



**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**FILE NO. 3 15124**

**In the Matter of**

**DAVID F. BANDIMERE and**  
**JOHN O. YOUNG**

**RESPONDENT DAVID F. BANDIMERE'S**  
**REPLY IN SUPPORT OF MOTION FOR**  
**MORE DEFINITE STATEMENT**

Respondent David F. Bandimere, through his attorneys, Jones & Keller, P.C. submits his Reply in Support of his Motion for More Definite Statement (the “Motion”) as follows:

**I. INTRODUCTION**

The Securities and Exchange Commission (the “Commission”), in recent years, has emphasized the use of its administrative forum for enforcement proceedings. As a result of that emphasis, the Commission’s administrative forum has received greater judicial scrutiny than ever before. The Commission’s adjudicative forum has not survived that scrutiny unscathed. Mr. Bandimere is now on the carpet again because he demonstrated that an earlier proceeding against him was unconstitutional because the presiding Administrative Law Judge was not appointed under the Appointments Clause of the United States Constitution. *Bandimere v. SEC*, 844 F.3d 1168 (10<sup>th</sup> Cir. 2016). The correctness of the Court of Appeals’ decision in Mr. Bandimere’s Case was confirmed by the United States Supreme Court in *Lucia v. SEC*, 138 S. Ct. 2044 (2018).

Mr. Bandimere’s Motion raises another issue of constitutional dimension: whether he will receive due process in a proceeding in which the Order Instituting Proceedings (the “OIP”)

provides insufficient notice of the factual basis of the claims against which he must defend. The OIP fails to do so, which caused Mr. Bandimere to file a Motion for More Definite Statement. Predictably, the Division of Enforcement wants to keep Mr. Bandimere in the dark about the case he will have to defend, and opposed his motion.

Mr. Bandimere has already been subjected to an unconstitutional proceeding; he should not be subjected to another.

**II. MR. BANDIMERE CANNOT HAVE A FAIR HEARING WITHOUT A MORE DEFINITE STATEMENT OF THE FACTS WHICH ARE ALLEGED TO CONSTITUTE THE VIOLATIONS HE COMMITTED**

The Division of Enforcement's ("Enforcement") Brief in Opposition to Mr. Bandimere's Motion for More Definite Statement (the "Opposition")<sup>1</sup> does not suggest that Enforcement would bear any undue burden if it is required to provide factual details which Mr. Bandimere requested in the Motion. Rather, Enforcement's position is that Commission precedent does not require it to provide any specific information regarding the violations alleged because such specifics would be discovery to which Mr. Bandimere is not entitled, and, because Mr. Bandimere is not entitled to that information, Enforcement will not provide it.

To the extent this proceeding is intended to find the truth, or provide a fair proceeding, Enforcement's position, as well as the Commission precedent on which it relies, is indefensible. Enforcement believes that it has a right to keep Mr. Bandimere in the dark about the case that he must meet, which creates a clear advantage to Enforcement, and a corresponding disadvantage to Mr. Bandimere, and Enforcement intends to exploit its advantage to Mr. Bandimere's detriment. Enforcement is willing to accept the risk that whatever findings of violation may result from this

---

<sup>1</sup> Rule of Practice 153(a) requires every filing to be signed by counsel for a party. The Opposition was not signed by counsel for Enforcement and must be stricken unless the lack of signature is promptly remedied.

proceeding will survive a challenge years down the road that the proceeding was sufficiently unfair as to constitute a denial of due process of law.

But, the precedent on which Enforcement relies is outdated placing the edifice of Enforcement's argument on a foundation of sand.

As recognized in *In the Matter of James A. Winkelmann* Rel. No. APR-4002, 2016 WL 11034805 (July 20, 2016), Commission precedent allowing for an OIP to provide extremely limited disclosure of facts regarding alleged violations arose at a time when a mid-hearing continuance could be granted to enable a respondent to prepare a defense based on evidence introduced by Enforcement. Because subsequently promulgated deadlines for the completion of an administrative proceeding make such continuances unlikely to be granted, the earlier jurisprudence on the degree of detail that must be provided in an OIP is no longer reliable. And, in *Winkelmann*, the motion for a more definite statement was granted and Enforcement was required to identify the person to whom misrepresentations were allegedly made, and, further, to provide a complete list of false and misleading statements. That is the information which Mr. Bandimere seeks.

Enforcement attempts to distinguish *Winkelmann* by arguing that Mr. Winkelmann did not know which of many of his clients he allegedly defrauded, but here the OIP alleges that Mr. Bandimere defrauded everyone with whom he dealt, making a specification of their identities unnecessary. Opposition, p. 5. However, what Enforcement did not disclose was that the OIP alleging that Mr. Bandimere defrauded all the investors lacked a factual basis because Enforcement spoke with only a fraction of the allegedly defrauded investors.

A member of Enforcement's investigative team testified in the evidentiary hearing that Enforcement interviewed only approximately 25 to 30 investors prior to the issuance of the OIP.

See, Exhibit A. Because this is a case involving alleged oral representations made primarily in one-on-one communications, the fact that Enforcement did not speak with at least half the putative victims makes clear that there was no factual basis on which the Commission could issue an OIP which publicly alleged that Mr. Bandimere defrauded everyone with whom he dealt.

Unsurprisingly, witnesses called by Enforcement did not support the allegations in the OIP. To give only a few examples, one witness could not recall whether Mr. Bandimere said anything about the amount of risk in the investments. See, Exhibit B. Another investor testified that she had made her investments in IV Capital based on representations made by persons other than Mr. Bandimere, that she invested in IV Capital directly with Mr. Parrish (who ran IV Capital), and that her investments were made before she ever spoke with Mr. Bandimere. See, Exhibit C.

Mr. Bandimere and his counsel remain in the dark about the case they will be required to defend, and will be exposed to a trial by ambush, where witnesses testify about, and findings may be made on, matters not mentioned in the OIP. A more definite statement is necessary to provide proper notice, and to ensure that the case stays within the confines of the OIP.

Enforcement's contention that the OIP contains sufficient information regarding the so-called "alternative" theory that Mr. Bandimere violated the Investment Adviser Act is similarly flawed. Enforcement argues that if interests in the limited liability companies used as a pass-through for investments made in IV Capital and Universal Consulting Resources LLC were considered to be securities, then Mr. Bandimere would be an investment adviser to those limited liability companies and would have additional liability as an investment adviser. Opposition, p. 7. That is nonsense.

Whether interests in a limited liability company are deemed to be securities has absolutely no bearing on whether Mr. Bandimere acted as an investment adviser to the limited liability companies. More importantly, Enforcement has already admitted that it has no evidence that Mr. Bandimere received compensation for providing investment advice, which is an essential element of the definition of an investment adviser under Section 202 (a) (11). See, Division of Enforcement's Post-Hearing Brief As To David F. Bandimere, p. 14, fn. 2. That lack of evidence is presumably why Enforcement abandoned the so-called "alternative" theory of liability under the Investment Advisers Act. Now, however, Enforcement wants to proceed under that theory without disclosing any facts which might support it, *after admitting that it has no such facts*.

Quite simply, the allegations of the OIP cannot be relied upon to provide notice of what Mr. Bandimere will be required to defend. If Enforcement wants to proceed under the OIP, they should be required to provide a more definite statement of the facts supporting the claims against Mr. Bandimere in a signed filing which constitutes a certification in accordance with Rule of Practice 153(b).

Even if a more definite statement is not required, administrative law judges have discretion to require greater specificity to expedite proceedings, arrive at settlements, simplify issues, and assure fairness to respondents. *In the Matter of David Pruitt, CPA*, APR Rel. No. 6421 (December 20, 2018). That discretion is appropriate to exercise here.

**WHEREFORE**, Respondent David F. Bandimere prays that the Motion for a More  
Definite Statement be granted.

Dated this 16th day of January, 2019.

Respectfully submitted:

JONES & KELLER, P.C.



David A. Zisser  
Jones & Keller, P.C.  
1999 Broadway, Suite 3150  
Denver, Colorado 80202  
(303) 573.1600 - main  
(303) 785-1689 – Direct  
(303) 573.8133 - Fax  
Email: dzisser@joneskeller.com

*ATTORNEY FOR  
DAVID F. BANDIMERE*

**CERTIFICATE OF SERVICE**

On January 16, 2019, the foregoing **RESPONDENT DAVID F. BANDIMERE'S REPLY IN SUPPORT OF MOTION FOR MORE DEFINITE STATEMENT** was sent to the following parties and other persons entitled to notice as follows:

Securities and Exchange Commission (Original and three copies by Federal Express)  
Elizabeth Murphy, Secretary  
100 F Street, N.E.  
Mail Stop 1090  
Washington, D.C. 20549

Honorable Carol Fox Foelak (courtesy copy via email at [alj@sec.gov](mailto:alj@sec.gov))  
Administrative Law Judge  
100 F Street, N.E.  
Mail Stop 2557  
Washington, D.C. 20549

Nicholas Heinke  
Terry R. Miller  
Securities and Exchange Commission  
1961 Stout Street, Suite 1700  
Denver, CO 80294  
(courtesy copy via email at [millerte@sec.gov](mailto:millerte@sec.gov)  
and [HeinkeN@SEC.GOV](mailto:HeinkeN@SEC.GOV), and US mail)



---

Emily Morse-Lee

1 Regional Office.

2 Q And how long have you been so employed?

3 A About eight-and-a-half years.

4 Q Where were you employed before that?

5 A I was a -- an attorney with the law firm  
6 Sidley Austin, in Chicago, in the financial and  
7 securities litigation group.

8 Q So -- so you're an attorney -- you are an  
9 attorney?

10 A I am an attorney, correct.

11 Q And did you work on the investigation that  
12 led to the initiation of this case against  
13 Mr. Bandimere?

14 A I did.

15 MR. ZISSER: May I have a moment,  
16 Your Honor.

17 BY MR. ZISSER:

18 How many investors in any of the limited  
19 liability companies which Mr. Bandimere managed or  
20 co-managed did the -- or did you speak to prior to  
21 the filing of the -- or the Order Instituting  
22 Proceedings.

23 A My memory is that those interviews were  
24 conducted by me as well as other staff within our  
25 office. I believe we interviewed approximately

EXHIBIT

tabbler

A



1 twenty-five to thirty investors.

2 Q Twenty-five to thirty investors all in the  
3 LLCs that Mr. Bandimere was a manager or a co-manager  
4 of?

5 A That's correct.

6 Q Okay. So that would exclude the people  
7 who invested in IV Capital or U/C, who were brought  
8 in by Mr. Young or Mr. Smith?

9 A That is correct.

10 Q Now, were you also involved in the  
11 investigation which resulted in the filing of a  
12 Complaint in the United States District Court for the  
13 District of Colorado against Larry Michael Parrish?

14 A I -- I was involved in an investigation  
15 that related to Mr. Parrish, yes.

16 Q Okay.

17 MR. ZISSER: And if Exhibit 206 could be  
18 placed before Mr. Mulhern.

19 BY MR. ZISSER:

20 Q Mr. Mulhern, do you recognize the document  
21 marked as Exhibit 206?

22 A I do.

23 I should tell you that other attorneys  
24 worked on this matter as well. And as this case was  
25 brought and went to filing, I was playing a secondary

1 on our investments.

2 Q Okay. But then did he say that it was  
3 safe?

4 A I don't recall if he said that or not.

5 Q Okay. Do you recall if he said that it  
6 was low risk?

7 A I don't know if Dave said that. But I  
8 knew that any kind of an investment has some risk.

9 Q Okay. So you don't recall, one way or  
10 another, whether Mr. Bandimere said anything about  
11 the amount of risk?

12 A I don't, no.

13 Q Okay. And so the investment was made in  
14 approximately -- or in late February 2008. Did that  
15 investment perform in accordance with your  
16 expectations?

17 A It did.

18 Q Okay. So it returned two-and-a-half  
19 percent per month?

20 A Yes.

21 Q Okay. Now, I'd like to talk to you a  
22 little bit about your understanding of how -- how  
23 this investment worked.

24 Now, we looked at Exhibit 122, and I  
25 think --

EXHIBIT

tabbier

B

1 Q And prior to say mid-2007, you had, as I  
2 recall, investments with Fidelity, correct?

3 A Probably not Fidelity at that time. I had  
4 worked with A.G. Edwards, and then late -- most  
5 likely with UBS, and I also had some of that with  
6 Wells Fargo, for the UBS account, financial advisor  
7 and I worked with my IRA.

8 Q Okay. And were all those investments in  
9 retirement-type accounts?

10 A No, absolutely not. Part of it -- the  
11 part that I invested was -- the \$501,000, that  
12 portion of my investments was for retirement. The  
13 rest of it was money that I had retired with to make  
14 income off of or not.

15 Q Okay.

16 A You know, either that or you put it in the  
17 bank and take it out and don't invest it.

18 Q Okay. Now, sometime in approximately mid  
19 or early 2007 you heard of Michael Parrish --

20 A Yes.

21 Q -- and IV Investment?

22 A Yes.

23 Q Or IV Capital?

24 A Yes.

25 Q And I believe you testified that you heard

**EXHIBIT**

tablar

C

1 of it through a person named Sonja Cassell?

2 A Yes.

3 Q And --

4 A Referred from my doctor.

5 Q From your doctor?

6 A Right.

7 Q So, your -- so you'd been talking  
8 with your --

9 A No. Let me clarify. The doctor told me  
10 he knew of someone that I might be interested in  
11 speaking with about making an investment, because he  
12 knew I was looking to make some changes; that was  
13 Sonja Cassell.

14 Q Okay. And so you had been speaking with  
15 your doctor about investments and he suggested you  
16 speak with Sonja Cassell?

17 A Not investments. I just said I wanted to  
18 make some changes, and he said he knew of someone.

19 Q Did you indicate what kind of changes you  
20 wanted to make?

21 A No. I just said I wanted to make some  
22 changes, and he said he knew of someone.

23 Q Okay.

24 A And then I spoke with Sonja Cassell.

25 Q Okay. So you didn't know Sonja Cassell

1 before that?

2 A No.

3 Q Okay. And what did -- and just for the  
4 reporter, the court reporter's benefit, could you  
5 spell "Cassell"?

6 A I hope I spell it right. I hope I  
7 remember it. I think it's C-a-s-s-e-l.

8 Q Okay. Thanks.

9 And now, what did Ms. Cassell tell you  
10 about Mr. Parrish or IV?

11 A That she had been successfully invested  
12 with him, and also had -- due to her own financial  
13 situation, had to withdraw the money, that was  
14 successful; that her parents had been invested with  
15 Mike Parrish/IV Capital -- you know, I wasn't really  
16 referring to it by "IV Capital" at that point because  
17 it was just the initial investigation -- and about  
18 how much her parents had in there, and that they had  
19 refinanced their homes to do this, they were very  
20 pleased with it. So, it was a good start. And she  
21 said she knew of the business model, she was very  
22 confident about it.

23 Q Now --

24 A It was an over-leverage, that sort of  
25 thing, you know, her -- her real reasons for

1 believing in it.

2 Q And was -- what did Ms. Cassell do for a  
3 living; do you know?

4 A At that time -- gosh, I -- I'm pretty sure  
5 she had her sales job. And it's -- it's one of those  
6 where they set up the credit card operation and  
7 businesses, and they actually -- in hers, it's --  
8 it's -- actually, they compete for the fees, the fees  
9 that you pay the credit card monthly. And she's a  
10 pretty good salesman. So, you know, financially  
11 speaking, she's a -- she's successful.

12 Q Okay. Now, did you ever come to learn  
13 that anything that Ms. Cassell told you was untrue?

14 A I don't think I know what you mean. Do  
15 you mean about the investment?

16 Q Yes.

17 A When we stopped getting paid, I guess it's  
18 to be assumed that it wasn't true that everything was  
19 all hunky-dory.

20 Q Well --

21 A I -- I don't -- I don't know if I'm  
22 answering your question properly.

23 Q Well, having that Ms. Cassell described  
24 what she understood the profile to be and described  
25 her own investment history?

1           A       Correct.  And her parents.

2           Q       Okay.  Did you ever come to learn that  
3 Ms. Cassell misrepresented either --

4           A       No.

5           Q       -- her own --

6           A       No, not that I know of.

7           Q       Okay.  You've got to let me finish,  
8 please.

9           A       Oh, I'm -- I apologize.

10          Q       Yeah.  Okay.  And just so -- to try to  
11 keep the record clear -- as far as you know,  
12 Ms. Cassell never -- or didn't misrepresent her  
13 parents' experience or her own experience with  
14 Mr. Parrish?

15          A       Correct.

16          Q       Okay.

17          A       As far as I know.

18          Q       Right.  Now, is it fair to say that you  
19 had some questions of Ms. Cassell that she couldn't  
20 answer about Mr. Parrish's investment program?

21          A       She wasn't the source.

22          Q       I'm sorry?

23          A       Do you know what I'm saying?

24                    She wasn't the source, she wasn't the  
25 person that could invest my money, so I needed to --

1 my next step was to talk to Dave Braud --

2 Dave -- sorry -- Dave Smith and then to Mike Parrish.

3 Q Okay. Now, who did I understand Mr. Smith  
4 to be?

5 A An in-between person who actually did the  
6 -- the initial representation of what I needed to do,  
7 to like find out how to invest in this, and he also  
8 talked to me about the profile.

9 And then when that was complete -- I guess  
10 he was sort of a qualifier, to find out if I was an  
11 accredited investor, that sort of thing, and then he  
12 -- you know, I talked to him about the profile. And  
13 then when he was satisfied I was who I was, he --  
14 then I was able to talk to Mike Parrish.

15 Q Okay. Now, to your knowledge, was there  
16 any relationship between Mr. Smith and Mr. Dalton?

17 A Mr. Smith and Mr. Dalton? No, not to my  
18 knowledge.

19 Q Okay. All right. So, now, what did  
20 Mr. Smith tell you about Mr. Parrish or IV Capital,  
21 if anything?

22 A About the same profile. Maybe not as  
23 extensive as I -- I was later told by Michael, but he  
24 gave me the basics on it.

25 Q And then you spoke with Mr. Parrish?



1           A       Yes.

2           Q       Okay.  And Mr. Parrish also explained what  
3 he did?

4           A       Yes.

5           Q       And explained --

6           A       -- his experience.

7           Q       -- his experience, and made some  
8 representations regarding risk, correct?

9           A       Yes.

10          Q       Okay.  And did Mr. Parrish tell you that  
11 he wouldn't be providing you with statements relating  
12 to your investment if you invested with him?

13          A       Do you mean that during that time?

14          Q       Well -- well, let's say -- and I  
15 understand you've had several -- or that you had more  
16 than one conversation --

17          A       Right.

18          Q       -- with Mr. Parrish prior to your  
19 investment?

20          A       Right.

21          Q       So, it's not important, for purposes of my  
22 question, for you to differentiate between or among  
23 the conversations you had with Mr. Parrish before  
24 your initial investment.

25          A       Okay.

1 Q So, at any time before your initial  
2 investment with Mr. Parrish, did he indicate to you  
3 that he would not be sending you statements?

4 A No, I don't think so.

5 Q Did he ever indicate to you that he would  
6 not be sending you statements?

7 A I don't think so. And I've reviewed my  
8 contract and it says we can have them.

9 Q Okay. Now, when did you make your initial  
10 investment of \$750,000 with IV Capital?

11 A In 2007. And I'd have to check exactly  
12 the month and date that --

13 Q What would you have to check?

14 A I'm sorry?

15 Q What would you have to check?

16 A My records --

17 Q Okay.

18 A -- for the exact date and all of that. It  
19 was -- I think it was in June of 2007, and then  
20 additionally in September. We went over that  
21 earlier.

22 Q Okay. Now, at the time you made your  
23 initial investment of \$750,000, had you spoken with  
24 Mr. Bandimere?

25 A No, I don't think so. I think only

1 Cameron Syke.

2 Q Okay. So you think that you spoke with  
3 Mr. Syke prior to your initial investment of  
4 \$750,000?

5 A No. No, I didn't. It was like I talked  
6 with Mike, I made the investment, and then I went  
7 into the tax characterization. And I was actually  
8 kind of a maniac about it. I said, "I've got to have  
9 some way to deal with the money." So -- you know,  
10 when I kept pounding that point home, so then he  
11 referred me to Cameron Syke. So, I made the  
12 investment of \$750,000, talked to Cameron Syke and  
13 then I started understanding the whole Exito  
14 structure.

15 Q Okay. And did you pay Mr. Syke?

16 A I don't -- no. I -- I don't understand --  
17 I don't think I understand the question.

18 No. I just talked to Cameron Syke, he  
19 told me about the whole structure, and I did not pay  
20 him for that.

21 Q Okay. Okay. But you understood him to be  
22 an attorney?

23 A Of the Exito -- and, for my purposes, for  
24 the Exito structure to characterize my investment  
25 with IV Capital.

1 year-end?

2 A Yes.

3 Q And you also understood that a check from  
4 Exito would be sent to you with your monthly return?

5 A Right.

6 Q Okay. And was it --

7 A And that was -- that was from Dave and/or  
8 Barbara, whoever did it that month, you know.

9 Q All right. Was there anything else that  
10 you expected Exito to do?

11 A Not that I can think of right now. But as  
12 I said, we had further conversations down the road,  
13 so the expectations changed over time. That was our  
14 initial agreement.

15 Q Okay.

16 A And it worked well. I was happy.

17 Q Okay. So, then, after -- well, all right.  
18 Let's -- strike that.

19 As I understand your testimony in response  
20 to Mr. Bliss's questions, you don't recall the first  
21 time you even spoke to David Bandimere?

22 A I don't. I wish I could but I don't.

23 Q Okay.

24 A And it -- it may -- I -- I said I'm -- you  
25 know, I could guess that it's around the first check,

1 because that had to happen. And I know there was a  
2 fee dispute at some point, where Dave Smith and the  
3 Exito people had to work it out. And I -- I actually  
4 told Michael to do that. But, you know, it was  
5 probably around that, because he had to give me the  
6 check. But that's my -- that's really a best guess  
7 on my part. I don't actually remember.

8 Q Okay. After your initial investment of  
9 two-hundred -- or -- I'm sorry.

10 After your initial investment with IV  
11 Capital in the amount of \$750,000 was made, you then  
12 made a subsequent investment of 250,000, correct?

13 A Yes.

14 Q Okay. Now, how did that investment come  
15 about?

16 A I don't understand. I did it like I did  
17 the other one. I don't think I fully understand  
18 your question.

19 Q Well, let's try to -- to proceed slowly.

20 Now, as I understand the first one, the  
21 first investment, you wire transferred \$750,000 from  
22 an account that you controlled --

23 A Right.

24 Q -- directly to an IV Capital account in a  
25 bank in Bermuda?

1           A       Right, as per the wire instructions that  
2 were given to me, and the second happened the same  
3 way.

4           Q       Okay.

5           A       Mm-hmm.

6           Q       So, you never sent either the first  
7 \$750,000 or the second \$250,000 to Exito or --

8           A       No --

9           Q       -- to Mr. Bandimere?

10          A       -- I didn't.

11          Q       Okay. And -- all right. Now -- and then  
12 later -- as I understand it, later in 2007 you  
13 invested another \$250,000?

14          A       Yes.

15          Q       Okay. And what caused you to decide to  
16 invest that second \$250,000?

17          A       I was supposed to be an accredited  
18 investor of \$1 million, it's really that simple.

19          Q       Well --

20          A       When I had my discussions with Mike  
21 Parrish, that's what I was supposed to do. And I  
22 looked at both of those -- where my portfolio was,  
23 and I said, "Mmm," performance-wise, and I said,  
24 "This is pretty good," so that -- it was okay with me  
25 to do that.

1           Q       All right. So you had a conversation with  
2 Mr. Parrish, Mr. Parrish said that you should invest  
3 another \$250,000, and you did that by wiring the  
4 \$250,000 from a bank account that you controlled to a  
5 bank account for Mr. Parrish's business in a bank in  
6 Bermuda?

7           A       Yes.

8           Q       Okay. Now, at the time that you wired the  
9 second \$250,000, bringing your total investment to a  
10 million, had you ever spoken with Mr. Bandimere?

11          A       I will repeat what I said. I can't  
12 remember exactly what -- when I talked with him. I'm  
13 going to give you my best guess. It was probably  
14 around the time that the checks came in.

15                    There was a fee fight, you know, between  
16 Dave Smith and the Exito people, that I actually  
17 asked them to all resolve among themselves. So I  
18 don't remember when I exactly first talked to him. I  
19 said, best guess, probably when -- when I get -- got  
20 paid, because he handled the money.

21          Q       Okay. So, if you don't remember when you  
22 first spoke to Mr. Bandimere, do you remember what  
23 you first spoke to Mr. Bandimere about?

24          A       He may have actually -- and I -- this is  
25 speculation on my part. He may have called me