

UNITED STATES OF AMERICA  
BEFORE THE SECURITIES AND EXCHANGE COMMISSION

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In the Matter of:

KING ARTHUR

File No: MNY-1490

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75 Park Place  
New York, New York  
July 7, 1992

The above-entitled matter came on for  
investigation, at 1:50 p.m.

APPEARANCES:

On behalf of the SEC:

former New York Enforcement Staff Attorney  
[Redacted]

JOHN GENTILE, ESQ.

Personal Privacy  
[Redacted]

On behalf of the witnesses, Frank Avellino and  
Michael Bienes, and the firm of Avellino &  
Bienes:

IRA LEE SORKIN, ESQ.  
DORI ANN HANSWIRTH, ESQ.  
JEAN VOUTSINAS, Legal Intern  
Squadron, Ellenoff, Plesent & Lehrer  
551 Fifth Avenue  
New York, New York 10176

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I N D E XWITNESSPAGE NO.

F. Avellino and M. Bienes

3

E X H I B I T SEXHIBIT NO.FOR IDENT.

No. 1 Form 1662

5

No. 2 Document request letter

8

No. 3 King Arthur account for  
Corinne E. Cox

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No. 4 King Arthur account fact sheet

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No. 5 King Arthur account fact sheet,  
with copyright on second page

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No. 6 King Arthur account for Mary  
Susan Espy

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No. 7 Letter to Melissa Shaw  
dated 8/7/91

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P R O C E E D I N G S

former New York Enforcement Staff  
Attorney

We are on the record. It is  
1:50 on July 7, 1992. My name is former New York Enforcement Staff  
Attorney To  
my left is John Gentile and Personal Privacy I am  
an Personal Privacy

John Gentile is a branch  
chief for the Commission's New York regional office,  
division of broker-dealer examinations and  
interpretations. Stephen Weinstein is a summer law  
clerk.

Your testimony today, Mr. Bienes and Mr.  
Avellino, has been requested by the staff as part of  
an informal inquiry entitled "In the Matter of King  
Arthur" to determine if there have been any  
violations of the federal securities laws. However,  
the facts developed in this investigation might  
constitute violations of other federal or civil or  
criminal laws.

Your testimony is not pursuant to a  
subpoena. Accordingly, you should understand that  
your appearance here is voluntary. There is no  
formal order of investigation in this matter.

Let's start with Mr. Avellino.

Mr. Avellino, do you understand that you

1 need not answer any question and you may leave at any  
2 time you wish?

3 MR. AVELLINO: Yes.

4 former New York Enforcement Staff  
Attorney And Mr. Bienes, do you  
5 understand that you need not answer any question and  
6 you may leave at any time you wish?

7 MR. BIENES: Yes.

8 former New York Enforcement Staff  
Attorney Mr. Avellino, do you consent  
9 to being placed under oath?

10 MR. AVELLINO: Yes.

11 former New York Enforcement Staff Attorney Mrs. Court Reporter, please  
12 identify yourself for the record, state the  
13 jurisdiction in which you are commissioned as a  
14 notary public and when that commission  
15 expires and swear in the witness.

16 THE COURT REPORTER: Dana Chipkin, notary  
17 public in Nassau County. My commission expires as of  
18 February '93.

19 former New York Enforcement  
Staff Attorney: Would you swear in Mr.  
20 Avellino.

21 Whereupon,

22 FRANK AVELLINO

23 having been first duly sworn, was examined and  
24 testified as follows:

25 former New York Enforcement  
Staff Attorney: Would you please swear in Mr.

1 Bienes.

2 MICHAEL BIENES

3 having been first duly sworn, was examined and  
4 testified as follows:

5 former New York Enforcement Staff Attorney

6 Mr. Avellino, please state  
7 and spell your full name for the record.

8 MR. AVELLINO: It's Frank Avellino,  
9 A.V.E.L.L.I.N.O.

10 former New York Enforcement Staff Attorney

11 Do you have a middle name?

12 MR. AVELLINO: Joseph.

13 MR. MILLER: Mr. Bienes, would you please  
14 state and spell your full name for the record.

15 MR. BIENES: Michael Stanley Bienes.  
16 B.I.E.N.E.S.

17 former New York Enforcement Staff Attorney

18 Prior to the opening of the  
19 record, you were both provided with a copy of the  
20 Commission's supplemental information form, Form  
21 1662.

22 Would you please mark that as King Arthur  
23 Exhibit Number 1.

24 (King Arthur Exhibit No. 1 was so  
25 marked for identification.)

MR. MILLER: A copy of Form 1662 has been  
marked as King Arthur Exhibit Number 1. Mr.  
Avellino, have you had an opportunity to read King

1 Arthur Exhibit Number 1?

2 MR. AVELLINO: Yes.

3 former New York Enforcement Staff  
Attorney

4 Do you have any questions  
5 concerning King Arthur Exhibit Number 1?

6 MR. AVELLINO: No.

7 former New York Enforcement Staff  
Attorney

8 Mr. Bienes, have you had an  
9 opportunity to read Exhibit Number 1?

10 MR. BIENES: Yes.

11 former New York Enforcement Staff  
Attorney

12 And do you have any questions  
13 regarding King Arthur Exhibit Number 1?

14 MR. BIENES: No.

15 former New York Enforcement Staff Attorney

16 Mr. Avellino, are you  
17 represented by counsel today?

18 MR. AVELLINO: Yes.

19 former New York Enforcement Staff Attorney

20 Would counsel please identify  
21 himself.

22 MR. SORKIN: Firm of Squadron, Ellenoff,  
23 Plesent & Lehrer, 551 Fifth Avenue, New York, New  
24 York 10176, by Ira Lee Sorkin and Dori Ann Hanswirth,  
25 and also present is Jean Voutsinas, a summer legal  
intern. We are representing Mr. Avellino  
individually and Mr. Bienes individually and the  
partnership of Avellino & Bienes.

former New York Enforcement Staff  
Attorney

Mr. Avellino, you were  
requested to produce documents voluntarily in

1 connection with this informal inquiry.

2 Mr. Avellino, do you have recognize this  
3 letter that was sent to Mr. Sorkin, your attorney?

4 MR. SORKIN: Let me put this on the record  
5 so we can move this along. We have not had an  
6 opportunity to review all the records that the staff  
7 has requested. However, at a convenient time for the  
8 staff and for my clients, we will make available to  
9 the staff the records called for in the letter and we  
10 will do so on a voluntarily basis, to the extent we  
11 have such records, because we believe that the number  
12 of documents requested is voluminous.

13 We are prepared to make them available at  
14 the offices of Avellino & Bienes, as I said, at a  
15 convenient time for both parties, for the staff  
16 members to come up and review the records in the  
17 offices. For us to produce all these records would  
18 be quite burdensome, so when we finish today, if you  
19 give us some time to put these documents together,  
20 which will not take a very long time, we will make  
21 them available to you.

22 MR. MILLER: Since we are on the subject  
23 right now, why don't we try to get a date to arrange  
24 for one or two of the staff members to go over.

25 MR. SORKIN: Why don't you go through the

1 testimony. There may be additional records that you  
2 may want to see which we may not have here and then  
3 at the end of the testimony, if we finish, we can  
4 pick a date, but we will do it before we finish  
5 today.

6 former New York Enforcement Staff Attorney: Assuming there are no other  
7 documents, it is anticipated we will be able to look  
8 at these within a week or two?

9 MR. SORKIN: I think that's certainly  
10 reasonable.

11 former New York Enforcement Staff Attorney: Let me just mark this as an  
12 exhibit, Exhibit Number 2, King Arthur.

13 (King Arthur Exhibit No. 2 was so  
14 marked for identification.)

15 former New York Enforcement Staff Attorney R: For the record, this was  
16 marked as King Arthur Exhibit 2. It is a letter  
17 dated June 19, 1992 addressed to Mr. Sorkin from former New York Enforcement Staff Attorney  
18 ██████████, requesting the documents pursuant to the  
19 investigation.

20 Mr. Avellino, have you ever testified in  
21 any investigation by the Commission or its staff?

22 WITNESS AVELLINO: No.

23 former New York Enforcement Staff Attorney: Have you ever testified in  
24 any investigation by any other federal agency?

25 WITNESS AVELLINO: No.



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former New York Enforcement Staff Attorney

By any state agency?

WITNESS AVELLINO: No.

former New York Enforcement Staff Attorney

By any stock exchange or the NASD?

WITNESS AVELLINO: No.

former New York Enforcement Staff Attorney

Mr. Bienes, have you ever testified in any investigation by the Commission or its staff?

WITNESS BIENES: No.

former New York Enforcement Staff Attorney

By any other federal agency?

WITNESS BIENES: No.

former New York Enforcement Staff Attorney

By any state agency?

WITNESS BIENES: No.

former New York Enforcement Staff Attorney

By any stock exchange or the NASD?

WITNESS BIENES: No.

former New York Enforcement Staff Attorney

Mr. Avellino, have you ever been named as a defendant or a respondent in any action brought by the Commission?

WITNESS AVELLINO: No.

former New York Enforcement Staff Attorney

By any other federal government agency?

WITNESS AVELLINO: No.

former New York Enforcement Staff Attorney

By any state securities agency?

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WITNESS AVELLINO: No.

former New York Enforcement Staff Attorney  
: By any stock exchange or the  
NASD?

WITNESS AVELLINO: No.

former New York Enforcement Staff  
Attorney  
: Mr. Bienes, have you ever  
been named as a defendant or respondent in any action  
brought by the Commission?

WITNESS BIENES: No.

former New York Enforcement Staff Attorney  
: By any other federal  
government agency?

WITNESS BIENES: No.

former New York Enforcement Staff  
Attorney  
: By any state securities  
agency?

WITNESS BIENES: No.

former New York Enforcement Staff  
Attorney  
: By any stock exchange or the  
NASD?

WITNESS BIENES: No.

former New York Enforcement Staff Attorney  
: Mr. Avellino, have you ever  
been a defendant or a witness in any civil litigation  
related to the securities laws?

WITNESS AVELLINO: No.

former New York Enforcement Staff  
Attorney  
: Mr. Bienes, have you ever  
been a defendant or a witness in any civil litigation  
related to the securities laws?

WITNESS BIENES: No.

1 [REDACTED] former New York Enforcement Staff Attorney  
2 Mr. Avellino, have you ever  
3 pled guilty to any crime?

4 WITNESS AVELLINO: No.

5 [REDACTED] former New York Enforcement Staff Attorney  
6 And Mr. Bienes, have you ever  
7 pled guilty to any crime?

8 WITNESS BIENES: No.

9 [REDACTED] former New York Enforcement Staff Attorney  
10 Mr. Avellinc, did you speak  
11 to anyone other than counsel concerning this  
12 investigation or your appearance here today?

13 MR. SORKIN: You mean by "speak," did he  
14 tell anyone that he was coming down here to testify?  
15 I always have a problem with "did he speak to anyone  
16 about this investigation." Not knowing what your  
17 investigation was about or what questions you would  
18 ask him is a problem because we are not mind readers.  
19 If you want to ask him did he discuss his appearance  
20 here today with anyone other than counsel, feel free  
21 to do so.

22 [REDACTED] former New York Enforcement Staff Attorney  
23 Did you speak with anyone  
24 other than counsel concerning your appearance here  
25 today?

WITNESS AVELLINO: No.

MR. SORKIN: Other than Mr. Bienes, who  
knows he is here today.

[REDACTED] former New York Enforcement Staff Attorney  
Is that correct, Mr.

1 Avellino?

2 WITNESS AVELLINO: Yes.

3 [REDACTED] former New York Enforcement Staff Attorney : So you discussed it with Mr.

4 Bienes?

5 WITNESS AVELLINO: Yes.

6 [REDACTED] former New York Enforcement Staff Attorney : Did you discuss the SEC  
7 inquiry with anyone besides Mr. Bienes or your  
8 attorney today?

9 MR. SORKIN: That's the problem I have.

10 What SEC inquiry, the fact that there is one?

11 [REDACTED] former New York Enforcement Staff Attorney : Correct.

12 MR. SORKIN: Without knowing what it is  
13 about?

14 [REDACTED] former New York Enforcement Staff Attorney : Correct.

15 WITNESS AVELLINO: Yes.

16 [REDACTED] former New York Enforcement Staff Attorney : Who did you discuss that  
17 with?

18 WITNESS AVELLINO: Richard Glantz.

19 [REDACTED] former New York Enforcement Staff Attorney : Who is Richard Glantz?

20 WITNESS AVELLINO: He is a friend of Frank  
21 Avellino.

22 [REDACTED] former New York Enforcement Staff Attorney : Could you spell his last  
23 name?

24 WITNESS AVELLINO: G.L.A.N.T.Z.

25 [REDACTED] former New York Enforcement Staff Attorney : And is Mr. Glantz an

1 attorney?

2 WITNESS AVELLINO: Yes.

3 [REDACTED] former New York Enforcement Staff Attorney What was the substance of the  
4 conversation with Mr. Glantz?

5 WITNESS AVELLINO: Basically it was Mr.  
6 Glantz who brought to my attention that something was  
7 happening with Andrew Copperman. That was the  
8 substance of it.

9 [REDACTED] former New York Enforcement Staff Attorney When was this conversation?

10 WITNESS AVELLINO: A specific date?

11 [REDACTED] former New York Enforcement Staff Attorney  
12 To the best of your  
13 recollection.

14 WITNESS AVELLINO: A week-and-a-half, two  
15 weeks ago.

16 [REDACTED] former New York Enforcement Staff Attorney What exactly do you recall  
17 Mr. Glantz telling you about Mr. Copperman?

18 WITNESS AVELLINO: Mr. Glantz called me  
19 up, he lives in California, by the way, and said that  
20 his friend, Andrew Copperman, had received a letter  
21 from the Securities and Exchange Commission stating  
22 that he had been doing something wrong and that he  
23 thought I would know about it because some of the  
24 people that were involved in the investigation were  
25 people that had lent month to Avellino & Bienes, and  
he wanted to bring it to my attention in the event

1 that I got some inquiry from you, not to be surprised  
2 and act accordingly.

3 [REDACTED] former New York Enforcement Staff Attorney: Did Mr. Glantz send you any  
4 documents?

5 WITNESS AVELLINO: What he did is he sent  
6 me a document of the subject that was being inquired  
7 about, which he called a fact sheet, which had been  
8 the premise of this investigation.

9 [REDACTED] former New York Enforcement Staff Attorney: Did you receive any other  
10 documents from Mr. Glantz?

11 WITNESS AVELLINO: No.

12 [REDACTED] former New York Enforcement Staff Attorney: Was there just one  
13 conversation you had with Mr. Glantz?

14 WITNESS AVELLINO: Yes.

15 [REDACTED] former New York Enforcement Staff Attorney: Have you spoken to anyone  
16 else concerning this inquiry?

17 WITNESS AVELLINO: No.

18 [REDACTED] former New York Enforcement Staff Attorney: Mr. Bienes, did you speak to  
19 anyone other than counsel concerning this inquiry or  
20 your appearance here today?

21 WITNESS BIENES: Just my partner.

22 [REDACTED] former New York Enforcement Staff Attorney: And that would be?  
23 [REDACTED] former New York

24 WITNESS BIENES: Mr. Frank Avellino. . .

25 MR. SORKIN: I think, to make the record complete, there are some employees of Avellino &

1 Bienes. One or more of the employees was aware of  
2 this so-called fact sheet. To the extent that there  
3 was some conversation taking place, perhaps not as  
4 extensive, but in the broadest definition of your  
5 question, there may have been some discussion between  
6 Mr. Avellino and one or more of his employees and you  
7 may want to inquire about it.

8 former New York Enforcement Staff Attorney  
9 Mr. Avellino, did you speak  
10 to employees concerning this inquiry, the SEC  
11 inquiry?

11 WITNESS AVELLINO: Yes.

12 former New York Enforcement Staff Attorney  
13 Who did you speak to?

13 WITNESS AVELLINO: To my office manager.

14 former New York Enforcement Staff Attorney  
15 Who would that be?

15 WITNESS AVELLINO: Lola Kurland.

16 former New York Enforcement Staff Attorney  
17 Approximately when was that  
18 conversation?

18 WITNESS AVELLINO: It's probably at the  
19 same time I had the letter sent to me by the  
20 Securities and Exchange Commission, certified, return  
21 requested mail.

22 former New York Enforcement Staff Attorney  
23 What was the substance of the  
24 conversation with Ms. Kurland?

24 WITNESS AVELLINO: I asked her if she knew  
25 what King Arthur was.

former New York Enforcement Staff  
Attorney

1 : What did she say to you?

2 WITNESS AVELLINO: She said all she knew  
3 was King Arthur was a name that was associated with  
4 Andrew Copperman.

former New York Enforcement Staff  
Attorney

5 : Did you have any other  
6 conversation with Ms. Kurland?

7 WITNESS AVELLINO: Other than the subject  
8 of King Arthur? No.

former New York Enforcement Staff  
Attorney

9 : Mr. Bienes, did you speak to  
10 Ms. Kurland about the SEC inquiry?

11 WITNESS BIENES: In the loosest possible  
12 terms.

former New York Enforcement Staff  
Attorney

13 : Why don't you tell me what  
14 your conversation with her was.

15 WITNESS BIENES: That there is one and  
16 that we are going to have to meet with them.

former New York Enforcement Staff Attorney

17 : Did you discuss Andrew  
18 Copperman or the fact sheet with--

19 WITNESS BIENES: No, no.

20 MR. SORKIN: I assume the question was  
21 "with Ms. Kurland"?

former New York Enforcement Staff Attorney

22 : Yes.

23 WITNESS BIENES: No.

former New York Enforcement Staff Attorney

24 : Mr. Avellino, besides Ms.  
25 Kurland, did you speak to anyone else at your firm?



1 WITNESS AVELLINO: No.

2 [REDACTED] former New York Enforcement Staff Attorney And Mr. Bienes, besides Ms.  
3 Kurland, did you speak to anyone else at Avellino &  
4 Bienes concerning the SEC inquiry?

5 WITNESS BIENES: No.

6 [REDACTED] former New York Enforcement Staff Attorney Did you speak to anyone else  
7 concerning the inquiry?

8 WITNESS BIENES: My wife, yes.

9 [REDACTED] former New York Enforcement Staff Attorney Anyone besides your wife?

10 WITNESS BIENES: No.

11 [REDACTED] former New York Enforcement Staff Attorney Mr. Avellino, did you discuss  
12 with anyone what your testimony would be today?

13 MR. SORKIN: Let me tell you why I've got  
14 an even bigger problem with that. How would he know  
15 what his testimony would be if he hadn't even heard  
16 the questions you were going to put to him? The  
17 staff keeps insisting on asking that question and,  
18 for the life of me, I don't know why you pursue it.  
19 How would he know what questions would be asked?

20 [REDACTED] former New York Enforcement Staff Attorney I'll try to rephrase it.

21 Did you discuss with anyone what you might  
22 say here today?

23 MR. SORKIN: If you want to ask him, did  
24 he discuss with anyone what he would tell the SEC,  
25 did anyone tell him what he should tell the SEC, you

1 can ask him those questions.

2 [REDACTED] former New York Enforcement Staff Attorney: Did anyone tell you what to  
3 tell the SEC today?

4 WITNESS AVELLINO: No.

5 [REDACTED] former New York Enforcement Staff Attorney: Let's move on. I want to get  
6 a little background information on Mr. Avellino and  
7 Mr. Bienes. Let me start with Mr. Avellino and I  
8 will finish the questions and then go to Mr. Bienes.

9 Mr. Avellino, what is your social security  
10 number?

11 WITNESS AVELLINO: [REDACTED] Personal Privacy  
12 [REDACTED] former New York Enforcement Staff Attorney: And when were you born?

13 WITNESS AVELLINO: June 25, 1936.

14 [REDACTED] former New York Enforcement Staff Attorney: Are you currently married?

15 WITNESS AVELLINO: Yes.

16 [REDACTED] former New York Enforcement Staff Attorney: And your wife's full name?

17 WITNESS AVELLINO: [REDACTED] Personal Privacy,

18 [REDACTED].

19 [REDACTED] former New York Enforcement Staff Attorney: And her maiden name?

20 WITNESS AVELLINO: [REDACTED] Personal Privacy

21 [REDACTED] former New York Enforcement Staff Attorney: Where do you currently live?

22 WITNESS AVELLINO: [REDACTED] Personal Privacy

23 [REDACTED].

24 [REDACTED] former New York Enforcement Staff Attorney: And the zip code?

25 WITNESS AVELLINO: [REDACTED] Personal Privacy.

1 [REDACTED] former New York Enforcement Staff Attorney: Is that a house you own?

2 WITNESS AVELLINO: It's a house.

3 [REDACTED] former New York Enforcement Staff Attorney: Do you have a second  
4 residence?

5 WITNESS AVELLINO: Yes.

6 [REDACTED] former New York Enforcement Staff Attorney: Where would that be?

7 WITNESS AVELLINO: [REDACTED] Personal Privacy,

8 [REDACTED].

9 [REDACTED] former New York Enforcement Staff Attorney: And the address?

10 WITNESS AVELLINO: [REDACTED] Personal Privacy,

11 [REDACTED].

12 [REDACTED] former New York Enforcement Staff Attorney: Do you have any other  
13 residence?

14 WITNESS AVELLINO: No.

15 [REDACTED] former New York Enforcement Staff Attorney: Do you have an address in New  
16 York State?

17 WITNESS AVELLINO: No.

18 MR. SORKIN: Other than a business  
19 address?

20 [REDACTED] former New York Enforcement Staff Attorney: Other than a business  
21 address.

22 WITNESS AVELLINO: No.

23 [REDACTED] former New York Enforcement Staff Attorney: Besides the [REDACTED] Personal Privacy address  
24 that you just gave and the [REDACTED] Personal Privacy address, do you  
25 own any other property, real estate property?

1 WITNESS AVELLINO: Real estate, yes. For  
2 investment?

3 [redacted] Individual.

4 WITNESS AVELLINO: No.

5 [redacted]: And what is your home  
6 telephone number?

7 WITNESS AVELLINO: [redacted].

8 [redacted]: Can you describe your  
9 educational background starting with high school,  
10 starting after high school.

11 WITNESS AVELLINO: I have a bachelor's  
12 degree in accounting.

13 [redacted]: What year did you obtain that  
14 degree?

15 WITNESS AVELLINO: I guess it's the 12th  
16 year. What year? 1958.

17 [redacted]: From?

18 WITNESS AVELLINO: CCNY.

19 [redacted]: And just for the record, CCNY  
20 stands for?

21 WITNESS AVELLINO: City College of New  
22 York.

23 [redacted]: Do you have any other  
24 degrees?

25 WITNESS AVELLINO: No.

1 MR. SORKIN: I think it should be noted  
2 that Mr. Avellino is a certified public accountant.

3 [REDACTED] former New York Enforcement Staff Attorney Do you have any professional  
4 licenses?

5 WITNESS AVELLINO: Yes.

6 [REDACTED] former New York Enforcement Staff Attorney : What are they?

7 WITNESS AVELLINO: Certified public  
8 accountant.

9 [REDACTED] former New York Enforcement Staff Attorney What year did you sit for the  
10 examination?

11 WITNESS AVELLINO: 1965, if I recall  
12 correctly.

13 [REDACTED] former New York Enforcement Staff Attorney : What year were you admitted  
14 to--

15 WITNESS AVELLINO: 1965.

16 MR. SORKIN: What year did he become  
17 certified?

18 [REDACTED] former New York Enforcement Staff Attorney : Certified.

19 WITNESS AVELLINO: '65.

20 [REDACTED] former New York Enforcement Staff Attorney Do you belong to any other  
21 professional organizations?

22 WITNESS AVELLINO: No.

23 [REDACTED] former New York Enforcement Staff Attorney Mr. Bienes, what is your  
24 social security number?

25 WITNESS BIENES: [REDACTED] Personal Privacy

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former New York Enforcement Staff Attorney

When were you born?

WITNESS BIENES: July 26, 1936.

former New York Enforcement Staff Attorney

Are you currently married?

WITNESS BIENES: Yes.

former New York Enforcement Staff Attorney

: What is your wife's full name?

WITNESS BIENES: Dianne, with two N's, Kathleen Bienes.

former New York Enforcement Staff Attorney

: And her maiden name?

WITNESS BIENES: Dydo, D.Y.D.O.

former New York Enforcement Staff Attorney

Where do you currently live, Mr. Bienes?

WITNESS BIENES: Personal Privacy

.

former New York Enforcement Staff Attorney

: Do you have a second residence?

WITNESS BIENES: Yes.

former New York Enforcement Staff Attorney

Where is that?

WITNESS BIENES: Personal Privacy

. The exact address I don't know. It's the Personal Privacy. It's a complex of condos on the grounds of the hotel. There is an exact street address, but nobody ever knows it.

former New York Enforcement Staff Attorney

Do you have any other

1 residence?

2 WITNESS BIENES: Yes. We maintain an  
3 apartment [Personal Privacy].

4 [former New York Enforcement Staff Attorney] Do you have an address?

5 WITNESS BIENES: It's the [Personal Privacy]

6 [REDACTED] I don't even think it has a  
7 number.

8 [former New York Enforcement Staff Attorney] Do you own any other real  
9 estate property?

10 WITNESS BIENES: My wife does.

11 MR. SORKIN: Other than the apartment? He  
12 didn't say he owned the apartment.

13 WITNESS BIENES: I rent there.

14 MR. SORKIN: Does he own any property?

15 [former New York Enforcement Staff Attorney] Other than [Personal Privacy]

16 [REDACTED].

17 WITNESS BIENES: I don't.

18 [former New York Enforcement Staff Attorney] Does your wife?

19 WITNESS BIENES: Yes.

20 [former New York Enforcement Staff Attorney] Where are those properties  
21 located?

22 MR. SORKIN: What is that relevant for?

23 [former New York Enforcement Staff Attorney] Background information.

24 MR. SORKIN: His wife has her property,  
25 he's got his. He already answered the question.

1 [REDACTED] former New York Enforcement Staff Attorney : So you are saying that you  
2 have no connection to those properties?

3 WITNESS BIENES: No. She's the owner.  
4 She's the owner of the house.

5 [REDACTED] former New York Enforcement Staff Attorney : Mr. Bienes, what is your home  
6 telephone number? If you have more than one, give me  
7 both or all of them.

8 MR. SORKIN: Let's take [REDACTED] Personal Privacy first.

9 WITNESS BIENES: Area code [REDACTED] Personal Privacy .

10 [REDACTED] former New York Enforcement Staff Attorney And the [REDACTED] Personal Privacy number?

11 WITNESS BIENES: I wouldn't know.

12 [REDACTED] former New York Enforcement Staff Attorney : Are there any other numbers,  
13 do you know?

14 MR. SORKIN: What do you mean, home  
15 numbers? Does he have any other telephone numbers  
16 either at [REDACTED] Personal Privacy ?

17 [REDACTED] former New York Enforcement Staff Attorney : Any other home numbers,  
18 whether it's a property his wife may own or not.

19 MR. SORKIN: That's not his home. You  
20 asked for his home telephone number. Do you want his  
21 [REDACTED] Personal Privacy number?

22 [REDACTED] former New York Enforcement Staff Attorney If he knows it.

23 MR. SORKIN: If you know it.

24 WITNESS BIENES: No.

25 [REDACTED] former New York Enforcement Staff Attorney Do you have any other



1 telephone numbers?

2 MR. SORKIN: At either of the three  
3 residences.

4 former New York Enforcement Staff Attorney Or mobile phone numbers?

5 MR. SORKIN: Are there any other telephone  
6 numbers other than Personal Privacy  
7 ?

8 WITNESS BIENES: In Personal Privacy I have  
9 a second number.

10 former New York Enforcement Staff Attorney What is that?

11 WITNESS BIENES: Personal Privacy .

12 MR. SORKIN: If you want to ask him, does  
13 he have any cellular phones--

14 former New York Enforcement Staff Attorney Do you have any cellular  
15 phone numbers?

16 WITNESS BIENES: Yes.

17 former New York Enforcement Staff Attorney What numbers are those? You  
18 don't know?

19 WITNESS BIENES: Seriously, I use them for  
20 outgoing calls, I don't get incoming calls, so I  
21 don't give a number, I don't know the number.

22 former New York Enforcement Staff Attorney Do you have more than one  
23 number?

24 WITNESS BIENES: Yes.

25 former New York Enforcement Staff Attorney More than two?

1                                   **WITNESS BIENES:** Yes.

2                   former New York Enforcement Staff  
Attorney [REDACTED] : Do you know how many numbers  
3 you have?

4                                   **WITNESS BIENES:** Three or four, cellular.

5                   former New York Enforcement Staff Attorney [REDACTED] : Mr. Bienes--

6                                   **MR. SORKIN:** Let me note that he has them  
7 available. If it really is relevant to the inquiry,  
8 we will find them, but off the top of his head, he  
9 doesn't have the numbers.

10                   former New York Enforcement Staff Attorney [REDACTED] : That's fine.

11                                   **MR. SORKIN:** If you need to press the  
12 matter, I'm sure we can get them for you.

13                   former New York Enforcement Staff Attorney [REDACTED] Can you describe your  
14 educational background starting after high school.

15                                   **WITNESS BIENES:** Bachelor of science  
16 degree, June 1958, NYU, New York University; MBA,  
17 Baruch College, June 1966.

18                   former New York Enforcement Staff Attorney [REDACTED] Any other educational  
19 degrees?

20                                   **WITNESS BIENES:** No.

21                   former New York Enforcement Staff Attorney [REDACTED] Any professional licenses?

22                                   **WITNESS BIENES:** Yes; CPA, certified  
23 public accountant, New York State.

24                   former New York Enforcement Staff Attorney [REDACTED] What year did you obtain your  
25 CPA?

1 WITNESS BIENES: 1969.

2 former New York Enforcement Staff  
Attorney Do you belong to any  
3 professional associations?

4 WITNESS BIENES: Associations?

5 former New York Enforcement Staff  
Attorney : Correct.

6 WITNESS BIENES: New York State Society of  
7 CPA's and the American Institute of CPA's.

8 former New York Enforcement Staff  
Attorney Any other ones?

9 WITNESS BIENES: No.

10 former New York Enforcement Staff  
Attorney : Back to Mr. Avellino.

11 EXAMINATION OF MR. AVELLINO

12 BY former New York Enforcement Staff  
Attorney former New York  
Enforcement

13 Q Mr. Avellino, are you a partner in any  
14 entity?

15 A Yes.

16 Q What entities?

17 A Avellino & Bienes.

18 Q Any other ones?

19 A Yes.

20 Q What is the name of that?

21 A Jax 1 Associates.

22 Q Any others?

23 A They may be corporations, but they are not  
24 partnerships, no.

25 Q Why don't we start with

1 Avellino & Bienes. What type of partner are you?

2 A General.

3 Q How many partners are there?

4 A Two.

5 Q And who is the other partner?

6 A Michael Bienes.

7 Q And is the partnership of

8 Avellino & Bienes registered in any state?

9 A Yes.

10 Q What state?

11 A Florida.

12 Q And what year was it registered?

13 A Probably, I'm guessing, probably 1988.

14 Q Has it ever been registered in any other  
15 state?

16 A Yes.

17 Q What state?

18 A New York.

19 Q And what year?

20 A 1977, '78. I'm guessing.

21 WITNESS BIENES: What does the word  
22 "registered" mean?

23 MR. SORKIN: Maybe you could define what  
24 you mean by "registered." Mr. Bienes has asked the  
25 question.

1 Q Did you register with the Secretary of  
2 State; did you fill out any paperwork? Does that  
3 help you, Mr. Avellino?

4 A In Florida I know we did in 1988 and in  
5 New York I'm sure we filed partnership papers. I  
6 don't know if you would call it a registration.

7 WITNESS BIENES: Early 70's, very early  
8 70's and then every time we changed the name of the  
9 firm, I remember vaguely filing something with the  
10 city or the state downtown here to make the name  
11 change.

12 WITNESS AVELLINO: Because we were a  
13 professional partnership, certified public  
14 accountants.

15 former New York Enforcement Staff  
Attorney At one point the firm's name  
16 changed?

17 WITNESS BIENES: Several times.

18 Q What was Avellino & Bienes, what is now  
19 known as Avellino & Bienes? What was the first name  
20 it was known as?

21 A It's the predecessor's name, it was  
22 Alpern, A.L.P.E.R.N., Avellino & Bienes.

23 Q When was that?

24 A In 1975 it was changed to Avellino &  
25 Bienes.

1 Q When did this name, Alpern, Avellino &  
2 Bienes, start?

3 MR. SORKIN: When was the partnership  
4 formed?

5 former New York Enforcement Staff  
Attorney : Okay.

6 A I don't know.

7 WITNESS BIENES: I do. 1972.

8 Q So from 1972 to 1975 the entity was named  
9 Alpern, Avellino & Bienes?

10 A Right.

11 Q In 1975, you changed names to--

12 A Mr. Alpern retired.

13 Q You changed names to  
14 Avellino & Bienes. Is that because Mr. Alpern  
15 retired?

16 A That's right.

17 Q Is this entity still known as Avellino &  
18 Bienes today?

19 A Yes.

20 Q Has the name of the firm changed since  
21 1975 in any way?

22 A Yes.

23 Q How?

24 A It used to be Alpern, Avellino & Bienes.

25 MR. SORKIN: He said since '75.

1           A       Then Avellino & Bienes, Certified Public  
2 Accountants, and now we don't render any public  
3 accounting service, so it's now known as  
4 Avellino & Bienes.

5           Q       When did you stop rendering CPA advice?

6           A       Probably, guessing again, 1983, 1984.

7           Q       How many employees currently does Avellino  
8 & Bienes employ?

9           A       Four in New York City.

10          Q       Are there any other employees besides  
11 these four people?

12          A       No.

13          Q       Currently, I'm talking about.

14          A       No.

15          Q       At some point in time prior to 1992, were  
16 there more employees than four?

17          A       No.

18          Q       And where is Avellino & Bienes? Where is  
19 their main office located?

20          A       At 70 East 55th Street, New York City,  
21 10022.

22          Q       Has that been the site of  
23 Avellino & Bienes since 1972?

24          A       No.

25          Q       Could you tell me the various locations

1 where your offices were located at.

2 A The one before that was 120 East 56th  
3 Street.

4 Q When was that?

5 A Four years before.

6 WITNESS AVELLINO: Was that four years?

7 A Excuse me.

8 WITNESS BIENES: 1983 to 1988, a five-year  
9 lease.

10 Q And then in 1988?

11 A Before that it was Fifth Avenue, or was it  
12 537?

13 Q I'm talking about 1988 to 1992. Has it  
14 been 70 East 55th Street?

15 MR. SORKIN: Since 1988.

16 A Yes.

17 Q Prior to 1983 where was it located?

18 A Fifth Avenue, I believe.

19 Q What is the address?

20 WITNESS BIENES: 537 Fifth Avenue.

21 A 537 Fifth Avenue.

22 Q And do you know how long

23 Avellino & Bienes was located at 537 Fifth Avenue?.

24 WITNESS BIENES: Approximately a year and  
25 a half.



1 Q Has Avellino & Bienes ever had an office  
2 in Florida?

3 MR. SORKIN: Has the partnership had an  
4 office in Florida?

5 [REDACTED] former New York Enforcement Staff  
Attorney : Right.

6 A Yes.

7 Q What is the address?

8 A My home address, [REDACTED] Personal Privacy

9 [REDACTED].

10 Q Any other addresses in [REDACTED] Personal Privacy ?

11 A No.

12 Q Back to the employees.

13 Can you give me the names of the  
14 employees?

15 A Yes. Lola Kurland.

16 Q What is her title?

17 A Office manager.

18 Q What are her responsibilities?

19 A She literally runs the New York office.

20 Q The next employee?

21 A Sonia Duque-Mendez.

22 Q And her title?

23 A She's the computer operator.

24 Q The next person, employee?

25 A Savina, S.A.V.I.N.A., Navas, N.A.V.A.S.

1 Q And her title?

2 A She's the assistant to the computer  
3 operator.

4 Q And the last employee?

5 A Elizabeth Dono, D.O.N.O.

6 Q And her title?

7 A Receptionist.

8 Q Are there any other individuals associated  
9 with Avellino & Bienes?

10 MR. SORKIN: What do you mean by  
11 "associated"?

12 Q Anyone that has any interest in Avellino &  
13 Bienes besides the employees and yourselves.

14 MR. SORKIN: You mean a legal interest, a  
15 limited partner?

16 former New York Enforcement Staff  
Attorney : Silent partner or limited  
17 partner.

18 MR. SORKIN: Let's confine ourselves to  
19 limited partner. Are there any limited partners?

20 WITNESS AVELLINO: No.

21 Q Any silent partners?

22 A No.

23 Q Are there other phone numbers for Avellino  
24 & Bienes?

25 A (212) 688-6677.

1           Q     Mr. Avellino, what type of business is  
2     Avellino & Bienes in?

3           A     Private investing.

4           Q     Could you elaborate on that.

5           A     Yes. Michael Bienes and Frank Avellino  
6     have private investments.

7           Q     What was the purpose of forming Avellino &  
8     Bienes?

9                     MR. SORKIN: It was a name change, he  
10    testified earlier.

11          Q     In 1983-1984, I believe you stated that  
12    the firm no longer associated itself as a CPA firm;  
13    is that correct?

14          A     Right.

15          Q     Why did it do that?

16          A     Why did it disassociate itself?

17          Q     Correct.

18          A     We no longer had any accounting clients  
19    so, therefore, we weren't servicing clients from a  
20    public accounting point of view.

21          Q     Was that due to economics, that is, there  
22    were no more customers coming into your door?

23          A     No.

24          Q     It was a choice you made?

25          A     Yes.

1 Q Why did you make that choice?

2 A There are several reasons, some physical,  
3 some financial, and you could weigh both of them.  
4 Probably the financial took over and I physically  
5 burnt myself out after 26 years of accounting  
6 service. I have a history of hypertension, heart  
7 problems. It was advised to me at the time to  
8 literally stop the pressure and the stress and so  
9 forth. That was the physical side of it.

10 The financial side of it is that even  
11 though the accounting practice was lucrative, was  
12 good, was operating very, very well, my private  
13 investments or our private investments for Avellino &  
14 Bienes became paramount and therefore it was prudent  
15 and financially wise to literally give away, if you  
16 will, our accounting practice--we did not sell  
17 it--and continue our investments, which are doing  
18 very, very well.

19 Q So as of 1983-84, Avellino & Bienes was in  
20 the business of investing money for themselves?

21 A Yes.

22 Q How does Avellino & Bienes go about  
23 investing money? Where does it get the money?

24 MR. SORKIN: That's two questions.

25 Q How does Avellino & Bienes go about

1 investing money?

2 MR. SORKIN: I'm not sure I understand  
3 your question.

4 Q You say you make money investing; is that  
5 correct?

6 A Yes.

7 Q How do you do that?

8 A Avellino & Bienes primarily invests in  
9 securities through a brokerage house on behalf of  
10 Avellino & Bienes, and the securities, like all other  
11 securities, are bought and sold and create profits or  
12 losses, and at the end of any given year we were  
13 fortunate enough to have profits.

14 Q There's a lot there. Let me try to break  
15 it down and understand it.

16 First of all, who do you invest through,  
17 what brokerage firm?

18 A Bernard L. Madoff.

19 Q Is that an individual or the name of a  
20 broker-dealer?

21 A It's the name of a securities dealer.

22 MR. SORKIN: Bernard L. Madoff & Co. It  
23 may be a corporation.

24 Q Where is Bernard L. Madoff & Co. located?

25 A 885 Third Avenue, New York City 10021.

1           Q     Who do you primarily deal with at this  
2     entity?

3           A     Bernard L. Madoff.

4           Q     Does Avellino & Bienes have one account at  
5     Bernard L. Madoff or more than one account?

6           A     More than one account.

7           Q     What are the names of the accounts?

8           A     Avellino & Bienes, account number one,  
9     number two, three, et cetera.

10          Q     How many accounts do you have there, at  
11     this firm?

12          A     As of now, five.

13          Q     Why do you have five accounts?

14          A     It had nothing to do with me. It had to  
15     do with Bernard L. Madoff's internal control of my  
16     securities.

17                     MR. SORKIN: When you say your securities,  
18     you mean Avellino & Bienes' securities?

19                     WITNESS AVELLINO: Yes, I'm sorry.

20          Q     These five accounts are all entitled  
21     "Avellino & Bienes"?

22          A     Yes.

23          Q     Do you personally have a brokerage  
24     account?

25          A     With Bernard L. Madoff?

1 Q With any entity.

2 A No.

3 Q So Avellino & Bienes does solely invest  
4 money in Bernard L. Madoff, through Bernard L.  
5 Madoff, buying securities through them?

6 A Yes.

7 Q There's no other broker-dealer?

8 A No.

9 MR. GENTILE: Mr. Avellino, who determines  
10 how the monies will be invested?

11 WITNESS AVELLINO: Mr. Madoff.

12 Q Is this a discretionary account that you  
13 have there?

14 A Yes.

15 MR. SORKIN: Let him ask the question.

16 Q A discretionary account with all five  
17 accounts?

18 A Yes.

19 Q Is that indicated in your new account or  
20 your account opening forms, that it's a discretionary  
21 account?

22 A Yes. As a matter of fact, we have  
23 accounts that are--when we open up a new account, he  
24 has a discretionary form application or opening,  
25 whatever you call it, that was definitely signed and

1 filed.

2 Q Do you ever make a decision on what  
3 securities to purchase?

4 A Never.

5 MR. GENTILE: Mr. Avellino, what is your  
6 understanding as to how these monies are invested?

7 MR. SORKIN: What do you mean by that?

8 MR. GENTILE: What type of strategy? Are  
9 you aware of the strategy that Mr. Madoff utilizes?

10 WITNESS AVELLINO: Oh, yes.

11 MR. GENTILE: Could you describe that to  
12 me.

13 WITNESS AVELLINO: Yes. What we basically  
14 have is, of course, long positions. He buys  
15 securities for the accounts of Avellino & Bienes, and  
16 the strategies that have been highly successful over  
17 the years, which Mr. Madoff, by the way, happens to  
18 be an expert in, all of the derivative hedges that  
19 the market affords. We sell short against the box,  
20 we use the hedges of the Standard & Poor's 500,  
21 Fortune 500.

22 MR. SORKIN: When you say "we"--

23 WITNESS AVELLINO: Mr. Madoff does it.  
24 When I say "we," it's always Avellino & Bienes.

25 A Mr. Madoff uses the hedges basically as



1 S&P's, puts and calls. Every security that we have  
2 in the long position has a hedge, every single one of  
3 them. We use what we call the hedge of the buying  
4 and selling, the buying of the convertible and the  
5 selling of the underlying common stock short,  
6 sometimes done the same two-- sometimes done two days  
7 after the long position is bought, which we used to  
8 use years ago. It used to be called a bona fide  
9 arbitrage, if you will. But every single derivative  
10 hedge that we are aware of over all the years have  
11 been instituted and are being instituted.

12 Q Do you have any input into how to employ  
13 these strategies at all?

14 A None at all.

15 Q So it's at the sole discretion of Mr.  
16 Madoff?

17 A Totally.

18 Q Does anyone else besides yourself at your  
19 firm have any input into the strategies?

20 MR. SORKIN: You said "besides yourself."

21 former New York Enforcement Staff  
Attorney : I just asked him whether he  
22 did.

23 MR. SORKIN: The implication is that he  
24 does. He doesn't have an input. So ask, is there  
25 anyone at the firm who does have an input.

1 Q Is there anyone that does have an input  
2 into the strategies employed?

3 A No.

4 Q Do you know if Avellino & Bienes is  
5 considered an institutional investor?

6 MR. SORKIN: What do you mean by "an  
7 institutional investor"?

8 former New York Enforcement Staff Attorney: Well, why don't we start with  
9 Mr. Avellino's definition.

10 MR. SORKIN: Ask him, does he understand  
11 the definition of that.

12 Q Do you understand the definition of "an  
13 institutional investor"?

14 A Yes and no. The yes that I understand is  
15 that--

16 Q Let's start like this. What is your  
17 interpretation of what an institutional investor is?

18 MR. SORKIN: He's not here to give you a  
19 legal definition or Webster's definition.

20 MR. former New York  
Enforcement Staff I'm certainly not going to  
21 give him mine either.

22 MR. SORKIN: If you want to ask him facts  
23 about what the account does, what it invests in, then  
24 at the end of the day you can draw a conclusion as to  
25 whether it's institutional or otherwise, but I don't

1 think he ought to be in a position--

2 former New York Enforcement Attorney former New York Enforcement : If he knows whether Mr.  
3 Madoff has held Avellino & Bienes or anyone else out  
4 to be an institutional investor--

5 MR. SORKIN: If you want to ask him did  
6 Mr. Madoff ever ask him--

7 Q Has Mr. Madoff ever held Avellino & Bienes  
8 out to be an institutional investor?

9 A Yes.

10 Q Has Avellino & Bienes held itself out to  
11 be an institutional investor?

12 MR. SORKIN: Told anybody it's an  
13 institutional investor?

14 former New York Enforcement Staff Attorney Right.

15 A Maybe. I don't know if I did or didn't.  
16 When you say "held out," do you mean if I go out and  
17 borrow money, do I say I'm institutional?

18 MR. SORKIN: Have you ever told anyone  
19 anywhere, at any time, that Avellino & Bienes is an  
20 institutional investor, verbally or in writing?

21 A No, I can't recall that.

22 Q But Mr. Madoff, you say, has said that  
23 Avellino & Bienes is an institutional investor, he  
24 considers them to be one?

25 A Yes.

1 Q Do you recall the date that Avellino &  
2 Bienes started investing with Mr. Madoff?

3 MR. SORKIN: As Avellino & Bienes or as  
4 another firm?

5 [REDACTED] : As Avellino & Bienes.  
[REDACTED] former New York Enforcement Staff Attorney

6 MR. SORKIN: They may have started to  
7 invest under a prior name.

8 Q The first time you had any association  
9 with Mr. Madoff.

10 A The earliest recollection I have, of Frank  
11 Avellino, 1962.

12 Q What about the entity Avellino & Bienes or  
13 its predecessor names?

14 A 1963, '64.

15 Q Is it fair to say that since 1983, 1984,  
16 when Avellino & Bienes got away from the certified  
17 public accounting business, that it has increased  
18 investments with Mr. Madoff?

19 A Yes.

20 Q Since 1983-84, that time period, do you  
21 know how Avellino & Bienes has done investing with  
22 Mr. Madoff?

23 MR. SORKIN: What do you mean?

24 [REDACTED]  
[REDACTED] former New York Enforcement Staff Attorney

Financially.

25 Q Financially, has Avellino & Bienes made

1 money each year?

2 A Yes.

3 Q Do you know the figures for each year?

4 MR. SORKIN: You are talking about net,  
5 gross? Are you talking about before taxes, after  
6 taxes? That's a very, very difficult question to  
7 answer unless you define what you mean by "made."

8 Q Let's start with 1991. Would you know how  
9 Avellino & Bienes did in 1991 investing through Mr.  
10 Madoff?

11 A It was profitable.

12 Q Do you know how profitable it was in terms  
13 of net profits for the year?

14 A No.

15 Q Why would you say it's profitable?

16 A Because I know that the securities that  
17 were sold had capital gains in excess of what I paid  
18 out in interest. That's the quick test.

19 Why do I answer--if I may elaborate, why  
20 do I answer that, what is the bottom line is that I  
21 have an extension of my tax return until October  
22 15th, which I do every year, and usually Michael  
23 Bienes, my partner, bugs me around October 1st and  
24 says, "Where is my K-1," because I have to file my  
25 personal return.

1                   So to answer your question, what did it  
2                   make, I do have a profit.

3                   Q        The firm has a profit?

4                   A        Yes.

5                   Q        Do you know in 1990 whether the firm had a  
6                   profit?

7                   A        Yes.

8                   Q        Do you know approximately how much the  
9                   profit was?

10                  A        A million, \$2 million, net, net.

11                                The profit, by the way, has a definition.  
12                   Let's keep in mind if you start defining "net profit"  
13                   for tax return purposes, I can give you a definition  
14                   of tax return application and strategy, capital gains  
15                   and profits; dividends income is profit, but there  
16                   are journal entries that we, as CPA's, over all the  
17                   year, legitimate journal entries that we may put on  
18                   the books that are not fictitious. But there are  
19                   journal entries you may use to reduce profits, which  
20                   are legitimate, and it's all part of the tax return.

21                                But what I'm looking at, when you say  
22                   "profit," I look at the tax return profit and I look  
23                   at the economic profit. And when I pay interest, I  
24                   look at the economic profit and if I take in a  
25                   million dollars and I could afford to pay \$800 in

1 interest on the loans, that's where I start from. I  
2 forget about the tax return.

3 It's like if you will have depreciation on  
4 the return and the recurring entries, which is a  
5 fictitious journal entry, so let's not get into the  
6 semantics of that, but from an economic point of  
7 view, every single year has a profit.

8 MR. SORKIN: How far back?

9 WITNESS AVELLINO: As far back as 1962.

10 MR. GENTILE: Mr. Avellino, when you  
11 started investing with Mr. Madoff, where did these  
12 monies come from?

13 WITNESS AVELLINO: Loans.

14 MR. GENTILE: Loans from who?

15 MR. SORKIN: Ask the question.

16 MR. GENTILE: He said "loans" and I just  
17 said, "Loans from who?"

18 WITNESS AVELLINO: Individuals.

19 Q Could you tell us how these loans work.

20 A Yes.

21 To take a hypothetical, Mr. Smith, if you  
22 will, I borrow money from a Mr. Smith for which I pay  
23 interest, the proceeds of the loan are put into my  
24 checking account. I now write a check from my  
25 checking account, send it to Bernard L. Madoff on

1           behalf of Avellino & Bienes. Like any other  
2           brokerage account, he takes the cash, gives me credit  
3           for it, goes out and executes whatever positions he  
4           has to do.

5           Q       When someone writes a check, it goes to  
6           your personal back account?

7           A       Avellino & Bienes, the partnership  
8           checking account.

9           Q       And then the partnership writes a check to  
10          Mr. Madoff if they want to invest?

11          A       Yes.

12          MR. SORKIN: So as not to mislead you, I  
13          don't want you to think that if Mr. Smith writes a  
14          check for \$1,000 payable to Avellino & Bienes and  
15          that check is deposited into the account of Avellino  
16          & Bienes, Avellino & Bienes then turns around and  
17          writes a check to Mr. Madoff. It doesn't quite work  
18          that way. It's not check-for-check, dollar-amount-  
19          for-dollar-amount.

20          Q       Is that correct, Mr. Avellino?

21          A       Yes.

22          Q       Does that money sit in Avellino & Bienes'  
23          checking account for a long period of time or does  
24          it--

25          A       It's a whole operation.



1 MR. SORKIN: Why don't you explain the  
2 operation, step by step.

3 A We, Avellino & Bienes, borrow money. We  
4 put it--as we receive the checks, we put it in one  
5 checking account at Chemical Bank which reads  
6 "Avellino & Bienes" and it sits there. Now, there is  
7 an involvement that over all of these many years,  
8 from experience, we know how and why it sits there.

9 Q Why does it sit there?

10 A Because we have an operation that we  
11 conduct. The operation is a very simple loan  
12 operation. We borrow money and we also return money  
13 on the loans. So I will give you a hypothetical case  
14 if it makes it easier.

15 Let's assume that we have \$100,000 in a  
16 checking account. We have requests for returns of  
17 loans and it's a periodic thing, it's a revolving  
18 thing, it's in and out, in and out. We know at any  
19 certain time that if I take \$100,000 on Monday,  
20 should I send it to the broker, that invariably  
21 somebody will call us up within that week and say,  
22 "We need money back. We want some money back." So  
23 rather than send it on to a broker and treat him as  
24 my bank--which is not what he likes, we are the  
25 bank--we absorb whatever interest we pay out because

1 it's a non-interest-bearing account, by the way.

2 But the operation is such that as we get  
3 requests to return money, we have the money in the  
4 checking account. So we invariably make up lists  
5 from day to day of the monies that we have to return,  
6 so at any given day I know what the requests are. I  
7 have a procedure, and the procedure, again, has  
8 evolved over all these years. Every Wednesday of  
9 every single week we make up the returns list of  
10 checks for the loans that have been requested for  
11 return. We know how much the amounts are, we make up  
12 those checks, we always have capital in our accounts.  
13 Michael Bienes and Frank Avellino has a capital  
14 account, so the monies sitting there at any one time  
15 is capital that Avellino & Bienes has. It could be  
16 \$1 million, it could be \$4 million. We don't bother  
17 the broker with that. We have a revolving cash  
18 checking fund balance at all times.

19 Now, when two weeks go by, and I have \$10  
20 million in the account, and I know from experience  
21 I've never sent back more than \$2 million in any high  
22 week, I look at the balance and I say, "Well, this  
23 money is not going to sit here, I have to put it to  
24 work for myself, ourselves." I make out a check to  
25 Bernard L. Madoff for the excess of what I don't

1 think I'm going to need, and he now takes the check  
2 and goes out and does this security selling, et  
3 cetera, et cetera.

4 Q Do you have a cushion in this account?

5 A Yes.

6 Q How much do you usually have in this  
7 account?

8 A Depending on the season, it depends on the  
9 time of year. Come April 15th, that cushion has to  
10 be very big because we have clients that call us up  
11 any time between April 5th and April 15 that need  
12 money tomorrow because their tax return is due. So  
13 that cushion could be \$5 million. The smallest  
14 amount in the bank could be \$800,000. The most I've  
15 ever had at any given period is probably \$6 million.  
16 That's the average on a yearly, month-to-month basis.

17 Q So as an average, between 6 million and  
18 800,000?

19 A Yes.

20 Q What is the average?

21 A The average money in the bank.

22 Q What is the average?

23 MR. SORKIN: Over a 12-month period? How  
24 much is there on average over 12 months?

25 A In the bank? In the bank account? 2 to

1           \$3 million.

2           Q       So using the range of 6 million to  
3           800,000?

4           A       Yes.

5           Q       Is that what you said?

6           A       Yes.

7           Q       And the average is 2 to 3 million?

8           A       Yes.

9                   MR. GENTILE: Mr. Avellino, in describing  
10           the account, you used the word "revolving" and I'm  
11           not clear as to what that means.

12                   WITNESS AVELLINO: It's an internal thing.  
13           Revolving in the sense that I know how much money I  
14           have in the checking account and how much money I  
15           anticipate is going out, because every day we take  
16           inventory. Now, keep in mind that everybody that  
17           wants money back, they say, "We want our loan back,  
18           send us a letter." So we have a policy of roughly  
19           ten days, ten working days. We say, "Don't call us  
20           up today and we'll have a return tomorrow." We are  
21           not going to do that; number one, because it protects  
22           myself that I don't have to break transactions, if  
23           you will, the broker won't be happy with that even.  
24           though he's done it in the past; but number two is it  
25           gives me time to know how much I will anticipate

1           needing.

2                         That's what I call a revolving door; in  
3           other words, in and out, in and out. It's not  
4           anything else more than that. That's the terminology  
5           I use.

6                         MR. GENTILE: Does the partnership have a  
7           credit line with this bank?

8                         WITNESS AVELLINO: Presently?

9                         MR. GENTILE: Yes.

10                        WITNESS AVELLINO: All I could say to you  
11           is at one point in time Michael Bienes and Frank  
12           Avellino borrowed millions of dollars from Chemical  
13           Bank, unsecured, period. And we could probably--and  
14           we haven't done it anymore because it's easier to  
15           borrow the way we do than going to a bank and  
16           borrowing. We voluntarily turned in our loan to the  
17           bank. They hated us for it. Even though they are  
18           our bank, we borrowed 2.250 unsecured from Chemical  
19           Bank for borrowers and then one day I said to  
20           Michael, "I don't like to give out financial  
21           statements, I don't like them to know"--I'm a very  
22           private guy, by the way, as is Michael--"It's none of  
23           their goddamned business in plain English and I think  
24           we could afford not to borrow."

25                        If you want an answer, do we have a credit

1 line, we probably have the same credit line. We  
2 could borrow more than we did then.

3 MR. GENTILE: So it's not active now?

4 THE WITNESS: I won't go to the bank. I  
5 go to Bernard L. Madoff and say, "Send me back the  
6 money."

7 former New York Enforcement Staff  
Attorney : Let's take a break. It's  
8 2:55.

9 (Recess taken.)

10 former New York Enforcement Staff  
Attorney : We are back on the record.  
11 It's five after three.

12 Q While we were off the record, there were  
13 no material discussions with the witnesses; is that  
14 correct, Mr. Avellino?

15 A Yes.

16 Q I believe when we left off we were talking  
17 about Chemical Bank and the fact that at one point in  
18 time I believe you stated that Avellino & Bienes had  
19 borrowed some money from Chemical Bank unsecured; is  
20 that correct?

21 A Yes.

22 Q Can you explain, first of all, or tell us  
23 when this occurred and what was the purpose of this  
24 unsecured loan from Chemical Bank to Avellino &  
25 Bienes.

1           A       Michael would probably remember more than  
2 I do on that because he has a better memory on  
3 addresses and time. Can I ask him?

4           MR. [REDACTED] former New York : Why don't I address the  
5 question to Mr. Bienes.

6           Mr. Bienes, do you recall the date when  
7 Avellino & Bienes borrowed money from Chemical Bank  
8 on an unsecured basis?

9           MR. SORKIN: Can we just, for the record,  
10 define when you say "Avellino & Bienes," you are  
11 talking about the present firm as constituting prior  
12 firms under different names, because the borrowing  
13 took place some time ago before it was known as  
14 Avellino & Bienes.

15           [REDACTED] former New York Enforcement Staff Attorney : Okay.

16           MR. SORKIN: So Avellino & Bienes will be  
17 the term used for all predecessor firm names as well?

18           [REDACTED] former New York Enforcement Staff Attorney : Okay, fair.

19           Mr. Bienes, do you recall the time, the  
20 date, when Avellino & Bienes borrowed money from  
21 Chemical Bank on an unsecured basis to do investing?

22           MR. SORKIN: This is the first time?

23           [REDACTED] former New York Enforcement Staff Attorney : Yes.

24           WITNESS BIENES: It was over a period of  
25 years. It would have to go back at least to 1980 or

1 '79, '80.

2 [REDACTED] former New York Enforcement Staff Attorney : That was initially when it  
3 started?

4 WITNESS BIENES: I think. I can only say  
5 I think. I remember meeting with the gentlemen from  
6 the bank around 1980. It could have been a little  
7 sooner, but let me give you a rough estimate.

8 [REDACTED] former New York Enforcement Staff Attorney : Okay.

9 WITNESS BIENES: I can give you the end of  
10 it. We repaid the final loan in October of 1988.

11 [REDACTED] former New York Enforcement Staff Attorney : During this period,  
12 approximately how much did you borrow from Chemical  
13 Bank?

14 WITNESS BIENES: It was a steadily  
15 increasing line as they became more comfortable with  
16 us.

17 [REDACTED] former New York Enforcement Staff Attorney [REDACTED] former New York : What was the initial line of  
18 credit extended?

19 WITNESS BIENES: \$225,000.

20 [REDACTED] former New York Enforcement Staff Attorney : What did it extend to?

21 WITNESS BIENES: \$2,250,000.

22 [REDACTED] former New York Enforcement Staff Attorney : And in October of 1988, you  
23 paid that loan off?

24 WITNESS BIENES: In total.

25 [REDACTED] former New York Enforcement Staff Attorney [REDACTED] former New York : What was the interest rate on



1 this loan, do you recall?

2 WITNESS BIENES: It was adjusted quarterly  
3 throughout that time frame. And it was what? We  
4 always paid approximately two points over prime,  
5 which is how they base their adjustments, one point;  
6 it was quite high.

7 former New York Enforcement Staff  
Attorney: Do you recall the highest  
8 percentage it was at?

9 WITNESS BIENES: I would be guessing. I  
10 don't like doing that.

11 former New York Enforcement Staff  
Attorney Don't guess. We don't want  
12 you to guess.

13 WITNESS BIENES: I think, if you went back  
14 and took the prime back in 1980, '79, popped it up  
15 two, two-and-a-half, you would have roughly what we  
16 were paying.

17 former New York Enforcement Staff  
Attorney former New York  
Enforcement  
Staff Attorney Was it less than 13.5  
18 percent, do you think?

19 MR. SORKIN: Does he have a recollection  
20 in 1980 of what they paid in interest?

21 former New York Enforcement Staff  
Attorney: Let's make it during the  
22 period between 1980 and 1988.

23 Do you recollect the interest rate being  
24 lower than 13.5 percent?

25 MR. SORKIN: Your best recollection. I'm



1 was part of our account. It was a loan to Avellino &  
2 Bienes. It was used or credited as part of our  
3 capital. We reduced our capital and wrote a check to  
4 the bank and said, "Thank you, we are done."

5 EXAMINATION OF MR. AVELLINO

6 BY MR. former New York: (Cont'd.)

7 Q Mr. Avellino, I believe previously you  
8 said it was easier to borrow from individuals than  
9 the bank. What were your reasons for saying that?

10 A The reasons are that we don't issue  
11 financial statements, we don't have to go through the  
12 rigamarole that you heard Michael Bienes talk about,  
13 and it's a matter of just saying, "Lend me the money,  
14 I'll pay you an interest rate," and that's it, which  
15 makes it a lot easier than going through the, as you  
16 know, applications.

17 Q When did Avellino & Bienes start borrowing  
18 money from individuals?

19 A Probably in 1962.

20 Q At some point in time, did borrowing from  
21 individuals increase?

22 MR. SORKIN: What do you mean, the number  
23 of individuals or the amount of money borrowed?

24 former New York Enforcement Staff Attorney  
former New York: The number of individuals.

25 A Yes.

1 Q When?

2 A Since 1962.

3 Q Did it change as of 1988? After stopping  
4 the line of credit with chemical, did the number of  
5 individuals borrowing money increase?

6 MR. SORKIN: Are you asking did the number  
7 of individuals who loaned money to Avellino & Bienes  
8 increase in 1988, after the loan was paid off to  
9 Chemical?

10 former New York Enforcement Staff Attorney  
Correct.

11 MR. SORKIN: Increase as compared to what?

12 former New York Enforcement Staff Attorney  
: Increases in previous years.

13 MR. SORKIN: That's assuming there was an  
14 increase from '62 to '63 to '64 to '65. I'm not sure  
15 how you can answer that question.

16 Q Then let's start in the beginning.

17 Approximately how many people did you  
18 borrow from in 1962 or did Avellino & Bienes?

19 MR. SORKIN: If you can remember 30 years  
20 ago.

21 A Again, it's going to be a guess. Only, if  
22 I remember 30 years ago, maybe ten.

23 Q Has that number increased since 1962? \_ \_

24 A Yes.

25 Q And has it steadily increased over the

1 years?

2 A Yes, yes.

3 Q Is it fair to say that you have borrowed  
4 money from more people in 1992 than in 1991?

5 MR. SORKIN: Are you asking him, are there  
6 more lenders in '92 than in '91?

7 former New York Enforcement Staff  
Attorney : Yes.  
8 former  
New York

9 A I would say yes.

10 Q Would that be also in comparison to 1991  
11 and 1990?

12 A Yes.

13 Q So it had steadily increased?

14 A Definitely.

15 MR. SORKIN: Since 1962?

16 former New York Enforcement Staff  
Attorney : Correct.  
17 former  
New York

18 MR. SORKIN: I don't want to leave the  
19 impression there is something magical about 1988.  
20 That's the point of my raising that.

21 There has been an increase since 1962.

22 Q In 1992, how many lenders does Avellino &  
23 Bienes have?

24 A Approximate guess?

25 Q Yes.

26 A About a thousand.

27 Q And approximately how much has Avellino &

1 Bienes borrowed from these 1,000 investors or  
2 lenders?

3 MR. SORKIN: Are you asking him how much  
4 is outstanding at this point in time that has been  
5 loaned by these thousand people?

6 former New York Enforcement Staff  
Attorney former New  
York : Yes.

7 MR. SORKIN: Or whatever the number is?

8 former New York Enforcement Staff  
Attorney former New  
York : Yes.

9 A \$400 million.

10 MR. SORKIN: Again, I don't want to leave  
11 the impression, and you can ask Mr. Avellino to adopt  
12 this or not, we keep talking about individuals.

13 former New York Enforcement Staff  
Attorney former New  
York : That would also include  
14 entities.

15 Q Is that correct, when we refer to  
16 individuals, that would include entities?

17 A Yes.

18 Q So there's approximately 1,000  
19 individuals/entities that have lent Avellino & Bienes  
20 money in 1992, approximately?

21 A Yes.

22 MR. SORKIN: Again, I don't want there to  
23 be a misunderstanding that a thousand people in 1992  
24 lent approximately \$400 million in the last six  
25 months. That's the impression I hope you don't have,

1 that there are a thousand lenders as of 1992, who,  
2 over a period of time, loaned money totaling  
3 approximately 400 million. You are not suggesting in  
4 your question and I hope you are not drawing the  
5 conclusion in 1992 alone they received \$400 million.

6 Q If you had to determine how much Avellino  
7 & Bienes owes individuals right now, would that be  
8 \$400 million?

9 A Yes.

10 MR. GENTILE: Mr. Avellino, how do you go  
11 about tracking these funds? People call you and say  
12 they want to loan you money?

13 MR. SORKIN: That implies there is a  
14 solicitation and they are actively seeking accounts.  
15 If you just want to ask him, "Tell us, please, how  
16 you came to borrow money," I am more comfortable with  
17 that and what takes place in the context of the  
18 borrowing.

19 MR. GENTILE: Exactly.

20 How did you come about to borrow these  
21 funds?

22 WITNESS AVELLINO: Let's go back to 1962.  
23 This was something that was only done for my behalf,  
24 whatever the company was at that time, by word of  
25 mouth, always by word of mouth, and it was a nucleus

1 of and still is friends, relatives, ex-clients, if  
2 you will, of Avellino & Bienes, cousins of my friends  
3 and relatives, nephews of my friends and relatives,  
4 and it evolved and evolved and evolved. So it's all  
5 by word of mouth and reputation, by integrity, by  
6 performance, by paying interest, never ever skipping  
7 an interest payment to anyone. Our word was our bond  
8 and it's basically the same thing today. It has not  
9 changed.

10 MR. SORKIN: I want to be clear, when Mr.  
11 Avellino says "word of mouth," and feel free to ask  
12 him, it is not his word of mouth. He hasn't  
13 solicited, nor has Mr. Bienes solicited, their word,  
14 through their word of mouth. It has been by word of  
15 mouth of lenders who have spoken to other potential  
16 lenders.

17 Q Is that what you're attempting to say,  
18 what Mr. Sorkin has said for you?

19 A Exactly.

20 former New York Enforcement Staff  
Attorney : Mr. Bienes, did you want to  
21 comment on that?

22 WITNESS BIENES: No.

23 MR. SORKIN: What I think Mr. Bienes  
24 wanted to say is that the universal lenders include  
25 clients of the accounting firm as it existed then,



1 and now they are ex-clients because they are no  
2 longer in the accounting firm, but they are still  
3 lenders.

4 MR. SORKIN: Is that what you wanted to  
5 say?

6 WITNESS BIENES: Yes.  
7 BY former New York  
Enforcement Staff Attorney former New  
York :

8 Q I think we have an understanding of who  
9 these people are who are lending you money.

10 Can you describe what would happen if  
11 someone called to lend money?

12 A If somebody would call my office, the  
13 first party they would speak to would be Lola  
14 Kurland, who runs and manages my office. The first  
15 question she would ask is, "Who are you," of course,  
16 if they haven't identified themselves already. They  
17 would say they are Mr. So and So, who was told by  
18 their brother, cousin, whatever, to call up because  
19 they have a loan that they are receiving X amount of  
20 interest on and it sounds good and they have been  
21 with this loan for about 20 years plus, which is the  
22 average, and could they, in turn, lend us some money  
23 and would we take it.

24 We don't stop at that. We follow it  
25 through. We make sure that this person is telling

1 the truth, number one. Number two, every party that  
2 is in there is related to someone that started this  
3 thing or lent money originally, and the phone call  
4 that would come in would say, "I am Mr. Jones and I  
5 hear you have a good thing going," or program or  
6 whatever, and is immediately answered with, "We don't  
7 tell you anything. We will tell you nothing. We are  
8 a private company, we invest for ourselves, so  
9 wherever you got this information from, please go  
10 back and check your sources again."

11 And basically, this is the response you  
12 get at all times and you will get at all times. This  
13 is probably, and I'm anticipating what precipitated  
14 this call, that somebody called, and we invariably  
15 say, "We are not going to give you anything," because  
16 the questions--when I answer the questions, "Do you  
17 have a brochure?" "Do you have a prospectus?" "Do  
18 you have a financial?" And my answer is, "We have  
19 none of those things because we are not in that  
20 business. We don't do any of the things that you are  
21 anticipating. We don't advertise, we don't solicit,  
22 we don't promote. We are a private investment  
23 company and we only deal with relatives, friends,  
24 clients and people that are associated with friends,  
25 relatives and clients."

1           Q       The thousand lenders that you currently  
2 have, you are not familiar with each and every one of  
3 them, are you?

4           A       No, I'm not.

5           MR. SORKIN:   The approximate thousand. I  
6 don't want you to pin him down.

7           former New York Enforcement Staff  
Attorney  
8           We haven't; approximate  
9 thousand.

10          Q       What happens after Lola Kurland speaks to  
11 them?

12          A       After Lola Kurland speaks to them and they  
13 are satisfied as to the legitimacy of this person,  
14 then they will ask, "Who do we send a check to and  
15 when could we send it, if we can now send it?" And  
16 they do that.

17          MR. SORKIN:   Perhaps you want to ask him  
18 whether not only do people call, but if people write  
19 asking if they could lend money.

20          Q       Is that also the case, that people also  
21 write in to inquire about Avellino & Bienes?

22          A       Most of the times-- let's just step back a  
23 little. If Lola Kurland gets a call, it's usually my  
24 Uncle Lou who would call up Lola because he has been  
25 there since day one with me. He would say that Joe,  
John, Tom, "will be calling you and he is somebody

1 related to me, so if they call, you can accept the  
2 call," most of the time.

3 There are times when we get a check with a  
4 letter that says, "We are aware of your," whatever  
5 they call it, "Enclosed please find a check. Could  
6 you please open up an account, loan account." And in  
7 every instance, if there's no relationship to that  
8 letter and that check, it immediately goes back.  
9 There's no ands, ifs or buts. "We are sorry, we are  
10 not able to accommodate you. We will not take your  
11 check." That is also part of this process.

12 Q Does Ms. Kurland tell them what they are  
13 going to get in return for their money?

14 A Yes, she would have to.

15 Q What does she tell them?

16 A If that person is the legitimate person,  
17 et cetera, et cetera, et cetera, she'll say that "You  
18 will get"--most of the times, by the way, they call  
19 and they say, "We know you pay X amount," and most of  
20 the times they are wrong because if we paid X amount  
21 to Mr. Smith, it doesn't mean I'm going to pay the  
22 same amount to Mr. Jones. It depends on the economic  
23 conditions of our times. We have old-timers sitting  
24 there for many years and we don't disturb them. They  
25 are the loyal lenders.

1           The market, the interest market, has been  
2 up and down. There was a time when the prime lending  
3 rate was 18 percent and those people were making 18  
4 percent and they were saying to us, "You know, we  
5 could take the money and put it in a money market  
6 account and make the same thing." And I would say,  
7 "Do whatever you want." And they did. So those are  
8 the loyal people.

9           So if I gave them 18 percent, I will  
10 continue to. So if Mr. Jones' uncle makes 18 and he  
11 calls up and says, "My uncle makes 18," I will say,  
12 "You are only going to get 14. I can't pay more than  
13 I make." So Lola would say, "14 percent."

14           MR. SORKIN: Or whatever the interest rate  
15 is.

16           A       Whatever is economically feasible at the  
17 time the phone call or letter comes in.

18           MR. SORKIN: The point of this is that  
19 depending upon the time period, some individual  
20 lenders get more interest, some individuals get less  
21 interest. It is a variable rate depending upon a  
22 determination made by Avellino & Bienes as to what  
23 the lenders should be paid.

24           Q       Besides the factor of the interest rate,  
25 prime rate, are there any other factors, such as the

1 size of the amount of money that is going to be lent?

2 A No. You could give me \$10, \$10,000. If  
3 it's 14 percent, it's 14 percent.

4 Q If someone called you today or Ms.  
5 Kurland, what would be the interest rate?

6 A 15 to 16 percent, based on my last  
7 figures, by the way.

8 Q Now, once a person sends in money, is that  
9 rate locked in or is that variable for that person?

10 A It's locked in for whatever period I  
11 decide it's locked into. It will probably say you've  
12 got 14 percent interest yearly compounded, probably  
13 quarterly, because they like their quarterly check,  
14 they like to see their check and we like to pay it  
15 that way, but it's locked in to the extent that I  
16 could afford to pay it.

17 Now, what I've done in the last four  
18 years, I've lowered my interest rate because I wasn't  
19 making the income that I supposedly anticipated. I  
20 do that after I look at my P&L. At the end of a  
21 quarter, I know what my capital gains will be, if you  
22 will, because they are all capital gains and I could  
23 anticipate that if I can't afford to pay 14 percent  
24 it will probably go down. It hasn't. Our experience  
25 has been that it hasn't.

1 Q Has it gone up?

2 A It probably stays the same or goes down.  
3 Every once in a while, I'm going by memory only,  
4 because I'm trying to determine if it ever went up,  
5 it probably did, but I don't remember.

6 Q You said today someone would get  
7 approximately 15 or 16 percent; is that compounded  
8 annually?

9 A No, compounded quarterly.

10 Q Are there investors that you have that are  
11 getting 13 percent or 13.1?

12 A No. The lowest one that we had ever was  
13 getting 13-and-a-half percent and that's, by the way,  
14 the Copperman group.

15 Q So, then, when they loaned the money at  
16 that point in time, you were giving out 13.5 percent?

17 A Yes.

18 Q So, then, is it safe to say that that  
19 interest rate was locked in, 13.5 percent?

20 A For whatever period I decided, yes, at  
21 that time. I could have made it--at the end of a  
22 certain quarter I could say, "Take your loan back or  
23 take 12 percent."

24 MR. SORKIN: Are you asking--

25

former New York Enforcement Staff  
Attorney

I'm trying to find out how do

1 these people know this?

2 Q How do they know they are going to get  
3 13.5 percent for the first quarter or for the second  
4 quarter? Is there some type of written  
5 communication?

6 A Yes.

7 Q What--

8 A They get a letter that, in essence, says,  
9 "We have borrowed \$10,000 for which you will receive,  
10 on an annual interest rate, compounded quarterly,  
11 13-and-a-half or 14 percent."

12 That's what they get.

13 Q And that states the interest on it?

14 A Yes.

15 Q So that--

16 MR. SORKIN: I think you asked him,  
17 though, if at the end of a quarter, calendar quarter,  
18 Mr. Avellino and Mr. Bienes decide if they are paying  
19 14 percent for the first quarter and they want to  
20 reduce it to 13 percent, how is the lender notified?

21 WITNESS AVELLINO: We haven't had that  
22 happen.

23 Q I believe you said Mr. Copperman's group  
24 got 13.5 percent; is that right?

25 A Yes.



1 Q Now, these individuals, lenders, we will  
2 use that term since you brought it up, did some of  
3 these individuals start lending in the 1988-89  
4 period?

5 A The first ones after I--

6 MR. SORKIN: Which individuals, the  
7 Copperman group?

8 former New York Enforcement Staff  
Attorney: The Copperman group.

9 A I believe the first Copperman loan  
10 accounts were dated back to 1989, after I spoke with  
11 you on the phone. Remember, I said I would look and  
12 I did look. It was after '89. The biggest bulk was  
13 1990.

14 Q And they were getting 13.5?

15 A Yes.

16 Q Has that increased for them?

17 A No. That group, I think, went up to 14  
18 percent and that's the maximum they hit, 14 percent.

19 Q Why haven't they gone up to 15, 16  
20 percent?

21 A Because it's stupid business.

22 Q So, then, some people are getting a higher  
23 percentage than others?

24 A Sure.

25 Q What does Miss Kurland or yourself tell

1 individuals that the money is going to be used for?

2 MR. SORKIN: If anything.

3 A What is it going to be used for?

4 MR. SORKIN: Why don't you ask him, do  
5 they tell these individuals how their loans will be  
6 used.

7 Q Do you tell individuals what the loans are  
8 going to be used for?

9 A Basically Avellino & Bienes is going to  
10 use it to invest.

11 Q Do you tell them anything besides just  
12 invest? Do you tell them you are going to invest in  
13 the securities market? Do you tell them you are  
14 going to invest in the real estate market?

15 A If the second question is, "What do you  
16 invest in," my answer would be an honest answer, that  
17 I will invest it in securities.

18 Q Do you tell lenders that you are going to  
19 invest in some type of arbitrage transactions?

20 A No.

21 Q Do you ever mention arbitrages, either  
22 yourself or Lola mention arbitrages, or riskless  
23 arbitrages?

24 A Maybe if they probe and you know the  
25 person. It's knowing what Frank and Mike do. We

1 don't just say "arbitrage." There is no such thing  
2 as riskless arbitrage. As you know, it's a broad  
3 term they used to use in the old days, which I  
4 consider stupid. The only riskless arbitrage I know  
5 with the integrity of the United States going out,  
6 that's a risk, the only one I know is the convertible  
7 purchase and short selling of common stock, it is the  
8 only one I know over all of these 30 years that I  
9 have done, and I have never had a problem in saying  
10 that it was riskless, because to me it was. I'm  
11 talking only for Avellino & Bienes, not for the  
12 person who thinks he's giving me to invest money on  
13 his behalf.

14 I could honestly say, and you could check  
15 any record that you want with me from 1962 to today,  
16 in thousands of transactions, of what I call  
17 arbitrage, which is bona fide convertible buying and  
18 selling, there has never been a loss.

19 Q Avellino & Bienes?

20 A Avellino & Bienes.

21 Q Avellino & Bienes does invest in other  
22 things?

23 A Yes; it invests in securities.

24 Q What other vehicles do they invest in?

25 MR. SORKIN: Besides?

1 Q Do you consider riskless arbitrage to be  
2 securities?

3 MR. SORKIN: You said "securities" and  
4 then you said "other vehicles." Do you mean other  
5 vehicles, property?

6 former New York Enforcement Staff  
Attorney No, I'm talking about  
7 securities.

8 MR. SORKIN: If you want to ask does he  
9 invest in equities, does he invest in debt, does he  
10 invest in naked options--

11 former New York Enforcement Staff  
Attorney former New  
York : That's what I want to know.

12 MR. SORKIN: Ask him.

13 Q What securities do you invest in?

14 MR. SORKIN: What securities does Avellino  
15 & Bienes invest in today and historically?

16 A I could only answer that in general terms  
17 when you say "securities." When you examine my  
18 portfolio, which you are welcome to, you will see  
19 that every security that I own in the name of  
20 Avellino & Bienes--I mean, Avellino & Bienes is a  
21 security that is probably on the Fortune list.

22 Q You mean the Fortune 500 companies?

23 A Yes. There is never a security, and I  
24 mean never a security, where there is a speculation,  
25 ever. Every security that I own in the long position

1 has a derivative hedge, every single one of them.

2 MR. SORKIN: Could you explain what you  
3 mean by "hedge" and what impact that hedge would have  
4 on the approximately 400 million that was loaned to  
5 Avellino & Bienes in investments?

6 A If you look at the \$400 million that we  
7 owe to lenders and you looked at my portfolio and, by  
8 the way, all of the \$400 million plus is with Bernard  
9 L. Madoff, every single dollar, it is invested in  
10 long-term Fortune 500 securities, it is, to use the  
11 word "protected" with hedges of Standard & Poor's  
12 index. Puts and calls are purchased and sold, and  
13 the way we examine this and do our due diligence on a  
14 monthly basis, we look at our fair market value of  
15 all of these securities that are being held at  
16 Bernard L. Madoff on behalf of Avellino & Bienes. We  
17 determine the fair market value at the end of each  
18 month and we make sure, and this is where we are very  
19 positive, we make sure that that value is always in  
20 excess of the loans payable.

21 We hedge, as I said, with the Standard &  
22 Poor's index, whereby our exposure at any one time in  
23 - all of the years we have been doing it is bottom-out  
24 four-percent loss. If we use the example of \$400  
25 million at cost, you are talking about a \$16 million

1 loss at any one time, but in real terms, you also  
2 have to look at what the exposure is on the long-term  
3 positions and most of the time we have 10 to 20  
4 percent of our positions in brokerage accounts  
5 represented by U.S. Treasury bills, which means they  
6 are out of the realm of the four-percent loss factor,  
7 which makes us more conservative.

8 And I could honestly say over and over  
9 again that we always have a cushion or, by  
10 experience, have always had a cushion of about 20  
11 percent, even with the four-percent loss factor,  
12 because of the capital that Michael Bienes and Frank  
13 Avellino have in excess of the money we lend out.  
14 That's the procedure we use.

15 We have short sales against the box,  
16 another protective device that we use, and  
17 there's--every hedge that we consider a derivative  
18 hedge is used by Bernard L. Madoff on behalf of every  
19 account that Avellino & Bienes has, and that's why we  
20 are so confident, that's why we are so prudent,  
21 that's why we pay the rate we pay and continue to  
22 have paid. It's not a thing that evolved just ten  
23 days ago or even ten years ago, but 30 years ago, and  
24 that's the difference between what we do and what  
25 maybe other people do.

1           Q       You said that Avellino & Bienes maintains  
2 a 20-percent cushion. Is that in cash? Is that what  
3 you are saying, in cash?

4           A       No.

5           Q       What do you mean by cushion, cushion of  
6 what?

7           A       Michael Bienes and Frank Avellino, in  
8 addition to this capital, have their own assets,  
9 which we always know can be called because we are  
10 personally liable on those loans. If somebody said  
11 to me the market has blown out and everything you  
12 think you could do didn't work, and you have that  
13 four percent and you have to pay it all back, we have  
14 to come out to \$16 million, and Michael Bienes and  
15 myself have that \$16 million. That's my cushion.

16                   I have personal accounts with Bernard L.  
17 Madoff that have nothing to do with A&B and so does  
18 Mr. Bienes. And that's about \$40 million worth of  
19 the assets right there.

20           Q       You have a personal account with Mr.  
21 Madoff?

22           A       Yes.

23           Q       Is it in your name?

24           A       Yes.

25           Q       How many accounts do you have?

1 A One.

2 Q Do you have any control over any other  
3 accounts with Mr. Madoff?

4 MR. SORKIN: He didn't say he had control  
5 over that account. He said he has an account. Do  
6 you want to ask him whether he makes the investment  
7 decisions for that account or whether Mr. Madoff  
8 does?

9 Q Do you make the investment decisions with  
10 that account?

11 A No.

12 Q Does Mr. Madoff?

13 A Yes.

14 Q Totally?

15 A Yes.

16 Q Do you have any other accounts with Mr.  
17 Madoff that you have control over?

18 A No.

19 MR. SORKIN: When you say other accounts  
20 that he has control over, he has no control over any  
21 accounts.

22 former New York Enforcement Staff  
Attorney The question is he could have  
23 an account with his son or something like that, if he  
24 has a son.

25 MR. SORKIN: You said other accounts he



1 has control of. If you want to ask him are there any  
2 accounts that he has with Mr. Madoff that he has  
3 control over, I will accept that question.

4 former New York Enforcement Staff Attorney I don't see the difference,  
5 but I will rephrase it for you.

6 MR. SORKIN: Can you answer my question?

7 Q Are there any accounts at Mr. Madoff &  
8 Associates, or that firm, that you have control over?

9 MR. SORKIN: That you make the investment  
10 decisions for?

11 A No.

12 Q Is there any account--and I don't want to  
13 get to whether you make the investment decision or  
14 not--are there any other accounts besides Avellino &  
15 Bienes and besides your own personal account that you  
16 have any association or control over?

17 A No.

18 MR. former New York Enforcement And Mr. Bienes, do you have a  
19 personal account with Mr. Madoff?

20 WITNESS BIENES: No. My wife does.

21 MR. former New York Enforcement Is there anyone else that you  
22 are related to that has a permanent account with Mr.  
23 Madoff?

24 WITNESS BIENES: No.

25 MR. former New York Enforcement And your wife's account with

1 Mr. Madoff, does Mr. Madoff control that account,  
2 make the decisions?

3 WITNESS BIENES: Yes, totally.

4 BY [REDACTED] former New York  
Enforcement Staff Attorney  
[REDACTED] former New  
York :

5 Q Mr. Avellino, before, you said that you  
6 were personally liable on those loans to people and,  
7 therefore, you have a cushion. Why do you say  
8 "personally liable"?

9 A Because I assume that every time I borrow  
10 money from a person in the name of Avellino & Bienes,  
11 as Frank Avellino and Michael Bienes, that I am  
12 personally liable.

13 [REDACTED] former New York  
Enforcement Staff Attorney MR. SORKIN: The money is borrowed, Mr.  
14 [REDACTED] and gentlemen, the money is borrowed in the  
15 name of the partnership. The two general partners  
16 are personally liable for the debts of the  
17 partnership.

18 [REDACTED] former New York Enforcement Staff  
Attorney : I just wanted to make sure it  
19 was his understanding.

20 MR. GENTILE: Mr. Avellino, you mentioned  
21 the 20-percent cushion. The 20-percent cushion, and  
22 correct me if I'm wrong, but this cushion sits  
23 - partially in your personal account?

24 MR. SORKIN: No.

25 MR. GENTILE: Where is it?

1 WITNESS AVELLINO: In the Avellino &  
2 Bienes accounts with Bernard L. Madoff.

3 Q So, then, is it fair to say that besides  
4 this \$400 million, there is more money that is  
5 invested through Madoff?

6 A Yes.

7 Q Approximately how much?

8 A \$40 million.

9 Q In addition to the 400 million?

10 A Yes.

11 Q And that 40 million is Avellino & Bienes'  
12 personal money?

13 A Yes.

14 MR. GENTILE: I'm a little confused.  
15 "Personal monies" means your personal account?

16 WITNESS AVELLINO: Yes.

17 MR. SORKIN: Ask the question first. You  
18 are asking "personal monies." This is not monies.  
19 If you're asking him, let's put it in the form of a  
20 question.

21 Are you asking: Are the monies that you  
22 personally invest monies you obtain by way of loans?  
23 - Is that what you are asking?

24 MR. GENTILE: No.

25 MR. SORKIN: Rephrase it.

1 Do you want to go off the record?

2 MR. GENTILE: Yes.

3 former New York Enforcement Staff Attorney Off the record.

4 (Discussion held off the record.)

5 former New York Enforcement Staff Attorney former New York: Back on the record.

6 MR. SORKIN: If you want to clarify it for  
7 the record

8 former New York Enforcement Staff Attorney While we were off the record,  
9 we had a discussion with Mr. Bienes and Mr. Avellino;  
10 and, Mr. Bienes, why don't you explain the 20-percent  
11 cushion as briefly and concisely as possible for us.

12 WITNESS BIENES: We owe, say, 400 million.  
13 The value of our investment with the broker is  
14 440-some-odd million. We always have approximately  
15 20 percent more with the broker than what we owe, it  
16 could be even bigger than that.

17 MR. SORKIN: This is 10 percent?

18 WITNESS BIENES: This is--well, 440, yes.  
19 Well, no. I'll tell you why. A lot of it is in  
20 Treasuries right now. It's not in the market.  
21 That's why we have the--about close to 100 million is  
22 in Treasuries, so even with any loss, we would still  
23 have approximately 20 percent above and beyond what  
24 we owe, which is part of our capital. We usually  
25 always will be covered by 20 percent more than what

1 we owe lenders.

2 In addition to that, we have our own  
3 personal funds which are also invested in the same  
4 type of discretionary account with the same broker.

5 MR. SORKIN: Your wife, not you  
6 personally?

7 WITNESS BIENES: My wife has the account.

8 MR. SORKIN: We also explained, off the  
9 record, that the total amount invested is hedged.  
10 Why don't you explain that hedge.

11 WITNESS BIENES: We never have a position  
12 long that is not hedged, either by virtue of an index  
13 option, S&P 100 or S&P 500. The put option never  
14 allows a greater weight loss than four percent.  
15 Could be less, depending on the particular option.

16 We also are, in many of our shares,  
17 short-sold against the box. So those that are not  
18 covered by a put option are covered by a short sale  
19 against the box. So, therefore, it is covered a  
20 hundred percent.

21 The biggest risk on the part of the  
22 investment account is four percent, because there are  
23 parts of the investment account that are covered by  
24 short sales against the box or are in Treasuries. So  
25 effectively, maybe two, two-and-a-half percent is

1 subject to a downside risk and we have capital--

2 MR. SORKIN: "We" meaning you and Mr.  
3 Avellino personally?

4 WITNESS BIENES: We personally, through  
5 the firm as partners, have capital which represents  
6 20 percent of the total fund.

7 MR. SORKIN: And this capital is  
8 independent of whatever money was loaned to Avellino  
9 & Bienes?

10 WITNESS BIENES: Totally independent, and  
11 totally independent of our personal assets.

12 I have to clarify something. There are  
13 three general partners in Avellino & Bienes: My wife  
14 is a 25-percent partner, I am a 25-percent partner,  
15 my partner, Mr. Avellino, is a 50-percent partner. I  
16 mention this now because as I am talking I am saying  
17 the account with Madoff, our personal account, is in  
18 my wife's name, but it is subject to call because she  
19 is a general partner also. I didn't have it in her  
20 name to protect her from lenders.

21 BY former New York  
Enforcement Staff Attorney  
former New  
York :

22 Q Very briefly, Mr. Avellino, you said  
23 something before that this is the only partnership-  
24 interest that you have besides Jax 1?

25 A Yes.

1 Q Are you an officer, director or agent for  
2 any other entity?

3 A If you consider family entities, entities,  
4 yes, I am.

5 Q What entities?

6 A A company called New Egypt Development.  
7 It's just a real estate developing company, very  
8 small.

9 Q What is your position?

10 A Stockholder.

11 Q How much stock do you own in that company?

12 A Venturing a guess, I think 50 percent.

13 Q And that's a real estate investment?

14 A Yes.

15 Q Any other ones?

16 A Optus Software, Inc.

17 Q And what is your affiliation?

18 A I own 25 percent of the stock.

19 Q Any other ones?

20 A Pines-Palm, Inc.

21 Q What is your affiliation?

22 A Stockholder.

23 Q Approximately how much do you own?

24 WITNESS AVELLINO: Five percent?

25 WITNESS BIENES: No, seven.

1           A       Seven percent. Approximately seven  
2 percent.

3           Q       Any other entities?

4           A       I can't recall any others.

5           Q       Are you affiliated with Benchwarmers?

6           A       Benchwarmers, yes, that's a new one, I'm  
7 sorry.

8           Q       What is your affiliation there?

9           A       I am a stockholder.

10          Q       What percentage do you own?

11          A       Probably eight percent, ten percent.

12                   former New York Enforcement Staff  
                  Attorney                   Mr. Bienes, are you an  
13 officer or director or agent for any entity?

14                   WITNESS BIENES: Director?

15                   former New York Enforcement  
                  Staff Attorney                   : Director.

16                   WITNESS BIENES: Yes. I believe I'm on  
17 the board of directors of Optus.

18                   former New York Enforcement Staff  
                  Attorney                   Any other entity?

19                   WITNESS BIENES: As an officer, an agent  
20 or director, no. I'm a partner in Jax 1. I'm a  
21 general partner.

22                   former New York Enforcement Staff  
                  Attorney                   What is Jax 1?

23                   WITNESS BIENES: It is a real estate  
24 partnership that owns a shopping center, a strip  
25 shopping center, in Jacksonville, Florida.



former New York Enforcement Staff Attorney

Any other entities?

WITNESS BIENES: I'm in Pine-Palm along with my wife as shareholders, I guess.

former New York Enforcement Staff Attorney

Any other entity?

WITNESS BIENES: Would a charitable foundation be included in that?

former New York Enforcement Staff Attorney

What is your affiliation?

WITNESS BIENES: I'm on the board of directors of a private foundation, along with my wife.

former New York Enforcement Staff Attorney

What is the name of the foundation?

WITNESS BIENES: SHAPE, S.H.A.P.E.

former New York Enforcement Staff Attorney

What does it stand for?

WITNESS BIENES: Student Help and Aid Program in education. It's a 501(c)(3), approved by the IRS in the State of Florida.

EXAMINATION OF MR. AVELLINO

former New York Enforcement Staff Attorney

BY : (Cont'd.)

Q Mr. Avellino, the money that people lend to Avellino & Bienes, do you invest it at all in any real estate, that money in real estate?

A No.

Q Is this money collateralized at all--

A No.

1 Q Let me complete the question.

2 The money that you borrow from these  
3 lenders, is it collateralized by anything at all?

4 A No.

5 Q Besides Ms. Kurland at Avellino & Bienes,  
6 does anyone else talk to new lenders, quote-unquote,  
7 calling in?

8 MR. SORKIN: Could I have that read back.

9 Q Besides Ms. Kurland, is there anyone else  
10 who talks to people calling in inquiring about  
11 lending money to Avellino & Bienes?

12 MR. SORKIN: Mr. Avellino said he  
13 occasionally talked to them as well. Are you asking  
14 of the four employees he mentioned earlier? There  
15 are three remaining. Anyone other than Ms. Kurland?

16 former New York Enforcement Staff  
Attorney former  
New York : Correct.

17 A Maybe, and the answer would be yes, maybe  
18 Sonia, because when Lola is on vacation, Sonia would  
19 have to answer the calls.

20 Q Do you maintain an office there at the  
21 building itself?

22 A Yes.

23 MR. SORKIN: You mean him personally? - -

24 former New York Enforcement Staff  
Attorney : Personally.

25 Q Do you personally have an office?

1           A       Yes.

2                   MR. SORKIN: The office of Avellino &  
3 Bienes, general partners, is at 70 East 55th Street.  
4 Are you asking within that office suite does he have  
5 a personal office?

6           **former New York Enforcement Staff  
Attorney**           Yes.

7           A       Yes.

8           Q       Do you frequently show up to work or to  
9 the office on a daily basis?

10           MR. SORKIN: What do you mean by  
11 "frequently"?

12                   How often do you come to the New York  
13 office?

14           A       Three, four times a year for one day at a  
15 time.

16           Q       How do you supervise that office?

17           A       It's supervised by Lola Kurland.

18           Q       So Lola Kurland runs that office?

19           A       Yes.

20           Q       If someone called to lend money to  
21 Avellino & Bienes, does she have the authority to  
22 accept the money?

23           A       Yes, under the rules that she's been  
24 dictated.

25           Q       Are these rules written rules that you've

1 given to her?

2 A No.

3 Q If someone called and said, "I was  
4 referred by an existing client," would they be able  
5 to lend money to Avellino & Bienes?

6 A After an investigation of who that client  
7 was.

8 Q Who conducts that investigation?

9 A Lola.

10 Q How?

11 A She'll find out who the person was, who  
12 the recommended person is, where they came from, who  
13 are they, the whole thing.

14 Q How does she do this?

15 A By speaking with them, by probably calling  
16 the person they said told the person to call.

17 And we also have to understand, it's very  
18 important that this is understood, it's a 20-year  
19 thing that Lola has been working with, not always in  
20 this capacity, but she's been there 20 years. You  
21 asked me once in our examination here do I know these  
22 people face to face. I will venture a guess that if  
23 you ask Lola that question, she could probably say,  
24 "I know every single name, either voice or face to  
25 face," better than I could say I know them voice and

1 face to face.

2 Q Better than you can?

3 A Yes.

4 Q But she doesn't know every person's voice  
5 or face?

6 A Of course not.

7 Q This loan that people give to Avellino &  
8 Bienes, is this considered a short-term loan, a  
9 long-term loan?

10 A I would probably consider it, from an  
11 economic point of view, a demand loan.

12 Q Are people told that it's a long-term or  
13 short-term demand note? What are they told?

14 A No. They are told basically that the loan  
15 could be returned provided they give us written  
16 notice of two weeks, in essence, two weeks.

17 MR. SORKIN: To make it clear, you should  
18 know they would get their principal back plus  
19 interest prorated to the next quarter.

20 Q Is that correct, Mr. Avellino?

21 A Yes.

22 former New York Enforcement Staff  
Attorney Why don't we go off the  
23 record. It's ten after four.

24 (Recess taken.)

25 former New York Enforcement Staff  
Attorney We are back on the record.

1 It's 4:20.

2 While we were off the record, there were  
3 no material discussions with the witness.

4 Q Let's start with Mr. Avellino.

5 Mr. Avellino, do you know of any  
6 investment advisors who have recommended lenders to  
7 Avellino & Bienes?

8 MR. SORKIN: I have a problem with that  
9 question.

10 former New York Enforcement Staff  
Attorney What is your problem with it?

11 MR. SORKIN: How does one know if one is  
12 an investment advisor? Is it an investment advisor  
13 registered under the 1940 Act? How about if you ask  
14 him does he know of anyone who has ever recommended  
15 an investment to Avellino & Bienes, other than the  
16 people--

17 former New York Enforcement Staff  
Attorney Okay. That gets even more  
18 broad, but we will start it that way and see what  
19 happens.

20 MR. SORKIN: Let's cut right to the core  
21 of this. If you are asking him does he know whether  
22 Mr. Copperman is an investment advisor, that is an  
23 unfair question.

24 former New York Enforcement  
Staff Attorney I'm not going to ask him  
25 that. Why don't we start with:

1 Q Do you know of anyone who has recommended  
2 lenders to Avellino & Bienes?

3 MR. SORKIN: Other than what he's  
4 described earlier as to how he conducts his business,  
5 namely, by word of mouth, with satisfied lenders who  
6 refer people?

7 former New York Enforcement Staff  
Attorney : That's where we get to it  
8 being so broad.

9 MR. SORKIN: Can I make a suggestion?

10 former New York Enforcement Staff Attorney  
Okay.

11 MR. SORKIN: Since you indicated before we  
12 broke that you were going to get to Mr. Copperman,  
13 why don't you ask him, "Do you know whether Mr.  
14 Copperman..."

15 Q First of all, do you know Andrew  
16 Copperman?

17 A Yes.

18 Q How do you know Andrew Copperman?

19 A I know Andrew Copperman because I met him  
20 in 1989 for the first time and only time, for about  
21 an hour in my office in New York.

22 Q What was the purpose of this meeting?

23 A Mr. Copperman was recommended by a dear-  
24 friend by the name of Richard Glantz, whom I  
25 mentioned before, who said that Andrew Copperman was

1 a very close friend of his and who thought that he  
2 could benefit his so-called, quote, clients, if he  
3 could get some of his clients, meaning Copperman's  
4 clients, to lend money to Avellino & Bienes, because  
5 they were asking Mr. Copperman if he had any vehicle  
6 to get four IRA accounts, which is retirement  
7 accounts.

8 Q Would you clarify what you said. I didn't  
9 catch exactly what you said about the IRA accounts,  
10 vehicles.

11 A Mr. Glantz said that Mr. Copperman had  
12 clients of his who were interested in putting their  
13 IRA fund, funds, money, whatever, into a thing, and  
14 let's use the word "thing," that Avellino & Bienes  
15 had, period.

16 Q So, if I understand you correctly, Mr.  
17 Glantz recommended you to Mr. Copperman?

18 A Yes.

19 Q And Mr. Copperman had investors?

20 MR. SORKIN: He had clients.

21 A He had clients.

22 MR. SORKIN: It was represented by Mr.  
23 Glantz and ultimately by Mr. Copperman that Mr.  
24 Copperman had clients.

25 Q Who had money in individual retirement



1 accounts?

2 A Who wanted to invest money in individual  
3 retirement accounts.

4 Q In individual retirement accounts?

5 A Right.

6 And Mr. Glantz knew that I had loans that  
7 were in individual retirement accounts, Mr. Glantz  
8 knew that, so, therefore, Mr. Copperman thought that  
9 he could recommend, if you will, to his clients, a  
10 vehicle whereby they could put their individual  
11 retirement account money.

12 Q So it was the money that was being  
13 transferred? You weren't going to set up an  
14 individual retirement account for these people?

15 A Not at all.

16 Q So it was the money--

17 A It was going to be loaned to Avellino &  
18 Bienes through an individual retirement account.

19 Q So you met with Mr. Copperman?

20 A Yes.

21 Q And what was the substance of that  
22 conversation?

23 A He came in from--I'm recalling the day he  
24 came in, and the only reason, and let's go back, it  
25 was important was, again, I made no attempt, again,

1 to meet Mr. Copperman. The only reason he met me was  
2 because Richard Glantz, who was a family friend, knew  
3 that I was going to be in New York on my one-, two-,  
4 three- and four-time visits at a certain time and  
5 place, and he said, "Well, why doesn't Andy come to  
6 New York and meet you, because he wants to do his due  
7 diligence."

8 And I would say, "I don't care what he has  
9 to do, but I'll only be there between 10 and 11  
10 because I have things to do with my wife and family."

11 And that's the only reason Mr. Copperman  
12 met me, is because I was in New York, just because I  
13 happened to be in New York.

14 Q And what was the substance of the  
15 conversation?

16 A Basically he came in and he asked me, he  
17 said, "Richard has told me he knows you from 1957.  
18 He told me that you and Mr. Bienes borrow money.  
19 He's told me that you have done very, very well in  
20 what you do."

21 And I literally sat there and said,  
22 "Whatever Richard said to you is true. I have done  
23 - very well. I was a CPA." He wanted to know if I was  
24 a CPA. "I retired from accounting. I do private  
25 investments. I've been a very lucky guy. I had good

1 fortune in it, I made a lot of money in it," and et  
2 cetera, et cetera, et cetera.

3 This is a fact that I've told you in  
4 testimony before, this afternoon. I told him exactly  
5 what I told you.

6 Q Did you tell him what Avellino & Bienes  
7 did with the money?

8 A Yes, because he asked me.

9 He said, "What is it you do with the  
10 money?"

11 And I said, "I invest it with a broker."

12 And, of course, the question then was,  
13 "What is it that he does?"

14 And I would say, "As far as you are  
15 concerned, it's none of your goddamned business."

16 But he already knew, and since he was a  
17 friend of Richard, he said, "I understand you invest  
18 in arbitrage."

19 And I said, "Yes."

20 He said, "I understand you invest in  
21 securities."

22 I said, "Yes."

23 He said, "I understand you could hedge  
24 these things."

25 And I said, "Yes."

1                   And basically he was asking, creating a  
2 confirmation of what he was asking, and I'm positive  
3 I only spent an hour with him. I know that.

4                   Q       So it was your understanding that he was  
5 trying to get due diligence on you?

6                   A       Yes, it's the only reason. He stayed at  
7 the office--and I remember that day because I was  
8 leaving. He stayed in the office and he said he had  
9 to make some phone calls, and I said, "By all means."  
10 I said, "Of course I have to leave, but you can stay  
11 and make the phone calls." And he did. He came and  
12 left for California the same day.

13                  Q       What was he getting out of this?

14                  A       At the time he was doing this, from me he  
15 was getting one percent, because if I followed it  
16 through and I remembered it right, he told me--and  
17 this is exactly what he told me--he said he was  
18 licensed in California. And my answer was, "Okay."

19                       I didn't know whether he's an investment  
20 counselor, broker-dealer, I had no idea. My idea was  
21 you know Richard, Richard knows what I do, so who am  
22 I. He would like one percent of the interest  
23 earmarked to himself and he would give his people -  
24 13-and-a-half percent.

25                       And I do remember telling him, I said,

1 being in business not only in investments, but being  
2 a CPA and auditor and doing a lot of work in  
3 accounting, I said, "Do your people know that you're  
4 getting something out of this?"

5 And he said, unequivocally, "Of course,  
6 they are my trusted clients." I remember him saying  
7 that, and with this--keep in mind my eyes were on my  
8 watch, but he came in with a positive idea of what I  
9 did and I just confirmed what he knew.

10 Q You said that Copperman was going to get  
11 one percent of the interest?

12 A Yes.

13 MR. SORKIN: No, he said that's what  
14 Copperman wanted. He didn't say he gave it to him.

15 Q I believe you said he would give,  
16 Copperman would give, the people 13.5 percent?

17 A No, I would give it to them.

18 Q The firm Avellino & Bienes?

19 A Yes.

20 Q Did you strike some type of deal?

21 A I didn't strike anything at the time. All  
22 he did was go back and think about it.

23 Q And at some later point in time?

24 A At a later point in time I heard from  
25 Richard, and I think he said, "Andy was very happy

1 meeting you. He's got all these clients that he's  
2 been with and if you start getting money from these  
3 people, don't be surprised, because that's what he's  
4 going to do."

5 And I said, "Fine." I treated him as  
6 though I would treat anybody else that said  
7 recommend, recommend, recommend.

8 MR. SORKIN: I want to make sure the  
9 record is clear Mr. Avellino didn't agree to  
10 anything. The suggestion that Mr. Copperman would  
11 get one percent was Mr. Copperman's suggestion. The  
12 suggestion that Avellino & Bienes would pay  
13 13-and-a-half percent to Mr. Copperman's clients was  
14 Mr. Copperman's suggestion.

15 I don't want the record left that there  
16 was some sort of understanding between the two.

17 Q How did Mr. Copperman come up with 13.5  
18 percent?

19 A He asked me what the rates were.

20 MR. SORKIN: Did you adopt what I just  
21 said?

22 WITNESS AVELLINO: Yes.

23 A He asked me what the rates would be on my  
24 interest payments and I'm positive I told him 14, 15  
25 percent, maybe 16 percent, and at that time, 1989, he

1           said, "Oh, good. Fine."

2           Q       And it was at that point that he said, "I  
3           want one percent"?

4           A       Yes.

5           Q       "And in turn you will give my clients  
6           13.5"?

7           A       Basically he said, "Is it okay if you pay  
8           me one percent and you give my clients 13-and-a-half  
9           percent on their loans?"

10           And I said, "It's your clients. It's your  
11           problem, not my problem." I would pay interest to  
12           Houdini if he came in the door and I liked him.

13           MR. SORKIN: That one percent would be  
14           paid to Mr. Copperman by Avellino & Bienes, that is  
15           not correct. This is what he wanted and if Mr.  
16           Copperman's clients wanted to pay him one percent out  
17           of their 14 or 15 or 16 percent, that's between Mr.  
18           Copperman and Mr. Copperman's clients.

19           A       No one from Avellino & Bienes agreed to  
20           pay Mr. Copperman a penny.

21           Q       At this point in time?

22           A       Right.

23           Let's go back to this. If I said I pay-  
24           14-and-a-half percent or 15-and-a-half percent,  
25           that's what I'm paying Copperman's clients,

1 14-and-a-half percent or 15-and-a-half percent. And  
2 that's what he goes back with. That's what his idea  
3 was.

4 And then I get a call from Mr. Glantz and  
5 his attitude was, "You are probably--he loves what  
6 you do because he agreed what I said is what you  
7 confirmed to and affirmed and you are probably going  
8 to be getting checks from his people."

9 And I said, "Fine." And that's where we  
10 left it.

11 Q When you got checks from his people, what  
12 did you do?

13 A At that point, something must have  
14 happened before that time. Remember, it's not  
15 Copperman ever talking to me again, it was Richard  
16 Glantz. The only time I spoke to Copperman was that  
17 one time.

18 Glantz said, "Copperman's people are going  
19 to be sending you a check that is coming from Mr.  
20 Copperman."

21 Keep in mind that all the checks I get  
22 from everybody else comes from the original lender.  
23 In Copperman's instance, the check came from Mr. - -  
24 Copperman, not his client. The client gave him the  
25 check that said "Avellino & Bienes" and he would be



1 the--do you want to call it advisor? He took the  
2 check and sent it in with a letter to A&B, Avellino &  
3 Bienes. His clients made out a check to Avellino &  
4 Bienes, gave it to Mr. Copperman when he met with  
5 them in his office.

6 MR. SORKIN: This is what Mr. Glantz was  
7 telling you?

8 WITNESS AVELLINO: No, that's what Richard  
9 Glantz said would happen.

10 MR. SORKIN: Let's define it. Richard  
11 Glantz told you--

12 WITNESS AVELLINO: That Mr. Copperman--

13 MR. SORKIN: --was happy with the program  
14 and that Mr. Copperman would now have clients who  
15 would send checks payable to Avellino & Bienes to Mr.  
16 Copperman, and Mr. Copperman would forward those  
17 checks to Avellino & Bienes; is that correct?

18 WITNESS AVELLINO: Exactly. That's what  
19 he said he would do exactly.

20 When we got this letter from Mr.  
21 Copperman, whenever the letter was and, you know, I  
22 didn't see these letters because I'm not in the  
23 office when the office, my office, received this - -  
24 letter from Mr. Copperman; Lola said to me, "We have  
25 a letter from Mr. Copperman. Is that the same young

1 man you met in the office? Is it okay to take his  
2 client's check?"

3 Q Check or checks?

4 A One check with each letter.

5 I would say it was okay, after her  
6 checking with me, and I said, "Of course it's okay,  
7 take the check." The letter comes in, it says, "Open  
8 up an account for Mr. Smith," again, let's use him  
9 again as an example, and he signs the letter "Mr.  
10 Copperman." "By the way, from what I hear, on behalf  
11 of Mr. Smith, here is a \$10,000 check. Please  
12 confirm directly, if you will"--the word is not  
13 "confirm" because I would say I don't use  
14 confirmations, this is not a brokerage house.

15 We will send them a letter of indebtedness  
16 to his client directly, and I don't know whether it  
17 went to Copperman first and Copperman gave them this  
18 thing, I don't remember what. We have to ask Lola  
19 that, did the letter go directly to his client, if  
20 you will, or to Copperman.

21 MR. SORKIN: But the letter was addressed  
22 to the client?

23 WITNESS AVELLINO: The letter was  
24 addressed to the client.

25 Q From Avellino & Bienes confirming the

1 amount received?

2 MR. SORKIN: Confirming the amount  
3 received and how much interest would be paid?

4 A Right.

5 Q What interest would be on that letter?

6 A 13-and-a-half percent.

7 I said, "I don't care whether you--where  
8 you get 13-and-a-half." You got to follow this. I  
9 don't know that it's 13-and-a-half until I sit down  
10 and look at this thing at the end of a quarter and  
11 see 13-and-a-half, but Richard must have told me, "By  
12 the way, he's cleared it with his clients that you  
13 are to send him his one percent direct," which I did.  
14 So, in essence, that account earned 14-and-a-half  
15 percent.

16 Q When would you send Mr. Copperman this one  
17 percent?

18 A At the end of a quarter. No different  
19 than any other interest payment.

20 Q So you would tally up all the clients he  
21 referred?

22 A Right. We would keep control on that  
23 particular group of clients.

24 former New York Enforcement Staff Attorney  
25 Can you mark this as King  
Arthur Exhibit 3.

1 (King Arthur Exhibit No. 3 was so  
2 marked for identification.)

3 Q Mr. Avellino, I'm going to show you what  
4 has been marked as King Arthur Exhibit 3. It's a  
5 multi-page document. The first page of this  
6 document, on the top, says, "King Arthur account,"  
7 followed by, "The following is my account  
8 information." This appears to be some kind of an  
9 application.

10 If you would kindly just glance through  
11 those pages, are there any pages that you recognize?

12 A Yes. I recognize the letter from Avellino  
13 & Bienes.

14 Q That would be the third page?

15 A Yes.

16 Q Do you recognize the fourth page?

17 A No.

18 Q What about the fifth page?

19 A From Avellino & Bienes? Could be at  
20 Avellino & Bienes. It says "Avellino & Bienes."

21 Q Is that something that is familiar to you?

22 A Could be, yes.

23 Q What about page six?

24 A Page six could be Avellino & Bienes, yes.

25 Q Page seven?

1 A Page seven, yes.

2 Q And what about the last page, page eight?

3 A Definitely, 1099.

4 Q So in this document, the pages you don't  
5 recognize are the first and second page and the  
6 fourth page?

7 A Exactly.

8 Q Why don't we turn to the third page, since  
9 you are familiar with that. Could you tell me what--

10 MR. SORKIN: Can I just make a comment?  
11 Are you asking has he ever seen three--

12 former New York Enforcement Staff Attorney  
13 Five, six, seven and eight  
14 before.

15 MR. SORKIN: You can ask him whether he  
16 recalls seeing these or is this the type of form  
17 Avellino & Bienes uses.

18 former New York Enforcement Staff Attorney  
19 I said "familiar," not "did  
20 you see."

21 Q Are you familiar with page three?

22 A Yes.

23 Q Could you tell me what this is, page  
24 three.

25 A This basically tells them that we received  
\$10,000 of their money and they are going to get  
their 10-and-a-half interest currently.

1 MR. SORKIN: The document speaks for  
2 itself. Are you asking what it represents?

3 former New York Enforcement  
Staff Attorney

: Okay.

4 WITNESS AVELLINO: It represents the fact  
5 that Avellino & Bienes received \$10,000 from Corinne  
6 Cox.

7 Q Is that what you would refer to as a  
8 confirming letter?

9 A No. There are different confirming  
10 letters, and the most official confirming letter has  
11 now been documented by the computer, so it looks  
12 entirely different than this. It says, in essence,  
13 probably the same things.

14 Q On February 13, 1990 would this have been  
15 the letter?

16 A Probably it was the letter that was sent  
17 out.

18 Q Let's move to page five. Are you familiar  
19 with this page?

20 A Yes.

21 Q Could you tell us what this document  
22 represents.

23 A This represents the fact that we're  
24 reporting \$450 interest on this particular loan for  
25 the quarter ending March 31, 1992.

1 Q Would this be a typical document that a  
2 lender would receive each quarter?

3 A In essence, yes.

4 Q Page six.

5 A Right.

6 Q Are you familiar with this document?

7 A Yes.

8 Q Could you tell us what this document is.

9 A That tells us that there is \$358 interest  
10 earned for September 30, 1990.

11 Q So, is this document similar to the  
12 previous document on page five?

13 MR. SORKIN: It speaks for itself as to  
14 whether it's similar or not.

15 Is this the type of document they would  
16 send out every quarter, you could ask him.

17 Q Is it the type of document that is sent  
18 out every quarter?

19 A Yes.

20 Q Before we move on, I want you to note the  
21 date on page six. We're talking between page five  
22 and six. On page six the date is October 1, 1990 and  
23 the date on page five is April 1, 1992.

24 A Right.

25 Q On page six, the first document that would

1 have been sent to this individual, it says, "For the  
2 period ending September 30, 1990, \$358 represents a  
3 return on your investment."

4 A I see that loud and clear.

5 Q And that says "investment" there, right?

6 A Yes.

7 Q Then on page five, 1992, it says, "For the  
8 period ended March 31, 1992, \$450 represents the  
9 return on your loan."

10 A Right.

11 Q The language changed. Do you know why it  
12 changed from "investment" to "loan"?

13 A Probably, yes, because if you look at the  
14 top of the letter, look at April 1, 1992, it says--do  
15 you see where it says "return of your loan"?

16 Q The top of the letter?

17 A Yes. April 1, 1992. I'm looking at it  
18 and I'm telling you what the differences are. April  
19 1, 1992, if you look at the top of it, there's  
20 nothing that says "reinvested." Do you see anything  
21 on top that says "reinvested"?

22 Q No.

23 A The computer serviced it itself. At one  
24 point when the computer program wrote "reinvested,"  
25 we call it a rollover, if you will, there's no such



1 thing as a reinvestment of a loan. There is no  
2 reinvestment of a loan. If it's leading anybody to  
3 the wrong conclusion, it looks like there's an  
4 investment there and there isn't.

5 Q So you don't know why the difference  
6 appears?

7 A It's probably the computer.

8 MR. SORKIN: Let's start with the  
9 practical effect of this as opposed to what the  
10 letter said. The practical effect is that when they  
11 received their interest in 1990 of \$358, rather than  
12 pulling it out, it was put out and made part of the  
13 principal rolled over. Are you asking that?

14 Q I understand that, but why does one say  
15 "investment" and one say "loan"?

16 A No, nothing was changed. It was still a  
17 loan.

18 Q I understand that, but do you know why it  
19 was changed?

20 A No. There is no--just probably a computer  
21 change, that's all, because I don't get involved in  
22 the computer terminology.

23 Q The next page, page seven, this document  
24 is dated January 1, 1991. Do you recognize this  
25 document, first of all?

1 A Yes.

2 Q In 1991, this page indicates "loan"; is  
3 that correct?

4 A Yes.

5 Q So between 1990 and 1991, that word  
6 changed from "investment" to "loan"?

7 A Yes.

8 Q Is that fair to say?

9 A Yes, evidently.

10 Q The last page, page eight, are you  
11 familiar with this document?

12 A Yes.

13 Q What is this?

14 A This is a 1099 that had to be reported to  
15 the Government.

16 Q Do you send 1099's to all people that lend  
17 you money and have--

18 A Interest income.

19 Q --interest income?

20 A Yes. Could I add a little to that?

21 Q Sure.

22 A You are looking at January 1, 1991. Just  
23 to come back for a little clarification of  
24 terminology, if you will, and what inferences people  
25 may take from it--the January 1, 1991 letter, what

1 page is that?

2 MR. SORKIN: Page number seven.

3 A Look at the bottom, substitute Form 1099  
4 INT. It's a 1990 statement of recipient interest  
5 income. Whatever the document said from--whatever  
6 the letter said, if you will, for October 1, 1990.

7 MR. SORKIN: Page six.

8 A If you want to keeping inferring and  
9 getting confused, look at the 1099. It's an INT,  
10 interest. 1991 is the full year, and 1991, there's a  
11 copy of a 1099 format change of the computer over and  
12 over again and they are still changing. The  
13 terminology changes; the principle of what we do is  
14 the same. It's still INT. It's always 1099-INT.

15 Q Before you leave that document, page four,  
16 I believe you said you are not familiar with that  
17 document?

18 A I've never seen that letter.

19 Q Let me direct your attention to the second  
20 paragraph and see if you've ever heard of this  
21 information. The second paragraph says, "The  
22 department seems to believe"--and "the department,"  
23 according to the first paragraph, is relating to the  
24 California Department of Corporations--"The  
25 department seems to believe that the King Arthur

1 account fact sheet is an inappropriate form of  
2 advertisement. Furthermore, the fact that my fee is  
3 paid by Avellino & Bienes rather than by my clients  
4 seems to have raised the question as to whether or  
5 not I should be registered as a broker-dealer. As  
6 you know, I am registered as an investment advisor  
7 but I have elected not to become registered as a  
8 broker-dealer."

9 Did you ever become aware of this  
10 information?

11 A Yes.

12 MR. SORKIN: Which information?

former New York Enforcement Staff Attorney

13 The information I just read.

14 MR. SORKIN: Which information are you  
15 referring to? Because he said "yes" and I want to  
16 know to what.

17 Q Have you ever become aware that the  
18 California Department of Corporations had spoken to  
19 Andrew Copperman and told him that it was  
20 inappropriate for him to advertise a King Arthur fact  
21 sheet?

22 A Yes.

23 Q When?

24 A 1990, whatever this letter says.

25 Q How did you become aware?

1           A       Richard Glantz called me up and told me  
2       so.

3           Q       Could you tell us the substance of that  
4       conversation.

5           A       Richard Glantz said, "I think you should  
6       be aware of the fact that you may be getting a call  
7       from the California"--I call it Corporations  
8       Department--"Department of Corporations inquiring  
9       about Andrew Copperman," or Andy Copperman, "because  
10      he has been--he has received a letter from them  
11      stating he is acting illegally, if you will."

12                   And with that, I blew my stack and I said,  
13      "I don't know what in the world you are talking  
14      about. What is this all about? And starting right  
15      now, all the money goes back, every dime, every  
16      penny, every nickel, because this is not what Andy  
17      told me he would be doing."

18           Q       When was this conversation?

19           A       1990, whenever he got the letter from the  
20      Department of Corporations. It could be weeks  
21      before.

22           Q       In or about late 1990?

23           A       Yes.

24                   And he told me that he was going to do  
25      something to the extent to fight it or object to the

1 letter, because he wasn't acting as a broker-dealer.  
2 And I said, "I am not a lawyer or SEC person and I  
3 don't know what you are talking about. As far as I'm  
4 concerned, I told you I can't be tainted in any way,  
5 that's not what I do in business, and you are getting  
6 all the money back. You could tell Andy forget about  
7 it."

8 Andy didn't call me, Richard called me.  
9 And Richard said, "Don't do that. I'll speak to  
10 Andy, I think we could fight this thing."

11 I said, "I don't want anybody questioning  
12 anything. If this has been questioned, I'm sorry,  
13 the guy's guilty, as far as I'm concerned."

14 He called me back shortly thereafter and  
15 said, "I advised Andy to stop doing what he's doing,  
16 not to fight anybody, because after I told Andy the  
17 fact that you are not going to deal with any nonsense  
18 even if he goes through all this, because Avellino &  
19 Bienes wouldn't get involved in all this, he said he  
20 would stop what he was doing and that he's no longer  
21 going to be involved in this thing with Avellino &  
22 Bienes, and it's your choice, you could take the  
23 money back or recall the loan or whatever."

24 And I said, "The money is still going  
25 back."

1                   Another conversation with Richard was  
2                   that, "You can't punish the innocent people because  
3                   they were clients of Andy's. As far as he was  
4                   concerned, he was stopping anything that the  
5                   Department of Corporations said he was doing wrong,  
6                   he wouldn't do it any more, and he won't do it any  
7                   more, but please make me a promise that you would let  
8                   the people take the money back or not take their  
9                   money back," a la Andy's letter.

10                   And I said, "Richard, are you begging me?  
11                   Are you telling me? What is it you want me to do?  
12                   Because this is wrong. I can't do this, I won't do  
13                   this."

14                   And he convinced me evidently that we  
15                   shouldn't hurt anybody; namely, the other people,  
16                   because it should be their option, not my option, as  
17                   to whether they wanted to continue with anything they  
18                   had. And we also have to realize here that the  
19                   convincing was done because, if I recall correctly, a  
20                   lot of these accounts were IRA's and I was a CPA and  
21                   I don't want to upset anybody because I'm mushrooming  
22                   this thing to a high level by creating a tax effect,  
23                   I'm now going to go crazy with tax effected  
24                   situations and be involved with litigation for the  
25                   rest of my life, which was not what I wanted to do.

1                   Putting all this together, I said I would  
2 not upset anybody, "but Andy doesn't get anything  
3 from me, that is the end of that."

4                   And Andy got nothing. If you start with  
5 anything after these quarters, after this period,  
6 Andy got nothing from Avellino & Bienes.

7                   Q       What was it you were quoting as wrong?

8                   A       The parameters I set up with anybody is  
9 there is no solicitation, and Richard used those  
10 words with me, being an attorney, he said they  
11 considered that he was soliciting, and my gosh, that  
12 is a bad word to use in my firm. "We don't do it for  
13 A&B. Who gave you the right to do it?" That's what  
14 is wrong. I don't care whether the guy was or  
15 wasn't; it made no difference to me.

16                  Q       So, in essence, you stopped giving him the  
17 one percent?

18                  A       Yes.

19                  Q       What happened to all these other people?

20                  A       Some of them, and I don't know how many, I  
21 haven't looked at the records to find out, some of  
22 them, of course, from looking at this letter--

23                  MR. SORKIN: Don't speculate. You've --  
24 never seen this letter before. Don't assume.

25                  A       I assume they took their money back.



1 MR. SORKIN: Don't assume. If you don't  
2 remember, you don't remember what these people did.

3 A They just asked for their money back,  
4 some.

5 Q What did others do?

6 A They left it.

7 Q With Avellino & Bienes?

8 A Yes.

9 Q So did they get 14.5 percent now?

10 A No, they got 14 percent now because that  
11 was what I was paying in 1990.

12 Q So did you change the quarterly interest  
13 payment letter to say, "You are now getting 14  
14 percent"?

15 A Probably not. I probably just changed the  
16 interest.

17 Q You also mentioned something about IRA's  
18 in Florida. What does that have to do with it?

19 A The Retirement Accounts, Inc. is a bank in  
20 Florida that I have nothing to do with and it's the  
21 way all IRA accounts work. It's a matter of IRS law,  
22 if you or anybody wants to open up an IRA account,  
23 they need a custodian. I am not a custodian, I will  
24 never be a custodian, I don't qualify as a custodian.  
25 So, therefore, what they, the people that want to

1 open up an IRA account do is they go to a Retirement  
2 Accounts, Inc. custodian, which is a Florida bank,  
3 and they send their documentation not to me, but to  
4 the Retirement Accounts, Inc. in Florida, who in turn  
5 is a self-directed account, and they could send the  
6 money to Merrill Lynch, Goldman Sachs, to anybody you  
7 want. And in their case, because they were told that  
8 when they filed or filled out an application of this  
9 Retirement Accounts, Inc., they say, "Where do you  
10 direct your funds?" They said, "Send it to Avellino  
11 & Bienes." Nothing to do with me, but I get the  
12 money from Retirement Accounts, Inc.

13 Q Did you get the money from Retirement  
14 Accounts, Inc.?

15 A No.

16 Q Do you know how these people went from Mr.  
17 Copperman to Retirement Accounts, Inc.?

18 A Yes. Retirement Accounts, Inc. is a bank,  
19 it is a custodian. We have accounts from Retirement  
20 Accounts, Inc. customers. When an Andy Copperman or  
21 a Richard Glantz says to me, "How do we open up an  
22 IRA account," my answer to them is, "Here is a  
23 telephone number of a bank in Florida that does IRA  
24 accounts." They call the bank. I don't care whether  
25 they take it, don't take it.

1 Q So it was at your recommendation?

2 A Yes, but it's not a recommendation; it's  
3 what we do. If you tell me the First Boston Bank  
4 does it too, I would recommend them, too.

5 Q How did you know that Retirement Accounts,  
6 Inc. bank had set up or was a custodian for IRA's?

7 A How do I know? A lender of mine brought  
8 it to my attention when they wanted to open up a  
9 retirement account and they had IRA funds, and I said  
10 for all the years, "I can't do it, I won't do it."  
11 And that particular person once called up and said,  
12 "I found a bank in Florida and it has a self-directed  
13 account." I think it was directed in the 1986 code  
14 that you could have self-regulated IRA accounts, and  
15 this man found that bank and said, "If I send my  
16 money to the bank, could you take my loan at Avellino  
17 & Bienes?"

18 And my answer, because this man was a  
19 lender of mine and an accounting client of mine  
20 before all this, I said, "If it's okay with you and I  
21 have no liabilities to the IRS or to you and it's  
22 self-directed and it's between you and the bank, I  
23 don't care who does it."

24 And that's the way Retirement Accounts  
25 came to my attention. I never called them in all the

1 years they have been around. They never called me.

2 MR. GENTILE: Have you received any fees  
3 from this bank?

4 WITNESS AVELLINO: No.

5 Q Did they receive any fees from you?

6 A No.

7 MR. SORKIN: You just asked him that.

8 MR. GENTILE: Do you recall how many  
9 customers Mr. Copperman referred to you?

10 MR. SORKIN: How many clients of Mr.  
11 Copperman were referred to Avellino & Bienes?

12 MR. GENTILE: Exactly.

13 WITNESS AVELLINO: I don't know the  
14 number. All I could tell you is that there are  
15 currently 100 loan accounts that relate to Copperman.

16 Q Now, this information, this information  
17 from the California Department of Corporations, I  
18 believe you said you learned of it from Mr. Glantz?

19 A Yes.

20 Q In or about late 1990?

21 A Yes, probably around the same time of  
22 this.

23 Q Does that refresh your memory as to  
24 possibly why Avellino & Bienes changed, I think it  
25 was page six and page seven--no, page five and six?

1 A No.

2 Q The difference between "investment" and  
3 "loan"?

4 A No, it had nothing to do with it.

former New York Enforcement Staff Attorney

5 [REDACTED] Mark this as King Arthur  
6 Exhibit 4.

7 (King Arthur Exhibit No. 4 was so  
8 marked for identification.)

9 Q Mr. Avellino, I'm going to hand you what  
10 has been marked as King Arthur Exhibit Number 4.  
11 It's a two-page document. At the top left corner it  
12 says "Andrew Copperman." In the middle of the page  
13 it says "King Arthur account fact sheet."

14 I ask you if you are familiar with or have  
15 you ever seen this document before?

16 A Yes.

17 MR. SORKIN: Or something similar to this.

18 WITNESS AVELLINO: Yes.

19 Q Approximately when was the first time that  
20 you've seen something similar to this?

21 MR. SORKIN: Before you answer--may we go  
22 off the record for a second?

former New York Enforcement Staff Attorney

23 [REDACTED]: We are off the record at five  
24 after five.

25 (Discussion held off the record.)



1 we produced for you another document, mark the second  
2 document and ask him has he ever seen Exhibit 5.

3 former New York Enforcement Staff  
Attorney

Okay.

4 MR. SORKIN: He said he has not seen  
5 Exhibit 4, which we have in the record.

6 Q I show you what has been marked as King  
7 Arthur Exhibit 5. Are you familiar with that  
8 document?

9 A Yes.

10 Q How have you become familiar with this  
11 document?

12 A It was sent to me via Federal Express to  
13 my New York office.

14 Q Who sent it to you?

15 A Richard Glantz.

16 Q When did he send it to you?

17 A I think it was the week of June 11th.

18 MR. SORKIN: What year?

19 THE WITNESS: 1992.

20 Q Is this the first time that you ever saw a  
21 document similar to this or that document itself?

22 A Yes.

23 Q Have you ever become aware that Andrew  
24 Copperman was giving documents similar to Exhibit  
25 Number 5 to lenders?

1 MR. SORKIN: Did you ever become aware  
2 that he was either giving copies of Exhibit 4 or  
3 Exhibit 5 or any other documents similar to these two  
4 exhibits to lenders or potential lenders?

5 (Witness and counsel confer.)

6 A The answer is no.

7 Q You never knew that Andrew Copperman was  
8 giving anything similar to this fact sheet, that's  
9 what we will say, that these are fact sheets,  
10 Exhibits 4 and 5?

11 MR. SORKIN: He calls them fact sheets.

12 Q We will call them fact sheets for now to  
13 make it easier.

14 A The answer is no.

15 Q I want to go through point by point  
16 Exhibit 5 and ask you if the information is correct.

17 A Okay.

18 Q It says in the left-hand margin, "What  
19 does it pay? 14.5 percent (13.5, the interest income  
20 is paid quarterly)."

21 Is that true?

22 A Yes.

23 Q The next sentence, "If you invest, 13.5  
24 percent compounded quarterly is 14.5."

25 MR. SORKIN: "If you reinvest."



1 Q Let's start again.

2 A It says, "If you reinvest, 13.5 percent  
3 compounded quarterly is 14.5 percent compounded  
4 quarterly"; is that correct?

5 A Yes. It's a mathematical computation.

6 Q The next margin says, "Is it safe?" And  
7 then it says, "Yes, 100 percent."

8 Is that correct?

9 MR. SORKIN: That's an opinion as opposed  
10 to a fact. Are you asking him to give his opinion as  
11 to whether the investment is safe, a hundred percent?  
12 Do you want to ask him does he agree with the  
13 opinion?

14 former New York Enforcement Staff  
Attorney : Yes.

15 Q Do you agree that the investment was  
16 100-percent safe?

17 A No.

18 Q Why do you say that?

19 A Because nothing is 100-percent safe.

20 Q And the investment that these people, the  
21 lenders, were giving you money for, quote-unquote,  
22 was not a safe investment?

23 MR. SORKIN: Objection.

24 former New York Enforcement Staff  
Attorney I'll strike it and try to  
25 rephrase it.

1 Q The lenders, when they gave you money, is  
2 it true that it wasn't 100-percent safe?

3 A Is it true it was not?

4 Q Yes.

5 A Yes.

6 MR. SORKIN: Are you asking is it true  
7 that in his opinion the money loaned to Avellino &  
8 Bienes was 100-percent safe? That's what you're  
9 asking?

10 And his answer is, in his opinion nothing  
11 is a hundred percent safe.

12 former New York Enforcement Staff Attorney

Okay. That was his answer.

13 Q The next question is: Why?

14 MR. SORKIN: Let me tell you the problem.  
15 The problem is that "is it safe" talks about trades.  
16 What Mr. Copperman obviously did here was talk about  
17 trades, not loans. He talks about a losing  
18 transaction. A loan is not a losing transaction in  
19 the sense that Mr. Copperman obviously means it in  
20 this context.

21 What Mr. Copperman did here was go from a  
22 loan in the first question to an investment in the  
23 stock market in the second. Where does the word  
24 "trade" fit into the first part of this? There is no  
25 such thing as a safe trade and Mr. Avellino has said

1 there is no such thing as a 100-percent safe trade.  
2 That's what Mr. Copperman obviously did here. He  
3 went from a loan in the first part to a trade in the  
4 stock market in the second. He doesn't talk about  
5 loans in the second.

6 former New York Enforcement Staff  
Attorney : That's your interpretation.  
7 What if this meant is it safe, the loan? The next  
8 sentence says, "At no time is a trade," but the basis  
9 could be and I think reasonable minds can differ on  
10 this, but I think someone could possibly say that was  
11 referring to the loan.

12 MR. SORKIN: I don't want him here  
13 speculating as to what reasonable minds can do. I'm  
14 not going to have Mr. Avellino sit here and speculate  
15 as to what Mr. Copperman meant here. What you want  
16 Mr. Avellino to do, which I am not going to let him  
17 do, is start to give his opinion as to one, what Mr.  
18 Copperman meant, and two--

19 former New York Enforcement Staff Attorney : I don't want that at all.  
20 What I want to do is make sure we cover both ends.  
21 What you've said already is that Mr. Avellino--he  
22 said that this, quote unquote, investment was not  
23 riskless.

24 MR. SORKIN: It's not an investment.

25 former New York Enforcement Staff  
Attorney This loan.

1 MR. SORKIN: Nothing in life is riskless.

2 former New York Enforcement Staff Attorney : I want to know what is not  
3 riskless here.

4 MR. SORKIN: If you want to ask him, was  
5 the loan 100-percent safe, ask him that.

6 former New York Enforcement Staff Attorney  
BY :

7 Q Was the loan 100-percent safe?

8 A Subject to what I said about an hour or  
9 two ago, the answer is no.

10 MR. SORKIN: Now, if you want to ask him,  
11 "At no time is a trade made that puts your money at  
12 risk," that's an opinion. All trading carries risk  
13 with it. He jumps from "loan" to "trade" and that's  
14 the problem I have with trying to interpret what Mr.  
15 Copperman is talking about, because I don't know if  
16 Mr. Copperman knew what he was talking about in this  
17 document.

18 former New York Enforcement Staff Attorney : I want to clarify that,  
19 whether it be a loan or a trade.

20 MR. SORKIN: But he didn't write this.  
21 Mr. Avellino didn't write this.

22 former New York Enforcement Staff Attorney : My question to Mr. Avellino  
23 was, "Is this true?"

24 MR. SORKIN: Is what true?

25 former New York Enforcement Staff Attorney : Is this 100-percent safe?

1 MR. SORKIN: He's already testified to the  
2 loan.

3 former New York Enforcement Staff  
Attorney That's what I wanted to get  
4 across.

5 BY former New York  
Enforcement Staff Attorney :

6 Q The last sentence after that says, "In  
7 over 20 years there has never been a losing  
8 transaction." Is that correct?

9 A No.

10 Q So at Avellino & Bienes, there have been  
11 losing transactions?

12 A Yes.

13 Q The next column says, "How long do I need  
14 to invest?"

15 MR. SORKIN: In your opinion, Mr.  
16 Copperman is talking about the stock market. Do you  
17 want to ask him whether Avellino & Bienes have put  
18 their own money at risk? Of course they have. Why  
19 don't you ask him.

20 Q Is that true? Has Avellino & Bienes  
21 invested money in transactions that could be deemed  
22 risky?

23 A Yes.

24 MR. SORKIN: I'm not going to belabor  
25 this. All investments in the market are at risk, but

1 you keep saying "risky". There is a degree of risk.  
2 "At risk" is objectionable.

3 Do you want to change the question?

4 former New York Enforcement Staff  
Attorney

: No.

5 Q The next margin says, "How long do I need  
6 to invest?" And it states, "In general, this is an  
7 investment vehicle for one year or longer."

8 Is that true?

9 A Not true.

10 Q The next sentence: "However, there is  
11 no"--

12 MR. SORKIN: I hate to do this over and  
13 over again, but are we talking about an investment or  
14 a loan? Mr. Copperman mixes apples and oranges. If  
15 Mr. Copperman meant to say this is a loan for one  
16 year or longer, the answer is no, it's not. They  
17 could get their money back in two weeks from the time  
18 they make their first loan at Avellino & Bienes.

19 Q Did you understand "investment vehicle" to  
20 mean this lender-borrower relationship? Is that what  
21 your understanding was?

22 A I don't know what it means.

23 MR. SORKIN: That's the whole point. He  
24 doesn't know what was running through Mr. Copperman's  
25 mind when he created this document.

1           Q       The next sentence, "However, there is no  
2 risk of capital and if funds are needed, you may get  
3 a check in 20 days."

4                   Is that correct?

5           A       First of all, for the record, in reading  
6 what you are reading, it sounds like somebody is--  
7 again, in the first sentence we talk about this  
8 investment vehicle is for one year or longer, and in  
9 that same answer he's saying you could get the money  
10 back in 20 days. Is the man a lunatic? I don't know  
11 what it means.

12                   MR. SORKIN: That's the problem with you  
13 asking him what Mr. Copperman meant. How does he  
14 know what Mr. Copperman meant? Internally, Mr.  
15 Copperman makes no sense on this document and Mr.  
16 Avellino just said it better than any one of us. One  
17 sentence says you've got to invest for a year or  
18 longer and the next sentence says you could get it  
19 back in 20 days.

20                   former New York Enforcement Staff  
Attorney : I'm trying to determine if  
21 these statements here are true. To a reasonable  
22 person reading this, I'm trying to understand it.

23                   MR. SORKIN: Why don't you ask the people  
24 who got this document and ask them what did they  
25 understand it to mean. Don't ask him. And better

1 yet, as a suggestion, ask Mr. Copperman what the hell  
2 he meant when he wrote this. But to have us sit here  
3 and try to figure out what he meant is not terribly  
4 productive.

5 By way of example, the next sentence, "Is  
6 it liquid?" "Yes. 20 days is all that is required."  
7 A reasonable person might say, if all I have to do is  
8 wait 20 days, then where does this business about an  
9 investment vehicle for one year or longer come in? I  
10 don't understand that.

11 I would call Mr. Copperman and say, "Mr.  
12 Copperman, what do you mean by this?"

13 Q I guess what I'm trying to get at here--

14 former New York Enforcement Staff  
Attorney And maybe you could help me,  
15 Mr. Sorkin, in trying to obtain this information.

16 Q --is that Mr. Copperman sent this to  
17 individuals, I believe you testified Mr. Glantz told  
18 you that, and I'm trying to determine if we  
19 characterize the loan arrangement and say that that's  
20 what he's talking about here--

21 MR. SORKIN: Let me tell you, here's the  
22 problem I have.

former New York Enforcement Staff  
Attorney

: Let's go off the record...

24 MR. SORKIN: Stay on the record.

25 Mr. Avellino and Mr. Bienes have told you



1 what they do for a living. They told you how it  
2 works. They told you how long it's been in  
3 operation. You now can read this thing and make a  
4 determination in your own mind as to whether it  
5 accurately reflects the business of Avellino &  
6 Bienes.

7 If you ask him the next question, "Are  
8 there people who invest," let's take the next one,  
9 "What is the minimal account size?" Ask him, "Mr.  
10 Avellino, are there people that invest less than  
11 \$10,000?" He does not know. "Are there people who  
12 loan you less than \$10,000," and what's the answer?

13 WITNESS AVELLINO: Yes.

14 BY former New York Enforcement  
Staff Attorney :

15 Q Mr. Avellino, is there a minimum account  
16 size?

17 MR. SORKIN: Stop. It's not an account.

18 Q Is there a minimum--

19 MR. SORKIN: Is there a minimum amount of  
20 money that you will accept from a lender?

21 A There is no established amount.

22 Q Fine.

23 Mr. Avellino, did you, in your meeting  
24 with Mr. Copperman, tell him that Avellino & Bienes  
25 makes simultaneous purchases of convertible

1 securities and short sells the common stock? Did you  
2 ever tell him that in substance or in general?

3 A I told him what I said before, we make  
4 convertible securities transactions whereby we  
5 purchase the convertible security, could be  
6 convertible preferred or debenture, and we sell short  
7 common stock of the same company.

8 Q Did you ever tell Mr. Copperman that it  
9 was riskless?

10 A No.

11 Q Did you ever tell Mr. Copperman that the  
12 brokerage firm that you use makes the market in big  
13 board 250 highest volume trading stocks?

14 A No.

15 Q Did you ever tell Mr. Copperman that  
16 Avellino & Bienes is classified as an institutional  
17 client?

18 A I may have.

19 MR. SORKIN: Can I go back for a second.  
20 You asked him whether he recalls telling Mr.  
21 Copperman about the purchases of convertible  
22 securities and short sales against the common stock.

23 former New York Enforcement Staff  
Attorney Yes.

24 MR. SORKIN: The thrust of Mr. Copperman's  
25 product, for want of a better term, indicates that

1 that was the only form of investment done by the  
2 brokerage firm, and I think Mr. Avellino has told you  
3 that other securities are invested by Madoff and at  
4 Mr. Madoff's discretion. The tone of this letter  
5 seems to indicate that is the only form.

6 former New York Enforcement Staff  
Attorney

The second sentence says,  
7 "Other forms of riskless trading are also used."

8 King Arthur Exhibit 6.

9 (King Arthur Exhibit No. 6 was so  
10 marked for identification.)

11 former New York Enforcement Staff  
Attorney

: Back on the record.

12 Q Mr. Avellino, I'm going to show you what  
13 has been marked as King Arthur Exhibit 6. It's a  
14 multi-page document, four pages. The first page says  
15 "King Arthur Account. The following is my account  
16 information, Mary Susan Espy."

17 Are you familiar with the first page of  
18 this document?

19 A No.

20 Q Are you familiar with the second page?

21 A No.

22 Q Are you familiar with the third page?

23 A No.

24 Q And what about the fourth page?

25 A No.

1           Q       Turning your attention to the last page,  
2           the fourth page, on the bottom it says, "Statement  
3           date, 6/30/91." Then it says "broker" underneath  
4           that and it says "Avellino & Bienes."

5           A       Yes.

6           Q       Do you know why this document says  
7           "Avellino & Bienes" under "broker"?

8           A       No.

9           Q       Has the firm Avellino & Bienes ever held  
10          itself out to be a broker?

11          A       No.

12          Q       And your--and I say "your" in terms of  
13          Avellino & Bienes--relationship with the Retirement  
14          Accounts, Inc. is what? What is your relationship  
15          with Retirement Accounts, Inc.?

16          A       Retirement Accounts, Inc. and Avellino &  
17          Bienes have a relationship whereby Retirement  
18          Accounts, Inc., being a subsidiary of a bank, is the  
19          custodian for the particular individual that opens up  
20          an account with Retirement Accounts, Inc., who, in  
21          turn, sends the money to Avellino & Bienes for Mary  
22          Susan Espy in this case, and all the internal  
23          documentation I am looking at right now is  
24          documentation that the bank probably had as pro  
25          forma.

1                   If it said something else other than  
2 "broker" in there, it could be anything you want to  
3 call it. They probably have what they call a broker  
4 because they deal with Merrill Lynch.

5                   MR. SORKIN: Don't speculate. You've  
6 never seen the document before.

7                   WITNESS AVELLINO: The only relationship  
8 there between Avellino & Bienes and Retirement  
9 Accounts, Inc. is that they are the conduit or  
10 custodian for individual retirement accounts who send  
11 the money to Avellino & Bienes.

12                   [REDACTED] former New York Enforcement Staff Attorney  
13                   [REDACTED] It's 5:40. Why don't we take  
14 a brief break.

14                   (Recess taken.)

15                   [REDACTED] former New York Enforcement Staff  
16                   [REDACTED] Attorney : Back on the record. It's  
17 5:45.

18 BY [REDACTED] former New York  
19                   [REDACTED] Enforcement Staff Attorney  
20                   [REDACTED] New York :

21                   Q       Mr. Avellino, are there any other  
22 individuals who have referred lenders to Avellino &  
23 Bienes, that you are aware of?

24                   MR. SORKIN: Other than the people he  
25 spoke about earlier?

26                   [REDACTED] former New York Enforcement Staff Attorney  
27                   [REDACTED] : Other than Mr. Copperman.

28                   MR. SORKIN: And the word of mouth from  
29 friends, cousins, and what he testified to earlier?

former New York Enforcement Staff  
Attorney

1 Right.

2 A No.

3 Q Are you aware of any other people who hold  
4 themselves out to be investment advisors that have  
5 contacted you to refer clients to you?

6 MR. SORKIN: You mean lenders?

former New York Enforcement Staff  
Attorney

7 : Their clients.

8 MR. SORKIN: Referred their clients to him  
9 so they can loan money out?

former New York Enforcement Staff Attorney

10 Correct.

11 A No.

12 Q Are there any other institutions that you  
13 are aware of that have opened up individual  
14 retirement accounts with lenders and that money has  
15 been lent to Avellino & Bienes, besides Retirement  
16 Accounts, Inc. in Florida?

17 A No.

18 Q Are you familiar with a Melissa Shaw?

19 A No.

former New York Enforcement Staff  
Attorney

20 : While he's copying that--

21 MR. GENTILE: Hypothetically, you referred  
22 to your friend, Mr. Smith, who has lent money to you.  
23 If he recommends the offer or recommends this loan  
24 program to a friend of his, Mr. Jones, and Mr. Jones  
25 lends money to you and you invest it, do any fees go

1 back to Mr. Smith?

2 WITNESS AVELLINO: No.

3 Q Is Mr. Copperman the only person that fees  
4 were given to as a result of recommending clients to  
5 lend money?

6 MR. SORKIN: Fees paid by whom?

7 former New York Enforcement Staff  
Attorney

: Avellino & Bienes.

8 MR. SORKIN: Avellino & Bienes didn't pay  
9 the fee. They paid interest to the client or  
10 customer of Mr. Copperman and then Mr. Copperman,  
11 through some arrangement which was brought to Mr.  
12 Avellino's attention by Mr. Glantz, got paid one  
13 percent, but the client and Copperman agreed that  
14 whatever the client owed to Mr. Copperman would be  
15 paid by Avellino & Bienes.

16 former New York Enforcement Staff  
Attorney

: I thought the testimony was  
17 that Avellino & Bienes paid Mr. Copperman a,  
18 quote-unquote, percent based on the people that he  
19 has referred to Avellino & Bienes.

20 Q Am I correct?

21 A He got one-percent interest.

22 Q Whether that's an interest or fee--let's  
23 use "interest." Is there anyone else that you have  
24 given an interest to for referring people?

25 MR. SORKIN: Can I just go back for one

1 second? I want to make sure the record is clear on  
2 this.

3 It is my understanding that the clients of  
4 Mr. Copperman, before any fees or interest were paid,  
5 were to receive 14.5 percent, for example. Then, at  
6 some point, Mr. Copperman wanted one percent, and it  
7 is my understanding and you are free to ask Mr.  
8 Avellino this, that that one percent was not paid  
9 above the 14.5 percent, but through some arrangement  
10 between the client of Mr. Copperman and Mr.  
11 Copperman, that one percent was paid to Mr. Copperman  
12 and the client received 13.5 percent.

13 former New York Enforcement Staff  
Attorney

That's my understanding.

14 Q Is that correct, Mr. Avellino?

15 A Yes.

16 Q And that one percent came directly from  
17 Avellino & Bienes, correct?

18 A Yes.

19 Q And my question was: Was there any other  
20 type of similar arrangement set up with anyone else?

21 A I can't think of any other one like this  
22 one, no.

23 Q Anything similar?

24 A No. The only other things we had, maybe,  
25 was there was a group, let's say, of 10, 12 people,



1 it's just a group, they call themselves ABC Company,  
2 for example, and they say, "Give me ten percent and  
3 give five percent to my company," if that's what you  
4 mean. In other words, by paying 15 percent, they get  
5 ten percent and their company gets five percent, but  
6 that's an accounting rather than this type of a  
7 setup.

8 Q Now, let me understand you correctly,  
9 before you said there was no minimum amount that a  
10 lender can lend to Avellino & Bienes; is that  
11 correct?

12 A I said that, yes.

13 Q Is that correct?

14 A Yes.

15 former New York Enforcement Staff  
Attorney : Can you mark this as King  
16 Arthur Exhibit 7.

17 (King Arthur Exhibit No. 7 was so  
18 marked for identification.)

19 Q Mr. Avellino, I hand you what has been  
20 marked as King Arthur 7. Take a brief moment and see  
21 if you recognize or are familiar with that document.

22 (Pause.)

23 Q Now, do you recognize this document? Are  
24 you familiar with it?

25 A No.

1 Q Does it appear to be a letter from Miss  
2 Lola Kurland?

3 A Yes.

4 Q And she's employed by you?

5 A Yes.

6 Q The first page, the last paragraph says,  
7 "minimum Deposit, \$5,000"?

8 A Yes.

9 Q Do you know why Ms. Kurland would say  
10 that?

11 A I don't know why, but she said it and I  
12 could understand maybe why, if I could answer that.

13 MR. SORKIN: Sure.

14 A Ms. Kurland deals with all these people on  
15 a day-to-day basis and I think--by the way, as we get  
16 to my interpretation as to why I think there's 5,000  
17 in here, I think the letter per se states exactly, if  
18 not word by word, what Avellino & Bienes is all  
19 about.

20 Q Are you referring to the second paragraph?

21 A I'm referring to the entire letter in  
22 total. It talks about friends and relatives, et  
23 cetera, et cetera, and recommendations to friends,  
24 relatives, friends, former clients, which is what I  
25 testified to.

1           The only discrepancy in this letter to the  
2 testimony I've given so far is that I said there was  
3 no minimum deposit, and all I could say is you could  
4 take any letter out of context and when you come to  
5 my office to investigate, you will find there are  
6 accounts for \$100, \$125, \$500 and millions of  
7 dollars.

8           All you could do here is ask Lola why she  
9 is saying to Melissa Shaw, "You've got to send us  
10 5,000 bucks." And I will venture a guess here and  
11 say that, for example, Virginia Atherton was a pain  
12 in the side and, "If you are going to do anything,  
13 you better do it with \$5,000, because that's what I  
14 want"; this is Lola talking. But the record is the  
15 names and lists of accounts that I had, which will  
16 prove this is not policy, but it could be policy if  
17 you are literally pissed off at somebody. I might  
18 even say that if I need a million from someone. This  
19 is not a program for the public. This is for people  
20 we talk to.

21           Q       Has Avellino & Bienes ever been registered  
22 with the Commission as a broker-dealer?

23           A       No.

24           Q       Has Avellino & Bienes ever been registered  
25 with the Commission as an investment company?

1 A No.

2 Q Are you registered with the Commission as  
3 an investment advisor?

4 A No.

5 former New York Enforcement Staff  
Attorney Mr. Bienes are you registered  
6 as an investment advisor with the Commission?

7 WITNESS BIENES: No.

8 Q Is anyone employed at Avellino & Bienes  
9 registered as an investment advisor?

10 A No.

11 Q We are about to conclude. Before we  
12 conclude, I just want to get these documents that we  
13 would like to look at. Of course the documents we  
14 have talked about in the request, those documents.  
15 In addition, we just put together three other  
16 requests. One is--and maybe we can explore this a  
17 little right now--you said you do a monthly P&L?

18 A I do a monthly examination. I don't do a  
19 monthly P&L at all. When we get into the documents,  
20 which is the cash receipts disbursements general  
21 ledger, that information will make itself known.

22 Q Do you do a P&L statement at any time for  
23 Avellino & Bienes?

24 A No, a trading journal. It's a very simple  
25 one and it's a very easy one to do. If you look at

1 my cash receipts and disbursements, you will see the  
2 cash, you will see the trading journal that I have  
3 manually done from monthly brokerage statements, and  
4 from that and the perusal of it, you could look at  
5 and see, you know, the P&L, if you will.

6 Let's not talk of P&L. Remember, I said  
7 economic gain. You can call it P&L, but I don't.  
8 Economic gain means that the fair market value at the  
9 end of any given period is in excess, way in excess,  
10 of the loans payable. That's the exam I do.

11 \*\* Q The other thing we would like to request  
12 are the monthly account statements. You just said  
13 you do a trading journal?

14 A Yes, that I have.

15 \*\* Q And the last thing is fees paid to  
16 Copperman.

17 A That was probably 1989-90. I'll have to  
18 have them dig out the checks, if that's what you  
19 mean. I have to go back. It might be hard only  
20 because I don't have cash receipts and disbursements.  
21 They go back to '88 and '90, but when I get them, by  
22 the way, you will get it. It may not be this date.

23 former New York Enforcement Staff Attorney

Why don't we set a date.

24 MR. SORKIN: Friday of this week,  
25 Thursday?

1                   WITNESS BIENES: Thursday is better in  
2 case you have to come back Friday. We live in  
3 Florida and it's a problem.

4                   former New York Enforcement Staff  
Attorney           Let's tentatively schedule  
5 Thursday. I have something planned Thursday. Maybe  
6 I could move it around.

7                   WITNESS BIENES: I appreciate if you  
8 could. That would leave you Friday to come back and  
9 complete it.

10                  former New York Enforcement Staff  
Attorney           Let's make it Thursday in the  
11 afternoon.

12                  MR. SORKIN: The earlier the better.  
13 There are voluminous records.

14                  former New York Enforcement Staff Attorney       Thursday at 10 o'clock. We  
15 will be there. And your address?

16                  WITNESS AVELLINO: 70 East 55th Street,  
17 eighth floor, and you have our telephone number.

18                  MR. SORKIN: We would appreciate that when  
19 you come into the lobby you not announce yourself as  
20 the Securities and Exchange Commission. You will  
21 have to sign in. You could say you are visiting  
22 Avellino & Bienes and they will call upstairs.

23                  MR. GENTILE: What floor is that?

24                  MS. HANSWIRTH: Eighth.

25                  MR. SORKIN: You don't have to badge them.

1 Just announce yourself.

2 former New York Enforcement Staff Attorney : Thursday, July 9th, we will  
3 be at your office.

4 MR. GENTILE: And you have statements from  
5 Madoff to support--

6 WITNESS AVELLINO: I have all the  
7 statements that you will need.

8 former New York Enforcement Staff Attorney : Mr. Avellino and Mr. Bienes,  
9 we have no further questions at this time. We may,  
10 however, call you again to testify in this inquiry.  
11 Should this be necessary, we will contact Mr. Sorkin.

12 Mr. Avellino or Mr. Bienes, do you wish to  
13 clarify anything or to add anything to the statements  
14 that you have made here today?

15 MR. SORKIN: What we have done is I  
16 requested a copy of the transcript. When we see the  
17 transcript, we will read it and if there are any  
18 additions or amendments to be made, we will notify  
19 the staff of that. At this point we have nothing to  
20 say.

21 former New York Enforcement Staff Attorney I'm sure you are aware of the  
22 rules and procedures of how to amend the transcript.

23 MR. SORKIN: We could do it that way or  
24 say, "Why don't you invite us back. There are some  
25 things we need to talk about." And I'm not talking

1 in terms of typographical errors but matters of  
2 substance. But let's read it first and we will see  
3 where we are.

4 former New York Enforcement Staff Attorney

This testimony is finished.

5 We are off the record at 6 o'clock on July 7th.

6 (Time noted: 6:00 p.m.)  
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C E R T I F I C A T I O N

I, DANA CHIPKIN, a Registered Professional Reporter and notary public, within and for the State of New York, do hereby certify:

That I reported the investigatory proceedings in the matter of King Arthr, File No. MNY-1490 on July 7 1992, at the offices of the Securities and Exchange Commission, 75 Park Place, New York, New York, and that this is an accurate copy of what transpired at that time.

Dana Chipkin *et al.*

DANA CHIPKIN, RPR