



April 2004

PONZI SCHEMES

by Dennis O. Williams

Suppose you go to visit your sister and learn that your brother in-law has just purchased a new car, and paid cash. You know he earns less than you do and it bothers you that he is five years your junior and that you drive a car that is seven years old. Beside that he has this smug gleam in his eye. Now you certainly don't want to defer to him by asking him directly, but you have to find out how he did it. So you make a joke and ask him if he won the Idaho state lottery.

That is all it takes. Your brother in-law is just bursting to tell you how clever he has been anyway. He then explains that he learned of this great investment opportunity where he could earn 4% per month on his investment. He borrowed \$100,000 by placing another mortgage on his house and borrowing against his 401(k) and invested this money. So far he has gotten \$4,000 a month for the past six months enabling him to buy the car and that is just interest on his investment. The principal is secure.

Not to be outdone by your younger brother in-law, you follow his example and the money comes in each month. The word gets around and many of your family members and friends also invest. After all, it is a proven successful investment. The interest keeps coming in each month. And the principal is safe.

Then one month the payments to everyone stop. The investment manager offers various excuses. Months go by and even years. The money never comes. You have lost 75% of what you invested as have all your friends and neighbors. What went wrong? You have all been victims of a Ponzi scheme. Simply put it uses the last investor's money to pay the first investors, up until the

investment managers decide to pull the plug and pocket your money. There never was any legitimate money making investment by the investment managers.

The schemes vary in their complexity. One of the schemes I was exposed to while in the FBI was the prime bank investment scheme. The promoter explains that in international banking the banks borrow from one another paying as much as 4% per week. The average investor can't get involved in this but by pooling money so that millions of dollars are assembled, the promoter can participate in this high-yield lending and the small investor can reap enormous profits.

It sounds good. It doesn't work. As a private investigator I have been involved in various investigations where tens of millions of dollars have been defrauded from thousands of investors. It is heart breaking to see families lose their life savings, their homes, their retirements, their 401(k) savings, etc.

Key things to watch out for include but are not limited to the following:

1. high-yield investments
2. anything off shore
3. trust accounts
4. promotions on ways to avoid paying taxes
5. promotions that occur outside the United States
6. unlicensed promoters
7. new businesses doing the promotions
8. promoters with criminal histories
9. any investment where your investment counselor receives any kick back from the end recipient (conflict of interest)

continued on page 7



The Journal is the official publication of the Private Investigator's Association of Utah. It is published quarterly. The opinions expressed herein are those of the authors and do not necessarily represent the view of PIAU nor its individual members.

©Copyright 2003 Private Investigators Association of Utah. All rights reserved.

Officers

President

Dennis Williams
(801) 254-8436

Vice President

Scott Heinecke
(801) 253-2400

Secretary

Holly Johnson

Treasurer

A. Frank Adams

Board of Directors

Mel Ashton
Ronald L. Probert
Kelly Madsen

1780 West 9000 South,
Suite 221
West Jordan, Utah 84088
Phone: (801) 467-9500
FAX: (801) 253-0578



A Message From The Vice President

In the absence of a message from the President, your editor has a command decision to give the VP center stage.

P.I.A.U. held a certification training on April 15th in civil procedure and service of process. This course was taught by Nicole Cottle who is an attorney and a certified instructor with Utah Peace Officers Standards and Training. This was an excellent training course, especially since passage of the new laws allowing licensed private investigators to serve additional legal documents. Everyone who attended the training session received a certificate of achievement signed by the instructor. In the future the Utah courts may require that all of those who serve legal documents complete this type of training. If any of you have questions on civil procedure and service of process, you can email Nicole Cottle at: ncottle@ci.west-valley.ut. Thanks to Larry Braegger for all the work he did in setting up this training session and preparing certificates, etc.

P.I.A.U. plans to have at least four training sessions presented by certified instructors throughout the coming year covering topics that would be beneficial to private investigators. If you have any suggestions for topics you would like to see covered, please contact me at: scott@datatraceonline.com or Larry Braegger at diver@qwest.com.

The P.I.A.U. Board of Directors met on April 15th and it was decided to change the amount for annual dues for our members. Beginning this year the membership fee for Agencies will be \$50.00 and \$25.00 for Registrants and Apprentices. As a reminder, annual dues are due by May 31, 2004. P.I.A.U. will send out an invoice to each member in May and we would encourage everyone to send your check to us before the end of May.

Scott L. Heinecke,
Vice President

From the desk of the:

Chairman of the Board

A major victory was achieved at the Federal Level through the efforts of NCISS and the many investigators that supported them. HR1543 was signed into law, containing the language inserted by Representative Pete Sessions. He has been a long friend of the Private Investigators industry and has worked with members of NCISS long and hard for the passage of this legislation. This legislation eliminates the 1996 restrictions on workplace investigations. This language made it so employers were enable to order a investigation of workplace misconduct by third party professional investigators, without first seeking the suspected wrongdoer's permission. Business owners were also required to provide the suspect with a complete unaltered copy of the investigative report which often has the names of witnesses and what they said about the wrongful behavior. Fortunately, these restrictions have been removed with the language of HR1543.

This does not, however change the requirement for employment screening on job applicants and employees being considered for promotion. Employers must still make the required disclosures and notices and seek the applicant's permission. We as investigators acting as Consumer Reporting Agencies must obtain certification from the employer before the work.

There is a cloud in the forecast however. Liberal legislators in both the house and senate continue to push bills that prohibit the sale or purchase of a Social Security Number. If this would pass, it would mean that we could not

purchase information containing the social security number from any information provider and they would not lawfully be able to sell it. NCISS is constantly telling any member of congress who will listen that we do support the publication of social security numbers on the internet and that we support the elimination of rogue information brokers who sell personal information without conducting due diligence on the buyer. (All of the brokers I deal with have had me send them a copy of my PI license and business license. I even have been audited on the use of the information). This matter is one we need to closely monitor and one of the bills will most likely be given serious consideration in 2004.

At the State Level, we have a bill that was worked with John Tinsley to prevent apprentice investigators from obtaining protected information. We have received some reports that apprentice investigators have taken cases on their own. This legislation was welcomed by both the head of the Driver's License Division and the Deputy Director for the Department of Motor Vehicles. This legislation is HB 122. It has passed the house and has been read into the senate for the first time. Both John and I testified at the committee level. This is a good pro-active step for private investigators and the Deputy Director of DMV indicated that he was so pleased that , maybe next year we can query DMV records by name.

Before I was a PI in Utah, I was a PI in Virginia. At the current time, Virginia public court records access is being debated. Two years ago, we

worked with a sponsor in our House of Representatives who wanted divorce records closed to the public. All information that showed income, or personal identification data was to be sealed. We had him convinced to allow private investigators access. He was not re-elected and the bill died.

The bottom line is that there are privacy advocated at all levels of government and in our society that are trying to shut down all sources of information about citizens. They make no differential as to whether it is John Q. Citizen or a professional licensed investigator that is getting the information. We need to be on guard at the local level and support NCISS at the federal level.

We also need to support our association and work to recruit new members that are professional and will be an asset to the PIAU. As long as we are professional, we have our law enforcement counterparts on our side.

Mel Ashton



Ask Sherlock

Dear Sherlock:

Need info on video recorders. Is there that much difference between my time-lapse VCR and the digital recorders?

Phil

Dear Phil:

There is a world of difference. Where to begin?

1. Digital recorders, even at the lowest of three settings, produces 400 lines of resolution. Analog recorders resolutions are usually 300 or 350 lines. A Super VHS recorder, then, is equal to the poorest setting of the digital. The bottom line, far better picture quality.

2. When you review a tape frame by frame, you will not have any of the distortion common with a VCR. One of the reasons for the distortion is old tapes. Each time a tape is used, it is degraded. Many companies seldom change tapes. The norm is to change a tape after 13 passes through a recorder. With digital, there is no worry of tape degradation because there are no tapes. Secondly, an analog recorder starts and stops as it travels. This is how a tape can record up to 30 days.

The end results is a second source of degradation to the video. And finally, as the analog recording time is extended, fewer and fewer lines of resolution are in each frame. With digital, the lines of resolution are always the same.

3. You need not worry about cleaning or having to replace recording heads. In addition there are far fewer moving parts and, therefore, less maintenance costs.

4. With your images documented on a harddrive, there is no longer a storage problem. I'll bet you have a closet full of cassettes.

5. Many of the new digital recorders have a built-in motion system. It will only record if activity is taking place in a camera's field of view.

6. Hooked to a telephone line or broadband, you can watch live from your home or office.

7. Many system will allow you to review recorded material via a telephone or broadband line. This eliminates the trips to the investigative site to review tapes.

All in all, digital recorders are a major improvement over analog units.

Sherlock

Dear Sherlock:

What is the "clean hands doctrine"? When does it apply?

Jared

Dear Jared:

The clean hands doctrine applies to honesty in relation to a specific situation. A person who commences a legal action with clean hands will have acted honestly and fairly in his actions

connected with the lawsuit. Most judges will say this rule does not require the plaintiff to have lived a pure life. What is required is that the individual has been reasonable in this particular situation with the defendant. The underlying theory is, "he who seeks equity must come into court with clean hands."

This doctrine only applies to actions seeking fair treatment. It does not apply if the suit is seeking money for damages. In the latter case, a court can reduce any recovered amount to penalize the plaintiff for his conduct.

Hope this helps.

Sherlock

Dear Advisor:

I know the burden of proof in a criminal case is "beyond a reasonable doubt." That is nearly 100% pointing to guilt. In a civil case, the proof is "a preponderance of the evidence" which is 50.1%. What then is "clear and convincing proof?" This came up when we had some evidence thrown out in a civil case.

Bob

Dear Bob:

Clear and convincing proof is the amount of evidence that is sometimes necessary in civil cases to prove a fact. It is a level of proof that goes beyond mere preponderance of the evidence but, at the same time, does not establish the fact beyond a reasonable doubt.

This level of proof is usually found in a civil case where the fact, if accepted, will have a great effect on the case. Take for example a case involving a fiduciary. This trustee or guardian has a duty to take care of another person's interest. These individuals have legal obligations that a normal person would not have. Because of the required higher standard of behavior, there must be clear and convincing proof that a fiduciary relationship exists.

Another example would occur in a state where verbal contracts are recognized. In this example, two individu-



als sign a contract which includes a stipulated selling price. If one of the signees later claims that the price was altered in a meeting subsequent to signing the contract, this individual must offer clear and convincing proof that there was such a discussion and that the price change was agreed upon.

Sherlock

Dear Sherlock:

The new security inspections at airports require opening and inspecting every suitcase. Any suggestions for those of us who travel alot?

JB

Dear JB:

I called the local office of the Transportation Safety Administration and they made a very simple suggestion: use sandwich bags. They suggest putting all of your items in ziplock bags. This will keep items from being lost, they are clear so the inspectors can view each piece or a percentage of your belonging, and they do not need to directly touch your items. It sounds like an easy solution to me.

The Advisor

Dear Sherlock:

I have heard there is an antenna you can make out of a Pringles can. It is used to get network signals. Can you explain how to make one?

Jeff

Dear Jeff:

The easiest instructions on putting one of these together can be found at oreillynet.com/cs/weblog/view/wlg/448. Along with the plans, you will need a budget of just under \$7 for parts. They can be purchased at your local Radio Shack.

Oh, don't forget to use it legally! Just kidding. I am sure no Alliance member would be stupid enough to cross that line.

Sherkock

Dear Sherlock:

Any idea what this is?

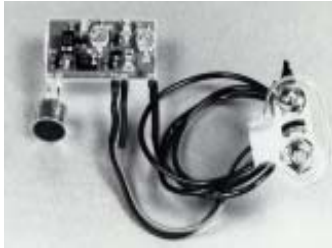
VM

Dear VM:

This appears to be a low powered audio transmitter. Two of the wires are the positive and negative to the 9v battery clip. The third is the antenna. The round object to the left is a microphone.

Not a legal item.

Sherlock



Dear Sherlock:

During my life I have had many interesting experiences. Looking back, they usually have been interesting and educational. I have always wanted to serve on a jury but I have never been asked. How are juries selected. Is there a way to improve my chances of getting on a jury?

FR

Dear FR:

Jury duty is indeed interesting and educational. It is also, in my opinion, an obligation of every citizen. Unfortunately nowadays, many people seek to avoid this important civic duty. Many people seem to do whatever is necessary to avoid service. To be fair, part of the problem also lies with the courts. At present, they seem to be too lenient in granting peoples request to be excused. Personally, reasons such as it might interfere with one's work schedule or their vacation, or their child's sporting events is just not a good enough excuse. By granting so many of these requests, I believe that we do not obtain a true cross section of society. If you attend a lot of trials, you will note that the average age is usually quite high. Older individuals seem to take this responsibility much more seriously and, of

course, retirement allows for more free time. But you do not want to hear my opinion on this. Let me just say, though, I appreciate your willingness to serve.

The names of potential jurors are picked at random from a variety of lists, depending on the state. The lists might be from voting records, driver's licensing records, taxpayers, or any other data base which the local state law directs. Depending on the jurisdiction, you might be required to be on call for periods of one day to one month. The one day period is usually found in small municipalities or counties where they do not have the request for many jury trials (because of budget limits, many of these small courts will bend over backwards to avoid a jury trial and will do anything to facilitate a plea bargain or other out-of-court settlement).

Once your name has been selected for the pool, you are not guaranteed a position on a jury. Depending on the number in the pool and the number of trials, you may pass the time period without hearing from the court. If they do not have the need for all of the people on their list, you or others may not be called.

Then there is another hurdle. Before any trial begins, members of the jury pool are questioned by the judge in most states. He may reject you for some specific reason such as a hearing disability which would impair your ability to serve.

Once past the judge, it is common that you will then be vetted by the attorneys for both the plaintiff and the defendant. They will ask a number of questions, seeking to determine if you might have a bias against their position or their client. The bias is usually not because you know the individual (the judge will usually dismiss you for that reason), but because maybe you seem to have certain ideas or prejudices which might unfairly harm either side. For example, in a criminal case, if you have had run-ins

or have less than happy experiences with the police, it is probable that the prosecutor will say, "Thanks, but no thanks". The defense attorney may send you on your way if you suggest that you do not like long haired hippie types, such as his client. You are ripe for a dismissal if your background, answers or demeanor suggest that you might be less than impartial or, more importantly, seem unfavorable to either side.

You can also be rejected, again depending on the jurisdiction, for having been convicted of a felony, if you have some financial interest in the outcome (owning stocks in ABC corporation which is being sued), a business relationship or a family member who is familiar with either party. In these types of cases, you will be "challenged for cause".

Finally, you might be removed for no understandable reason. Someone just doesn't like you. This is called a "peremptory challenge".

Finally, should you make the jury, you can still be sent home. A reason for this might be for bringing and reading a local newspaper article about the trial in the jury room or the courtroom. Holding a discussion group about the case during evening recess with other patrons of the local pub might also bring a quick banishment. In other words, you have to follow the rules laid down by the court.

I hope that your dream comes true. I also trust that you will take this responsibility very seriously. In the future, it may be your life or one of your loved one's which is dependent on the wisdom of 12 fellow citizens.

The Advisor

Dear Sherlock:

How would you answer a client's question about whether they should accept a settlement offer or continue with litigation? How do people decide which way to go?

Chante

Dear Chante:

I think that there is only one answer: tell him or her to discuss it with legal counsel. I think that to give that kind of advise might well be dangerous.

As to your question as to how people decide, it depends on the person. Some people are out for blood. They will never settle because they want to punish the other party and will drag out the situation until the opposition dies.

Another group is standing on principal. They would interpret any settlement, which they see as a compromise, as capitulating on deeply held beliefs. For them, it is a matter of proving right and no amount of settlement money will sway them. They want a judgement in their favor.

Others are more indecisive. If they might receive something, that is better than nothing. They will usually accept offers. Worryers are also more apt to reach an accord with their counterparts. The unknowns brought on by the unpredictableness of judges and juries will have them leaning towards a sure settlement rather than taking the chance of losing.

Yet another type of person might not handle stress well. And trials can be stressful. This group also tends to jump at the change of "getting this over with".

While the list can go on forever, two more common reasons come to mind: finances and lack of confidence. The cost of litigation can be quite high. With attorney fees averaging \$200 per hour, it might not be feasible to continue depending on the amounts in question. Likewise, if you are not confident of prevailing, well, what is that saying about a bird in hand?

In these decisions, it is best to limit yourself to providing quality information on the facts. Otherwise, stay on the sidelines and allow the affected party to weigh the options and make a decision for themselves.

Sherlock

Dear Sherlock:

Should an investigator be concerned about if his client is guilty or not guilty?

Susan

Dear Susan:

You are asking a question which has been and will continue to be argued forever. But if you will allow me, I believe that there is only one answer: No.

First, the decision of whether a person is guilty or not guilty is reserved to the judge or the jury. Just as no one has the right to interfere with your work, you should not be assuming the power of making this decision for them. Under our system of justice, all individuals in a criminal case are assumed to be not guilty until such time as their responsibility for a crime is proven beyond a reasonable doubt. Unfortunately for some, this idea does not sink in until they or one of their friends or family are falsely accused of some improper act. If you do not fully believe in that principal, you should not be involved in criminal cases. Legislators write laws, judges interpret them, and jurors - and jurors alone - need to decide if they were broken and by whom.

Secondly, the system demands that you keep in mind that once you can throw out a major brick in the foundation of the criminal justice system, you open the door to dismissing other important pieces. For example, if a fair and impartial trial should only be afforded to those whom we think are the "good guys", why not throw out some of the rules of evidence also. If the end justifies the means, hell, what is a little illegal wiretapping or a small amount of torture? After all, it is for a good cause.

What is the duty of an investigator? His obligation, regardless of which side he works for, it to ascertain facts and to document them in an appropriate manner. This documentation is then sent to others involved in the process,

each of which have their own focus and responsibilities. You, the investigator, are only one spoke in a large wheel. Hopefully, if all other “spokes” involved perform their respective duties in an unbiased and professional manner, justice will prevail.

Justice can be viewed in a variety of ways. For some, justice means that the guilty party is always detected and punished. That would be ideal but not probable. The system is made up of humans. And as such, errors will occur. There will be times when, unfortunately, an innocent party is found guilty. In these cases we need to ascertain which “spoke(s)” contributed to this mistake and make every effort to see that it is not repeated in the future.

I am guessing though, that your real concern is the possibility of a guilty person being set free. That does happen with far greater frequency than many would like. Why does this happen? It is really quite simple. Society as a whole has set a standard for the system. One of these standards - in a criminal case - is that the burden of proof must be “beyond a reasonable doubt”. If the proof does not reach this level, a jury must return an acquittal - a vote of not guilty. As I mentioned in a past column, this does not mean that the person did not commit the alleged act. On the contrary, no jury is ever asked to determine whether a person was innocent. Their sole charge is to decide whether a person is guilty under the law. And the law says, beyond a reasonable doubt. As a judge, I rendered not guilty verdicts when I had no doubt that the defendant was culpable. However, my charge was to decide whether the facts of the case met the legal requirement necessary for conviction. If it did not, the decision, while perhaps a little impalpable, was quite clear. To lower the barrier would only ensnare more innocent parties, something which we previously agreed was unacceptable. It is always better to allow a hundred guilty

to walk free than to falsely convict and punish the innocent.

One last thought. Call your local prosecutor and ask how many attorneys work for their office. In my county, the number is just under 700. Also, attempt to ascertain the number of police officers who make up the total compliment of law enforcement personnel in your county. In mine, that is just under 3,000 men and women who can be called upon to assist the Prosecuting or District Attorney.

What is the point? Defense counsel engages in a David vs. Goliath fight. Most defendants are guilty. Contrary to the opinion of some, law enforcement is generally competent. With 600 prosecutors and 3,000 police to call upon, it should be possible in nearly all cases to prove the guilt of those who truly are responsible. The concern should be for falsely accused.

Lined up against this state giant is usually one overworked attorney and a part-time investigator. If the state fails with these odds, there is a problem somewhere.

Granted, we all know that guilty parties are allowed to walk free due to some innocent error on the part of the state. Yet, those errors or technicalities must be a violation of the Constitution, which is no small matter. And with all the people to check and double check the evidence prior to the filing of charges, should these errors exist?

My suggestion is to perform the best gathering of information that you are capable of and then let the rest of the system play its role. We may not like the client or the outcome. However, we should all be content when the system works in a fair and impartial manner.

If you can not stomach the fact that the system might fail in bring a guilty defendant to justice, look to specialize in another area other than criminal defense.

Good luck on your cases.
Sherlock

Dear Sherlock:

Would you please refer me to a source where I can bone-up on the laws on monopolies and restraint of trade?
“Penny”

Dear Penny:

Sure can! Two statutes passed by the federal government are the foundation for the legal rules on these two subjects. They are the Sherman Antitrust Act and the Clayton Act. Now while this is the original legislation, you will also need to review federal appellate court decisions as different sections of these laws have been interpreted by the courts to have meanings which might not be evident from reading just the statute book.

DA

Dear Sherlock:

Many government licenses for PIs and security guards have a disqualifier for applicants convicted of crimes against moral turpitude. Any crime is against morals. What is really meant here?

Donald

Dear Donald:

The usual definition is crimes contrary to justice, honesty, modesty or good morals. The term signifies that there is an inherent quality of vileness, depravity or baseness. Examples would be child molestation, rape, exposing, etc. However, some states also include crimes such as forgery and robbery.

DA

