Volume 4

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER

UNITED STATES OF AMERICA, Plaintiff, vs. SAMUEL COHEN, a/k/a Mouli Cohen, Defendant.	)	NO. CR 10-0547 CRB San Francisco, California Thursday October 20, 2011

TRANSCRIPT OF PROCEEDINGS

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Official Reporter - U.S. District Court

P R O C E E D I N G S

OCTOBER 20, 2011 **9:36 A.M.**

THE COURT: Okay. Let the record reflect all jurors are present, parties are present.

Mr. Sprague, you may continue.

MR. SPRAGUE: Thank you, Your Honor.

HARI DILLON,

called as a witness for the Plaintiff herein, having been previously duly sworn, was examined and testified as follows:

MR. SPRAGUE: Thank you, Your Honor.

DIRECT EXAMINATION RESUMED

BY MR. SPRAGUE:

Q. Good morning, Mr. Dillon.

A. Good morning.

Q. Let me briefly jump back to late '02/early 2003 time period, in the initial purchase of Mr. Cohen's Ecast shares by the Dillon and Glover groups.

A. Yes.

Q. Do you recall approximately how many shares in Ecast those groups purchased in that time period?

A. Yes, almost to the number. 1.432 was through Dillon, Dillon I, II, III. And I think it was 950,000 through Glover.

Q. When you say "1.432," you mean 1,432,000 shares?

A. Yes.

Q. Plus 950,000 shares?

A. Correct.

Q. So a total of approximately 2,000,382 shares; is that correct?

A. Yes.

Q. And do you recall how much the Dillon and Glover groups paid to Mr. Cohen for those shares?

A. Yes. 6.2 million.

Q. And, now, we talked some about 2004 yesterday, but I'd like to get into 2004 again.

I've put a binder in front of you that has exhibits in the order I intend to go through them. Will be a little faster than grabbing the books.

Is 86 the first one you have?

A. It is.

Q. If you could take a look at that, please.

Is that an e-mail you sent to Mr. Cohen on or about May 17, 2004?

A. It is.

MR. SPRAGUE: The government offers 86.

THE COURT: Admitted.

(Trial Exhibit 86 received in evidence.)

(Document displayed.)

THE CLERK: Is it on?

MR. SPRAGUE: It is on. Thank you.

BY MR. SPRAGUE:

Q. What are you sending Mr. Cohen good karma for on May 17, 2004?

A. He had said there was some critically important meetings regarding the central moving part, so I'm wishing him well for those meetings.

Q. And the "central moving part" is what?

A. The acquisition of the startup Ecast by Microsoft Corporation.

Q. And there's a reference in the second paragraph to someone being completely out of the picture. What is that?

A. One of the people who had come in, into the investment, Delroy Lindo, had become extremely uneasy because he, like all the rest of us, was told this would be over very quickly, and we're now May 17, '04.

So myself, Danny Glover, and Sam Mills put together some money to buy his stake out, which was $150,000, I believe.

Q. Did you buy Mr. Lindo out of this investment in Ecast?

A. We did.

Q. Turn to 88. Is that an e-mail chain between you and Mr. Cohen on or about May 19, 2004?

A. It is.

MR. SPRAGUE: The government offers 88.

THE COURT: 88 admitted.

(Trial Exhibit 88 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. In the bottom e-mail does Mr. Cohen have a subject line "Call Later"?

A. He does.

Q. And then you respond, "Curious about whether this is more meetings about the central moving part." Is that right?

A. Yes.

Q. And his response does not question what the central moving part is, correct?

A. Not at all.

Q. Turn to 89.

Now, during this time period of May 24, approximately how frequently were you talking to Mr. Cohen by telephone?

A. Daily.

Q. Do you recognize 89 as an e-mail you sent to Mr. Cohen on May 20th, on or about May 20th of 2004?

A. Yes, I do.

MR. SPRAGUE: The government offers 89.

THE COURT: 89 admitted.

(Trial Exhibit 89 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. What had Mr. Cohen told you went well at big meetings earlier this week?

A. He was reporting back to me about the meetings he had had regarding the central moving part, and said they had gone extremely well.

Q. And what had he told you about shooting off to New York to get the thing closed?

A. This is in regard to the Bridge on the River Kwai that I was describing yesterday.

Q. So was Mr. Cohen telling you something was going to close with respect to that?

A. Yes.

Q. What?

A. That the monies we had put in, X amount were supposed to be bought out three to one, and he was going to New York to try to get that resolved to make it happen.

Q. And then later in the paragraph there's a reference to Yael would have given you a yes or no. What is that referring to?

A. That's speaking to the idea that he had broached about the possibility of Yael providing a bridge donation until the monies from Mr. E arrived from Switzerland.

Q. If you could turn to 91.

Is that an e-mail you sent to Mr. Cohen a few days later, on or about May 25, 2004?

A. It is.

THE COURT: Admitted.

(Trial Exhibit 91 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. What $300,000 were you urgently trying to come up with in late May 2004?

A. I can't be absolutely certain, but my assumption is, given what I wrote here, that it's $300,000 for Vanguard.

Q. And jumping back -- you don't have to jump back; put it on the screen -- but to the prior exhibit, do you see in the middle of the second paragraph, "Looming May 28 due date for MAFCU/PAFCU"?

A. Yes.

Q. What is that?

A. These are the interest payments I talked about a little bit yesterday. They are now coming due. We've passed the 15-month period.

MAFCU is Missionary Federal Credit Union. And PAFCU, which I don't think I did speak about, is the Polish American Credit Union down on the peninsula. The two of them worked together.

Q. Is 300,000 about how much was owed on those loans at that time, or do you recall?

A. Yes. And, obviously, I was referring to the interest payments. I had both on my mind at the time, Vanguard and the pressure of MAFCU.

Q. Who took out the -- who took out the loan upon which the interest was owed?

A. Sam Mills.

Q. Turn to 93. Do you recognize that as an e-mail you sent to Mr. Cohen on or about June 6, 2004?

A. Yes, I do.

THE COURT: 93 admitted.

(Trial Exhibit 93 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. I'll give you a minute to read through that.

A. I have.

Q. What were you communicating regarding Mr. E? Is that Mr. Ettinger, by the way?

A. That's correct.

Q. And what were you communicating to Mr. Cohen at this time?

A. Two things. One, we desperately needed to get this money in from Switzerland. So I was pushing, as you can see in the middle of the paragraph there, for at least the first year's installment.

And I'm reminding him and I want him to remind Joseph Ettinger that he had said it would be there by Passover. Two Passovers have now come and gone and we still haven't received any money.

In addition to that, what I am referring to here, and

I mentioned yesterday, is a program we put together at the Third Baptist Church, black community here in San Francisco. It was a program put together jointly by the Third Baptist Church, Temple Emmanuel, and Vanguard. And we invited Mr. E.

To some extent we made an effort to have the timing of it to coincide with Mr. E's visit so he could actually see the kind of work that Vanguard did for the African American kids in conjunction with the Jewish Community.

And Harry Belafonte had just come into town, so he was one of the keynote speakers, as well as myself and others.

Q. Was that part of your effort to convince Mr. E to release some of the money to you?

A. Absolutely.

Q. And "to you" I meant to Vanguard. Is that--

A. Yes, Vanguard to Foundation.

Q. Wait until I finish.

Did Mr. E attend this event?

A. He did not.

Q. How did you find out he was not going to attend this event?

A. I think I got a call from Mouli -- I think the morning of, it might have been late the night before the event; I can't be certain -- saying he was up in Napa, having a good time with the wine country and so on, he was not going to come down for the event.

Q. 232, please.

Is that an e-mail you sent to Mr. Cohen the next day, June 7th, 2004?

A. It is.

THE COURT: Admitted.

(Trial Exhibit 232 received in evidence.)

MR. SPRAGUE: Thank you, Your Honor.

(Document displayed.)

BY MR. SPRAGUE:

Q. What were you thanking Mr. Cohen for doing battle for you?

A. Can you give me a minute to finish reading the e-mail?

Q. Yes. Sorry.

A. I'm sorry could you repeat the question now. I apologize.

Q. No, if I'm asking you to wait to finish my answers I should wait to let you read the e-mails.

What is "Thank you for doing battle for us today" referring to?

A. To getting Mr. Ettinger set up logistically so he can get down to this event.

Q. Turn to the next tab, 94.

MR. LINCENBERG: I'm sorry, did you say 94?

MR. SPRAGUE: 94.

BY MR. SPRAGUE:

Q. Is that an e-mail you sent to Mr. Cohen, and a response you received from him on June 16, 2004?

A. It is.

THE COURT: Admitted.

(Trial Exhibit 94 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. Do you recall what Mr. Cohen had told you about a meeting regarding the central moving part down in the Silicon Valley at this time?

A. Yes. He said he had a four-hour meeting down in the valley to discuss the closing of the central moving part.

Q. And were you also -- what is the reference to Yael, Yael's decision, in the last line of the first paragraph?

A. This is speaking to the Vanguard piece and Yael's -- trying to get Yael to front the money that Mr. Ettinger was supposed to have sent by now.

Q. And the rest --

A. Not the entire amount, but a smaller portion, 1.85, I believe.

Q. Million?

A. Million. Excuse me.

Q. And were you also inquiring about an update from Mr. E?

A. Yes. Absolutely.

And if I may, you can see that Mr. E did not show up. The event was a huge success, and the main newspaper in the African American community ran a story on it, so I'm having

Mingo take that over to -- a copy for Mouli and a copy for Mr. E.

Q. Mingo is a driver you employed at some point?

A. Yes, he was a driver for Danny Glover, and then he started doing stuff for Vanguard, especially when documents needed to be moved around.

Q. And then Mr. Cohen responds, not questioning the central moving part, correct?

A. That's correct.

Q. And mentioning Yael?

A. Yes.

Q. Mentioning Mr. E?

A. That's correct.

Q. Could you turn to 95.

Is that an e-mail you sent to Mr. Cohen on or about September 19, 2004?

A. It is.

THE COURT: Admitted.

(Trial Exhibit 95 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. What are you -- what approval are you indicating you're fairly confident about, at this point?

A. This is all referring to Mr. Ettinger's money. And he had -- I was told by Mouli that he had a committee that had to

approve donations before they went out the door.

Q. "He" Mouli or "he" Mr. E had a committee to approve the donations?

A. Mr. Ettinger.

Q. 97, please. Is that an e-mail you sent to Mr. Cohen on or about October 4, 2004?

A. It is.

THE COURT: 97 admitted.

(Trial Exhibit 97 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. What had Mr. Cohen told you about the situation back there?

A. He's referring here to the committee, and that the group that Mr. Ettinger is involved with was involved in two mega financial deals unrelated to our matter.

And I'm expressing here that -- one, I'm trying to emphasize we still need this to be on the agenda, and, two, I'm saying I hope the approval of our donation moves quickly and easily given the magnitude of what they are dealing with, and, specifically, that they don't delay it over until the following week.

Q. And in the first line of the second paragraph what are you referring to?

A. I had sent him the mailing address and wire information

from Vanguard, to pass on to Yael. And I had neglected to give Vanguard's official California tax I.D. number so I'm including that here, and thanking him and telling him to put "Attention Hari/Danny" so we know it's coming.

Q. If you could turn to 169. It should be the next tab.

A. Oh. I'm sorry.

Q. Is that an e-mail you sent to Sarisa Middleton on or about October 26, 2004?

A. It is.

THE COURT: Admitted.

(Trial Exhibit 169 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. What is the "buyout agreement" you're referring to here?

A. By this time, Harry Belafonte had become extremely anxious and felt something must be wrong, so he said he needed to get out and wanted to be bought out.

Q. And you indicate here that, "Mouli is adamant that we need point two in the agreement." Is that the point two that's listed below in the e-mail?

A. It is.

Q. What was Mr. Cohen adamant about in connection with this buyout agreement?

A. He didn't want anyone, Harry's financial advisors or anyone else, investigating or trying to learn more, making

inquiries, or so on, formally or informally, to try to find out more about the Ecast deal.

Q. Mr. Cohen told that to you?

A. Yes.

Q. Did Mr. Belafonte -- was he bought out of his Ecast investment?

A. He was. As I said earlier, didn't happen that week but, yes, he was within 10, 15, 20 days. I'm not sure of the timing.

Q. Do you recall how much he had invested?

A. Yes. $500,000.

Q. And who put together the money to buy him out?

A. Most of it came from Jane Segal.

Q. Turn to 98.

Do you recognize this as an e-mail you sent to Mr. Cohen on or about October 15, 2004?

A. I do.

THE COURT: Admitted.

(Trial Exhibit 98 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. Is this right during the time period that you're negotiating Mr. Belafonte's buyout?

A. It is overlapping with that, yes.

Q. How often were you talking to Mr. Cohen over the phone

during this time period?

A. Daily.

Q. In the first sentence, at the end, you mention you're giving Mr. Cohen these figures in writing, as well.

Had you spoken to him over the phone about these figures?

A. I had.

Q. Why did Mr. Cohen say he wanted these figures?

A. This was part of the demand for monies related to the three fees, so to speak, holding fees, legal fees, stamping fees, other related fees.

Q. And had these fees, indicated here, been paid already to Mr. Cohen?

A. At the moment of this e-mail?

Q. Yes.

A. I believe we had cut checks. And there was a wire in the case of Danny's, that Sarisa was sending out. But I can't be absolutely certain of the timing.

Q. Did this have anything to do with investments in Procinea?

A. No, not at all.

Q. Now, I'm going to ask you to look at six documents in a row. They are sequential, 100 through 105. They are each one page.

Just tell me if they are all e-mails between you and Mr. Cohen. Again, 100 through 105.

A. They are.

THE COURT: 100 through 105 admitted.

(Trial Exhibits 100 through 105 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. Mr. Dillon, first, 100.

Have you had a moment to look at that?

A. Yes. I would like more. I didn't read them. I verified that they were ...

Q. What are you referring to in the first line?

A. Could I have a moment just to read it?

Q. Oh, yeah. Sorry.

Who is Henry?

A. This the attorney in New York, at the law firm. This is where supposedly our money had been sent that was going to be purchased at three to one.

Q. This is what you referred to as the Bridge over the River Kwai?

A. That's correct.

Q. Are you asking for a portion of those funds to come back in November of '04?

A. Yes.

Q. What was the bond that Sam put up for $310,000?

A. I think that was related to legal fees, as well as the one

Jane put up.

Q. Legal fees for what?

A. For the acquisition of the startup Ecast by Microsoft.

Q. And Sam is Sam Mills?

A. He is.

Q. And how about the $300,000 bond that Jane put up?

A. The same, in terms of what we were told. And Jane is Jane Segal.

Q. They weren't for Procinea investments?

A. No. Absolutely not.

Q. And you refer to "from the claws of the IRS." What are you asking for Mr. Cohen to -- how you are going to structure these payments or send these payments?

A. Well, Sarisa had raised -- Sarisa is Mr. Glover's business manager and CPA -- that how would this be handled from a tax point of view. She wanted to be make sure it was done properly.

And we wanted to make sure it consists -- the money -- we gave the money to Mouli. Therefore, she had raised the money should come back to whoever the money was given to. So that's why I'm saying have it go back to Mouli.

Q. Instead of?

A. Instead of directly to the -- she said it was important that the route that the money went it should be the same route coming back. And she quoted some IRS regulations that I didn't

really -- wasn't really familiar with.

Q. 101.

(Document displayed.)

Q. Okay. What is your reference to "how close we are" in this e-mail?

A. I'm referring here to the central moving part. At this point, he's saying that it's imminent.

Q. And you communicate to Mr. Cohen something about overwhelming exciting and positive developments in recent days.

What had he told you about developments in recent days?

A. This, again, was the central moving part, that everything was coming together and that it was being consummated.

Q. And communicating to him interest is owed on MAFCU loan?

A. Yes.

Q. And then is this another person in the second paragraph who you are buying out of their Ecast investment?

A. Yes. It was someone who had a small amount in, who was a friend of Harry's.

Q. And then what's the last sentence of the first paragraph? I'm sorry, the second paragraph. What are you referring to there?

A. I'm sorry. Which sentence are you --

Q. Last sentence of the second paragraph. Starts with the word "one."

A. Well, I'm referring to two things. When I say because of the confidentiality he, by this time especially, really hammered on -- when I say "he" I mean Mr. Cohen -- really hammered to us the absolute necessity of keeping the whole arrangement secret. So that's what I'm referring to in terms of confidentiality.

And then I say I would rather buy her out and have that simplified by not having to deal with her.

Q. Why would you rather buy someone out at this point in November of 2004?

A. Two reasons. One, it was difficult -- she was very anxious, and I felt this an awkward and difficult position. And, secondly, we were so confident that the thing was -- the acquisition was closing that it would actually be more for us, so to speak.

Q. Then in the third paragraph, which brings me back to, "Henry, given that we posted the bond and so on, it's now mid November." Is that Henry the lawyer in -- or who you think is a lawyer in New York holding the money from the Bridge over the River Kwai?

A. Yes.

Q. What bond that you posted are you referring to there?

A. Here I'm referring to the sum total of all of the monies we had put into the Bridge on the River Kwai.

Q. 102, please.

(Document displayed.)

A. I have read it.

Q. All right. In the second paragraph, what are you referring to with the word "advance"?

A. The Bridge on the River Kwai monies that were supposed to be coming to Vanguard.

Q. What did you understand from Mr. Cohen to be the status of the central moving part in late November 2004?

A. That it was closing any day now.

Q. What are the major repercussions to Vanguard that you're communicating to Mr. Cohen at this time?

A. That we were in dyer financial straits because of all of the money we had put into the deal as a whole, but also particularly we had put a lot of money into this SPV to get money to Vanguard, and we are now at the end of the year, getting close to the end of the year, and nothing has come back.

And as you can see in the other paragraph, I am asking him to at least pressure Henry to get half of it back to us right away.

Q. What had Mr. Cohen told you about the whirlwind of discussion and negotiations going on that day?

A. That's referring to the central moving part negotiations.

Q. 103.

(Document displayed.)

Q. Okay. You've had a moment to read that?

A. I have.

Q. Who is Melinda in December 6 of 2004?

A. She's an assistant, executive assistant to Mouli.

Q. And why did you ask Mouli to have her send you materials on Microsoft, Applied Materials, and IBM?

A. He told us he had seen this report. I forget from whom. I think from Merrill Lynch.

And Sam and I, because we believed that the acquisition of the startup by Microsoft was days away and, therefore, we were going to be holding shares of Microsoft on the peg, we were now interested in how Microsoft was doing because we saw ourselves as big stakeholders of Microsoft shares very soon.

Q. What are you referring to when you say "the peg"?

A. He had told us time and again that for every share we held of Ecast in the acquisition we would be getting one share of Microsoft.

Q. And what are the Procinea documents that you refer to in the second point of this e-mail?

A. This is during the period when he had started gifting us, quote/unquote, Procinea, a stake in Procinea for the monies that we were putting up for all these fees and costs and so on. And I'm referring here to the document he had given me about a week earlier, I believe.

Q. Did Mr. Cohen keep the originals of those documents?

A. Yes. Almost always.

Q. And is that what you're referring to in the last sentence, or the second to last sentence of this e-mail?

A. Yes.

Q. And 104, Melinda sent you the report, correct?

A. She did.

Q. And it's got Microsoft rated as a buy?

A. That's correct.

Q. Dated October 26, 2004. So a month and a half or so before this e-mail?

A. Yes.

Q. And its price is $27.63, with a target of $35 according to Ragen McKenzie?

A. That's correct.

Q. And, at this time, you testified earlier that the Dillon and Glover groups had 2.382 million shares, thought they had that many shares in Ecast, correct?

A. That's correct.

Q. And this is late 2004, Melinda sends this to you in December of 2004, correct?

A. That's correct.

Q. At this time, did you still think that the Dillon and Glover groups had 2.382 million shares of Ecast?

A. Oh, yes. Absolutely.

Q. You didn't think that -- well, were you ever advised there was a thousand-to-one reverse stock split in Ecast shares?

A. No.

Q. 105.

THE COURT: What do you understand a reverse stock split to be? Do you have an understanding?

THE WITNESS: Yes. That the shares that someone holds are actually diluted by whatever factor the reverse is.

THE COURT: So if it's a thousand-to-one reverse stock split, that would mean that one share that you hold in the company would be worth -- after the split, would be worth one one-thousandth of a share?

THE WITNESS: Yes.

THE COURT: So, in other words, you need a thousand shares to equal the one share that you have?

THE WITNESS: Correct.

THE COURT: Thank you. Go ahead.

BY MR. SPRAGUE:

Q. Do you have 105 in front of you, sir?

A. Yes.

Q. The first sentence, "Jane" is Jane Segal?

A. Yes.

Q. And when you say there's going to be an ability to pay her back $450,000 soon, either from Mr. E or funds sitting in -- well, what are the funds sitting in New York?

A. Again, this is the Bridge on the River Kwai funds.

Q. What do you think the prospects for Mr. E sending $2 million or more to Vanguard are in --

A. We still believed, at this point, that it was definitely going to happen. But as you can see we also knew it was not happening at the time. So, hence, the advance from Yael.

Q. And why had you told Ms. Segal that her original $450,000 loan was only going to be three or four months in the first place?

A. Because a year earlier, as I reference here, she had loaned that money to Vanguard because the money from Mr. Ettinger was supposed to be coming within a three, four-month period.

Q. In the next paragraph you indicate you did call Sam again, after you talked to her, but he's just tapped out on cash and margin borrowing. Doesn't want to have to sell off anything to raise more cash.

Is that right?

A. Correct.

Q. But he offered to put up another 200,000 as soon as the New York funds, the Bridge over the River Kwai, funds are sent back to you?

A. That's correct.

Q. In December of 2004, about how often were you talking to Mr. Cohen by telephone?

A. Daily.

Q. Now, during this period of, say, the last four months or so of 2004, were you, on behalf of the Vanguard Group, sending Mr. Cohen money?

A. On behalf of Vanguard?

Q. Well, was anyone -- were you or anyone connected with these investments in Ecast sending Mr. Cohen money, to your knowledge?

A. Yes. I think we did send more money in the fall, but I can't be absolutely certain of the amounts or time.

Q. Let me show you pages from what's been admitted as Government Exhibit 251.

A. Could you bring that down just a little bit? It's blown up so much it's blurry. Thank you. Thank you.

(Document displayed.)

Q. Does that reflect a wire from you to the account of Yael Cohen and Samuel Cohen, dated September 7, 2004, for $240,000?

A. Yes.

Q. Do you remember what that wire was for in the fall of 2004?

A. This was for fees connected with the acquisition. And this is the first time we had ever sent money to that account that had Yael's name on it.

Q. Why did you send it to that account?

A. He told us -- he gave -- or gave Susannah Schwartz the

account number, and that's where we sent it.

Q. Was this for an investment in Procinea?

A. No, absolutely not.

Q. Was it for a loan to Signet Ventures?

A. No.

Q. Is this your handwriting on this check?

A. It is.

Q. It's check number 4218, dated 10/31/04, in the amount of $300,000; is that right?

A. Correct.

Q. What is the bond -- does that say "bond"?

A. It does.

Q. What does that refer to in late October '04?

A. For, again, these fees that we were asked to pay our pro rata share of it.

Q. Wasn't a loan to Signet Ventures?

A. No.

Q. Wasn't for an investment to Procinea?

A. No, absolutely not.

Q. Is that a check you wrote to Mr. Cohen?

A. It is.

Q. Dated November 30th, 2004, in the amount of $410,000?

A. Yes.

Q. What was this for in this time period?

A. Again, for these costs associated with the acquisition by

Microsoft of the startup Ecast.

Q. Is that a check you wrote to Mr. Cohen on December 15, 2004, for $200,000?

A. It is.

Q. What was that for?

A. The same, for the costs, some of the costs he was telling us had to be paid in connection with the acquisition.

Q. So there was a wire for $240,000, and then 300, 710, $910,000, plus a wire for $241.15 million (sic) in the last few months of 2004, payable to Mr. Cohen?

A. Yes.

Q. The next ten exhibits, if you could flip through them and see if they are e-mails between you and Mr. Cohen, 106 through 115.

THE COURT: Without objection, they are all admitted.

(Trial Exhibits 106 through 115 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. Starting with 106. So, now we're into 2005. At the bottom, is that an e-mail you sent to Mr. Cohen on or about January 14, 2005?

A. It is.

Q. What had he told you about the checklist on the central moving part?

A. Said that when an acquisition is at this stage, there's a checklist that the lawyers and accountants have to go through. And that's the checklist I'm referring to.

Q. And what does the second sentence refer to where you are meeting with people putting up $800,000?

A. Yes. This is on MLK weekend of that month. He had told us that an additional $800,000 could get Mr. E's -- if we paid costs to Mr. E and covered his costs, that we would get the Mr. E money released immediately.

Q. And Mr. Cohen sends you an e-mail back later that day?

A. Yes.

Q. 20 or 30 minutes later. Any question of what is the central moving part?

A. No.

Q. Or why are you raising $800,000?

A. No.

Q. 107. Okay.

(Document displayed.)

Q. What conversations, if any, with Mr. Cohen led you to sending him this e-mail?

A. He was making the demands for more money, and had suggested I talk to Sam. I had spoken with Sam. He was hesitant and he spoke with Mary, and she was way beyond hesitant.

Q. Sam is Sam Mills?

A. Sam Mills and Mary Mills.

Q. And Mary is Sam's ex-wife?

A. Yes.

Q. And in the second paragraph who are those that you're trying to squeeze an extra 600,000 out of?

A. Different persons in the Vanguard circle, some of whom said they would only do this if they had a letter of credit either from us or from Mouli.

Q. Did they ever get that letter of credit?

A. No. I did ask.

Q. You asked whom?

A. Mr. Cohen.

Q. What did he say?

A. He said no.

Q. Did he say why?

A. I don't know if he gave a reason for the no on the letter of credit. Just that he couldn't do it. He would often reference his attorneys, that he wouldn't be able to get it cleared with his attorneys.

(Document displayed.)

Q. 108. Is your e-mail referring to trying to raise additional funds?

A. Yes.

Q. And Mr. Cohen's assistant sends the e-mail, it appears, in response?

A. Yes.

(Document displayed.)

Q. 109. Are you updating Mr. Cohen on your progress in raising additional funds?

A. I am.

(Document displayed.)

Q. Same thing in 110?

A. Yes.

(Document displayed.)

Q. Now showing 111. Does that reflect the $600,000 that you sent to Mr. Cohen on or about February 11, 2005?

A. Yes. Excuse me. Yes, it was wired.

Q. 112, which actually was admitted yesterday. Would you take a moment to look at that, please.

A. I have read it.

(Document displayed.)

Q. February 28, 2005, in the morning, first sentence, do you recall what signed documents those were?

A. These are documents he had -- give me a second.

These are documents he had given me to get people to sign in conjunction with the stake that he was supposedly giving us in Procinea.

Q. And this first sentence, the signed documents that Melinda should have and brought them to you, did the originals go to Mr. Cohen?

A. Yes.

Q. What was the question or snag that you referred to and then explain in this next paragraph?

A. Sam had -- excuse me, Sam Mills had said he was willing to do this, but when he spoke with Mary Mills she felt that they couldn't put any more.

And none of the things that were supposed to be happening were happening in terms of money coming back. And I'm referencing here -- this is all the monies Bridge on the River Kwai, that are supposed to have been back to us a long time ago. And the 1.6 million is still not coming back.

Q. And that is the 810,000 that went in in the checks you saw yesterday, that Mr. Cohen told you you would get $2.4 million back at some point?

A. Yes.

Q. So the 1.6 would have been the profit on that?

A. Yes.

Q. And then you refer to a call that you try to arrange to explain restructuring. Do you recall what restructuring that is or was at the time?

A. I don't, actually.

Q. And -- okay. Let's go to 113.

(Document displayed.)

A. I have read it.

Q. Why are you trying to arrange a conference call with Sam

and Mary Mills and Mr. Cohen?

A. For two reasons. One, the overwhelming reason was for them to get a status update directly from him on the closing of the central moving part, which I had reported to them what he had told me. They hadn't spoken to him recently directly.

And I'm also referencing that this restructuring should be explained to them, as well. But you can see I'm saying that the closing of the central moving part is actually what they most urgently need an update and reassurance about.

Q. Do you recall that this conference call took place?

A. It did. I can't be certain of when, but we did have a call. I'm not sure if Mary actually ended up on the call by the time we set it up.

Q. And do you recall what Mr. Cohen explained about the status on the central moving part in -- was it around this time, March 2005?

A. Yes.

Q. Do you recall what Mr. Cohen explained about the status of the central moving part at that time?

A. Oh, yes, absolutely. That everything was going perfectly, and it would be over in short order, and monies would be -- the monies -- by this time, he had linked the monies in New York with the closing of the central moving part, and that all the monies, both the monies in New York as well as the central moving part would be consummated very soon.

Q. This e-mail is dated March 7, 2005. I'm showing you pages out of Government Exhibit 251.

(Document displayed.)

Q. A cashier's check from MAFCU, three days after that e-mail we just saw for $400,000, to Mr. Cohen?

A. Yes.

(Document displayed.)

Q. And if you could look at 114. Have you looked at that?

A. I have.

Q. This is dated the same day as the check that was just shown, correct?

A. Yes, March 10.

Q. What did Mr. Cohen tell you about faxing the red notice immediately?

A. He said that when the close is at this stage there are various notices that come to document and verify that the acquisition has been completed. And he referred to one of them as the red notice. And it would be coming momentarily.

Q. And then Mr. E, in the last full line of the e-mail, he still hasn't sent his 2 million?

A. He has not.

(Document displayed.)

Q. The last one we admitted as part of the 10 in a row, 115, please.

Do you recognize that?

A. I do.
Q. What is the reference -- what are you saying, Danny sent 210K from Bank of America?
A. These are I.D. numbers for wires that are being sent from Danny directly to Mouli Cohen's account, as well as additional monies sent from the MAFCU -- from MAFCU. And Sam is sending 64 in direct form of check, for a total of just over 450K.
Q. And then there's a reference to "in spite of the intensity and demands of the close."
What are you referring to there?
A. The close of the central moving part, the acquisition of the startup by Microsoft.
Q. This is a page from Government Exhibit 251. Just prior to that e-mail dated April 12 of 2005, a wire from the Dillon Group to the account of Yael Cohen and Samuel Cohen for 252,411. Do you recall what that was for?
A. These were all costs connected with the acquisition.
Q. Now, the e-mail we looked at a moment ago had a reference to Danny -- that's Danny Glover, correct?
A. Yes.
Q. -- sending $210,000 from Bank of America. Do you remember that?
A. Yes.
MR. SPRAGUE: I'm going to mark Exhibit 252.
THE CLERK: Do you have a copy?

MR. SPRAGUE: I do. Offer 252.

THE COURT: 252 admitted.

(Trial Exhibit 252 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. Is this a wire dated April 22, 2005, for $210,000 from Danny Glover to Mr. Cohen?

A. It is.

Q. There was also a reference in that e-mail to $53,000 from the Dillon Group?

A. Yes.

(Document displayed.)

Q. Same date. I'm now showing a page from government 251. Does this reflect a wire on April 22nd, 2005, for $53,000, from the Dillon Group to Mr. Cohen?

A. It does.

Q. There was also a reference in the prior exhibit that said that you sent 125,000 from your MAFCU account. Do you remember that?

A. Yes.

Q. Showing you another page from government -- trial Exhibit 251, is that same date, April 22, '05, $125,000 wire from your MAFCU account to Mr. Cohen?

A. It is.

(Document displayed.)

Q. Showing you a couple more payments. About ten days later, showing you another page from government 251, is that a wire on May 2nd of '05, for a hundred thousand dollars from the Dillon Group to Mr. Cohen?

A. Yes.

(Document displayed.)

Q. And then another page from trial Exhibit 251. Is this a check from the MAFCU account for $40,000, payable to Mr. Cohen, dated May 9, '05?

A. Yes.

Q. Do you recall what those payments were for in April and May 2005?

A. Beginning in this period, and I can't be certain of the date, somewhere in the April -- in the spring of '05, I got a call from him. I was coming back from a funeral on the peninsula, headed back toward the city. And he represented that the actual deal had closed, and that we were there. We were home free, so to speak.

Q. And that was sometime in the spring of '05?

A. It was definitely the spring '05. I can't be certain. I just remember I was driving up from the peninsula from the funeral.

Q. Would you take a look at Exhibit 116, please. Should be the next tab.

THE COURT: 116 admitted.

(Trial Exhibit 116 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. Why did you write this e-mail to Mr. Cohen on May 14, 2005?

A. I'm talking to him about what I just described and how it's a tribute to his efforts over these last years, and now the culmination and fruition of his vision for Ecast and his willingness to share with Vanguard is coming to pass.

Q. Do you recall how you are going to thank him with this something special in mind that you referred to at the bottom of the first paragraph?

A. I think it was an Indian dinner at a restaurant that Danny and I had liked, that I had introduced Danny do. But I'm not sure. Something of that type.

Q. Showing you another page from trial Exhibit 251, dated four days later. Is that a check from you to Mr. Cohen for $300,000?

A. It is.

Q. Dated May 18, 2005?

A. Yes.

Q. Do you recall why you sent that in the middle of May '05?

A. Yes. Once he told us that the acquisition was a fait accompli and had been approved, he started talking about bonds and fees that were needed for the approval of the -- excuse me,

the Competition Commission of the European Union.

Q. Had you heard -- before Mr. Cohen mentioned bonds and fees being needed for the European Union Competition Committee, had you heard of that possible obstacle to the Microsoft acquisition of Ecast before?

A. No, not at all.

Q. Was this $300,000 a loan to Signet?

A. No.

Q. Was it an investment in Procinea?

A. No.

Q. Could you turn to 205. Should be the next tab. Is it an e-mail from you to Mr. Cohen?

A. It is.

Q. Dated May 30, 2005?

A. Correct.

THE COURT: Admitted.

(Trial Exhibit 205 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. Now, after Mr. Cohen introduces the EU concept --

A. May I have a moment to read this.

Q. Oh, yeah. Sorry.

THE COURT: We'll take a recess now. Ladies and gentlemen, we'll take a recess until 11 o'clock. Remember the admonition given to you. Don't discuss the case, allow anyone

to discuss it with you, form or express any opinion.

(Jury out at 10:44 a.m.)

THE COURT: Let the record reflect the jurors have left. About how much further do you have? How much longer do you have?

MR. SPRAGUE: What did I just go? It's 10:25. Went about an hour. I've got more than an hour. I will certainly take us to lunch.

THE COURT: All right. Thank you.

(Recess taken from 10:44 to 11:05 a.m.)

THE COURT: Okay. Let the record reflect all jurors are present, the parties are present. You may proceed.

MR. SPRAGUE: Thank you, Your Honor.

BY MR. SPRAGUE:

Q. Mr. Dillon, if you would take a look at Exhibit 206, please. While you're looking at that, the government would move 207, 209, 211.

THE COURT: Wait. 207. Well, 206, 207.

MR. SPRAGUE: 209.

THE COURT: 209.

MR. SPRAGUE: 211.

THE COURT: 211.

MR. SPRAGUE: 213.

THE COURT: 213.

MR. SPRAGUE: 118.

THE COURT: Pardon?

MR. SPRAGUE: 118.

THE COURT: 118.

MR. SPRAGUE: 119.

THE COURT: 119.

MR. SPRAGUE: 121.

THE COURT: 121.

MR. SPRAGUE: 122. All e-mails between Mr. Dillon and Mr. Cohen.

MR. LINCENBERG: No objection.

THE COURT: No objection. All those documents will be received in evidence.

(Trial Exhibits 206, 207, 209, 211, 213, 118, 119, 121, 122 received in evidence.)

BY MR. SPRAGUE:

Q. Have you had a moment to look at Exhibit 206?

A. I have.

Q. In late May of 2005, are you still trying to get the funds from Mr. Ettinger?

A. Yes.

Q. And did Mr. Cohen tell you where Mr. Ettinger was at this time?

A. He did. In the previous e-mail you can see I'm expecting the funds to be wired anytime because of the close. And here he's saying that Ettinger is over in St. Moritz on vacation.

Q. In the last paragraph you're thanking Mr. Cohen for taking the time, focusing on the Vanguard piece vis-a-vis Mr. E on the holiday weekend. What is the Vanguard piece you are referring to?

A. These are the funds that should be coming at this point -- because it's closed, the funds are supposed to be coming immediately now to Vanguard. And that's why I'm giving him wiring instructions.

Q. What is -- what did Mr. Cohen say looks like, as he put it, a definite 10?

A. Referring to the monies coming from Switzerland.

Q. Switzerland is where Mr. Ettinger was going to be wiring his money from, as you understood it?

A. That's correct. Geneva, Switzerland.

Q. Showing you a page from trial Exhibit 251, about a week after that e-mail you send a check to Mr. Cohen for a hundred thousand dollars; is that right?

A. Correct.

Q. This is dated June 6, 2005?

A. Yes.

Q. What does that say in the memo line?

A. It says "Euro stamping," referring to European stamping.

Q. What was your understanding of European stamping, why you were paying a hundred thousand dollars toward that?

A. This was a -- he said, a stamping fee. That everything

was closed, and just like there had been stamping fees earlier regarding the domestic, that there are now stamping fees and so on in Europe.

Q. When you refer to "he"?

A. Mr. Cohen.

Q. This was not a loan to Signet?

A. No.

Q. Take a look at 207.

(Document displayed.)

Q. Just briefly, are these continued -- another e-mail from you to Mr. Cohen, inquiring about the status of Mr. E's money?

A. Yes.

Q. And then that's June 17, 2005.

Showing you another page from Exhibit 251. Is that a check you wrote to Mr. Cohen for $600,000, on July 1st, 2005?

A. It is.

(Document displayed.)

Q. Showing you another page from 251, is that a check you wrote to Mr. Cohen for $400,000 on August 1, 2005?

A. Yes.

Q. The signature in August '05 looks a little strange. Can you explain that?

A. Yes. I had broken my hand and my elbow playing football with my grandson at his birthday party.

Q. Was that sometime between July 1st of 2005 and August 1st

of 2005?

A. Yes. His birthday is July 14th.

Q. And what did this $1 million in essentially a month, why did you pay that $1 million to Mr. Cohen?

A. These were all fees connected with the European Union's Competition Commission.

Q. 118. I'm just going to focus on the middle section that's highlighted.

Have you had a minute to look at that?

(Document displayed.)

A. If I could have a minute, yes.

I'm ready.

Q. You tell Mr. Cohen that you know he won't have an update from Wilson early in the morning. What was that referring to?

A. I'm referring to the law firm Wilson Sonsini.

Q. And what was their role, as you understood it from Mr. Cohen, in September 2005?

A. He said they were still in charge of everything, including the part in Europe, dealing with the European Union's Competition Commission, getting that approval.

Q. In relation to what?

A. In relation to the acquisition by Microsoft of Ecast.

Q. And then are you also asking Mr. Cohen if he has an update from Mr. E?

A. Yes, absolutely.

Q. 209, please.

(Document displayed.)

Q. And, again, if you could just focus on the paragraph that has the highlighting in it, please. This is an e-mail dated September 7th, 2005, correct?

A. Correct. I read it.

Q. Why -- what are you using to push -- are you pushing Mr. Cohen to try to get money from Mr. E, at this point?

A. Yes, absolutely.

Q. Why?

A. Because we're now in the early fall of '05. It's been years since the money was supposed to arrive. And I'm talking, I'm trying to appeal to his moral center here in terms of Hurricane Katrina had just hit in New Orleans, and the suffering in the African American community was huge. And so I'm trying to invoke that in terms of the need for the money.

Do you want me to continue in terms of the paragraph?

Q. Go ahead.

A. Mr. Isenberg is an additional person he had talked to me about recently, who had joined the others in Mr. E's group. And he said that Mr. Isenberg was somebody who really identified with the kind of things that Vanguard stood for.

He identified him as sort of a progressive social democrat in Europe. So I'm trying here to a say at least maybe we can get Mr. Isenberg to send his check while we're still

waiting for Mr. E to get his thing.

And then at the very end I'm trying to say I'm hoping Mr. E will see the moral veracity and wisdom of FedEx'ing Mr. Isenberg's check right away, given what's happened in New Orleans.

Q. From whom did you learn of the existence of Mr. Isenberg?

A. From Mouli Cohen.

Q. Did you ever meet Mr. Isenberg?

A. I did not.

Q. 119.

(Document displayed.)

Q. What were both closes, as far as you understood it from Mr. Cohen, on or about September 12, 2005?

A. The first, I'm referring to the acquisition by Microsoft of the startup and all the approvals connected with that, the European Union and so on.

And the second is Mr. E's money and him getting his process closed out so that check can be wired. Or that actually was supposed to be a wire, not a check.

Q. In the fall of '05, September of '05, what did you understand Mr. Cohen's role to be in the Microsoft acquisition of Ecast?

A. I understood that as executive chairman of the company he was leading all things related to getting the -- bringing about the consummation of the acquisition of Microsoft by the

startup, of the startup.

Q. What was that understanding based on?

A. His representations to me that he was traveling to Europe, he's traveling to Silicon Valley, that he was right at the center of the discussions.

He even said that he and Neelie Kroes, who at the time was the head of the EU's Competition Commission, had developed kind of a strong personal rapport.

Indeed, if I may expand, one of the times I was talking to him during that period his assistant interrupted and said that someone from Neelie Kroes's office was calling to talk to him directly. So, obviously, I jumped off the line.

Q. Around this time had you seen Neelie Kroes's name in the newspaper?

A. Yes.

Q. Turn to 211, please.

(Document displayed.)

Q. Now, I'm just going to ask you about a couple of pieces from this e-mail. Okay?

Is this an e-mail from you to a group of people, dated September 22, 2005?

A. It is.

Q. Who are these people as a category on the "to" line of this e-mail?

A. They are people in the Vanguard circle, but were not

originally part of this whole effort.

And we were completely tapped out financially. "We" meaning the people we have spoken about earlier in the Dillon and Glover groups. And we reached out to these people to be a part of this and put up the funds we needed for these European Union bonds and fees.

Q. Now, the people who were part of the groups in 2002 and 2003, how do you refer to them as a category?

A. Well, I use the term "core group." More people tend to say the "first tier."

Q. So the core group or first tier who invested in Ecast back in '02-'03?

A. Correct.

Q. How do you refer to these groups who came in later, people who came in later?

A. Second tier. This particular group is often referred to as the Berkeley group because they lived in Berkeley.

Q. So within the second tier these people didn't -- or did they buy any Ecast shares?

A. No, not directly. They loaned money to the Dillon and Glover partnerships to cover these bonds and fees.

Q. And in this second tier, second set of investors, there were -- I think you mentioned this was the Berkeley group. So there were subgroups of the second tier?

A. Yes.

Q. And what are the names of the people, Brian and Kimberly? Can you read that line? What are the names of those people, full names?

A. Uhm, Brian Pometta, Kimberley Moses, Charlie Crocker. Charity -- I'm forgetting her last name. They were married at the time. Laura Gallagan. Mark Troupe. Ulrich and Johanna. I'm blanking on his last name. I apologize. And Stevie Kaplan and Willie Pettus.

Q. And then over time you communicated with these groups the status of the Microsoft-Ecast acquisition, correct?

A. I did.

Q. And that status you understood from whom?

A. I'm sorry, could you repeat that?

Q. Where did you get your understanding of the status of that acquisition such that you could communicate it to these other people?

A. Oh, from Mouli Cohen.

Q. What are you communicating in the highlighted portion nearest the top here?

A. I have read it.

Q. What were you communicating to this group?

A. That that provisional acceptance by the EU's Competition Commission had been granted, but that the -- according to Mr. Cohen they had put up the price tag on that. They wanted bonds posted in case Ecast -- excuse me, in case Microsoft

violated the use of the technology involved with Ecast.

Q. Look at 121, please.

(Document displayed.)

A. I have read it.

Q. Okay. Is this an e-mail from you to Mr. Cohen on or about October 25 of 2005?

A. Yes.

Q. And here are you forwarding an e-mail or a part of an e-mail you received from Sam Mills?

A. I am.

Q. What was Sam's concern, as expressed to you, when he saw this article that appears below?

A. Mouli Cohen had represented that Ecast had an exclusive contract with these music groups and entertainment groups that are listed here.

And when we saw this article that Microsoft had broken off licensing talks with four of these companies, we were concerned what it meant for Ecast and, therefore, possibly did it threaten the acquisition.

Q. Did Mr. Cohen respond to this e-mail either in writing or by phone?

A. He did not in writing. He did -- he reassured me that this was not an issue and not a problem. I don't actually remember the particulars of that explanation.

Q. I'm going to show you some pages from Exhibit 251, around

this time. Is that a check from you to Mr. Cohen for $600,000, dated September 14, 2005?

A. It is.

Q. Is this a check from you to Mr. Cohen dated September 23rd, 2005, for $600,000?

A. It is.

Q. Is this a check from you to Mr. Cohen dated September 30, 2005, for $900,000?

A. It is.

Q. Is this a check from you to Mr. Cohen dated October 14, 2005, for $500,000?

A. Yes.

Q. Is this a check from you to Mr. Cohen dated October 14, 2005, for $68,000?

A. It is.

Q. Is this a check from you to Mr. Cohen dated October 31st, 2005, for $400,000?

A. That's correct.

Q. Those checks add up to more than $3 million in a month and a half in 2005. Why were you paying that money to Mr. Cohen at that time?

A. For these -- the bonds and fees he said were necessary.

Q. And where were you getting the money to pay Mr. Cohen all that money?

A. By this time, much of the money if not all of it was

coming from what we just referred to as the second tier of people.

Q. And were you relaying to those people what Mr. Cohen was telling you about the status of the bonds and fees related to the Microsoft-Ecast deal?

A. I was.

Q. If you would look at 213, please.

A. Excuse me. I have a frog in my throat.

Q. Do you have water?

A. I do. It doesn't seem to be helping, but I'm sure I will be fine.

Q. What event are you referring to in this e-mail dated November 10, 2005?

A. Vanguard was putting on a major event on Sunday night. I think it was November 13th or 14th. Ahmed Kathrada, who was on Robben Island with Nelson Mandela and the others for 28 years, had just published his memoirs, and Vanguard was hosting a big event honoring him here in San Francisco.

Q. And did you invite Mr. Cohen to that event?

A. Yes.

Q. Did he attend?

A. Yes.

Q. With anyone else?

A. With Stacy Cohen.

Q. Did he sit at your table?

A. He sat at the head table, yes.

Q. Who else was at the head table?

A. Mr. Kathrada, of course. Delores Huerta. Ron Dellums. Cecil Williams. People like that. Sam and Mary Mills. Myself. Danny. Gus Newport, former mayor of Berkeley. And the Counsel General from India for San Francisco.

Q. Had you spoken to Mr. Cohen at or around the time of the Kathrada event about these $3 million worth of money that you had sent him in the last month and a half?

A. Yes. A few days prior to the event.

Q. And what did you say to him?

A. Well, I was up at his house. I can't be certain of the date. But I know it was bearing down on the event because I was feeling the pressure that goes with that. And he said that another half a million dollars was needed.

Q. And how did you respond to that?

A. I sat there, and I can remember this day sitting in a certain spot on his couch, and I just said nothing for a minute. And he could see it on my face.

And he said, I know. I know. How are we going to do it? How are we going to do it? And I just sat there feeling the weight of it.

And then I told him that -- I think by this time the event was maybe three or four days away and I couldn't really talk about this right now. And I had to focus on the event but

obviously we needed to talk about it after the event.

Q. So you had just sent a little over $3 million. He was asking for another $500,000 after that?

A. That's correct.

Q. And then you invited him to this event?

A. Yes. We had already invited him to the event.

Q. You attended this event with him, the Kathrada event?

A. I'm sorry, could you repeat the question.

Q. You attended the Kathrada event with him, correct?

A. Well, I was in charge of the event. So he came to the event. I didn't attend it with him.

Q. Bad question. Clarification. Thanks.

Based on this -- his request for more fees, did you ask to have a meeting with Mr. Cohen?

A. Not at that moment. But, yes, as soon as the event had passed a few days later we spoke by phone.

Q. What did you tell him in that phone conversation?

A. A couple of things. I told him that we had to have a meeting with the whole group.

When I say "the whole group" I mean the core group or first tier group. That two things, one, we didn't have any more money so there was no way we could put up this money. And, secondly, I told him that I didn't feel I could, speaking for myself, could continue to represent this to our group because there was always a demand for more money. It was

always connected with something that was going to close and it never did.

And I felt like -- besides the fact we couldn't -- we didn't -- we weren't financially capable, that was one point I was making, the other point I was making is I am no longer personally capable of representing something that wasn't coming to pass.

Q. And did you arrange to have a meeting with Mr. Cohen?

A. With the group?

Q. With the group.

A. Yes, I did.

Q. And who -- did the meeting take place?

A. It did about ten days after the event. Excuse me, at his home.

(Document displayed.)

Q. If you could look at 122. Do you recognize that?

A. Yes, of course.

Q. And is this an e-mail you sent to Mr. Cohen the afternoon of this meeting with the group that you just talked about?

A. Yes.

Q. And you refer to Susanna. Who is that?

A. Susanna Moore. I'm sorry, who is also on the board of directors of Vanguard, and one of the leading people in tier one or group one, core group.

Q. The initial investors?

A. Yes.

Q. Core group. Okay.

Then in the second to last sentence you say, "Just wanted you to know she was going to say something to that effect before we begin talking about the deal."

What was "the deal"?

A. "The deal" was the term used to refer to the acquisition by Microsoft of Ecast.

Q. And did you -- did this meeting take place?

A. It did.

Q. Who had asked for the meeting?

A. I had asked for the meeting.

Q. Who attended the meeting?

A. Myself, Susanna Moore, Jane Segal, Sam Mills, Mary Mills.

Q. Where was the meeting?

A. At Mr. Cohen's home in Belvedere.

Q. And when you got there, where did you -- where were you at first when you arrived in the home?

A. We were shown down to the what he calls the great room. And there's an alcove at the end of the great room. And he had some food. Or his staff had food there so we were shown over to that area.

And we stood around there for a few minutes or more than a few minutes while staff was giving us food, and there was sort of chitchat about the event and things like that.

Q. Was there any tour of art given at this --

A. Yes. As we were -- as people were entering -- I had seen it, before but as people were going downstairs, and so on, Jane and Mary especially were seeing some of the art for the first time. And they're very knowledgeable about art. Susanna also had seen it for the first time, the Picasso and Matisse and others.

Q. You had been in this house in Belvedere several times?

A. Oh, yes, of course.

Q. And had Jane or Susanna or Mary been to the house before, as far as you know?

A. Jane and Susanna had not. I can't remember if Mary had been there because Sam had been there a lot. And I can't remember if Mary had been there once or twice before.

Q. What did Mr. Cohen say about the art?

A. He talked about how these were original pieces that he felt very strong -- one thing he told me was that it cost him $75,000 a month just to have the insurance to cover this -- have such expensive art in the house.

Q. How long did you stand?

A. Too long. Can I expand my answer?

Q. On the art or --

A. Oh, I thought you said how long did we stand in the room at the -- in the great room.

Q. How long were you standing up before you got to talking

about business?

A. There were two phases to it. We were entering and being shown the art. That probably took a half hour. But then he showed us over to this alcove at the end of his great room, and that's where there was food and so on.

Q. How long did he stand there?

A. Until Susanna Moore brought up that -- I was just waiting for anytime we had -- I had met with him, we had always gone over to the great room and sat down on a couch and other chairs.

As I was just waiting for that to happen, I assumed we'd just gone over there to get the food and so on. But he clearly was trying to turn it into sort of what they call a standing meeting, with people just standing around eating the food and talking.

Finally, Susanna Moore spoke up and said that in terms of having a serious discussion she didn't know about other people but she couldn't really do it in that context.

And Mouli quickly acceded, and we moved over to sit down in the great room.

Q. And, at that point, did you discuss the status of Microsoft's acquisition of Ecast?

A. Yes.

Q. Who began that discussion?

A. Let me correct myself. We did talk a little bit more

about the Vanguard event because it had just happened recently.

Q. The Kathrada event?

A. Yes, the Kathrada event.

And then Susanna Moore talked some about Vanguard, gave a little presentation.

Q. What did she say?

A. She talked about the kind of community groups that Vanguard grants, and that it was a -- some of the things I said earlier, but that it was a social justice foundation, it was sort of unique in that regard, and talked about the community that depends on Vanguard.

And he had said how he feels so strongly about Delores Huerta, sitting sort of between her and Mr. Kathrada. And so she was talking about the kinds of groups Vanguard supports, very much like the United Farm Workers --

MR. LINCENBERG: Your Honor, this is getting to be a bit of a narrative, nonresponsive answer.

THE COURT: Overruled. Go ahead.

BY MR. SPRAGUE:

Q. Were done with your answer, sir?

A. No.

Q. Go ahead.

A. So then it shifted to the purpose of the meeting.

The purpose of the meeting was for Mouli directly, as opposed to through me, give a report to the core group, if you

will, about the status of the acquisition. Specifically, these negotiations in Europe regarding the EU Competition Commission approval of the deal. And so he started talking about that.

Before he got to that he gave a long talk about the strength of Ecast as a company. It was quite lengthy. And the one thing that I remember real clearly is he said that Ecast was growing at a phenomenal rate, including in Europe, and that its rate of growth, not its absolute revenue, but its rate of growth was comparable to Google's.

And then he talked about a pub chain in Europe, which I don't remember the name of, that the jukeboxes were going to be in and so on.

That was the first part. Can I keep going?

Q. Sure.

A. This was the first part. And we didn't exactly come to get that, but it was heartening to hear how strong the company was.

But then -- what we wanted to know is, when is this EU process going to be over? When is the approval going to happen? And when is the demand for money coming from us to him going to end? And when is the approval going to happen so the money is coming back to us?

So -- and Mary Mills spoke up strongly and sort of -- I had already posed that question but she had -- I had already posed that question, but she posed it in her own words, in a

friendly but very strong, pointed way, describing how this had been three years now, something that was supposed to take six months. And, also, all these bonds and fees had come to millions and millions of dollars, and when was it going to end, when was the consummation of the deal going to happen, and when was the call for more money going to happen? She posed that question, and Mouli spoke to it.

Q. And what did Mouli say in response to that question?

A. Mouli said -- he had already described the strength of Ecast, and he said -- this is in the late fall, November by this time, was like November 30, or something, this meeting, and he said that this would be the last call for any bonds or fees or any costs associated with the deal, this December -- or late November of '05.

And then in January, because -- let me just correct myself. Mary asked him specifically, when is it going to close and will this be the last time, call for money? And he said, yes, absolutely. It's going to close in January. And this 500,000 will be it. And he was very adamant about that.

Q. And did Mr. Cohen tell people -- or tell you at the meeting what you all would receive when the deal closed?

A. Well, we would get three things. We would get our -- supposedly, we would get shares of Microsoft equal to the number of shares we held at Ecast.

Mr. E's money would be released, and then all these

bonds and fees, as they're referred to, would be refunded back to us. So we had three. And then that sort of included the money sitting in New York. So we had sort of four categories of funds that would be coming to us.

Q. And with respect to the Microsoft shares, did he ever tell you that instead of 2.38 million shares you would have that number divided by a thousand?

A. No, not at all.

Q. And that meeting, you said, was in late November, I think you said -- well --

A. Well, the event was November 14th. It took about ten days to pull the meeting together, so I can't be certain -- oh, you got an e-mail. Okay.

Q. So, this was trial exhibit that you start, "Regarding tonight." This is the meeting that you were discussing?

A. Right, yes.

Q. So the meeting was probably November 28th of '05?

A. Yes.

Q. After that meeting, did you pay the extra $500,000 that Mr. Cohen had requested?

A. I did not, nor did I attempt to raise it. But he was so persuasive that that evening when Mary and Sam got home -- I found out about this after the fact -- they called their siblings, brother and sister respectively, and came up with a half a million dollars, and wired it into Mouli's account.

Q. And I'm showing you some pages of Exhibit 251. About a week after this meeting you sent him a check for $167,000. Is that right?

(Document displayed.)

A. Correct.

Q. You were still struggling with your broken arm, at this point?

A. Yes, unfortunately.

Q. A couple of weeks later, a few days before Christmas, a check for 200,000?

A. Yes.

Q. That's from you to -- to Mr. Cohen, correct?

A. Correct.

(Document displayed.)

Q. A couple of weeks later you send him a check for $200,000, dated January 13, 2006, correct?

A. Yes.

Q. Did you get your cast off by then?

A. My hand was starting -- I had seen a specialist and they had done some stuff with my hand so it was coming back.

Q. Same day, January 13, 2006, another $500,000 that you sent to him, correct?

A. Yes.

(Document displayed.)

Q. Same day, January 13, 2006, another $75,000 check to

Mr. Cohen from you, correct?

A. Yes.

(Document displayed.)

Q. And also, and finally, on January 13, 2006, a check for $467,000, from you to Mr. Cohen, correct?

A. Yes.

Q. So between the first one, I think I showed you was December 5th, and January 13th, so about a 5-week period, it's a little over $1.5 million?

A. Yes.

Q. What was this money for?

A. More bonds and fees.

Q. It wasn't a loan to Signet?

A. No, no.

Q. Was it an investment in Procinea?

A. No, not at all.

Q. And whose money was this?

A. This was primarily the second tier folks' money.

Q. And they paid the money based on what you had told them of the status of the Microsoft acquisition of Ecast?

A. That's correct. I misspoke earlier regarding one thing. I don't know if it's important to clear it up.

Q. What was it?

A. You had asked were they investors. And they weren't part of the original investment group, but everybody who put up this

money was indeed assigned shares in Ecast, a percentage stake of what the Dillon-Glover Group held.

Q. Explain that. The people who were in the second group, of paying the bonds and fees, what were they told they were going to get out of this in return for their payments?

A. They were assigned -- based on how much money they put in, they were assigned that amount of a stake in the shares that the Dillon-Glover Group, and they were given a spreadsheet that showed how many shares their amount came to.

Q. And then shortly after that million and a half or so that you sent to Mr. Cohen, if you could look at Exhibit 215.

MR. SPRAGUE: And the government would offer 215 through 219 at this time, more e-mails. 215 through 219 admitted?

THE COURT: Oh, sorry.

MR. LINCENBERG: No objection.

THE COURT: What numbers are they, again?

MR. SPRAGUE: 215, 216, 217, 218, and 219.

THE COURT: Admitted.

(Trial Exhibits 215 through 219 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. So that million and a half went in December and January of '05 to '06. Was Mr. Cohen updating you on the status of

Mr. E's donation to Vanguard at this time?

A. Yes.

Q. What did he say about that?

A. He -- the person I'm referring to here, Ross, he said he was the most difficult person on Mr. E's committee in Geneva, and was starting to raise questions about the money being released until the deal had been completely approved by the EU.

(Document displayed.)

Q. Look at 216. Is this an e-mail you sent to a group of this second tier, secondary investors? I'll use that term.

A. Yes. Actually, it includes the secondary but also first tier people, as well.

Q. So one of the recipients is Jane Segal, Mary Mills, Gail Webb. I believe this is Stevie Kaplan?

A. Stevie Kaplan, that's her name, yes.

Q. Susanna Moore?

A. Yes. So you'll see Henry Pichioto (phonetic) --

(Reporter interrupts)

Q. Susanna Moore?

A. Yes.

Q. Patience Moore?

A. Yes.

Q. Willie Pettus?

A. Yes.

Q. Shannon Gallagher?

A. Yes.

Q. And then you mentioned Mr. Pichioto (phonetic)?

A. Yes.

Q. And there's many others. This is an update on both the Vanguard piece and the central moving part, correct?

A. Correct.

Q. "The Vanguard piece," your phrase for Mr. E?

A. Yes.

Q. And "central moving part" is Microsoft and Ecast?

A. Yes.

Q. And so you -- and this is -- you send these e-mails out fairly regularly in this time period; is that right?

A. Yes.

Q. And that was dated February 11th of '06.

Showing you some pages from government 251. Is that a check you wrote to Mr. Cohen for a hundred thousand dollars, on February 17th?

A. It is.

Q. Why did you write "second notice" in the memo line of the check?

A. Because he represented that the approval had essentially been granted by the EU's Competition Commission, and that the way they finalize that is to send a first notice and then a second notice, which is even more significant. And this is -- he said these are costs associated with the second notice.

Q. It wasn't a second notice related to a loan to Signet?
A. No.
Q. Or an investment in Procinea?
A. No.
(Document displayed.)
Q. Same day, February 17 of '06, $250,000 check from you to Mr. Cohen, correct?
A. Yes.
Q. Also "second notice" in the memo line?
A. Yes.
(Document displayed.)
Q. Same day, check to Mr. Cohen from you, for $32,000, correct?
A. Yes.
Q. Were those $382,000, as far as you understood it, going into bonds and fees in connection with the Microsoft acquisition of Ecast?
A. Yes.
Q. Look at 217, please. I just want to focus on a couple of things. I don't need you to read the whole thing.
(Document displayed.)
A. Okay.
Q. This is an e-mail from you to the Dillon Group, correct?
A. Correct.
Q. And there's talk about a lawsuit being filed against

Microsoft. And then it goes on about everyone being hit with another adjustment. Our share comes to $104,000. You're not pleased because you just finished raising $400,000, and a $32,000 adjustment on that. Is that right?

A. Correct.

Q. And you're telling people in negotiations you're not directly involved. Is that referring to Mr. E or --

A. That's the Mr. E piece.

Q. And that should be closed out by the end of next week, right?

A. Yes.

Q. All right. So what was -- did Mr. Cohen tell you about what an adjustment was?

A. Yes. He said -- and this has happened more than once, that we would put in X amount of money, in this case 400,000, or more than 400,000, then he sometimes would call a week later and say that, actually, the accountants had gone over it and there was an adjustment for everybody. Then he would give us what he said was our pro rata share of the adjustment.

Q. I showed you, I think, already a check a moment ago for $32,000?

A. Yes.

Q. On March -- I'm showing you a page out of trial Exhibit 251. This is a check from you to Mr. Cohen, dated March 2nd, 2006, for $104,000?

A. Correct.

Q. And what does it say in the memo line?

A. I wrote "for second notice adjustment" because that's what I was told.

Q. A few days after that, is this a check dated March 7th, 2006, for a hundred thousand dollars, from you to Mr. Cohen?

A. It is.

Q. Check dated April 7, for $500,000 from you to Mr. Cohen?

A. Yes.

Q. Another one, April 14, of '06 for a hundred thousand dollars, from you to Mr. Cohen?

A. Yes.

Q. Same day, April 14, 2006, from you to Mr. Cohen, for $500,000?

A. Correct.

Q. I won't take all of those, but 1.2 million between March 7th and April 14th. So about five weeks. Checks payable to Mr. Cohen. What did you think those were for?

A. For the bonds and fees connected with the EU.

Q. You weren't loaning a million dollars to Signet?

A. No.

Q. Showing 218, very quickly. I don't need you to read the whole thing. I'm just going to point out a sentence.

Your share, pro rata share, came to 1.36 million. Raised half that last week. Trying to raise the second half,

which has to be posted by next Monday.

Do you see that?

A. Yes.

Q. And then our entire team, including attorneys and technical people, flying to Europe for an in-person meeting with the EU commissioners.

Is that what Mr. Cohen told you in April of 2006?

A. Yes.

Q. What, if anything, did Mr. Cohen tell you about what would happen if this money wasn't posted by next Monday?

A. That we would be stripped of our shares.

Q. And did he tell you -- this is a pro rata share. He told you that other people invested were putting in, too?

A. Absolutely.

Q. 219, just very briefly. This is from -- an e-mail from you to Mr. Cohen, dated April 30, 2006, correct?

A. Correct.

Q. And why are you referring to it as a huge week for the central moving part and the Mr. E part?

A. Because he represented that both of those were closing -- he said he was going to be in Europe and that both of those were closing very soon.

Q. And this is dated April 30th of '06. And then right after it, is that a check for a hundred thousand dollars from you to Mr. Cohen?

(Document displayed.)

A. Yes.

(Document displayed.)

Q. Is this a check from you to Mr. Cohen, for $500,000, dated May 10 of '06, same date as the prior one?

A. Yes.

Q. Is this a check from you to Mr. Cohen, dated May 15 of '06, for $90,000?

A. Yes.

Q. And this is a check from you to Mr. Cohen, dated June 1 of '06, for $500,000?

A. It is.

Q. Are those four checks between May 10th and June 1 -- so three weeks -- $1.19 million, what did you think that was for?

A. For the bonds and fees for Europe, for the European Union.

Q. 128, sir, if you could turn to that. Is that an e-mail from you to Mr. Cohen?

A. It is.

MR. SPRAGUE: The government offers 128.

THE COURT: Admitted.

(Trial Exhibit 128 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. On the bottom, is that an e-mail from Mr. Cohen to you?

A. It is.

Q. It appears to be replying to an e-mail that you sent. You often use "From Hari" in your subject line?

A. I do.

Q. And, usually, when you reply to an e-mail, in your experience, the "Re:" pops up before the same term that was used in the original e-mail?

A. Yes.

Q. And Mr. Cohen says he is planning on getting back to the United States sometime tomorrow. Who did you understand that to be, if you recall?

A. I don't -- I'm not sure if he's saying Ettinger is coming, or he's just referring to him coming home. I think he is referring to himself coming back.

Q. In this e-mail above you're generally inquiring about the status of Mr. Ettinger's 2 million; is that right?

A. Correct. I'm reminding him of the core and the time frame, and the time is now to get this money in.

Q. The core was when Mr. Ettinger had made his initial pledge back in the fall of 2002, that was the movie premiere you guys went to, right?

A. Correct.

Q. And then Isenberg, you never met him, correct?

A. No.

Q. Did you ever meet these other two gentlemen?

A. No. Only Ettinger.

Q. And this is dated June 21, 2006, correct?

A. Correct.

Q. Did you ever get -- go to do this it presentation in Europe, to Mr. Ettinger's people?

A. No. We put together the slide show presentation, but because the money never came we were not in a position to -- I was so consumed by trying to make this happen.

Q. Now, that's June 21st of 2006. Showing you another check from Exhibit 251. June 27th, 2006. Is that a check for $1 million?

A. It is.

Q. From you to Mr. Cohen?

A. It is.

Q. Why did you send him a check for a million dollars on June 27th of 2006?

A. For these bonds and fees in Europe.

Q. It wasn't a million dollars loan to Signet?

A. No.

Q. Wasn't an investment in Procinea?

A. No.

THE COURT: Is this an appropriate time to take a recess?

MR. SPRAGUE: Great time.

THE COURT: Okay. Ladies and gentlemen, we will take our noon recess. Remember the admonition given to you. Don't

discuss the case, allow anyone to discuss it with you, form or express any opinion. I'll see you at 1:00 o'clock.

I'll see counsel back in chambers.

(Jury out at 11:56 a.m.)

(The following proceedings were held in chambers, outside the presence of the defendant.)

THE COURT: Let the record reflect we are meeting in chambers. Defendant is not present. All lawyers are present.

Is your client's presence waived for this proceeding?

MR. LINCENBERG: Yes.

THE COURT: Okay. We've had an off the record discussion about scheduling, but nothing else, and now we're proceeding on the record.

MR. SPRAGUE: Thank you, Your Honor. Doug Sprague for the United States.

We were informed by Mr. Oertel, who is sitting as a summary witness in this case, possible expert as we mentioned, that Mr. Ashkenazi, who has come up before in the trial -- he is a spectator -- had said things to the effect of "that son of a bitch" and "that bastard" during trial testimony.

Mr. Ashkenazi --

THE COURT: When?

MR. SPRAGUE: This morning.

THE COURT: I see.

MR. SPRAGUE: This morning.

MR. LINCENBERG: I understand, if I may interrupt, that in this past hour he was making further comments. I didn't hear them, but I got feedback on that.

MS. MITCHELL: I didn't hear.

MR. SPRAGUE: We asked, after we heard that, we raised it with counsel and asked for this and then -- this meeting, this conversation we're having now on the record.

And then we asked Mr. Oertel to walk up a note to counsel table if he heard any further comments from Mr. Ashkenazi, which he did not, at least walk up a note. And that was in the one hour we had before lunch.

So those are the extent of the comments as we understand them, but that's why we asked for this meeting. We don't think the jurors can hear him, but we don't want a risk of that.

And so I think he should be told to move back at least. And if there's any more of this, he should just be told to leave.

MR. LINCENBERG: If I may supplement the record here.

Bay way of background, the Court's heard this name, Ashkenazi, a little bit in the course of the testimony.

He was, around the '01 and '02 time frame, dealing with Farrell and some of these guys. I believe he was convicted for loan sharking.

At some point in the early 2000s, Mr. Cohen's civil

counsel, when he was represented by Marshal Grossman, went into court and got a restraining order because of threats that Mr. Ashkenazi was making. In fact, I think at Mr. Grossman's suggestion, until they got that order, he had told Mr. Cohen and his wife to pull out of the home.

He's -- he's -- he has a -- sort of an evil eye venomous look. He obviously hates my client. And my sense is he's a pretty bad guy. And he's roaming the courthouse -- court hallway, interacting with people. He's making comments.

Although he was moved away from Mrs. Cohen, ironically he's now sitting -- I think it's two rows right behind the alternate jurors.

MS. MITCHELL: Three rows. The first row is empty.

MR. LINCENBERG: I don't know what's being heard or not. I had gotten feedback -- I didn't personally hear it, but I got feedback of some further comments during this last hour along that line.

MS. MITCHELL: And, Judge, I would just like to further supplement the record and say that Your Honor had warned him not to talk.

And my concern is that I actually heard him -- he stopped when he saw me, but I heard him start talking to some of the other people in the well of the courtroom.

They were outside --

THE COURT: In the well?

MS. MITCHELL: No, excuse me. They were outside. Sitting next to him in the -- in the third row, and then he was like talking to them on one of the breaks outside the courtroom. Which I understand it's a free world and people can talk outside. But I think it's just of concern because Your Honor had --

THE COURT: What I propose to do is call him in. My guess would be before the jury arrives. If he's there at 1:00 o'clock I'll bring him in. I could either do it publicly or I could do it -- whatever I do, I'll do on the record.

But I could either do it publicly or I could do it in the jury's deliberation room, which they don't use, and admonish him a second time, advise him that there have been reports that he has been overheard saying things about the defendant or which could be construed as being directed about the defendant. And that he is to, number one, sit in the very back row of the courtroom, if he chooses to come in and hear these proceedings. I don't know which side we want him on, to tell you the truth. But that's -- you know, I wanted to keep him away from the defendant's wife, so he took the other side, which is where I told him to go last time, but it's a bit closer to the jury.

I think I'd just put him in the back row, away from the defendant's wife and what I call the left side, stage left of the courtroom. And, again, admonish him and tell him if I

hear another report I'm going to exclude him from the court.

I don't know what else -- I mean, he is -- I don't know whether he considers himself a victim or not, but, of course, this is a public trial. Nevertheless, he has to comport with the Court's order. Or I can simply send him out.

MR. LINCENBERG: Well, if the Court's going to go in that direction --

THE COURT: I invite comment on that. That's what I would propose to do. That avoids the necessity of having to have some evidentiary hearing about, you know, did the government witness hear this. And I don't need to do that. I can simply accept your representations. Not that I have a moment's doubt about it, but then we don't have to have that kind of proceeding, at this point.

All I would tell him to do is desist, and this is my final warning, and he is to sit in the back row.

MR. LINCENBERG: If the Court's going to permit him to stay in the courtroom -- and we ask that he be excluded, but if the Court is going to permit him to stay would the Court consider supplementing it by instructing him not to discuss -- not to have any conversations with any of the people related to the proceeding?

THE COURT: I thought I did yesterday.

MR. SPRAGUE: You did. You told everyone in the room --

THE COURT: Maybe I should exclude him. Maybe I should just exclude him. I don't -- but if I do that, if you think I really should exclude him, I want the IRS agent or whoever it is to come in here and make a record on it, because I don't have his statement.

MR. LINCENBERG: We would ask for exclusion.

THE COURT: I would hate for some scene to occur and then it blow up and then legitimately defense would ask for a mistrial. And all of this effort on everybody's part will have been wasted after being warned about it.

What do you want to do, Mr. Sprague?

MR. SPRAGUE: We have no objection to him being excluded. Do we?

THE COURT: I think what I need to do is at 1:00 o'clock -- is the agent out there now?

MR. SPRAGUE: I don't know if he's out there now.

THE COURT: Why don't you go look. Why don't you go out and see if he is. If he is, bring him back now. If not, I'll do it after lunch.

(Pause.)

THE COURT: Good afternoon. You are?

MR. OERTEL: James Oertel. I'm a revenue agent with the IRS. I'm the summary witness.

THE COURT: And you have been attending these proceedings?

MR. OERTEL: Yes.

THE COURT: So we have heard a report that you've been seated in the courtroom. How close are you to Mr. Ashkenazi?

MR. OERTEL: He's seated right behind me, probably like within a couple of feet.

THE COURT: Okay. And what have you heard?

THE WITNESS: I made note of it. At 9:57 he said, "That son of a bitch." At 10:08 he said, "That bastard." And at 10:26 he said, "Bastard" again.

THE COURT: And, obviously, it was audible for you to hear it, but how loud was it?

MR. OERTEL: Well, I didn't see the jurors react to it. I didn't hear [sic] them like turn their head or anything like that. And, usually, when he says it he says it in the direction of the defendant. Because sometimes I can -- I can see him just staring at the defendant as the trial is going on.

MR. SPRAGUE: For the record, the defendant would be about 45 degrees to Mr. Ashkenazi's left. The jurors would be straight in front of him or slightly to his right.

MR. OERTEL: Correct.

MR. SPRAGUE: And he is sitting in the third or fourth row behind the -- of pews away from the jury?

MR. OERTEL: Let's see. The two jurors who were out closest to that one big TV.

MR. SPRAGUE: So alternates three and four.

MR. OERTEL: I'm in the row behind them. And then he's in the row behind me.

MR. LINCENBERG: Agent Oertel, is he also sort of making all sorts of grunting and huffing sounds at times?

MR. OERTEL: Sometimes he will make a kind of gruffing sound. But that's about it. Did you want me to say what he said out in the hallway?

THE COURT: Go ahead.

MS. MITCHELL: Yeah.

MR. OERTEL: Oh, out in the hallway he was talking to two people who I had not seen in the courtroom before. And he said to them -- and it was in a normal tone of voice, "He's an evil man. I should kill him."

THE COURT: Do you know who he said that to? When you say "two people" what were they like?

MR. OERTEL: Well, it was an older woman. And she's with a man. He has a full beard, dark hair. And I think it's seated closest to that big TV by the two jurors.

THE COURT: Has he been there throughout the proceedings?

MR. OERTEL: Those two people?

THE COURT: Yes.

MR. OERTEL: No. Actually, today was the first time at least that I had seen them.

THE COURT: If you observe them back in the courtroom, would you identify them to the U.S. Attorney, and I'll have a discussion with them.

Unless you know them. Do you know them?

MR. LINCENBERG: No. But I -- I've also observed him at times -- I try not to pay attention -- but speaking to, I think it's Mr. Black -- who I think he has been approaching different people -- Mr. Black, who is a lawyer for Mary Mills and various people.

THE COURT: He's going to be excluded. That's it. Better get a marshal here.

(In chambers proceedings concluded.)

(Recess taken from 12:18 to 1:06 p.m.)

(The following proceedings were held in open court, outside the presence of the jury.)

THE COURT: Let the record reflect that the parties are present. The attorneys are present. The jury is not present.

Mr. Ashkenazi, sir, during this morning's proceedings, I was advised that you were overheard uttering certain profanities in the direction of the defendant.

I was also advised that during one of the recesses in the corridor outside the courtroom you had a conversation or made a statement to some individuals that -- to the effect, so many words, that the defendant should be dead.

Given those circumstances, and in light of my earlier admonition, I'm going to order you to leave the courtroom and not return to this courtroom on the 17th floor or any courtrooms on the 17th floor. And, also, you are not to use the public facilities located on the second floor of the courthouse, the cafeteria.

And this order will remain in effect until the -- this trial has been concluded. And so that's the -- that's the order of the Court.

If you have any issues as to that order of the Court, I would, of course, suggest that you seek legal advice. And, if necessary, I will, of course, have a conversation with any lawyer who you choose to represent you.

But in light of my concerns about security and in light of my prior admonition, I feel it appropriate that you vacate the court at once.

So, would you please leave.

MR. ASHKENAZ: I could -- Could I explain myself?

THE COURT: No. I don't want to hear any explanation right now.

MR. ASHKENAZ: Just give me a chance to speak.

THE COURT: All right. What do you want to say?

MR. ASHKENAZ: The information you received that I said anything to the defendant is completely wrong. I never spoke to him, never even stand next to him.

The only thing, I was talking to another person that he was a victim, and he was asking me if I was a victim, and I say yes. And just as matter between me and him. Nobody was around. I said I made a mistake, and just as an expression I said I should have killed him as just an expression.

Nothing to him. Never come next to him. Never said anything to the Court. It was between me and the lady and the man that was sitting over here, that said that they were a victim and asked me if I was a victim.

You could speak to the people. And I say yes. And I said he got me with a lot of money. He destroyed my life. And that's the only reason I'm over here. I never next to him.

And killing, of course, just an expression. If the lady and man would come in, you could ask them. And do not know any other thing. You said I spoke to the defendant. I never even came close to him. Even when we walked in the cafeteria, I sat about 150 yards away from him.

THE COURT: Well, Mr. Ashkenazi, I understand what you said. However, the Court has a responsibility to the parties in this case, as well as to the jury.

MR. ASHKENAZ: Give me another --

THE COURT: No, I'm not -- Mr. Ashkenazi, I'm not going to take any further chances. The Court admonished you, and now you are ordered to leave this courtroom, to leave the 17th floor, and not return until these proceedings have been

concluded.

Thank you.

MR. ASHKENAZ: Thank you.

(Mr. Ashkenaz exits courtroom.)

THE COURT: You may get the jury.

(Jury enters at 1:13 p.m.)

THE COURT: Okay. Please be seated. Let the record reflect that all jurors are present. You may continue.

MR. SPRAGUE: Thank you, Your Honor.

DIRECT EXAMINATION RESUMED

BY MR. SPRAGUE:

Q. Mr. Dillon, good afternoon.

A. Good afternoon.

Q. Would you put in front of you, please, Exhibit 221.

Is that an e-mail from you to Mr. Cohen, and a response from him?

A. It is.

MR. SPRAGUE: The government offers 221.

THE COURT: Admitted.

(Trial Exhibit 221 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. What is the reference of working with Sam and Mary on structuring of pulling their cash in July of 2006?

A. This is cash that we were trying to get, to get to Mouli

because he said this would help to get the Mr. E piece released.

Q. And Mr. Cohen responded to you a little later that morning by e-mail; is that right?

A. Yeah, just saying we'll talk later.

Q. Showing you another two pages from Government Exhibit 251, at about this time. The first page here, this is a check dated July 28th, 2006, from you to Mouli Cohen, for $1.4 million?

A. That's correct.

Q. And is that a check from you to Mouli Cohen, dated July 28th of 2006, for $300,000?

A. Yes.

Q. And do you know what those were for?

A. Yes. These were bonds and fees, the European bonds and fees.

Q. If you could look at Exhibit 222. Is that an e-mail from you to Mouli Cohen?

A. It is.

Q. Dated August 31st, 2006?

A. Yes.

THE COURT: Admitted.

(Trial Exhibit 222 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. What did you understand the debriefing with Wilson about

the Brussels meeting to be?

A. Can you give me just a second? It's too blurry so I'm reading it here, if that's all right.

The meetings that he was attending on behalf of Ecast with the EU were always held, he said, either in London or Brussels. This one, obviously, had been held, supposedly, in Brussels, and I wanted to hear what transpired.

And then, of course, I'm still talking about getting Mr. E's money in.

Q. If you could turn to 129. Is that an e-mail from you to Mr. Cohen, on October 29th, 2006?

A. It is.

THE COURT: Admitted.

(Trial Exhibit 129 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. Who is "the kid" at the EU, as far as you understood, as of October 2006?

A. Mr. Cohen said that there was a younger person there, Neelie Kroes's associate, and he referred to him as the kid.

Q. Go ahead.

A. And this call specifically, as you can see, I'm saying if the call goes well that you and Wilson are having with the kid, then we won't have to strategize around Mr. Ettinger because, of course, it will be released.

Q. "Wilson" being Wilson Sonsini?

A. Yes.

Q. And it was your understanding that as soon as the Microsoft-Ecast deal was done that Mr. E, Joseph Ettinger, would also be releasing his contribution?

A. That's correct.

Q. Turn to 223, please. Is that an e-mail from you to the Dillon Group, dated November 15, 2006?

A. It is.

THE COURT: Admitted.

(Trial Exhibit 223 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. Let's talk about the first paragraph. Why did you send that e-mail to the Dillon Group investors or people who had put money in?

A. Because Mouli had told me -- as you can see, I title it "Break through," in caps with an exclamation point.

Mouli had told me that everything had been approved by the EU. And while I don't tend to write like this, usually I say -- so the essence of this --

(Reporter interrupts)

A. I say, "We were given approval by the EU," exclamation point. So the essence of this update is approval, approval, approval. Again exclamation point.

Q. Did Mr. Cohen also tell you that even though you had approval there would be a 90-day waiting period?
A. Yes.
Q. Before the final certificate?
A. Yes.
Q. And then, at this time, you're still working on the Mr. E contribution, correct?
A. Correct.
Q. A couple of months later, is this a check for $320,000 that you sent to Mouli Cohen? And this is a page out of trial Exhibit 251?
A. It is.
Q. And, also, in January 2007, can you take a look at Exhibit 132. Is that an e-mail from you to Mr. Cohen, dated January 31, 2007?
A. It is.

THE COURT: Admitted.

(Trial Exhibit 132 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:
Q. You sent that e-mail to Mr. Cohen, correct?
A. I did.
Q. Questioning the central moving part?
A. Yes.
Q. A couple of times.

What was this 1. -- do you remember the 1.1 million that Sam Mills and Mary Mills put up in December?

A. Yes. I remember very clearly. Actually, they put up a little over 800,000. I believe the figure was 831. But the total was 1.1 million that was added to by other people.

Patience Moore was one of those people. I forget who rounded it off. And that money, in late December, was to get the Mr. E money released.

In the earlier part of the paragraph Sam and Mary, while being concerned about the Mr. E money, they had questions about the central moving part and so I suggested that Sam join us in the call.

Q. Could you look at 133, please. And is that an e-mail from you to Mr. Cohen, and a response from him?

A. Yes.

MR. SPRAGUE: The government offers 133.

THE COURT: Admitted.

(Trial Exhibit 133 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. So dealing with the bottom e-mail first, what was the big call, if you remember?

A. I'm not certain that this refers to a big call regarding the EU or a big call regarding Mr. Ettinger, because we had a lot, supposedly, going on at that time.

Q. The reference to "Joseph" here is Joseph Ettinger?

A. Yes.

Q. To focus you for a moment on the period September 2005 to April of 2007.

A. I'm sorry, could you give me the dates again.

Q. September of 2005 through April of 2007.

A. Yes.

Q. During that period, were you communicating with these second tier investors, as you call them?

A. Yes.

Q. And how would you communicate with them, by e-mail?

A. Mostly by e-mail. And, also, I was in touch by phone with Stevie Kaplan probably every two or three days, at length.

Q. Ever in person with any of them?

A. Yes.

Q. And when would you update them on the Microsoft-Ecast status, as you understood it to be?

A. Whenever Mouli gave me an update of some significance, I would write that up and send it out to the group. Occasionally, I would call Stevie first and talk with her, and send it out a few hours later.

Q. And, in all, about how many of these what you referred to as secondary or second tier investors were there?

A. They are mostly couples, so I want to say about 19 to 21 couples.

Q. Okay. So around 40'ish?

A. Somewhere in that range. I could be off on the number a little bit. But that's an approximation.

Q. And did you inform all of these people about your understanding of the necessity of paying these bonds and fees?

A. I did.

Q. And did these people include William Pettus?

A. Yes.

Q. Did they include his brother, Winston Pettus?

A. Yes.

Q. Did they include Susanna Moore?

A. She's part of the first tier.

Q. Did she also pay money towards bonds and fees?

A. She did.

Q. And did her husband Brian Bloom, was he part of the first tier and also paid towards bonds and fees?

A. Yes and yes.

Q. And was Susanna Moore's sister, Patience Moore, one of the second tier investors?

A. Second tier, yes.

Q. And did -- was Mary Mills, an initial investor, also a second tier investor? Let me rephrase that.

Did Mary Mills pay money that went towards bonds and fees?

A. Yes.

Q. Did Gail Webb?

A. Yes.

Q. Along with her partner Sharon Smith?

A. Yes.

Q. And her brother, Gail Webb's brother John Webb?

A. Yes.

Q. Asake Bomani?

A. Yes.

Q. Roney Allen?

A. Yes.

Q. Dennis Kowalski?

A. Yes.

Q. Shannon Gallagher?

A. Yes.

Q. Did Ms. Gallagher invest individually and through an entity called Gallagher Partnership?

A. Not aware of anything called a Gallagher Partnership, no. Excuse me. I take that back.

Yes, she had her own -- with her brother, a partnership that she put her money in, that came from that partnership into the Dillon Group.

Q. So all of those names I just read were in the second tier investors, correct?

A. I think --

Q. Mary Mills.

A. Mary Mills. And I think you mentioned Asake Bomani in that group. She was actually somewhere, I believe, in the September through what we call that first period of September -- September through February, but I could be off.

Q. So you think she was in both?

A. Yes.

Q. And Mary Mills was in both?

A. Yes.

Q. Now, all of these people that I just listed, they sent money to you or entities you controlled in furtherance of this Microsoft-Ecast bonds and fees, correct?

A. Correct.

Q. And you also borrowed money from investors in this matter, correct?

A. Two people, yes.

Q. Which two people?

A. Jane Segal and Sam Mills.

Q. How much money did you borrow from Jane Segal?

A. Approximately $5 million.

Q. What type of loan or loans was that? Were they personal loans? Were they secured by something? Describe that.

A. Yes, they were unsecured personal loans. Although, de facto we both saw them secured against the stake in Ecast.

Q. And how much money did you borrow from Sam Mills?

A. About seven, $700,000.

Q. Did you borrow money from Dennis Kowalski?

A. Personally?

Q. At all.

A. No.

Q. So what was your distinction? You said "personally." What distinction were you making there?

A. As opposed to him being one of the people who put money into the deal and got assignment of shares.

Q. So Dennis Kowalski put money into the deal for bonds and fees?

A. Yes.

Q. And Asake Bomani put money into the bonds and fees, in addition to initially?

A. Yes.

Q. And then several other people put money in for bonds and fees, including the people we just went through, correct?

A. Correct.

Q. At some point, you started spending those people's money without telling them; didn't you?

A. That's correct.

Q. So you stole some of their money, essentially?

A. I guess, yes.

Q. For example, Mr. Kowalski paid some money, and you used some of it to pay your American Express bill, correct?

A. Correct.

Q. And Ms. Bomani paid you money, and you used some of that to pay your American Express bill, correct?
A. Correct.
Q. And both Mr. Kowalski and Ms. Bomani thought that money was going for bonds and fees?
A. Correct.
Q. And, in all, do you know about how much that you used without telling these people you were doing so?
A. Above and beyond what Jane and Sam had loaned me, over -- a little over $2 million, approximately.
Q. So you used the 5 million from Jane Segal, that she had loaned you, separate and apart from bonds and fees?
A. Yes.
Q. And the 700,000 or so that Mr. Mills had loaned you? Those are personal loans, though, right?
A. Yes.
Q. Now, separating that out, what about the other people who thought they were paying for bonds and fees, how much of that did you use without them knowing you were doing so?
A. Approximately two and a half million dollars.
Q. As a result of that, have you been charged with any crimes?
A. Yes.
Q. By whom?
A. The government.

Q. Federal government?

A. U.S. Attorney, yes.

Q. What crimes were you charged with?

A. Fraud and wire fraud.

Q. And have you resolved that case?

A. I pled guilty.

Q. You pled guilty to all the charges that were filed against you?

A. Yes.

Q. Have you been sentenced for those crimes?

A. No.

Q. Who -- what's your understanding of who will sentence you for that conduct?

A. The Court.

Q. Why did you use about two and a half million dollars or so of these people's money without telling them you were doing it?

A. I felt -- first of all, let me say to my everlasting shame and regret I feel horrifically about it.

Having said that, I felt that between what Jane and Sam had loaned me, coupled with me stake, I saw myself as borrowing against my own stake.

I'm not defending my actions. You just asked for how I viewed it.

Q. Did you think the money was going to come back to you, and you would be able to pay them back?

A. Could you repeat the question.

Q. Did you think you were going to be able to pay the money back?

A. Absolutely.

Q. Why?

A. Because of the stake that I held in Ecast and also Procinea by that time.

Q. At some point, did you try to get out of this deal?

Now I'm changing subjects. Did you try to get out of this deal in the summer of 2007?

A. Yes. Not personally, but I tried to get our whole group out.

Q. What did you do to try to get the group out of the Microsoft-Ecast deal?

A. When we first had gone in -- if I could give a little background that relates.

When we first had gone in, I told Mouli -- this is late fall '02 -- Vanguard donors are not a wealthy people, by his standards, and that I had to have a buy back agreement from him in writing that if this liquidity event got drawn out beyond a certain point and that we needed to get out that he would buy back our shares if we decided to exercise that option.

And he said, yes, he understood -- I told him it was a public charity and people were doing this to help Vanguard.

He said he understood. He would be glad to guarantee that, and it would just be more shares for him. And that appeared in writing in some of the purchase agreements. Apparently, in others.

Q. Not in yours, though? Not in the Dillon groups, as far as you know?

A. No.

Q. Not in the Glover Group, as far as you know?

A. No.

Q. So you are referring to some of the other individuals?

A. First tier, first tier people.

Q. Okay. So pick up then with 2007. What did you do to try to get out of the deal?

A. Well, as you saw in the last e-mail you asked me about, there was this 90-day waiting period, so we all were waiting anxiously, and supposedly -- I think it was February 28, and got kicked over to March 7.

And when I got the news from him -- and I wrote an e-mail about this -- that, once again, on March 7th, the EU had not followed through on this 90-day period, and I realized at that time we had to get the group out, I had to get the whole group out.

And I called him and I told him I wanted to talk with him. Before I called him about it, I discussed it with our own group. Well, the first tier and some of the second tier

people.

And I also put an e-mail out talking about the bad news. I requested -- do you want me to go ahead --

Q. Was this in a meeting with Mr. Cohen?

A. No. First, I informed our group. Then I talked with our group. But I felt that this had become totally untenable, it's never going to end, and we have to get out, that I felt I needed to have a come to Jesus meeting, if you will, with Mouli, and tell him we need to exercise this option to get out.

So, people agreed. People in our group, I'm talking about. I then called him and said I wanted to meet him at length when he was not jammed up so we could really talk about something important. And he agreed to the meeting.

Q. And you had a meeting with Mr. Cohen?

A. I had a meeting with him up at his house, I think, on May 2nd or 3rd. Early May. Very early May.

I got there and told him. But I hadn't told him that much beforehand, but I told him that our group was in dire straights, and that Vanguard was in dire straights, and the second tier was in dire straights, and that at this point it was impacting the groups in the community that relied on support from Vanguard, and we had to be bought out; it was a desperate situation for all parties involved.

Q. Did Mr. Cohen agree?

A. He did, yes. He asked me a few questions about why people

couldn't just hang in there, and so on, but we talked for a good long while. I was there for about four or five maybe more hours. We started out in his great room downstairs. We moved upstairs to his study, and continued talking.

But, yes, to answer your question he agreed to buy us out.

Q. And do you recall what he said -- you mentioned a moment ago about why certain people couldn't just hang in there. Did he mention any people in particular?

A. Well, he said that -- he said, What is the problem? Why can't people hang in there?

And then he cited -- he said Danny is working. Shooter had just come out. A film Danny was in had just come out. That Susanna and Brian were working professionals. Sam and Mary were okay, so what was the urgency.

Q. And did you explain to him that people had mortgaged their homes to put money into this deal?

A. Yes, that's exactly where I went when he posed that question. I said, Have you forgotten about all the money that's been borrowed through MAFCU? And then, since then people had taken out these loans against their homes. And I cited Sam and Mary in particular.

Q. How did he respond to that?

A. He listened -- this is when we were still downstairs -- sort of taking it in. And then we moved upstairs.

Q. Was Procinea discussed in this meeting in May 2007?

A. Not at that meeting, no. Mr. E was.

Q. And so when you left this meeting, what was your understanding about any potential buyout?

A. My understanding was that he had definitely agreed to buy us out. In fact, as I was driving home, I started calling people. I called Sarisa first. Called Danny. Called Susannah Schwartz. Susanna Moore.

Basically, I was on the phone while I was driving, from the time I left his house until I got back into the city. And I felt relieved, and our group felt relieved.

Q. And so did -- after that, did you have continuing conversations with Mr. Cohen about the buyout?

A. Yes. We had rolling conversations henceforth.

Q. Over about how much time?

A. Well, the buyout never happened, so throughout the rest of that year at least into the fall of '07. It took different twists and turns.

Q. Did you understand that you and the group had to give anything up in connection with this buyout?

A. There was supposed to be a restructuring of the Procinea piece, but he said that our stake in Procinea -- he said it was restructuring his stake in Procinea into something called MC18, and we would still have a stake in MC18, and, in fact, it would be slightly greater than what we had before.

Sam Mills had raised that specifically with me, and so I inquired about that. And I was reassured we were not losing our stake in Procinea and in his management company that administered Procinea.

Q. Did you sign any documents in connection with this buyout?

A. We did.

Q. And how did you receive those documents?

A. We signed the signature pages.

Q. And so did you receive them, the entire documents, before you signed? Did you receive the entire documents?

A. No, we received the signature pages. Signed those.

Q. What did you think you were signing?

A. He told us there were two basic types of documents that had to be completed. One was the simple authorization documents, so that he actually could buy us out. We signed those. And then later on was the part about the restructuring of Procinea and MC18, and so on.

I asked him about it, and he said it's not decreasing your stake, but it's enabling me to be in a position to consummate this buyout that you want. He said to me a couple of times, I'm trying to accomplish here what you asked me to do on behalf of the group.

I also pressed him, at this time, about the -- in that meeting at his home I really pressed hard. At that point I was convinced the money was never coming from Mr. E, and I

pressed him hard for him to make a direct contribution to Vanguard, and then just square up with Mr. E afterwards when the deal was closed.

Q. Turn to Exhibit 226, please.

Is that a couple of e-mails from Mr. Cohen to you, with one from you to him in between?

A. Yes.

THE COURT: Admitted.

(Trial Exhibit 226 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. So this is in September 11, 2007. And you are still pursuing the Mr. E contribution, at this point?

A. Yes.

Q. And Mr. Cohen responded to you that he's on top of everything?

A. Correct.

Q. Later in 2007, were there further communications about the Microsoft-Ecast deal?

A. Yes. In the fall of '07, I think around September, October, all the sudden the -- it had been stalled. Back in March of 2007, we got what we felt was that terrible news. In the fall of '07, he told us that everything was back on a rapid track.

Q. When you refer to the "terrible news," are you referring

to the e-mail we saw earlier about Microsoft being sued? Or what were you referring to here?

A. No, I'm referring now back to the -- apologize, back to the March 7th, when I said we were expecting the possibility of bad news and that's what we got. I'm referring back to the EU did not honor that 90-day period and grant the approval.

Q. Okay. The 90 days from that e-mail had read, "Break through. Approval. Approval. Approval"?

A. Right.

Q. After that was bad news?

A. Yes.

Q. And what was the bad news?

A. That we didn't actually get the approval.

Q. All right. And you got bad news from whom?

A. Mouli Cohen.

Q. And then in the summer you talk about this buyout?

You need to say something in response. You can't nod.

A. Yes.

Q. And what did you understand the terms of the buyout to be? How much, if any, was Mr. Cohen going to pay people who had invested in the Ecast-Microsoft deal?

A. Yes. We talked about that very specifically in his study, when we moved upstairs. And, ultimately, he said he would do it at $24 a share, and that he would refund the $22 million in

bonds and fees that we had put up.

Q. Your recollection is that by the summer of 2007, these people had put in $22 million in bonds and fees?

A. I think it's 22.6, I believe.

Q. And that's on top of the 6.2 in the initial investment?

A. That's correct.

Q. And then after the buyout discussions did there come a time where the Microsoft-Ecast deal was back on, in your understanding?

A. Yes. That was in the fall.

Q. And who told you the deal was back on?

A. Mouli Cohen.

Q. Did he tell you how it came back to life?

A. He did. There were some things that appeared in the papers at that time about a sort of rapprochement --

(Reporter interrupts)

A. It appeared in the papers at that time about a détente or rapprochement between the EU Competition Commission and Microsoft.

And he spoke about how that was putting the deal back on. Then he spoke about flying to a meeting in Chicago, specifically in the fall of '07, because the EU guys had come over to Chicago for something else.

Q. Take a look at Exhibit 138, please. Is that an e-mail from you to Mr. Cohen?

A. Yes.

THE COURT: Admitted.

(Trial Exhibit 138 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. In the "p.s." just look at that. What are you referring to?

A. He had told me there was going to be another conference call with Wilson Sonsini, and I was asking what time specifically it was going to be.

Q. You're still hoping for a contribution from Mr. E at this point?

A. Yes. Well, the conference call was about the EU stuff. But, yes, also raising the Mr. E thing.

(Reporter interrupts)

A. The conference call was about the European Union dynamics.

Q. If you could look at 140, please. Actually, I'm sorry, skip 140. 141.

Is that an e-mail from you to Mr. Cohen, dated October 26, 2007?

A. It is.

THE COURT: Admitted.

(Trial Exhibit 141 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. What is the reference to the gorilla?

A. Mr. Cohen referred to Microsoft as the gorilla.

Q. So you were excited that -- is this indicating that the gorilla's stock price went up on October 26, 2007?

A. Correct. Went up significantly.

Q. Why were you excited about that?

A. Because we understood, as you can see, Danny and Sam saw the stock price and called me before I had actually looked. But we were excited because we felt we had a large number of shares of Microsoft.

Q. If you could look at 142. Is that an e-mail from you to Mr. Cohen?

A. It is.

MR. SPRAGUE: Government offers 142.

THE COURT: Admitted.

(Trial Exhibit 142 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. Where did you understand Mr. Cohen to be going in the middle of 2007, such that you were wishing him love, support, good energy and solidarity as he and the team went back into battle on behalf of all of you?

A. I understood that he was going back into meetings with the EU. Not just himself, but heading up and taking with him the

Wilson Sonsini, Ecast board of director team.

Q. At the end of 2007, what did you understand Mr. Cohen's relationship or involvement with Ecast to be?

A. That he was in charge. That as executive chairman he was running the acquisition, the macro level of the acquisition by Microsoft of the startup, and also dealing with the EU issues that had come up.

Q. Look at 143. Is that an e-mail from you to Mr. Cohen?

A. It is.

THE COURT: Admitted.

(Trial Exhibit 143 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. And you're forwarding him your wire information, hoping for the wire from Mr. Ettinger?

A. Yes. This is Vanguard. This is the wire information for the Vanguard Foundation. And I'm sending it because we're expecting, based on what he said, that the money would be coming.

Q. Look at 144, please. Is that an e-mail from you to Mr. Cohen, dated December 13th, 2007?

A. Yes.

THE COURT: Admitted.

(Trial Exhibit 144 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. All right. Why are you wishing him your love and the best as you go into battle for all of you?

A. He said he was going back to London for what he called the final final meeting with the EU folks on the EU issues.

And, as you can see, he told me he's going on to Geneva afterwards, to bring home the Mr. E piece as well. And he often used that metaphor. That's why I'm saying that. He had his combat boots on and shined them.

Q. Now, you called him -- according to this e-mail, does it indicate you tried to call him on Thursday, December 13, 2007, sometime before 1:11 p.m.?

A. Yes. Looks like I got Inez.

Q. Who was Inez?

A. One of his executive assistants.

Q. What did she tell you about his whereabouts?

A. She said he was already in the air.

Q. And then in the last sentence of the first paragraph you indicate that he would be making a little stop in Geneva after London, and that piece was finally coming home. Is Geneva the Mr. E piece?

A. That's correct.

Q. And the London was Microsoft-Ecast?

A. Yes.

Q. And then in the p.s. you refer to the gorilla. Is that

Microsoft?

A. Yes.

Q. And then about this time -- show you a few pages from trial Exhibit 251. Is that a check from you to Mr. Cohen, dated December 11, 2007, for $400,000?

A. It is.

Q. Is this a check dated January 14, 2008, to Mr. Cohen for $150,000?

A. It is.

Q. And is this also a check, in the middle of January 2008, from the Dillon Group to Mr. Cohen, for 200,000?

A. It is, yes.

Q. And I neglected to show on the last one that it was all from the Dillon Group.

So in that month, that's $750,000 from the Dillon Group to Mr. Cohen. What did you think that was for?

A. It was connected with Europe, but some of it might also have been connected with Mr. Ettinger. I can't be absolutely certain.

Q. In December of 2007, did you have conversations with Mr. Cohen more specifically about the Mr. Ettinger contribution?

A. I did.

Q. What were those discussions about in December of 2007?

A. I was trying to get him, one way or another, to make sure

that that got done, again, once again, by December 31, the nonprofit contribution period.

Q. Focus on the nonprofit to get money in by year end?

A. Yes.

Q. And what did Mr. Cohen tell you about the status of this contribution?

A. I don't remember. There was always some issue. But usually he would say those issues could be resolved if we could get some money to Mr. E. It would expedite his having to get all of his committee's approval in such a stringent way because we would be covering the costs.

(Reporter interrupts)

MR. LINCENBERG: Your Honor, I move to strike everything after, "I don't remember."

THE COURT: Well, I'm going to allow it. Go ahead.

BY MR. SPRAGUE:

Q. Mr. Cohen tell you that there were costs associated with getting the contribution from Mr. Ettinger and his committee?

A. Yes.

Q. At some point did he suggest that you could pay those costs?

A. Yes. And that -- sorry.

Q. Was that in or about 2007?

A. Yes.

Q. December of 2007?

A. Yes.

Q. And that what? I said at some point he suggest you pay the costs, and I cut you off with my next question. And you said yes.

A. Yes. And that that would expedite -- if we covered the cost, that would expedite the process because then the issue of costs being covered, and so on, did not come up. And presumably that would de-link it from the closure and final approval of the EU.

Q. Did Mr. Cohen offer to pay these costs?

A. He did not offer. I certainly asked him many times.

Q. Did he suggest that you could pay the costs, or the Dillon Group could pay the costs?

A. Yes, he suggested we could pay the costs and that would expedite the contribution.

Q. Did you do that?

A. We did.

Q. Do you recall how much it was?

A. I don't recall the total because we sent so much money at different times for that. I think in the period we're talking about, though, we're talking about four -- I would have said 450, but I think it became $400,000.

I could be off. I'm doing that from memory so I could be off a little bit.

Q. Could this have been -- I'm showing you the check

December 11, 2007, for $400,000.

A. Yes.

Q. Why is it payable to Mouli Cohen? Why not to whoever -- whatever costs or fees are due?

A. I presumably --

(Reporter interrupts)

THE WITNESS: I'm asking him to repeat the question, to make sure I understand it.

BY MR. SPRAGUE:

Q. Why did you make this check for costs and fees somewhere in Switzerland payable to Mouli Cohen?

A. Because that's what he told me to do.

Q. Quickly look at 227. Is that an e-mail from you to the Dillon Group in March of 2008?

A. It is.

THE COURT: Admitted.

(Trial Exhibit 227 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. Very briefly, I don't need you to read the whole thing, this is -- you're updating people on the status of the EU and approval certificate in the top, correct?

A. Correct.

Q. And in the bottom, the Vanguard piece. You say, "The Swiss Federal authorities' mandatory waiting period expires

March 24, so the wire to Vanguard should hit by the end of that week."

What does that mean?

A. All of a sudden he told me and told us for the first time that there was -- the Swiss government had some federally mandated waiting period for a large chunk of cash to leave the country, even if it was for a charitable purpose. And that was supposed to expire -- or transpire by March 24, so the wire could go out by the end of that week.

Q. By "he" told you that --

A. Mouli Cohen.

MR. SPRAGUE: I'm going to offer 146 through 152, each of which are one-page e-mails and the last seven.

THE COURT: 146 through 152 admitted.

(Trial Exhibit 146 through 152 received in evidence.)

(Document displayed.)

BY MR. SPRAGUE:

Q. Are you looking at 146, Mr. Dillon?

THE COURT: I'm sorry. 146 through what number?

MR. SPRAGUE: 152.

THE COURT: 152. Okay.

THE WITNESS: Yes.

BY MR. SPRAGUE:

Q. You're asking Mr. Cohen to call you if he has any positive news on either of the two big fronts. What are the "two big

fronts" in June of '08?

A. The closure of the acquisition in Europe, and Mr. E.

Q. And then 147, you e-mail him asking for an update on the latest -- for the latest update regarding progress in Geneva. Is that the Mr. E?

A. Yes.

Q. And Mr. Cohen responds to you that he'll be in the office. A phone call later?

A. Correct.

Q. And 148. Is this another e-mail in which you're asking Mr. Cohen for an update on the Mr. E piece, Microsoft-Ecast deal?

A. Yes.

Q. 149. Who were -- who is Kelly or Kathy, September of 2008?

A. Those were -- he had a lot of assistants, but those were two of his assistants.

Q. So you had scheduled a call with Mr. Cohen around this time?

A. Yes.

Q. And you indicate to him that they didn't know the schedule of the call with the EU and said he handled those directly; is that right?

A. That's correct.

Q. And then looking at 150, you ask him about a call with

Microsoft; is that right?

A. Correct.

Q. Why did you think he was having a call with Microsoft in October of 2008?

A. Because he had conveyed that to me.

Q. November 11th of 2008, you're asking for a status. That's the Mr. E piece; is that right?

A. Yes.

Q. Now, I'm looking at the last e-mail, 152, November 26, 2008. At around this time, November 2008, were you planning to have a meeting with Mr. Cohen at his house?

A. Yes. Excuse me. Yes.

Q. At some point in mid to late 2008, did you learn that there was, in fact, no deal, ever a deal, for the acquisition of Ecast by Microsoft?

A. Yes, we did.

Q. How did you learn that?

A. Rob McKay, who was an investor in Ecast through Doll Capital, had a meeting with the CEO of Ecast, at my request, and had a long, lengthy discussion with him, but included discussing whether there was any -- was or had been any pending acquisition by Microsoft of the startup, and he said no.

Q. Did Mr. McKay relay to you whether he had asked if the Dillon Group or the Glover Group, any of those investors, had any stock ownership in Ecast?

A. He did.

Q. What did he relay to you the response was?

A. That we had no stake, there was no book entry or anything, and that our monies had never been put into the company coffers.

Q. So did you plan to confront Mr. Cohen about this information?

A. We did.

Q. And what did you do to get ready for that meeting?

A. Two things. We conferred -- by this time, we had retained counsel, Manet, Phelps & Phillips, here in San Francisco. The attorney we were working with was Bruce Kelson. So we talked with him.

First, I had to struggle to get the meeting with Mr. Cohen. He wanted the meeting to be only with me, and said -- he was adamant about that. It was quite a struggle. It went on for three or four days on the phone. He said if it was with anybody other than just me, he would be very tight lipped and could not go into any detail about what's going on with the acquisition and so on.

Q. All right. So once you got the meeting, who was -- who were you going to go to the meeting with?

A. Myself, Sam Mills, and Susanna Moore. And Danny. It took so long to get it scheduled that he had to fly out of the country before we could get the meeting.

Q. Mr. Glover did?

A. Yes.

Q. So did you and Susanna Moore and Sam Mills come up with a plan of how the meeting would be handled?

A. We did.

Q. And what was the plan?

A. Sam was -- after initial chitchat, Sam was supposed to pose the question of what is the status with the central moving part, when is it going to close.

Q. What was going to happen after that? What was the next part of the plan?

A. After Mouli responded to Sam, I was supposed to then make it clear that we knew independently that there was no deal and never had been, and there were no bonds and fees connected with the deal, it didn't exist.

Q. And then what was Susanna's role?

A. She was supposed to make it clear to Mouli, which she did, to remind him of who Vanguard was, what kind of organization we are, and that we could go public with this information and make it clear that he defrauded a large group of people.

Q. And did you -- where did you have this meeting?

A. At a restaurant in Tiburon, called Three Degrees.

Q. Did you try to have it at his house, Mr. Cohen's house?

A. I assumed it would be there, and I proposed that, but there was some photo shoot he said that his wife was involved

in.

Q. Do you recall what restaurant it was in Tiburon?

A. Three Degrees.

Q. Who did you arrive there with?

A. I came with Susanna, and Sam drove down from Grass Valley on his own.

Q. Where had Susanna come from just before this meeting?

A. She had flown up from what Oaxaca, Mexico.

Q. She came in from Mexico just for this meeting?

A. She did.

Q. About what time --

A. Not the day of, but the day before.

Q. About what time did you get to the restaurant in Tiburon?

A. Six o'clock, approximately.

Q. And did the four of you sit down?

A. We did.

Q. What was the seating arrangement at the table, if you can recall?

A. I can. Mr. Cohen was here. I was here. It was a square table. Sam was to my left and Susanna was to my right.

(Witness indicating.)

Q. And you said it was a small table. About how big was the table?

A. Standard four top. A smallish four top for a restaurant.

Q. And so was the plan -- well, what happened at the dinner?

Who raised the topic of the soft pitch, I think as you put it, or what Sam was supposed to say?

A. It was a soft pitch. That's how we characterized it. And Sam posed it. And in spite of the fact Mouli told me he couldn't go on at length and had to be tight lipped, he went on for a good long while repeating the whole narrative again.

Q. "The whole narrative" of what?

A. That the deal and the closure that he knew was imminent, that he had been in Europe that summer at meetings. He said, "I've kept Hari informed about that, and I assume you guys are aware of that." And since he had been back from Europe, in the last couple of weeks there had been meetings in the Ecast board and people down in Silicon Valley.

And he concluded all of this by saying -- which he told me on the phone he was not going to say -- that he thought the whole thing could be wrapped up in about a month. It was a very positive situation. "The whole thing" referring to the final approval by the EU.

Q. Were the terms "EU" used or confirmed?

A. They were confirmed, absolutely. Every time he said "we" or "them" or "they" Susanna -- this is part of her role -- would say -- anytime he used any pronouns, let's put it that way, for a euphemism, Susanna would say, "You mean EU?" or "You mean Ecast?" or "You mean Microsoft?" And each time he confirmed what she posed.

Q. And then did you confront him with the fact that you knew there was no deal and had never been?

A. I did.

Q. And what did you say?

A. I said, Well, look, Mouli, we asked someone to meet directly with the CEO of Ecast. And he was told in no uncertain terms that there is no deal with Microsoft, that there's no pending acquisition, there never has been. And, therefore, certainly, there's no bonds and fees or legal fees or any other kinds of fees associated with the deal that didn't exist. And then, finally, that our monies were not invested in the company or transferred over to the company and there was no book entry.

I had pressed him over the years about when we were going to get an actual visual share certificate. And he said, Don't worry about it. There's a book entry and I'll get it when it's needed.

Q. So how did he respond when you told him you knew there was no deal at this dinner?

A. He was taken by surprise. His body language was probably more revealing than what he said. At first he sat -- he was sitting sort of forward, and he sort of slumped back in his chair and put his hand over his chest and his jacket and sat there momentarily, but then quickly recovered and said, well, I don't know who he talked to, but I don't know why they didn't

call me.

And he knows things in his capacity that others wouldn't know. All very confidential. And when we pursued it with our lawyers we would be reassured that everything was good.

It was so effective that when we debriefed later we said if we didn't know independently the truth, we probably would have gone away from yet one more meeting feeling reassured it was going to close in a month or so. This is what we said to ourselves after he have left.

Q. Did Sam Mills -- after that reaction from Mr. Cohen, did anyone say anything else to him?

A. Yes. Sam Mills went next. And he gave a very powerful and passionate talk. He was probably not more than this far apart from Mouli at this point (indicating).

Q. Reflecting two or three feet?

A. Three feet, two feet.

And, yeah, he talked very strongly about how this had devastated several groupings of people, he had devastated the core group or first tier.

(Reporter interrupts)

A. Several groupings of people all connected with Vanguard. The first being the core group, which he was a member, and he talked about how much --

(Reporter interrupts)

THE COURT: You have to slow down. Slow down.

THE WITNESS: So, Sam talked personally about how he was one of the main people in the first group. Then he talked in very powerful personal terms about all the money he had put in, and about how he had lost already his home over in Diablo Valley and now he is losing his home in Tahoe.

He went on from there to talk about the second tier. He referred to them as people who were like teachers and so on. And it was having devastating effect on these people.

And, thirdly, he talked about Vanguard and all the -- Vanguard itself as a foundation had been drained and devastated by this. And he talked about the impact of that on the hundreds of groups that rely on Vanguard for support.

BY MR. SPRAGUE:

Q. Did Mr. Cohen say anything in response?

A. He didn't at that point. He just listened, and Sam kept going. Which I can continue.

Q. What else did Sam say?

A. That was the first part.

And then the second was that he told Mouli that -- actually not that we had filed but we were about to file, we were filing a complaint, that we were pursuing litigation. And I think the deadline for the complaint was two days hence or something.

Q. And did Mr. Cohen say anything in response to that?

A. He did. Interestingly enough, the first words out of his mouth were, well, probably the statute of limitations has run already on that.

MR. SPRAGUE: Nothing further.

THE COURT: Okay. Ladies and gentlemen, we are going to take a recess now. We will be in recess until 2:30. Remember the admonition given to you. Don't discuss the case, allow anyone to discuss it with you, form or express any opinion.

(Recess taken from 2:09 to 2:33 p.m.)

THE COURT: Okay. Let the record reflect all jurors are present. The parties are present. Cross examination.

MR. LINCENBERG: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. LINCENBERG:

Q. Mr. Dillon, how many times have you been interviewed by or had meetings with members of the prosecution team since you first spoke to them in around May of 2010?

A. I couldn't say exactly. I would guess around six, seven times.

Q. And were these meetings that were held at the U.S. Attorney's Office in this building?

A. Yes.

Q. And did they involve sometimes these prosecutors and sometimes former prosecutors on the case?

A. Yes.
Q. Did they involve the FBI and IRS agents?
A. Yes.
Q. And were you shown a number of documents during those meetings?
A. Yes.
Q. And for many of those meetings your attorney was present with you; is that right?
A. No. I couldn't afford to pay him. The first one, yes.
Q. The first attorney was present, for example, during your meetings in May 2010, correct?
A. Yes.
Q. That was prior to your pleading guilty to the offenses --
A. Yes.
Q. -- you described; is that correct?
A. That's correct.
Q. And did you at any point have an opportunity to review memorandum that were prepared by the government of meetings with you?
A. Would you repeat the question.
Q. Sure. Break it down.

First, were you ever shown typewritten notes of your meetings with the government officials?
A. No.
Q. Did anybody ever describe to you, review with you,

statements you had made previously?
A. No.
Q. In other words, when you would meet with the government officials and they would ask you questions, did they appear to be looking at prior interviews of yours?
A. No, not at all.
Q. Nobody went over your earlier interviews with you to see if you wanted to change anything?
A. I mean, they had the e-mails that I had written.
Q. I'm talking about your prior interviews by them. Nobody ever reviewed with you the --
A. I think they cited previous -- not recalling notes, but they cited previous interviews.
Q. Did you ever tell them that any of the prior statements that you had made, at least as they were being reviewed with you, that those statements were incorrect?
A. Not that I can recall. Not in any substantive way.
Q. Now, you have gone through a lot of e-mails during your direct examination today. Is that right?
A. Correct.
Q. And those e-mails had Bates numbers coming from various sources, such as "DG" was one of them, correct?
A. I didn't have -- you mean in the documents that I was shown here?
Q. Yes.

A. Yes, I assume so. I wasn't looking at that, but I assume so.

Q. Were you involved in gathering together documents with "DG" Bates numbers for production in connection with civil suits?

A. Yes, we were asked to turn over all documents in our possession.

Q. Right. And that was both in connection with the civil suits and the criminal case, right?

A. That's correct.

Q. And the "DG," does that stand for Dillon Group?

A. Yes. And I should clarify. I don't know that I was ever asked by the government to turn over anything because the civil stuff preceded this by a long time. So pretty much everything we had had been turned over to the civil.

Q. When you looked for documents to produce, that related to this case, where did you search?

A. Home office, Vanguard office, e-mail in particular, on the computer.

Q. Did you search the Vanguard computer?

A. Didn't have -- the Vanguard computers were lost by someone.

Q. When were they lost?

A. We had to -- when Vanguard was devastated by all of this, we had to move out of our offices.

Q. I didn't ask that. I just asked you when they were lost.
A. I couldn't tell you the exact date.
Q. 2010?
A. I can tell you when we moved out of the offices was, I think, April or May of 2008 -- or 2009.
Q. I noticed, for example, that a number of the e-mails you reviewed -- for example, I'm going to place before you Exhibit 77, was a January 2004 e-mail, had a Cohen Bates stamp number; is that right?
A. Yes, it appears to be.
Q. And then the "SC" number, I'll represent to you, is a number that the U.S. Attorney's Office applied to documents before they sent them to defense counsel.

And what did I just do? Did I lose the screen?

A. You did.
Q. We'll gear back. Now, you didn't deny that these were --

(Earthquake felt in courtroom.)

JUROR MR. FLORES: Earthquake. Big earthquake.

MR. LINCENBERG: Most effective cross examination I've ever had.

(Laughter)

JUROR MR. FLORES: Another aftershock.

BY MR. LINCENBERG:
Q. You didn't deny that you had sent this e-mail just because --

THE COURT: Is everybody all right? Do you want to take a moment? We just had an earthquake. I don't know whether your notes reflect that.

JUROR MR. FLORES: Security guard is sticking his head through the door.

MR. LINCENBERG: Your Honor, I would move government 77 into evidence.

THE COURT: Admitted.

(Trial Exhibit 77 received in evidence.)

MR. SPRAGUE: No objection.

BY MR. LINCENBERG:

Q. A number of e-mails you testified to had Cohen Bates numbers on them, right?

A. I wasn't looking at the Bates numbers. I am familiar with that term since the civil litigation, but I assume they did.

Q. In the course of reviewing documents with the government, did you see some e-mails that you had written to Mr. Cohen which did not have "DG" Bates numbers?

A. You know, honestly I wasn't paying attention to the Bates number thing.

Q. Fair to say that a number of documents that pertain to your dealings with Mr. Cohen were not provided by you, apparently because the Vanguard computer was lost?

A. Could you restate the question?

Q. Yes. Did you see e-mails between yourself and Mr. Cohen,

when you reviewed documents with the government, that you had not produced to the government?

A. I'm not sure. I mean, we had turned -- most of what I saw had been turned over by us to the civil litigators.

Q. Is it your belief, as you sit here today, that all of the e-mails that you've testified to were in the "DG" records that were turned over to your lawyers?

A. Yes.

Q. So you don't believe that any records relating to this matter were lost or destroyed as a result of whatever happened to the Vanguard computers?

A. I'm not sure I follow the question.

Everything that we had in our possession we turned over to the civil litigators, and I'm sure they made that available to the government.

Q. Right. But there were documents on your Vanguard computer that you could not retrieve because you no longer had the Vanguard computer; is that right?

A. We couldn't retrieve anything that was on the Vanguard computers; that's correct. I think we had all the documents that relate to the case, but I can't be certain of that.

Q. So it's your belief that all of the documents, all of the e-mails that related to the case, you had even though the Vanguard computers were not available?

A. Yes, I think so.

Q. And most of your e-mails were sent from Vanguard computers, correct?

A. That's correct.

Q. In fact, most of the e-mails you reviewed -- strike that.

Were some of the e-mails that you reviewed actually typed out by you or -- let me rephrase that again.

Were some of the e-mails that you sent typed out by somebody other than you?

A. You mean when they were originally sent?

Q. When you originally sent them.

A. Yes.

Q. Some were typed up by people other than you?

A. Yes.

Q. Who was that?

A. Susannah Schwartz and another assistant of mine. But I was dictating them. I didn't say send an e-mail to whomever, you know, capturing these points. It was literally dictation.

Q. And when Susannah Schwartz would do that you were generally with her at your office?

A. Sometimes. Sometimes on the phone. But I actually gave her the content and then edited the content.

Q. When she was typing them out was she generally at your office?

A. Yes.

Q. Was she generally using the Vanguard computer?

A. Yes.
Q. Now, do you understand what the term "fiduciary duty" means?
A. I believe so.
Q. In connection with your position as the executive director of Vanguard, did you believe that you had fiduciary duties to the Vanguard Foundation?
A. Yes.
Q. And did you believe and understand that one of those duties was for you not to act in conflict with the interests of this nonprofit foundation?
A. Yes, of course.
Q. And did you understand that that was a very serious duty because if you violated it, the Vanguard Foundation could lose its nonprofit status?
A. Yes.
Q. Try to keep your voice up.
A. Yes.
Q. And did you understand that some of those duties that you had dealt with how you approach potential donors?
A. Yes.
Q. Did you understand that you had duties not to solicit donors for money that wasn't going into the Vanguard Foundation?
A. I can answer that fully -- I can't give you a yes or no

answer to that. If you want me to answer it fully to the best of my understanding, I will.

Q. So you're saying you can't answer yes or no whether you believe you had a duty not to solicit potential donors for money that wouldn't be going to the foundation? You're unable to answer that yes or no?

A. Yes, because we met with the Vanguard attorneys and discussed it at length, so ...

Q. Okay. And did you believe that you had a fiduciary duty to disclose to members or donors of Vanguard if you were doing business on the side with Vanguard donors?

A. Could you repeat the question?

Q. Sure.

When a donor has a dollar and you can solicit that donor for a dollar to contribute to Vanguard, or you can say, I'd like you to give 50 cents to Vanguard and 50 cents to me, do you believe there's any fiduciary duty that you have not to ask that donor to give 50 cents to the foundation and 50 cents to you when that might take away from the dollar that would go to the foundation?

A. I do understand that, but I wasn't -- we were pursuing a project that was going to benefit Vanguard, really.

MR. LINCENBERG: I move to strike the answer beyond yes as nonresponsive.

THE COURT: Okay. That will go out.

BY MR. LINCENBERG:

Q. Now, sir, in connection with Vanguard you mentioned that there's certain advisors that Vanguard had; is that right? I believe you just said a moment ago that there's attorneys; is that right?

A. That's correct.

Q. And are there investment advisors for the Vanguard Foundation?

A. There is one investment advisor who handled Vanguard's endowment.

Q. Who is that?

A. John Herrington.

Q. Herrington?

A. Herrington.

Q. And was Mr. Herrington fully informed of everything that you were doing in connection with what you called this Ecast series of investments?

A. He was very aware of it because most of the people involved utilize him as their personal financial advisor as well. Susanna Moore. Jane Segal.

Q. You told Mr. Herrington that you were speaking to potential donors to Vanguard and asking them to write out checks to Hari Dillon personally because you were going to be investing it in this deal and Vanguard could benefit from it?

MR. SPRAGUE: Objection. Vague as to time and

compound.

THE COURT: Sustained.

BY MR. LINCENBERG:

Q. Well, my time is intentionally broad. Did you throughout 2002 through 2008 tell Mr. Herrington that you were having donors write checks personally to you? Let's start with that.

A. No, I did not. Mr. Herrington is not on the board and didn't function in that capacity. The board of directors of Vanguard was well aware of what we were doing.

Q. So the answer is no?

A. I didn't discuss it with Mr. Herrington along the lines you are talking about. I did have several discussions with him.

Q. And with regard to accountants, who was the accountant for Vanguard?

A. Gail Webb during some of this time.

Q. Now, prior to the Ecast transaction, you had engaged in a number of other investment deals with people you had met through Vanguard, correct?

A. Two. If that's what you mean by "a number."

Q. Two. Did you have any investments with Vanguard donors in a company called Chromatics?

A. Yes.

Q. Did you have investors -- investments with Vanguard donors in a company called Purchase Pro?

A. Yes.

Q. Did you have any investments with Vanguard donors in a company called RG Tech?

A. There were people involved. Sam Mills was involved in RG Tech before I knew about it. But, no, I didn't bring any Vanguard donors into RG Tech.

Q. So you were involved in investments with Sam Mills and RG Tech, but you hadn't solicited him; is that what you're saying?

A. That's correct. Actually, he told me about RG Tech.

Q. Did you have any prior investments with Vanguard donors in a company called Cygna Worx, which I believe is spelled W-o-r-x, C-y-g-n-a W-o-r-x.

A. I think it's C-y.

I don't think there were any Vanguard donors involved in that, but I can't be certain.

Q. Did you have any involvement with Vanguard donors with a company called Next Engine?

A. Again, I don't think there was any Vanguard donors involved in that, but we were involved in that.

Q. All of these investments that I mentioned, would you agree, were highly speculative deals?

A. Yes, they were venture capital in nature.

Q. Now, at the time that --

A. Can I expand on that answer in relation to something you

asked me?

Q. If you want to expand, government counsel can question you on redirect examination. Okay?

A. Fine.

Q. Now, let's go back for a moment to just prior to August-September of 2002.

In 2002, you were sued by Janet Kranzberg, a former Dillon Group investor, correct?

A. That's correct.

Q. And Ms. Kranzberg sued you for fraud, correct?

A. Correct.

Q. And she had loaned you, personally, a million and a half dollars because you told her you wanted the money to purchase two homes, correct?

A. Actually she sued me, her financial advisor, and U.S. Trusts, which is where her financial advisor was based.

Q. I didn't ask about who else she may have sued. If you could just follow my question, please.

A. Okay.

Q. I'll repeat it for you. She had loaned you a million and a half dollars, correct?

A. Correct.

Q. And you had asked this Vanguard donor to lend you this money so that you could purchase two homes, correct?

A. Correct. Against the equity that we had in P Pro. I had

in P Pro. Purchase Pro.

Q. One of the homes was a home you wanted to purchase for your son, correct?

A. Correct.

Q. And another was a home that you wanted to purchase for your aunt, correct?

A. Right.

Q. You had gone to lenders, more traditional lenders, for help in getting a loan, and had been turned down, correct?

A. I don't recall going to a traditional lender. I only recall talking to U.S. Trust.

Q. Do you recall talking to a mortgage broker called Alternative Mortgage Services?

A. Yes, I recognize that name.

Q. And they said they can't help you because you did not have adequate financial assets, income, your credit history didn't qualify you for such a one-and-a-half-million-dollar loan, correct?

A. Yeah, I would not dispute that. The amount, by the way, was 1.3, I believe.

Q. Well, Ms. Kranzberg sued you for 1.5 million, didn't she?

A. I don't remember. But the amount that was loaned was 1.3.

Q. Now, you mentioned, I believe as an afterthought to one of your answers, that you were going to secure it with some Purchase Pro stock. Did I hear you say that?

A. Yes.

Q. So you had told Ms. Kranzberg that, If you lend me the money I'll give you a security interest in some stock that I have; is that right?

A. Yes, more or less.

Q. And that was in one of these speculative investments called Purchase Pro, correct?

A. This was after the IPO. No, this was not prior to the --

Q. Let me ask you the same question again, if you can listen to it. Was this stock in an investment called Purchase Pro?

A. Yes.

Q. And you wanted to add that this was after the IPO because Purchase Pro was a company that you had invested in when it was a private company, with other Vanguard donors, correct?

A. Correct.

Q. And you hit the jackpot, for a while at least, on Purchase Pro; didn't you?

A. Yes.

Q. So you had approached Ms. Kranzberg to co-sign and get a loan from a bank, correct?

A. Correct.

Q. And when she sued you at that time, you -- you had failed to repay the loan to her, correct?

A. In full, yes.

Q. And you were deposed about that. By "deposed" meaning you

were questioned under oath in July of 2002, in connection with that litigation, correct?

A. Correct.

Q. And in 2002, is it true that you were hurting financially?

A. I'm sorry, repeat the question.

Q. Is it true that in 2002, you were in pretty bad shape financially?

A. Yes. When the market crashed.

Q. And so around that time it was important to you to be able to convince other wealthy people, who you were meeting through Vanguard, to give you money, for example, so that you could invest in Ecast, correct?

A. No, that's not correct.

Q. You were looking for a way to try to hit it big again, so that you could keep these homes and pay off some of these financial obligations, supposedly, correct?

A. No, that's not correct.

Q. Now, the money that you got from -- this loan that Ms. Kranzberg cosigned was a loan from Citizens Bank, correct?

A. It was from U.S. Trust.

Q. It was not from Citizens Bank?

A. Citizens Bank may be the U.S. Trust Bank. I don't remember the name.

Q. Okay. And you took that money and spent some of it on travel, correct?

A. Correct.

Q. Restaurants, correct?

A. Correct.

Q. Limousines, correct?

A. Correct.

Q. Parties, correct?

A. A great bulk of the money was spent on the two homes.

Q. Two homes, you spent some of it on that, correct?

A. Spent most of it on that.

Q. You took some of it and invested it with Rob McKay in other investments, correct?

A. That's correct.

Q. Rob McKay was the gentleman whose name has come up a few times -- you brought it up earlier today -- as somebody who is a venture capitalist, correct?

A. He is not a venture capitalist but, yes, it's the same Rob McKay.

Q. He is an investor?

A. Yes.

Q. And Mr. McKay, was he at some point on the Vanguard board, or no?

A. Yes, starting in 1992.

Q. And he was also on the board of Doll Capital, correct?

A. Doll.

Q. Doll, D-o-l-l. Doll Capital?

A. I don't believe he was on the board.
Q. And you understand Doll Capital was an investor in Ecast, right?
A. Yes.
Q. And with regard to this money from this loan you spent -- you bought over $10,000 worth of audiovisual equipment, correct?
A. I wouldn't dispute that. I don't have the figures in front of me.
Q. Do you recall testifying under oath in your deposition that you spent over $10,000 on audio-video equipment?
A. Yes.
Q. You recall testifying to that?
A. Yeah.
Q. You spent thousands of dollars on clothing, correct?
A. Correct.
Q. Hundreds of thousands of dollars investing in startup companies, correct?
A. Correct.
Q. You had a $200,000 loan outstanding at MAFCU credit union, correct?
A. Correct.
Q. You had money due to the IRS and the state Franchise Tax Board totaling over $100,000, correct?
A. Correct.

Q. And you had a massive credit card debt, correct?
A. Correct.
Q. At the time, I believe you testified you had two children. Ten years ago they were both in college, correct?
A. Correct.
Q. And for one of them you were paying $8,400 a semester tuition, correct?
A. Approximately, yeah.
Q. And so that's about 17,000 a year or so, correct?
A. Right.
Q. And you were paying about $4,000 a year for private school tuition for a 10-year-old son named Jeff; is that right?
A. Grandson.
Q. Grandson named Jeff, correct?
A. Correct.
Q. You were paying tuition for a daughter-in-law of yours named Gardener Dillon; is that correct?
A. Her last name wasn't Dillon but, yes, that's correct.
Q. You were not making payments on your MAFCU loan while you were paying all of this money for audiovisual equipment and tuition and so forth, correct?
A. Correct.
Q. And at the time in 2002, your only salary was from your employment with the Vanguard Foundation; is that correct?
A. That's correct.

Q. And that was about $74,000 a year, correct?
A. Between 74 and 87, depending on which year you're talking about.
Q. So all of these -- it's over a million dollars in homes and all of the luxuries and so forth, were certainly not something that you could afford based upon your salary, correct?
A. That's correct.
Q. But there were a lot of wealthy people that you were meeting through Vanguard who were helping you with loans, as you called them, correct?
A. One person was, yes.
Q. Over time, there's been a number of people who you met through your position at Vanguard and who have financed your lifestyle, correct?
A. Correct.
Q. And you never repaid that loan to Citizens Bank, correct?
A. I don't remember the figures, but it was repaid partially. She took it to trial and she lost. So I don't remember the outcome.
Q. "She" --
A. Ms. Kranzberg took it to trial. I was represented by Sideman and Bancroft. There was talk of a settlement. She went to trial. There was a trial here in San Francisco and she lost.

Q. She lost, so she never got repaid then a lot of the money she had lent you, correct?

A. Correct. She got repaid some, but not all.

Q. Didn't you actually settle that suit in late November of 2003?

A. I did, but she had sued myself, her financial advisor, and U.S. Trust, so there ended up being a trial regardless.

Q. But on your end you settled it, correct?

A. Yes. I think for $500,000, but I'm not a hundred percent certain.

Q. She was unsuccessful against the bank, right?

A. Yes.

Q. That's what she lost?

A. Right.

Q. Now, is taking money from donors and wealthy people who you meet through Vanguard, people like Mr. Mills, who are committed to social justice, is taking their money and spending it on various luxuries and putting it into private investments, is that your view of social justice?

A. Obviously, it's not social justice. And, moreover, it was something that was done collaboratively with Sam. He said I feel like I owe you -- excuse me, I feel that I owe you guys after P Pro.

Q. Right. These people came to trust you, right?

A. Yes. They trusted my judgment and my acumen.

Q. By the way, when you traveled, you would stay in sometimes the Ritz Carlton, correct?

A. Sometimes, yes.

Q. Sometimes the Four Seasons?

A. I would stay wherever -- depending on why I was traveling, I would stay wherever the people I was working with were staying.

Q. Sometimes you would ask your staff to set up private jet accommodations?

A. Once, yes. Once or twice.

Q. You used to go to the film festivals in Sundance with Mr. Glover and folks, correct?

A. I was never at Sundance with Mr. Glover or anyone else. Danny and Sam were at Sundance a couple or three times.

Q. And in -- this was all the setting in your financial situation at the time that you first met Mr. Cohen in September of 2002, correct?

A. That's correct.

Q. And you continued throughout this time frame to take money from these trusted Vanguard donors --

MR. SPRAGUE: Objection. Vague as to time.

MR. LINCENBERG: Throughout this time period, '02 to '08.

THE COURT: 2002 to 2008, okay.

MR. LINCENBERG: Yeah.

BY MR. LINCENBERG:

Q. You continued to take money from these trusted donors to finance your personal lifestyle, correct?

A. You said "take." I borrowed money from people.

Q. Well, you stole -- I know you had a hard time saying it when you were examined before, but you stole over $2 million from them, correct?

A. In a later period, yes.

Q. "Later period." I'm referring to 2002 through 2008. Was it during that time period?

A. Yes.

Q. And in 2010, you filed for bankruptcy, correct?

A. I can't be certain of the date but, yes, around February, I think.

Q. If I represent to you that it was February 5th of 2010, would you have any reason to dispute that date?

A. No. It was February. I know that.

Q. And in that bankruptcy filing, you, among other things, noted that you had borrowed, for example, from Jane Segal about $9 million, correct?

A. It was 5 million. And the 9 million -- though she had -- I put on -- everything that she had put into the deal, the Mouli Cohen deal, I included in that figure.

MR. LINCENBERG: I would like to have marked for identification Exhibit 582.

(Trial Exhibit 582 marked for identification.)

BY MR. LINCENBERG:

Q. I'm sorry, let me re-ask the question while this is being marked.

You actually borrowed from Jane Segal $11 million, correct?

A. Not personally, no.

Q. Not personally.

Mr. Dillon, I'm placing before you what's been marked as Exhibit 582 for identification. Can you take a look at it and tell me if that's your bankruptcy petition?

A. Yes, it is.

THE COURT: Admitted.

(Trial Exhibit 582 received in evidence.)

BY MR. LINCENBERG:

Q. Mr. Dillon, in connection with this bankruptcy, if you look at page 3, at least on my copy it appears to be an electronic signature. Do you see that? Do you see where I'm pointing?

A. Yes, yes.

Q. All right. You reviewed this petition, correct?

A. Yes.

Q. And you understood that when you were signing it you were signing it under oath, correct?

A. Correct.

Q. This is the same declaration under penalty of perjury that you're essentially testifying to today, correct?

A. Correct.

Q. You understood that if you were going to be asking a court to relieve you of some of your financial obligations that it was critically important to the Court that you be completely truthful and accurate, correct?

A. That's correct. And I was told that by my attorney, Ms. Simon, as you can see.

Q. And if you take a look at what on the bottom says, "Page 24 of 57, Schedule F," this is going through some of your obligations such as $115,000 in American Express purchases.

Do you see that?

A. I don't see it this second, but I remember that figure.

Q. Okay. And I had it a moment ago.

If you would take a look at page 28 of 57. Creditor number 23 is listed as Jane Segal, personal loans for $11 million. Do you see that? Let me zoom out.

A. I do.

Q. Okay. And --

A. Six million of that was money that she gave to me that went to Mr. Cohen.

Q. Was this accurate when you signed it?

A. Her total?

Q. Yes.

A. As best I know and as best she knew.

Q. And did you believe that you were being truthful when you described these as personal loans?

A. I discussed this with Ms. Simon. She was aware of the whole case. I told her that there was a personal loan and that she had given, like many other people, a lot of money to me that went to Mr. Cohen. She said, You need to list all of that; list the whole total.

Q. I think I need to advise you -- Ms. Simon was your attorney?

A. Yes.

Q. I think I need to advise you that you don't have to discuss attorney-client communications with your attorney, and if you do so it may constitute a waiver of your communications with Ms. Simon, okay.

A. Oh, okay.

Q. Let me ask you that, when you signed this, did you believe it was accurate that these were personal loans involving Jane Segal?

A. No. I believed it represented personal loans plus $6 million, approximately, to Mouli Cohen.

Q. So this was inaccurate?

A. As I said, I believe that these were monies that came through me. Some were personal loans and some went to Mr. Cohen.

Q. When a court reads this, at the time was it your understanding that the court would view these as, quote, personal loans?

A. Yes, that's how it was explained to me. Personal obligations.

Q. Now, was it also true that you used credit cards in other people's names? Sir?

A. I can only think of my aunt right offhand, but I'm not sure.

Q. Okay. Well, do you recall --

A. I'm hoping having my memory refreshed, if there's something you're saying.

Q. Okay. Maybe I can help refresh your memory.

Do you know a person named Cindy Woods?

A. Yes.

Q. And do you recall Ms. Woods writing to you in March of 2008, about the fact that when she was in the process of trying to access a loan for her own purposes, she found a credit card in your name, upon which she was a signatory with no knowledge, that was more than a hundred thousand dollars in debt? Does that refresh your memory?

A. Cindy Woods was connected with my credit card?

Q. I'm asking if that refreshes your memory?

A. No, I mean -- I -- I don't know what you're referring to but, no, I never had any joint credit card with Cindy Woods. I

had a relationship with Cindy Woods, but --

MR. LINCENBERG: Your Honor, I'm marking for identification Exhibit 579. May I approach since the clerk stepped out?

THE COURT: Yes.

(Trial Exhibit 579 marked for identification.)

BY MR. LINCENBERG:

Q. I would like you to take a look at Exhibit 579, and specifically let's focus right now on the third page. Take a look at the middle paragraph and tell us if that refreshes your memory. It's the paragraph beginning with the words "My fear."

MR. LINCENBERG: Your Honor, I'm going to move this in so the jury can read this at the same time.

MR. SPRAGUE: I object.

MR. LINCENBERG: Well, let me lay a foundation.

THE WITNESS: This is a --

BY MR. LINCENBERG:

Q. Sir, sir, did you have an e-mail account, hdillon@vanguardsf.org?

A. I did.

Q. And have you ever e-mailed a Dr. Cindy Woods at gmail.com?

A. Of course.

THE COURT: I don't know if foundation is the issue. Do you object on the basis of foundation --

MR. SPRAGUE: It's not foundation. He was refreshing

his recollection, which he hasn't done. It's -- there's a ton of hearsay. It appears to be a 4 page or so, single space --

THE COURT: I'll deal with this later.

MR. LINCENBERG: Well, I'm changing from refreshing recollection to straight --

THE COURT: The question is whether or not it's relevant --

MR. LINCENBERG: Right.

THE COURT: -- this letter was relevant. I don't know whether it is or not. It's four pages of single space letter.

I'm not going to sit here while the jury sits here and reads it all. Unless this is the last question of the witness -- which I don't anticipate it is -- we'll have to move on to another subject, and we'll return to this.

MR. LINCENBERG: Let me go back and ask him if this refreshes his recollection.

THE COURT: About what?

MR. LINCENBERG: About whether or not there was a credit card in -- that he was drawing off of somebody else's credit card.

THE COURT: You can ask him.

BY MR. LINCENBERG:

Q. Does that refresh your memory?

A. Yeah. Can I speak to this?

Q. Let me ask you if that refreshes your memory, first, on that is subject, from reading the paragraph that begins with "My fear."

A. Yes, it refreshes my memory. This letter is from someone else, not Cindy Woods.

Q. Who is it from?

A. Kim Portis.

Q. Who?

A. Kim Portis.

Q. Who is Kim?

A. Kim Portis is a friend of mine in South Africa, who has no relationship to this deal.

Q. You're correct that it's from Kim. And then it is something which later is sent to Cindy Woods?

A. Yes.

THE COURT: We'll deal with this later.

BY MR. LINCENBERG:

Q. Okay.

A. But the person on the credit card is my daughter.

Q. And -- well --

MR. LINCENBERG: Can I follow up on --

THE COURT: We'll return to this at a later time.

MR. LINCENBERG: Very well.

BY MR. LINCENBERG:

Q. Now, sir, when you went to Ecast in 2002, Mouli Cohen had

invited you there, correct?

A. When we got the demonstration?

Q. Yes.

A. Yes.

Q. He didn't restrict you from talking to other people in the company there, did he?

A. We weren't under guard, but he was the host and he showed us around and he ran the show.

Q. And you met other people in the company there that day, correct?

A. Yeah, the technicians, yes.

Q. Okay. And he told you in that time period that he was leaving the company, correct?

A. No.

Q. He never told you that?

A. No.

Q. So you never learned that until 2008?

A. Correct. That he was no longer associated with the company? We found that out as this litigation commenced. Or in the process of the litigation.

Q. So you and the people who you brought in on this invested some $22 million between '05 and '07, $6 million in '02 and '03, spoke to Mr. Cohen on a daily basis, and you're saying over the course of six years you never knew he was not associated with the company?

MR. SPRAGUE: Objection. Compound and loops in all the other people.

THE COURT: Sustained.

BY MR. LINCENBERG:

Q. Sir, over the course of six years, you're saying it was not until November of 2008, that you first learned that Mouli Cohen was no longer working with Ecast; is that your testimony?

A. That's correct.

Q. During that 6-year time period after that first meeting in September of 2002, did you ever place a phone call to him at Ecast?

A. In the '02 period, yes. After '02 period, no.

Q. After October 1st of 2002, did you ever place a phone call to him at Ecast?

A. No. He said he was going to be working out of his house when he became executive chairman.

Q. Did he ever call you from Ecast?

A. I don't know for --

MR. SPRAGUE: Objection. Speculation.

THE COURT: He can answer.

THE WITNESS: I don't know where the early calls came from. He e-mailed me from his e-mail at -- at Ecast.

BY MR. LINCENBERG:

Q. Until what time period?

A. Sometime in '03, he switched over to his personal e-mail.

Q. So whenever that time in 2003, to the best of your memory, for some five years he never sent you an e-mail from an Ecast address; is that right?

A. That's correct.

Q. And you never sent him an e-mail to an Ecast address after that period of time, correct?

A. After the first six months, that's correct.

Q. This investment for these six years was certainly the biggest investment in your life, correct?

A. Correct.

Q. And you were following very closely whatever came up in the news relating to Ecast, for example, correct?

A. Nothing came up in the news related to Ecast. It was a small startup.

Q. You never did a Google search for news on Ecast during all this time period?

A. Oh, yes, we did. Sam in particular would follow anything he could find about Ecast on the net and send it to me.

Q. I think, for example, one of the e-mails attached an article?

A. Yes. That one was about Microsoft, but yes.

Q. And there were press releases of activities at Ecast, correct?

A. Yes.

Q. There was news about Microsoft, for example, displaying

Ecast product at a convention in Las Vegas, correct?

A. I did remember that, yes.

Q. I mean, you're talking to Mr. Cohen every day and you have millions of dollars, you're following this pretty closely, correct?

A. Following what?

Q. Following Ecast.

A. We're following Ecast online as much as we can.

Q. And you knew that Ecast had a website, right?

A. Correct.

Q. And you visited that website, correct?

A. We did.

Q. And after -- some point in 2003, Mr. Cohen's name was never associated with anything on that website, correct?

A. Actually, we asked him about that. And that's when he said as executive chairman he was no longer listed but he was still playing that role.

Q. I see. So the answer is, correct, that you never saw his name associated?

A. After the '03 period, correct.

Q. Okay. But the response you got, so you say, is that he told you, Even though I'm executive chairman, I'm no longer being, I guess, listed as such on the Ecast website. Is that a fair summary of your testimony?

A. He conveyed something like that to myself and Sam, yes.

We learned for the first time --

Q. Let me direct your attention to Exhibit 44. We have it electronically.

I believe that you testified that Exhibit 44 was a September 2002 -- can you put it up on the screen?

THE COURT: Exhibit 44 admitted.

MR. LINCENBERG: Yes.

(Trial Exhibit 44 received in evidence.)

(Document displayed.)

BY MR. LINCENBERG:

Q. This was a September 2002 --

A. Yes.

THE CLERK: Your Honor, did you admit that?

MR. SPRAGUE: We have no objection.

THE COURT: I admitted it.

MR. LINCENBERG: Move it in.

BY MR. LINCENBERG:

Q. Now, you see here where you write, "It sounds like everything is coming together in connection with the acquisition"?

A. Yes.

Q. And your testimony is that that was a reference to Microsoft, correct?

A. Correct.

Q. Now, sir, you knew that right around late September of

2002-early October, that Ecast was announcing an acquisition of Rioport, correct?

A. I vaguely recall. I'm a little fuzzy on that but, yes, I remember Sam talking to me about it.

Q. But you're saying this e-mail, of course, had to do with Microsoft, not Rioport; is that right?

A. This e-mail here?

Q. Yeah.

A. Oh, yes, absolutely.

Q. Let me move to Exhibit 50.

MR. LINCENBERG: If it's not in evidence, we move it into evidence.

THE COURT: It is in evidence.

(Document displayed.)

BY MR. LINCENBERG:

Q. Exhibit 50 is a November 2002 e-mail, correct?

A. Bring that down slightly. You just pushed it up so much that I can't --

Q. Let me get the hard copy for you.

MR. LINCENBERG: Can you scroll up on -- scroll down.

BY MR. LINCENBERG:

Q. If you can't read that, I'll give you a hard copy. Can you make this out?

A. I mean, it's large, but go ahead.

Q. Now, let me give you a copy.

MS. MITCHELL: It's in the binder.

THE WITNESS: That's okay. Let's go ahead, at this point.

BY MR. LINCENBERG:

Q. This is an e-mail that you're sending in early November 2002, correct?

A. Correct.

Q. And in this e-mail you talk about wanting to be one of the purchasers -- this sentence that begins here -- and you end it with "until after the IPO."

Do you see that?

A. I do.

Q. What IPO?

A. The IPO, he said throughout this whole period that while he leaned toward an acquisition, he always had the option of an IPO, and that he was in touch with Merrill Lynch in particular in that regard. They wanted to take Ecast out.

Q. And I heard your testimony about that, but it appears here you're not talking about an acquisition but about an IPO. Is that right?

A. That's correct.

Q. So was it your view at the time that what you were expecting was an IPO?

A. I expected -- he said that he preferred an acquisition. But he made it clear that an IPO was a possibility.

Q. You're writing "until after the IPO."

A. I understand.

Q. Was it your understanding that there was going to be an IPO, based upon your conversations with Mr. Cohen?

A. Quite possibly, yes, as a backup.

Q. Isn't it true that in your conversations with Mr. Cohen in the November 2002 time period, there was a conversation about exit strategies?

A. Yes.

Q. And by "exit strategies" do you understand me to mean that if you're going to be buying stock in a private company, you're interested in knowing how you may be able to sell and liquidate the position at some point, correct?

A. We understood the exit strategy of the startup in terms of having a liquidity event. I'm not sure I'm answering your question or not.

Q. You had invested in private companies before, correct?

A. That's correct.

Q. And when investing you were sophisticated enough to know that unless that company gets bought or goes public at some point, your money might just be sitting there, correct?

A. Correct.

Q. And so you had a conversation about potential exit strategies, correct?

A. But are you talking about exit strategies for the startup

or for us within the context --

Q. For the startup.

A. Yes, yes, you're right.

Q. So that Mr. Cohen's conversation with you was that, here's some information about Ecast, this is what the company is about, and these are the prospects. Might get bought up. Might go public. And then there's a lot of conversation, of course, that you testified to after that. But that is the initial conversation, correct?

A. I feel that it's not being accurately characterized, but I'm not sure what -- it wasn't -- can I expand on my answer to what you just asked?

Q. Let me ask you if that's correct, that there was a conversation about how you might get your money out that you had invested?

A. No, that's not correct because I know exactly what you're talking about.

When you come into a private company, a startup, unless there is a pending acquisition or a pending IPO you understand it's illiquid. You don't have any idea how long it will be for this liquidity event, and there may not be a liquidity event.

Q. Right.

A. That was not the character of the conversations that I had with Mouli Cohen. In fact, he characterized it, and I repeated

the phrase, "venture capital without the venture." And by that he meant and I meant that there's a pending acquisition and the IPO is a backup.

Q. Sir, you were going to turn around and sell this investment opportunity to some of these wealthy Vanguard donors, correct?

A. No, that's not correct. I didn't try to sell anything to anybody. It was one of those people, Danny, who brought Mouli Cohen to me. When we heard about this, then we took it to other people and told them what was going on.

Q. You said, "When we heard about" it. Is it your testimony that Mr. Cohen also told Mr. Glover that Ecast was going to be taken over by Microsoft?

MR. SPRAGUE: Objection. Foundation.

THE COURT: Well, at any time, or what?

MR. LINCENBERG: He just testified that Mr. Cohen told --

BY MR. LINCENBERG:

Q. At any time. Well, let's break it down. Let's focus, first, in the fall of 2002. Did -- were you present when Mr. Cohen told Mr. Glover and you or Mr. Glover in your presence, that Microsoft was going to be taking over Ecast?

A. Mr. Glover was not at the meetings, the first meetings where Mouli Cohen raised this with me. Nor was --

Q. A moment ago you testified that Mr. Cohen told you and

Danny Glover about this Microsoft takeover. And I want to be clear --

A. Right.

Q. -- what your testimony is, sir.

A. Right.

Q. Is it your testimony that you heard Mr. Cohen say this to Mr. Glover?

A. No. I heard him say it to me, but there were subsequent meetings with both Danny and Sam Mills and others. No, you're absolutely right, at the early meetings in the Omni it was myself and himself.

Q. So a moment ago if you testified --

MR. SPRAGUE: Object. Mischaracterizes his testimony.

BY MR. LINCENBERG:

Q. If a moment ago you testified that Mr. Cohen had said that to Mr. Glover, that's not what you intended to say?

THE COURT: Well, at what point in time?

THE WITNESS: I misspoke if I said at that meeting, because Danny wasn't at that meeting. He couldn't have said it to him.

BY MR. LINCENBERG:

Q. Now, sir, you testified about a number of different attorneys who you spoke to, or who -- let's back it up -- who Mr. Cohen told you about as being involved in this transaction;

is that right?
A. That's correct.
Q. Let's go through a few of them.
First, do you recall an attorney named Mark Stevens?
A. I couldn't swear to the last name but, yes, I think that's the guy at Fenwick & West.
Q. And if we look at Exhibit 131, this is a November of 2006 e-mail.
MR. LINCENBERG: Move it into evidence, Your Honor.
THE COURT: Admitted.
(Trial Exhibit 131 received in evidence.)
MR. SPRAGUE: No objection.
BY MR. LINCENBERG:
Q. It's a November of 2006 e-mail in which you state in this e-mail, "You said you were going to be talking to Mark." Do you see that?
A. No, I said he's sayings he's talking to Mark.
Q. Right. Right. You're referring to that Mouli told you he was going to be talking to Mark?
A. Yes, that's correct.
Q. He wasn't hiding from you the fact that he had an attorney named Mark; is that correct?
A. That's correct.
Q. Did you ever speak with Mark?
A. No.

Q. Let's look at Exhibit 135.

MR. LINCENBERG: Move into evidence.

THE COURT: Admitted.

(Trial Exhibit 135 received in evidence.)

MR. SPRAGUE: No objection.

(Document displayed.)

BY MR. LINCENBERG:

Q. Here you're talking about what time the call is with Mark. Was that a reference to Mark Stevens?

A. What time the call is with Mark and Joseph Ettinger, because Mark was supposed to be helping get the Ettinger piece squared away.

Q. Right. My question is, are you referring to Mark Stevens there?

A. Like I said, I'm referring to a Mark at Fenwick & West that Mouli -- I couldn't swear to that. That sounds familiar.

Q. I'll represent to you that the Mark at Fenwick & West is Mark Stevens, so you'll know who I'm referring to when I ask these questions.

Let's look at Exhibit 139, which we'll move into evidence.

THE COURT: Admitted.

(Trial Exhibit 139 received in evidence.)

(Document displayed.)

BY MR. LINCENBERG:

Q. This is an October 6, 2007 e-mail referencing two different lawyers here. One is Mark Stevens.

MR. SPRAGUE: Objection. The witness doesn't know that.

MR. LINCENBERG: I don't have to use the word "Stevens." I'm asking what his intent is.

BY MR. LINCENBERG:

Q. When you're referring to Mark, are you referring to the attorney Mark?

A. Yes.

Q. All right.

A. And Wilson.

Q. Let's look at Exhibit 141, which is another e-mail that we'll move into evidence.

MR. SPRAGUE: No objection.

THE COURT: 141 admitted. It's already in.

BY MR. LINCENBERG:

Q. Here in the p.s. line you're asking Mr. Cohen about Mark. Were you referring to the attorney Mark from Fenwick & West?

A. Yes. Was he able to get that off, meaning to Mr. E, before the weekend.

Q. So was Mr. Cohen representing to you that Mark Stevens was involved with these transactions with Microsoft and Mr. Ettinger and what you've testified to in your direct?

A. Actually, what he said was Mark was his -- that the deal was being handled by Wilson, but that Mark was his own personal, private attorney at Fenwick, and that he would utilize him in terms of the -- this is October of '07. So in relation he was -- Mark was going to help facilitate and legally direct the buyout, the buyout of us by Mouli.

And, also, in terms of getting Mr. E's money, he said Mark was going to help with that. And that's what I am referring to, was Mark able to get together the things that need to be sent to Mr. E.

Q. But you never spoke to Mark?

A. No. Not that I recall. I don't think I had any conversation with any of his attorneys.

Q. Let me place before you what's been marked as Exhibit 521 for identification.

MR. SPRAGUE: No objection.

THE COURT: 521 admitted.

(Trial Exhibit 521 received in evidence.)

(Document displayed.)

BY MR. LINCENBERG:

Q. Do you have that in front of you, sir?

THE CLERK: It's right here.

BY MR. LINCENBERG:

Q. 521 is a February 11, 2008 e-mail from you to Sam Mills; is that correct? I'm looking --

A. It's actually from Hari to Mouli.

Q. Well, look at the e-mail below it, in the string. Did you write that e-mail?

A. Yes, I did.

Q. Now, in the e-mail you write that, "Mouli and I started firing questions back at Mark." Is that referring to Mark the lawyer from Fenwick & West?

A. Yes.

Q. And then you write to Sam Mills what Mark Stevens told you; is that correct?

A. No, it's not correct. And I often wrote in this vein. When I say, Mouli and I are firing questions, I would fire -- I only talked to Mouli.

In fact, I asked him specifically how about if I stick around and be at some of these meetings -- he said Mark was coming to his house after I had just been there -- and he said no, he didn't think that was good because I was too desperate and Vanguard was too desperate.

Q. So this is not correct when it says, "Mouli and I started firing questions back at Mark"; is that your testimony here today?

A. Correct. In the sense I would put questions to Mouli, and he would convey them to Mark, and convey his response. But I wasn't in the loop in terms of meeting with Mark, even though I requested that at one point.

Q. Isn't it true that you were trying to convey to these Vanguard-related investors that you were in the loop, speaking with the attorneys?

A. No.

Q. And Mr. Cohen, by the way, in this time frame is not hiding from you the name of the attorney that he is dealing with at Fenwick & West, correct?

A. Correct.

Q. So if at some point you had picked up the phone and called Mark Stevens, I guess this scheme that you're alleging would have been up, correct?

A. Along with --

THE COURT: Wait a minute.

MR. SPRAGUE: Calls for speculation.

THE COURT: Certainly. It assumes that Mark, whatever his last name, would disclose any conversations he had with Mr. Cohen, which that question assumes that. And that's incorrect. It's an incorrect assumption.

MR. LINCENBERG: I'll rephrase. The ruling is correct, Your Honor. Not that you need my validation.

THE COURT: That's okay. 50 percent I'm okay.

(Laughter)

BY MR. LINCENBERG:

Q. Sir, you understood that Mark Stevens was in communication with various parties involved in this alleged transaction,

based upon what Mr. Cohen told you, correct?

A. Correct. Correct.

Q. So if you had spoken to Mr. Stevens, then -- if he wasn't involved, you would have learned that, correct?

MR. SPRAGUE: Same objection.

THE COURT: Sustained.

BY MR. LINCENBERG:

Q. Sir, there was another law firm that you discussed, called Wilson Sonsini.

A. Correct.

Q. Is that right?

A. Correct.

Q. And did you ever have any calls with Wilson Sonsini?

A. Directly, that I was involved in?

Q. Yes.

A. No.

Q. Isn't it true that when you were interviewed on February 25th of 2010, by an Assistant U.S. Attorney and these two gentlemen in the courtroom, special agents Donohue and Saavedra, that you told them that you and Mr. Mills had had a conference call with an attorney from Wilson Sonsini Goodrich & Rosati?

A. I don't believe so, because Sam and I never had that call. This was an important issue because one of the big things was --

Q. I --

THE COURT: Hold on. Let him answer.

THE WITNESS: One of the big things was we wanted to talk to Wilson and wanted to talk to Mark, whatever his last name is, at Fenwick. And we felt that we needed to do that. And Mouli was absolutely adamant we should not make those calls, and it caused conflict within our group.

THE COURT: Slow down.

THE WITNESS: Pardon me.

Willie and Stevie and others were saying they were just going to pick up the phone and call Wilson. Which I wish we had said great, but we said, no, don't do that, that would be stabbing Mouli in the back and causing all kinds of problems for all of us.

BY MR. LINCENBERG:

Q. So the answer is that you never told that to the FBI agent?

A. I don't think so, no, because I never had such a conversation.

Q. All right. Let me place before you Exhibit 70.

MR. LINCENBERG: If it's not in evidence we would move it into evidence.

THE COURT: It's in evidence.

MR. LINCENBERG: Okay.

(Document displayed.)

BY MR. LINCENBERG:

Q. If we look at Exhibit 70, dating back to 2003, you're writing to Mr. Cohen, "Hope things are going well down there at Wilson Sonsini." Do you see that?

A. I do.

Q. And, in fact, there are numerous e-mails between 2003 and 2007 where you reference Wilson Sonsini, correct?

A. Correct.

Q. And Wilson Sonsini was, according to Mr. Cohen, doing this big deal with Microsoft on behalf of Ecast; is that right?

A. That's right.

Q. So at any point you could have picked up the phone and called Wilson Sonsini, correct?

MR. SPRAGUE: Same objection. Withdrawn on that one.

THE COURT: I think that's -- you could have phoned Wilson Sonsini. You could have.

THE WITNESS: It's a free country. Yes, we could have picked up the phone. But Mouli Cohen told us --

BY MR. LINCENBERG:

Q. Free country, right?

A. Yes, but Mouli Cohen told us not to pick up the phone, that we would create huge problems for ourselves by doing such.

Q. Sir, I've heard you testify to that several times. And I would ask you to confine your answer to my question.

THE COURT: I think he can -- in an effort to

complete this, because this cross-examination may go on for some period of time, I think he's entitled to give an explanation when the question is asked repeatedly.

MR. LINCENBERG: Your Honor, with all due respect, he has given this explanation.

THE COURT: Then why do you ask the question?

MR. LINCENBERG: The question is not the explanation.

THE COURT: It's very simple. Yes, he could have phoned Wilson Sonsini.

MR. LINCENBERG: Right.

THE COURT: No, he did not phone Wilson Sonsini. And he says -- and this is a matter for the jury to consider. He says he didn't for a particular reason.

MR. LINCENBERG: Right.

THE COURT: So now we've covered it. We've covered it with Fenwick & West. We've covered it with Wilson Sonsini. And my guess is there are any number of people he could have phoned. You can ask him about all that. You can ask him about that. And I don't know what his answers are going to be. But if they are that answer, then that's a complete answer.

It's up to the jury whether or not they accept this testimony or reject this testimony. That's their determination.

But we're going to have testimony in some complete segments because the case is going on for some period of time.

And in an effort to make things clear, I think it's important to have the testimony, the explanation, and then move on to the next subject. And it's all a question for the jury to determine.

Okay. Go right ahead.

MR. LINCENBERG: I won't make the motion to strike any of his answers after he answers --

THE COURT: Well, it depends.

MR. LINCENBERG: -- my question.

THE COURT: It depends. No, there may be answers that are totally nonresponsive, that have nothing to do with the subject or don't respond to your question. You can certainly make a motion to strike as being nonresponsive.

But this is responsive, you see. This is directly responsive. He's saying why he didn't do something that you have suggested by your question he could do.

MR. LINCENBERG: All right.

THE COURT: There. Let's --

MR. LINCENBERG: I'm not asking him why.

THE COURT: Okay.

MR. LINCENBERG: I'll move on.

THE COURT: Okay. There's a different way to conduct the examination, is to complete a subject, and then I allow cross and redirect on the subject. But that's a nightmare. We want to try to get through this in our lifetime.

(Laughter)

MR. LINCENBERG: Right.

THE COURT: I think it's important that -- I say lifetime, you see, because I have my job for my life. That's it. But you don't have your job for your life.

MR. LINCENBERG: Right.

THE COURT: Let's move ahead.

MR. LINCENBERG: All right. I don't think it should be an opportunity for him to repeat his direct testimony every time there's a question.

THE COURT: Okay. Let's go.

BY MR. LINCENBERG:

Q. So according to your testimony, you claim that Mr. Cohen asked you to pay Wilson Sonsini's fees; is that right?

A. Among others, yes.

Q. And you understood that Wilson Sonsini was being employed by Ecast, right?

A. Correct.

Q. Did you believe that Ecast was paying Wilson Sonsini's fees?

A. In addition to what we were being asked to pay?

Q. My question was, did you believe that Ecast was paying Wilson Sonsini's fees if they were the law firm for Ecast?

A. I often asked and others always asked him were other people paying their pro rata share of all these fees, legal and

otherwise, and he would say yes.

Q. So my question to you for the third time is, did you believe that Ecast was paying Wilson Sonsini's fees?

A. Ecast and the VCs, yes.

Q. All right. So you believes that anybody who had an investment in Ecast was paying for the legal fees for Ecast; is that your testimony?

A. Not the legal fees of Ecast in general, but specifically the legal fees associated with this acquisition, that the investors were sharing those costs, yes.

Q. Was it, likewise, your belief that anybody who had an investment in Microsoft was paying the legal fees for Microsoft?

A. I never even discussed or even thought much about Microsoft.

Q. Not asking what you discussed. Asking if that was your believe at the time?

A. And I'm saying I didn't give it any thought at the time about who was paying Microsoft's legal fees.

Q. So you didn't think further about this notion that as a shareholder it somehow made sense that you might have to pay the legal fees for Ecast; is that your testimony?

A. Yes. We accepted that. We believed it and we accepted it. And we acted upon it.

Q. And as of 2004, you understood that Mr. Cohen was not

employed by Ecast, correct?
A. No, actually.
Q. Now, you mentioned --
A. If I could just clarify, I understood that as executive chairman he was playing a major role for the company.
Q. So you believed that he was executive chairman because that's what he told you, was your testimony?
A. That's what he told us, and we saw it on Ecast literature.
Q. After 2003, did you ever see any Ecast literature that described Mr. Cohen as executive chairman?
A. I didn't after 2003.
Q. Okay.
A. But I had no reasons to doubt his word, nor did the rest of us.
Q. Now let's talk about McKay. You had known Mr. McKay for many years, correct?
A. That's true.
Q. Dating back to 1991?
A. Yes.
Q. He was the director of Vanguard?
A. He wasn't at the time, but I brought him on to the board. I proposed that he join the board in '92.
Q. You worked with him in 1997, to develop a plan for Vanguard donors to invest in venture capital transactions; is that right?

A. Yes. Two in particular, Chromatics and P Pro.

Q. You invested in Chromatics through his investment group, correct?

A. Yes.

Q. Chromatics was a company, likewise, that you had hoped would go public or be acquired, correct?

A. That's correct.

Q. You had worked with him on the Purchase Pro investment, correct?

A. Actually, the Chromatics was first, in '97, and Purchase Pro was second, in '99.

Q. And Mr. McKay, you knew, was involved with Doll Capital, correct?

A. Right.

Q. And in 2002 you spoke to Mr. McKay about Ecast, correct?

A. That's correct.

Q. And you talked to him about who were the board members, correct?

A. Correct.

Q. You discussed revenues and capitalization of Ecast, correct?

A. Correct.

Q. You came to understand through Mr. McKay that Ecast was a company whose, back in 2002, revenues were under $150 million?

A. I didn't remember the figure, but I knew it was a startup

with a low revenue base. But I wanted to find out from him what he thought of the company, and he showed me some documents indicating that Doll Capital listed it in their top tier of all the tech investments that they had made.

Q. And you spoke to him about Mr. Cohen, correct?

A. Yes.

Q. He told you that Mr. Cohen was being terminated from the company, correct?

A. No.

Q. He didn't tell you that?

A. First of all, this is before this was happening. I think this is fall of '02.

Q. September of 2002 --

A. Right.

Q. -- he told you that Mr. Cohen was being terminated from the company, correct?

A. Not in September of '02, no.

Q. Okay.

A. But we did discuss -- when the transition from CEO to executive chairman happened, he and I did discuss that.

Q. Mr. -- Mr. McKay told you that Mr. Cohen was in dispute with other members of the board of Ecast, correct?

A. No, that's not correct. But he did say in a little segue at a Vanguard board meeting, we were just talking about Ecast and we -- I knew that Mouli was moving from CEO to executive

chairman.

And Rob said that some of the VC guys and some of the board members felt that the company would function better with him not as the CEO and as the executive chairman.

Q. He told you that the board forced Mr. Cohen out of the company, correct?

A. No, he never -- no, that's not correct. He never told me anything like that.

Q. Okay. And you understood that Mr. McKay was involved with the primary venture capital firm that had an investment in Ecast, correct?

A. Yes. He was an investor. He wasn't a managing director. He was an investor through Doll. When I discussed this with him, he said he was a passive investor.

Years later, when we began to be concerned, he was concerned with the election campaign. He said he was a passive investor.

(Reporter interrupts)

A. He said he would call Doll Capital and set up a meeting.

Q. And you spoke to McKay on further occasions over the years about Ecast, correct?

A. Not so much -- not so much after the early period. He pulled away and concentrated on national politics.

Q. As one example, in 2005, you discussed with Mr. McKay Mr. Cohen's lack of a role at Ecast, correct?

A. I don't -- no, I know nobody said that Mr. Cohen had no role at Ecast. That would have jumped out at me like a lead freight train. That's a bad metaphor.

Q. In fact, in 2005 -- well, strike that.

Didn't you tell the government in an interview that you had just a month ago that in 2005 Mr. Cohen had told you that Doll Capital was also paying bonds and fees for a Microsoft acquisition of Ecast?

A. He said all the VCs were paying their pro rata share, which I assumed included Doll.

Q. So according to what you told the government, as of 2005 you knew that this supposed Microsoft deal was not secret, or you believed it was not secret from Doll Capital, correct?

A. I never understood it to be secret from the -- what Mouli -- you're confusing two different things here.

Q. I'm not confusing. I'm asking you a question about 2005 --

A. I understand.

Q. -- and if you understood that this supposed deal was not secret to Doll Capital?

A. Referring to the supposed acquisition by Microsoft of Ecast?

Q. Right.

A. I didn't think it was secret for Doll Capital.

What Mouli said was our involvement in Ecast was

secret. And that's what, therefore, we couldn't talk with people about it, including Wilson Sonsini.

Q. So your -- you had a relationship with Mr. McKay dating back since 1991, that involved both the Vanguard group, a number of different private investments in companies. And you spoke to him about your investment activity, correct?

A. Only in the early period. I'm kicking myself for that now, but, yes, only in the early period.

Q. So you're testifying here today that you never discussed with Mr. McKay that you were investing -- that you had purchased shares of stock from Mr. Cohen?

A. No, I'm not saying that at all. I told him specifically that we were -- I asked for -- I suggested we have lunch. We often did that anyway. This is back in September of '02.

Before we put a dollar --

(Reporter interrupts)

THE COURT: Slow down.

THE WITNESS: As part of the due diligence that I did on behalf of all of us, one of the first people I called was Rob McKay, who suggested we have lunch. We did at Boulevard. This was early September of '02. I don't know the exact date.

And I told him that Mouli Cohen -- I told him about the dinner on August 25th, and about the meetings, and what he was proposing, and so on, and did he know anything about the company, et cetera. He said he knew a fair amount about it

because he was invested.

BY MR. LINCENBERG:

Q. When you say "what he was proposing," you're talking about in terms of him selling you shares of the stock?

A. To help Vanguard, yes.

Q. Right. Okay. And you had discussed with Mr. Cohen that you had spoken to Mr. McKay back in September of 2002, correct?

A. We talked about Rob McKay. I don't remember exactly what -- you know, yes, he and I had talked. I told him who Rob was in relation to Vanguard and Taco Bell and all that kind of stuff.

Q. So at least with regard to Mr. McKay, you would admit that Mr. Cohen was not hiding the fact that he was selling founders' shares to you; is that right?

A. It wasn't Mouli Cohen that spoke to Rob McKay about that. I was the one who spoke to Rob McKay about it.

Q. Right. And he knew you had spoken to Mr. McKay?

A. I think so. I'm not a hundred percent certain that he knew I had talked with him about the estimate of the company. But he knew that I had discussed with Rob, you know, what we were doing at the early stage.

Q. Did Mr. Cohen ever tell you to direct Rob McKay not to discuss with other people on the board at Ecast the fact that he was selling shares to you?

A. No.

Q. And isn't it --

A. Although, actually, although --

Q. There is no question pending.

THE COURT: If he wants to complete his answer.

THE WITNESS: Although, I had forgotten this, but I asked Rob to keep it confidential because Mouli Cohen had asked us to keep it confidential. I don't remember the exact conversation. It's been a long time but --

BY MR. LINCENBERG:

Q. So you asked Rob McKay to keep the Microsoft deal confidential?

A. I told him that we had been asked/told by Mouli Cohen to keep the fact that we were purchasing these shares through the back door, to keep that confidential.

Q. And you told him why you were purchasing the shares in Ecast, right?

A. Yes.

Q. Because the company was going to be bought out by Microsoft, according to Mr. Cohen?

A. Yes.

THE COURT: Okay. It's 4 o'clock. Let's take our recess. Ladies and gentlemen, remember the admonition given to you. Don't discuss the case, allow anyone to discuss it with you, form or express any opinion.

We are going to resume Monday morning, 8:30. We're

moving right along. I know these days seem long, and I appreciate that, but we are actually making progress. So thank you very much. See you on Monday.

(Jury out at 3:59 p.m.)

THE COURT: Mr. Dillon, you're going to have to speak slower. It's very difficult for the court reporter.

THE WITNESS: I apologize.

THE COURT: That's all right. Don't apologize. I think you have to think though. You sort of get on a roll and you have to think about slowing down so our court reporter can get all of it down.

Thank you.

MR. LINCENBERG: Your Honor --

THE WITNESS: Thank you, Your Honor.

THE COURT: Yes.

MR. LINCENBERG: Can I raise one thing after the witness is excused?

THE COURT: Sure. You're excused for the day. We'll see you on Monday at 8:30.

THE WITNESS: Thank you, Your Honor.

(Witness steps down.)

MR. LINCENBERG: Your Honor, I'm going to take one more jab at maybe fighting with you on this. I don't believe you're allowing me to go through my cross-examination in a manner where he -- he gives me answers.

I don't believe it's appropriate if I say, Did you do this? that he should be permitted to then go off and repeat explanations that he gave in his direct testimony. And it's going to triple the length because this guy likes to talk. He likes to ramble on. And his rambling is not responsive to the straightforward questions I'm asking him.

THE COURT: Well, I don't disagree with you. I think there's a certain amount -- I think I have to weigh a certain amount of allowing him to explain an answer with the concerns I have about timing. You know, this is a long case. And so --

MR. LINCENBERG: The explanation --

THE COURT: It's almost like, it's almost like allowing a document in for completeness. One side introduces three sentences, and the other side can get up right away and introduce five sentences.

I don't know. Do you want to have -- I haven't done this before, but you're predicting two days of cross-examination over a 7-year period or longer.

MR. LINCENBERG: Actually --

THE COURT: And you're not moving chronologically either, particularly.

MR. LINCENBERG: No.

THE COURT: You don't have to. You can do it anyway you want to do it. But the problem is when you don't move chronologically, when you cover an 8-year period or 9-year

period, it becomes extremely difficult to try to make some coherent testimony on a particular subject.

Usually, the coherent testimony is the answer and an explanation. If there is an explanation. Some things don't need an explanation.

Obviously, testimony like this needs some explanation because you're making such a point out of the fact that he's not talking to other people and he could have talked to other people.

So, I mean, that's a big thing, you know. You've introduced two lawyers and more people. And I'm sure there are going to be more as we go along. I'm just trying to achieve some balance here.

MR. LINCENBERG: But he is not entitled -- I'm not asking him why. And he's given a story for a lengthy period of time on direct.

If counsel for the government feels an explanation is in order, they can ask him on certain points. But he's not entitled to just start rambling on about an entire subject when I ask him a yes or no question.

THE COURT: I don't think he is rambling on about an entire subject. You asked him did he phone Wilson Sonsini. Well, you start out, Did you phone Mark, whatever his last name is. Who cares. Okay. Then you say, well, all you had to do was phone him and he would have told you that there was no

deal. Well, that, of course, was wrong. And you pointed that out.

MR. LINCENBERG: It's not wrong.

MR. SPRAGUE: It's wrong and it's compound.

THE COURT: Of course, it's wrong. That is, a lawyer gets a call from somebody he doesn't know, out of the blue, saying, are you working on the Ecast -- my name is Hari Dillon, and I'm buying founders' shares, or whatever he wants to say, are you working on the Ecast deal, Ecast-Microsoft, and you're telling me the lawyer can say yes or no?

MR. LINCENBERG: That's right. Because this is being conveyed to him by Mr. Cohen.

THE COURT: What is being conveyed?

MR. SPRAGUE: So he's supposed to know that he waived --

THE COURT: Wait a minute. Let's have this discussion.

MR. LINCENBERG: Sure.

THE COURT: What?

MR. LINCENBERG: First of all, we see e-mails in which Mr. Dillon --

THE COURT: I'm trying to figure out why Mark, lawyer Mark, can say in response to a call from Mr. Dillon, "There is no project like that," or "I'm not working on that project."

MR. LINCENBERG: Because you're assuming -- first of

all, let's look at Wilson Sonsini. Wilson Sonsini is supposedly the lawyers for Ecast. And Mr. Cohen doesn't have a privileged relationship with Wilson Sonsini.

THE COURT: Wait a minute. Wait a minute.

Let's go back to Fenwick & West. Let's not do a switch here. You're telling me, you're telling me that if an individual unknown to the lawyer, without the permission of his client, is asked the question, Are you working on X with your client, he can then respond?

MR. LINCENBERG: Not necessarily, if that's the question, I'm working on X for the client.

(Simultaneous colloquy which was not reportable.)

THE COURT: -- the question.

MR. LINCENBERG: I don't think so. And let's switch it to Wilson Sonsini.

THE COURT: No, because you asked a further follow-up question. You asked a follow-up question, which was, well, something to the effect he could have told you if he wasn't working on it. I think you did ask that.

MR. LINCENBERG: I don't recall, but I may have.

THE COURT: Very good.

MR. LINCENBERG: That wasn't my most artfully-worded question.

THE COURT: No. Your questions are fabulous. Don't worry about that. And the answer is no.

Once again, once again, he can't -- it's a little bit questionable whether or not you can -- whether a lawyer can say I'm not working on that deal. But a cautious lawyer who has a client would not, in my view, would not respond one way or the other as to whether or not there are any communications with a client on a particular subject.

Jurors don't know that. So I think that's a very sort of technical ethical consideration.

And, actually, to the extent that you believe lawyers can respond -- if you do, and the question suggests you do -- it's misleading.

MR. LINCENBERG: Well, I don't --

THE COURT: This is just the Court's view. I'm not accusing you of anything. I'm saying that the Court's view is that if you think that that's an appropriate manner in which a person can receive information, it's the Court's view it may not be. That's number one. And, the jurors may not know that.

So I have problems, I guess, on two levels. One is the suggestion that he could have done it. But the truth of the matter is -- and I put "truth" in quotes because the witness's truth in the matter that it is he asserts I didn't phone Mark because I thought Mark was under an attorney-client relationship and couldn't discuss the substance -- he says, I didn't phone Mark because the defendant told me not to, in so many words.

MR. LINCENBERG: Right.

THE COURT: In so many words.

So it's almost like a collateral argument that you make to the jury by virtue of your questions, which suggest that there is a vehicle for him to find out this information, and he chose not to follow that vehicle.

And, actually, the story is, which you object to my allowing him to say or repeat, because he already said it once, repeat is not that the vehicle was improper but that he was told not to employ that vehicle. Anyway, that's the Court's view of this colloquy.

Now, if you want to go to Microsoft, you know, for example, you say, well, you're suggesting, isn't it odd or isn't it incredible to believe that shareholders in Ecast would be required to pay Wilson Sonsini fees? That's a suggestion. Then you follow that up by suggesting, well, do you think that the shareholders of Microsoft were asked?

Well, first of all, I think there is a large difference between a privately held company and a publicly held company.

MR. LINCENBERG: Not in this regard. There's differences. Not in this regard.

THE COURT: Really?

MR. LINCENBERG: We heard testimony from the Ecast people, We never turned to private shareholders to pay our

legal fees.

THE COURT: No, no, no.

Whereas, I have seen investors in startup companies being required or being sought or being implored or importuned to pay part of the cost of the operation of the company, of a startup company, that happens all the time. That's part of the game.

Whereas, for shareholders in a publicly held company, which Microsoft is and was at the time, that to me would be unheard of.

I've never heard of a capital call on shareholders. Maybe there is such a thing. I guess they issue more shares if they need more capital. That's one way to raise money. Microsoft doesn't have to raise too much money right now.

Anyway, it's a little bit of an apples and oranges thing. We're not there yet, I just wanted to address the Microsoft --

MR. LINCENBERG: And Your Honor has shifted the topic --

THE COURT: I have.

MR. LINCENBERG: -- to the law firms when my initial complaint with the rulings is, on every area this witness is being permitted to ramble on and give lengthy answers.

THE COURT: I'll try to be more -- I'll try to make sure that Mr. Dillon is more responsive to the -- limits his

answers in an appropriate way to your questions.

Though, I don't accept your characterization because I think it's overly broad, I will certainly be diligent in that regard.

MR. LINCENBERG: Thank you, Your Honor. Appreciate it.

THE COURT: Anything else?

MR. LINCENBERG: Did we have an exhibit the Court wanted to take up, 579?

THE COURT: Yes.

MR. SPRAGUE: Yes. The government objects.

THE COURT: I read it during this examination. Here it is. Do you want to see it?

MR. LINCENBERG: Sure.

THE COURT: I think it contains all sorts of prejudicial material about the witness without -- I don't know what its probative value is. It talks about how he has fallen out with his family, he's really become a deadbeat, he's used his daughter's credit card and incurred a hundred thousand dollars debt.

MR. SPRAGUE: I think this is --

THE COURT: All of which may be true.

MR. LINCENBERG: We could redact it.

MR. SPRAGUE: This is someone else saying -- it's not even him talking about -- this is someone else saying all of

those things about him. It's their psychoanalysis of Mr. Dillon.

MR. LINCENBERG: They are saying it about him to him.

THE COURT: Yeah. So what?

MR. LINCENBERG: And I'm using this as part of the area of his motive.

THE COURT: Motive for what?

MR. LINCENBERG: To just take money from whoever he can to --

THE COURT: He doesn't deny it.

MR. LINCENBERG: Including his -- he did deny it with the daughter.

THE COURT: Okay. Fine. That he's such a low life that he's taking money from his child. And that, to me --

MR. LINCENBERG: Without her knowledge.

THE COURT: Pardon?

MR. LINCENBERG: Without her knowledge.

THE COURT: Yeah. I don't think this is really probative. Its prejudicial effect is enormous, and I don't think it has much probative value if any.

If he got up and he said he didn't steal any money then I think, well, okay, you can -- you can do some further probing in that regard. He said it at the outset or he said it day three. I don't know about the outset, but he said it in the government's case, and he's admitted it in your

examination. You pursued it.

MR. LINCENBERG: So our --

THE COURT: Denied.

MR. LINCENBERG: Denied. Okay.

THE COURT: That's the word.

MR. LINCENBERG: All right. Thank you, Your Honor. Have a good weekend.

THE COURT: Thank you. Same to you.

MR. SPRAGUE: Thank you, Your Honor.

(At 4:12 p.m. the proceedings were adjourned until Monday, October 24, 2011, at 8:30 a.m.)

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I N D E X

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CERTIFICATE OF REPORTER

I, KATHERINE POWELL SULLIVAN, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings in CR 10-0547 CRB, United States of America vs. Samuel Cohen, were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings at the time of filing.

s/b Katherine Powell Sullivan

Katherine Powell Sullivan, CSR #5812, RPR, CRR

Wednesday, February 1, 2012