TRIAL AND APPELLATE ADVOCACY
Adjunct Professor John S. Siffert
and Honorable Sonia Sotomayor

COURSE MATERIALS VOLUME 2

UNITED STATES v. CONAN SWEET and MERLIN LEMON © 2006

For:

A-1 – Joseph Alonzo
A-2 – Christopher Coulson
B-1 – Micah Espinoza
B-2 – Genesis Fisher
This coursepack contains copyrighted material. No part of this coursepack may be reproduced or photocopied, in any form or by any means, without obtaining the prior written permission of each of the perspective owners of the copyright to the material contained herein.
<table>
<thead>
<tr>
<th>3rd Session 1/30/06</th>
<th>4th Session 2/6/06</th>
<th>5th Session 2/13/06</th>
<th>6th Session 2/27/06</th>
<th>7th Session 3/6/06</th>
<th>8th Session 3/20/06</th>
<th>9th Session 3/27/06</th>
<th>10th Session 4/3/06</th>
<th>11th Session 4/10/06 Judge Sotomayor Lecture</th>
<th>12th Session 4/17/06 Judge Sotomayor Lecture</th>
<th>13th Session 4/24/06 Judge Sotomayor Lecture</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Serve Government Brief on sev.</td>
<td>Argue sev. in Lemon</td>
<td></td>
</tr>
<tr>
<td><strong>A-2</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Serve Appellant Brief for Lemon on wrongful denial of sev.</td>
<td>Argue sev. in Lemon</td>
<td></td>
</tr>
<tr>
<td>Christopher Coulson</td>
<td>Dubois atty, Dubois</td>
<td>Pros. Opening in U.S. v. Sweet and Lemon</td>
<td>Drills</td>
<td>Cross DeLong for pros.</td>
<td>Play Sweet, Direct Lemon</td>
<td>Makeup, Lecture, Demonstration</td>
<td>Sum. for Sweet</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Serve Government Brief on sev.</td>
<td>Argue sev. in Lemon</td>
<td></td>
</tr>
<tr>
<td><strong>B-1</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Serve Appellant Brief for Lemon on wrongful denial of sev.</td>
<td>Argue sev. in Lemon</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Serve Appellant Brief for Lemon on wrongful denial of sev.</td>
<td>Argue sev. in Lemon</td>
<td></td>
</tr>
<tr>
<td><strong>B-2</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Charge jury in Sweet and Lemon</td>
<td>Serve Government Brief on mailings</td>
<td>Argue mailings Sweet and Lemon</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Serve Government Brief on mailings</td>
<td>Argue mailings Sweet and Lemon</td>
<td></td>
</tr>
<tr>
<td><strong>C-1</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Serve brief on appeal in Bandele on Miranda</td>
<td>Deliver opinion on Bandele</td>
<td>Argue for Bandele on Brady appeal</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Serve brief on appeal in Bandele on Miranda</td>
<td>Deliver opinion on Bandele</td>
<td>Argue for Bandele on Brady appeal</td>
</tr>
<tr>
<td><strong>C-2</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Serve brief on appeal in Bandele on Brady material</td>
<td>Argue Miranda Appeal for Defense in Bandele</td>
<td></td>
</tr>
<tr>
<td>Andre Segura</td>
<td>Sadiki/ Sadiki's lawyer</td>
<td>Defender Opening in U.S. v. Bandele</td>
<td>Drills</td>
<td>Cross Sadiki</td>
<td>Direct Bandele, play Sadiki</td>
<td>Makeup, Lecture, Demonstration</td>
<td>Prosecution Sum. in Bandele</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Serve brief on appeal in Bandele on Brady material</td>
<td>Argue Miranda Appeal for Defense in Bandele</td>
<td></td>
</tr>
<tr>
<td><strong>D-1</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Serve Opposing Brief in Bandele on Brady</td>
<td>Argue Bandele Appeal for Gov't Bandele on Brady</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Serve Opposing Brief in Bandele on Brady</td>
<td>Argue Bandele Appeal for Gov't Bandele on Brady</td>
<td></td>
</tr>
<tr>
<td><strong>D-2</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Serve Opposing Brief in Bandele on Miranda</td>
<td>Argue appeal for Gov't in Bandele on Miranda</td>
<td>Deliver opinion in Bandele</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Serve Opposing Brief in Bandele on Miranda</td>
<td>Argue appeal for Gov't in Bandele on Miranda</td>
<td>Deliver opinion in Bandele</td>
</tr>
</tbody>
</table>

No Classes on 1/16/06 (Martin Luther King Day), 2/20/06 (Presidents' Day), 3/13/06 (Spring Recess)
SUMMARY

Trial and Appellate Advocacy is designed to take eight third year law school students through the critical stages of a case from inception through appeal. Special emphasis will be placed on ethical considerations, preserving issues for appeal as well as trial and appellate strategy. The eight students will be teamed in four groups of two, with each team rotating as prosecutor/defense counsel, appellant/appellee and trial/appellate judge at the various stages of the proceeding. There are two fact patterns that will be followed from trial through appeal. One criminal case involves the use of a forged document and alleged perjury in a securities arbitration. The other criminal case involves the use of false documents to obtain federally subsidized housing.

The reading materials will consist of These Course Materials prepared by the Professors, as well as Thomas A. Mauet's Fundamentals of Trial Techniques (Little, Brown and Company) and Michael E. Tigar's Federal Appeals (Shepard's/McGraw-Hill, Inc.).

The thirteen class sessions will be organized as follows:

**First Session:** January 9

**Assigned Reading Prior to First Session**

Read pages I-1 to I-3 of Course Materials:

**Classroom Topics**

1. Overview of the course and its objectives.

2. Using the generic criminal fact pattern in Exercise for First Session (pp. I-1 to I-3), introduce themes of taking no steps as a prosecutor without first asking and answering the questions:

   What are you trying to accomplish?
   Is what you are doing/saying accomplishing your purpose?
   What are the risks of pursuing your purpose?
   What are the alternatives available for accomplishing your stated purpose?

4. Develop a Point of View: Repetitions/Sanford Meisner Tape

5. The Imprecision of Language: Peanut Butter and Jelly Sandwich/Imagine A Bear

**Second Session:** January 23

**Assigned Reading:** Read pages II-1 to II-4 and II-5 through II-34; and for A-1, A-2, B-1 and B-2 read: IV-1 to IV-135 (United States v. Sweet) of Course Materials; for C-1, C-2, D-1 and D-2 read U.S. v. Bandele; Mauet: Chapters I & II

- Exercise for Second Session: pp. II-1 to II-4

**Classroom Assignments**

Using the materials contained in the Exercise to Second Session (pp. II-1 to II-4), explore the same themes developed in first session from defense point of view.

Discuss ethical considerations in criminal intakes:
- "Anatomy of a Murder" Video v. Book (pp. II-5 to II-13)
- Video on Witness Prep Issues

**Strategic Issues for United States v. Sweet and Lemon:**

1. Who to indict; what to charge?
   a. Why initially indict Sweet alone?
   b. Why supersede to add Lemon?
   c. Why have two counts?
   d. Generic considerations; what to say in indictment?

2. Why make a motion attacking indictment?
   a. Striking prejudicial matter
   b. Severing - standards
   c. Evidentiary concerns
   d. Tactical issues
   e. Risks of making motion
   f. Preservation of Appellate Issues
Strategic Issues for civil cases:

1. Who to sue/what allegations to make?
   A. Suing the company alone
   B. Suing individual employees
      - pro's
      - con's
      (i) issues of liability, damages, collectibility, amenability
   C. Why charge: Contract
      False Imprisonment
      Battery
      Tortious Interference
   D. Pro's and Con's of Motion Practice:
      (i) to dismiss
      (ii) for summary judgment considerations: cost, timing, appellate concerns, strategy

OTHER TOPICS

At the Second Session, we also will discuss such pretrial issues as:

1. drafting requests to charge
2. interviewing/deposing adversarial witnesses
3. importance of developing a theme

We also will discuss such trial issues as:

1. Starting with Summation
2. Order of Proof
3. Whether to Call a Witness
4. Goals of Cross-examination
5. Calling a Defendant/Client

Third Session: January 30

Reading Assignment:

All students read pages III-1 to III-74 (Niesig v. Team I and Camden v. State of Maryland), and students A-1, A-2, B-1 and B-2 read United States v. Sweet. Students C-1, C-2, D-1 and D-2 read United States v. Bandele in Course Materials:
CLASSROOM TOPICS:

Witness Preparation

A. Non-Client Witness Interviews
B. Client Intake Issues Continued
C. Preparing Client for Deposition
D. Preparing Client for Grand Jury
E. Preparing Client for Trial Testimony
F. Prosecutor Preparing Witness for Grand Jury
G. Prosecutor Preparing Witness for Trial

CLASSROOM ASSIGNMENTS:

Students will introduce at least two Ethical Issues raised by the Disciplinary Rules, Ethical Considerations and ABA Rules and the cases cited above (pp. III-1 to III-75) in connection with the following role-playing exercises, and students will lead discussion about those issues.

A-1 will play the role of Charlotte Dubois. A-2 will play the role of her lawyer and prepare her to testify at the NASD. Then A-2 will play the role of Dubois and A-1 will play the role of the prosecutor and will prepare her to testify in the criminal case.

B-1 will play the role of Conan Sweet. B-2 will play the role of Trustum's lawyer preparing him to testify at the NASD arbitration. Then B-1 will prepare B-2 to testify as Sweet on his own behalf at the criminal trial.

D-1 will play the role of Bandele. D-2 will interview D-1 as Bandele for purposes of being retained as counsel. Then D-1 will play the role of defense counsel and will prepare D-2 as Bandele to testify at trial.

C-1 will play the role of Sadiki. C-2 will play the role of Sadiki's lawyer and meet with C-1 as Sadiki about whether Sadiki should plead guilty and cooperate. Then C-1 act as prosecutor and prepare C-2 for trial testimony as Sadiki.

EXAMPLE OF OPENING
Fourth Session: February 6

Assignments

1. Read:

Mauet Chapters III & IX (opening statements, trial preparation and strategy)

Course Materials, United States v. Sweet; and United States v. Bandele

Written Work:

2. Prepare: Trial Book for United States v. Sweet
   Trial Book for United States v. Bandele

Classroom Work:

Classroom Exercises:

A-1 and A-2 will give prosecution opening in United States v. Sweet and Lemon.

B-1 will give defense opening for Sweet in United States v. Sweet and Lemon.

B-2 will give defense opening for Lemon in United States v. Sweet and Lemon.

C-1 and D-2 will give prosecution opening in United States v. Bandele.

D-1 and C-2 will give opening for defendant in United States v. Bandele.

Fifth Session: February 13

Assignments

Read: Mauet: Chapters IV, V and VI (Direct and Cross)

United States v. Lemon and Sweet Drills:

   For Direct:

1. Refresh Recollection
For Cross:

2. Prior Inconsistent Statement
   DuBois
   Sweet
   Marlow

Exhibits:

3. Award
5. Affidavit of DuBois on p. IV-58
6. Stipulation on pp. IV-60 to IV-63
7. Insurance Policy on IV-71
8. Cut and Paste examples on pp. IV-72 and IV-73
9. Diagram of Lemon's office and position of DeLong's and Burton's Desks

United States v. Bandele Drills:

1. Refresh Recollection
2. Prior Inconsistent Statement
   Sadiki
   Vigilente

Discuss Theories and Practice of Direct and Cross Examinations.

Show Video of Direct/Cross.

**Sixth Session:** February 27

Classroom Assignment:

D-1 will direct Vigilente.
D-2 will cross Vigilente.

C-1 will play Vigilente.

B-1 will direct Abner Pols for prosecution.

B-2 will cross Abner Pols for Lemon.

A-1 will play Pols.
A-1 will direct Sheila DeLong for Lemon.
A-2 will cross Sheila DeLong for prosecution.

    B-1 will play DeLong.

C-1 will direct Sadiki.
C-2 will cross Sadiki.
D-1 will play Sadiki.

**Seventh Session:** March 6

**Classroom Assignment**

A-1 will cross Lemon.
Al-2 will direct Lemon. Play Sweet.
B-2 will direct Conan Sweet for defense.
    Play Lemon.
B-1 will cross Conan Sweet for prosecution.
C-2 will direct Bandele.
C-1 will cross Bandele.

    D-2 will play Bandele.

D-2 will direct Sadiki.
D-1 will cross Sadiki.

    C-2 will play Sadiki.

**Eighth Session:** March 20

**Classroom Work:**

Complete exercises from prior weeks.

Lecture/Discussion: Objections; Record Preservation; Issue
Camouflaging/Flagging; Record Supplementation; Reasons for Appeal; Grounds for Appeal; Strategy of Cross-Appeal; Logistics of Appeals

Discuss Theories and Practice of Summations. Demonstration.

**Ninth Session:** March 27

A-2 will sum up for *Sweet* in *United States v. Sweet* and *Lemon*.

A-1 will sum up for *Lemon*.

B-1 will sum up for prosecution.

B-2 will give rebuttal summation for prosecution.

D-1 and C-2 will sum up for prosecution in *United States v. Bandele*.

C-1 and D-2 will sum up for defense in *United States v. Bandele*.

**Tenth Session:** April 3

Assignment

Read: *Mauet*: Chapter VIII (Objections)

*Federal Appeals*, pp. 197-246; 247-299

A-1, A-2, B-1 and B-2 read: Abstracts from Motions to Dismiss, pp. X-1 to X-19; X-29 to X-34

**Written Work:**

Assume a conviction in *United States v. Sweet* and *Lemon*:

A-1 will serve appellants' Brief on Appeal in *United States v. Lemon* and *Sweet* on grounds that the mailings were not in furtherance of the fraud and were not foreseeable (See pp. X-1 to X-19).

B-1 will serve Brief on Appeal on behalf of Lemon on the grounds that motion for severance of Sweet should have been granted. (See pp. X-29 to X-34)

Assuming a conviction in *United States v. Bandele*, C-1 will serve brief on appeal on grounds that the district court improperly failed to order production of the *Brady* materials that were discovered after the conviction. C-2 will serve brief on
appeal on Miranda violation.

Classroom Work:

D-1 will give charge to jury in United States v. Bandele.

B-2 will give charge to jury in United States v. Sweet and Lemon.

Lecture/Discussion on how to appeal, standing, final judgment rule, interlocutory orders, appeals by United States, sentence appeals, habeas petitions, certifying questions to state court, en banc in 2d Circuit.

Eleventh Session: April 10

Assignments

Read: Federal Appeals, pp. 315-360 (Briefs)

361-414 (Oral Argument)

Written Work:

B-2 serve Opposing Brief on Appeal on "mailing" issues in United States v. Lemon and Sweet; A-2 will serve government brief on severance.

D-1 will serve Opposing Brief on Brady and D-2 will serve opposing brief on Miranda in United States v. Bandele.

Classroom Work:

1. Make up on Trial Exercises
2. Lecture/Discussion continued on how to appeal, standing, final judgment rule, interlocutory orders, appeals by prosecution, sentence appeals, habeas petitions, certifying questions to state court, en banc in 2d Circuit.

Twelfth Session: April 17

Classroom Work:


D-2 and C-2 argue Miranda Appeal in United States v. Bandele.

Remainder preside as judges.
A-1 delivers opinion on Appeal re: severance.

C-1 delivers opinion in United States v. Bandele.

Lecture on how panels decide cases and continue lecture on appeals.

**Thirteenth Session:** April 24

**Classroom Work:**


C-1/D-1 argue Brady Appeal in United States v. Bandele.

B-1 assigned to delivers opinion on mailings in United States v. Sweet.

D-2 assigned to write opinion in Bandele.

Lecture/Discussion on appellate practice continued.

Lecture/Discussion on Ethics in Appellate Advocacy

- What are counsel's obligation for candor on appeal, and is it a limitation on advocacy?
- What can a lawyer do to defend attack of competence? (See pp. XII-1 to XII-7).
- Should a lawyer take appeal if he or she is directed by a client to do so regardless of the legal basis for an appeal?

**EXTRA TOPICS:**

**Assignment**

Read: Federal Appeals, pp. 415-432

**Classroom Work:**

Make up Arguments

Lecture/Discussion on

Deliberation Process
Impact of Oral Argument on Decision-making
Issuance of Mandate
Rehearing and Rehearing En Banc
Bail Pending Appeal
Bond Pending Appeal
Post Judgment Remedies
Collateral Review (habeas)

When to settle

Cost/Benefit Analysis

Likelihood of Success

- Weight of evidence
- Jury sympathy

Collateral issues in settling

- Publicity
- Collateral consequences
- Costs
- Family harmony
- Precedential risks

When to Plead Guilty

Likelihood of conviction
Sentencing considerations
Collateral consequences

- Licensing
- Civil cases
- Publicity
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Item</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHRONOLOGY</td>
<td>IV-4-14</td>
</tr>
<tr>
<td>REASSIGNMENT MEMO FROM ASSISTANT U.S. ATTORNEY SUSAN JAMES</td>
<td>IV-15-16</td>
</tr>
<tr>
<td>INDICTMENT</td>
<td>IV-17-23</td>
</tr>
<tr>
<td>CHARLOTTE DUBOIS TESTIMONY</td>
<td>IV-24-39</td>
</tr>
<tr>
<td>CONAN SWEET TESTIMONY</td>
<td>IV-40-49</td>
</tr>
<tr>
<td>MERLIN LEMON TESTIMONY</td>
<td>IV-50-55</td>
</tr>
<tr>
<td>AWARD</td>
<td>IV-56-57</td>
</tr>
<tr>
<td>FEBRUARY 21, 1999 LETTER</td>
<td>IV-58</td>
</tr>
<tr>
<td>STIPULATION</td>
<td>IV-59-62</td>
</tr>
<tr>
<td>GX 301</td>
<td>IV-63</td>
</tr>
<tr>
<td>GX 302</td>
<td>IV-64</td>
</tr>
<tr>
<td>GX 303</td>
<td>IV-65</td>
</tr>
<tr>
<td>NOTICE OF PETITION</td>
<td>IV-66-68</td>
</tr>
<tr>
<td>AFFIDAVIT OF CHARLOTTE DUBOIS</td>
<td>IV-69</td>
</tr>
<tr>
<td>DX A</td>
<td>IV-70</td>
</tr>
<tr>
<td>INSURANCE POLICY</td>
<td>IV-71</td>
</tr>
<tr>
<td>&quot;BUGS BUNNY&quot;</td>
<td>IV-72</td>
</tr>
<tr>
<td>VARIETY</td>
<td>IV-73</td>
</tr>
<tr>
<td>EDWARD BLOOD 1/28/02 LETTER TO IZZIE SMART</td>
<td>IV-74</td>
</tr>
<tr>
<td>HANDWRITING AND QUESTIONED DOCUMENTS TREATISE BY DOCTOR JESSE THROWN</td>
<td>IV-75-80</td>
</tr>
<tr>
<td>LETTER REQUEST TO DEPOSE VALERIE MARLOW</td>
<td>IV-81-82</td>
</tr>
<tr>
<td>GX 3501 - ABNER POLS INTERVIEW</td>
<td>IV-83-84</td>
</tr>
<tr>
<td>GX 3502A - VALERIE MARLOW INTERVIEW</td>
<td>IV-85-91</td>
</tr>
</tbody>
</table>

IV-2
<table>
<thead>
<tr>
<th>Date</th>
<th>Description of Event</th>
<th>Source</th>
<th>Record Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1967 through 1971</td>
<td>Lemon works as a customers man at Watchem &amp; Company.</td>
<td>GX 118b (Lemon Testimony)</td>
<td>IV-50</td>
</tr>
<tr>
<td>1971 through 1980</td>
<td>Lemon works as a managing partner, compliance officer of Equity &amp; Company.</td>
<td>GX 118b (Lemon testimony)</td>
<td>IV-50</td>
</tr>
<tr>
<td>1980 through 1987</td>
<td>Lemon works as a managing partner at Winkin Blinkin &amp; Nod.</td>
<td>GX 118b (Lemon testimony)</td>
<td>IV-50</td>
</tr>
<tr>
<td>1985 through 1988</td>
<td>Sweet is employed by Trustum and works in the general compliance surveillance division (3 years).</td>
<td>GX 118a (Sweet testimony)</td>
<td>IV-47</td>
</tr>
<tr>
<td>1987</td>
<td>Lemon joins Trustum as a registered representative, and then as principal</td>
<td>GX 118b (Lemon testimony)</td>
<td>IV-50</td>
</tr>
<tr>
<td>1992</td>
<td>DuBois graduates Bennington College.</td>
<td>GX 3500 (DuBois testimony)</td>
<td>IV-24</td>
</tr>
<tr>
<td>1988 through 1993</td>
<td>Sweet works in option auditing (5 years).</td>
<td>GX 118a (Sweet testimony)</td>
<td>IV-47</td>
</tr>
<tr>
<td>1990</td>
<td>Sheila DeLong graduates from college.</td>
<td>GX 3505</td>
<td>IV-106</td>
</tr>
<tr>
<td>1992 through 1993</td>
<td>DuBois works as a manuscript reader, assistant literary agent.</td>
<td>GX 3500 (DuBois testimony)</td>
<td>IV-26</td>
</tr>
<tr>
<td>Jan. 1995</td>
<td>Flora Burton is hired by Trustum; and then gets her license, and in 2000 began working as a sales assistant to Lemon</td>
<td>GX 3504</td>
<td>IV-97</td>
</tr>
<tr>
<td>Date</td>
<td>Description of Event</td>
<td>Source</td>
<td>Record Page</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------------------------------------------------------------------</td>
<td>-----------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>1996</td>
<td>Sweet becomes control administrator of Trustee's GM branch.</td>
<td>GX 118a (Sweet testimony)</td>
<td>IV-47</td>
</tr>
<tr>
<td>Nov. 13, 1996</td>
<td>Date of DuBois's Sentry Savings and Loan application falsely stating that she received a salary when she was self-employed as a writer and received only alimony</td>
<td>GX 3500 (DuBois testimony)</td>
<td>IV-27-28</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>IV-106</td>
</tr>
<tr>
<td>Spring 1998</td>
<td>DeLong becomes Series 7 and 63 licensed while at Fidelum.</td>
<td>GX 3505</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>IV-60</td>
</tr>
<tr>
<td>between May 1998</td>
<td>Lemon loses 2 arbitration awards, each in excess of $100,000.</td>
<td>Stipulation, para. 4</td>
<td></td>
</tr>
<tr>
<td>and Sept. 1998</td>
<td></td>
<td></td>
<td>IV-97</td>
</tr>
<tr>
<td>May 7, 1998</td>
<td>DeLong is hired by Trustum after interviewing with Lemon.</td>
<td>GX 3505</td>
<td>IV-106</td>
</tr>
<tr>
<td></td>
<td>[See also IV-97.]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>July 1998</td>
<td>DuBois opens a brokerage account at Trustum.</td>
<td>Indictment, para. 4</td>
<td>IV-18</td>
</tr>
<tr>
<td>July 27, 1998</td>
<td>Lemon discusses a plan of investment with DuBois.</td>
<td>GX 118b (Lemon testimony)</td>
<td>IV-52</td>
</tr>
<tr>
<td>Aug. 1998</td>
<td>DuBois meets Lemon, for the first time, in his New York office.</td>
<td>GX 3500 (DuBois testimony)</td>
<td>IV-30</td>
</tr>
<tr>
<td>starting in Nov.</td>
<td>DuBois charges as much as $3,000 to $7,000 per month on her Visa card.</td>
<td></td>
<td>IV-116</td>
</tr>
<tr>
<td>1998</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>starting in early</td>
<td>DuBois charges in excess of $10,000 per month on her Visa card.</td>
<td></td>
<td>IV-116</td>
</tr>
<tr>
<td>1999</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jan. 1999</td>
<td>Activity letter may have gone out on Sweet's own initiative at this time.</td>
<td>GX 3502B</td>
<td>IV-93</td>
</tr>
<tr>
<td>Feb. 21, 1999</td>
<td>Date of activity letter. [DuBois was residing in the Berkshires, Massachusetts, at the time. IV-38.] [Copy of document shown on IV-59. Letter is addressed to Cheryl Pall.]</td>
<td>GX 3500 (DuBois testimony)</td>
<td>IV-37</td>
</tr>
<tr>
<td>Feb. 21, 1999</td>
<td>DuBois's commissions had not yet amounted to $20,000. [Feb. 21, 1997, was a Sunday. IV-32.]</td>
<td>GX 118a (Sweet testimony)</td>
<td>IV-44</td>
</tr>
<tr>
<td>Date</td>
<td>Description of Event</td>
<td>Source</td>
<td>Record Page</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>--------------------------------------------------------------------------------------------------------</td>
<td>-----------------</td>
<td>-------------</td>
</tr>
<tr>
<td>end of Feb. 1999</td>
<td>DuBois's account had over $20,000 in gross commissions, which would have called for an activity letter</td>
<td>GX 3502A</td>
<td>IV-87</td>
</tr>
<tr>
<td></td>
<td>to be sent in Mar. 1999.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>between Mar. 28, 1999 and</td>
<td>The signed activity letter is returned by DuBois to the GM branch.</td>
<td>GX 11a</td>
<td>IV-49</td>
</tr>
<tr>
<td>May 1, 1999</td>
<td></td>
<td>(Sweet testimony)</td>
<td></td>
</tr>
<tr>
<td>May 1999</td>
<td>Smart calls DuBois and advises her to close her account with Trustum because, he said, Lemon was a</td>
<td>GX 3500</td>
<td>IV-32</td>
</tr>
<tr>
<td></td>
<td>&quot;crook.&quot; She does not believe Smart, because Lemon got her through the market crash without losing</td>
<td>(DuBois</td>
<td></td>
</tr>
<tr>
<td></td>
<td>money.</td>
<td>testimony)</td>
<td></td>
</tr>
<tr>
<td>Aug. 11, 1999</td>
<td>Noting on her statement that much of her money was gone, DuBois calls Lemon to complain. DuBois then</td>
<td>GX 3500</td>
<td>IV-33</td>
</tr>
<tr>
<td></td>
<td>consults with a Merrill broker who advises her to write a complaint letter.</td>
<td>(DuBois</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>testimony)</td>
<td></td>
</tr>
<tr>
<td>after Aug. 11, 1999</td>
<td>DuBois moves her account to Merrill.</td>
<td>GX 3500</td>
<td>IV-34</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(DuBois</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>testimony)</td>
<td></td>
</tr>
<tr>
<td>July 1998 through Sept. 1999</td>
<td>DuBois loses a substantial amount of money in her Trustum account. Lemon derives a substantial amount</td>
<td>Indictment,</td>
<td>IV-18</td>
</tr>
<tr>
<td></td>
<td>of money as a result of the activity in DuBois's account. During this period, DuBois pays Trustum</td>
<td>para. 4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$70,000+ in commissions.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sept. 1999 through</td>
<td>Sweet and Lemon conspire to commit various offenses. [As per indictment.]</td>
<td>Indictment,</td>
<td>IV-14</td>
</tr>
<tr>
<td>indictment</td>
<td></td>
<td>para. 7</td>
<td></td>
</tr>
<tr>
<td>May 2000</td>
<td>Flora Burton obtains her Series 7 and 63 licenses.</td>
<td>GX 3504</td>
<td>IV-97</td>
</tr>
<tr>
<td>Sept. 18, 2000</td>
<td>Valerie Marlow is assigned the DuBois case.</td>
<td>GX 3502A</td>
<td>IV-85</td>
</tr>
<tr>
<td>Sept. 24, 2000</td>
<td>Marlow handles the pre-hearing conference.</td>
<td>GX 3502A</td>
<td>IV-85</td>
</tr>
<tr>
<td>Sept. 28, 2000</td>
<td>Back-dated date of Lemon $50,000 insurance policy. Apr. 24, 2001, issue date.</td>
<td></td>
<td>IV-71</td>
</tr>
<tr>
<td>Nov. 15, 2000</td>
<td>DuBois commences an arbitration against Trustum and Lemon as a result of Lemon's handling of her account.</td>
<td>Indictment,</td>
<td>IV-18</td>
</tr>
<tr>
<td></td>
<td>DuBois alleges that Lemon had &quot;churned&quot; her account. She requests an award of $218,046 plus $2.5 million in punitive damages. The claim is</td>
<td>para. 5</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Description of Event</td>
<td>Source</td>
<td>Record Page</td>
</tr>
<tr>
<td>---------------</td>
<td>--------------------------------------------------------------------------------------</td>
<td>-----------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>after Nov. 15, 2000</td>
<td>DuBois requests documents from Trustum. Trustum instructs Sweet to locate the documents in Trustum's files.</td>
<td>Indictment, para. 6</td>
<td>IV-18-19</td>
</tr>
<tr>
<td>Nov. 16, 2000</td>
<td>DuBois files Statement of Claim against Trustum, etc.</td>
<td>GX 115 (arbitration award)</td>
<td>IV-56</td>
</tr>
<tr>
<td>Dec. 1, 2000</td>
<td>Date of DuBois's affidavit which was used for her signature on the Activity Letter.</td>
<td></td>
<td>IV-58</td>
</tr>
<tr>
<td>Dec. 21, 2000</td>
<td>DuBois signs document from which her signature was allegedly lifted. [IV-69 indicates document was a December 1, 2000 affidavit.]</td>
<td>Indictment, para. 13</td>
<td>IV-21</td>
</tr>
<tr>
<td>Feb. 2001</td>
<td>Lemon tells Abner Pols that he wants to give Sweet a gift by naming him in an insurance policy.</td>
<td></td>
<td>IV-125</td>
</tr>
<tr>
<td>Feb. 6, 2001</td>
<td>Lemon fills out an insurance policy and marks it with this date. This was a bookmarked date.</td>
<td></td>
<td>IV-125</td>
</tr>
<tr>
<td>May 10, 2001</td>
<td>Date of Lemon research memorandum with Bugs Bunny cut-and-paste.</td>
<td></td>
<td>IV-72</td>
</tr>
<tr>
<td>July 28, 2001</td>
<td>Date of check written by Lemon to Sweet for $8,000. [Document located on GX 302 or IV-52.]</td>
<td>Stipulation, para. 14</td>
<td>IV-62</td>
</tr>
<tr>
<td>approximately Spring through Fall 2001</td>
<td>Burton and Lemon cut-and-paste extensively during this 6-month period.</td>
<td>GX 3504</td>
<td>IV-101</td>
</tr>
<tr>
<td>Sept. 10, 2001</td>
<td>Government advises counsel for Sweet of its witness list.</td>
<td></td>
<td>IV-82</td>
</tr>
<tr>
<td>Sept. 26, 2001</td>
<td>Date of check written by Lemon to Sweet for $6,500. [Document located on GX 303 or IV-53.]</td>
<td>Stipulation, para. 15</td>
<td>IV-62</td>
</tr>
<tr>
<td>Sept. 26, 2001</td>
<td>Marlow hears that Lemon is going to have Fred Ghost represent him. [Marlow had no contact with Lemon prior to this date.]</td>
<td>GX 3502A</td>
<td>IV-85</td>
</tr>
<tr>
<td>Sept. 27,</td>
<td>Date of check written by Joe Smith to Sweet for $4,000. [This</td>
<td>Stipulation,</td>
<td>IV-63</td>
</tr>
<tr>
<td>Date</td>
<td>Description of Event</td>
<td>Source</td>
<td>Record Page</td>
</tr>
<tr>
<td>---------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>2001</td>
<td>was apparently a loan in connection with repairs on Sweet's house. Para. 19.] [Document located on DX A or IV-70.]</td>
<td>para. 18</td>
<td>IV-20</td>
</tr>
<tr>
<td>late Sept. 2001</td>
<td>Lemon purchases $50,000 life insurance policy with the intention of making Sweet the beneficiary. [Document located on IV-58 and dated Sept. 28, 2000.]</td>
<td>Indictment, para. 10</td>
<td>IV-20</td>
</tr>
<tr>
<td>between late Sept. 2001 and early Oct. 2001</td>
<td>Sweet advises Trustum's attorneys that he found a copy of an activity letter dated February 21, 1999, and signed by DuBois. The letter states that DuBois is aware of her account transactions and the commissions due as a result of them, and indicates her consent. [Language from letter excerpted.]</td>
<td>Indictment, para. 12</td>
<td>IV-20</td>
</tr>
<tr>
<td>late Sept. 2001 early Oct. 2001</td>
<td>Marlow hears mention of the activity letter, during his first visit to the branch, with Hal Freeze, Fred Ghost, and Sweet.</td>
<td>GX 3502D</td>
<td>IV-94</td>
</tr>
<tr>
<td>Oct. 5, 2001</td>
<td>Lemon pays Sweet $6,000. [Para. 17(c) alleges that the check was written on Oct. 5, 2001). See also IV-62, para. 13.]</td>
<td>Indictment, para. 11</td>
<td>IV-20, IV-64, IV-62</td>
</tr>
<tr>
<td>Oct. 1, 2001</td>
<td>Marlow receives phone message from Lemon.</td>
<td>GX 3502A</td>
<td>IV-85</td>
</tr>
<tr>
<td>between Oct. 1, 2001 and Oct. 10, 2001</td>
<td>Marlow believes that Sweet located activity letter during this time.</td>
<td>GX 3502A</td>
<td>IV-85</td>
</tr>
<tr>
<td>Oct. 10, 2001</td>
<td>Marlow makes first visit to the branch. She believes she did not see an activity letter prior to this first meeting with Lemon. The meeting was in Sweet's office with Fred Ghost and Hal Freeze, Marlow's supervisor.</td>
<td>GX 3502A</td>
<td>IV-85</td>
</tr>
<tr>
<td>Oct. 10, 2001</td>
<td>During first office visit, Marlow sees Sweet's activity letter file [containing original copies of other activity letters].</td>
<td>GX 3502A</td>
<td>IV-89</td>
</tr>
</tbody>
</table>

The order tickets were in boxes located in a vacant office down the hall. Sweet went through his activity letter file, pulled out the activity letter and noted to Marlow that it was a copy, unlike the other letters in the file. He also points out the difference in text and says he has no recollection of sending the letter. The attorneys ask if he has a problem with the letter, and he says he does not. Lemon is told about the letter and reports he knew nothing about it. Sweet tells Marlow that the activity in the account would have prompted a letter in March.

Valerie Marlow's paralegal is unable to locate the original letter.
<table>
<thead>
<tr>
<th>Date</th>
<th>Description of Event</th>
<th>Source</th>
<th>Record Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>between Oct. 10, 2001 and Oct. 19, 2001</td>
<td>Marlow speaks with branch manager about setting the settlement reserve. Lemon is present and says he wants to fight the case (i.e., not settle). Branch manager says to Lemon, &quot;If you lose this case, you are going to be fired.&quot;</td>
<td>GX 3502A</td>
<td>IV-88</td>
</tr>
<tr>
<td>Oct. 17, 2001</td>
<td>Marlow has a second meeting with Sweet in his office with Fred Ghost.</td>
<td>GX 3502A</td>
<td>IV-87</td>
</tr>
<tr>
<td>Oct. 19, 2001</td>
<td>Marlow sets a reserve of $70,000 for the case and speaks with DuBois's attorney, Izzie Smart, concerning a possible settlement; Smart demanded the full amount of loss and more. Smart states that he knew Lemon was in trouble with other cases. Smart is very critical of Lemon. Marlow does not make any settlement offer and the conversation concludes.</td>
<td>GX 3502A</td>
<td>IV-87</td>
</tr>
<tr>
<td>before NASD hearing</td>
<td>Marlow reads the pre-hearing memorandum and notices the reference to the fact that DuBois was never sent and never signed an activity letter. Marlow decides to turn over the letter (he had originally intended to withhold it and use the letter for impeachment purposes).</td>
<td>GX 3502A</td>
<td>IV-88</td>
</tr>
<tr>
<td>Monday morning prior to hearing</td>
<td>Smart is given the activity letter by Marlow.</td>
<td>GX 3502A</td>
<td>IV-88</td>
</tr>
<tr>
<td>Oct. 22, 2001 through Dec. 12, 2001</td>
<td>NASD arbitration hearings.</td>
<td>GX 115 (arbitration award)</td>
<td>IV-57</td>
</tr>
<tr>
<td>first day of arbitration</td>
<td>DuBois overhears Smart say to Lemon: &quot;I will ruin you. This case will be your ruination. Mark my words.&quot;</td>
<td></td>
<td>IV-118</td>
</tr>
<tr>
<td></td>
<td>Sweet testified he did not recall speaking to Lemon about the account.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>DuBois testifies that she does not recall signing the activity letter and that she has &quot;severe doubts&quot; that she signed it. Her attorney does not doubt the letters and her testimony sounds to</td>
<td>CD testimony Val</td>
<td>IV-37-38, IV-89</td>
</tr>
<tr>
<td>Date</td>
<td>Description of Event</td>
<td>Source</td>
<td>Record Page</td>
</tr>
<tr>
<td>-----------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Oct. 24, 2001</td>
<td>Marlow like &quot;coached denials&quot;</td>
<td>Interview</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sweet testifies under oath during the arbitration that he found the activity letter in his files. He also testified that it was his practice to retain only copies of such letters; he said that he regularly sends the originals to another Trustum office; and that he has no memory of this letter, that commissions had not yet reached $20,000 at the date of the letter; that he does not work Sundays so the letter date must be a typographical error.</td>
<td>Indictment, para. 15</td>
<td>IV-21</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sweet Testimony</td>
<td>IV-43</td>
</tr>
<tr>
<td></td>
<td></td>
<td>IV-44-45</td>
<td>IV-47-48</td>
</tr>
<tr>
<td>Oct. 27, 2001 and Nov. 28, 2001</td>
<td>Maureen Bangel is the official court reporter in DuBois v. Trustum, etc.</td>
<td>Stipulation, para. 17</td>
<td>IV-62</td>
</tr>
<tr>
<td>Nov. 2001</td>
<td>Freeze suggests that Marlow seek out a handwriting expert. First expert concludes handwriting was &quot;probably not&quot; authentic but was unsure. Second, highly respected, expert concludes signature is authentic and will testify.</td>
<td>GX 3502D Val Interview</td>
<td>IV-95</td>
</tr>
<tr>
<td></td>
<td></td>
<td>IV-89-90</td>
<td></td>
</tr>
<tr>
<td>after Sweet's testimony</td>
<td>Marlow raises the issue of keeping original copies of activity letters with Hal Freeze and Fred Ghost.</td>
<td>GX 3502A</td>
<td>IV-89</td>
</tr>
<tr>
<td>Nov. 28, 2001</td>
<td>Lemon testifies. His employment history (37-38); is an officer and principal at Trustum but functions as a broker (38); is a member of the Director's Council because he paid $1mm commissions 3 yrs. in a row (39). DuBois was aware of all transactions (40). He was unaware of a problem with high commissions but an activity letter must have been sent (42).</td>
<td>Stipulation, para. 17</td>
<td>IV-50-55</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Lemon Testimony</td>
<td></td>
</tr>
<tr>
<td>between Dec. 2001 and Jan. 2002</td>
<td>DuBois is awarded $70,200 by the arbitrators.</td>
<td>Indictment, para. 16</td>
<td>IV-22</td>
</tr>
<tr>
<td>Dec. 28, 2001</td>
<td>Sweet and Lemon &quot;caused to be delivered by mail&quot; a Draft of Award from NASD to arbitrator Ralph Klein.</td>
<td>Indictment, para. 19</td>
<td>IV-23</td>
</tr>
<tr>
<td>after 2001</td>
<td>DeLong does not see any activity letters.</td>
<td>DX 3505A</td>
<td>IV-111</td>
</tr>
<tr>
<td>Jan. 17, 2002</td>
<td>Sweet and Lemon &quot;caused to be delivered by mail&quot; a copy of arbitration award from NASD to Trustum.</td>
<td>Indictment, para. 19</td>
<td>IV-23</td>
</tr>
<tr>
<td>Jan. 17, 2002</td>
<td>Date of NASD arbitration award.</td>
<td>GX 115 (arbitration)</td>
<td>IV-57</td>
</tr>
<tr>
<td>Date</td>
<td>Description of Event</td>
<td>Source</td>
<td>Record Page</td>
</tr>
<tr>
<td>--------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------</td>
<td>-------------</td>
</tr>
<tr>
<td>Jan. 28, 2002</td>
<td>Edward Blood letter to Izzie Smart concluding that DuBois signature on Feb. 21, 1999 letter is an overlay.</td>
<td></td>
<td>IV-74</td>
</tr>
<tr>
<td>late Jan. 2002</td>
<td>Burton, on vacation in Puerto Rico, calls DeLong at her home. They discuss Sweet's indictment and Burton asks DeLong if Lemon had ever asked her to find a copy of DuBois's signature.</td>
<td>DX 3505A</td>
<td>IV-112</td>
</tr>
<tr>
<td>June 3, 2002</td>
<td>Jack O'Donnell has phone conversation with Valerie Marlow. Marlow acknowledges that Sweet showed her the activity letter; that he was puzzled about why it was a copy but figured he sent the original to compliance; that he had no recollection of sending or receiving the letter; that it could have been a second request; that he puzzled about the text being different, but believes he must have sent it. Sweet denied anyone could have placed it in file.</td>
<td>GX 3502B</td>
<td>IV-92</td>
</tr>
<tr>
<td>June 18, 2002</td>
<td>Jack O'Donnell has phone conversation with Valerie Marlow. Consistent with prior conversation, Sweet adopted the letter as written by him. Marlow asked paralegal to look but could not find original. Marlow thought they weren't looking hard enough. Sweet said Lemon knew where file is, but does not think he would access it.</td>
<td>GX 3502D</td>
<td>IV-94</td>
</tr>
<tr>
<td>late Dec. 2002</td>
<td>Lemon departs.</td>
<td>DX 3505A</td>
<td>IV-113</td>
</tr>
<tr>
<td>2003</td>
<td>Edward Blood is asked to come to a meeting at Trustum's General Counsel's office. He is shown a copy of the activity letter and a copy of the affidavit with an attached notice of petition.</td>
<td></td>
<td>IV-120</td>
</tr>
<tr>
<td>Mar. 19, 2003</td>
<td>Trustum General Counsel tells counsel for Sweet during a phone conversation that interviews of Trustum personnel will not be permitted, on the advice of outside counsel.</td>
<td></td>
<td>IV-81</td>
</tr>
<tr>
<td>before July 16, 2003</td>
<td>Lemon tells Flora Burton not to volunteer any information during investigation interviews.</td>
<td>GX 3504</td>
<td>IV-97</td>
</tr>
<tr>
<td>July 16, 2003</td>
<td>Jack O'Donnell interviews Flora Burton.</td>
<td>GX 3504</td>
<td>IV-97</td>
</tr>
<tr>
<td>July 16 and 23, 2003</td>
<td>Interview of Flora Burton, Lemon's administrative (or sales) assistant: General Manager's assistant keeps GM letterhead on assistant's desk but doesn't let anyone use it unless specific need.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Description of Event</td>
<td>Source</td>
<td>Record Page</td>
</tr>
<tr>
<td>------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>--------</td>
<td>-------------</td>
</tr>
<tr>
<td>July 20, 2003</td>
<td>Lemon does not regularly work on weekends but does come in occasionally. Flora sees all activity letters for Lemon’s clients. Branch manager’s secretary types the letters for Sweet, gives them to Flora. Lemon looks at them but Sweet keeps copies. Lemon types some of his own materials but doesn't know how to use a word processor. Lemon used characters like Bugs Bunny on letters to clients until Compliance told him to stop. Lemon speaks to Sweet on a daily basis; they are very good friends. Sweet is a good, accessible compliance officer. Sweet never let Lemon break Trustum rules. Lemon loaned money to Sweet for repairs on his house on several occasions. Lemon was open about his life insurance policy for Sweet; wanted to do something nice for Sweet. Lemon was unable to obtain a split commission number to reward Sweet. He refers some business to Flora and Flora thinks most accounts services by Lemon would follow her if Lemon is convicted. Lemon helped Sweet get a mortgage at Bank of New York; gives to United Way; gave Sweet's daughter a stuffed animal. Flora has recently received much less extra money from Lemon than she used to. Sweet was loaned money by other Trustum employees. Lemon once asked Flora to get him a clean signature of DuBois to see what it looked like. Flora got him a signature but doesn't recall where from. Doubts that it was from a legal document. Sheila DeLong was present when he made the request. Lemon then went in the direction of the copy machine with scissors and scotch tape. (p. 82-93)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>July 20 and 22, 2003</td>
<td>Valerie Marlow is interviewed by Jack Donnell</td>
<td>GX 3502A</td>
<td>IV-85</td>
</tr>
<tr>
<td>July 22, 2003</td>
<td>Interview of Valerie Marlow. Val denies any role in creating or legitimizing the activity letter.</td>
<td></td>
<td>IV-85-91</td>
</tr>
<tr>
<td>July 23, 2003</td>
<td>Marlow interview resumes with Jack O'Donnell.</td>
<td>GX 3502A</td>
<td>IV-87</td>
</tr>
<tr>
<td>July 23, 2003</td>
<td>Jack O'Donnell interviews Sheila DeLong.</td>
<td>GX 3505</td>
<td>IV-106</td>
</tr>
<tr>
<td>July 23, 2003</td>
<td>Interview of Sheila DeLong (by J.D.): According to Lemon, DeLong was not working for him when the DuBois account was trading; was hired in May 1998. Enters trades/does administrative work for Lemon. When she was hired, Lemon entered all trades himself. DeLong is not involved with activity letters. Describes procedures they used to create letters with</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Description of Event</td>
<td>Source</td>
<td>Record Page</td>
</tr>
<tr>
<td>------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------</td>
<td>-------------</td>
</tr>
<tr>
<td>July 23, 2003</td>
<td>cartoon characters and other symbols. Lemon knows the rules of the industry since he was once a compliance officer. He's a hands-on manager who is in control; wants to know everything that goes on with his clients. Sweet is Lemon's best friend in the office. Knew about life insurance policy. Receives extra money from Lemon on certain occasions or for extra work. Lemon and two other employees loaned Sweet money. (p. 93-96)</td>
<td>GX 3504</td>
<td>IV-97</td>
</tr>
<tr>
<td>Aug. 20, 2003</td>
<td>Abner Pols is interviewed by Jack O'Donnell and Jeffrey Hollinshead.</td>
<td>GX 3501</td>
<td>IV-83</td>
</tr>
<tr>
<td>Aug. 20, 2003</td>
<td>Jack O'Donnell interviews Flora Burton.</td>
<td>GX 3504</td>
<td>IV-97</td>
</tr>
<tr>
<td>Sept. 2003</td>
<td>Date of Stipulation by Mary Jo White; to be signed by Lemon and Sweet.</td>
<td>Stipulation</td>
<td>IV-63</td>
</tr>
<tr>
<td>Sept. 2003</td>
<td>Date of stipulation to certain facts by U.S. Attorney and counsel for Sweet and Lemon: Robert Kern, attorney at Trustum, would testify that Lemon had already lost two arbitration awards in excess of $100,000 and had two further pending charges; that had he lost one of the two pending matters, the Stock Exchange would have investigated and imposed sanctions. (Stip. 47-48) Jacob Milo, chairman of the arbitration panel, would have testified that their arbitration award was based on their belief that DuBois suffered churning in her account but also may have exerted pressure on Lemon to achieve higher returns. Award reflected decision not to allow Trustum to benefit from commissions but not to make DuBois entirely whole because she continued to control her account. Punitive damages were not appropriate in this case. Activity letter was a factor in panel's decision. (Stip. 48-49) Stipulation to various government exhibits. Stipulation to Mailing.</td>
<td>Stipulation</td>
<td>IV-60-62</td>
</tr>
<tr>
<td>Sept. 2, 2003</td>
<td>Government supersedes the indictment, deleting from the conspiracy count the charge that Sweet and Lemon conspired with &quot;others.&quot;</td>
<td></td>
<td>IV-81</td>
</tr>
<tr>
<td>Sept. 14, 2003</td>
<td>Counsel for Sweet writes to Trustum General Counsel requesting permission to interview Valerie Marlow.</td>
<td></td>
<td>IV-82</td>
</tr>
<tr>
<td>Sept. 15, 2003</td>
<td>Counsel for Lemon interviews Sheila DeLong at her home in Seaford, NY.</td>
<td>DX 3505A</td>
<td>IV-110</td>
</tr>
<tr>
<td>Sept. 16, 2003</td>
<td>Date of file memorandum re: Sheila DeLong written by &quot;RGR,&quot;</td>
<td>DX 3505A</td>
<td>IV-110</td>
</tr>
<tr>
<td>Date</td>
<td>Description of Event</td>
<td>Source</td>
<td>Record Page</td>
</tr>
<tr>
<td>--------------</td>
<td>---------------------------------------------------------------------------------------</td>
<td>--------</td>
<td>-------------</td>
</tr>
<tr>
<td>2003</td>
<td>counsel for Lemon.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sept. 16, 2003</td>
<td>Interview of Sheila DeLong (by Lemon's counsel): DeLong did not handle activity letters (Flora Burton did) and Lemon would have reviewed any outgoing activity letters. Talks about process of stenciling to make lettering for Lemon's stationery. Lemon occasionally did it himself. DeLong handled individual accounts, Burton handled corporate accounts. Indicates that Burton wasted time, made personal calls. Lemon never tried to hide life insurance policy for Sweet. Lemon never asked her to locate DuBois' signature for him. Burton called Sheila from Puerto Rico in late January 2003 to ask whether she remembered Lemon asking for a copy of DuBois' signature. Burton expressed concern about losing her position but was eventually retained by Trustum after Lemon's departure in December 2003.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sept. 20, 2003</td>
<td>Interview of Abner Pols, financial consultant at Trustum. Pols states that he has done quite a bit of insurance business for Lemon and was approached by him for an insurance policy with Sweet as the beneficiary. Pols mentioned the policy to Sweet afterwards; Sweet was surprised and amused. Pols thought it was unusual.</td>
<td></td>
<td>IV-83-84</td>
</tr>
</tbody>
</table>
Attached is the file on the indictment against Sweet and Lemon that was filed last week. This is a simple case. There had been an arbitration two years ago, before the National Association of Securities Dealers involving a customer of Trustum Fidelity and Merlin Lemon, a financial consultant. The customer's name is Charlotte DuBois. She complained that her securities account had been churned. Churning is a term that means that the account was subjected to many transactions of buying and selling securities for no legitimate business purpose other than to generate commissions. Charlotte DuBois won an award in that arbitration for $77,000. She had claimed that she was damaged by a much larger amount and had sought punitive damages.

One of the reasons that the arbitrators did not award her more money was that Merlin Lemon and Trustum persuaded the panel that Charlotte DuBois was aware of how much activity had been going on in her account. One way that they did this was to offer as evidence a letter that was purportedly signed by Charlotte DuBois acknowledging that she was aware of all of the purchases and sales that Lemon was making in her account. That type of letter is called an activity letter. It is the responsibility of the compliance officer at the branch where Lemon worked to keep track of each account and cause customers to be sent letters informing them of the unusual and high level of activity in their account when that occurred. The compliance office in charge of doing so in this case was Conan Sweet.

The crime was that the activity letter that was offered into evidence by Trustum was a phony. It was phony because the signature of Charlotte DuBois that appeared on the bottom of the letter as an acknowledgement of activity in the account in fact was cut and pasted from a signature that she had placed on an affidavit in a related document in the litigation. Simply put, the activity letter was a cut and paste. We have expert opinions coming out our ears that it is a phony. That issue probably won't be contested at trial.

The evidence all points to the fact that Lemon created this phony activity letter. He was the one who cut and pasted it. He has a long track record of cutting and pasting silly little things like Bugs Bunny cartoons and logos from Variety magazine onto stationery he frequently sends to customers. We even have a witness who recalls that he (Lemon) asked her to obtain a Charlotte DuBois signature and that he then photocopied that signature onto another document using scissors and scotch tape.
We also know that the person through whom the activity letter was offered at the arbitration, namely Conan Sweet, was secretly on Merlin Lemon's payroll. Lemon obviously corruptly paid Sweet off to offer this document at the arbitration. Sweet testified at the arbitration that he found the document in his file. That statement was an obvious lie. He also testified at the arbitration that all of the activity letters in his file were copies and that he sent the original letters to the main compliance branch. That statement was also a lie obviously meant to mislead the arbitrators to believe that it was not unusual for the letter being offered at the arbitration to be merely a photocopy.

Because the perjury and submission of the false document occurred at an NASD arbitration, we do not have federal jurisdiction for perjury or obstruction of justice. Therefore, this case has been cast in terms of a conspiracy to commit mail fraud and mail fraud. There is a bunch of law that upholds jurisdiction under that theory.

This case should be a slam dunk winner. I am only sorry I can't continue on it. Unfortunately my new responsibilities as Section Chief preclude my ability from trying the case. I am available, however, for a consult if you need.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v -

CONAN SWEET and MERLIN LEMON,

Defendants.

INDICTMENT

28 00 Cr. 68 (SS)

COUNT ONE

(CONSPIRACY)

The Grand Jury charges:

Introduction

1. At all time relevant to this Indictment, Trustum Fidelity & Dough, Inc. ("Trustum") was a registered broker-dealer and a member of the New York and American Stock Exchanges, as well as of the National Association of Securities Dealers (the "NASD"). Trustum employed numerous stockbrokers who provided financial services to Trustum's retail customers.

2. At all times relevant to this Indictment, the defendant CONAN SWEET as employed by Trustum as a control administrator at its Fifth Avenue branch in New York, New York. Among other things, SWEET was responsible for monitoring the compliance of Trustum brokers at that branch with applicable laws and rules.

3. At all times relevant to this Indictment, the
defendant MERLIN LEMON was a stockbroker working for Trustum at its Fifth Avenue branch in New York, New York. At all times relevant to this Indictment, among his other responsibilities, the defendant CONAN SWEET was responsible for supervising the conduct of the defendant MERLIN LEMON.

4. In or about July 1998, Charlotte DuBois opened a brokerage account at Trustum. DuBois's account was under the supervision of the defendant MERLIN LEMON. Between in or about July 1998 and in or about September 1999, the period during which DuBois's account was open, DuBois lost a substantial amount of money in her Trustum account. Nonetheless, LEMON derived substantial commissions for Trustum and himself as a result of the activity in DuBois's account. Over the course of the period her account was open at Trustum, DuBois paid in excess of $70,000 to Trustum in commissions.

5. On or about November 15, 2000, DuBois commenced an arbitration against Trustum and the defendant MERLIN LEMON as a result of LEMON's handling of her account. In her statement of claim, DuBois alleged, among other things, that LEMON had churned her account, that is, that LEMON had engaged in excessive trading not in the interests of DuBois in order to generate commissions for himself. DuBois requested an award in the amount of $218,046 plus punitive damages in the amount of $2,500,000. DuBois's claim was eventually submitted to a panel of arbitrators under the supervision of the NASD.
6. In the course of the arbitration, DuBois's attorneys made various requests of Trustum for documents relevant to her arbitration claim. In order to respond to DuBois's attorneys' requests, Trustum requested the defendant CONAN SWEET to locate some of the requested documents in Trustum's files.

**THE CONSPIRACY**

7. Between in or about late September 1999 and the date of this Indictment, in the Southern District of New York and elsewhere, the defendants CONAN SWEET and MERLIN LEMON, unlawfully, wilfully and knowingly combined, conspired, confederated, and agreed together and with each other to commit offenses against the United States, specifically, to violate Title 18, United States Code, Section 1341, and Title 15, United States Code, Section 78q.

**THE OBJECTS OF THE CONSPIRACY**

8. It was an object of the conspiracy to deceive the arbitrators in the course of the arbitration proceeding through the use of a forged document and perjurious testimony.

9. It was a further object of the conspiracy that the defendants CONAN SWEET and MERLIN LEMON, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, would and did cause to be delivered by mail according to the direction thereon, mail
matter for the purpose of executing such scheme and artifice and attempting to do so, in violation of Title 18, United States Code, Section 1341.

**THE MEANS AND METHODS OF THE CONSPIRACY**

10. In or about late September 2001, the defendant MERLIN LEMON purchased a life insurance policy with a cash value of $50,000 with the intention of making the defendant CONAN SWEET the beneficiary of the policy.

11. In or about early October 2001, the defendant MERLIN LEMON made a $6000 payment to the defendant CONAN SWEET.

12. Between in or about late September 2001 and in or about early October 2001, the defendant CONAN SWEET advised Trustum's attorneys that in the course of his search for documents he had found an activity letter purporting to be signed by DuBois (the "Activity Letter"). The Activity Letter appeared on its face to be of significant value to the defendant MERLIN LEMON's defense of the arbitration. The Activity Letter, which purported to be dated February 21, 1999, and was addressed from DuBois to the Resident Manager at Trustum's branch office where LEMON and SWEET were employed, read as follows:

> I am and have been aware of all transactions in my account. I am and have been aware that these transactions resulted in significant commission [sic] being paid to your firm and the Financial Consultant servicing my account. In addition, all the transactions were made with my consent and with my prior full knowledge as to the nature of the speculative risks involved in these transactions.

IV-20
13. In fact, the Activity Letter that the defendant CONAN SWEET provided to Trustum's counsel was a forged document, which had been created using DuBois's signature on a document that she had signed on or about December 1, 2000 -- some 21 months after the date on the forged Activity Letter -- in the course of her attempts to sue Trustum and the defendant MERLIN LEMON. At the time that SWEET provided the Activity Letter to Trustum's counsel he was aware that the document had not been maintained in his files as he had falsely stated to Trustum's counsel.

14. The defendant CONAN SWEET informed Trustum's attorneys that he had been unable to locate the original of the Activity Letter, but rather had only been able to find a copy. The copy of the Activity Letter was produced by Trustum's attorneys to the NASD in connection with the arbitration.

15. On or about October 24, 2001, the defendant CONAN SWEET gave testimony under oath in the course of a hearing held during the arbitration of DuBois's claims against Trustum and the defendant MERLIN LEMON. In the course of the arbitration, SWEET testified falsely that he had found the Activity Letter in his files. In truth and in fact, SWEET knew that the Activity Letter was not a document that he had found among his files. In addition, SWEET explained the lack of an original of the Activity Letter by testifying falsely that it was his regular practice to keep only copies of activity letters in his files and to send the
originals of such documents to another Trustum office. In truth and in fact, SWEET knew that it was his practice to keep original activity letters in his files.

16. Between in or about December 2001 and in or about January 2002, the arbitrators rendered a decision awarding DuBois $70,200 of the $2,718,046 that she had sought in the arbitration. In the process of finalizing the arbitration award, and advising the parties to the arbitration concerning the arbitrators' decision, the NASD employed the United States mails on a number of occasions, including (a) to facilitate communications between the NASD and the arbitrators, and (b) to advise the parties to the arbitration of the arbitrators' decision.

**OVERT ACTS**

17. In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts, among others were committed in the Southern District of New York and elsewhere:

a. In or about September 2001, the defendant MERLIN LEMON purchased an insurance policy.

b. Between in or about late September 2001 and in or about October 2001, the defendant CONAN SWEET advised attorneys for Trustum that he had located an Activity Letter in boxes that he had retrieved from a warehouse.

c. On or about October 5, 2001, the defendant MERLIN LEMON wrote a check in the amount of $6000.

d. On or about October 24, 2001, the defendant
CONAN SWEET testified at a hearing in an NASD arbitration.

(Title 18, United States Code, Section 371.)

**COUNTS TWO AND THREE**

(MAIL FRAUD)

The Grand Jury further charges:

18. Paragraphs 1 through 6, 8, and 11 through 17 of this Indictment are reincorporated and realleged as if fully set forth herein as setting forth a scheme to defraud.

19. On or about the dates set forth below, in the Southern District of New York, the defendants CONAN SWEET and MERLIN LEMON unlawfully, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, caused to be delivered by mail according to the direction thereon, the things described below, for the purpose of executing such scheme and artifice and attempting to do so:

<table>
<thead>
<tr>
<th>COUNT</th>
<th>APPROXIMATE DATE</th>
<th>MAILING</th>
</tr>
</thead>
<tbody>
<tr>
<td>TWO</td>
<td>January 17, 2002</td>
<td>Copy of arbitration award mailed from NASD to DuBois.</td>
</tr>
<tr>
<td>THREE</td>
<td>January 17, 2002</td>
<td>Copy of arbitration award mailed from NASD to Trustum.</td>
</tr>
</tbody>
</table>

(Title 18, United States Code, Sections 1341 and 2.)

______________________________  ____________________________
FOREPERSON                      MARY JO WHITE
                                      United States Attorney

IV-23
CHARLOTTE DUBOIS

having been first duly sworn by the Notary Public, was examined and testified as follows:

THE CHAIRMAN: Will you state your name and address and other information for the record.


THE CHAIRMAN: What is your occupation?

THE WITNESS: I am a writer.

DIRECT EXAMINATION

BY MR. SMART:

Q You live up in the Berkshires?
A Yes.
Q How long have you lived there?
A I have lived there a little over three years.
Q Do you own your home or do you rent it?
A I own my home.
Q Did you purchase it or build it?
A I built it.
Q Could you tell me about your educational background, Charlotte?
A Well, I graduated from Bennington College in 1992 and got a BA degree primarily in writing.
Q When did you go to college, was it before or after your
divorce?
A  I went back to college as an older person three years prior to my divorce. I had been married about 14 years at that point. I never finished college before I got married.
Q  Did you have an education after Bennington?
A  Yes.
Q  What was that?
A  I went to film school for one year.
Q  Where was it?
A  At Yale.
Q  When were you divorced?
A  I was divorced in 1991.
Q  How long had you been married at the time you were divorced?
A  Give or take a little over 16 years.
Q  Were there any children from your marriage?
A  I have two children.
Q  How old are they?
A  20 and 25.
Q  What was your husband's name?
A  My husband's name was Francis DuBois.
Q  What was his profession?
A  Attorney.
Q  What is your current employment?
A  I am a writer, self-employed.
Q  Do you earn anything in the way of a salary from your writing?
A  No.

Q  Have you ever earned any salary income from a job?
A  Yes.

Q  When was that?
A  1992 to 1993 I worked at a literary agency as a manuscript reader, assistant literary agent.

Q  What sort of work was that?
A  I read manuscripts and critiqued them and did some clerical work and dealt with publishers, editors at publishing houses.

Q  How long did you have that job?
A  A little over a year.

Q  How much did you earn?
A  I don't remember exactly how much I earned.

Q  This was after you were divorced?
A  This was the year after I graduated from Bennington. This was 1992-93.

Q  At any time have you earned any income from your writing?
A  No.

Q  Now I believe you said you were divorced in 1991; is that correct?
Q  Yes.
Q  And did you receive any alimony payments from your husband at that time?
A  Yes.
Q  Do you recall roughly how much that was?
A  Well, roughly it was roughly give or take $5,000 a month, until he stopped paying me.
Q  How did you acquire the land where you live?
A  When my mother died she left me $15,000 and I bought that land for about $13,000 with that money.
Q  Now you eventually decided to build a house up in the Berkshires, isn't that correct?
A  Yes.
Q  How did you plan to pay for building the house?
A  Well, I borrowed money against the value of my land. In other words I used the land as collateral and went to the bank and they gave me a mortgage based on what my land was worth at the time that I built the house.
Q  Let me show you a document and ask if you can identify it for us (handing document)?

THE CHAIRMAN: Any objection?
MR. GHOST: No objection, Mr. Chairman.
MR. MARLOW: No objection.
THE CHAIRMAN: We will call this C-9.
MR. MEENEMEIR: C-9 is two pages of a Sentry Federal Savings and Loan application dated November 13, 1996. That
will be C-9.

(Received in evidence.)

THE CHAIRMAN: Proceed.

Q Charlotte, do you recognize this document?
A Yes. This is the application that I made to get a mortgage to build a house on the land that I had bought.

Q Now did you state in this application that you were still earning a salary?
A Yes, I did.

Q Why is that?
A Because I could not get approved for the mortgage by the bank if I stated that I was self-employed as a writer, when nothing I had written had been sold.

Q Was that your source of income at that time?
A Alimony.

Q Did you have any other income at that time?
A No.

Q What was it that made you want to build this house up in the Berkshires, what was it you were going to do up there?
A I was going to, I wanted to move up there because I was working on a novel, I was finishing a novel which is why I had quit my job at the literary agency and I wanted to devote all my time to writing is why I went up there, is why I built the house.
Q Did your husband stop paying you alimony?
A His third wife didn't like that he was paying me alimony.
Q And he just decided to stop paying you.
A Yes.
Q What did you do when that happened?
A I hired a lawyer.
Q Did you begin an action against your husband?
A Yes, I did.
Q Did you ultimately reach a settlement with your husband?
A Yes, I did.
Q What work of settlement did you come to with your ex-husband?
A We settled figures, he gave me a lump sum amount of $200,000.
Q Did he have to continue to pay you alimony?
A And he did not have to pay any more alimony.
Q When did you first hear about Merlin Lemon?
A It was July that summer, it was July of 1998 by telephone to Mr. Smart in New York.
Q What did he tell you?
A He told me the name of the broker. He said Merlin Lemon at Trustum. He gave me the phone number. He said I have spoken with him about you, he knows who you are.
Q What was your first conversation with Mr. Lemon like?
A I don't recollect a lot about it. It was brief. He did know my name. He had spoken with Mr. Smart. It was fairly brief conversation.

Q Do you recall telling him anything about yourself?
A Yes. I think I told him how much money I had, that I was a writer, that I was living in the woods and that I was finishing a book and I did not want to deal with this at all, that I was not good at it, that I did not want to deal with it. I just wanted to finish the book, I was trying to write and he came very highly recommended. I mean I can't remember anything more than that.

Q Do you recall when you first met with Mr. Lemon face to face?
A To the best of my recollection, it was in August of 1998.

Q Do you recall where you met him?
A Yes. It was in his office in New York.

Q Can you tell me the nature of the meeting?
A I wanted to see face to face who was handling my account and to the best of our recollection, our meeting was more social then, a meeting where we talked at length about my money. He basically asked me about my writing and was very interested in my writing and there was an important portrait of him on the wall with JFK. We discussed a lot
about the fact -- it was an older picture. He had hair in
the picture. We discussed his age in the picture, what he
had done for JFK, his political leanings at the time.

We discussed my writing. I was beginning work on a
screen play. I had almost finished a novel.

He told me he had connection in film. We talked very,
very little about my investment objectives because I
remember a friend afterwards being surprised there was not
more conversation about the actuality of what my investments
would be, it was more I want to see the whites of your eyes,
you got my money.

Q  What did you tell him your objectives was?
A  I said this is my nest egg, I am living in the woods, I
will try my hand at writing, it will take me a while, I am
starting late and I need this time to try and write and I
don't want to think about my money.

He came highly recommended and I felt very safe; that I
didn't have to think about it, I didn't want to think about
it. It is not an area I understand or am interested in.

Q  While you were in the Berkshires, did you subscribe to
any newspapers?
A  I got the New York Times on Sunday. I got Food and
Wine Magazine.

I believe that was the only one I was subscribing to at
that time.
Q Did you regularly read any financial magazines?
A No.

* * *

Q What happened in May 1999?
A Mr. Smart called me and he left me a message that said I should get my money out of Trustum because he said Mr. Lemon was a crook and I should get my money out.
Q Did you return the message?
A Yes. I called him back and I didn't believe him.
Q Why didn't you believe him?
A What I felt was, I felt people like Mr. Smart probably had a lot of money invested and maybe something happened in his account but I was different and I just had a little bit of money and I felt Mr. Lemon was -- he came so highly recommended and I believed in him in the beginning and he was a vice president at Trustum. I mean a vice president, I didn't know anybody that was in that position and he had sent me an article that talked about him, people were quoting him, asking him predictions about the market.
Q When had you seen the article?
A I could remember.
Q Did you have any discussions with your friends about your investment?
A Yes. He got me through the crash. I had a friend that lost a lot of money through the market. I had a lot of
friends. I was very elitist about it. I was very proud of myself. I had this wonderful broker, he was a vice president at Trustum. He had got even me through the crash. I felt very lucky he had taken my account and they had not gotten through the market, so I didn't believe Mr. Smart when he said he was a crook, I did not believe it, and also we had developed a friendship on the telephone. I didn't think someone would do something like that.

A  My monthly statement and the slips -- I never looked at them. I never really paid much attention to the account until the end.

Q  Can you tell me about what happened on August 11, 1999?

A  I think I must have gotten the statement where I realized so much of the money was completely gone and I must have called him and tried to ask him what had happened. I told him that I thought he was stealing from me to the tune of 10,000 a week.

Q  What was Mr. Lemon’s reaction to your statement?

A  He was speechless.

Q  What did you do?

A  I went to see a broker at Merrill. I explained what had happened and we walked towards his office and he started -- I handed him a whole stack of these trade slips. I just went through my closet to find whatever I could find
and I had this whole stack of trade slips and he looked at
them and was astounded how many trade slips there were and I
think he laughed and he said -- that was the first time I
realized that I had been taken, then he said you must write
a letter immediately instructing Lemon to stop trading your
account. We wrote it at that office, I faxed it from
Merrill's office to Mr. Lemon in New York at Trustum.

The Merrill broker was astounded of the number of
trades in my account. He laughed and I was crying. That
was the first moment I realized that it was a bad thing that
happened to me.

Q Did you subsequently move your account to Merrill?
A I did, what was left of it.

MR. SMART: No further questions.

CROSS EXAMINATION

BY MS. MARLOW:

Q Ms. DuBois, I am going to hand you a copy of a
letter dated February 23rd, 1999, which I would like to
offer and ask you if you recognize that document?
A Okay.

MR. SMART: Well, I would like to make a
statement on the record concerning this document.

THE CHAIRMAN: Go right ahead.

IV-34
MR. SMART: I only saw this document for the first time yesterday.

The panel should be aware that it is a document which constitutes correspondence between the respondent and the claimant and that it was covered by a document request which the claimant had served upon Trustum back in January of this year.

I am not going to belabor the point. The panel is already well aware of the number of prehearing conferences we have had on document production in this case. And I believe this document should have been produced prior to Monday morning.

Now, I am not opposed to having Ms. DuBois testify with regard to this document.

However, before it is put into evidence, I am going to request, in view of its late production, that I be granted a voir dire from the person who found it as well as from the person who sent it originally before it is introduced into evidence.

THE CHAIRMAN: Do you want to respond to that?

MS. MARLOW: Yes.

This document was discovered within the last two weeks.

I told Mr. Smart that after I read his prehearing memorandum over the weekend, which was the first time that I
looked at it, I saw a statement in his memorandum that he had requested and not received copies of any activity letters. I decided that I had an obligation to turn it over and I did turn it over to him Monday morning, which was the first opportunity that I had to do so.

THE CHAIRMAN: What do you want the panel to do, Mr. Smart?

MR. SMART: I would like to have an opportunity before the document is introduced into evidence to examine the person who found it and also to examine the person who sent it originally.

I would also like to ask if there is an original of it.

THE CHAIRMAN: Okay. The original is another issue.

MR. SMART: My understanding of the activity letter from Trustum's own administrative directives is that the branch manager is under an obligation to obtain back from the client an original signed letter which they keep and a copy is supposed to be sent to compliance.

The original is explicitly supposed to be kept in the client's file.
MS. MARLOW: We have not been able to locate an original.

THE CHAIRMAN: Is that a copy of a signed original?

MS. MARLOW: It appears to be.

THE CHAIRMAN: By the customer?

MS. MARLOW: It appears to be, yes.

THE CHAIRMAN: Okay. What the panel has decided is that we are going to go ahead with the cross-examination and allow this document to be entered and the cross-examination to proceed based on the document.

THE CHAIRMAN: Okay. We are going to accept the document, anyhow, as Respondent's 4. And you can proceed examining Ms. DuBois in reference to this document. This is a 2-21-99 letter from Charlotte DuBois to Edward J. Sack on Trustum stationery.

(Received in evidence.)

THE CHAIRMAN: Okay. Let's go. Respondent's 4 has been marked.

BY MS. MARLOW:

Q    Ms. DuBois, have you had an opportunity to look at R 4, Exhibit R 4?

A    Yes. Yes, I am looking at this letter. Yes.
Q   Had you seen it before this morning?
A   I do not recall whether I have seen this letter before. Nor do I think to the best of my recollection this is my signature, although I am not sure.

I don't think I would have signed anything that said "I am and have been aware that these transactions resulted in significant commission being paid to your firm." I don't believe this is my signature, is one answer. Start it from scratch. Can we roll back?

Q   Is this the second time that you are looking at this document this week?
A   This is the second time I have seen this letter this week, yes.
Q   Do you deny that that's your signature?
A   I, to the best of my knowledge, do not recall signing this document, nor do I recollect ever having been sent this letter in Truro, Massachusetts.

I do not recollect having received this letter or a cover letter with it explaining what it was in the Berkshires, Massachusetts, which is where I was residing on February 21st, 1999.
Q   Do you deny that that's your signature?
A   To the best of my knowledge, I have severe doubts that is my signature.
Q   But you don't deny it?
A I have never signed "DuBois" like that. I sign my name a lot of ways. The Charlotte looks okay, although the bottom part of the C doesn't look right, but the DuBois is the part that I have real -- my U is never -- my U never comes up through the D the way that U comes up through the D.

And the S is completely wrong. My S's always come differently.

It is that part. And -- okay.

So I'm saying I have severe doubt.

Q But you don't deny it?

A What does severe doubt mean, is what you are asking me.

Does severe doubt mean deny? Deny means I'm a thousand -- that I have no -- it's like I murdered somebody, but then I have amnesia two weeks later and I say I severely doubt I murdered that person.

I mean, we're getting into semantics here and I don't know how to answer you, so I'm going to have to say I don't know how to answer you.
THE CHAIRMAN: Would you state your full name and address and occupation for the record, please.

THE WITNESS: Conan Sweet, S W E E T. Business address, Fifth Avenue, New York, New York, and I'm a control administrator.

THE CHAIRMAN: Thank you. You can proceed.

MR. SMART: Okay.

DIRECT EXAMINATION BY MR. SMART:

Q Mr. Sweet, you stated that your position is a control administrator. Could you describe what your responsibilities are?

A It's to assist the branch manager and compliance in administrative duties.

Q And in what ways do you assist the branch manager?

A Daily functions of compliance reviews, signing and approving new account forms, daily review of accounts.

Anything with the exception of reviewing of order tickets and outgoing correspondence which cannot be delegated by the branch manager.

Q You are not responsible for the outgoing correspondence?

A No, I am not.
Q Would that be anything with Ms. Pall's name on it?
A Anything written by any of the employees of the branch must be approved first by Ms. Pall before it goes out.
Q I see.
A Are you responsible for preparing any outgoing correspondence?
Q Yes, I do.
A What sort of outgoing correspondence would you prepare?
Q I would prepare any response to clients, inquiries from clients, I would prepare a response out to the client.
A Activity letters, I prepare. Things of that nature.
Q How do you prepare activity letters?
A Based on reviews that I do daily and on a monthly basis, it is determined whether we are going to request an activity letter on a particular account, and from there we would type up a letter and mail them out to the client.
Q Who does the physical work of actually preparing the letter?
A The typing?
Q Yes.
A My assistant
Q Is your assistant a secretary?
A Yes.
Q Full-time secretary?
A Yes.
Q In addition to the activity letter itself, is there any other letter that goes with it?
A Cover letter would go out.
Q Are these prepared on any established schedule?
A Not really, no.
Q They are prepared on a random basis?
A Correct?
Q In the usual course of your business?
A It could be on a monthly basis when the monthly reports come up. It could be intra-month. It depends on what sparks an activity letter.
Q Let me just show you what's been marked as Respondent's Number 4.

(Witness perusing document.)

Q Do you recognize that document?
A Yes, I do.
Q Have you ever seen it before?
A Yes, I have.
Q Where have you seen it before?
A I've seen it in the branch office and it's an activity letter that we typically use to mail out to clients.
Q Did you produce this letter?
A Yes, I did.
Q And where did you produce it from?
A From my activity letter file for the year of 1999.
Q    In the branch office?
A    I was gotten from our warehouse on a request for a document search. It was in one of the boxes that we recovered from the warehouse.

THE CHAIRMAN: Who has the original? Is that available here in this room today?

     Anybody? Do you people have it?
     MS. MARLOW: No. I believe we have previously discussed that we have not been able to locate the original.

THE CHAIRMAN: Okay. I'm sorry.

Q    What is your procedure, office procedure, when a letter like this comes back into the office?
A    The letter would come to my attention. I would make a copy of it and send it down, send the original down to the compliance department and then I would maintain the copy in our file.

Q    So you send the original to the compliance department?
A    Correct

Q    And you keep a copy in your file?
A    Correct.

Q    When a letter like this comes in or when any correspondence comes into your branch office, is it usually time stamped?
A    It depends where it comes in. I personally, any correspondence I get directly, I do not time stamp.
Q  I see.
A  No, I don't.
Q  Would this come into a general mail room?
A  Yes.
Q  Would they time stamp it there?
A  No, they wouldn't.
Q  You testified, didn't you, that you send the original to compliance?
A  Correct.
Q  How long have you been doing that?
A  I've been at the branch since 1992.
Q  And you have always been sending the original down to compliance?
A  Yes, I have.
Q  Now, is the cover letter and the actual activity letter prepared at the same time?
A  It should be, yes.
Q  What are the criteria for sending out an activity letter?
A  I send out activity letters when the commissions reach $20,000 year to date.
Q  As of February 21, 1999, were there $20,000 year to date commissions?
A  No.
Q  Why did you send out the activity letter, then, if
there were not enough commissions?
A  I do not have any memory of sending out the letter.
Q  Oh, I did want to ask you, go back to Respondent's
Number 4. That's the activity letter.
A  Okay.
Q  Now, you testified this is all prepared by your
assistant who types and prepares this with a cover letter
simultaneously and it goes out?
A  Yes.
Q  I'm just curious if there was any particular urgency
with getting this letter out for Charlotte DuBois or if it
was done just in the regular routine business?
A  I don't recall the circumstances for it going out.
Q  Okay. I'm just wondering if there was any reason why
either you or your assistant would come into work on a
Sunday.
A  There is no reason to come in on a Sunday.
Q  I am suggesting to you that February 21st, 1999 was a
Sunday.
A  Okay.

    Typo, wrong date.
Q  All right.

    THE CHAIRMAN: You doubt seriously if it was done on
Sunday?

    THE WITNESS: Oh, I know it wasn't done on -- I know I
wasn't there on a Sunday.

Q  Did you have any conversations with Mr. Lemon?
A  In general or --
Q  Well, in 1998 or 1999 about any of his accounts?
A  I'm sure I did, yes.
Q  Did you have frequent conversations with him?
A  I don't know what you mean by frequent.
Q  Well, a daily conversation with Mr. Lemon?
A  No.
Q  No.
  Weekly?
A  Doubt it.
Q  Monthly?
A  Possibly.
Q  Do you recall what you talked to Mr. Lemon about? Anything stick out in your mind?
A  Nothing sticks out, no.
Q  Does Charlotte DuBois come to mind?
A  No, it doesn't.
CROSS-EXAMINATION

BY MS. MARLOW

Q    Could you please give the panel a brief resume of your background at Trustum?

A    I started with Trustum in 1985. I started in the general compliance surveillance division.

        I worked there for approximately three years or so, then moved on to option auditing, also for Trustum, where I did branch option audits. Did that for, I guess, probably five years.

        Then I moved up in 1996 to the GM branch as control administrator.

Q    So you have been up at the GM branch since '96?

A    Since 1996, correct.

Q    Has that been located in the same building for that period of time?

A    Same building. We recently switched floors.

Q    If you send a letter and assuming the letter's received back, do you do anything else to monitor the account?

A    I would continue to monitor it. Based on maybe five months, six months, or whatever the case may be, maybe I would go for another activity letter.

Q    Is there anything else besides sending an activity letter which --

A    Have a conversation which the Financial Consultant
branch manager is made aware of it, and based on the input I'm getting back maybe I would do something differently.

Q Like what?
A Maybe slow the account down and don't let the account trade anymore.

Q Do you recall this account?
A Ms. DuBois' account does not stick out in my mind from discussions or anything else.

Q You don't recall anything about it?
A It does not stick out anything -- any differently than -- it is an account that does not jump out in my mind. No.

Q And you don't recall whether you had a conversation with Mr. Lemon?
A Do not.

RECROSS-EXAMINATION

BY MR. FREEZE:

Q Is there anything in Trustum's policy that requires you at least by virtue of getting activity letters to get any more activity letters, additional activity letters, over and above the only one that's referred to the first time an account hits the $20,000 year to date commission figure?
A No, there isn't.

Q Just so the record is clear, we know that the date of
the letter, Respondent's Number 4, is February 21st, 1999.

For clarity of the record, what is your best recollection of when the signed letter was returned to the GM branch?
A I could not pinpoint an exact date or time, but based off the other information given to me, somewhere between 3-28-99 and 5-1-99.
Lemon's Testimony
at DuBois v. Trustum Fidelity

Q Would you for the record state your background and experience in the securities business?

A Began in 1967 as a customers man at Watchem & Company to 1971.

From 1971 to 1980, a managing partner, compliance officer of Equity & Company and from 1980 to 1987, a manager partner at Winkin Blinkin & Nod.

I have been at Trustum since 1987 as a registered rep, and then as a principal.

Q Do you have any particular certifications and qualifications in the securities business?

A I have been a member of the lecture bureau of the New York Stock Exchange since 1968, approximately. Although that had diminished considerably over the past 15 years. I was lecturing at least once a week adult education in different schools, Columbia. I am a member of the National Association of Securities Analysts and a member of the National Securities Federation.

I am not a member of the research department of Trustum. However, I sign my research as a member of both of those organizations.

Q Within Trustum, what are your particular
qualifications?

A  At Trustum I have the role as a -- I do not have the title or designation financial consultant on my card because I am an officer and principal of Trustum. But I function, in my eyes, as a broker. I would say 90 percent of the time.

I do have other responsibilities, but I would have to say that that is my main source of income, and my main responsibility. Although, I do contribute a great deal of research on our floor. We have the largest office in the Trustum fleet, and I contribute to the income of those -- we have 75 brokers, approximately, on that floor. I share my ideas with them.

Q  Do you become involved with money management?

A  Yes. In fact, tomorrow I -- there is an inauguration, there are 265 people at Trustum, coast-to-coast, who will have the designation of portfolio manager. Tomorrow is our induction after completing a thorough course in analysis.

This has to do with a program of Trustum managed money, where there is a selection of, say, 50 odd money managers, or we now have with that designation -- and I will have the opportunity of having portfolio manager on my card as a designation -- running money for people, charging a fee, I understand, and/or commissions.
I am not sure of what that schedule is. I find it is exclusive, you have to be a member of the director's council. That means you have to do one million dollars in gross commission business three years in a row. Only open to those who have made director's council, which I have been a member of, for the last four years.

* * *

Q Did you have a discussion with DuBois as to what your recommendations or plan was for the investment in the account July 27, 1998.

A It does not differ much. I should have mentioned this before, you asked me what other designations I have. In the media, which I -- should I discuss this?

Q Go right ahead.

A I am sorry, I left out the fact that I have been involved in the media for 23 years. My main thrust years ago was the motion picture industry, which has diminished slowly but surely, as these companies disappear. I became more of a generalist. I go on television, NBC, and I talk about this.

It is buying securities listed on the New York Stock Exchange, and buying boring stocks like General Motors. High-yielding stocks, like utilities. This is my main thrust.
I do not go to options, over-the-counter. Not that I have a disrespect for that area, I just feel more comfortable and have for years on the New York Stock Exchange. Where there is a dividend of substance, plus the chance of capital appreciation.

The basic theory is that the company pays a respectable dividend, you collect that while you wait for a security to appreciate.

This basically would be my thrust to Ms. DuBois, or anyone walking into my office.

I believe you can make money on a quality boring stock, like a General Motors, or AT&T or an utility that is rated A, and if interest rates drop even faster.

I always make a point, you do not have to hold the stock for a long, for years and years to capitalize on making money in the market.

I have said that in public and coast to coast on network television.

Q Prior to making a trade in her account, did you always discuss with Ms. DuBois what your recommendations were and get her assent to a transaction?

A Ms. DuBois was aware of all the transactions that took place in her account from beginning to end.

THE CHAIRMAN: Could I ask a clarifying question?
When your counsel asked about these trades, you said she was aware of all the trades. I do not know if you used the word trades. My question is when was she aware of them.

THE WITNESS: Before they were executed.

THE CHAIRMAN: It is your testimony throughout the account that she was aware at all times before a trade was executed?

THE WITNESS: Absolutely. This fund was redeemed or sold at her instructions.

THE CHAIRMAN: I recognize in the parlance of the industry you are a big hitter. I presume there are other big hitters at Trustum. Do you know whether Trustum has a policy whether an account generates X in commissions a month that the requirement is to send one of these happiness letters, or other terms that have been used here today?

THE WITNESS: I believe I heard Mr. Sweet testify the answer is yes.

THE CHAIRMAN: Who is your branch manager?

THE WITNESS: Cheryl Pall.

THE CHAIRMAN: During the period this account was going, someone has testified or stated, probably one of the counsel, that this account generated 70,000, about, in commissions in a relatively short period of time, less than a year. If that were the case, and if there were a 2,000 limitation, there would have been a question raised by
someone in the firm, perhaps your Compliance Department downtown about so much commissions in the account a month and talking to you about it. Either through Ms. Pall or Mr. Sweet, or some person unknown in the Compliance Department downtown, by memo, wire, et cetera.

Is that a fair assumption on my part?

THE WITNESS: I assume that, if there is a letter that appeared, somebody must have triggered that. I am not aware of it.
CASE SUMMARY

The Statement of Claim was filed on November 16, 2000

Claimant, Charlotte DuBois, alleged that Respondent, Trustum Fidelity & Dough, Inc. and its agent, Merlin Lemon a Vice President and Financial Consultant deliberately, wantonly and recklessly engaged in unsuitable trading in light of the background and objectives of Claimant. Claimant also alleged that Respondent, Merlin Lemon, churned her account, traded on a discretionary basis without authorization and that Respondent, Trustum Fidelity & Dough, Inc., failed to supervise its employee, Merlin Lemon.

Respondents, Trustum Fidelity & Dough, Inc. and Merlin Lemon denied all allegations of wrong-doing and maintained that Claimant was involved in the management of her account, that trading in her account was consistent with her investment objectives and that further, Claimant made no complaint regarding her account prior to this arbitration.

RELIEF REQUESTED

Claimant, Charlotte DuBois requested an award in the amount of $218,046.00 plus punitive damages of $2,500,000.00.

Respondents, Trustum Fidelity & Dough, Inc. and Merlin Lemon requested dismissal of the Claim and requested that costs be assessed against Claimant.
TRUSTUM FIDELITY & DOUGH, INC.

February 21, 1999

Cheryl Pall
Fifth Avenue
New York, NY

Re: Charlotte DuBois

Dear Ms. Pall:

I am and have been aware of all transactions in my account. I am and have been aware that these transactions resulted in significant commission being paid to your firm and the Financial Consultant servicing my account. In addition, all the transactions were made with my consent and with my prior full knowledge as the nature of the speculative risks involved in these investments.

Very truly yours,

Charlotte DuBois
IT IS HEREBY STIPULATED AND AGREED by and among the United States of America, by Mary Jo White, United States Attorney for the Southern District of New York, and the defendant Conan Sweet, and the defendant Merlin Lemon, that:

1. If called as a witness, Robert Kern would testify that he is a attorney working for Trustum Fidelity & Dough, Inc.

2. That he began work in the Compliance Department and moved to the General Counsel's Office where he has become head of the litigation group.

3. In the 1990's, the Securities and Exchange Commission and the New York Stock Exchange increased their scrutiny of brokers, more than doubling their enforcement department.

4. Mr. Lemon had lost two arbitration awards against him between May and September 1998, each in excess of $100,000. There were two additional pending complaints against him charging sales practices. New York Stock Exchange has the authority to sanction brokers, including suspending or disbarring them. In his opinion, if Mr. Lemon lost either of the two then pending cases, including the DuBois case, the Stock Exchange would have
investigated Mr. Lemon further and in his opinion, a form of sanction would have been imposed against him.

5. Brokers at Trustum were aware of the powers of the Stock Exchange and the increased surveillance that the Stock Exchange had undertaken at the time.

6. If called as a witness, Jacob Milo would testify that he was the chairman of the arbitration panel which heard the case captioned "Charlotte DuBois v. Trustum Fidelity & Dough, Inc. and Merlin Lemon.

7. That Government Exhibit 100 was offered into evidence as Respondent's Exhibit 4 at the arbitration purporting to be a letter signed by Ms. DuBois and referred to as "the activity letter."

8. At the conclusion of both the testimony and receiving all of the exhibits, the arbitrators left the hearing room and conferred among themselves in closed session and reached a decision to award approximately $77,000 in favor of Ms. DuBois.

9. The amount of the award was determined based upon the belief by the arbitrators that Ms. DuBois suffered a great deal of activity in her account which could be called churning, but that she might have exerted some pressure on Mr. Lemon to achieve higher returns by creating this activity. Therefore, the arbitrators decided that Mr. Lemon and Trustum should not benefit in any way from what they did and their commissions totalling $77,000 should be taken away from them and awarded to Ms. DuBois but that she should not be made entirely whole because she did continue to control her account.

IV-60
10. The arbitration award was physically prepared by an NASD administrator who typed up the award. The arbitrators signed the award and then returned to the hearing room and read the award. Copies were available to the parties, although no record was kept of whether the parties took a copy at that time. Subsequently, the NASD administrator mailed the award to the parties to the arbitration. Government Exhibit 115 is the award.

11. The panel was experienced enough to know that punitive damages were not going to be awarded in this case.

12. The activity letter played a role in the determination of the panel in that the panel believed that the letter was signed and it was one of the factors that caused the panel to believe that Ms. DuBois was aware of the activity that was occurring in her account.

13. Government Exhibit 301 is a copy of a check dated October 5, 2001 in the amount of $6,000 from Merlin Lemon to Conan Sweet.

14. Government Exhibit 302 is a copy of a check dated July 28, 2001 in the amount of $8,000 from Merlin Lemon to Conan Sweet.

15. Government Exhibit 303 is a check dated September 26, 2001 in the amount of $6,500 from Merlin Lemon to Conan Sweet.

16. Government Exhibit 102 is the original petition to consolidate the DuBois - Lemon arbitration with the Skull v. Lemon arbitration.

17. If called as a witness, Maureen Bangel will testify that she was the official court reporter on October 24 and
November 28, 2001 in DuBois v. Trustum and Lemon; that Government Exhibit 118a is a fair and accurate transcript of the portions of the testimony given on October 24, 2001 and November 28, 2001 by Conan Sweet during the DuBois v. Trustum and Lemon arbitration; and that Government Exhibit 11b is a fair and accurate transcript of portions of the testimony given on November 28, 2001 by Merlin Lemon during the DuBois v. Trustum and Lemon arbitration.

18. Trial Exhibit A is a check from Joe Smith to Conan Sweet dated September 27, 2001 in the amount of $4,000.

19. Joe Smith would testify that he was an account representative at Trustum and loaned Mr. Sweet $4,000 in connection with repairs on Mr. Sweet's house.

Dated: New York, New York
September __, 2003

MARY JO WHITE
U.S. Attorney
Southern District of New York

By: ______________________

CONAN SWEET

By: ______________________

Attorney for Conan Sweet

MERLIN LEMON

By: ______________________

Attorney for Merlin Lemon
"Personal Loan"

TRUSTUM FIDELITY & DOUGH, INC.

MERLIN LEMON

Oct 5 2001

Pay to the Order of Conan Sweet $6,000

Six Thousand 00/XX Dollars

PREFERRED CLIENT
FINANCIAL MANAGEMENT ACCOUNT

387 Boston Safe Deposit and Trust Company
One Boston Place, Boston, MA 02106

For ________________________________ Merlin Lemon

4717_1.doc IV-63
TRUSTUM FIDELITY & DOUGH, INC.
MERLIN LEMON

Pay to the Order of Conan Sweet $8,000
Eight Thousand 00/XX Dollars

PREFERRED CLIENT
FINANCIAL MANAGEMENT ACCOUNT

367 Boston Safe Deposit and Trust Company
One Boston Place, Boston, MA 02109

For ________________________________ Merlin Lemon

[Signature]
TRUSTUME FIDELITY & DEU, INC.

MERLIN LEMON

Sept 26 2001

Pay to the Order of Conan Sweet $6,500

Sixty-Five Hundred 00/XX Dollars

PREFERRED CLIENT
FINANCIAL MANAGEMENT ACCOUNT

For Merlin Lemon

GX 303
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the matter of the Arbitration between

CHARLOTTE DUBOIS,

Petitioner,

- against -

TRUSTUM FIDELITY & DOUGH, INC.,
and MERLIN LEMON,

Respondents.

-----------------------------------X

RACHEL PUTT,

Plaintiff,

- against -

TRUSTUM FIDELITY & DOUGH, INC.
MERLIN LEMON,

Defendants.

-----------------------------------X

S I R S:

PLEASE TAKE NOTICE that upon the petition of Charlotte DuBois, verified on December 1, 2000 and the affirmation of Izzie Smart, Esq. dated December 1, 2000 and all the exhibits annexed thereto, an application will be made before this District Court on the 15th day of December, 2000 at 9:30 a.m. for an order pursuant to 9 U.S.C. §§ 4 and 6 and Rule 42(a) of the Federal Rules of Civil Procedure directing the consolidation of the arbitration proceeding commenced by the petitioner against

IV-66
respondents Trustum Fidelity & Dough, Inc. and Merlin Lemon now pending before the National Association of Securities Dealers, with the arbitration proceeding commenced by plaintiff Rachel Putt against the same respondents and also pending before the National Associate of Securities Dealers, on the grounds that the two arbitrations involve common questions of law and fact and the consolidation will avoid conflicts or inconsistent determinations.

Dated: New York, New York
December 1, 2000

By: _____________________________

Izzie Smart

Attorneys for Rachel Putt and Charlotte DuBois
TO:

Associate General Counsel
Trustum Fidelity & Dough, Inc.
Two World Trade Center
New York, New York  10048
Attorneys for Trustum Fidelity & Dough, Inc.
and Merlin Lemon

Trustum Fidelity & Dough, Inc.
American Express Tower
World Financial Center
New York, New York  10018

Merlin Lemon
One Avenue A
New York, New York
STATE OF NEW YORK  )  )  SS:
COUNTY OF NEW YORK  )

Charlotte DuBois, being duly sworn, deposes and says that deponent is the petitioner in the within proceeding; that deponent has read the foregoing petition and knows the contents thereof; that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true.

__________________________
Charlotte DuBois

Sworn to before me this
day of December, 2000

Notary Public
TRUSTUM FIDELITY & DOUGH, INC.
JOSEPH SMITH

9/27 2001

Pay to the Order of Conan Sweet $ 4,000
Four Thousand 00/XX Dollars

PREFERRED CLIENT
FINANCIAL MANAGEMENT ACCOUNT

For ________________ s/ Joe Smith

□
□
American Mayflower Life
Insurance Company of New York
A Stock Company

Will pay the Beneficiary the death proceeds as defined in this Policy. Payment will be made after the following have been received at the home office:
- this Policy;
- due proof that the Insured died while this Policy was in force;
- a written claim for the death proceeds completed on a form supplied by the Company; and
- an authorization, on a form supplied by the Company, which will allow the Company to obtain and disclose information concerning the Insured.

Any payment is subject to the provisions on this page and on the following pages.

The consideration for this Policy is the application and payment of the Total Initial Premium on or before policy delivery. Subsequent premiums are payable on each Premium Due Date during the Insured's lifetime.

The Owner may return this Policy within 20 days after its delivery. To return this Policy, take it or mail it to the Company or to the agent through whom it was purchased. Immediately upon delivery or mailing, this Policy will be deemed void from the beginning. Any premium paid will be returned.

Signed at the home office at 2 Penn Plaza, New York, New York, on the Date of Issue.

President

Secretary

INCREASING PREMIUM LIFE POLICY
Insurance Payable at Death
See Schedule for Amount of Insurance and Premiums
Premiums Payable during Insured's Lifetime
Premium Subject to Change as Shown in Schedule
But Will Not Exceed Specified Maximum Premium
Cash Values Available as Shown in Schedule
Exchangeable on or before the Exchange Date
Nonparticipating - No Dividends

<table>
<thead>
<tr>
<th>Insured</th>
<th>Merlin Lemon</th>
<th>Amount of Insurance</th>
<th>$50,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Initial Premium</td>
<td>$407.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Policy Number</td>
<td>M158,099</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Policy Date</td>
<td>September 28, 2000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date of Issue</td>
<td>April 24, 2001</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Form No. AM-1410-GP

Form No. AM-1410-GP
MAY 10th, 1999

Merlin Lemon
Vice President

Trustum Fidelity & Dough, Inc.

PLENTY! And near term targets of $42-$45, and a long term price projection of $66 is on the chart. Upjohn reversed its downtrend recently as it broke out over 37-1/2. The next barrier is 40 and with the momentum in the expect accelerated velocity to carry level soon. A breakdown in Upjohn would negate this scenario.

Upjohn has been a rumored takeover candidate for years. However, this is the first time I have felt comfortable in predicting that a friendly acquisition of one of the largest manufacturers of pharmaceuticals and agricultural products that also provides health care services, will take place sooner than later, within the next six to twelve months, at a price exceeding $60 per share. If past performances have any meaning, let this typewriter remind you that Smithkline Beckman was recommended in January at $52, and in the first quarter of last year an additional nine deals were done that were written here. Four out of five securities published in my model portfolio were involved in takeovers, the fifth, MCA. The overall portfolio performance for the year: +77.2%. Could history predicting repeat itself? Why not?

Upjohn's profit growth should rise sharply this year. The rapid change in the practice of medicine demands new development of drugs, and this is Upjohn's major focus now. For example, sales of Xanax, a modest 7% anxiety drug contributor last year should add considerable numbers to earnings as a panic disorder drug. Besides price increases, Upjohn has received approval for Xanax's additional usage for this illness. And let us not forget Rogaine, the hair raising topical minoxidil male pattern baldness sensation. Names familiar to us all such as Cheracol cough syrup, Kaopectate Unicap vitamins are labeled by Upjohn. Human health care accounts for 81% of sales and 91% of profits. Agricultural products 19% and 9% respectively. Earnings for last year should hit $2.40 per share, 2001, $2.90 per share, versus 95¢ for 1999. The first quarter for this year: 61¢ versus 56¢ for last year. The June quarter estimate 56¢ versus 51¢ for last year. The $1.00 annual dividend should be increased later this year.

Bear in mind Upjohn took a $1.08 restructuring charge last year. New drugs in the Research and Development pipeline should move bottom line numbers much higher, near and long term, enhancing the probability of a combination with another major consumer product company. BUY

If I may be of service, please call.

Merlin Lemon

Member
New York Society Securities

4717_1.doc

IV-72
January 28, 2002

Izzie Smart, Esquire
Blum, Gersen & Stream
270 Madison Avenue
New York, New York 10016

Dear Mr. Smart:

At your request, I have conducted an examination and comparison of the photocopy signatures on the two photocopies submitted, as follows:


The purpose of the examination was to determine whether the signature on the Trustum Fidelity letter was signed by Charlotte DuBois.

The examination reveals that the photocopy Charlotte DuBois signature on the February 21, 1999 letter to Edward J. Sack is a transplant from the December 1, 2000, affidavit.

The signatures overlay. They match. In addition, there are lines in the capital "C" and "D" that are consistent with patching. Those are the areas that are light or have dropped out in the photocopy of the signature on the affidavit, the prototype.

If you desire, we will prepare an exhibit to graphically illustrate the findings.

Enclosed are the two documents submitted.

Sincerely yours,

Edward Blood

IV-74
Handwriting and Questioned Documents Treatise

by Doctor Jesse Thrown

Published by the Sotofert Publishing Company,
1997, New York, New York
Foreword

Jesse Thrown is a world-renowned expert in questioned documents and handwriting. For thirty-seven years, he has led the field. After obtaining a Bachelor of Science from Union College in Schenectady and a Masters in Criminology from the University of California and Berkeley and a Doctorate in Criminology from the University of California and Berkeley, he worked to make the field of questioned documents what it has become today.

He received special training in the laboratories of the postal inspectors in San Francisco and advanced from trainee to assistant director of that laboratory. He then traveled to Washington, D.C. to become the Chief of CIA Questioned Document Laboratory, where he held that position for fifteen years until he retired from government service in 1991. While he was at the Central Intelligence Agency, he also taught forensic science at Chabot College and at Georgetown University, George Washington University, the American University and the Antioch School of Law. He held the rank of Adjunct Professor at the American University and Antioch School of Law.

Mr. Thrown, now retired from government service, teaches at the F.B.I. Academy in Quantico, Virginia. He is the author of numerous books, articles and other technical papers, including books entitled forensic examination of paints and pigments,
forensic science and pigments, forensic science and legal medicine. His latest book is in German, entitled Forensische Schriftenuntersuchung (Forensic Examination of Handwriting). He is a fellow and past president of the American Forensic Sciences and the American Questioned Document Examiners, and a member of the British Forensic Science Diplomates.

He is a world-renowned expert who has testified before numerous federal, state and local grand juries military courts, and has made presentations to the United States and foreign officials at the highest levels on matters concerning questioned documents.

This book is the most recent word on questioned documents now available.
Chapter 14

The Montage Technique

... The montage technique -- oftentimes referred to as the cut-and-paste technique -- has become prevalent in today's world of easy access to photocopying equipment. All that is required to make a montage are three separate pieces of paper. The first would be the stationery on to which the questioned document is to appear. The second is the typewritten text of such a document. The final piece of paper is the signature that is to be forged by placing it on to the new questioned document. These three separate and distinct documents can be united into in one of two ways: (1) by literally cutting and pasting the text and then the signature on to the bottom of the letterhead document or (2) by photocopying portions of each piece after strategically placing them on the photocopying machine.

After each step in the process, a line is likely to appear. That line may be eliminated by a careful process of whiting out the line and photocopying again until the line all but disappears. No great manual dexterity is required to accomplish this relatively simple forgery.

Of acute interest, however, to the keen observer, is whether the finished product, indeed, is a montage or a tracing. It must be borne in mind that a line on a questioned document cannot come
into existence from a line that did not exist on the source
document. Experts must keep their antenna up for the possibility
that tracing was the technique used in creating a questioned
document rather than relying on the possibility that the document
was created by a montage. Oftentimes, these two different
techniques can be confused by the untrained eye. Tracing can
only be performed by one who possesses great manual dexterity.
It requires patience, skill, concentration and a very fine, motor
skill coordination -- the kind of skills expected of an artist
who can paint miniature paintings.

The best way to discern whether or not a questioned document
is a tracing rather than a montage is to see whether or not there
are skips in the original source document that do not appear on
the final questioned document. Unless the filled in areas in the
final questioned document can be explained by touch-ups, the most
likely cause is that the document was traced, not created by a
montage.

A series of complicated laboratory tests must be undertaken
in order to discern whether or not a questioned document is the
result of a tracing, rather than a montage.

The following is a brief list of each of the steps that must
be taken to remove doubt that tracing is not the manner of the
creation of the questioned document. Without taking these steps,
it would not be reasonable to rule out tracing as the methodology
used: (1) careful examination of the original source document
and the most original of the questioned documents (i.e., first generation); (2) photocopying and enlargement of the respective source document and questioned document; (3) ultraviolet light analysis of the two documents; (4) creation of a transparency and comparison of the signatures under the transparency; (5) a chemical analysis of the questioned document to discern whether the ink that created the questioned signature was different from the ink that was on the source document; and (6) the use of a stereoscopic microscope which is like a 3-D microscope to examine the documents.
September 14, 2003

BY HAND

General Counsel
Trustom Fidelity & Dough, Inc.
Fifth Avenue
New York, New York 10013

Re: United States v. Sweet and Lemon,
25 01 Cr. 68 (SS) (SDNY)

Dear General Counsel:

We write to formally request that we be permitted to interview Valerie Marlow in connection with the above-captioned criminal action, the trial of which is scheduled to commence shortly.

As you are aware, since this firm was retained by Trustum to represent Conan Sweet in this matter, we have asked that we be permitted to interview certain Trustum employees. I was told by you early this year that we would be permitted to do so. However, on March 19, 2003, in a telephone conversation you told me that we would not be permitted to speak with any Trustum employees on the advice of Trustum's counsel. I sought an explanation for this decision and was told to deal with counsel. Counsel informed me that he did not want to risk exposing Trustum to government claims that it was too friendly with Mr. Sweet's counsel, because the government contended that Trustum was a "subject" of the investigation. When you and I subsequently spoke, you informed me that Trustum would follow the advice of its counsel, and decline to let its employees speak with me.

On September 2, 2003, the government superseded the indictment, deleting from the conspiracy count the charge that Messrs. Sweet and Lemon allegedly conspired with "others". It is now clear that the government does not contend that the defendants acted with others, and Trustum is no longer at any
risk.

The trial is now two weeks away. In that Trustum witnesses have met and continue to meet with the prosecutors with only Trustum's counsel present, fundamental fairness and decency would dictate that the same privilege be afforded to us.

On Friday, September 10, 2003, the government advised us for the first time of its witness list. Included on that list is Val Marlow. In order to properly prepare for the impending trial, it is necessary that we be permitted to interview this witness.

We ask that you show this letter to Ms. Marlow and advise her that she has a right to speak with us concerning this case.

I look forward to hearing from you.

Very truly yours,

Counsel For Conan Sweet
Interview of Abner Pols by Jack O'Donnell and Jeffrey Hollinshead conducted on 8/20/03 at the Manhattan Divisional Office.

**Position/Employment History**

Mr. Pols has worked in the securities for many years all at Trustum and has been employed by Trustum as a Financial Consultant for the last eighteen years.

**The Lemon/Sweet Relationship, Loans and Insurance Policy**

Pols has served as Lemon's personnel insurance agent. He said that over the years he has written and placed quite a bit of insurance business for Lemon. According to Pols, one day Lemon approached him and said that he wanted to do something nice for Sweet because of all of the assistance he gave him. However, Lemon told Pols that he was prevented from directly giving Sweet money or other gifts so he came up with the idea of purchasing life insurance on his own life and naming Sweet as the beneficiary. He asked Pols if this could be done. Pols checked with an insurance company and found out that he could write such a policy. However, because of some technicality the policy would have to be first issued with Lemon's estate or one of his
relatives as the beneficiary. Once issued, he told Lemon that the latter could simply change the beneficiary designation to Sweet.

Lemon elected to make the purchase and he selected the $50,000.00 face amount for the policy. Pols thinks Lemon bought a whole life policy. After the policy was issued Lemon changed the beneficiary to Sweet. Pols said that it was Lemon's intention from the beginning to list Sweet as the beneficiary on this policy. Pols has no recollection concerning the naming of Sweet's son as the contingent beneficiary.

Pols said he spoke with Sweet about the policy after Lemon approached Pols with the proposal. Pols said that Sweet was surprised and amused by the whole affair.

Pols said he personally thought the purchase was odd but that he did not see anything wrong with it. He did not discuss it with anyone else in the office since it was a private transaction.

Pols said that he is not aware of anyone, including Lemon, loaning money to Sweet.
DuBois V. LEMON: INTERNAL INVESTIGATION

7-20-03  Interview of Valerie Marlow by Jack Donnell.

Val's first involvement with the DuBois matter was on 9/18/00, when she was assigned the case.

Discovery was basically over when she got the file. Val handled the pre-hearing conference on 9-24-02.

On 9-26-01 Val heard that Merlin Lemon was going to have Fred Ghost represent him. Val had no contact with Merlin Lemon up to the 9-26-01 time frame. On 10-1-01 Val received a phone message from Lemon.

Val thinks that Wednesday 10-10-01 was her first visit to the branch. Val now believes that she probably asked Sweet to try to find an activity letter prior to the meeting. Val believes that after reading the statement of claim he requested Sweet to look for an activity letter. Val also feels she was aware that Conan located the letter prior to the meeting. She is sure this was some time between 10-1-01 and 10-10-01. Val definitely did not see the letter prior to the first meeting.

On 10-10-01 they met first in Sweet's office with Fred Ghost and Hal Freeze, Val's supervisor. The order ticket boxes were
located in a vacant office down the hall. The four of them later went to the vacant office, not necessarily at the same time. At times Hal or Fred went to visit Merlin. Conan went through the activity letter file. He had the file in his hand and pulled out the letter. Conan pointed out that it was a copy, unlike the other letters in the file. He also said that the text of the other letter was different, but that he must have used it. Val thinks that Conan had no specific recollection of sending this letter.

Conan said he found the letter in a warehouse box. She thinks Hal asked Conan some due diligence type questions about the letter. Basically the questions were designed to see if Conan had a problem with the letter and the outcome was that Conan did not. She thinks Hal or Fred asked whether anyone had access to the file. Val does not remember what box it was in. She does not remember if Conan ordered his compliance files or whatever.

Hal and/or Fred outside of Val's presence told Lemon about the letter and they reported back that Merlin didn't know anything about it. Val never asked Merlin a single question about an activity letter. After the meeting Val had his paralegal look for the original letter and they could not locate it.

Val remembers discussing the letter at breakfast before Conan
testified. Basically Conan recited what he testified to at the hearing.

During her discussions with Sweet, Sweet said that the account was generating a high amount of commissions and that by the end of February 1999 the account had over $20,000 in gross commissions on a trade date basis, which would have called for an activity letter to be mailed to DuBois in March.

The second meeting was on 10-17-01. Val and Fred were in Lemon's office.

On 10-19-01 Val set a reserve for the case of $70,000. She also spoke with DuBois' other attorney, Izzie Smart, on that date concerning possible settlement. Smart demanded the full amount of loss and more.

7-22-01 Continuation of the interview of Valerie Marlow by Jack O'Donnell.

Val believes the 10-19-01 conversation with Smart was the first time he spoke with him. Smart stated that he knew Merlin was in trouble in other cases. Smart was very critical of Lemon. He
made some unkind and hostile remarks about Merlin. Val did not make any settlement offer and the conversation was concluded.

Val spoke with the Branch Manager at some point between the 10th and 19th of October about setting the settlement reserve. Lemon was present. Lemon wanted to fight the case and not settle. The Branch Manager turned to Lemon and said: "If you lose this case, you are going to be fired."

Just before the hearing Val read the claimant's pre-hearing memorandum and saw its reference to the fact that DuBois was never sent and never signed an activity letter. At that point, Val decided that the activity letter had to be turned over to the other side as part of discovery. Val had intended to use the activity letter for impeachment, and therefore had withheld its production for strategical reasons.

Once she realized she could not withhold it, Val believed the activity letter was a helpful document and wanted to use it as affirmative evidence that DuBois retained control of her account, that Trustum properly supervised Sweet, and that her account was not churned.

Smart was given the letter the Monday morning prior to the hearing's first session. Smart made it plain on the record that
he did not challenge the letter's authenticity. However, it seemed apparent from DuBois' testimony that they were trying to discredit its effectiveness by her saying she did not remember it. Smart was more upset with the timeliness of the production.

Val's reaction to DuBois' testimony was that the letter was real, and that she signed it. Val feels she gave an attorney coached "non-denial". At some point after DuBois testified, but before Sweet testified, Hal Freeze suggested that Val send the letter to a handwriting expert for an oral opinion. Val did this but not right away since he had other more pressing work projects.

Smart asked for Sweet to talk about activity letter procedures. Sweet stated that his procedure was to keep copies of the activity letters and send originals to the Compliance Department.

Val realized at the time that this statement was incorrect, because Val had seen Sweet's 1999 activity letter file during the first office visit. Freeze told Val not to raise the point with Sweet or the tribunal, because whether Sweet kept copies or originals was not material to the proceedings. It would be a distraction and waste of time to raise it. Val agreed. However, after Sweet testified, Val told Sweet that she thought Conan misspoke on this point. But Conan defended his testimony saying that was his practice. Conan could not explain why he had
originals for that period of time but that was not his practice. Conan then left the hearing and Val attended to his next witness.

At some later point Val discussed the issue with Hal and Fred and raised the issue at breakfast the next day. However, they pointed out that Conan said it was his practice and he defended his testimony afterwards. Val raised the issue in the first place because she was concerned about accurate testimony, and not because she was questioning the authenticity of the letter.

There was a delay in hearing back from the first handwriting expert. Val called him repeatedly and finally had a short conversation, before Sweet testified. The expert said it was difficult to tell whether the signature was genuine because it was a copy. He questioned the fact that the bottom of the "C" in Charlotte did not go below the line. Val believed the expert's conclusions, i.e., probably not authentic, were full of doubt. Val did not have a confidence level of the expert's opinions.

Val reported this to Hal and the latter said obviously they needed another more certain opinion. He told Val to get somebody good and well respected. They sought out the premier handwriting expert and sent him more exemplars than they sent to the first. The second expert called Val back after reviewing the materials.
This was also before Sweet testified. The second expert concluded on balance that the letter was authentic. The second expert said he would be willing to testify to that conclusion in response to Val's request. Val said that she did not know if his testimony would be needed but that she wanted him available if the claimant revisits the issue.

Val said Merlin never gave him anything or offered to give him anything of value. Val denies any role in creating or legitimizing the activity letter.

Val never saw the petition to consolidate the Putt and DuBois claims filed in the U.S. District Court. In fact, he has no recollection of anything to do with the U.S. District Court issues. This was well prior to his involvement in the case. He did not see the petition when reviewing the file for signature exemplars to send to the handwriting expert. Val never knew DuBois signed documents in the U.S. District Court matter.
Notes from my (Jack O'Donnell's) telephone conversation of 6/3/00 with Valerie Marlow.

Valerie said Sweet handed them the letter. It was the first time he saw it. Valerie, Hal Freeze and Fred Ghost (attorneys for Trustum and Lemon) were in the branch office at the time. The file folder was examined by all and Valerie believes he remembers it containing originals.

This was roughly 3 weeks before the hearing. Valerie knows this since Val was not assigned the case before mid-September 2000.

Sweet said he found the activity letter folder in a warehouse box that also contained order tickets and confirmations that DuBois' attorney had requested in discovery. She recalls Conan being puzzled because the file contained originals and the DuBois letter was a copy. But he guessed he must have sent the original down to Compliance. Conan explained where the box was and how he found it. Val does not recall Sweet going any further on this that point at that time. Sweet had no personal recollection of the letter going out or returning. She thinks Sweet told
them that he thought the letter may have been a second request to DuBois. She also thinks Sweet told her the first letter may have gone out on Conan's own initiative in possibly January 1999.

They talked about the text being different from the other letters and Conan said he didn't know why he did that. He was puzzled but this is what must have happened. At some point, Valerie does not know when, they had a discussion as to whether he thought anyone would have placed this in the file. Conan said, "No." They discussed the chronology of the activity runs in detail. They felt they nailed it down to everyone's satisfaction.
DuBois V. LEMON: INTERNAL INVESTIGATION VALERIE MARLOW

Notes from my (Jack O'Donnell) telephone conversation of 6/18/02 with Valerie Marlow.

Valerie believes she first heard mention of the letter while she was at the GM branch office. It took place in late September or the very beginning of October 2000. She thinks it was at his first visit to the branch. She was there with Hal Freeze, Fred Ghost and Conan Sweet.

She had no prior discussion on this activity letter before the meeting. She is crystal clear on this, it wasn't requested, etc. The purpose of the meeting was for her to meet Conan and Lemon.

What stands out in Val's mind is that the folder supposedly came from a box in the warehouse. Also she recalls that the other letters in the file were originals and the DuBois letter was a copy. Conan said something to the effect, "I don't know why this is a copy. All I can say is I must have sent the original down to Compliance." Conan said he did not specifically recall sending it out, but that he must have sent it out. It was clear in Val's mind that Conan obviously adopted it. We looked through the activity letters in Ed's file. They were all originals, except this one. Val also
recalled that there was a discussion that the text of the letter was different from any of the other activity letters in his file. Val thinks that Conan himself may have raised this question. He said words to the effect that, "I don't know why I used this form here, but I must have in this case."

Val remembers someone pointing out that the date of the letter fell on a Sunday. Conan said he couldn't have worked on a Sunday. Val thinks Conan made copies. Val does not believe they took away the file copy. They took copies of the letter back, but not the whole file.

Val did not talk to Lemon about the letter at that time. Val thinks he was just introduced to him. Hal or Fred asked Lemon about the letter (without Val present) and someone came back reporting that Merlin doesn't know anything about it.

They also discussed going to Compliance to try to find the original. After the meeting, she believes she had her paralegal check Compliance and found out that they had no record of it. She discussed this with Hal and he said it could be anywhere. There was frustration that Compliance was not looking hard enough and the original letter was never found. But the attitude was more of it must be there, but we can't find it.

After DuBois questioned the document at the arbitration, Hal told Val that they should get a handwritten opinion in case DuBois' attorney further questions the
letter. At some point in November 2001 they had an expert review it for the purpose of determining whether the signature was a forgery. The expert was not immediately responsive. When Val finally called a third or fourth time, the expert said that he did not think he could give a firm opinion as to the validity of the signature based on a photocopy, but that from his cursory review of other examples of DuBois' handwriting, it appeared to him that the signature was likely a forgery -- i.e., not signed by her.

Because this expert's reaction was so reluctant and casual, Val decided to consult a second expert. He said that in his opinion the signature was probably not a forgery, i.e., it appeared to be Ms. DuBois' signature, but that he had to reserve certainty because he only had a photocopy to work with.

Val and Fred never told Conan about their concerns about the letter, or that they sent the letter to two experts, or that the first expert questioned its authenticity.

Sometime later, during the arbitration, in order to ascertain whether the letter might not be authentic, Hal asked Conan if anyone had access to his files or records. Fred Ghost was brought in on this as well. Conan said Lemon could have done it because he himself had once been a compliance officer, but the thought was so improbable that he couldn't believe that Lemon would have done it. When Val pressed him, Conan said Lemon probably knew where the file was and would have had access to it.
DuBois V. LEMON: INTERNAL INVESTIGATION      FLORA BURTON

Interviews of Flora Burton by Jack O'Donnell conducted on 7/16/03 and 7/23/03. Also included are notes from a follow-up interview of Flora by Jack O'Donnell conducted on 8/20/03 at the Manhattan Divisional Office.

After our first interview Flora requested a second meeting for further discussion. At that meeting, Flora told us that before the first meeting, Lemon had told her not to volunteer any information, and to limit her answers precisely to the question.

She stated that Merlin has been "on edge" and acting weird lately.

Position/Employment History

Flora was hired by Trustum in January 1995 to work with another financial consultant (FC). She then began work as a sales assistant for Merlin Lemon. Flora
obtained Series 7 and 63 licenses in May 2000.

Flora performs administrative functions for Lemon. Lemon does not throw things away. Lemon has approximately 250-300 client accounts.

**Branch Office Layout/Security**

Flora said that the General Manager's assistant, keeps the General Manager's letterhead on the assistant's desk. The assistant does not permit others to use the letterhead without a specific need.

Merlin comes into the office between 8-8:30 a.m. and works until 6:30-7:00 p.m. Flora works from 8:30-8:45 a.m. until 5:00-5:30 p.m. and occasionally as late as 6:30-7:00 p.m. Merlin does not regularly work on weekends, unless there is an arbitration or some other emergency. He is known to have come in with his wife on weekends, who was his assistant before Flora.

Flora sees all activity letters for Lemon' clients. They get a copy of the letter before
it goes out. The Branch Manager's secretary types for them for Sweet and gives them to Flora. Lemon does look at them. Flora does not keep copies, because Sweet is supposed to.

**Lemon's Typing and Related Skills**

Flora said that Lemon is a pretty good typist who will type some of his own materials. He does not know how to use the word processor so he will go out of his office and use a typewriter. According to Flora, Lemon favors the typewriter of a nearby secretary, and he likes to use script print. Flora said that Merlin has an incredible memory for numbers and he is not absent-minded.

Flora explained how they would create letters containing symbols such as the "Bugs Bunny" character. She does not recall if Merlin taught her how to do it or if he merely told her how he wanted the finished product to look. However, according to Flora it is a very simple process and they all (i.e. Flora, Sheila DeLong and Lemon) know how to do it. Flora also noted that the idea of using the characters came from Lemon. In fact, she thinks Lemon may have been using the characters before she
started working for him in September 2000.

According to Flora, Lemon would generally bring the symbol to work from home. for example, she specifically remembers him bringing in the "Bugs Bunny" character. She said Lemon' wife may have torn it out of the paper. They would first put the symbol on a plain sheet of paper. She said they would use a glue stick for this purpose since tape has a tendency to leave a line on the finished copy. Then, they would type the text of the letter and make copies using Merlin's letterhead in the Xerox machine so the copies would have the original letterhead. She said that Lemon is pretty much a perfectionist. Often he would have Flora or Sheila recopy, enlarge, lighten or darken the symbol several times until he was satisfied with it. Flora said that Lemon bought her a stencil kit to assist them in creating large letters and other effects for his correspondence and newsletters.

According to Flora, Lemon also created these letters from time to time without help from his assistants. She said this would occur when she and Sheila were busy and Lemon had the time.
They stopped using symbols either last Fall or approximately 1 to 1 1/2 years ago when the Compliance Department told him that such usages were copyright violations. Flora said that Lemon utilized this cut-and-paste technique most extensively during one six month period. She thinks that period was from the Spring to Fall of 2001 but it could have been last year. She believes they created 4-5 pieces during that period.

**The Lemon/Sweet Relationship, Loans and Insurance Policy**

Flora said that Merlin speaks with Conan Sweet on a daily basis. They work closely together and they are very good friends. Lemon has sensitive and confidential accounts. He tolerates no mistakes on these accounts so he relies on Conan for assistance. Conan does not give similar assistance to other FCs as far as she knows.

Flora said that Lemon, on at least one occasion, lost his temper with her. In that instance she failed to repeat an order back to a customer and was not sure if she had the order correct. Rather than risk entering an incorrect order, they had to telephone the customer again to confirm the order. Lemon was so angry with her that he sent
her home.

She said Sweet was a good compliance officer. He was always available for help. His door was never locked. Anyone could have access to his office and to him. She often saw people in Sweet's office leaving notes for him.

She thinks Lemon knows what Conan's job functions are. Lemon trusts Conan's judgment and ability. She thinks Conan is a pretty tough supervisor. He will reject new account cards if not complete, etc. He will not let her slide things by. He is also tough on Merlin. Conan will not let things slide with Merlin either. Specifically, she recalled the Nofelder account. Nofelder was a trader who bought and sold securities. She recalled a time when Nofelder tried to buy securities on margin, and Sweet cautioned Lemon that Nofelder would not be permitted to spend more money than available, and that if he tried his account would be restricted. She could recall no time when Sweet let Lemon break Trustum rules.

Flora told us that she knew Lemon loaned Sweet money to cover the cost of repairs to his house on several occasions.
Flora also knew about the life insurance policy. She said that Merlin was open about this. She heard about it 1 to 1 1/2 years ago. He told her that he bought it because he could not pay Conan directly for all his help since that was against the rules. Lemon also told her that this was a way to do something nice for Sweet. She thought it was an annuity contract. She has never seen it.

Flora also remembered that Lemon attempted to obtain a split commission number for Sweet in order to compensate him for his assistance. However, she said that Lemon was unable to do this due to some rule or policy prohibition.

Flora noted that Lemon had several split commission arrangements with office brokers over the years. Lemon refers some business to her and she shares her commissions on these accounts with him. She believes most of the accounts now serviced by Lemon would follow her, if Lemon is convicted.

According to Flora, Merlin helped Sweet get a mortgage at The Bank of New York. Lemon gives money to the United Way. Lemon gave Conan's daughter a stuffed
animal.

Flora said she received checks from Lemon for late work or extra work. She said these checks used to be much higher, but that Lemon has paid her much less frequently in recent months. Previously she received splits in commission up to $30-40,000 annually from Lemon. Currently, she receives $25,000 from Trustum plus $20,000 from Lemon. Flora said Lemon gives her Christmas bonuses and money on her birthday. The largest gift she ever received from him was $1,000 last Christmas.

Knowledge of Other Sweet Loans

Flora said she is aware that another employee loaned Sweet money on occasion, because of the bills he incurred for renovations on his house.

Knowledge of DuBois

Flora recalls that there was one occasion when she and Sheila DeLong were talking
at her desk when Lemon called out from his office. Lemon probably was not aware that DeLong was standing there. Lemon yelled something like: "Find me a clean signature of DuBois, Flora. I need to see what a good signature of hers looks like." Flora and Sheila thought nothing of it, even though it was a bizarre request. Lemon often makes bizarre requests. Flora got him a signature. She has no memory where she got it from. She does not recall ever seeing the Petition or the accompanying affidavit. She has no idea whether that is what she gave Lemon. She doubts it. Court papers, and things like that, Lemon would have given to Sweet to keep.

After she brought the DuBois signature into his office, she noticed Lemon leave the office and go in the direction of the photocopy machine. He had a scissors in his hand and scotch tape.

Flora said she did not tell us about this incident on our first meeting, because we did not ask, and Lemon had told her only to answer our questions. She came forward now, because she thought this information might be important and she could not sleep at night keeping it to herself.
7/23/03 Interview of Sheila DeLong by Jack O'Donnell. Also included are notes from a follow-up interview of Sheila by Jack O'Donnell conducted on 8/20/03 at the Manhattan Divisional Office.

Lemon told her he did not think she would be interviewed by us because she was not working for him when the DuBois account was trading.

Position/Employment History

Sheila graduated from college in 1990. She worked at Fidelum for 3 years as a portfolio assistant trading fixed income securities for institutional clients. She became Series 7 and 63 licensed while at Fidelum in the spring of 1998. On May 7, 1998 she was hired by Trustum after interviewing with Lemon.

Merlin uses Sheila for entering trades. Flora does more of the administrative work
but Sheila also helps Flora with these duties when she is not busy. According to Sheila, Lemon entered all of the trades at the time she was hired. Lemon now does very little trade order entering.

**Activity Letters Procedures**

She is not directly involved with activity letters. She said that she "wouldn't even know what an activity letter looked like." Flora would handle them.

**Lemon's Typing and Related Skills**

We showed Sheila samples of Lemon's correspondence which incorporated symbols such as cartoon characters or company logos. She said that Lemon often would cut stories and other items out of magazines or newspapers and bring them into the office to send to clients, etc. She believes Merlin used such symbols by the time she began working for him. In fact she thinks he has been doing this for a long time, at least since "the early 1990s."
She said that Lemon would give her and Flora Burton cutouts of the symbols, animals or whatever he wanted to incorporate into his letters. They would take the cutouts, reduce or enlarge them and place them on plain paper at an appropriate spot. Sheila said that Lemon knows this procedure as well. She said he often made the copies himself.

She believes Merlin "knows the rules" of the industry since he told her he was once a compliance officer at another firm. According to Sheila, Merlin is very meticulous. He will pick lint up off the floor. Merlin wants to know everything that goes on with his clients. He is a "hands on" manager who is "in control." He used to do everything himself. She said that Merlin has a great memory for numbers and dates.

**The Lemon/Sweet Relationship, Loans and Insurance Policy**

Sheila said Sweet helps Lemon out on the major accounts. According to Sheila, Lemon is very good friends with Conan Sweet. He is the only one in the office Merlin will go to lunch with. Merlin calls Sweet his best friend in the office.
She thinks Merlin visits Sweet approximately three times per week. She is not aware of Merlin giving anything to any other employees except in the yearly Christmas pool. She knew about the insurance policy that Lemon purchased with Sweet as the beneficiary. She believes Lemon bought it in the beginning of this year.

She received $1000 from Lemon last Christmas and $500 the prior year. She also received $200-300 from Lemon this year on her birthday and $100 the prior year. Lemon gave her checks in the amount of $100 each for extra work. However, there were not many of these checks and there have been fewer lately since Lemon has been increasing her base pay supplement.

**Knowledge of other Sweet Loans**

Sheila said that she has never loaned money to or borrowed from Sweet. She was aware that Sweet was loaned money by Lemon and two other employees, Bob Guarducci and Joseph Smith.
MEMORANDUM

To: File

From: RGR, Attorney for Lemon

Date: September 16, 2003

Re: United States v. Sweet and Lemon - Sheila DeLong

Last evening I travelled to Seaford, Long Island where I visited with Sheila DeLong at her home. Also present were her father, mother, son and, later in the meeting, her husband. Her father sat at the kitchen table during my entire debriefing of Ms. DeLong. She advised me that she was hired by Trustum after interviewing with Lemon on May 7, 1998 and her general hours were 8:30 AM to 4:30 PM. Flora Burton worked from 9 to 5. She advised me that she had been to see the United States Attorney on March 16, having been called a week earlier. She advised that she has not had any additional meetings with the U.S. Attorney or
conversations with them.

With respect to the activity letters, she indicated that this was not part of her responsibility and, after 2001, she does not believe that she ever saw any such letter other than the documents which were in client files. It was her general impression that if Flora Burton was sending out an activity letter on behalf of Merlin he would see it since, as far as Sheila was concerned, nothing would be mailed out without his reviewing it. However, when pressed, she indicated quite clearly that activity letters were never her responsibility and she herself was not sure what, if any, responsibility Flora had for them.

With respect to cut and pasting, she made it clear that from time to time she, Flora and Merlin would cut and paste various documents on Merlin's stationery which would be mailed to his clients. Sheila indicated that there was no set pattern as to how or where or when or who would do this. On occasion, as she recalled it, Merlin would "do the whole thing himself." She recalls Flora having a stencil which was used to make various lettering for Lemon' stationery.

She indicated that corporate accounts were generally the responsibility of Flora Burton and she would handle individual accounts. She further agreed that she has no personal knowledge of activity letters. She thought that she had a good relationship with Merlin and that Merlin was really not familiar with the
paperwork which was the responsibility of Burton and Sweet.

Concerning Burton's work habits, DeLong indicated that she was often not present at her desk, she would often "dilly-dally" around the office and would often spend time on personal calls, all of which were an issue with Lemon.

Concerning the life insurance policy, Sheila indicated that this issue was open and above board and at no time did she have a sense that Merlin was attempting to hide what he was doing from Sweet.

DeLong told me that Lemon never asked her to locate a DuBois signature. DeLong was clear that this simply never happened. She does recall a telephone call from Burton toward the end of January, 2002, when DeLong was at home and Burton was in Puerto Rico apparently on vacation. DeLong clearly recalls circumstances of the call -- she was nine months pregnant, expecting Nicholas on January 28, had workmen in her home erecting an extension and, was watching "General Hospital" on TV. Sheila said that in the phone conversation Burton was asking her if she had heard about Conan Sweet's indictment. Sheila said Burton read from some newspaper or writing. In addition, she said Burton asked whether she (Sheila) remembers the cut and paste process which they used which DeLong said she remembered. Burton then asked if she (Sheila) recalled Lemon asking for a DuBois signature. Sheila told me that she (Sheila) was never asked by Lemon to find a DuBois signature.

IV-112
When I asked her again if she or Flora ever was asked to look for a "good DuBois signature" or a "DuBois signature", she was quite emphatic and stated that "it didn't happen".

After the January phone call, Sheila told me that there were telephone calls back and forth between herself and Burton of a social nature. She said that following Merlin's departure in late December 2002, Burton told Sheila that she was quite concerned about her future and was concerned that she would be dismissed by Trustum by March. She stated that she was about to begin to look for another position because unless someone left, it appeared unlikely to her that she would be staying at Trustum. Finally, she was retained and continues to work at Trustum according to the best of Sheila's knowledge.

I went over the government's statements concerning Burton's testimony about Lemon telling Burton that he was cutting and pasting the DuBois signature. Sheila said that she did not believe that this happened.

When asked whether she had ever heard Lemon threaten to kill Flora, Sheila laughed and said she never heard such a statement and further said that she did not believe it happened. Finally, she stated that when she did go down to the U.S. Attorney's office she went down without a subpoena. She was never asked about this conversation by the Trustum lawyers who interviewed her, or the U.S. Attorney.

IV-113
Witness Sheet for Prosecution Witness Charlotte DuBois

You want to portray yourself as the victim in this case. Although well-educated, you want to appear ignorant as concerns investments and securities. You want to portray yourself as a divorcée who never handled the money in the family. You left it to your first husband. After your divorce, you were trying to make it as a writer in the woods in Massachusetts. You trusted all of your life savings to Mr. Lemon so that you could pursue your dream.

In fact, you are a little more willing to stretch the truth to get what you want. For example, when you filled out your mortgage application for your home in Massachusetts, you did not accurately state your net worth. Among other things, you exaggerated your income by claiming that you were still earning income from your prior job as a W-2 employee without disclosing that you had quit your job to start your writing career. You overstated the value of your automobile by claiming that it was a 2002 model when in fact it was a 1994 model Honda.

You are also more sophisticated in securities than you let on. Prior to investing your money with Mr. Lemon at Trustum, you had an account at Smith Barney. You had a savvy friend who told you that you could make a lot of money by buying options. You
bought and sold options for a six month period and ended up breaking even. This was in the early 1980's.

Mr. Lemon was referred to you by your divorce lawyer, Izzie Smart, who also handled the arbitration. Your lawyer had himself been a client of Lemon, and your lawyer had referred other clients to Lemon. Sometime in May 1999, Smart called you and told you to get all your money out of Trustum; that Lemon was a crook; that he couldn't be trusted. You thought Lemon was doing a good job, so you ignored this advice. Now you are sorry you did.

It was your hope that you would be able to earn ten percent a year with Mr. Lemon. By your calculations, ten percent of $250,000 should yield $25,000 a year. Your mortgage was roughly $1,200 a month. This left roughly $1,200 a month for other expenses.

You also thought you could supplement your income by renting your house in the summer months for roughly $12,000 for July and August. You planned to stay with friends during those summer months.

You will testify that you hate dealing with money. You do not like dealing with securities. You want to write books. It was your view that Mr. Lemon was going to protect your money and he was going to build your nest egg for you.

The problem was that when you got to Massachusetts, your expenses were more than $1,200 a month. The house continually

IV-115
needed repairs -- a roof, shingles, a boiler, almost another $500 every three months. You therefore pressed Lemon to earn as much as possible to cover those increased costs. You will deny, however, understanding that this involved greater risk to the principal. This is consistent with your NASD testimony.

The exhibits also show that you received monthly statements from Trustum. Each monthly statement clearly delineated what stock you were buying and what stock you were selling. It showed the profits and losses and the value of the account each month. Your copy of the monthly statements was subpoenaed at the arbitration. You produced your copy of those monthly statements. Those monthly statements show notes in the margin indicating that each month you had carefully calculated the amount of money that you have gained or lost on each stock. The notes also reflect references to telephone conversations you had with Mr. Lemon concerning your account. You will testify you never really paid attention to the statements, you just filed them. You cannot explain the notes except to admit to what they say.

A close examination of your monthly statements reveals the following additional facts. You had a Visa charge card that was attached to your securities account. You charged as much as $3,000 to $7,000 a month on your Visa card starting in November 1998. On other occasions you wrote checks in excess of $10,000 a month starting in early 1999. Your explanation for these charges
and checks is that your expenses had unexpectedly increased.

As a result of these large payments on your account, the capital in your account reduced drastically. You will emphatically deny Mr. Lemon's assertion that you told him that your need for cash had unexpectedly grown and that he should begin to take more risks with your account in order to generate higher returns. You will also deny that you understood the meaning of having your account on margin.

With respect to the forgery at issue in this criminal trial, you will testify that you did not sign and did not receive the activity letter in question. You will testify that it is your signature. You will further testify when shown the source document for that signature that you recall signing the Affidavit for the Petition for Consolidation, and that the signature that appears on the activity letter appears to you to be the same signature that came from the source affidavit contained in the petition for consolidation.

You had never met Mr. Conan Sweet in your life other than to see him testify at the arbitration against you. At that arbitration, you were seeking money damages from Trustum and from Mr. Merlin Lemon, not Mr. Sweet.

You will be able to identify the pleadings in the arbitration, including the Statement of Claim and the Answer, as well as, any NASD arbitration exhibit which the prosecution or

IV-117
defense counsel may show you.

If asked at trial, you will testify that it is your understanding that the activity letter had a bearing on the claims that you raised in the arbitration. It is your understanding that the import of the letter was that you approved and knew of the transaction that had been conducted in your account by your broker and you understood the significant commissions which had been generated in that account. You also understood that your claim depended on the fact that you did not know and had not approved of the course of trading in your account. Accordingly, the activity letter would undercut your claim. You will assert that you never would have signed such a letter.

Izzie Smart had told you prior to the arbitration that the current State of New York law was at the time that punitive damages were not permissible in arbitrations. Nonetheless, you were hopeful that punitive damages could be awarded to you in the arbitration.

During a break in the first day of the arbitration, you overheard Smart and Merlin Lemon in a heated exchange. You did not hear what started the argument, but you did hear Smart say to Lemon: "I will ruin you. This case will be your ruination. Mark my words."
Witness Sheet for Prosecution Witness Edward Blood

You live at 3 Hiccup Avenue on Staten Island. You are self-employed in private practice. In 1959, you went to work assigned to the New York City Police Laboratory in the Documents Section, examining thousands of documents, handwriting and typewriting identification, writing reports and testifying about those reports in various judicial proceedings. From 1957 to approximately 1972, you became the Police Department's Senior Document Examiner. From 1972 until 1980, you went to work for the United States Postal Inspection Service. You worked in their New York Crime Laboratory which covered the northeast district of the United States. You were the Senior Document Examiner and Assistant Director of the Laboratory in New York. You have been in private practice since 1982. Since that time, you have done all of the document examining work for the Suffolk County Crime Laboratory.

You have obtained various certifications, including the United States Civil Service Commission to hold positions in the federal government as a document analyst. You are a Diplomat of the American Board of Forensic Document Examiners. There are 250 such diplomats in the United States. When you were employed by the Police Department, you had a section of about seven or eight people who were always training people in the field of document analysis and overseeing their work for accuracy and dependency.
One of your jobs at the Postal Inspection was to train people and review their work. You have testified in sundry courts, including the United States courts of the Eastern, Southern and Western Districts of New York, Pennsylvania, Connecticut, Massachusetts, Maine, North and South Carolina, Florida, as well as the United States First District Court of Puerto Rico. You have been qualified as an expert and testified in the state courts of New York, Connecticut, Massachusetts and Pennsylvania.

In 2003, you were asked to come to a meeting at Trustum's headquarters to meet in the General Counsel's office with representatives of Trustum. At that meeting, you were shown a copy of a letter dated February 21, 1999 from Charlotte DuBois to Pull purporting to bear the signature of Charlotte DuBois. You were also shown an Affidavit, dated December 1, 2000. Annexed to a Notice of Petition, dated December 1, 2000, which also bore on the last page the signature of Charlotte DuBois. You were asked by the General Counsel of Trustum to look at the two exhibits and compare the handwriting. You were able to determine at first glance that in all probability this signature that appeared on the letter was the same as the signature that appeared on the Affidavit. It is your belief that the signature was taken off the Affidavit by a photocopying process and placed on a sheet of paper with typewriting on it and then photocopied again. You have been able to examine the two signatures and you have determined in your
opinion that they were written at the same time and that one is a copy of the other. After you left the offices of the General Counsel, you made a further comparison of the signatures on both documents and found that the signature on the February 21 letter to be an exact copy of the signature on the Affidavit. The first thing you did was photocopy the signatures off of each exhibit. You enlarged them and placed them on a chart. You then made a transparency of the original signature that was on the sworn statement to show how the signature was transferred from the sworn statement to the letter. You enlarged the signature on the letter to the same extent that you enlarged the signature on the Affidavit. When you superimposed the transparency that you made from each, you can determine that the signatures of each is an exact duplicate of the other. Specifically, if you look at the initial "W" in both signatures, they are exact. In your opinion, nobody can write exactly that way twice in a row. If you compare the "DuBois" on both signatures, you will notice that the "DuBois" is slightly off register, so that it doesn't cover it exactly as the signature on the Affidavit. Instead, you have a slight extension of the word "DuBois" if you line up the "C". However, if you line up the "DuBois", you have an exact copy of the "DuBois", but the "Charlotte" is slightly off register. The reason for the slight variation between the two signatures is that every time a document goes through a photocopy or photographic
process, there is a slight change in size. It is possible that when the signature from the Affidavit was pasted to make the letter, there was an air bubble under it or a ripple on the paper and when it went through the photocopying process, it put the last name slightly off register. Another possibility is that they both could have been done separately, but that does not appear to be the case in this situation. In your opinion, the actual parts of the signature from the Affidavit are identical to the letter. It's just that one is a little larger than on the original. The actual signature was the same. In your opinion, although people sign their name very similarly, it is not like a rubber stamp. While you can always recognize your name, the same form is there.

You cannot duplicate where you put the dot after the middle initial each time or the dot over an "i" each time. Similarly, you cannot always duplicate where the "c" hits the signature line.

In this particular case, the "c" hits the signature line exactly on the bottom in both the letter and the Affidavit. Likewise, the tail of the "e" in your opinion cannot be duplicated every time you sign your name. You sign your name a thousand times and it is always a little different each time you sign them. The dots over the "i's, for example, will never come out in the same place. In your opinion, it is almost impossible when you are duplicating a name for the "D" in DuBois to start identically as it does in both exhibits with a hook at the top and swinging down, around and then
coming up. Similarly, the next letter which would be the part of the "a" over here, it comes out exactly at the same point from the hook that begins the "D". This, in your opinion, would be impossible to be the same unless it is the exact same signature cut and pasted. In your opinion, the signature on the letter is superimposed by the cut and paste or montage method and the source document was the Affidavit.

On cross examination, you will concede that you never obtained or inspected the original petition and affidavit annexed thereto that was filed in court. You are aware that the petition on its face was served upon Trustum and Mr. Lemon personally. You made no attempt to determine whether the signature on the February 21 activity letter derived from the copy that was served upon Trustum, or whether it was derived from the copy that was served upon Lemon, or whether it was derived from the original that was filed in court. It will be your off-the-cuff impression that you probably could not make that determination even if you had looked into it. On cross-examination, you will resist any attempt to suggest that the signature on the activity letter was a result of tracing. You will persist in maintaining that the method of creating the signature on the activity letter was by montage or cut and paste.

You will concede as you must on cross-examination that the "C" in the "Charlotte" that appears on the activity letter has
been filled in, whereas, the "C" on the Affidavit appears to have a skipping from the original ink. Likewise, the "D" on the activity letter appears to be darker than the source document. You performed no tests to determine why this occurred. It will be your off-the-cuff opinion that the darkening occurred in the process of photocopying numerous times during the montage technique. You will explain that the activity letter had to be photocopied numerous times in order to insure that the white-out that was placed over the lines where the scotch tape or where the ends of the paper had been were concealed and that the process of whiting out and photocopying continued until there were no traces of any such lines. In your opinion, the repetitive process of photocopying could have caused the "C" and the "D" to have darkened.
Witness Sheet for Abner Pols

You are fifty-eight years old. You have been an employee of Trustum or one of its predecessors for nineteen years. Before that you were in the supermarket business. Then you became a stockbroker and sales of commodities. In order to sell life insurance, you studied course work and took an examination so that you could be licensed. You worked at the offices at the GM Building on Fifth Avenue with Lemon and Conan Sweet. You have known Mr. Lemon for approximately ten to twelve years, compliance officer at that branch.

In approximately February of 2001, Lemon told you that he wanted to give to Mr. Sweet a gift by naming him a beneficiary on a life insurance policy that he would like to buy. Lemon was to be the owner of the policy and Sweet, the beneficiary. Lemon told you that all had done a lot of work developing business. In part as a result of Sweet's efforts, Lemon had become one of the largest producers of business at the firm. Lemon filled out the necessary paperwork, including an application, and dated February 6, 1997. Lemon backdated the document in order to get the advantage of having a younger age, because that would give him a lower premium rate. The application listed Conan Sweet as the beneficiary and Brendon, Conan's son, as the contingent beneficiary.
At a later date, you had a conversation with Mr. Lemon informing him that the insurance company had told you that Conan Sweet could not be the beneficiary of the policy because Conan did not have a vested interest in Lemon and was not related to him in business or by blood. You advised Lemon that he could nonetheless take out the policy and after a period of time change the beneficiary from his estate to Mr. Sweet. That is precisely what Mr. Lemon decided to do. Subsequently, the policy was issued. 3 or 4B is a copy of the policy. The amount of the policy is $50,000. And subsequently, Mr. Lemon changed the beneficiary to Conan Sweet as evidenced by 3 or 4C. You will also testify that you had a conversation with Mr. Sweet about the insurance policy when Mr. Lemon changed the beneficiary to name Mr. Sweet. In that conversation, Sweet expressed surprise when you told him about it.

You will not be an unfriendly witness to Mr. Sweet. In fact, you like him a lot. You think that Mr. Lemon is a strange duck however. When you sold Lemon the life insurance, the broker was Trustum and it was Trustum who got the commission. You received a portion of that commission. You thought there was nothing illegal about Lemon buying a policy for Sweet. When you filled out the application form, it went directly to Trustum, but handled other policies for Lemon in the past.

Lemon's life expectancy at the time you took out the insurance policy was roughly twenty-five years. Since the policy
was dated back to age sixty, he was expected to live into his mid-80's according to the actuary tables. You would also testify that you have assistants who work for you and that Trustum pays those assistants a salary. In addition to that salary, you pay your assistants bonuses. You are aware that Mr. Lemon could not pay Sweet a bonus, because Sweet was the compliance officer. Lemon told you that he had tried to bonus some money to Sweet but that the general manager of the branch would not allow it. Lemon told you this when he came to you to fill out the application in the first instance for the life insurance. You are quite clear that Trustum never told you that Sweet could not be named a beneficiary. It was the insurance company that had a problem with naming Sweet the beneficiary, because he did not have a vested interest in Lemon's life. You knew Lemon to be a healthy man, although he suffered from arthritis of the hands that made his knuckles swell. He, nonetheless, was a fairly good athlete and in good shape. He worked out three times a week in the firm gym and also jogged. Lemon was able to change the beneficiary another time if he wanted to. By naming Sweet the beneficiary, there was no guaranty that Sweet would always be the beneficiary. The same is true for Brendon. Lemon was not obligated to continue making the $407 premium payments. He could stop making the payments at any point in time that he wanted. The cost of the insurance premiums would go up after the first five years. Because of your
job at Trustum, you also were financial consultant handling customers' accounts. In that capacity, Mr. Sweet was the compliance officer with whom you dealt. Sweet was one of the busiest people in the office, because all of the problems of the office would go to him. Sometimes, there were people lined up outside his office to speak to him. His door was never locked and you always had access to his office even when he was not there.

You are aware that Lemon has another policy in which he has named his wife, Karen, the beneficiary. You know this because you wrote the insurance policy.
WITNESS SHEET FOR PROSECUTION WITNESS FLORA BURTON

You are currently employed as a broker for Trustum. You perform client trades and the basic daily maintenance of client accounts. You buy and sell stocks, do gain/loss reports, verbal and written correspondence with clients, anything basically that clients would like you to do. You had served as an assistant broker for Mr. Lemon for approximately three years. Before that, you had a similar job for another financial consultant. You have fulfilled your ambition to become a financial consultant.

It was your ambition to take over all of Lemon's accounts. You secretly hope that Lemon gets convicted so that he cannot take back his accounts. You also think that he is a weird and strange man.

You like Conan Sweet by contrast. You do not want to hurt him.

It may be that Merlin Lemon only meant to provide friendly advice when he told you not to volunteer your information at your first interview at the U.S. Attorney's Office, when he told you to answer only the questions. After all, that is the kind of advice that lawyers frequently tell clients in preparing to meet with governmental agents. Nonetheless, you have no problem leading the jury to believe that Lemon was in some way trying to tamper with your testimony, at least on a subconscious level you have no problem with allowing that to happen. You will never admit that expressly.

You will adhere in testimony to your interviews as contained in the memorandum prepared by Jack O'Donnell, the Trustum lawyer who was conducting the internal investigation.

With respect to the conversation when Lemon asked you for a clean signature of Charlotte DuBois, you will be quite firm that this is what happened. You will also be certain that Sheila DeLong would have heard the same thing that you heard. You will also testify, if asked, that Sheila whose desk was right across from yours, would have seen what Merlin Lemon did immediately after you provided him with the signature, namely head toward the photocopy machine. Since the photocopy machine is actually around the corner, you cannot testify that you saw Lemon making photocopies, nor can you say that you saw him cutting and pasting the signature onto a different document. You will be terribly
vague concerning the date and time of this conversation. You will not remember whether the weather was warm or cold, you will not remember the time of day, you will not remember the day of the week. However, you will assert with certainty that the conversation occurred as you state in your witness sheet.

If confronted, you will state that you did call Sheila DeLong while you were in Puerto Rico after the indictments came down. You called her at home. You will testify that you did say to her in words or substance "don't you remember when Lemon asked me to look for or get a good DuBois signature." You will also testify that Sheila denied recalling that event when you reminded her of it in that phone call. You have no real explanation for why you remember the event but DeLong does not.
WITNESS SHEET FOR DEFENDANT MERLIN LEMON

You are a 62 year old financial consultant. You have achieved the height of success. You are at the pinnacle of your career. You have several of the greatest accounts, both personal and corporate in nature. You are frequently consulted for quotations by the news media. You have a column that regularly appears in Business Today. You are a frequent guest on the business news shows at 7:00 a.m. on PBS.

This case, as far as you're concerned, is total silliness. You are convinced that there has been a conspiracy to bring you down by Izzie Smart and Izzie Smart's clients. There is no doubt in your mind that Izzie Smart somehow during one of the court appearances in the companion cases, planted this phony activity letter in the files of Trustum and that somehow it was discovered by Conan Sweet unknowingly, who then produced it for the arbitration.

The thought in your mind that an activity letter would change the outcome of an arbitration is silly. Everyone knows that activity letters are virtually of no consequence at NASD arbitrations.

You barely remember this account, it was such a small account. To have been accused by this client of churning was patently ridiculous.

You were one of the few big hitters at Trustum. You were a multimillion dollar a year generator of commissions. The amount of commissions here totaled less than $80,000. It was a drop in the bucket. You never churned her account. She was the one who wanted to do the buying and selling. You would love to get on the witness stand and testify that virtually every one of those trades that you made on her behalf was directed by her and you would be able to cite virtually chapter and verse the conversation that proceeded the purchases and trades.

This was a woman who needed the money because she was unable to live on the income that she had and therefore was taking a more aggressive position than she originally had intended when she opened the account.

The branch manager told you that you might be fired if the arbitration did not come out favorably to you; however, you point out that the arbitration did result in an award for DuBois but that you continued to be employed by the firm. You frankly, never
believed that your license was in jeopardy or that you would be fired.

The problem here is that Izzie Smart had a falling out with you when the stock market crashed. He lost his shirt and he started calling all of his clients and he has been out to get you.

Essentially you have no knowledge of any of the facts that surround the creation of this phony document. You are prepared personally to concede that it is a phony document but you certainly never knew that it was phony at the time of the arbitration. You had no knowledge of the creation of the phony document. You deny that you had ever seen it prior to the arbitration. You certainly did not create it.

Your gifts to Sweet were gifts that were prompted by the fact that he had done an enormous amount of work for you and that he was in large measure responsible for your being able to service the very important accounts that you had. You wanted share your commissions with him but were told by the branch manager that you were not permitted to do so and consequently decided to loan him money and to then take out a life insurance policy on him. In your view, there was absolutely nothing wrong about doing this at the time.

You now concede that because he was the compliance officer perhaps you shouldn't have loaned him the money without better documentation but this is really silliness to claim that the transfer of money by you to him motivated him in any way to lie on your behalf. In your mind, Sweet told the truth at the arbitration. He would never lie for anybody including for you.

You love Sweet like a son, and you think that this is terrible, that he has been dragged into this conspiracy by Izzie Smart. You will protest his innocence to the end. When he had a little too much to drink, Conan Sweet told you he had flunked a lie detection test. You don't believe in those tests anyway, and you still believe Sweet to be innocent.

You do suffer from arthritis which acts up a great deal. Your knuckles are swollen and you have a great deal of trouble with doing small motor skill tasks.
WITNESS SHEET FOR DEFENDANT CONAN SWEET

You are a 35 year old not too well educated hard drinking guy of blue collar means who has gotten to a position within Trustum of some relative importance because you have made yourself indispensable. In short, you are as hard working as you are hard drinking.

Merlin Lemon is like a father to you. You would do anything for him. You realize that he is a wacko and you know that he has this weird conspiracy theory about the case. You don't believe the conspiracy theory. You have no idea how the activity letter got into your files. It was there, you found it.

There was nothing that you withheld from the lawyers for Trustum at the arbitration. When you first looked through your file, you did not find the letter at all. You told the lawyers. They told you to look again. You found the copy. You told them that you couldn't find the original. You showed them that the file contained only originals and that this was a copy. You pointed out to them that there was something different about the formatting of this document from any of the other activity letters in the file. You pointed out to the lawyers at the time that you discovered the activity letter that the wording of this activity letter was different from the wording of all the other activity letters. You told them that you did not work on Sundays and that this activity letter was dated a Sunday. In short, you brought to their attention all of the things that the prosecutor is now saying evidences the fact that this is a phony and they did nothing to stop you from testifying. It was Valerie Marlow and the other Trustum lawyers who wanted you to look for the activity letter, and it was the lawyers who wanted to introduce the activity letter into evidence. You didn't ask to testify at the arbitration. They are the ones who thought that the activity letter was helpful to their case. They thought it was authentic and they told you that it was a document that should be used.

Indeed, you were told to find the letter. It was not your idea to come up with the letter. It was their idea. The thought has flickered through you mind that maybe Valerie Marlow herself created the letter. She seemed so insistent on your finding one.

In any event, you protest your innocence. You also protest that Merlin Lemon was not involved. You cannot imagine that he would go to the trouble of creating such a document, although in your heart you know that he has the wherewithal and suffers the
sufficiently macabre state of mind that he could have thought of such a scheme. That however, is something you will never admit on the witness stand.

Your real problem as a witness is that you will explode if you are subjected to pressure on cross-examination.

You have no explanation for why you made the mistake on the witness stand that you kept only copies of activity letters. Your only answer is that Marlow knew that you made the mistake and Marlow did not correct it. Somehow you must have convinced yourself at the time that you were testifying that you honestly believed the file contained only copies.

You also will point out that it was you who told the lawyers that according to the activity run the guidelines of Trustum did not require that an activity letter be sent out on February 21, the date that the activity letter bears. It was not until a subsequent month, according to the activity letter, that there was enough activity in the account that would warrant an activity letter.

What really ticks you off about being prosecuted is that the Trustum lawyers at the time of the arbitration, but unknown to you, apparently suspected that the activity letter was not valid and submitted it to handwriting analysis. You were not told by the lawyers that they had done this. You were not told that after DuBois testified that she did not sign the activity letter that Marlow and Hal Freeze suspected that the activity letter might be a phony. The least they could have done was told you that. You certainly never knew that the first expert had rendered an opinion that the letter was in fact a forgery.

Because of your excitable nature when your lawyer asked whether you would submit to a lie detector test you hotheadedly agreed and immediately flunked the test when you denied that you had anything to do with creating the phony activity letter or testifying falsely about it. In a moment of weakness, you told Lemon about flunking the test.
WITNESS SHEET FOR DEFENSE WITNESS SHEILA DeLONG

You are a housewife who has given up your job, having given birth to your first child last year. You will be available to testify for the defense pursuant to the contents of defense counsel's memorandum to file. You will emphatically deny recalling ever hearing Lemon tell Flora Burton that Flora should find a Charlotte DuBois signature for him. You will deny that Lemon subsequently took that signature with scissors and headed toward a photocopy machine. You will testify affirmatively that that never happened. You will testify that Flora Burton called you when you were pregnant just before the birth of your child while she was on vacation after the indictments had been filed. You will testify that Flora Burton reminded you of the fact that Lemon frequently did cut and pastes which you remembered and that Flora asked you whether you recall Lemon telling her to get a good DuBois signature. You recall telling Flora Burton that you had no such recollection of that ever happening. You let Flora Burton believe you had a perfectly friendly relationship. In fact, you cannot tolerate her. You think she is a liar, back stabbing and ambitious to a fault. You know that Ms. Burton is very ambitious and would like some day to become an FC. You believe she wanted Lemon's job and would do anything to get it. She has treated you very badly in the past year since the birth of your child, condescending to you as if your choice of staying home with your child is beneath contempt. You acknowledged that Lemon gave you an unusually large bonus (twice the normal you had received in prior years) at the end of 2002, before Lemon's departure) while you were on maternity leave.