seems like to me, if you look back in history,
20 judge, you see the fascinating instances of what we all know
21 is hard facts make bad law. Here we may have hard facts. We
22 simply don't know yet. We certainly have probable cause to
23 believe there are hard facts. But we certainly are not
24 convinced of that and there is not evidence that this court
25 can feel confident in that.

1 There is a nagging sense of incompleteness of this
2 very well-meaning gentleman who came in here and examined
3 less than one-third of the records, didn't have a whole lot
4 of training in Ponzi scams, but I clearly believe he can
5 figure out Ponzi scam if he examines all the record.

6 What we don't know is what's in the other
7 two-thirds of the accounts. And that's where the burden
8 shifting comes in. We do not have the resources, nor is it
9 the law, and we are a country of laws, of course, and not
10 men, to possibly bring you the evidence that this court needs
11 to impose that sweeping order. The government does, and,
12 therefore, it would seem to be appropriate, and the relief
13 that I'm asking for the court continue this hearing for 60
14 days, allow the government to go back, look at those nine for
15 some reason had access to but didn't tell you about, as well
16 as the other balance of the accounts.

17 And it may well be I have no argument in front of
18 you, but I sure have an argument right now as a lawyer and
19 one who can clearly see when courts have struggled with
20 burdens of proof. For example, if you go back and listen to
21 the oral argument before the United States Supreme Court in
22 Terry vs. Ohio, before reasonable suspicion existed, Your
23 Honor, and the only law of the land was probable cause to
24 seize a citizen off the street, it's fascinating to hear the
25 justices grapple with evidence that clearly showed something

1 was going on when that officer with 42 years of experience,
2 all these guys casing the drugstore and walking up and down
3 suspiciously, finally spins around and pats them down. He
4 certainly didn't have probable cause, but yet the court was
5 concerned we got to do something, and that's what we have
6 here.

7 We've got to do something. But there's no way that
8 this evidence rises to the dignity of the level of confidence
9 that this court needs to have to enter such a sweeping order.

10 But the court has other remedies, other interim remedies
11 that do not shift the burden onto these defendants whose
12 assets are frozen. Our ability to have access to this court
13 under the First Amendment and to advocate and to bring forth
14 the kind of evidence that the court is entitled to rely on,
15 is shut off. It's a water faucet. It's shut off. We simply
16 don't have that ability under this order.

17 So it's meaningless to say, come back to me -- I'm
18 going to enter this order, come back to me and show me, you
19 know, I should modify it or something. We can't. It's a
20 fiction, and it's not our burden. And just like in Terry vs.
21 Ohio, it's not black or white situation here, judge. The
22 arguments that you've heard most of which -- some of which
23 I've been privy to, seem to be of black or white to posit you
24 and I suppose the government's does too, judge, it's either
25 black or white. It's not blank or white. There's clearly a

1 shade of gray that has been presented to this court, but
2 there are very nagging things about the things that have not
3 been presented.

4 For example, Your Honor, as I go down the list of
5 findings of fact that I propose that the court look at in
6 entering in support of its continuance, that the government
7 puts on a witness who says Mr. Clagg knew nothing of this.
8 Now, Mr. Clagg is similarly situated to Mr. McLaws and Mr.
9 Pate. So it is a reasonable inference if he did not know, at
10 least it raises the serious question, did Mr. Pate know? Did
11 Mr. McLaws know? It raises the inference that perhaps they
12 didn't. And if together with the other additional proof
13 coupled with you've heard allegation or insinuations through
14 my questioning that Mr. McLaws recommended to his own
15 daughter put your money in this. This is a great deal, it's
16 safe, which is inconsistent with knowledge of fraud, just
17 flatly inconsistent, so that this court would be
18 uncomfortable.

19 There's a big segregation between Ben Cook, who's a
20 brilliant mastermind, sophisticated, appears to be, Ponzi
21 expert, you know, under the government's theory, and that may
22 be the case. And these other guys where the government's own
23 witnesses are coming in at a lower level and saying he didn't
24 know. The inference, therefore, applies to other people
25 similarly situated. It raises a serious question before this

1 court under the government's own evidence.

2 A second witness comes in and says, you know, I did
3 due diligence and I couldn't find anything wrong with it and
4 I've been a senior financial analyst for Hunt Oil for 13
5 years. What does that mean when a 17-year-old policeman --
6 17 year policeman comes in. There's no way that he has the
7 financial skills or wherewithal that a senior analyst at Hunt
8 Oil has. I'm sure whatever due diligence that Mr. Jones did
9 was nowhere near what Mr. McLaws is even capable of doing.
10 Was he negligent? Maybe. Was he skilled? No. Did he rely
11 on Cook? Undoubtedly. Did everybody else rely on Cook?
12 Undoubtedly.

13 But to ignore the government's own evidence about
14 Clagg and say, well, it raises an inference to the other
15 people similarity situated, is simply shifting the burden.
16 We do not have the burden to come in and prove our innocence.
17 We cannot do that. We do not have the resources. We do not
18 have -- the lawyer is going to disappear after today in the
19 absence of something else happening, some relief is going to
20 disappear so he's going to be pro se.

21 And we have been sent packing to Arizona to get
22 assets without them having the benefit of anything that went
23 on in this courtroom. So they're left with the bare
24 pleadings of the United States government to support their
25 own belief of fraud, without any -- without the benefit of

1 any single finding, judicial finding of fact by this court.
2 We are in worse shape in Arizona than we are here today
3 because we will be before -- with all due respect to Arizona
4 officials, we will be before not even a judicial body, in all
5 probability.

6 The first plea will be to, you know, executive
7 branch, attorney general, make your case. Well, if you'd
8 heard the evidence back in federal court in Dallas you would
9 have heard this and he contradicted this and the government's
10 evidence said, you know, one of the guys didn't know and he's
11 similarly situated to mine. Well, I wasn't there, you know.
12 I've heard the government's pleadings. It's pretty clearly
13 to me.

14 Pleading and evidence are at variance on certain
15 points. It's surprising to me, and I think the court must
16 take cognizance of this, that there was no interest income
17 located by the government's expert. If these people are as
18 sophisticated -- even Ben Cook -- I don't think Mr. McLaws
19 would even know interest income necessarily if he saw it on
20 the financial statement. I simply don't know the degree of
21 sophistication, but I don't get the impression that he is any
22 sort of sophisticated person. He's less than the senior
23 financial analyst at Hunt, for example.

24 But my point is, if this sophisticated criminal
25 mind that created this very complex Ponzi scheme, if it is,

1 you think he'd just blow off a million bucks in interest? Is
2 that reasonable for the greed and avarice that they allege?
3 Did they just put it in a trust account so we really don't
4 want to draw interest on this. We're going to hold it in
5 trust. And if that's the case, if that interest exists what
6 other mistakes of perhaps material nature would this
7 government expert, had he had more time, I'm sure he was
8 rushed, not being unfair to him, what else could he bring to
9 the court? We would like to see. We would like to see. And
10 unless they bring it, you're not going to see it, Your Honor.

11 Now, for example, in paragraph 9 of my proposed
12 facts, I have asserted by innuendo, and I got away from this
13 point, that McLaws has, in fact, got \$110,000 in this Dennel,
14 his own money, \$110,000 from Eli Lilly retirement fund where
15 his wife worked for 17 years. We can't even bring that to
16 the court. Why? Because the very records that are proposed
17 you know as being analyzed by that government expert, where
18 we don't have the resources to do it, it's not in there. But
19 do you think for one minute that as much trouble as he's in
20 he would propose to me, as his lawyer, to assert that to a
21 federal district court repeatedly that he did that. And I
22 will represent to the court I have evidence indica of a
23 Merrill Lynch -- and I'll be happy to show this to
24 co-counsel, you know, funds that says Eli Lilly on it with
25 her name showing funds. But I can't even get it as -- call

1 it exculpatory evidence, if you will, I can't even get it
2 before you.

3 And there are other significant omissions and they
4 may -- you know, it's just hard to judge at this point,
5 judge, you know. The three witnesses that they called, the
6 doctor, where is his record? No investor, apparently. Mr.
7 Jones, no record of him. And these are the government --
8 what I'm saying, judge, it's incomplete. It certainly must
9 create a nagging, nagging sense of incompleteness, and yet
10 there is probable cause to believe. We've got problems here,
11 but I am not ready -- I suggest to the court, that the court
12 is not ready to say firmly and convincingly, I am satisfied
13 by this evidence. I would hire that guy to do my tasks. I
14 don't think any of us can say that. He may get to that
15 point. I don't think he's been given a reasonable
16 opportunity to do that.

17 Therefore, Your Honor, the conclusion of law that I
18 proposed on page 4 of my proposal, is that the hearing be
19 continued for 60 days and that some limited relief be granted
20 to Clagg and McLaws. And, you know, there's a typographical
21 here. One of the co-defendants, for example, runs an
22 insurance company. You know, anything to present to the
23 receiver, it seems like to me, that you've already appointed
24 in this case, that shows that the money that he proposes to
25 do, for example, in the next 30 days if he's presented the

1 bank accounts of the insurance company, the name of the
2 insurance company and the licenses and the average balances
3 for the last three years of the insurance company, that he
4 ought to be able, through your direction, to go to the
5 receiver in the next 60 days, while we're waiting on the
6 government, and make application for taking the insurance
7 company out from under the freeze order.

8 Similarly, I would ask that on page 4 at the
9 bottom, that the nonliquid personal property, such as the
10 defendants' automobiles, and I've put money -- that's a
11 mistake, personal effects and real estate, the title to which
12 was conveyed to each defendant prior to the period of their
13 employment with Dannel Finance Limited, be deemed outside the
14 freeze order. If it's obviously in their possession prior by
15 title, recorded title, public record, prior to the time they
16 even became associated with Cook, there's no reasonable
17 likelihood that it is tainted money, and, therefore, an
18 application for the receiver through your direction and court
19 order, would be appropriate and certainly documentable. And
20 these people can hence start liquifying some assets to go on
21 and live.

22 Finally, Your Honor, I simply have this note. The
23 allegations talk about good cause, good cause this, good
24 cause that, good cause this. I think they have good cause.
25 And if the court would take in its mind the idea that on the

1 state of this evidence, which was rushed, nobody could
2 reasonably deny that it's rushed, and substitute the word
3 probable for good, you have the government's case and they
4 made it out. You've got it in spades in probable cause, but
5 what you don't have is the kind of evidence that rises to the
6 level of integrity and dignity upon which this court can
7 firmly say I am satisfied by this clear evidence.

8 Therefore, I would ask the court to enter a motion
9 continuing this hearing for the government to assume its
10 legal burden and come back in 60 days and in the meantime let
11 us apply to the receiverships with some limited relief.

12 Thank you.

13 THE COURT: Plaintiff.

14 MR. MOWERY: Judge, I forgot to give you a case
15 that I cited. May I approach the court?

16 THE COURT: Sure.

17 MR. MOWERY: This a brief. It talks about the
18 standard on asset coverage in terms of whether the assets are
19 subject to the -- are the subject of involvement in the
20 alleged transactions as opposed to other assets.

21 THE COURT: Okay.

22 MR. NORRIS: Your Honor, I think I dealt in
23 anticipation with almost every argument that defendants'
24 counsel raised so I'll be brief.

25 With respect to Mr. Connelly's accusation and

1 allegations that we were inaccurate in our papers, I just
2 want to state for the record that we stated that Mr. Pate had
3 a securities license. He did. He sat for the exam, had a
4 securities license, and by Mr. Connelly's admission he held
5 that license for four years. There's nothing inaccurate
6 about that statement.

7 In the supplemental declaration concerning
8 production of documents that statement was specifically
9 directed to the document request that was served under the
10 court's expedited discovery order issued on March 16. It is
11 a fact that Mr. Pate did, in fact, produce documents in
12 response to investigative testimony, document request that
13 were served on him -- he provided some, some he did not
14 provide that were responsive to that investigative subpoena
15 stating that he not feel that they were relevant. The
16 document request that was served under your order was broader
17 and it is a fact we have not received additional documents
18 under that request.

19 Let me address as a whole the issue that has been
20 raised with respect to modification of the freeze order.
21 It's been raised by Mr. Connelly, it was raised by Mr.
22 McColl, raised by other counsel. We simply do not have any
23 evidence or information upon which to support a modification
24 at this time of the freeze order. No one's submitted an
25 accounting. No one has provided us with documents of an

1 independent source that's in the funds that are in the
2 possession of the defendants or in the possession of our
3 receiver.

4 There's been some offering of some documents
5 relating to purported independent funds -- independent source
6 of funds that Mr. McLaws had among the \$8,000,000 in that
7 Reno bank account. But those -- the documents that have been
8 provided to us are very conclusiary letters from the
9 purported investors who provided those funds in a separate --
10 purportedly separate investment program. All that the
11 letters really state is that those funds were provided for a
12 very short-term investment. And in talking to counsel for
13 Mr. McLaws, it comes out that, in fact, that investment was
14 related to Dannel.

15 MR. McCOLL: Your Honor, we have never taken the
16 position with counsel, nor do we now before the court, that
17 we're asking the court to take that -- those funds out of the
18 freeze order. We have asked -- I told you some limited
19 amount just for attorney's fees because we show the
20 independent source going into this fund.

21 MR. NORRIS: That's what I'm talking about.

22 MR. McCOLL: So that the pro rata potential would
23 not be disturbed.

24 THE COURT: I understand. He's making his
25 argument.

1 Go ahead.

2 MR. NORRIS: Anyway, whatever portion of that
3 1,000,000 plus dollars that counsel claims are untainted, we
4 don't have evidence to support the position that that is
5 untainted. We haven't gotten what we consider documentary
6 evidence that supports that position. We haven't been able
7 to talk to these purported investors. Mr. McLaws has not
8 been willing to -- thus far to talk to us under oath because
9 he's asserted the Fifth Amendment. So we do not have
10 information or evidence, did not receive an accounting from
11 any defendants. We don't have information or evidence at
12 this point that would allow us to support a modification of
13 the freeze order for any of the defendants.

14 Your Honor, I find in almost every case I've dealt
15 with the issues raised by defense counsel in my opening
16 statement. Mr. Cook's attorney, Mr. Mowery, argues that the
17 court should infer that this operation was not fraudulent
18 from the fact that investors were paid their funds on a
19 regular basis. But that's the nature of a Ponzi scheme.
20 Investors are paid with new investor funds until the house of
21 cards collapses. In this case we are able to, we feel, shut
22 this operation down before that happened. And I think the
23 evidence, despite what defendants say that this was a Ponzi
24 scheme, is more than sufficient for this court to enter the
25 order that we've asked the court to enter. And it's more

1 than sufficient that the representations that were made in
2 writing and orally by each of the defendants were fraudulent.

3 Mr. Goodenow suggests that the court should not
4 make any negative inference from the assertion of the Fifth
5 Amendment by Mr. McLaws and Mr. Clagg. I think it's
6 perfectly legitimate for the court to infer evidence -- that
7 that evidence from the Commission Fifth Amendment in this
8 civil case to infer scienter from not only the other evidence
9 that's been presented but from their assertion of the Fifth
10 Amendment.

11 Let me specifically address the motion that's
12 before the court on a 60-day continuous. I think the
13 evidentiary record now is sufficient to support this relief.
14 It's sufficient to require that the assets continue to be
15 frozen and that they be turned over to the receiver. And I
16 think given the conduct of the defendants that's been
17 presented through the testimony that you heard yesterday and
18 through the information set forth in the declarations that
19 have been presented to the court, failing to keep that relief
20 in place would pose a significant danger to investors that
21 funds would be dissipated before that 60-day period was up
22 and that complete relief would not be provided to investors.

23 Thank you.

24 THE COURT: Okay.

25 MR. CRAWFORD: Your Honor, may I briefly address

1 the court?

2 THE COURT: Yes.

3 MR. CRAWFORD: Your Honor, I'm Kelly Crawford,
4 attorney for the receiver. I would just simply like to point
5 out to the court, there's been a lot of reference to the
6 receivership order as being a freeze order. It is much more
7 than that. It orders the defendants to turn over their
8 assets to the receiver. Indeed, that's the purpose of this
9 is to marshal all of the assets that we can have that
10 gathered in one form.

11 I would simply like to point out to date none of
12 defendants have voluntarily turned over any assets. All the
13 assets that have been seized have been seized through
14 judicial process.

15 THE COURT: And I'm not sure what's left. It
16 sounds like Arizona has most of the stuff.

17 MR. CRAWFORD: We're still working on that, Your
18 Honor.

19 THE COURT: Okay.

20 MR. CONNELLY: Your Honor, if I could get some
21 clarification on that? With respect to my client, Mr. Pate,
22 he has personal accounts in an IRA. Am I hearing Mr.
23 Crawford say that he expects that IRA to be broken and the
24 penalty paid and turned over to the receiver and then decide
25 whether or not that money is subject to seizure? Who's going

1 to pay him back?

2 THE COURT: I'm not addressing problems like that
3 right now.

4 MR. CONNELLY: Okay, judge.

5 THE COURT: As a matter of fact, I'm not going to
6 address any problems for relief from the temporary
7 injunction, which I am going to enter. As long as it
8 concerns matters that are frozen by the Arizona orders, it
9 simply doesn't warrant my time or the attorneys' time to hear
10 a meaningless motion to release something which is frozen by
11 some other order.

12 And I absolutely reject the argument presented to
13 me that I have some ability to reverse the Arizona courts. I
14 do not.

15 The evidence presented to me clearly establishes
16 that Mr. Cook planned and ran a Ponzi scheme, indeed a
17 massive Ponzi scheme based around the idea of offering and
18 selling fraudulent prime bank trading programs. He enlisted
19 the other four defendants, trained them in the process that
20 he was using. He raised, through the Dannel programs,
21 approximately \$30,000,000 and that was generated through the
22 fundraising efforts of Pate, McLaws and Clagg who served as
23 general managers. And the evidence also establishes that
24 Clagg raised approximately 12.8 million, Pate raised 7.4
25 million and McLaws raised 6.3 million.

1 With reference to the arguments that all payments
2 were made on time, that is the evidence before me. And there
3 was no loss to the investors, that is the evidence before me.
4 However, as the plaintiff, the SEC argues, that's typical of
5 a Ponzi scheme. Some last for years. And it usually
6 collapses either because not enough money has come in to make
7 the payments, that's happened on occasion, or because of some
8 regulatory action or some disgruntled person who's involved
9 in the Ponzi scheme who reports it to officials. In any
10 event, it's clear to me that Cook did supply the regional
11 managers, the other four defendants, with false and
12 misleading offering materials and they in, turn, disseminated
13 that to the investors and potential investors. There were
14 numerous representations made both in written and by the
15 investors in meetings and in phone calls with those people.
16 And I credit the testimony of all of the -- all of the
17 investors who testified here.

18 Another common thread in a Ponzi scheme is that
19 it's not simply people who are in desperate need of money who
20 would engage in something like spending their money on a
21 Ponzi scheme. Indeed, I have one example of a couple with a
22 very seriously ill child and they took the money that was set
23 aside for the operation to invest in a Ponzi scheme and make
24 a lot of money, not just people like that but also people
25 like the ones who testified. There was a business executive

1 who should have known better. He didn't. He obviously was
2 enamored by the fact that he was going to make a lot of money
3 in the Ponzi scheme.

4 The government has established each of the elements
5 required for the granting of a temporary injunction. They
6 have shown that contrary to the representations made by the
7 defendants that no money went to London or overseas to engage
8 in any sort of program over there and that the new money
9 coming into the Ponzi was used to make the payments to the
10 people who had invested previously.

11 I will enter the temporary injunction based on all
12 of the evidence presented before me. And if the government
13 would present me with a final order to be entered.

14 And we will stand adjourned.

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I N D E X

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2	WITNESS OR PROCEEDING	PAGE
3	ARGUMENTS:	
4	Mr. Norris for the Plaintiff	4
	Mr. Connelly for the Defendant Pate	12
5	Mr. Goodenow for Defendant Clagg	18
	Mr. Mowery for the Defendant Cook	23
6	Mr. McColl for the Defendant McLaws	30
	Mr. Norris for the Plaintiff	40
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8	COURT'S RULING	46
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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 49, 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

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DALLAS DIVISION

