

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RIPPLE LABS INC., BRADLEY  
GARLINGHOUSE, and CHRISTIAN A.  
LARSEN,

Defendants.

Case No. 20-CV-10832 (AT) (SN)

**SECOND DECLARATION OF BRADLEY E. OPPENHEIMER  
IN SUPPORT OF DEFENDANTS' MOTION TO EXCLUDE  
THE TESTIMONY OF [REDACTED]**

I, Bradley E. Oppenheimer, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I am an attorney at the law firm of Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C., and counsel to Defendant Ripple Labs Inc. I submit this second declaration in support of Defendants' Motion To Exclude the Testimony of [REDACTED]

2. Attached as **Exhibit J** to this declaration is a true and correct copy of the Defendant's Rule 16 Disclosure in *United States v. Sayre*, No. 2:05-cr-00198-VBF, ECF No. 173-3 (C.D. Cal. July 15, 2008).

3. Attached as **Exhibit K** to this declaration is a true and correct copy of the Transcript of Proceedings in *United States v. Sayre*, No. 2:05-cr-00198-VBF, ECF No. 225 (C.D. Cal. Aug. 21, 2008).

4. Attached as **Exhibit L** to this declaration is a true and correct copy of the Order in [REDACTED].

I hereby declare under the penalty of perjury that, to the best of my knowledge, information, and belief, the foregoing is true and correct.

Dated: August 30, 2022  
Washington, D.C.

By: /s/ Bradley E. Oppenheimer  
Bradley E. Oppenheimer

KELLOGG, HANSEN, TODD,  
FIGEL & FREDERICK, P.L.L.C.  
Sumner Square  
1615 M Street, N.W., Suite 400  
Washington, D.C. 20036  
+1 (202) 326-7900  
boppenheimer@kellogghansen.com

# **Exhibit J**

LAW OFFICES  
OF  
**DAVID R. REED**  
(M. S. TAX)

3699 WILSHIRE BOULEVARD, SUITE 850  
LOS ANGELES, CALIFORNIA 90010  
Automatictrials@yahoo.com

TEL. (310) 854-5246

FAX (760) 342-7927

Richard Robinson  
Assistant United States Attorney  
312 N. Spring St.  
Los Angeles, CA 90012

June 24, 2008

RE: United States v Stephen C. Sayre; CR 05-198 VBF; RULE 16 Disclosure: Dr. Cornew

Dear Mr. Robinson:

You have the resume of Dr. Cornew. Dr. Cornew will provide his background to start his possible testimony. He will then testify as an expert on the operation of the U.S. stock market including OTC Bulletin Board stocks, methods of trading, market participants, and sources of information regarding stocks.

He will testify about the stock market for technology stocks in the late 1990s and early 2000, the dramatic growth in the price of most high tech stocks, and the rise of wireless communication technology.

He will testify generally about the common types of frauds that are perpetuated on the stock market, including brief discussions regarding methodologies of "pumps and dumps", "scalping", "stock price manipulation" and "short selling." He will also briefly describe "insider-trading" frauds.

He will testify about how the securities laws of the United States contain criminal statutes to control and punish the various aforementioned types of stock market schemes, and, generally, how code provision 15 U.S.C. 78(j), the "stock manipulation" statute incorporates the legal requirements of 17 C.F.R. § 240.10b-5. He will testify that before one can conclude a fraud occurred with respect to securities violations, one must analyze any purported fraud scheme in the context of all the circumstances of the particular case. He will testify that only through a full analysis of the facts can one can draw any conclusions on whether a scheme to defraud has occurred

He will testify that although stock market frauds can be placed into certain kinds of scheme categories, they are diverse in their factual manifestations. Once one analyzes the factual circumstances of a purported scheme, one must then determine whether the various legal elements required to be proven under 10b.5 are met.

He will testify that most of the common schemes, with the exception of insider trading and possibly manipulations, involve frauds in which statements about a company or its stock are made, or omissions occur about a stock, the company, or through some unique type of situation.

EXHIBIT 2

LAW OFFICES  
OF  
DAVID R. REED

He will testify that when statements are made, or omissions are claimed to have occurred, the statement or omission must be: (1) an untrue statement of a material fact, not just an opinion, and (2) the omission must be a failure to disclose a material fact that resulted in making defendant's overall statement misleading.

He will testify that whether a particular misstatement or omission is material is assessed from a reasonable investor's perspective. He will testify what a reasonable investor would be, e.g. not an expert on the stock market who makes his day to day living trading and researching stocks and companies, nor would it be the inexperienced person who has had little experience in the stock market and/or researching companies, rather the kind of person who practices reasonable due diligence before making an investment decision.

He will testify that the concept of whether an untrue statement is a material fact, or a failure to disclose a material fact is one which resulted in making the defendant's statement misleading, requires a factual inquiry into whether there is a substantial likelihood that an accurate disclosure would have been viewed by the reasonable investor as having significantly altered the "total mix" of information available to the public. He will then testify about what is considered the "total mix" of information in the market at any particular time. He will give examples of what would be informational releases making up a "total mix." He will give examples of how a total mix can be made up from one informational release to numerous informational releases. He will testify how a total mix can be broadened exponentially if the releases are disseminated throughout the world, e.g. through the world wide web, as opposed to smaller geographical areas.

He will testify that common methods of determining whether material statements or omissions have altered the total mix of information can be analyzed in two ways. For example, (1) reasonable investors can be queried directly to determine whether they indeed made investment decisions based on any purported statement or omission that is the subject of the total mix inquiry; (2) one can step back and look at the total mix of information being disseminated along with the statements or omissions at issue, then try to determine whether those statements or omissions would have had a substantial likelihood of altering the total mix of information available.

In using the second methodology, the so-called "step back and look" method, many things must be taken into consideration. The factual considerations include, but are not limited to, what was the reputation in the market place of the source of information making the false material statements or omissions at issue, were the statements or omissions coming directly from the company or from people reporting about the company (i.e. second-hand information), what was the reputation in the market community of the reporting entity, how many other reports were being disseminated in the market place at the time, was the total mix international in nature, and, very importantly, what was the nature of the statement or omission. There are many other factors as well.

He will testify about eConnect (ECNC); the company, its history, its purported activities, Thomas Hughes and the company's ultimate fate.

He will testify that he has reviewed Mr. Sayre's case, including but not limited to the indictment, researched the statutes for which Mr. Sayre is charged, has reviewed the charts that were prepared by Carl Knudson, has prepared his own charts regarding the case (these will be provided to the government shortly), and has reviewed and analyzed the total mix of information which was disseminated throughout the world at the time Mr. Sayre was publishing his IFR reports. He has analyzed the trading account of Silver Screen, which he understands was controlled by Mr. Sayre at the time he released the IFR reports, and he has reviewed the patterns of Silver Screen's trades in relation to the publication of IFR reports.

He will testify as to the impact of Silver Screen orders on the market and the activity of the market makers. He will state that the Silver Screen orders did not significantly impact prices in the market place.

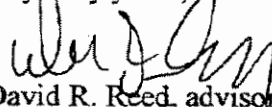
He will testify that the failure of Mr. Sayre to disclose his control of eConnect stock in the amounts set forth in the indictment when he released IFR opinions cannot be said beyond a reasonable doubt to have been material omissions, that is that there was a substantial likelihood that an accurate disclosure would have been viewed by a reasonable investor as having significantly altered the total mix of information available.

He will explain why the omission cannot be said to be a material omission within the total mix of information available to the public. He will explain the significance of other reports being released at the time into the total mix and discuss ones that could have had a significant impact on the total mix. He will discuss several of the other released reports, particularly earnings reports of eConnect.

He will conclude that in his opinion, the omission within the IFR opinion reports that Mr. Sayre failed to disclose that he controlled eConnect stock as he recommended it to investors for purchase would not be a material omission such that there would be a likelihood that an accurate disclosure would have been viewed by a reasonable investor as having significantly altered the total mix of information available in the market.

To repeat, Dr. Cornew is in the process of preparing charts and schedules to illustrate his opinions. We expect to show them to you no later than Monday of next week. Thank you.

Very truly yours,



David R. Reed, advisory counsel to Mr. Sayre

# **Exhibit K**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
HONORABLE VALERIE BAKER FAIRBANK  
UNITED STATES DISTRICT JUDGE PRESIDING

- - -

United States of America,            )  
  PLAINTIFF,         )  
  )            )  
VS.    ) NO. CR05-198VBF  
  )            )  
Stephen C. Sayre,                        )  
  DEFENDANT,        )  
\_\_\_\_\_)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA  
WEDNESDAY, JULY 16, 2008  
JURY TRIAL - DAY EIGHT

\_\_\_\_\_  
KATIE E. THIBODEAUX, CSR 9858  
U.S. Official Court Reporter  
312 North Spring Street, #436  
Los Angeles, California 90012



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF,

UNITED STATES OF AMERICA:      U.S. DEPARTMENT OF JUSTICE  
   U.S. ATTORNEY'S OFFICE  
   BY: RICHARD ROBINSON, AUSA  
   312 NORTH SPRING STREET  
   TWELFTH FLOOR  
   LOS ANGELES, CA 90012

FOR THE DEFENDANT:  
    STEPHEN C. SAYRE  
    DEFENDANT PRO SE

ADVISORY COUNSEL TO DEFENDANT:  
    DAVID REED

1           LOS ANGELES, CALIFORNIA; WEDNESDAY, JULY 16, 2008

2                           8:30 A.M.

3                           - - - -

4  
5  
6           (The following proceedings were held in open court  
7           outside the presence of the jury:)

8  
9           THE COURT: Good morning. It is 9:05. We can get  
10 started on jury instructions pertaining to the securities  
11 fraud charges.

12                   Last night at the request of defendant and his  
13 advisory counsel, I concentrated on reviewing and  
14 arriving at a tentative on the jury instructions  
15 pertaining to the securities fraud charges.

16                   After carefully reviewing the matter last  
17 night, I fail to see how and why the defense needed some  
18 resolution in the jury instructions before presenting  
19 their expert, but I did nevertheless prepare a two-page  
20 written tentative which I will go over with you now. Of  
21 course, this is just a tentative. The court will not  
22 finally resolve jury instructions until after all the  
23 evidence has been presented.

24                   I had my staff give each side a copy of the  
25 tentative rulings. I will go through them, and I will

1 invite argument by both sides as appropriate on the jury  
2 instructions.

3 Looking at the government's jury instructions  
4 first, beginning with instruction -- proposed instruction  
5 number 35, the court's tentative is to give that  
6 instruction.

7 Next, with respect to the government's  
8 proposed instruction 36, which is similar to the  
9 defendant's proposed instruction 32, as stated yesterday,  
10 the court's instruction is -- the court's tentative is to  
11 give a modified version of both instructions consistent  
12 with Ninth Circuit model instruction 9.7.

13 In other words, the court, looking at the  
14 government's proposed instruction 36, would give the  
15 government's proposed instruction 36 as presented.

16 Then, looking at the defendant's proposed  
17 instruction 32, the court would give certain of the  
18 additional paragraphs requested by the defendant which  
19 are taken from 9.7.

20 Looking at the defendant's proposed  
21 instruction number 32, lines 22 through 26, this is on  
22 page 35 of the defendant's submission, the court would  
23 give that instruction.

24 With respect to page 36, lines 1 through 3,  
25 the court questions whether that is necessary in light of

1 other parts of the instruction on page 35, lines 16 to  
2 17, and other instructions, but I will give lines 1  
3 through 3. I will consider giving it. And I would give  
4 on page 36 lines 5 and 6.

5 So essentially, the tentative is to give the  
6 government's and then -- proposed instruction 36 and then  
7 give the portion of defendant's proposed instruction 32,  
8 which adds to the government's. In other words, merge  
9 the two.

10 Next, continuing with the government's  
11 proposed instruction, the court's tentative is to give  
12 the government's proposed instructions 37, 38, 39, 40. I  
13 would hear argument on 41, but the tentative is to give  
14 it as requested. 42, tentative to give.

15 Government's 43, the tentative is to give the  
16 second paragraph, lines 9 through 12. I would ask for  
17 argument on whether the court should give the first  
18 paragraph. There is a question in my mind as to whether  
19 the first paragraph in the government's proposed 43 is  
20 necessary in light of the fact that the court is  
21 essentially giving model -- Ninth Circuit model jury  
22 instruction 9.7, which is contained in the blended  
23 version of the government's 46 and the defendant's 33.

24 The court would give government's proposed 44,  
25 45, and then we get to the government's proposed 46 which

1 pertains to the definition of material.

2 MR. REED: And this is the big area, Your Honor.

3 THE COURT: And I realize that from looking at the  
4 papers, but, again, in considering the matter, I feel  
5 that the argument that the court needed to decide these  
6 and recess early and decide these before the expert  
7 testimony continued lacked credibility, but,  
8 nevertheless, out of an abundance of caution, I took a  
9 break yesterday, and I am reviewing these now.

10 So looking at the government's proposed 46 and  
11 the defendant's proposed 33 as set forth in the court's  
12 tentative, the court would give the government's proposed  
13 46 with a possible modification of paragraph 3 of the  
14 government's 46.

15 The instruction, government's proposed 46,  
16 particularly paragraphs 1 and 2 of the instruction, finds  
17 support in the case law, including TSC Industries, U.S.  
18 versus Brooks, U.S. versus Tarrallo, T-A-R-R-A-L-L-O.

19 And I would also refer to the Zweig case,  
20 Z-W-E-I-G, 594 F2nd 1261 at 1266. In that case, the  
21 Ninth Circuit stated: "The appropriate test for  
22 materiality of an admitted fact is whether there is a  
23 substantial likelihood that a reasonable investor would  
24 consider the fact important in making his or her  
25 decision."

1           The government's proposed 46 is more  
2 consistent with model instruction 9.7 than the  
3 defendant's proposed 33. The court would tentatively  
4 reject the defendant's proposed 33 as not necessary. The  
5 concept set forth in defendant's 33 relating to the  
6 definition of materiality are more appropriately covered  
7 by the government's and more accurately covered by the  
8 government's proposed instruction 46.

9           So the tentative would be to grant the  
10 government's proposed 46, though I have a question as to  
11 the third and last paragraph, and deny the defendant's  
12 proposed 33 as unnecessary and adequately covered and  
13 more appropriately covered by the other instructions.

14           Of course, however, the defendant can argue  
15 total mix to the jury and can make that -- can make an  
16 argument relating to total mix, but it is not necessary  
17 to have this in an instruction.

18           Then, with respect to the government's 47, the  
19 tentative is to give.

20           With respect to the government's 48 regarding  
21 the term willfully, the court's tentative is to give the  
22 government's proposed 48 and to refuse the  
23 defendant's 40.

24           The government's instruction accurately states  
25 the law and is supported by the case law cited, including

1 the Tarrallo case, 379 F.3d 1174. The defendant's  
2 proposed instruction number 40 lacks support and, in  
3 fact, is misleading in certain respects, for example, to  
4 the extent it implies that knowingly is required.

5 Then, looking at the rest of the government's  
6 instructions as to the substantive issues, the court's  
7 tentative is to give 49, 50. The court would give 51 but  
8 questions whether it is applicable. I assume it is, and  
9 it is based upon Ninth Circuit model instruction 5.9. So  
10 I would give it as requested tentatively. Same with  
11 respect to -- the court would give 52.

12 With respect to the government's proposed  
13 instruction 53, which is based on the Ninth Circuit model  
14 instruction 4.17, the court would give this instruction,  
15 53.

16 MR. ROBINSON: Your Honor --

17 THE COURT: But it seems to be a duplicate of 50.

18 MR. ROBINSON: I'm sorry, Your Honor. I was going  
19 to point that out. It was a mistake. We duplicated it.  
20 It wouldn't apply.

21 THE COURT: All right. So 53 is withdrawn.

22 Then, 54 I would give. There was an extra  
23 page 58, so that would be disregarded. 55, the  
24 government's proposed 55, I would give, and this seems to  
25 be the same as the defendant's 28.

1           Then turning to the defendant's proposed  
2 substantive instructions, the court would -- has already  
3 addressed 32 and 33. I would give part of 32 as stated.

4           I would tentatively reject defendant's 33.

5           With respect to the defendant's 34, the  
6 court's tentative is to refuse. I find the lack of  
7 support -- legal support for this instruction, having  
8 read the cases cited.

9           With respect to 35 and 36 of the defendant's  
10 proposed instructions, the court's tentative is also to  
11 refuse, finding these are essentially redundant, they are  
12 not necessary, and that they duplicate other instructions  
13 that the court is giving.

14           With respect to the defendant's 37, the  
15 court's tentative is to refuse. There is a lack of  
16 support for this instruction. Furthermore, the  
17 instruction is unnecessary especially in light of the  
18 other instructions which the court intends to give, and I  
19 would refer to the Ninth Circuit case of SEC versus Rana  
20 Research, 8 F.3d 1358 at 1362.

21           With respect to instruction 38, the  
22 tentative is to refuse this instruction as worded. The  
23 last sentence of the instruction, for example, is  
24 over-inclusive and inaccurate and inappropriate to the  
25 extent it tells the jury how to look at certain evidence.



1 The last sentence reads: "Thus, for example, statements  
2 that are optimistic predictions for a company's  
3 performance are not misstatements of material facts about  
4 a company or its stock." That is not accurate. It is  
5 over-inclusive, and it is instructing the jury on how  
6 they should consider the evidence. And those kinds of  
7 instructions are not proper.

8 I would also refer to the case of U.S. versus  
9 Smith and the Tarrallo case, U.S. versus Smith at page  
10 1051 in particular.

11 With respect to the defendant's proposed 39,  
12 the court's tentative is to refuse. There is a lack of  
13 support for giving this instruction to the jury in this  
14 case. The cases cited do not support giving this  
15 instruction.

16 With respect to 40, the court would --  
17 defendant's proposed 40, the court would also deny.

18 With respect to 41, the court would deny.  
19 This instruction is not necessary. It is more  
20 appropriately addressed in plaintiff's proposed 51 which  
21 is based upon model jury instruction 5.9.

22 With respect to 42, I would hear argument from  
23 both sides. I don't have a tentative on defendant's 42.

24 With respect to 43, the court would refuse as  
25 worded, noting that the instruction appears incomplete

1 and inaccurate. In any event, I would not advise the  
2 jury the Ninth Circuit has held. But I will hear  
3 argument as to 43.

4 With respect to 44, I would also hear  
5 argument. I question whether there is sufficient legal  
6 support for giving this instruction, and I question  
7 whether there is a factual basis for the instruction, in  
8 any event. So I would hear argument on 44.

9 On 45, I would refuse as unnecessary. It is  
10 repetitive and covered adequately by the other  
11 instructions.

12 These appear to be the only disputed  
13 instructions. As to the introductory instructions, both  
14 sides essentially proposed the same instructions.

15 Mr. Robinson, before I turn to the defense,  
16 I would ask you if the government has any questions or  
17 clarification.

18 MR. ROBINSON: May I have a moment just to review  
19 my notes, Your Honor?

20 THE COURT: Sure. I will take a couple minute  
21 break, if you like, both sides. We will start at 9:30 as  
22 soon as the jury is here.

23 MR. SAYRE: Your Honor.

24 THE COURT: Yes.

25 MR. SAYRE: If I could address the issue

1 regarding -- regarding jury instruction 33 because the  
2 evidence is overwhelming --

3 THE COURT: Why don't I take a couple of minute  
4 break, and then we will get to that. I will make sure  
5 that we have at least five minutes before we start.

6 THE CLERK: This court is in recess.

7 (Brief recess.)

8 THE COURT: Mr. Robinson -- I am noting that both  
9 sides are here -- any questions regarding the court's  
10 tentative -- and I would state it is just a tentative --  
11 or any clarification?

12 MR. ROBINSON: No, Your Honor. I think that, if I  
13 may, I could just respond to the court's position.

14 With respect to government's instruction 36 as  
15 modified, the government has no objection to the court's  
16 modification but agrees with the court that the second  
17 paragraph from defendant's instruction that refers to  
18 whether the false statement went through the mail is  
19 probably not necessary under the facts of this case and  
20 in light of other instructions we have. And so I would  
21 suggest that we don't use that second paragraph of  
22 defendant's 42, but we use the first and the third  
23 paragraphs which the court wanted used.

24 I would just note, Your Honor, that lack of  
25 reliance was covered in a different government

1 instruction, but if the court prefers to consolidate it  
2 into one, we have no objection to that. So we are fine  
3 with that, Your Honor.

4 With respect to government's 43, the court, I  
5 believe, indicated that the first paragraph seemed to be  
6 redundant with other instructions, but the second  
7 paragraph is okay. That is fine with the government,  
8 Your Honor.

9 THE COURT: All right.

10 MR. ROBINSON: And then with respect to  
11 government's instruction number 46, the third paragraph,  
12 Your Honor was not convinced that the case law clearly  
13 supported that third paragraph. And, frankly, Your  
14 Honor, I have only quickly read the cases that we cited,  
15 but I would invite the court's attention to a passage in  
16 the Supreme court's decision in TSC Industries, which is  
17 one of the cases we cited.

18 THE COURT: All right.

19 MR. ROBINSON: And, Your Honor, at page 2130 of  
20 that opinion, next to headnote 1, the court says: "The  
21 question of materiality, it is universally agreed is an  
22 objective one involving the significance of an admitted  
23 or misrepresented fact to a reasonable investor.  
24 Variations in the formulation of a general test of  
25 materiality occur in the articulation of just how

1 significant a fact must be, or, put another way, how  
2 certain it must be that the fact would affect a  
3 reasonable investor's judgment."

4 And so, Your Honor, I think that that does  
5 support the third paragraph where it says the question is  
6 whether it had a capacity or potential to influence the  
7 person's decision.

8 The first part which says the test is not  
9 whether somebody actually made a decision or lost money  
10 based on the act, I think is well supported in the law,  
11 including the Ninth Circuit instruction on securities  
12 fraud. So mainly, this latter portion of the paragraph I  
13 assume the court is concerned about --

14 THE COURT: Right.

15 MR. ROBINSON: -- about whether it had a capacity  
16 or potential to influence a person's decision. And I  
17 think that is supported by TSC Industries, in particular  
18 the passage I just quoted before.

19 THE COURT: All right. Thank you.

20 Mr. Sayre, as to the court's tentative, I  
21 would invite your response as appropriate.

22 MR. SAYRE: Yes, Your Honor. As you heard,  
23 Mr. Robinson redundantly cited TSC Industries. That is  
24 exactly where the quote from our jury instruction 33  
25 comes from. It is replete throughout every district

1 court --

2 THE COURT: I read that case, and I found that  
3 quote. The question in my mind is simply because there  
4 is a statement in a case, does that support giving the  
5 instruction, quoting that statement? I found not in this  
6 instance.

7 MR. SAYRE: Your Honor, this involves a news  
8 release. How could it be more appropriate, the total mix  
9 instruction? If I could just please make the statements  
10 here and go through this.

11 THE COURT: Sure.

12 MR. SAYRE: The following quotation is from 15  
13 USCS --

14 THE COURT: Please, Mr. Sayre --

15 MR. SAYRE: Yes.

16 THE COURT: -- if you want a record, slow down.  
17 The court reporter can't follow that, you reading  
18 quickly.

19 MR. SAYRE: I just wanted to make sure I could get  
20 the information in, but I will slow down. The following  
21 quotation is from 15 USCS, Section 78(j), commentary  
22 section of the United States Code Service 2007.

23 "To assert a viable section 10(b) claim,"  
24 which is exactly what we are dealing with here, "the  
25 plaintiff must establish a number of elements. First,

1 any misstatement or omission must be material. Whether a  
2 particular misstatement or omission is material involves  
3 a factual inquiry into whether there is a substantial  
4 likelihood that an accurate disclosure would have been  
5 viewed by a reasonable investor as having significantly  
6 altered the total mix of information." Couldn't be much  
7 more clear, that comes directly from the --

8 THE COURT: Correct. And you elaborate on this in  
9 your proposed jury instructions, the argument with  
10 respect to defendant's proposed jury instruction 33  
11 contained in the defendant's filing at pages 37 through  
12 40.

13 MR. SAYRE: Yes, Your Honor. And the key issue,  
14 as I mentioned previously, is that this is clearly and  
15 unequivocally a total mix case. If there is another case  
16 that would be a total mix case above and beyond this one,  
17 I would like to know about it because I don't know of  
18 one --

19 THE COURT: As I stated in my tentative, your  
20 witnesses can refer to total mix, you can argue total  
21 mix, but it is not necessary or appropriate to instruct  
22 the jury on total mix. A jury instruction using the  
23 language total mix is not necessary or appropriate.  
24 Materiality is adequately covered and more appropriately  
25 covered by the government's proposed instruction 46.

1 MR. SAYRE: May I answer that?

2 THE COURT: In -- for example, in argument,  
3 counsel for both sides could tell the jury, in deciding  
4 materiality, you can consider all the facts and  
5 circumstances presented by the evidence. That is what I  
6 mean by total mix.

7 But please continue, Mr. Sayre, and then I  
8 will give Mr. Robinson an opportunity to respond.

9 MR. SAYRE: What Mr. Robinson is clearly doing,  
10 and it is unequivocal, he is citing half the materiality  
11 definition of the case law being used. I see no logical  
12 reason why that should be done just to prejudice the  
13 defendant. That is clearly what is being done. Why  
14 would we cite half of a quotation from a Supreme court  
15 case law? That seems absurd and outrageous.

16 Now, it goes on -- and if you are questioning  
17 whether or not it is in civil case law Ninth Circuit, it  
18 clearly is because there is a long list. You cited U.S.  
19 versus Smith. They cite TSC and Basic, and they quote  
20 exactly the same quote that I quoted from the U.S. Code  
21 Service.

22 And then we go on to the other case law which  
23 is cited in the jury instruction itself, and I will turn  
24 to that page. This is the government's exhibit. We have  
25 U.S. versus Reyes, District court in the Ninth Circuit;



1 U.S. versus Smith, Ninth Circuit; U.S. versus Bringham,  
2 Ninth Circuit; U.S. versus Margala, Ninth Circuit; U.S.  
3 versus DiIanni. And those are the criminal case laws  
4 that cite TSC and/or Basic, which is identical as far as  
5 the issue of materiality.

6 My question is, why should we simply cut off  
7 half the definition of materiality to support the  
8 prosecution? It seems a bit outrageous because this is a  
9 total mix case.

10 THE COURT: Thank you. Mr. Robinson.

11 MR. ROBINSON: Your Honor, this may take more than  
12 a couple of minutes.

13 THE COURT: I am going to ask my clerk to check on  
14 the jurors. A few minutes ago, I was advised that we  
15 still had two jurors missing. I do not want to keep them  
16 waiting. It is not necessary. So as soon as the jurors  
17 are here, let me know, and we will start, Ms. Bradshaw.

18 Mr. Robinson.

19 MR. ROBINSON: Thank you, Your Honor. I just  
20 wanted to say that in case I get cut off, I would like to  
21 pick up later, if I have an opportunity.

22 Your Honor, the government made this point in  
23 its motion in limine, and I would stress it again here.  
24 The language that references total mix which appears in  
25 numerous securities fraud cases is not disputed by the

1 government. We are not saying that that phrase does not  
2 appear in the cases, Your Honor.

3           What we are saying, first of all, is that in  
4 the context of the securities fraud charged in this case  
5 which concerns a scheme to defraud involving false and  
6 misleading investment opinions in which the information  
7 which is false and misleading does not concern the  
8 company being touted, namely, e-Connect, but instead  
9 concerns the independence, objectivity, lack of conflict  
10 or interest of the person, or in this case the  
11 corporation that the person controls touting the stock,  
12 that that presents a different context.

13           So the total mix analysis which the defendant  
14 wants to use here which does not focus on whether or not  
15 the omission or misleading statements in that -- in those  
16 opinions about the defendant's objectivity, honesty and  
17 lack of conflict of interest, if there is any total mix,  
18 it goes to that information, Your Honor. It does not go  
19 to all the other news releases that may have been out on  
20 the Internet concerning e-Connect.

21           The problem with the defendant's analysis is  
22 they take it so far as to say it is in the total mix,  
23 begging the question, the total mix as to what? The  
24 government submits that the only total mix that matters  
25 here is the total mix of information which would reveal

1 whether or not defendant's opinions were misleading and  
2 whether they were important and whether the misleading  
3 information would have been important to an investor or a  
4 potential investor reading those opinions.

5           The problem with defendant's analysis is  
6 essentially he is claiming that if -- he can cite  
7 thousands. He cited less than a hundred. But if he  
8 could cite thousands and thousands and thousands of  
9 articles on the Internet about e-connect as the total  
10 mix, somehow that drowns out his fraudulent conduct in  
11 presenting those investment opinions.

12           And I defy him to cite a single case in which  
13 the court has ever recognized a defense to the kind of  
14 securities fraud claim that we have here about a  
15 fraudulent representation relating to the capacity and  
16 the lack of conflict of interest of somebody touting the  
17 stock, where any court has ever said, oh, you can defend  
18 on materiality in a case like that by just talking about  
19 how many other people are discussing, not you, but the  
20 company.

21           So, Your Honor, not only do we think that a  
22 jury instruction on total mix that would contemplate  
23 allowing the defendant to argue that his fraud is drowned  
24 out by the fact that other people wrote not about him,  
25 not about IFR, but about e-Connect, misstates the law and

1 would mislead the jury.

2           And the absurd practical consequences of that  
3 standard would be, how would you prove securities fraud  
4 if you were dealing with Microsoft or Apple, a company in  
5 which there is countless things on the Internet or in  
6 publications at any given time? Would that be the total  
7 mix in deciding whether a defendant charged with  
8 securities fraud had engaged in a scheme to defraud by  
9 giving investment opinions, simultaneously trading  
10 against those investment opinions and not revealing what  
11 he was doing? I would say no, Your Honor. That defies  
12 common sense.

13           So the government has a fundamental objection  
14 to the use of the total mix to contemplate information  
15 that relates not to defendant and the IFR opinions and  
16 whether or not they are false and misleading or  
17 important, but instead to just what people are saying  
18 about e-Connect.

19           There is no support that I have seen in the  
20 thousands of pages I have read of those cases that he has  
21 cited where a defense was ever raised and approved by any  
22 court that allowed the total mix analysis to be applied  
23 in that fashion. So that is our problem with total mix,  
24 Your Honor.

25           THE COURT: Thank you. Mr. Sayre.

1           And I would ask -- I understand we still have  
2 one juror missing; is that correct?

3           THE CLERK: Yes, Your Honor.

4           THE COURT: Yes, Mr. Sayre.

5           MR. SAYRE: Your Honor, his argument is totally  
6 erroneous. First of all, the definition of materiality  
7 is what we are dealing with here. Not his definition,  
8 but TSC's definition by his own insistence. He is  
9 cutting the definition in half, and he is justifying it  
10 because he wants to call the fact that I omitted an  
11 irrelevant fact a fraud. And since I committed  
12 Mr. Robinson's fraud, I have no right to defend myself.  
13 This is clearly what is being said. It is ludicrous.

14           Now, in regard to there being no precedent,  
15 there is no precedent for a case like this. I challenge  
16 Mr. Robinson to even find a case that vaguely represents  
17 somebody who omitted a fact, who managed a company, had  
18 an investment in the company he is writing about. It  
19 doesn't exist because I read all the case law.

20           MR. ROBINSON: The court has already ruled to the  
21 contrary, Your Honor, as the court may recall on his  
22 motion about materiality.

23           MR. SAYRE: If I could speak to this issue?

24           THE COURT: Yes, Mr. Sayre.

25           MR. SAYRE: And then in regard to the materiality

1 issue, we have Apple Computers, he was asking how can  
2 Apple Computers determine total mix in the case law, and  
3 he says it doesn't exist. It is right here in Ninth  
4 Circuit. They determined that clearly false and  
5 misleading statements about the CEO and president were  
6 not misleading because of the total mix of information on  
7 the market, so that is clearly another false statement.  
8 It is clearly here. It is Apple Computers, 672 F.Supp at  
9 1561. It was dismissed by a motion to dismiss it. It --

10 THE COURT: I'm sorry. Would you state that cite  
11 again?

12 MR. SAYRE: It was 672 F.Supp at 1561.

13 THE COURT: All right.

14 MR. SAYRE: And this case law is specifically what  
15 he is saying does not exist. And it clearly does exist.

16 And in regard to the issues related to this  
17 case, the total mix is the entirety of the case because  
18 the defendant in any case such as this couldn't possibly  
19 have the intent unless the omission was material, because  
20 if it wasn't a material omission, he couldn't have had  
21 the intent to influence the market. This is the whole  
22 purpose of total mix.

23 He is trying to clearly misconstrue the law,  
24 and he is trying to quote half of the total mix  
25 definition, TSC and Basic, which are the two Supreme

1 court decisions that every district court and every Ninth  
2 Circuit court uses as a definition of materiality in  
3 cases where there were press releases released.

4 THE COURT: Thank you.

5 MR. ROBINSON: Your Honor, I could just respond to  
6 Apple, and that is all I will say. Your Honor, I have  
7 read the Apple case. The Apple case was a puffing case.  
8 It was a case in which the securities fraud had to do  
9 with vague and overly optimistic projections about how  
10 certain Apple products would work.

11 And in that context, which is completely  
12 different than the context we have here, the court looked  
13 at whether the total mix of information that the market  
14 knew about Apple's products would make them false and  
15 misleading.

16 And so I would grant that if the question is  
17 somebody has puffed up a description about a company's  
18 product and in the total mix of the marketplace there is  
19 ample information that is just puffing and would not  
20 mislead anybody, then the total mix can apply. But that  
21 is not the context which we are addressing in this case.  
22 Apple provides no help to the defendant.

23 MR. SAYRE: Your Honor, if I could just make  
24 one last statement in regard to this same issue.  
25 Clearly, it still goes to intent. He is trying to

1 whitewash the Apple Computer situation. They stated very  
2 clearly, "Lisa is going to be phenomenally successful in  
3 the first year out of the chute."

4 THE COURT: Wait. Please slow down when you read  
5 from a document for the reporter.

6 MR. SAYRE: Mr. Jobs, the CEO and president, and  
7 the other principle executive for Apple Computers, made  
8 the following two statements which they knew to be false:  
9 "Lisa is going to be phenomenally successful in the first  
10 year out of the chute." They knew that they couldn't get  
11 even get this system operating at this point, and they  
12 didn't even know if there was any possibility of  
13 marketing this product. And this is in the case law.

14 Then the other statement that was made and  
15 quoted in the Wall Street Journal, not some unknown  
16 article, omitting a fact that somebody managed the  
17 company and whatever remote theory that Mr. Robinson has  
18 devised, "This division that developed Lisa is going to  
19 make Apple's growth before this look small." They said  
20 this knowing that it was not likely that they could even  
21 successfully market this product. It was a clear and  
22 intentional lie. It had nothing to do with puffing.

23 THE COURT: The court's tentative remains. The  
24 court will give the government's proposed jury  
25 instruction 46 and refuse the defendant's proposed jury



1 instruction 33 for reasons set forth in the court's  
2 tentative and as further articulated by the prosecutor,  
3 Mr. Robinson, this morning. I find his points are all  
4 well taken and supported by the law.

5 The tentative will be filed and served as a  
6 tentative along with a more thorough minute order  
7 explaining the court's tentative on these issues.

8 We are still waiting for one juror. That  
9 juror's family has confirmed that he should be here soon,  
10 so it should be a couple of minutes. We will take a  
11 break and then start as soon as that juror is here.

12 Thank you very much.

13 MR. ROBINSON: Thank you, Your Honor.

14 THE CLERK: This court is in recess.

15 (Brief recess.)

16 THE COURT: The jurors are all here, and we will  
17 get started.

18  
19 (The following proceedings were held in open court  
20 in the presence of the jury.)

21  
22 THE COURT: Good morning, ladies and gentlemen. I  
23 note the presence of the jurors, counsel and parties for  
24 both sides, and the witness has returned to the witness  
25 stand.

1                   Sir, I would remind you that you were  
2 previously sworn and you are still under oath. Would you  
3 state your name again for the record?

4                   THE WITNESS: Carl R. Knudson.

5                   THE COURT: Thank you, Mr. Knudson.

6                   Mr. Sayre, please continue.

7

8                   DIRECT EXAMINATION (Res'd)

9 BY MR. SAYRE:

10 Q           We left off with a few questions regarding your  
11 experience and such. In addition to your work with the  
12 IRS and the U.S. Treasury Department as a special agent,  
13 you worked with the CIA and Naval Intelligence as well,  
14 did you not?

15 A           Yes, I did.

16           MR. SAYRE: I think if the reporter might be able  
17 to indicate where we left off, I am having trouble --

18           THE COURT: No, that is not appropriate, but I  
19 believe yesterday when we adjourned, the witness had been  
20 asked questions regarding 2291, Exhibit 2291.

21           MR. SAYRE: Oh, yes.

22           THE COURT: And he was discussing how 2291 was  
23 prepared, the number of releases before the first IFR,  
24 referring to page 3, 2291, and a redacted version of 2291  
25 was admitted into evidence and permission was given to

1 publish it to the jury.

2 MR. SAYRE: Okay. Well, I am going to try to  
3 figure it out because 2291 is several pages.

4 Q I will just start and you tell me if you have  
5 answered these questions. Does your Exhibit 2291 list  
6 other press releases issued by e-Connect and Prima  
7 Capital during the same time period?

8 A Yes, they do.

9 Q And does your analysis indicate whether Silver  
10 Screen Industries purchased or sold e-Connect stock  
11 immediately before or after its second release?

12 A The second release from IFR occurred on March 1st,  
13 2000, 6:03 a.m. in the morning, and the closest purchase  
14 of Silver Screen stock occurred on the 28th,  
15 February 28th, at 9:43 in the morning. So when you ask  
16 immediate, I would say no.

17 Q And does your Exhibit 2291 show that Silver Screen  
18 Industries subsequently sold their stock in e-Connect?

19 A Yes, they did. Look at page 3 of Exhibit 2291, and  
20 the green shaded area indicates a sell of Silver Screen  
21 stock on March 2nd. All of their holdings were sold  
22 within about 30 minutes, between 11:00 o'clock --  
23 11:00 o'clock on March 2nd.

24 Q Does your Exhibit 22291 show the price that the  
25 stock was being sold at?

1 A Yes, it does.

2 Q Does your Exhibit 2291 show that the price of  
3 e-Connect was falling from \$4.43 per share to  
4 approximately \$3.5 per share during that same time  
5 period?

6 A Yes, it does.

7 Q So after IFR released the March 1st, 2000 release,  
8 did the price ultimately fall on March 2, 2000?

9 A Yes, it did.

10 Q Did Silver Screen make a profit from their sale of  
11 e-Connect?

12 A Yes, they did.

13 Q Does your profit calculation coincide with the  
14 profit number provided by Mr. Loveman?

15 A Yes. If you'd look at Exhibit 2291 and you look at  
16 the last row colored in green, you will see in the  
17 running proceeds without fees, because there is a profit  
18 calculation of \$246,679.92.

19 Q And drawing your attention to 2291 at page 3, the  
20 last row, does this row show a purchase of e-Connect  
21 stock by Silver Screen?

22 A Yes, it does. The last two rows show that there  
23 were approximately 80,000 shares of Silver Screen -- of  
24 e-Connect purchased by Silver Screen.

25 Q And so would it be fair to say that Silver Screen

1 purchased e-Connect stock back -- I'm sorry, let me  
2 restate that.

3           Would it be fair to say that Silver Screen  
4 purchased the e-Connect stock back the day after it had  
5 sold the e-Connect stock?

6           MR. ROBINSON: Objection. Leading.

7           THE COURT: Sustained.

8 Q   BY MR. SAYRE: What occurred in the trading in those  
9 two days, the March 2nd and the March 3rd trades?

10 A   March 2nd, Silver Screen sold their complete  
11 holding in e-Connect stock, and then March 3rd -- let me  
12 clarify that. They sold 96,100 shares on March 2nd. And  
13 on March 3rd, they purchased 80,000 shares of e-Connect  
14 stock.

15 Q   Was Silver Screen purchasing stock that was  
16 increasing in value?

17 A   The purchase on the 3rd shows that the stock was  
18 selling at -- or was purchased at \$4.6562 per share, and  
19 the second purchase of 56,900 shares was purchased at  
20 \$4.6875, so the stock was rising at that point.

21 Q   So the difference between the shares was 96,100  
22 shares were sold, 80,000 shares were purchased. What was  
23 the total sell and buy amounts? What was the total  
24 amount of the sale, and what was the total amount of the  
25 buy-back on the 3rd?

1 A Well, the difference between 96,180, just as a  
2 point of clarification, there were additional purchases  
3 of e-Connect stock a few days later which brought the  
4 total holding up to 81,200.

5 I have done a rough calculation, and I think  
6 the difference is 14,900 shares that was the difference  
7 between when they sold it at 96,100 and when they  
8 purchased it back at 81,200.

9 Q So the difference in purchase price and sale price  
10 in total, is that calculated on the chart? In other  
11 words, the sale on March 2nd was for what total gross  
12 amount?

13 A It was 246,000. Those were the sells.

14 Q And what was the repurchase total?

15 A The repurchase totals were 266,000 plus 7000.  
16 About 273.

17 Q So significantly higher to buy less stock?

18 A Yes.

19 Q And what was the dollar amount per share that  
20 Silver Screen purchased e-Connect stock for on March 6,  
21 2000?

22 A If you go to it page 4 --

23 Q Page 4, yes?

24 A -- of Exhibit 2291, you will see color coded purple  
25 right in the middle of the chart. And there are

1 two purchases on March 6th for 500 shares and 700 shares,  
2 and they were purchased at \$7.10 per share.

3 Q Therefore, Silver Screen was continuing to purchase  
4 e-Connect stock despite the fact that the market on the  
5 stock was rising?

6 MR. ROBINSON: Objection, Your Honor. Leading.

7 THE COURT: Sustained.

8 Q BY MR. SAYRE: What was Silver Screen doing under  
9 these circumstances when it was purchasing stock for a  
10 greater value? Can you simply describe what was  
11 happening at that time in regard to the pricing and the  
12 increase in pricing and what Silver Screen Industries  
13 was doing regarding its trading activity?

14 A Well, the -- Exhibit 2291 shows that Silver Screen  
15 was continuing to purchase a small amount at a higher  
16 rate.

17 Q The total buy-back was significantly greater than  
18 the sale previously?

19 MR. ROBINSON: Objection. Leading.

20 THE COURT: Sustained.

21 Q BY MR. SAYRE: All right. Was the sale on March 2nd  
22 significantly less than the purchase price on March 3rd?

23 A Yes. If you look at the colored shaded green on  
24 page 3, you can see that the sales of Silver Screen were  
25 at the top of \$4.4 per share, and the last entry is 3.5

1 for 33,700 shares. So they are -- Silver Screen is  
2 selling stock in a declining market or at least at a  
3 declining profit.

4 And when they then start repurchasing the  
5 following day, they are buying it back at \$4.06, or 60  
6 cents per share, which is an indication that the market  
7 is on the upswing again and they are paying more.

8 Q So this -- was this sell on March 2nd and there is  
9 a buy-back on March 3rd strategically or mathematically  
10 practical?

11 MR. ROBINSON: Objection. Leading, vague and  
12 ambiguous. Calls for speculation as to strategy.

13 THE COURT: Sustained.

14 Q BY MR. SAYRE: Would this have led to a loss of  
15 potential profit in the future?

16 A Yes.

17 MR. ROBINSON: Objection. Ambiguous.

18 THE COURT: Sustained. Lack of foundation as  
19 well.

20 Q BY MR. SAYRE: When was the next IFR release,  
21 according to your Exhibit 2291?

22 A The next release after March 1st was on March 3rd.  
23 That is at the top of page 4 on Exhibit 2291.

24 Q According to this exhibit, where were the other  
25 press releases -- were there other press releases issued



1 during that same period of time?

2 A Well, there was the press release we just talked  
3 about on March 1st.

4 Q Oh, no. I am referring to other companies' press  
5 releases.

6 A Oh, yes. Yes, there were. I mean, there were --

7 Q Where would we find that information?

8 A On March 3rd, if you just look at the date and you  
9 look at the press releases associated with that date, you  
10 will see that there are a number of businesses issuing  
11 releases with respect to the e-Connect stock.

12 Q Could you read those press releases for the jury,  
13 which ones were released on that same day?

14 A I -- I can read you the headline, but I --

15 Q Yes, that would be preferable.

16 MR. ROBINSON: Your Honor, I would object that the  
17 underlying press releases haven't been offered into  
18 evidence or were admitted.

19 THE COURT: Sustained. And Exhibit 2291 has been  
20 admitted into evidence and speaks for itself.

21 Q BY MR. SAYRE: We will continue while we are putting  
22 together the appropriate information for the exhibit.

23 What was the --

24 MR. SAYRE: We are going to have the same issue on  
25 this question, then. Actually, almost all these next

1 questions pertain to that exhibit. So we will -- I think  
2 in just a few minutes we will have this --

3 Your Honor, I would like to ask the court to  
4 introduce Exhibit 2001.

5 THE COURT: 2001 will be marked for  
6 identification.

7 MR. SAYRE: Thank you, Your Honor.

8 Q And, Mr. Knudson, you are reviewing the total mix  
9 at this time; is that correct? Do you have a copy of  
10 it --

11 A Yes. I am reviewing the press releases that are  
12 marked under Exhibit 2001.

13 Q And have you previously reviewed those press  
14 releases?

15 A Yes, I have.

16 Q And those press releases you currently have in  
17 front of you are accurate representations of the previous  
18 press releases you had reviewed?

19 A Yes. These are the press releases that are  
20 evidenced by the Bates number on Exhibit 2291.

21 Q Government discovery?

22 A Yes. And also the press releases that I recovered  
23 from the Internet that I previously talked about.

24 Q That have been stipulated to, I believe.

25 And the charts, these charts represent a

1 synopsis of the press releases that you have currently as  
2 Exhibit 2001; is that correct?

3 A Yes.

4 MR. SAYRE: Your Honor, I would like permission to  
5 introduce Exhibit 2001 into evidence.

6 THE COURT: Any objection?

7 MR. ROBINSON: No objection, Your Honor.

8 THE COURT: Admitted.

9 Q BY MR. SAYRE: Mr. Knudson, were we going to  
10 reference the first bar chart on February 29, or which  
11 exhibit were we referring to?

12 A I believe if you look on page 4 of 2291, we are  
13 talking about a bar chart release with Bates number 3085.

14 Q Okay. 3085. All right. We are locating that.

15 Could we continue without the actual article,  
16 possibly? What is the headline for barchart.com on that  
17 particular date?

18 A Historical opinion for e-Connect. I recall this  
19 release if you wish to ask questions about it.

20 Q It is the March 3rd bar chart that you were  
21 referring to in the chart?

22 A Yes. I have a copy of it if you would like.

23 Q Possibly that would be best. We will have to get  
24 it for you.

25 MR. SAYRE: Your Honor, if I could ask the clerk

1 to bring the copy.

2 THE COURT: Yes.

3 MR. SAYRE: We seem to have -- this is March 6.  
4 This is actually the Wall Street Directory on March 3rd,  
5 so I will project that. There must have been some type  
6 of cross-reference.

7 MR. REED: Returning this to the clerk, Your  
8 Honor, to give to the witness.

9 THE COURT: Okay. Thank you.

10 Q BY MR. SAYRE: All right. Then in regard to the  
11 March 3rd release, the Wall Street Directory, which is  
12 the parent company for barchart.com, so there is no  
13 confusion in that regard --

14 MR. ROBINSON: Objection. The question just  
15 stated facts not in evidence.

16 THE COURT: Sustained. And the jury should  
17 disregard the question.

18 Please, Mr. Sayre, simply ask a question  
19 without testifying.

20 Q BY MR. SAYRE: In regard to this opinion from the  
21 Wall Street Directory, could you describe what this  
22 opinion states and what the statistics represent?

23 MR. ROBINSON: Objection. Document speaks for  
24 itself, lack of foundation.

25 THE COURT: Sustained on both grounds.

1 Q BY MR. SAYRE: All right. Does this Wall Street  
2 Directory of March 3rd exhibit list buy recommendations  
3 for e-Connect stock?

4 MR. ROBINSON: Same objection. The document  
5 speaks for itself.

6 THE COURT: Sustained.

7 MR. SAYRE: There must be something that  
8 Mr. Knudson can say about the chart?

9 MR. ROBINSON: If he provides the proper  
10 foundation, Your Honor, I won't object.

11 THE COURT: Noted.

12 Q BY MR. SAYRE: We already did that, but I will do  
13 that again.

14 Was this taken from the government's exhibit?

15 A Yes, it was.

16 Q And this is something that has been stipulated to  
17 by the government?

18 A I understand --

19 MR. ROBINSON: Objection. Ambiguous as to what  
20 the stipulation encompassed. The court has the  
21 stipulation.

22 THE COURT: Sustained.

23 And the jury should disregard the question,  
24 and the answer is stricken.

25 Q BY MR. SAYRE: is this document taken from

1 Exhibit 2001?

2 A Yes.

3 Q What does it say?

4 MR. ROBINSON: Objection. The document speaks for  
5 itself, Your Honor.

6 THE COURT: Sustained.

7 MR. SAYRE: Your Honor, can I ask the jury to read  
8 it, and we will just sit quietly while the --

9 THE COURT: The jury will have the exhibits that  
10 have been admitted into evidence to read and review  
11 during deliberations.

12 MR. SAYRE: Your Honor --

13 THE COURT: Please move on.

14 Q BY MR. SAYRE: All right. In Exhibit 2291, there is  
15 a reference to Prima Capital on March 3rd. Does that  
16 document have a Bates number?

17 A Yes, it does.

18 Q You may want to -- on each of these, it may be more  
19 efficient if we just take your exhibits, Mr. Knudson,  
20 because the number of articles are so time-consuming.

21 MR. SAYRE: Your Honor, could I ask the clerk on  
22 all these issues, it would just expedite things  
23 considerably.

24 THE COURT: What do you want the clerk to do?

25 MR. SAYRE: To bring all of Mr. Knudsen's exhibits

1 up because we are having such a hard time locating them.

2 THE COURT: Sure. As Mr. Knudson hands the clerk  
3 the exhibits, she will bring them up to you as directed.

4 MR. SAYRE: Oh. All of them? We have all of  
5 them. We are just having trouble locating the reference.

6 THE COURT: Do you want her to bring all the --

7 MR. SAYRE: No, just the individual references.

8 THE WITNESS: Well, these are in order.

9 MR. SAYRE: These are in order as well. I could  
10 take a second copy and try to locate them at the same  
11 time. But I think you maybe have more familiarity with  
12 the exhibits. I don't know.

13 THE WITNESS: Well, I have Exhibits 2531.

14 Q BY MR. SAYRE: Okay. Whatever you have would be  
15 great.

16 A It is two pages.

17 Q Now, this document is part of government's  
18 evidence, is it not?

19 A Yes, it is.

20 Q It has previously been provided to the government  
21 in support of our Exhibit 2291?

22 A Yes.

23 Q Does the March 3rd -- I seem to have a lot of --  
24 this is -- there is a lot of disorganization here. Now,  
25 we are referring to a March 2nd release. I think we are

1 lost. I know. That is the problem.

2 A No. The release says March 3rd at the top.

3 Q Yes, it does. So let's -- does this document, what  
4 does this document reflect? What is the title of this  
5 document?

6 A This is the e-Connect to Pilot Island Establish  
7 Unique. So if you look at the headline at the top of the  
8 page, March 3rd, the headline appears on my Exhibit 2291  
9 and if you look at the second page of that exhibit, you  
10 will see that that press release was issued by Prima  
11 Capital for e-Connect at the bottom of the page.

12 Q So the titles at the left side of the chart reflect  
13 the media that was extant at that particular date related  
14 to e-Connect; is that correct?

15 A Yes.

16 Q Could you please look at Exhibit 2291 and tell the  
17 jury when Silver Screen Industries began purchasing  
18 e-Connect stock on March 3rd?

19 MR. ROBINSON: Objection to the form of the  
20 question, Your Honor, as ambiguous. He used the phrase  
21 "began purchasing." Does that mean execution of an order  
22 or placement of an order? And the timing is important.

23 THE COURT: Sustained.

24 Q BY MR. SAYRE: All right. Mr. Knudson, could you  
25 please look at Exhibit 2291 and tell the jury at what



1 point in time on that particular day the trading in  
2 e-Connect began for Silver Screen Industries?

3 A Yes. If you look at the bottom of page 3, color  
4 coded purple, you will see that the first purchase of  
5 e-Connect stock on the 3rd was right around 1:00 o'clock.

6 Q Was this after the other releases or before the IFR  
7 release?

8 A Well, it was after the March 1st release, and it  
9 was before the March 3rd release.

10 MR. REED: Your Honor, I wanted to just return  
11 this original exhibit to the witness so we don't lose it.  
12 That was the press release, March 3rd.

13 Q BY MR. SAYRE: So what time did the March 3rd release  
14 actually get released? What time was that, according to  
15 the chart?

16 A On page 4, the first row at the top of page 4,  
17 there is an IFR release on March 3rd at 1458 hours, which  
18 is right around just before 3:00 o'clock.

19 Q Would this time difference make any difference to  
20 your analysis?

21 A No.

22 Q So if Silver Screen sold all 96,100 shares of  
23 e-Connect on March 2nd, it had maximized its profit  
24 potential that it would have gained had it held onto the  
25 stock?

1 MR. ROBINSON: Objection. Lack of foundation.  
2 Calls for speculation.

3 THE COURT: Sustained. Lack of foundation,  
4 speculation.

5 Q BY MR. SAYRE: If Silver Screen Industries had not  
6 made this sale on March 2nd and had sold all the  
7 e-Connect stock on March 9th and 10th, would it have  
8 made considerably more money?

9 MR. ROBINSON: Objection. Lack of foundation.  
10 Calls for speculation.

11 THE COURT: Overruled.

12 THE WITNESS: The answer is yes, the e-Connect  
13 stock, all 96,100 shares, were sold in a declining market  
14 on March 2nd. Had they kept the 96,100 shares, they  
15 would have had 96,100 shares to sell on March 9th and  
16 10th. At that price, they would have sold them at  
17 \$19.75. So clearly, there is a loss of potential profit  
18 by them selling all their shares on March 2nd. The  
19 profit was roughly \$290,000 that they lost by selling  
20 their shares on the 2nd.

21 Q BY MR. SAYRE: Exhibit 2291 shows that after March 6,  
22 there was a purchase of 1200 shares of e-Connect, the  
23 total holdings are 81,200; is that correct?

24 A That's correct.

25 Q Did Silver Screen release an opinion immediately

1 before or after they purchased these 1200 shares?

2 A No, they didn't.

3 MR. ROBINSON: Objection. The question said  
4 Silver Screen.

5 THE COURT: Sustained.

6 Q BY MR. SAYRE: Did I purchase shares for Silver  
7 Screen made before or after they purchased -- or I  
8 purchased the shares for Silver Screen -- all right. I  
9 am going to have to make a moment to get this the way --

10 The shares purchased for Silver Screen on  
11 March 6th -- did I purchase Silver Screen industry shares  
12 for Silver Screen -- I don't know.

13 This is -- these little word puzzles are  
14 getting a little silly.

15 MR. ROBINSON: Objection, Your Honor.

16 THE COURT: Sustained.

17 Q BY MR. SAYRE: Did IFR issue an opinion immediately  
18 before or after the 1200 shares were purchased for  
19 Silver Screen Industries?

20 A No.

21 Q So when was the next IFR opinion released? And  
22 would you point that out on the Exhibit 2291.

23 A Page 4, near the bottom, color coded in a darker  
24 purple, I would say maybe call it blue, there is --  
25 releasing firm is called IFR, and the date is March 8th

1 at 6:15 in the morning.

2 Q Okay. Thank you. Were other releases listed on  
3 Exhibit 2291 on or near the same day that IFR released  
4 their opinion?

5 A Yes.

6 Q Did barchart.com and Prima Capital issue releases  
7 during the period before and after the release by IFR?

8 A Yes, they did.

9 Q And was barchart.com on their March 7th release  
10 shown on Bates number 3084 again indicating a 100 percent  
11 buy recommendation for short, medium and long-term  
12 investment?

13 MR. ROBINSON: Your Honor, objection. The  
14 document speaks for itself. He is just asking the  
15 witness to adopt his characterization of it.

16 THE COURT: Sustained.

17 Q BY MR. SAYRE: Mr. Knudson, could you read the  
18 document for the jury?

19 THE COURT: The objection has been sustained. The  
20 document, Exhibit 2291, has been admitted into  
21 evidence --

22 MR. SAYRE: I am going to briefly consult --

23 THE COURT: -- and the jury can read the document  
24 in the jury room during deliberations if they choose to.

25 Q BY MR. SAYRE: Did you ultimately render an opinion

1 in this case based on the total mix of information of  
2 these press releases?

3 A Yes.

4 Q And after the fourth opinion from IFR, based on  
5 your analysis as shown on Exhibit 2290 and 2291, did  
6 Silver Screen immediately buy or sell shares of  
7 e-Connect, according to the two charts?

8 A Immediately? No.

9 Q After March 8th, did barchart.com continue to  
10 release 100 percent buy recommendations on March 8th and  
11 9th?

12 MR. ROBINSON: Objection. Document speaks for  
13 itself.

14 THE COURT: Sustained.

15 Q BY MR. SAYRE: Did the barchart.com releases -- all  
16 right.

17 Did the barchart.com releases from the 8th and  
18 9th of March indicate that e-Connect prices were still  
19 rising?

20 MR. ROBINSON: Objection. Compound. The  
21 documents will speak for themselves.

22 THE COURT: Sustained on both grounds.

23 Q BY MR. SAYRE: Are there samples of press releases  
24 that you designate in your chart which you used to  
25 render your opinion?

1 A Yes.

2 Q Which ones?

3 A Well, all of them that are listed on 2291, but in  
4 particular, the references to Bates number 3084 and 3085  
5 are examples of releases known as bar chart.

6 Q And one of those on March 3rd, I believe, was that  
7 Wall Street Directory?

8 A No. The bar charts are dated March 8th and  
9 March 7th.

10 Q And could you read the samples of the press  
11 releases in your chart that allowed you to render this  
12 final opinion?

13 MR. ROBINSON: Objection, Your Honor. First, they  
14 speak for themselves, and if he is talking about all the  
15 releases that rendered his opinion, there is 70 or  
16 something of them there, so I would object on 403  
17 grounds.

18 THE COURT: Sustained on both grounds. Also,  
19 asked and answered. He did -- he previously responded to  
20 the question, which press releases did you use in  
21 arriving at your opinion? He answered that question.

22 MR. SAYRE: All right.

23 Q BY MR. SAYRE: Exhibit 3086 indicated that e-Connect  
24 opened on March 9th at \$20.88 and closed at \$14.50; is  
25 that correct?

1 MR. ROBINSON: Objection, Your Honor. The  
2 document speaks for itself, and it is a leading question.

3 THE COURT: Sustained on both grounds.

4 Q BY MR. SAYRE: Did Silver Screen at some point sell  
5 their holdings in e-Connect?

6 A Yes, they did.

7 Q And on what dates?

8 A On March 9th, they sold all of their holdings  
9 except for 1200 shares. On March 10th, they sold their  
10 remaining shares of 1200.

11 Q On page 5, there is -- actually, there is a Pacific  
12 Equity release regarding e-Connect dated March 10th.  
13 Does this release reference Bates numbers?

14 A Yes.

15 Q And what Bates numbers would those be?

16 A It is 2344 and 2345.

17 MR. SAYRE: Your Honor, permission to publish?

18 MR. ROBINSON: Your Honor, may I have a moment? I  
19 am not sure we have that in the defense exhibit that we  
20 received.

21 THE COURT:

22 MR. ROBINSON: Have an opportunity to check it  
23 before we take a position.

24 THE COURT: Yes, Mr. Chavez.

25 THE WITNESS: Can we take a five-minute break?

1 THE COURT: Absolutely. We will take a ten-minute  
2 break now until 10:50. The jurors should remember not to  
3 discuss this case or anything related to this case.

4 Thank you.

5 All right. Thank you. We will take a  
6 ten-minute break as well. Thanks.

7  
8 (The following proceedings were held in open court  
9 outside the presence of the jury:)

10  
11 THE COURT: In the trial, both sides are present,  
12 and we will call in the jury.

13 MR. ROBINSON: Your Honor, may I just --

14 THE COURT: Yes.

15 MR. ROBINSON: I think we are getting to the point  
16 where I would expect the defendant to ask Mr. Knudson for  
17 his opinion. And we had orders yesterday about certain  
18 areas where Mr. Knudson could not render an opinion, and  
19 I would like to avoid a situation where I am jumping up  
20 and objecting.

21 So perhaps the defendant could let us know  
22 what the opinion is -- or what the question will be about  
23 the opinion so we can deal with that before the jury  
24 comes out.

25 THE COURT: Your point is well taken.



1           Mr. Sayre, could you summarize the opinions  
2 that you would ask --

3           MR. SAYRE: Yes, Your Honor.

4           THE COURT: -- the witness for?

5           MR. SAYRE: Yes. I would just like to refer to  
6 Rule 704A which states, " Expert's opinion is reliable and  
7 helpful" --

8           THE COURT: Please slow down when you read. I  
9 have 704 in front of me, so it is not necessary to read  
10 it. Just respond to my question at this time. What  
11 opinions will your expert be giving?

12           MR. SAYRE: Well, the first opinion is, did you  
13 see any patterns of fraud that resembled a market  
14 manipulation scheme by Silver Screen?

15           MR. ROBINSON: Can I address these one at a time,  
16 Your Honor? Or we can list them.

17           THE COURT: I would like to have a list of the  
18 opinions.

19           Did you see any patterns of fraud that showed  
20 that Silver Screen engaged in market manipulation; is  
21 that correct?

22           MR. SAYRE: Yes, Your Honor.

23           THE COURT: Then, what is the second opinion?

24           Mr. Knudson, you can have a seat if you wish.  
25 You don't need to remain in the witness stand.

1 MR. SAYRE: Then there, was there a pattern of  
2 withdrawals from Silver Screen Industries' account at  
3 that would be considered an indication of fraud? That  
4 would be the second opinion.

5 THE COURT: Okay. Any other opinions, Mr. Sayre?

6 MR. SAYRE: I believe there is one other.

7 THE COURT: Okay. That is from Mr. Knudson.

8 MR. SAYRE: And then the other would be, after  
9 reviewing all the discovery evidence in this case, what  
10 have you concluded?

11 THE COURT: And what is he going to say?

12 MR. SAYRE: What are you going to say?

13 THE WITNESS: That Silver Screen was following the  
14 market in their trading activity.

15 THE COURT: Any other opinions?

16 MR. SAYRE: I believe that's it, Your Honor.

17 THE COURT: All right. What is the government's  
18 response or position?

19 MR. ROBINSON: Your Honor, some of this was the  
20 subject of the government's motion in limine, so I will  
21 refer to that and also make an additional argument.

22 With respect to trading patterns on the  
23 issue -- on the opinion, did you see patterns of fraud  
24 that show that Silver Screen engaged in market  
25 manipulation, if the -- first of all, we had a Rule 16

1 objection in that the disclosure letter for Mr. -- with  
2 respect to Mr. Knudson stated that conclusion but never  
3 described what patterns he would be referring to so that  
4 we would have an opportunity to analyze them and decide  
5 whether that testimony was consistent with the pattern,  
6 had a proper foundation, or could otherwise be  
7 challenged.

8           And if the court looks at the Knudson letter,  
9 there is no disclosure of any particular patterns. And  
10 in the charts that he has given us, I don't think there  
11 is anything on those charts which would, you know, circle  
12 something or and highlight something that said there is a  
13 pattern. So first we have a Rule 16 objection.

14           Secondly, the issue in this case is securities  
15 fraud with respect to the investment opinions issued by  
16 Mr. Sayre in the name of IFR. It is not that his trading  
17 in the sense of buying and selling e-Connect stock in the  
18 Silver Screen account itself caused a market  
19 manipulation. For example, if he owned 50 million shares  
20 and bought and sold it and manipulated the market, that  
21 would be something else.

22           But we have never claimed, it is not in the  
23 indictment, we have never claimed that his purchase and  
24 sales of shares separate and apart from the opinions  
25 caused a market manipulation.

1           So I would say that that just doesn't go to a  
2 relevant issue or it is outweighed under 403, and it  
3 would be confusing to the jury.

4           I have a similar objection to the second  
5 opinion, which was, was there a pattern of -- I think it  
6 was transactions in the account that would be indicative  
7 of fraud? Here, I think he is talking about Silver  
8 Screen's bank account.

9           And we made a Rule 16 objection in our motion  
10 in limine that the Knudson Rule 16 letter failed to  
11 identify any bank account patterns or explain how they  
12 would support that conclusion, so we have a rule 16  
13 objection.

14           Secondly, Your Honor, we haven't contended in  
15 this case that something that he did with his bank  
16 account itself constituted fraud, plus it would be very  
17 confusing and ambiguous as to what is meant by fraud.  
18 Are we talking about check kiting? What are we -- loan  
19 fraud? I mean, the only real relevance of the bank  
20 accounts here is that the money to purchase and sell the  
21 stock flows through the bank account, and the  
22 government's position is Mr. Sayre controls the bank  
23 account.

24           Beyond that, I don't see how an expert opinion  
25 on an indicia of fraud or lack thereof in the bank

1 account is helpful to the jury in deciding any of the  
2 issues in this case.

3 THE COURT: Evidence has been introduced as to  
4 withdrawals from bank accounts and transfers to the Bank  
5 of Montreal. From the government's perspective, what is  
6 the relevance of that evidence?

7 MR. ROBINSON: Because I don't know what pattern  
8 Mr. Knudson is going to refer to, it is hard for me to  
9 address that. If the Rule 16 --

10 THE COURT: Independent of Mr. Knudson from the  
11 government's perspective.

12 MR. ROBINSON: From the government's perspective,  
13 the transfer of funds offshore was indicative of  
14 defendant's scheme and that he wanted to profit from his  
15 securities fraud and then make the proceeds less  
16 available to be pursued by the SEC or law enforcement and  
17 also make it more difficult to trace his relationship  
18 with those proceeds.

19 So if Mr. Knudson is going to specifically  
20 talk about those issues, I suppose that would be okay.  
21 But I simply can't tell from the Rule 16 disclosure  
22 whether that is the focus of his analysis or not, and I  
23 don't know -- I don't know how he renders an opinion on  
24 that either, but that is a separate issue.

25 THE COURT: All right. And what about the third

1 opinion where Mr. Sayre indicated that he would ask  
2 Mr. Knudson, after reviewing all of the discovery, what  
3 have you concluded, and the response would essentially be  
4 that Silver Screen was following the market in its  
5 trading?

6 MR. ROBINSON: First of all, I am not sure what  
7 following the market means. If it means that they bought  
8 and sold at market prices, I don't see how that is  
9 helpful to the jury or particularly relevant to the case.  
10 So the opinion itself to me is simply unclear what that  
11 is and how it has any probative value in this case.

12 THE COURT: All right. Perhaps we can begin with  
13 the third -- the defendant's response to the government's  
14 objection to the third opinion that Mr. Knudson concluded  
15 that Silver Screen was following the market in their  
16 trading.

17 What does he mean by that, and how is it  
18 relevant to issues in this case.

19 MR. SAYRE: Right, Your Honor. It is in  
20 contradiction to the statement that Silver Screen  
21 Industries' trades were based on IFR's opinions. It was  
22 based on the market at the time, the press releases being  
23 released by e-Connect and all the other press releases  
24 being released concurrently. It wasn't based on IFR's  
25 releases, which I believe is the government's theory. If

1 it is not, I don't understand this case at all.

2 MR. ROBINSON: There was no Rule 16 disclosure  
3 showing how that conclusion is based on any reasons. And  
4 first, I don't -- I don't follow. But there certainly  
5 was no Rule 16 disclosure explaining how he was going to  
6 arrive at that opinion following the market and how that  
7 somehow negates that the defendant was taking profits in  
8 the rise in the market after he issued those opinions.

9 I don't know how he arrives at that  
10 conclusion, Your Honor, because it has never been  
11 explained what the basis for that conclusion is.

12 MR. SAYRE: Your Honor, it is not a contention  
13 that we weren't taking profits. I think that is pretty  
14 self-evident. It is the contention that Mr. Robinson  
15 says that I omitted I managed the company in order to  
16 pump up the stock and sell it at increased value,  
17 artificially raising the price of the stock. Again, I am  
18 assuming this is his theory. It may be something else.

19 THE COURT: And you are presenting this evidence  
20 to rebut an argument of intent to deceive?

21 MR. SAYRE: Yes, Your Honor, entirely.

22 THE COURT: Was this disclosed in the Rule 16  
23 expert witness summary, this opinion?

24 MR. SAYRE: I don't have --

25 MR. ROBINSON: I have attached the letter -- Your

1 Honor, I have attached the Rule 16 letter to my motion in  
2 limine.

3 THE COURT: With respect to this Exhibit 1 to the  
4 government's motion, the second full paragraph refers to  
5 an opinion, but it is unclear because it doesn't identify  
6 the chart. And it merely says Mr. Knudson will explain  
7 the chart and what it shows. The chart includes the time  
8 line of dissemination of total mix documents. Well, the  
9 witness has done that with 2291.

10 Then, the second opinion as set forth in the  
11 third paragraph that Mr. Knudson will discuss common  
12 stock frauds, yesterday I indicated my ruling that that  
13 would not be relevant or admissible.

14 But the third paragraph goes on to state that  
15 Mr. Knudson will testify of about trading patterns of  
16 Silver Screen based on the charts vis-a-vis IFR releases;  
17 namely, that the pattern is not consistent with the pump  
18 and dump scheme, a scalping scheme or a market  
19 manipulation scheme. The last scheme being the relevant  
20 scheme, market manipulation.

21 He will testify about the implications of  
22 trading of stock in what is known as the long position,  
23 etcetera. He will testify that the positions Mr. Sayre  
24 took in e-Connect were long positions and why the fact  
25 patterns of trades are in ways inconsistent with a person



1 who is committing a stock scheme.

2 MR. ROBINSON: That, Your Honor, does not tell us  
3 what the patterns are or what the reasons are that they  
4 support his conclusion. It tells when he is going to  
5 testify about, but it doesn't tell us how he arrives at  
6 that. And that is what a Rule 16 disclosure is supposed  
7 to do.

8 THE COURT: It is supposed to disclose in at least  
9 summary form the reasons or the basis of the opinion?

10 MR. ROBINSON: Yes, Your Honor.

11 THE COURT: What is the remedy for failure to  
12 fully comply with Rule 16? Is it exclusion?

13 MR. ROBINSON: Well, the court has discretion to  
14 fashion the remedy, obviously. And the remedy can vary  
15 from exclusion, and I have cases supporting that, to  
16 requiring the defense to make full and proper disclosure  
17 under Rule 16 and giving the opportunity for the  
18 government to have that information and evaluate it  
19 before it has to commence its cross-examination of the  
20 witness.

21 In this case, Your Honor, we have made a big  
22 deal about Rule 16, and the court was very clear that she  
23 wanted Rule 16 compliance. This is what we have, and  
24 they have never supplemented it. I made my motion in  
25 limine pointing out these problems. I filed the motion

1 in limine on Monday, and there has been no effort by the  
2 defense to address the shortcomings in the Rule 16 letter  
3 by giving us a description of those patterns and the  
4 bases and the opinions that the witness would rely on.

5 So now, here we are, soon, I'm presumably  
6 going to begin my cross, and I don't have that  
7 information. I don't think that is what Rule 16  
8 contemplates.

9 THE COURT: The Rule 16 letter, Exhibit 1 to the  
10 government's motion, is a letter by advisory counsel  
11 dated June 24th of 2008. After receiving this letter,  
12 did the government object to the defense that this  
13 June 24th letter was inadequate and did the government  
14 seek, Mr. Robinson, a more full disclosure?

15 MR. ROBINSON: I did not at that time, Your Honor.  
16 I raised it in my motion in limine on Monday, which I  
17 thought was sufficiently in advance. And there would  
18 have been sufficient time for the defense to provide me  
19 with that information before these witnesses testified.

20 THE COURT: Let's continue down the letter.

21 The last paragraph on page 1 refers -- states  
22 Mr. Knudson will testify that Exhibit blank is called the  
23 total mix analysis. And Mr. Knudson will testify  
24 regarding the timing of trading patterns exhibited by the  
25 data. And then Mr. Knudson will testify that in light of

1 his experience, it is not statistically possible or  
2 possible in any other way taking into consideration the  
3 total mix of information about e-Connect released on the  
4 world market to determine or forensically measure the  
5 impact of the inclusion or exclusion of Silver Screen in  
6 the safe harbor, et cetera.

7 I already addressed this yesterday, and I  
8 excluded this opinion.

9 Then, continuing on the second page, the first  
10 full paragraph, it states Mr. Knudson will also testify  
11 about his analysis of the Silver Screen corporate bank  
12 account and will testify about the pattern of deposits  
13 and disbursements from Silver Screen account. And  
14 finally, Mr. Knudson will testify as to the use of  
15 offshore accounts.

16 Mr. Sayre, what is your response to the  
17 government's objection to the opinions on grounds that  
18 the Rule 16 disclosures were insufficient, they merely  
19 indicated a conclusion or an opinion without stating the  
20 basis, and, furthermore, as to the first and second  
21 opinions that you have identified, that they are not  
22 relevant, or if they have some relevance, it is minimal  
23 and substantially outweighed by other factors in 403?

24 MR. SAYRE: Well, Your Honor, I assume, at least  
25 from my understanding of Rule 16 disclosures, that it is

1 supposed to be a summary of the information being  
2 provided. If he wanted the entire line of questions and  
3 answers, we certainly didn't get that from the  
4 government.

5 It is very clearly stated, it is very clearly  
6 synopsised, and it definitely gives a summary of the  
7 basis that this information will be -- and the charts  
8 also which have all the information relevant to the  
9 summary. So it has a substantial amount of supporting  
10 information.

11 THE COURT: The charts may give the basis, and the  
12 letter may indicate the area of the opinion, but the  
13 letter doesn't state the opinion. As Mr. Robinson  
14 pointed out, neither the court nor the government knows  
15 what opinion your expert will state regarding patterns of  
16 fraud or that he didn't see any patterns of fraud to  
17 indicate market manipulation. That statement doesn't  
18 tell the court anything or, more importantly the  
19 prosecution.

20 And the charts, when considered with that  
21 statement, don't advise the prosecution of what the  
22 witness is going to say in this regard. Same thing with  
23 patterns of withdrawals from bank accounts.

24 But what is your response to the relevancy  
25 objection?

1 MR. SAYRE: I don't -- I don't see how it could be  
2 any more relevant. It is discussing the issue -- all  
3 this goes to the issue of intent. If I intended to  
4 manipulate the market, I would had to have made a  
5 statement that could have moved the market. All this  
6 information proves that these statements or the omission  
7 of or even the IFR articles in their entirety did not  
8 show any pattern that this information being omitted  
9 would have in any way manipulated the market. It is  
10 simply a statement that, namely, the pattern is not  
11 consistent with a pump and dump scheme, a scalping  
12 scheme, or a market manipulation scheme even by the  
13 trading patterns themselves, which are presented in the  
14 charts.

15 And then, of course, this whole case is  
16 intent, and, of course, the entire case based on  
17 character. But intent is a key issue here. And if we  
18 can't prove anything related to intent, we have no  
19 defense, and I think that is exactly what Mr. Robinson is  
20 looking for.

21 THE COURT: That is your response with respect to  
22 the relevancy of all three opinions, that they all relate  
23 to intent?

24 MR. SAYRE: Yes, Your Honor. It is entirely based  
25 on intent, proving these facts that the market

1 manipulation scheme that Mr. Robinson alleges simply did  
2 not exist. So there couldn't have been intent to defraud  
3 if there was no scheme to defraud.

4 MR. ROBINSON: I don't really see how Mr. Knudson  
5 is in a position to voice that opinion, but I can only  
6 guess because I don't know what the bases are for that,  
7 Your Honor.

8 THE COURT: Well, perhaps to make the record  
9 clear, Mr. Knudson is here, I should ask him for the  
10 information that really should have been provided in the  
11 letter, and I would ask the clerk to tell the jury that  
12 they can take a break for 15 more minutes. Thank you.

13 Yes. Mr. Knudson, when you state that you do  
14 not see any pattern of fraud showing market manipulation  
15 by Silver Screen, what do you mean? What is your -- what  
16 will you testify to?

17 THE WITNESS: I believe I was -- I was possibly  
18 addressing this in my testimony when I made the  
19 observation that there was no immediate purchase or sale  
20 of e-Connect stock before or after a release of an IFR  
21 opinion.

22 THE COURT: You have made that statement to the  
23 jury, and you certainly can. The question is whether you  
24 can state the opinion that this shows there was no fraud  
25 or market manipulation. And that is a legal question for

1 the court, is this a proper subject for expert testimony.

2 THE WITNESS: Well, I believe --

3 THE COURT: Looking at the patterns like you have,  
4 highlighting the significance of the patterns, as you  
5 have, that the defendant, for example, sold at a loss at  
6 one point when if he held onto March 9th rather than  
7 selling on March 2nd, he would have made more money. You  
8 have made that point to the jury.

9 The question is, whether as an expert -- and I  
10 am not going to argue with an expert as to admissibility  
11 of evidence. My argument is to Mr. Sayre.

12 THE WITNESS: If I may, Your Honor.

13 THE COURT: So the question is whether, Mr. Sayre,  
14 your witness, your expert witness, can say, looking at  
15 these patterns, there is no fraud. Is that a proper  
16 subject of an expert's opinion, or is that something  
17 better saved for closing argument?

18 Certainly, the evidence has been presented to  
19 the jury through Mr. Knudsen's expert testimony. He  
20 did -- for example, referring to 2291, Exhibit 2291 in  
21 his testimony this morning, stated that -- or pointed  
22 out, essentially, in his testimony that Silver Screen  
23 continued to purchase stock at a higher price. The total  
24 buy-back was significantly greater than the sale. This  
25 is all evidence that has been presented to the jury

1 through your expert.

2 MR. SAYRE: Yes, Your Honor.

3 THE COURT: And I guess it could be referred to as  
4 pattern evidence. And in your closing argument you can  
5 certainly argue that this -- that there is no pattern of  
6 fraud or there is no showing of market manipulation here.  
7 You can assert, I would suggest tentatively, that this  
8 tends to disprove the government's allegation that you  
9 had a scheme or used a scheme to defraud or engaged in a  
10 transaction practice or course of business which operated  
11 as a fraud. You can argue this.

12 The question is, can you have your expert  
13 opine that the pattern does not reveal market  
14 manipulation or is not a pattern of fraud.

15 That would seem to be a legal conclusion or an  
16 argument that should be made to the jury and not be  
17 highlighted by an expert.

18 MR. SAYRE: Your Honor, may I answer that?

19 THE COURT: Yes.

20 MR. SAYRE: Okay. In regard to that, he will be  
21 testifying to an ultimate issue in this case as an  
22 expert, but if I testify to it, I am not an expert.

23 THE COURT: I am talking about closing arguments  
24 based upon the evidence presented.

25 MR. SAYRE: That is what I mean, Your Honor. Our



1 experts are being refused the right to make an expert  
2 opinion, which I believe is allowed by 704A. If he  
3 doesn't make an opinion, the entire purpose of an expert  
4 has been excluded from the trial. Because he is just  
5 stating facts. He is a summary witness, not an expert.  
6 He is no longer being allowed to present himself to the  
7 jury as an expert witness.

8 THE COURT: I would pose the same question with  
9 respect to the pattern of withdrawals. Presumably,  
10 Mr. Knudson is going to have a chart examining the  
11 pattern of withdrawals or bank transactions by Silver  
12 Screen. That evidence can be presented to the jury.

13 But for the conclusion that this isn't -- that  
14 this pattern is not fraudulent, that would seem to be  
15 something for the jury to decide.

16 MR. SAYRE: Well, but they are not experts, Your  
17 Honor, and neither am I. So he is determining this  
18 information from decades of experience as a forensic  
19 accountant, an IRS investigator, and all his other  
20 qualifications.

21 THE COURT: In that regard, the summary of his  
22 testimony doesn't tell us anything about the pattern he  
23 is going to identify or what the basis -- what his  
24 opinion is in this regard other than there is no pattern  
25 of withdrawals that would be an indication of fraud.

1 That is the idea indicated in Exhibit 1.

2 MR. SAYRE: Well --

3 THE COURT: But what is the witness going to say?  
4 What is his reasoning? Mr. Knudson.

5 THE WITNESS: Well, basically, I would point out  
6 that on the -- my exhibit, it doesn't have any  
7 significant withdrawals or payments to Mr. Sayre. So  
8 when we have a million or so dollars going through the  
9 account, the jury can obviously see for themselves that  
10 there aren't a significant amount of monies that are  
11 going out to Mr. Sayre.

12 And it goes to the lifestyle evidence that the  
13 government has put on with respect to the Ferrari and the  
14 lavish lifestyle that he was living up in Hollywood  
15 Hills. It goes to the fact that he was not really  
16 profiting from his scheme, his market manipulation  
17 scheme.

18 And so I think it does fairly present the  
19 evidence in this case to the jury with respect to him and  
20 the profitability of his scheme and how he used those  
21 profits.

22 THE COURT: Mr. Robinson, what is your response to  
23 this offer?

24 MR. ROBINSON: Well, at least now I have some idea  
25 of what Mr. Knudson wants to testify about. That is

1 helpful.

2 But I would also say, Your Honor, and I  
3 believe that we laid out the law in our motion in limine,  
4 it is improper to have an expert witness opine about the  
5 law; and even though 704A allows expert testimony to be  
6 admitted that may embrace an ultimate issue, it is  
7 improper to have an expert rendering legal opinions or  
8 directing the jury to draw legal conclusions about the  
9 evidence based on that opinion.

10 And the way Mr. Sayre, at least, is framing  
11 how he expects this opinion to come out, it is that  
12 Mr. Sayre didn't commit fraud, as would be the conclusion  
13 of the witness based on his review of the pattern  
14 evidence that he has described. I think that is  
15 improper.

16 If Mr. Sayre wants to have him highlight and  
17 explain the transactions that the witness has just  
18 described here, I don't have a problem or an objection to  
19 that now that I know what they are. I agree that, in  
20 closing argument, Mr. Sayre can -- with the benefit of  
21 the instructions that the court will be giving the jury,  
22 not Mr. Knudson or me or Dr. Cornew, he can argue the  
23 proper inferences to be drawn.

24 But I don't think that Mr. Knudson should be  
25 framing opinions in terms of whether or not fraud exists

1 here for Mr. Sayre based on this type of information.

2 THE COURT: I agree. The evidence of what the  
3 transfers or withdrawals were from the Silver Screen  
4 accounts can be introduced and highlighted by the expert,  
5 but the expert can't testify as to the ultimate  
6 conclusion of whether this is an indication of fraud or  
7 not.

8 That can be argued by Mr. Sayre to the jury in  
9 his closing arguments, and the government can make an  
10 argument and the defendant but -- as to how the jury  
11 should decide the legal issues, but experts -- expert  
12 opinion on this would not be appropriate, in my view.

13 Mr. Sayre, anything further by way of  
14 response?

15 MR. SAYRE: Yes, Your Honor. In that respect, I  
16 understand the concept of fraud being a legal issue.  
17 Could Mr. Knudson simply refer to these issues as being  
18 generally accepted practice or in regard to being  
19 permissible as to the rules that he understands them as  
20 an accountant and as a forensic accountant as an  
21 investigator, rather than making a legal determination.  
22 And I understand the point that fraud would be a legal  
23 determination. So if he uses the appropriate terminology  
24 that would be relevant to his expertise, that may be  
25 appropriate.

1 THE COURT: All right. What about the third  
2 opinion that, after reviewing all the evidence,  
3 Mr. Knudson reached the opinion that Silver Screen was  
4 following the market in their trading? The third opinion  
5 seems to have some relation to the first opinion, but  
6 what is the basis? What is the reasoning behind this  
7 conclusion, Mr. Knudson?

8 MR. ROBINSON: The conclusion or the basis for the  
9 conclusion would be just looking at the evidence that is  
10 contained in Exhibits 290, 291 and that the patterns of  
11 his trading, the purchasing and selling, are very similar  
12 to what Garrett Sayre was talking about was that Mr. --  
13 Mr. Sayre is a student of the market, and he looks for  
14 trends.

15 And when you look at the trends that exist in  
16 the trading of Silver Screen, by Silver Screen of  
17 e-Connect, you can quite clearly see that many of these  
18 trades occur between 10:00 and 11:00 or in a certain  
19 period of time. He is not an early morning trader. He  
20 is a mid morning trader. And I think that is very  
21 relevant in explaining that his trading activity does not  
22 follow, as Mr. Loveman indicated in his testimony,  
23 immediately after or before the release of an IFR  
24 opinion.

25 So I do think that it should be explained to

1 the jury that this pattern of trading that was used by  
2 Mr. Sayre is not consistent with the releases of the IFR  
3 opinions.

4 I think it is very clear from the exhibits  
5 that we have placed into evidence, and maybe the argument  
6 could be, again, it is argument, that Mr. Sayre could  
7 point this out in his closing and just refer to the  
8 exhibits and show them the obvious times of trading by  
9 Mr. Sayre.

10 THE COURT: All right. Government have anything  
11 to add?

12 MR. ROBINSON: Well, Your Honor, first of all, I  
13 hope I didn't misunderstand Mr. Knudson on this. I take  
14 it he is not going to be testifying about the defendant's  
15 state of mind, that he infers that Mr. Sayre is -- as his  
16 brother described him, has a certain frame of mind,  
17 because that would not be proper expert testimony here.

18 MR. SAYRE: No, I will not.

19 MR. ROBINSON: If he wants to say that Mr. Sayre's  
20 trading is consistent with the way people sometimes  
21 described as day traders trade, which I think is kind of  
22 what Mr. Knudson is saying, and I don't think day trader  
23 has the kind of legal conclusion or issues that we are --  
24 that I am concerned about in this case. So if he wants  
25 to say that his pattern is consistent with somebody who

1 is just day trading in the market and leaves it at that  
2 and then Mr. Sayre wants to argue that that somehow  
3 negates his intent or refutes the government's evidence  
4 on his intent, that is fine with the government.

5 THE COURT: I would agree. Mr. Sayre.

6 MR. SAYRE: Yes, Your Honor. What I would like to  
7 do is I have two questions here that I think maybe would  
8 clarify a few issues in regard to that.

9 That one question that was just discussed by  
10 Mr. Robinson I was thinking might be best phrased as, is  
11 the trading activity consistent with what would be  
12 expected of a day trader in the market. And then another  
13 question would be --

14 THE COURT: That would be fine.

15 MR. SAYRE: And then the other, do the trades and  
16 publications appear to indicate that Silver Screen  
17 Industries' trades were following the timing of IFR  
18 releases or following the general market.

19 THE COURT: I don't believe there would be a basis  
20 for that opinion in light of the government's objections  
21 so far. Mr. Robinson?

22 MR. ROBINSON: Yes. I think that's crossing the  
23 line towards talking about his intent, Your Honor.

24 THE COURT: All right. I am just going to take  
25 about a five-minute break to consider your positions. I

1 stood up and reached for -- when Mr. Knudson referred to  
2 Mr. Loveman's testimony, I reached for my notes of  
3 Mr. Loveman's testimony on July 8 to confirm that he  
4 didn't cross the line into opinions or open any doors.  
5 And from glancing at my notes of his testimony, I find  
6 that he did not, that he stayed away from improper  
7 opinions. All right, I'll -- yes.

8 MR. SAYRE: One suggestion from Mr. Knudson, I  
9 will just read it quickly, he said, "Based on your  
10 analysis, do the trades and publications appear to  
11 indicate that Silver Screen Industries' trades were  
12 following the general market" and leave out the other  
13 issue related to this. So this would be his expert  
14 opinion related to the patterns and such.

15 MR. ROBINSON: I don't know what following the  
16 market means, Your Honor.

17 MR. SAYRE: Well, the general market, the total  
18 mix of information on the market. That would be what --

19 MR. ROBINSON: I believe that is confusing to the  
20 jury.

21 THE COURT: I would sustain the objection to that  
22 question.

23 THE WITNESS: Your Honor, perhaps --

24 THE COURT: I have heard argument from counsel,  
25 proffer on both sides. Thank you.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE CLERK: This court is in recess.

(Brief recess.)

THE COURT: In the trial, both sides are present. We are outside the jury's presence. Considering the issues raised in the government's motion in limine and the parties' arguments today, the court will grant the government's motion on grounds that the opinions are not relevant and admissible.

The ultimate opinion that the -- that no patterns of fraud or market manipulation are seen and that the pattern of withdrawal is not an indication of fraud, these opinions are not relevant or admissible, referring to 702 and 704 of the evidence code, and I would refer to the brief filed by the government on this issue.

Essentially, if I allowed those opinions, the role of the jury would be usurped improperly. Although, in certain circumstances experts can testify to the ultimate issues to be decided by the trier of fact, in this case testimony on those ultimate issues is not relevant or admissible. The jury can decide whether the patterns set forth, for example, in 2291 and the witness's testimony are indicative of fraud or not.

Similarly, the jury can decide whether the patterns of withdrawals, which the expert is free to

1 testify about, those facts, the jury can decide whether  
2 the facts highlighted -- introduced and highlighted by  
3 the expert are indicative of fraud.

4 The -- however, as discussed before the break,  
5 the witness, of course, can state facts regarding the  
6 defendant's trading, and, for example, he can state that  
7 in his opinion, the defendant's trading is consistent  
8 with the trading of a day trader, but he can't give the  
9 ultimate conclusion as to whether or not the trading is  
10 indicative of fraud or not indicative of fraud. Neither  
11 expert can do that, neither the plaintiff's expert nor  
12 the defendant's experts.

13 The Rule 16 objection was also made. It is  
14 true that the summary is inadequate and does not comply  
15 with Rule 16, but I don't believe the remedy of exclusion  
16 would be appropriate. So my decision is not based upon  
17 the Rule 16 objection.

18 And we will bring in the jury, and Mr. Knudson  
19 can take the witness stand again.

20  
21 (The following proceedings were held in open court  
22 in the presence of the jury.)

23  
24 THE COURT: Good afternoon. In the trial I note  
25 the presence of both sides and all of the jurors. Thank

1 you very much. Please be seated.

2 The witness is present, and he is reminded  
3 that he was previously sworn and is still under oath.

4 Would you state your name again for the  
5 record?

6 THE WITNESS: Carl Knudson.

7 THE COURT: Thank you Mr. Knudson.

8 Mr. Sayre, please continue.

9 MR. SAYRE: Yes, and I apologize for all the  
10 delays in exhibit issues.

11 THE COURT: Your apology isn't necessary. I  
12 would -- as I have explained to the jury, sometimes it  
13 takes the court longer to address and resolve issues  
14 outside the jury's presence than anticipated. I can  
15 assure you that we are all working hard while you have a  
16 recess, and we appreciate your patience. Usually our  
17 breaks and discussions outside your presence serve to  
18 expedite the proceedings.

19 Thank you. Mr. Sayre, please continue.

20 Q BY MR. SAYRE: Yes. Mr. Knudson, based upon your  
21 analysis of the discovery as listed in Defense Exhibits  
22 2290 and 2291, did you see whether the trading of  
23 e-Connect stock occurred immediately after or before the  
24 release of the IFR opinions at issue in this case?

25 MR. ROBINSON: Objection. Asked and answered.

1 THE COURT: Sustained.

2 Q BY MR. SAYRE: Is Silver Screen Industries' trading  
3 activity consistent with what would be expected of a day  
4 trader in the market?

5 A Yes.

6 Q Could you explain why?

7 A Day traders follow the market publications, chat  
8 sites, and have a consistent pattern of when they trade  
9 and don't trade. And generally, based on the pattern of  
10 trading here, I see that this is rather consistent  
11 trading -- you know, a constant trading pattern.

12 If I might expand a little bit further on  
13 that.

14 Q Yes, I think if we could just have a description of  
15 exactly how the trades indicate day trading, is the  
16 timing of the trades and this sort of thing.

17 A I believe we previously discussed that the trading  
18 pattern was consistent with a market that was going up.  
19 You buy when the market is going up, hopefully, or just  
20 before the market goes up. And traders are looking at  
21 how the market reacts, and they will sell when the market  
22 starts going down.

23 So when we see the trades that occurred by  
24 Silver Screen, you can see that they were selling when  
25 the market was going down and they were buying,

1 hopefully, in a market that was going up.

2 Q And in the trades, however, there were clearly  
3 times when the trades were made at approximately the same  
4 times of the day; is that correct?

5 A Yes.

6 Q Did you analyze the Prima Capital press releases in  
7 this case?

8 A Yes, I did.

9 Q What are they?

10 MR. ROBINSON: Objection. Compound. Lack of  
11 foundation.

12 THE COURT: Sustained.

13 Q BY MR. SAYRE: Who was the source of these releases,  
14 which company?

15 A The source of all the releases?

16 Q No. Prima Capital.

17 MR. ROBINSON: Objection. Compound. Lack of  
18 foundation.

19 THE COURT: Sustained. Are you referring to a  
20 specific exhibit or Bates stamp within an exhibit?

21 MR. SAYRE: I am referring to the 2001 exhibit  
22 which exhibits all the total mix of information on the  
23 market and Prima Capital releases, just the individual  
24 Prima Capital releases, in that exhibit.

25 THE COURT: Which -- in light of the objection,

1 which Prima Capital release? You can refer to each of  
2 them, but you have to refer to them specifically.

3 MR. SAYRE: Oh, I see.

4 Q BY MR. SAYRE: If you could review those releases on  
5 your chart, we are looking for them here as well. If  
6 you see them, you could indicate the various different  
7 releases, I suppose, and that might facilitate things.  
8 Yes, the ones on the chart are what we are referring to.  
9 Those Prima Capital releases, who was responsible for  
10 having those releases disseminated?

11 MR. ROBINSON: Objection. Lack of foundation.

12 THE COURT: Sustained.

13 Q BY MR. SAYRE: Did you determine who released the  
14 Prima Capital releases on your chart?

15 MR. ROBINSON: Objection. Lack of foundation.

16 THE COURT: Sustained.

17 Q BY MR. SAYRE: Did you do an investigation to  
18 determine who released the Prima Capital press releases  
19 on your chart?

20 A Well, I merely looked at the releasing party on the  
21 release which indicates the person who is releasing the  
22 information.

23 Q Correct. Who was that?

24 A I am going to --

25 MR. ROBINSON: Objection, Your Honor. The

1 document speaks for itself, if his conclusion is based  
2 merely on reading the document.

3 THE COURT: Sustained.

4 Q BY MR. SAYRE: All right. Well, let's turn to  
5 Exhibit 2291A. Could you explain this exhibit to the  
6 jury?

7 THE COURT: 2291A will be marked for  
8 identification.

9 MR. SAYRE: Thank you.

10 THE WITNESS: 2291A is an Excel spreadsheet of all  
11 the banking activity in the Silver Screen bank account at  
12 Bank of America covering the period October 1999 to  
13 March 5th, 2000. This exhibit was prepared from the bank  
14 statements, deposit items, withdrawal items provided by  
15 the government, and they are referenced on the chart to a  
16 particular Bates number where you would find that  
17 information.

18 Q BY MR. SAYRE: And then preparing these exhibits,  
19 what information did you draw?

20 A In constructing a bank analysis, you always start  
21 with the bank statements. That provides a foundation of  
22 all the information that is going to be on your  
23 spreadsheet. That ensures that every nickel that went  
24 through the bank account is accounted for. So you would  
25 look at the bank statement first.

1                   Then you would look at the supporting  
2 documents such as the deposit tickets, deposit items,  
3 incoming wire transfers.

4                   Then, from the other side of the ledger, you  
5 would look at withdrawals, which would be evidenced  
6 perhaps by outgoing wire transfer orders or cancelled  
7 checks.

8                   And you put all of that information in its  
9 appropriate designation on each row which would allow the  
10 jury to look at the document and determine the source of  
11 the funds that came into the account and the disposition  
12 of the funds going out.

13 Q           And is this an accurate reconstruction of all the  
14 banking activity within the Silver Screen account?

15 A           Yes, it is.

16               MR. SAYRE: Your Honor, may I have permission to  
17 publish Exhibit 2291A?

18               THE COURT: Any objection?

19               MR. ROBINSON: Could I voir dire the witness on  
20 just one issue, Your Honor?

21               THE COURT: Yes.

22  
23   VOIR-DIRE EXAMINATION

24 BY MR. ROBINSON:

25 Q           Mr. Knudson, on the far right-hand side of this



1 Exhibit 2291A for identification, there is a column that  
2 says comments?

3 A Yes.

4 Q Could you explain what was the basis for your  
5 preparing the comments section?

6 A This is the information that came off the check.

7 Q Verbatim off the check?

8 A Pretty much, yes.

9 MR. ROBINSON: Thank you, Your Honor.

10 THE COURT: Thank you. 2291A is admitted and may  
11 be published to the jury.

12 MR. SAYRE: Thank you.

13

14 DIRECT EXAMINATION (Res'd)

15 BY MR. SAYRE:

16 Q Mr. Knudson, can you summarize your findings with  
17 respect to Exhibit 2291A?

18 MR. ROBINSON: Objection. Vague and ambiguous as  
19 to the scope of findings.

20 THE COURT: Sustained.

21 Q BY MR. SAYRE: Could you explain to the jury what  
22 Exhibit 2291A represents in --

23 A Yes. 2291 represents all the funds that went into  
24 Silver Screen Industries, and the -- as you can see on  
25 line 1, the beginning balance in this account was

1 \$15,488.

2           You can then see monies that are coming in to  
3 the account in the deposit column, and you can see that  
4 there was a 95,000 amount that came in. And this,  
5 although not perfect evidence, would indicate that this  
6 \$95,000 came from DAI. And I think you heard testimony  
7 about DAI and its relationship.

8           The other monies that came in -- substantially  
9 came in from E-trade Securities, if you go down to  
10 February 18th, you will see a deposit for \$131,000. This  
11 is a wire transfer credit from E-trade Securities, and  
12 you can see that this money came in. And there were then  
13 subsequent monies that went out right after that to  
14 E-trade Securities and a person by the name of Jane  
15 Sayre.

16           There was a deposit after that of \$4680, and  
17 that came from something called Cinema Arts  
18 Entertainment.

19           And it appears that right after that, there  
20 were wire transfer orders from E-trade Securities, and  
21 after that, Dean Witter Reynolds.

22           From the deposit side, the total amount that  
23 went into the account was \$1,693,000 and change, and this  
24 same amount of money went out -- or a little bit more  
25 when you include the amount that was already in there.

1                   From the withdrawal side, I think the  
2 comments section were designed to put in the payee of the  
3 check or information that was on the check or on the wire  
4 transfer order, which would tell you who the person was  
5 receiving the money.

6       Q       Based on your charts, what is your summary of the  
7 information regarding Silver Screen Industries' trades?

8                   MR. ROBINSON:  Objection.  Your Honor.  Vague and  
9 ambiguous.

10                  THE COURT:  Sustained.

11       Q       BY MR. SAYRE:  Having reviewed all the information,  
12 what do the trading patterns of Silver Screen indicate?

13                  MR. ROBINSON:  Your Honor, objection.  This chart  
14 deals with a bank account, not with a trading account, so  
15 the question is unclear as to what he is referring to.

16                  THE COURT:  Sustained.

17                  MR. SAYRE:  I would be referring back to chart  
18 2290 and chart 2291.

19                  THE COURT:  Can you state the question?

20                  MR. SAYRE:  Yes.

21       Q       BY MR. SAYRE:  Based on these two charts, 2290 and  
22 2291, what does the trading activity of Silver Screen  
23 Industries indicate?

24       A       Well, it indicates that the pattern of trades was  
25 similar to a day trader, that the trading was consistent

1 with the market in -- that was going up or a market was  
2 going up, very consistent with what traders do is that  
3 they try to get in when the market is going up, and they  
4 try to get rid of their stock than the market is going  
5 down.

6 MR. SAYRE: All right. Then no further questions,  
7 Your Honor.

8 THE COURT: Thank you. Mr. Robinson, any  
9 cross-examination?

10 MR. ROBINSON: Yes, Your Honor.

11  
12 CROSS-EXAMINATION

13 BY MR. ROBINSON:

14 Q Mr. Knudson, in your work as an IRS agent, did you  
15 actually investigate securities fraud?

16 A No. We didn't actually investigate securities  
17 fraud. We investigated in parallel -- normally with the  
18 FBI on security fraud matters.

19 Q You investigated tax offenses, money laundering  
20 offenses with the IRS; correct?

21 A Yes. Including that, yes.

22 Q And when you were working in private practice with  
23 KPMG and Price Waterhouse, you talked about being  
24 involved in SEC compliance matters?

25 A Yes.

1 Q Did you investigate securities fraud?

2 A Yes.

3 Q All right. Now, with respect to the charts that  
4 Stephen Loveman, the government's witness, forensic  
5 auditor, provided, he provided some charts. I assume you  
6 have reviewed those previously?

7 A Briefly, yes.

8 Q With respect to the chart that he had listing the  
9 purchases and sales of e-Connect stock in the Silver  
10 Screen account, did you have any -- did you find any  
11 mistakes in that chart with regard to how much stock was  
12 bought or sold and when it was bought or sold?

13 A No. Quite frankly, I didn't focus on Mr. Loveman's  
14 work product. I didn't really have much of an opinion on  
15 it.

16 Q Okay. So you don't dispute the accuracy of his  
17 chart showing the buys and sells in the Silver Screen  
18 account with respect to E-trade; correct?

19 A Well, it is just my impression. I didn't review  
20 them in extensive detail. But I believe they are  
21 reasonable.

22 Q And with respect to the determinations reflected on  
23 those charts about the profit that was made from, for  
24 example, the purchase and sale of the first 96,100  
25 shares, you come up with the same profit figure that

1 Mr. Loveman had; correct?

2 A Yes.

3 Q And then with respect to the subsequent purchase  
4 and sale of e-Connect shares in the Silver Screen  
5 account, the 80,000 plus a bit, you come up with the same  
6 profit that Mr. Loveman came up with, didn't you?

7 A Yes, I did.

8 Q Now, with respect to the charts that you prepared,  
9 you prepared -- just a moment and I will have it. You  
10 prepared the chart that indicated when -- this is Defense  
11 Exhibit 2291. Do you have that before you?

12 A Yes.

13 Q Now, this is the chart that you prepared that  
14 listed what you described as releases?

15 A Yes.

16 Q And chronologically, along with purchases and sales  
17 of e-Connect stock in the Silver Screen account; correct?

18 A Yes.

19 Q Now, when you were referring to the documents that  
20 you described as releases --

21 A Yes.

22 Q -- you correlated those with items that you were  
23 able to locate either because they had been produced by  
24 the government for the defendant --

25 A Yes.

1 Q -- as instances of items which were publicly  
2 disseminated over the Internet concerning e-Connect;  
3 correct?

4 A Yes.

5 Q And some additional items that you located through  
6 your investigation; correct?

7 A Yes.

8 Q Now, with respect to these items, when you listed  
9 them on your chart, you listed them by what you referred  
10 to in the second column as a release title?

11 A Yes.

12 Q So you have Exhibit 2291 before you?

13 A Yes, I do.

14 Q So that would be what the headline was on the  
15 release; correct?

16 A Yes.

17 Q All right. And the headline on the release may or  
18 may not describe what it discussed about e-Connect in the  
19 release; correct?

20 A Yes.

21 Q So, for example, you had opinions from something  
22 called the subway.com; right?

23 A Yes, I did.

24 Q And on your chart where you list opinions for the  
25 subway.com, let's take an example, the one that appears

1 on the third page of your chart for the subway.com on  
2 March 2nd, 2000.

3 A Yes.

4 Q And you describe as subway.com announces investment  
5 opinion on stereoscope.com?

6 A Yes.

7 Q And then you correspond that to a document in the  
8 Bates number D with a lot of zeros and then 62-64?

9 A Yes.

10 Q Okay. That opinion was not an investment opinion  
11 about e-Connect, was it?

12 A I will have to refer to it.

13 Q Could you look at it. You have the underlying  
14 document?

15 A Yes.

16 The reference is to e-Connect at the bottom of  
17 the document, and I think there is four pages.

18 MR. ROBINSON: Your Honor, may I display this --  
19 this is an underlying document supporting that exhibit.  
20 It is marked as D000062.

21 MR. SAYRE: It speaks for itself, Your Honor.

22 THE COURT: And it is in Exhibit 2001?

23 MR. ROBINSON: Yes. It is the basis for 2001.

24 THE COURT: Overruled.

25 Q BY MR. ROBINSON: So, Mr. Knudson, I have placed on



1 the screen so the jury and the court can see, this is  
2 the document that you referred to in your chart as the  
3 subway opinion; correct?

4 A What Bates date?

5 Q March 2nd, 2002.

6 A What Bates number do you have there?

7 Q 0000062.

8 A Okay.

9 Q And on your chart, how do you describe this  
10 document?

11 A Announces investment opinion on stereoscape.com  
12 headline with e-Connect.

13 Q And on this document, it discusses, does it not,  
14 numerous companies?

15 A Yes, it does.

16 Q Where does it discuss e-Connect?

17 A It discusses e-Connect at the bottom of the page.

18 Q And isn't it correct that the only thing it says  
19 about e-Connect is under the heading, market's largest  
20 dollar volume leaders, dot, dot, dot, it lists e-Connect  
21 OTC BB, colon, e-Connect, which is the trading symbol for  
22 e-Connect, and then a bunch of other companies?

23 A Yes.

24 Q So the only information this provides, it is not an  
25 investment opinion about e-Connect, is it?

1 A I am not quite sure that it is an investment  
2 opinion, but it does have information regarding  
3 e-Connect.

4 Q The only information it has is that e-Connect,  
5 along with another -- the other companies listed here --  
6 and now I will display the second page of this exhibit,  
7 which continues on -- e-Connect and all those other  
8 companies listed, starting on the bottom of that first  
9 page and continuing to the top of the second page, are  
10 just described as the market's largest dollar value  
11 leaders?

12 A Yes.

13 Q So for purposes of your total mix analysis, all  
14 this type of release contributes is that it tells the  
15 public there is a lot of trading going on in dollar  
16 volume in e-Connect, along with a bunch of other stocks;  
17 correct?

18 A Yes. At the bottom of 61, it talks about when  
19 e-Connect was established and the technology and a short  
20 little description of what they were doing.

21 Q This is 62, though.

22 A Understand, but I think this is related to that as  
23 well. Maybe not. Never mind.

24 Q Is it fair to say that that is an example of a  
25 release which is not an investment opinion about

1 e-Connect?

2 A Yes.

3 Q Rather, it -- is it fair to say it is simply a  
4 description of trading activity in e-Connect?

5 A Yes. It is information out on the market about  
6 e-Connect.

7 Q And it does not recommend that anybody buy  
8 e-Connect, does it? No recommendation appears in that?

9 A No.

10 Q And there is no projection in it or prediction that  
11 e-Connect will reach a certain dollar volume or a certain  
12 price in the future, is there?

13 A No.

14 Q Now, Mr. Knudson, I would like you to continue on  
15 with your chart. We will look at some other examples of  
16 what you have cited as releases.

17 Could you please look at -- at the  
18 equityalert.com announces investment opinion number 8 of  
19 8, which I believe is on your chart as a release on  
20 January 7th of 2000.

21 A Okay.

22 MR. SAYRE: Your Honor, could we have the exhibit  
23 published so we know what Mr. Robinson is referring to?

24 MR. ROBINSON: Your Honor, I am referring to  
25 Defense Exhibit 2291 for the reference to the listing

1 that Mr. Knudson has.

2 THE COURT: All right. It is Defense Exhibit  
3 2291.

4 MR. ROBINSON: Right. And then I have referred  
5 him to a particular entry which is on this exhibit, which  
6 is the one that is described in the far left column as  
7 releasing firm, equityalert.com, release --  
8 equityalert.com announces investment opinion number 8 of  
9 8.

10 THE COURT: And is this opinion included in  
11 Exhibit 2001?

12 MR. ROBINSON: I believe it is, Your Honor, as  
13 Bates number D0000003 through 4 as the underlying  
14 document.

15 THE COURT: Thank you. Do you have a question?

16 MR. ROBINSON: Yes. I want to refer him to that.

17 Q BY MR. ROBINSON: Now, with respect to that document,  
18 do you have that before you?

19 A Yes, I do.

20 Q Okay. Now, the title of that document is what?

21 A Equityalert.com announces investment opinion number  
22 8 of 8.

23 Q Now, that is not the title that you used for the  
24 release title, is it?

25 A No. It is the third line down.

1 Q Okay. So sometimes you used the title of the  
2 article and sometimes you didn't when you described it in  
3 this exhibit; is that correct?

4 A Yes.

5 Q All right. So, now, referring to this article,  
6 what in this article did you find that was relevant to  
7 e-Connect that's reflected on your chart?

8 MR. ROBINSON: Your Honor, may I publish this?

9 THE COURT: Yes.

10 Q BY MR. ROBINSON: What in this exhibit did you find  
11 relevant about e-Connect that caused you to list it on  
12 your chart?

13 A The statement E-connects gains 53.06 percent after  
14 taking first quarter order.

15 Q So there is a reference to the increase in the  
16 stock price of e-Connect?

17 A Yes.

18 Q Anything else?

19 A No.

20 Q So it is fair to say that this is not an investment  
21 opinion recommending e-Connect, is it?

22 A That is true.

23 Q And it doesn't project any -- give any opinion  
24 projecting any increase in E-connect's price, stock price  
25 in the future, does it?

1 A Well, actually, if you read it, I think you could  
2 conclude that this talking about a gain of 53 percent, I  
3 think --

4 Q Does it say it is going to gain in the future to a  
5 certain price per share level?

6 A I think you could conclude that, yes.

7 Q Where -- that is an inference you are drawing,  
8 isn't it?

9 A That is true.

10 Q What does it say in this document about any  
11 prediction of future stock price? Does it specify a  
12 price, it is going to go up to a certain amount?

13 A No, it doesn't.

14 Q And so, it is fair to say that this reflects  
15 historical information about where e-Connect stock is  
16 trading at that point in time, and that is all it does?

17 A That is true.

18 Q Now, with respect to e-Connect itself, it put out  
19 releases; correct?

20 A Yes.

21 Q The company itself issued releases. And you have  
22 included those on your exhibit, Defense Exhibit 2291;  
23 correct?

24 A Yes.

25 Q Is it fair to say that in the company's own press

1 releases, it did not predict a particular stock price in  
2 the future?

3 A I think that would be fair to say that that is  
4 probably accurate.

5 Q And it wouldn't be fair to characterize the  
6 company -- E-connect's own press releases as investment  
7 opinions, would it?

8 A I don't know. I don't know that you -- I think  
9 that's an opinion that I couldn't advance.

10 Q Is it fair to say that the company's own releases  
11 about itself are not presented as being independent from  
12 the company?

13 A That is probably true.

14 Q Now, on your Exhibit 2291, there were also  
15 releases, weren't there, from companies other than  
16 e-Connect which made reference to e-Connect, and you  
17 included those; right?

18 A Yes.

19 Q So, for example, if we could look at the release  
20 you have listed on here for e-Connect -- well, just a  
21 moment, I'm sorry.

22 MR. ROBINSON: May I have just one moment, Your  
23 Honor? I need to clarify something about this exhibit.

24 I apologize for the delay.

25 Q Mr. Knudson, if you would look on the Defense

1 Exhibit 2291, you have an entry for releasing firm E  
2 funds for January 28th, 2000?

3 A Yes.

4 Q See that. And then you have the underlying  
5 document that supports that, which is D0000011?

6 A Yes.

7 Q And could you turn to that document, please. Do  
8 you have that before you?

9 A I am looking. I don't have that in my exhibit  
10 package, I don't believe. Let me look again.

11 Q You don't have that, sir?

12 A I don't have that here in my package, no.

13 MR. ROBINSON: Your Honor, I could approach him  
14 and give him my copy?

15 THE COURT: Yes.

16 Q BY MR. ROBINSON: You now have before you Defense  
17 Exhibit 0000011?

18 A Yes, I do.

19 Q And this is the release that you cite in support of  
20 the entry on your chart, Exhibit 2291, with respect to  
21 E funds on January 28th, 2000; correct?

22 A Yes.

23 Q Now, this, a news release, is from -- not from  
24 e-Connect; correct?

25 A That's correct.



1 Q You attribute on your chart to E funds; correct?

2 A Yes.

3 Q And in this release, is -- let me strike that.

4 Is this release an investment opinion on  
5 e-Connect? It is not, is it?

6 A No.

7 Q And this release doesn't predict any particular  
8 future price for e-Connect, does it?

9 A No, it doesn't.

10 Q And it doesn't recommend that people buy e-Connect,  
11 does it?

12 A Not specifically, no.

13 Q And it doesn't purport to be from any independent  
14 investment analyst, does it?

15 A Well, it has a safe harbor statement at the bottom  
16 of the page, so I am not sure how to answer that  
17 question.

18 Q Well, is there anything in this document where the  
19 company releasing it says they're independent investment  
20 analysts with regard to e-Connect?

21 A It doesn't say that, no.

22 Q Isn't this a case of another company that does  
23 business with e-Connect talking about their business  
24 relationship?

25 A I don't know.

1 Q Now, I would like you to look on your -- excuse me,  
2 I keep saying your. I apologize. This is Defense  
3 Exhibit 2291 which you have prepared. Please turn to the  
4 second page, and you have an entry there for something  
5 released by freedomstocks.com?

6 A Yes.

7 Q And that is for February 7th, 2000?

8 A Yes.

9 Q And do you have the underlying documents supporting  
10 that, 2550 and 2521?

11 MR. SAYRE: Your Honor, I would like to object  
12 under Rule 403. We are not even in the relevant time  
13 period. This is a waste of time.

14 MR. ROBINSON: This is a defense chart, Your  
15 Honor.

16 THE COURT: Overruled.

17 Q BY MR. ROBINSON: Do you have that before you,  
18 Mr. Knudson?

19 A Say those again, please.

20 Q I believe on your chart it is 2508 and 2509.

21 THE COURT: I believe you just referred to earlier  
22 Bates stamp 2550 and 2521.

23 MR. ROBINSON: Your Honor, I apologize. I  
24 misspoke about that. It is 2550 and 2521. I apologize.

25 THE COURT: Okay.

1 THE WITNESS: Okay.

2 Q BY MR. ROBINSON: And on your -- excuse me. I  
3 apologize. On Defense Exhibit 2291, this entry that you  
4 have for Freedom Stocks for February 7, 2000, how is  
5 that described under release title?

6 A Freedomstock.com announces investment opinions for  
7 week of February 7th, 2000.

8 MR. ROBINSON: May I publish it, Your Honor?

9 THE COURT: Yes.

10 MR. SAYRE: Your Honor, I would like to also  
11 object that, for whatever reason, we couldn't read from  
12 these documents. I object to the fact the prosecution is  
13 doing the same.

14 THE COURT: Overruled. The argument lacks merit  
15 or basis.

16 Q BY MR. ROBINSON: Mr. Knudson, so in this particular  
17 instance on Defense Exhibit 2291, you used the same  
18 title as appears at the top of this release, correct,  
19 Freedomstocks.com announces investment opinion for week  
20 of February 7th, 2000?

21 A Yes.

22 Q Where in this document did you find information  
23 that related to e-Connect?

24 A Give me a moment, please. On 2550, there -- seems  
25 to be related to another document, which is 2521. It is

1 listed on 2521.

2 Q Well, you have it listed for 2550, don't you, on  
3 your chart?

4 A Yes, I do.

5 Q So let's, if it we can, for the moment stick with  
6 2550, because that is the document that matches the title  
7 that you have for this entry; correct?

8 A That is true. I was interrelating these two on the  
9 same date.

10 Q Okay. Well, on this document, 2550, isn't it the  
11 case that the only thing in this document that even --  
12 that mentions e-Connect is where it says "Recently  
13 profiled U.S. companies include," a number of companies  
14 are listed, and at one point it says e-Connect?

15 A Right.

16 Q Is there anything else about e-Connect on this  
17 document?

18 A No.

19 Q And so, it is fair to say that this is not an  
20 investment opinion itself concerning e-Connect; correct?

21 A That is true.

22 Q It makes no prediction of future price for the  
23 company; correct?

24 A That's correct.

25 Q And it doesn't recommend that people buy the stock,

1 does it?

2 A No, it doesn't.

3 Q On Defense Exhibit 2291, you also included, did you  
4 not, news service articles that referred to e-Connect;  
5 correct?

6 A Yes.

7 Q For example, you had a news service article  
8 regarding e-Connect that appears from something called  
9 Asia Pulse PTE, and that is on page 4 of 2291 for a  
10 release date of March 8th, 2000; correct?

11 A Yes.

12 Q And the underlying document that you had that  
13 supported that is marked as D00000074; correct?

14 A Yes.

15 Q And that is not -- let me rephrase.

16 That's Asia Pulse PTE sending out a release on  
17 repeating IFR; correct?

18 MR. ROBINSON: Your Honor, may I check with the  
19 agent about one thing?

20 THE COURT: Yes.

21 Q BY MR. ROBINSON: I'm sorry for the interruption.

22 This is D00000074; correct?

23 A Yes.

24 Q Okay. And you put this on your -- on Defense  
25 Exhibit 2291 described as asia.net summary for Wednesday,

1 March 8, 2000; correct?

2 A Yes.

3 MR. ROBINSON: Your Honor, may I display this?

4 THE COURT: Yes.

5 MR. ROBINSON: I am displaying D0000074.

6 Q BY MR. ROBINSON: At the top of it, it says asia.net  
7 summary for Wednesday, March 8, 2000, which is the title  
8 you used for the release title on your chart?

9 A Yes.

10 Q What on this document relates to e-Connect that  
11 caused you to include it in your exhibit?

12 A At the bottom of the page.

13 Q And that is the part where it talks about the part  
14 of what e-Connect said today concerning integration of  
15 its systems?

16 A Yes.

17 Q Now, it is fair to say that this is not an  
18 investment opinion, is it?

19 A No, it is not.

20 Q It doesn't make any predicted about the future  
21 price of e-Connect?

22 A That is true.

23 Q Doesn't recommend that anyone buy e-Connect, does  
24 it?

25 A No, it doesn't.

1 Q And it doesn't purport to come from an independent  
2 investment analyst who doesn't have any interest in the  
3 stock, does it?

4 A I don't believe so.

5 Q You also have on Exhibit 2291 release that comes  
6 from something called Linux Stock News. This appears on  
7 March 7th, 2000. It is on the first page of 2291.

8 A Yes.

9 Q And that is supported by Exhibit D00000072 and 73?

10 A Yes.

11 Q Could you turn to those supporting documents? Do  
12 you have them before you?

13 A Yes, I do.

14 MR. ROBINSON: Your Honor, may I publish?

15 THE COURT: Yes.

16 Q BY MR. ROBINSON: Now, the title that you have on  
17 Exhibit 2291 for this is Linux Stock News announces  
18 investment opinion; correct?

19 A Yes.

20 Q And that comes from the top of this page; right?  
21 That is where you got it?

22 A Yes.

23 Q Now, where on this document is there material  
24 concerning e-Connect that caused you to include it as  
25 part of Exhibit 2291?

1 A I don't have the first page. Oh, yes, I do. Here  
2 it is. The very, very bottom of the page.

3 Q The very, very bottom of the first page?

4 A Yes. And then beginning at the top of the second  
5 page.

6 Q Is that the part that says, "This week we revisit  
7 e-Connect," starting on the bottom of that page 72?

8 A Yes.

9 Q And then, it continues onto the next page; correct?

10 A Yes, it does.

11 Q And on the next page, it appears to be cut off.

12 Do you see any other information about  
13 e-Connect that appears on this defense exhibit?

14 A Just the reference to the information at the bottom  
15 of the page and the references to Palm IPO and that kind  
16 of connection.

17 Q Now, on your chart, this is described as Linux  
18 Stock News announces investment opinion, but it is  
19 correct, is it not, that this is not an investment  
20 opinion about e-Connect, is it?

21 A That is true.

22 Q It does not recommend that anyone buy e-Connect;  
23 correct?

24 A That's correct.

25 Q Doesn't project any future pricing levels for



1 e-Connect; correct?

2 A That's correct.

3 Q And it doesn't say that Linux Stock News is  
4 independent and objective and has no position in  
5 e-Connect, does it?

6 A No, it doesn't.

7 Q On Exhibit 2291, you include what could be  
8 described as releases from something called Wall Street  
9 Directory. And I invite your attention to page 4 of  
10 2291, an entry for the date, March 3rd, 2000, that you  
11 have listed the releasing firm Wall Street Directory?

12 A Yes.

13 Q And then beneath that you put barchart.com reprint.

14 A Yes.

15 Q And the corresponding supporting document is Bates  
16 3082?

17 A Yes.

18 Q First, Mr. Knudson, you describe this in the  
19 releasing firm column of 2291 as barchart.com reprint.  
20 What investigation did you conduct to determine that Wall  
21 Street Directory was a barchart.com reprint?

22 A I didn't.

23 Q So what -- why did you put something on your chart  
24 that you didn't investigate? Was there a reason that you  
25 put barchart.com reprint?

1 A That is in parentheses, so it may have been that  
2 that is what I was believing that it was and failed to  
3 take it out after -- after I couldn't find whether it was  
4 or not.

5 Q So you don't really know where the Wall Street  
6 Directory comes from or what its affiliation is with  
7 barchart, do you?

8 A This came out of the government's exhibits.

9 Q But you don't have any knowledge because you didn't  
10 investigate it; correct?

11 A That is true.

12 Q Now --

13 MR. ROBINSON: Your Honor, may I publish this?

14 THE COURT: Yes.

15 Q BY MR. ROBINSON: So is it fair to say that you don't  
16 know who or what is Wall Street Directory?

17 A That is fair to say.

18 Q Now, on this document what information concerning  
19 e-Connect did you find relevant that caused you to put it  
20 on 2291?

21 A It was providing market information on e-Connect.

22 Q So, for example, it appears to indicate for the  
23 date March 3rd of 2000, there is open, high, low, last,  
24 change in volume numbers relating to e-Connect?

25 A Yes.

1 Q And that is historical stock information?

2 A Yes.

3 Q And then there are some additional items on here  
4 called the composite indicator trend spotter. Do you  
5 know what the composite indicator trend spotter is?

6 A It is an analysis performed by this company.

7 Q Are you speculating, or do you know that for a  
8 fact?

9 A Well, I am speculating.

10 Q And you don't know how this company performs a  
11 composite indicator trend spotter analysis, do you?

12 A No. I can only say that this is very similar to  
13 what Bar Charts was doing.

14 Q And on this document, the word "buy" appears  
15 multiple times; correct?

16 A Yes.

17 Q Now, it doesn't indicate, does it, any prediction  
18 about future stock price for e-Connect, does it?

19 A It doesn't say it specifically, no.

20 Q So from this, you can't tell, can you, whether you  
21 should buy e-Connect, according to this, when it is at  
22 \$5-and-a-half or \$6 or \$9 or \$10 or \$20? You can't tell  
23 from this, can you?

24 A That is true.

25 Q The buy is not in relation to any particular price?

1 A Only as it relates to that date.

2 Q And this does not indicate a time of day, does it,  
3 when it came out?

4 A I don't see it listed here.

5 Q And, in fact, since it shows the open, high, low,  
6 last, it would have to come out after trading closed that  
7 day, wouldn't it?

8 A Yes, I believe I have indicated that.

9 Q So this wouldn't be a buy recommendation that came  
10 out on the 3rd of March for trading that day because  
11 trading that day is done; correct?

12 A Well, I don't know that that is actually true.

13 Q It shows last \$4.63?

14 A That is true, but --

15 Q Does that indicate a closing price that day for the  
16 stock?

17 A Close of market is what that price is, but that  
18 doesn't mean that trading couldn't have occurred after  
19 close of market.

20 Q Now, this document doesn't purport to be from an  
21 independent investment analyst who doesn't own any stock  
22 in e-Connect, does it? There is nothing on here that  
23 says that?

24 A That is true.

25 Q And then, Mr. Knudson, you also talked about

1 several times barchart.com as among the releases that you  
2 put in Exhibit 2291; correct?

3 A Yes.

4 Q And so now, if I invite your attention to the entry  
5 that you listed on 2291, by a release from barchart.com  
6 for March 6th, 2000.

7 A Okay.

8 Q And so for that entry, the underlying pages for  
9 that, do you have those well as well?

10 A Yes, I do.

11 Q And that is 3083?

12 A Yes.

13 MR. ROBINSON: May I publish it, Your Honor?

14 THE COURT: Yes.

15 Q BY MR. ROBINSON: Mr. Knudson, this is one of several  
16 barchart.com releases that you have included in Exhibit  
17 2291; correct?

18 A Yes.

19 Q This one is for -- it is described as historical  
20 opinion as of 3/6/2000?

21 A Yes.

22 Q Does that indicate that this was printed out  
23 sometime after 3/6/2000, since it is an as of date and it  
24 says historical?

25 A I suppose so.

1 Q Now, on this chart, there is a listing of  
2 historical stock price information for e-Connect on  
3 March 6, 2000; correct?

4 A Yes.

5 Q With the open, high, low, last change, volume, et  
6 cetera; correct?

7 A Yes.

8 Q And then there is some information that refers to,  
9 for example, the 20-50 day MACD oscillator, 20-day  
10 Bollinger bands, et cetera. And across from that, there  
11 is the word "buy" that appears a number of times;  
12 correct?

13 A Yes.

14 Q Now, is it fair to say that on this exhibit, there  
15 is no recommendation -- strike that.

16 There is no prediction of future price for  
17 e-Connect stock, is there?

18 A Well, there actually are predictions and  
19 recommendations.

20 Q What price level does it say e-Connect stock is  
21 going to be in the future, and where does it say that on  
22 the chart?

23 A Well, it talks about short-term indicators,  
24 seven-day directional indicator, ten to eight moving  
25 average, and it is talking about a buy recommendation

1 over time. It doesn't say what the price would be.

2 Q Right. So a person reading this is not provided  
3 with information as to a particular price or price range?

4 A reasonable investor looking at this is not given  
5 information --

6 MR. SAYRE: Calls for speculation and conclusion.

7 MR. ROBINSON: I will rephrase it, Your Honor.

8 THE COURT: All right.

9 Q BY MR. ROBINSON: A person reading this document who  
10 is considering investing in e-Connect is not provided  
11 information about any specific or particular stock price  
12 range; correct?

13 A Well, it actually does. I mean, it is telling you  
14 the high and the low, and it is telling you what the  
15 current price is and --

16 Q Let me -- excuse me. Let me rephrase that. I am  
17 talking about future stock price. It does list  
18 historical stock price as of March 6, but it does not  
19 provide information as to specific stock price in the  
20 future, does it?

21 A It doesn't tell you a specific stock price. Nobody  
22 could ever predict that.

23 MR. ROBINSON: Your Honor, move to strike after he  
24 answered the question "it does not provide specific stock  
25 price."

1 THE COURT: Granted. Stricken.

2 Q BY MR. ROBINSON: Nor does it tell you a specific  
3 dollar range of stock price in the future, does it?

4 A No.

5 Q So it doesn't tell you, for example, whether you  
6 should buy the stock in e-Connect if it was at \$9 or \$10  
7 or \$15 or \$20, does it?

8 A It doesn't give you a specific price, that's  
9 correct.

10 Q And it doesn't purport to be provided by someone  
11 who is independent and has no position or ownership of  
12 e-Connect stock, does it? There is no disclaimer here in  
13 that regard, is there?

14 A Not on this, no.

15 Q Now, I would like to you look at the IFR opinion,  
16 independent financial reports's opinion, that is  
17 referenced on Defendant's 2291 that appeared on March 8th  
18 of 2000.

19 A Okay.

20 MR. ROBINSON: Your Honor, may I publish the first  
21 page of this?

22 THE COURT: Yes.

23 Q BY MR. ROBINSON: Now, the copy I have, Mr. Knudson,  
24 is from a copy that has been used previously in  
25 evidence. But if you could look at the screen and



1 satisfy yourself that what I am displaying is the same  
2 thing that you have for the March 8th Independent  
3 Financial Report's opinion. Is that the one you are  
4 familiar with?

5 A Hold on just a second. I have referred to it as a  
6 different number. I recognize this one, but I also have  
7 one that is referenced on my chart.

8 Q They appear to be the same document?

9 A Well, no. They are not the same document.

10 Q The same text?

11 A It is from Business Wire, so I would assume that it  
12 is.

13 Q Would you be confused if I use this copy that I  
14 have displaced? Because if you would in any way, I will  
15 make sure I am using the same one you are using if you  
16 think they are materially different.

17 A Go ahead.

18 Q Now, this is the March 8th Independent Financial  
19 Report's opinion that -- that you have been referring to  
20 in your testimony; correct?

21 A Yes.

22 Q And isn't it the case that, unlike all the other  
23 releases that we have been talking about that I have  
24 reviewed with you, this purports to be an independent  
25 investment opinion?

1 MR. SAYRE: Your Honor, the document speaks for  
2 itself, and it is argumentative.

3 THE COURT: Overruled.

4 THE WITNESS: Well, I don't think we reviewed all  
5 of the information on my chart.

6 Q BY MR. ROBINSON: Of the ones I reviewed with you --

7 A But the ones you have, I would agree.

8 Q Right. And unlike the ones I have reviewed with  
9 you that are on your chart, this does give predictions  
10 and projections about specific prices that e-Connect  
11 stock will reach in the future; correct?

12 A Yes.

13 Q And that is unlike any of the other releases on  
14 your chart that we have discussed so far; correct?

15 A That is true.

16 Q And this includes a disclaimer at the bottom where  
17 it says, "IFR holds no stock in e-Connect and is not and  
18 will not be compensated for its opinion in regard to  
19 e-Connect." That type of -- that disclaimer language,  
20 the substance of that, doesn't appear on any of the  
21 releases that we have reviewed so far; correct?

22 A That is true.

23 Q So of the releases that we have looked at so far,  
24 the release by Independent Financial Reports is not a  
25 press release, is it?

1 A No, it is not.

2 Q It is an investment opinion; correct? That is what  
3 it calls itself; correct?

4 A Yes.

5 Q And each of the Independent Financial Reports  
6 investment opinions are investment opinions and not press  
7 releases; correct?

8 A Yes.

9 Q And each of these purports to be independent and  
10 objective and coming from a company that has no interest  
11 in the stock it is recommending; correct?

12 A That's correct.

13 Q And particularly the last one that I showed you  
14 recommends purchase of the stock and talks about specific  
15 future higher prices and growth in the prices of the  
16 stock; correct?

17 A Yes.

18 Q Which of the other releases that you put into  
19 Exhibit 2291 do that?

20 A Do you want me to review all of them?

21 Q If you can review them and find some that have  
22 those same features, I would like you to identify them.

23 A I think the purpose of this exhibit is to show  
24 press releases in context with all the information that  
25 was out in the public. My --

1 MR. ROBINSON: Your Honor. Objection. Move to  
2 strike as nonresponsive.

3 THE COURT: Sustained. Granted. Stricken.

4 Q BY MR. ROBINSON: Can you identify any releases that  
5 you have listed on Defendant's Exhibit 2291 that have  
6 one or more of the features that I just described to you  
7 and you acknowledge are present in the Independent  
8 Financial Reports investment opinions?

9 A No, I can't.

10 MR. ROBINSON: May I have a moment, Your Honor?

11 THE COURT: Yes.

12 MR. ROBINSON: No further questions, Your Honor.

13 THE COURT: Thank you. Any redirect, Mr. Sayre?

14 MR. SAYRE: Yes, Your Honor.

15

16 REDIRECT EXAMINATION

17 BY MR. SAYRE:

18 Q Mr. Knudson, did you say Equity Alert or subway.com  
19 were opinions about e-Connect?

20 A No, I did not.

21 Q Did you state that -- in your exhibit that  
22 E-connect's press releases were opinions?

23 A No, I didn't.

24 Q And did you state that E funds was an investment  
25 opinion on your charts?

1 A No.

2 MR. ROBINSON: Your Honor, object to the form of  
3 the question. He is just asking the witness what his  
4 prior testimony was.

5 THE COURT: Overruled.

6 Q BY MR. SAYRE: Are the overwhelming majority of  
7 articles in Exhibit 2001 entirely about e-Connect?

8 MR. ROBINSON: Objection. Vague and ambiguous as  
9 to "overwhelming."

10 THE COURT: Sustained.

11 Q BY MR. SAYRE: Would it be fair to say that  
12 approximately 90 percent of the articles in Exhibit 2001  
13 are entirely about the e-Connect company?

14 A Yes.

15 Q Is it fair to say that the IFR opinions didn't give  
16 100 percent buy ratings?

17 A That is true.

18 Q Is it fair to say that Wall Street Directory did  
19 give 100 percent buy ratings?

20 A Yes.

21 Q Is it fair to say at the bottom of the IFR articles  
22 that there was a considerable warning given regarding the  
23 risks involving the stock market?

24 MR. ROBINSON: Okay. Irrelevant.

25 THE COURT: Sustained. And those exhibits that

1 have been admitted speak for themselves.

2 Q BY MR. SAYRE: Is it fair to say that the Wall Street  
3 Directory 100 percent buy rating had no warning of any  
4 kind?

5 A That is true.

6 Q Would it be fair to say that all articles tend to  
7 produce different forms of information?

8 MR. ROBINSON: Objection. Vague and ambiguous.  
9 Lack of foundation. Relevance.

10 THE COURT: Sustained.

11 Q BY MR. SAYRE: Did you find any two articles that  
12 were identical in the 60-something articles that you  
13 presented in Exhibit 2001?

14 MR. ROBINSON: Objection to the meaning of  
15 identical.

16 THE COURT: Sustained under 402, 403, 702.

17 Q BY MR. SAYRE: Did any of the other articles in  
18 Exhibit 2001 give 100 percent buy ratings in e-Connect?

19 MR. ROBINSON: Objection, Your Honor. Unclear as  
20 to whether he is referring to the exact words,  
21 100 percent buy rating, or that they recommended a buy  
22 without any reservations. The question is ambiguous.

23 THE COURT: Sustained.

24 Q BY MR. SAYRE: Precisely, did any of the articles in  
25 the Exhibit 2001 use the term 100 percent buy ratings

1 other than barchart.com and the Wall Street Directory?

2 A That is quite a big question. I am not sure. I  
3 don't have all of the information in my head at this  
4 moment. But there were some that were very positive. I  
5 can't say that they used 100 percent buy rating.

6 Q And IFR articles did not use that term, did they?

7 A I don't believe so.

8 Q Did IFR own any stock in e-Connect?

9 MR. ROBINSON: Objection. Lack of foundation.

10 THE COURT: Sustained.

11 Q BY MR. SAYRE: Did you purport to investigate the  
12 Wall Street Directory opinions?

13 A No.

14 Q Did you create the Wall Street Directory opinions?

15 A No, I didn't.

16 Q How many opinions did -- in combination of  
17 barchart.com and Wall Street Directory produce on  
18 e-Connect between the dates February 29th and March 8th  
19 in the year 2000? I should say that are included in your  
20 Exhibit 2001.

21 A Between February 28th and --

22 THE COURT: The question was February 29th and  
23 March 8th in the year 2000.

24 THE WITNESS: Would you say it again, please?

25 Q BY MR. SAYRE: Just how many opinions were there

1 between February 29th and March 8th that are included in  
2 Exhibit 2001?

3 A Are we talking about IFR opinions?

4 Q No. Wall Street Directory and barchart.com.

5 A Well, again, I don't believe they were opinions. I  
6 think they were news releases.

7 Q In respect to the historical opinions in Wall  
8 Street Directory and barchart.com, could you tell me on  
9 the barchart.com and the Wall Street Directory, the  
10 historical opinion for e-Connect, how many are there in  
11 the 2001 exhibit?

12 A (No response.)

13 Q All right. Possibly that is not so important.

14 MR. SAYRE: I would like to broadcast eight of the  
15 opinions, Your Honor.

16 THE COURT: Which of the documents? Can you  
17 identify them?

18 MR. SAYRE: Yes. This is January 29th.

19 THE COURT: And you are referring to writings  
20 listed in Exhibit 2291?

21 MR. SAYRE: Yes. Well, they are documents that  
22 are -- yes, that are mentioned.

23 THE COURT: All right. Which documents?

24 MR. SAYRE: They are in Exhibit 2001, but I don't  
25 know the specific identification.



1 THE COURT: If you could give me the name and the  
2 date and the Bates stamp identifying number.

3 MR. SAYRE: Yes. Well, the first one would be  
4 2/29/2000.

5 THE COURT: 2/29/2000. And which releasing firm?

6 MR. SAYRE: That would be barchart.com.

7 THE COURT: Barchart.com. All right. And that is  
8 Bates stamped 3079?

9 MR. SAYRE: Actually, unfortunately, it is missing  
10 from the exhibits I have here, but I would assume that it  
11 is preceding --

12 THE COURT: I am referring to Defense Exhibit  
13 2291. That is what I am reading from.

14 THE WITNESS: I have it in front of me.

15 MR. SAYRE: I think possibly we will just simplify  
16 this.

17 Q BY MR. SAYRE: Could you just briefly describe to the  
18 jury the concept of beneficial ownership for -- a  
19 nominee beneficial ownership in offshore corporations?

20 MR. ROBINSON: Objection. Calls for a legal  
21 conclusion and relevance and lack of foundation.

22 THE COURT: Sustained. Also beyond the scope of  
23 cross.

24 MR. SAYRE: No further questions. Thank you.

25 THE COURT: Any further questions redirect -- or

1 recross, Mr. Robinson?

2 MR. ROBINSON: Just briefly, Your Honor. ^rce.

3

4

RE CROSS-EXAMINATION

5

BY MR. ROBINSON:

6

Q Mr. Knudson, when you were asked about 100 percent  
7 buy ratings --

8

A Yes.

9

Q -- your response was simply that the words  
10 100 percent buy rating don't appear in the IFR opinions  
11 anywhere; correct?

12

A I didn't -- I don't recall seeing those.

13

Q Okay. But there is no question that the IFR,  
14 Independent Financial Reports, investment opinions  
15 recommended that people invest in that stock of  
16 e-Connect?

17

A That is true.

18

Q And with respect to 100 percent buy rating, of all  
19 the other articles that are in Exhibit 2291, it is only  
20 the ones that were put out under the name barchart and  
21 Wall Street that used the words 100 percent buy rating;  
22 correct?

23

A I believe that's correct.

24

Q And if you set aside those handful from barchart  
25 and Wall Street along with the Independent Financial

1 Reports investment opinions, there is no other releases  
2 in that exhibit where there is an investment opinion  
3 recommending buying e-Connect?

4 A I don't think I could say that with any clarity.

5 Q It is the exhibit you prepared.

6 A That is true, but as I sit here right now, I can't  
7 go through each one.

8 Q You don't remember any of them, do you?

9 A Not right now, I don't.

10 MR. ROBINSON: Nothing further.

11 THE COURT: Mr. Sayre --

12 MR. SAYRE: Yes, Your Honor.

13 THE COURT: -- any redirect?

14 Q BY MR. SAYRE: Mr. Knudson, in your experience as an  
15 IRS agent and investigator for the U.S. Treasury, is it  
16 impermissible to publish opinions?

17 MR. ROBINSON: Objection. Beyond the scope of the  
18 direct, the redirect and the cross, lack of foundation,  
19 and relevance.

20 THE COURT: Sustained on those grounds.

21 MR. SAYRE: No further questions, Your Honor.

22 MR. ROBINSON: Nothing further, Your Honor.

23 THE COURT: Can Mr. Knudson be excused as a  
24 witness, Mr. Sayre?

25 MR. SAYRE: Yes, Your Honor.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. ROBINSON: Yes.

THE COURT: All right. Thank you very much. You are excused.

And, Mr. Sayre, you may call your next witness.

MR. SAYRE: Your Honor, would it be permissible to take a short break?

THE COURT: We can get started, and then we will take a break. Thank you.

The witness can approach the witness stand to my right.

THE WITNESS: Thank you, Your Honor.

THE CLERK: Sir, can you please raise your right hand?

THE WITNESS: Certainly.

(The wit was sworn.)

THE CLERK: Thank you. Please take a seat, and can you please state and spell your full name for the record.

THE WITNESS: Yes. My name is Ronald W. Cornew, and that is spelled C-O-R-N-E-W.

THE CLERK: Thank you.

THE COURT: Mr. Sayre.

DIRECT EXAMINATION

1 BY MR. SAYRE:

2 Q Yes. Mr. Cornew -- I'm sorry. Dr. Cornew. How  
3 are you employed?

4 A I am the president of Market Consulting Corporation  
5 and have been so for approximately 20 years.

6 Q Can you describe your educational background?

7 A Yes, I have both a undergraduate and a graduate  
8 degree from the Massachusetts Institute of Technology.

9 Q Can you describe your employment over the past 20  
10 years?

11 A Yes. Over the last 20 years, I have been employed  
12 as a consultant in the securities industry. We have --  
13 over that time period, we have consulted for a large  
14 number of different organizations, including the New York  
15 Stock Exchange, Teachers Insurance and Annuity  
16 Association, which is the insurance company and the  
17 pension plan insurer and, for that matter, investment  
18 manager of the pension plans of approximately 2000  
19 colleges and universities in the United States. I have  
20 also been involved with, as I mentioned, any number of  
21 other organizations.

22 I also have been a professor at Ford  
23 International University where I have taught courses  
24 relating to investment management stocks and various  
25 things of that type.

1 Q As a result of your background and experience, do  
2 you have expertise in the field of how the United States  
3 stock market operates?

4 A Yes, I do. I do.

5 Q What is that experience?

6 A Well, again, as I mentioned, I have been employed  
7 for the last 20 years as a consultant in this area. But  
8 also, prior to that time, I was the -- a founder and a  
9 vice president of a company which created and sold  
10 securities.

11 And in that connection, I did due diligence  
12 work. I was involved in the generation of press  
13 releases. I was involved, for that matter, in the  
14 trading of the company. And just general, different  
15 kinds of tasks that relate to a lot of the issues in this  
16 case, including -- I think the thing I was trying to  
17 think of and say, perhaps if I have already said it,  
18 excuse me for me repeating myself, but I think I also  
19 wanted to point out that I had done due diligence work in  
20 connection with that.

21 Q And as a result of your education and experience,  
22 do you have expertise in the fields of securities and  
23 marketing?

24 A Yes, I do.

25 THE COURT: Would this be a good time to take our

1 break?

2 MR. SAYRE: Yes.

3 THE COURT: We will take a ten-minute break until  
4 1:30. The jurors should remember not to discuss this  
5 case or anything related to the case. Thank you.

6  
7 (The following proceedings were held in open court  
8 outside the presence of the jury:)

9  
10 THE COURT: The jurors are out of the room  
11 Dr. Cornew, you can step down from the witness stand. We  
12 will take a break in a couple of minutes, but until we  
13 do -- before we take a break, are there any issues to  
14 address at this time?

15 MR. ROBINSON: Your Honor, the government's motion  
16 in limine which the court has addressed with respect to  
17 Mr. Knudson also extended to the opinions of Dr. Cornew,  
18 and we have the same concerns as reflected in our motion  
19 in limine. And to the extent the court would like to  
20 address that before we get into those areas or perhaps  
21 Mr. Sayre could work around those areas, we would avoid  
22 having a lot of objections in front of the jury.

23 THE COURT: All right. How would you suggest we  
24 proceed? I would ask -- I could ask Mr. Sayre what  
25 opinions Dr. Cornew will state, will be asked to state.

1 MR. ROBINSON: Very well, Your Honor.

2 THE COURT: Does that sufficiently address your  
3 motion at this time?

4 MR. ROBINSON: Yes, Your Honor.

5 THE COURT: Mr. Sayre, what opinions will you be  
6 asking Dr. Cornew to give to the jury?

7 MR. SAYRE: I will look through the documents  
8 here.

9 THE COURT: Why don't we take a five-minute break  
10 for my staff, and then I will ask Mr. -- and the parties,  
11 then I will ask Mr. Sayre to list the opinions that  
12 Dr. Cornew will state.

13 (Brief recess.)

14 (The following proceedings were held in open court  
15 outside the presence of the jury:)

16  
17 THE COURT: We are outside the jurors' presence.  
18 Both sides are here. With respect to Dr. Cornew's  
19 testimony, reviewing the government's motion to dismiss  
20 and Exhibit 2 to the government's motion to dismiss,  
21 which contains -- which consists of a letter dated  
22 June 24th, 2008 summarizing Dr. Cornew's testimony, I  
23 would tentatively rule as follows:

24 Looking at the first -- the second paragraph  
25 on page 1 beginning, he will testify about the stock



1 market for tech stocks, tentative grant motion to exclude  
2 not relevant or admissible expert opinion.

3 With respect to the remaining paragraphs on  
4 page 1, the third, fourth, fifth and sixth, the court's  
5 tentative is to grant the motion to exclude as well for  
6 reasons set forth in the government's motion. With  
7 respect to the third paragraph, the testimony is not  
8 relevant, describing -- for example, insider trading  
9 frauds is not relevant.

10 With respect to the remaining opinions in the  
11 fourth, fifth and sixth paragraphs in Exhibit 2, this is  
12 not admissible expert opinion. Essentially, what the  
13 expert -- what defendant seeks to do is have his expert  
14 instruct the jury unnecessarily on the law.

15 With respect to the -- page 2 of Exhibit 2,  
16 there are five opinions listed in five separate  
17 paragraphs.

18 With respect to the first four paragraphs, the  
19 court would also tentatively grant the government's  
20 motion to exclude. Again, this is impermissible,  
21 inadmissible testimony by an expert and should be  
22 excluded for all of the reasons set forth in the  
23 government's brief. Again, the jury -- the witness seeks  
24 to instruct the jury on how they should interpret the  
25 law, how they should decide the case. Same ruling with

1 respect to the last paragraph on -- and the last opinion  
2 on page 2.

3 In addition, when the defendant refers to  
4 methodology, there is no foundation for the kind of  
5 methodology the expert would use. Moreover, again, the  
6 defense seeks to have the expert impermissibly tell the  
7 jury how they should decide what is material or is not  
8 material in this case.

9 With respect to the last page of Exhibit 2,  
10 the first paragraph states that the witness will testify  
11 about e-Connect, the company, its history. The question  
12 I have is, is this a proper subject of expert testimony?  
13 In this case, is there a sufficient foundation for his  
14 knowledge? Wouldn't the appropriate witness to testify  
15 about e-Connect be Thomas Hughes, who has already  
16 testified?

17 Then continuing on the third page, the second  
18 paragraph, the expert's opinion about the indictment and  
19 the criminal statutes is not relevant or admissible.  
20 This paragraph states that he has prepared charts. I  
21 need to learn more about those charts to see if they are  
22 admissible and would be concerned as to whether or not  
23 they are unduly cumulative of Mr. Knudsen's charts. But  
24 I would invite more information from the defendant as to  
25 what kind of charts the doctor has prepared.

1           Then, with respect to the third paragraph on  
2 page 3, the court's tentative would be to exclude that as  
3 well, though I would entertain argument to the contrary.  
4 And I would exclude it for reasons set forth in the  
5 government's brief.

6           With respect to the fourth paragraph on  
7 page 3, the court's tentative would be to exclude  
8 pursuant to grounds set forth in the government's papers.

9           With respect to the fifth paragraph on page 3,  
10 the court's tentative would be to exclude as well for  
11 reasons set forth in the government's brief.

12           And with respect to the final opinion, the  
13 final paragraph on page 3, the court would also exclude  
14 pursuant to the grounds set forth in the government's  
15 brief.

16           Before I turn to the defendant, does --  
17 Mr. Robinson, does the government have any argument they  
18 wish to highlight or correct?

19           MR. ROBINSON: No, Your Honor. I think that there  
20 were some Rule 16 arguments that we made as well, but I  
21 would approach those the same way we approached the other  
22 ones. It is within the court's discretion. We wouldn't  
23 ask that he be prohibited from testifying, but if there  
24 are areas of opinion that the court will allow him to  
25 testify to which were not -- for which the bases and the

1 reasons were not spelled out in the Cornew Rule 16  
2 letter, we would ask that they at least be spelled out  
3 before the government is required to cross-examine him.

4 THE COURT: That is a valid request. In sum, as  
5 the government asserts in their papers, the expert should  
6 not be permitted to testify about how securities laws of  
7 the United States operate. He shouldn't be allowed to  
8 testify generally as to common fraud schemes. His  
9 testimony regarding materiality is also objectionable for  
10 the reasons highlighted in the government's brief. The  
11 government's objection to testimony regarding the impact  
12 of Silver Screen trading on the stock price also has  
13 merit and would be sustained.

14 Mr. Sayre, do you wish to be heard in  
15 response?

16 MR. SAYRE: Your Honor. Just that, clearly, it  
17 appears that we will be entirely eliminating all expert  
18 opinion; is that correct?

19 THE COURT: That is not what I stated. First of  
20 all, Exhibit 2, to the government's motion is rather --  
21 is general, and it doesn't purport to be exhaustive.  
22 Furthermore, as I stated, there may be areas where expert  
23 testimony by Dr. Cornew is appropriate.

24 For example, as I stated on page 3,  
25 Paragraph 2, you refer to the expert's charts. Well, the

1 summary is so vague, I can't tell what you are referring  
2 to. The charts may be admissible. That is one of the  
3 areas I identified as potentially a proper area for  
4 expert opinion.

5 So I would like to hear from you now, or  
6 since it is 1:45, if there is some areas of his testimony  
7 that you could elicit now in the next 15 minutes, why  
8 don't we do that rather than keeping jury waiting? And  
9 then once the jury leaves, I can ask for a more detailed  
10 recitation by the defense as to what opinions they do  
11 seek to elicit from the doctor.

12 MR. SAYRE: All right. And then, Your Honor, in  
13 respect to the charts, pretty much what the chart do is  
14 simply add more information to the government's charts.  
15 That is all they --

16 THE COURT: All right. And you provided a copy of  
17 the charts to the court this morning. I have them before  
18 me, Exhibits 2340 through 2363; is that right?

19 MR. SAYRE: Yes, Your Honor. And in regard to the  
20 time, again, it would be best, of course, as far as me  
21 being able to return and prepare for tomorrow, the  
22 earlier we break, the better.

23 THE COURT: You have had more than ample time to  
24 prepare for trial. That is why I continued the trial in  
25 this case multiple times.

1 MR. SAYRE: Yes.

2 THE COURT: I find that additional delays can't be  
3 justified. I am trying to accommodate your schedule, but  
4 you also want to be heard on certain points.

5 MR. SAYRE: Yes.

6 THE COURT: So I would suggest we stop today at  
7 2:00, and you will be heard on these issues before we  
8 recess.

9 Are there any areas of Dr. Cornew's  
10 testimony that can be elicited now in the next 15  
11 minutes?

12 MR. SAYRE: Yes. Yes, there is.

13 THE COURT: And I direct our attention to his  
14 charts.

15 MR. SAYRE: All right. Are we referring to the  
16 testimony before the jury, Your Honor?

17 THE COURT: Correct.

18 MR. SAYRE: Yes. We can continue with his  
19 background, and that would probably easily take the next  
20 12 minutes, I would imagine.

21 THE COURT: That doesn't really seem to be -- you  
22 know, I am not placing time limits on you, but you have  
23 got a jury here. If you waste time in front of the jury,  
24 I don't think it is beneficial to your case. Are  
25 there -- it appeared to me that you asked a lot about his

1 background before we broke. Maybe you need a little more  
2 time. But after that, is there any agreement as to which  
3 of the charts he can testify about?

4 MR. SAYRE: Oh, the charts after that. I would  
5 have to ask Dr. Cornew. We have been doing quite a bit  
6 of changes, and it looks like we will have to do quite a  
7 bit of additional changes to suit the motion in limine.

8 So which chart would come first, Dr. Cornew?

9 THE WITNESS: May I approach Mr. Sayre?

10 THE COURT: Sure. Well, perhaps I can shortcut  
11 things. Does the government have any objection to  
12 inquiry regarding 2340?

13 MR. ROBINSON: Your Honor, I think the government  
14 is at a disadvantage in that we have what we understand  
15 to be the charts, but we don't have exhibit numbers on  
16 them.

17 THE COURT: I apologize. You can --

18 MS. TABET: I placed a set of copies on your table  
19 this morning with the exhibit numbers in front of them.

20 MR. ROBINSON: Oh, no. If you put them here, it  
21 might be under something. We do --

22 THE COURT: Maybe we can expedite things --  
23 Mr. Robinson, any of these exhibits as to which the  
24 government has no objection at this time?

25 MR. ROBINSON: Your Honor, if -- I don't know

1 which exhibits relate to which area of the witness's  
2 testimony. I would have to speculate. A lot of them  
3 appear to relate to areas which the court has tentatively  
4 ruled she would exclude.

5 So perhaps the defendant could identify with  
6 Dr. Cornew which chart he thinks is an area that the  
7 court has not excluded, and I would address that.

8 THE COURT: All right. Thank you.

9 Mr. Sayre or Mr. Cornew?

10 MR. SAYRE: Yes, Your Honor. Did you want me to  
11 list the charts?

12 THE COURT: Yes. Which charts? After conferring  
13 with your expert, which charts do you believe could be  
14 identified and discussed?

15 MR. SAYRE: Okay. Then, there would be  
16 Exhibit 2340, which is Nasdaq market overall trading  
17 activity 1998 to 2002.

18 THE COURT: Any objection to that exhibit by the  
19 government?

20 MR. ROBINSON: I think Your Honor ruled that he  
21 should not testify about the stock market for technology  
22 stocks in the late 90's and early 2000 because it is not  
23 relevant.

24 THE COURT: I need further argument to convince me  
25 this is relevant. So putting aside 2340 and 2341 --



1 MR. SAYRE: Yes.

2 THE COURT: -- are there any other exhibits or  
3 groups of exhibits?

4 MR. SAYRE: Did we just pass by 2341? I see. And  
5 then this next one is Exhibit -- it is a government,  
6 Exhibit 104. What we have is an overlay which points out  
7 the omissions on that chart. And the overlay is  
8 Exhibit 2342.

9 THE COURT: Well, exhibits shouldn't be  
10 characterized as a correction of omissions. That would  
11 be argumentative.

12 MR. ROBINSON: Your Honor, I don't believe that we  
13 offered into evidence 104.

14 THE COURT: All right. That's correct. I will  
15 have my clerk check.

16 Mrs. Sanchez, has 104 been admitted?

17 THE CLERK: No. Identified only.

18 MR. ROBINSON: I haven't offered it. I may use a  
19 version of it in closing, but it is not admitted.

20 MR. SAYRE: Wouldn't it have to be admitted to be  
21 used in closing, Your Honor?

22 THE COURT: I am not addressing the admissibility  
23 now. You have got 15 jurors in the jury room that are  
24 starting to get really hot, so --

25 MR. SAYRE: Exhibit 101, Your Honor, would be --

1 Government Exhibit 101, I believe, has been entered into  
2 evidence. And then the overlay for that exhibit would be  
3 Exhibit Number 2343, which is the omissions in the  
4 government chart. It is just adding the information that  
5 is missing from the chart.

6 THE COURT: All right.

7 MR. SAYRE: Press releases --

8 THE COURT: The clerk should confirm that 101 has  
9 been admitted.

10 THE CLERK: Yes, Your Honor.

11 MR. ROBINSON: Your Honor, I don't believe it was  
12 admitted in this version.

13 THE COURT: All right. I have two pages. I would  
14 have to go back and check my notes.

15 MR. ROBINSON: Yes. I think -- I think they  
16 altered an earlier draft, but they did not alter the  
17 one that we offered into evidence. So it would be  
18 confusing if it was presented.

19 THE COURT: Can we move along right now? We will  
20 have to address that.

21 MR. SAYRE: Then it would be on the exhibit --  
22 whatever exhibit they have that is replacing this  
23 exhibit, the overlay would be the same, Your Honor.

24 THE COURT: We can address that tomorrow.

25 MR. SAYRE: All right.

1 THE COURT: Any other exhibits or areas of  
2 testimony?

3 MR. SAYRE: I think, Your Honor, that at this  
4 point, it would be confusing, the jury wouldn't know what  
5 we were really discussing if we jumped forward that far,  
6 if we weren't able to at least produce that Exhibit 101  
7 which is now evidently --

8 THE COURT: All right. Do you want to call the  
9 jury in and finish the foundation as to his  
10 qualifications and --

11 MR. SAYRE: Yes, Your Honor.

12 THE COURT: -- the information he has reviewed to  
13 prepare for his testimony? Thank you.

14 And then after that, we will spend as much  
15 time as needed reviewing his testimony outside the  
16 presence of the jury so we have no delays tomorrow.

17 And if we don't finish today, I can start with  
18 both sides tomorrow at 8:00. It is my intention to start  
19 at 8:00 tomorrow anyway because after finishing issues  
20 relating to Dr. Cornew, I think would be it would be  
21 appropriate to continue our discussion of jury  
22 instructions and get as much resolved as we can.

23 I don't want to burden either side, but we  
24 also have an obligation to see as much as possible that  
25 the case is tried within the time estimate given to the

1 jury. And since we are stopping at 2:00 or 2:30, we can  
2 start at 8:00, if that is not going to be impossible for  
3 counsel and the parties.

4 (The following proceedings were held in open court  
5 in the presence of the jury.)

6  
7 THE COURT: In the trial, I note the presence of  
8 both sides, all the jurors. Please be seated. Ladies  
9 and gentlemen of the jury, I'm sorry to have kept you  
10 waiting.

11 Dr. Cornew can take the witness stand again.  
12 I would simply advise him that he was previously sworn  
13 and he is still under oath. Could he please state his  
14 name again for the record?

15 THE WITNESS: Yes, Your Honor. My name is Ronald  
16 Cornew.

17 THE COURT: Thank you, Dr. Cornew.

18 Please continue, Mr. Sayre.

19 Q BY MR. SAYRE: Yes. Dr. Cornew, as a result of your  
20 education and experience, do you have an expertise in  
21 the field of securities law -- I'm sorry -- securities  
22 violations at the criminal and civil level?

23 A Yes, I do. I have previously testified for the  
24 United States Attorney in a white collar crime case. I  
25 also have been involved in a fair number of matters

1 involving civil violations or alleged civil violations of  
2 securities law.

3 I am also a member of the compliance and legal  
4 division of the Securities Industry Association. And I,  
5 for that matter, have served as a member of the board of  
6 arbitrators on the New York Stock Exchange and of Nasdaq,  
7 including as chairperson.

8 Q As a result of your education and experience, do  
9 you have an expertise with the securities industry rules  
10 and the standards of practice within the industry?

11 A Yes, I do. And that includes the rules of the  
12 various so-called self-regulatory agencies, which again  
13 are the New York Stock Exchange and Nasdaq. It also  
14 includes both federal and state securities laws. And,  
15 for that matter, there are other issues of industry  
16 practice and custom and so forth that come into play.

17 Q As a result of your education and experience, do  
18 you have an expertise in the field of forensic accounting  
19 relating to the trading of various kinds of securities?

20 A Yes, I do. I have been involved in analyzing  
21 situations where embezzlement has occurred and other  
22 forms of white collar crime. I have also done damage  
23 calculations in connection with that kind of work and  
24 have prepared charts and graphs and things of that type.

25 Q Do you have an expertise in the area of what

1 constitutes due diligence related to the financial  
2 reporting industry?

3 A Yes. As I mentioned, back in the early part of my  
4 career, I was involved in a company that created and sold  
5 securities, and in that connection, I became familiar and  
6 was engaged in due diligence work in generating various  
7 forms of financial information that were released in  
8 connection with that.

9 I also have been a consultant to different  
10 brokerage firms where that kind of issue that you are  
11 speaking of comes up. For example, disputes between  
12 customers and brokers, there is often an allegation that  
13 a broker did not properly, you know, do the work that was  
14 necessary to present an investment to a client.

15 It is a similar kind of issue. There are a  
16 number of different areas where that kind of thing comes  
17 up.

18 Q Do you have an expertise in the area of forensic  
19 analysis regarding the stock market such that you can  
20 render opinions which would produce information that  
21 would be relevant to company releases, news sources, and  
22 other material related to this?

23 A Yes.

24 Q What is this field referred to as?

25 A Well, the -- what we are dealing with here

1 generally is the issue of what is material, and material  
2 is -- sorry for the double use --

3 THE COURT: Answer is nonresponsive and is  
4 stricken. The court would also refer to its prior  
5 orders. Not relevant.

6 MR. SAYRE: Yes, Your Honor.

7 Q BY MR. SAYRE: What is this form of analysis of news  
8 releases and press releases referred to? Is there a  
9 particular name or particular type of reference for that  
10 particular field of study?

11 A Yes. There is an area that has developed in  
12 securities in the last 10 years or so that deals with --  
13 it is something called an event analysis. And it deals  
14 with what it is that really moves stock prices. And,  
15 basically, things like earnings releases are dealt with  
16 as well as new product releases and revenue increases.  
17 Those are the things that event analysis shows moves the  
18 market.

19 Q Do you have an expertise in analyzing the kinds of  
20 offenses charged against a defendant and the code of  
21 regulations related thereto?

22 A I'm sorry. I did not hear your question,  
23 Mr. Sayre.

24 Q Do you have an expertise in analyzing the types of  
25 offenses that are related to the issue in this case?

1 THE COURT: Objection. Sustained in light of the  
2 court's rulings. 402, 403.

3 Q BY MR. SAYRE: Do you have an expertise in the area  
4 that constitutes due diligence related to the financial  
5 reporting industry?

6 A Yes.

7 Q Do you have an expertise in the area of forensic  
8 analysis regarding the stock market such that you can  
9 render opinions of whether the information released by  
10 companies and news services have had a -- I don't know if  
11 this word is impermissible, but material effect?

12 MR. ROBINSON: Objection, Your Honor.

13 THE COURT: Sustained. Irrelevant. 402, 403.  
14 Referring to the court's rulings.

15 Q BY MR. SAYRE: Do you have an expertise analyzing the  
16 kinds of offenses charged in the indictment against the  
17 defendant and the code of federal regulations related  
18 thereto?

19 A Yes.

20 Q Do you have an expertise in the field of stock  
21 frauds in their various forms?

22 A Yes.

23 Q Have you been qualified as an expert in respect to  
24 the fields mentioned above?

25 A Yes.



1 MR. ROBINSON: Objection. Compound.

2 THE COURT: Sustained.

3 Q BY MR. SAYRE: Do you have an expertise in the field  
4 of stock fraud litigation?

5 A Yes.

6 Q Are you an international lecturer and professor  
7 regarding stock frauds and the litigation related to  
8 stock frauds?

9 A I have lectured on that. I have lectured on that  
10 outside of this country, so the answer is yes.

11 Q Have you testified in court as an expert witness in  
12 either or all of the above areas in which you have an  
13 expertise?

14 MR. ROBINSON: Objection. Compound.

15 THE COURT: Sustained.

16 Q BY MR. SAYRE: Have you testified as an expert  
17 witness as a forensic analyst regarding stock issues?

18 A Yes. I think I answered that. I have done that  
19 kind of work, presented charts and damage calculations  
20 and things of that type.

21 MR. SAYRE: Your Honor, I would like to request --

22 THE COURT: Have you finished questioning the  
23 witness about his background and qualifications,  
24 Mr. Sayre?

25 MR. SAYRE: Yes, I have.

1 THE COURT: All right. Then the jury would be  
2 excused until tomorrow at 8:30. Please remember not to  
3 discuss this case or anything related to this case with  
4 anyone. Thank you very much. We will see you tomorrow  
5 at 8:30.

6  
7 (The following proceedings were held in open court  
8 outside the presence of the jury:)

9  
10 THE COURT: Thank you very much. The witness can  
11 step down.

12 We are outside the jury's presence, so we can  
13 continue our discussion of the government's motion in  
14 limine regarding the expert testimony of the doctor. I  
15 would refer to the government's brief commencing on  
16 page 7. Their objection number 1, as I have indicated,  
17 is -- should be sustained. Testimony regarding  
18 applicable securities laws would usurp the role of the  
19 court in instructing the jury on the applicable law.

20 With respect to objection number 2 relating to  
21 testimony about common fraud schemes, the government's  
22 objection also has merit. This is on page 7 commencing  
23 on line 24. The testimony would not be relevant and  
24 would not be helpful to the jury and, therefore, not  
25 admissible.

1           With respect to the objection on page 8  
2 commencing on line 4 regarding Cornew's testimony  
3 regarding materiality, that is also objectionable, and  
4 the government's objection has merit and will be  
5 sustained. The testimony first would improperly tell the  
6 jury how it should decide the issue of materiality. It  
7 would usurp the jury's function.

8           And the total mix testimony contemplated does  
9 not have support in the law, given the facts of this  
10 case. And I would refer to the legal discussions set  
11 forth in the government's brief, page 9, and the cases  
12 cited in particular at the bottom of page 9, including  
13 the Zweig case, Z-W-E-I-G.

14           With respect to the fourth item objected to on  
15 page 10, commencing on line 1, testimony regarding  
16 e-Connect, the company, its history and purported  
17 activities, as indicated, the court would sustain that  
18 objection on lack of foundation. Dr. Cornew is not a  
19 percipient witness, and while an expert can rely on  
20 hearsay facts to support his opinion, he cannot be called  
21 simply to introduce otherwise inadmissible hearsay to the  
22 jury. There is no foundation for expert opinion  
23 testimony as to e-Connect and Hughes. And Cornew's  
24 testimony would not be helpful to the jury. Therefore,  
25 not admissible.

1           The final area objected to is item number 5  
2 in the government's brief, impact of Silver Screen  
3 trading on stock price. The government contends this is  
4 not relevant or lacks probative value and therefore  
5 should be excluded under 403. I would invite further  
6 argument on this and further argument on the charts  
7 prepared by Dr. Cornew that Mr. Sayre wishes to  
8 introduce.

9           Mr. Sayre.

10           MR. SAYRE: Yes. Well, in regard to -- from what  
11 I understand, I am trying to make notes, but I understand  
12 that item 5 is an issue that you would like to hear  
13 further argument. Was there other items?

14           THE COURT: It is up to you. I gave you my  
15 tentative, and I am giving you time to respond.

16           MR. SAYRE: With regard to the impact on Silver  
17 Screen trading on stock prices, it is just a general  
18 overall presentation of the prosecution's charts that  
19 seem to indicate that the stock prices were affected by  
20 the sales and the purchases of Silver Screen Industries'  
21 stock.

22           So if they are not refuted by implication -- I  
23 realize the government's case is just implying that IFR's  
24 releases -- well, I am not sure if it is implying that,  
25 but my understanding is that he says that IFR's releases

1 or the omissions of Silver Screen Industries from IFR's  
2 releases have caused the stock to increase.

3 We need to somehow refute that, and if we are  
4 not allowed to refute it by proving, at least on a  
5 technical level, that this did not occur both in the buys  
6 and sells which are an issue of the case and also the  
7 press releases themselves and the impact that the  
8 omission of Silver Screen Industries had on the stock  
9 price of e-Connect, Your Honor.

10 THE COURT: All right. What is the government's  
11 response to Mr. Sayre's assertion that this evidence  
12 regarding the impact of Silver Screen trading on the  
13 stock price is relevant and needed to respond to the  
14 evidence introduced by the government in its case in  
15 chief?

16 MR. ROBINSON: Your Honor, neither the indictment  
17 nor opening statement from the government nor the  
18 evidence from Loveman or any of the other witnesses, I  
19 believe, was submitted in support of a theory that simply  
20 the trading, the purchasing and selling of stock in the  
21 Silver Screen account caused a manipulation of the  
22 market. There are cases that can be brought on that kind  
23 of a theory, but this is not one of them.

24 So the reason we argued that under 403, that  
25 this would be -- result in confusion of the issues and

1 undue delay is because it would be putting in what  
2 appears to be a complicated analysis with a number of  
3 parts to address what has not been an issue in dispute in  
4 this case.

5 We have never said and I don't believe Loveman  
6 or anybody else has said that because the defendant  
7 caused a certain amount of stock to be sold or purchased  
8 on a certain day, that conduct caused a change in the  
9 price of e-Connect.

10 Our focus has always been on him putting out  
11 the IFR releases and whether or not they were misleading  
12 to the public and done with intent to defraud. We didn't  
13 even have -- and I think we were careful, we didn't have  
14 Loveman say that a particular release caused a particular  
15 increase in the price of the stock. Frankly, I think  
16 that's a very difficult issue to argue, and if we ever  
17 argue it, it would be at a later point in these  
18 proceedings. But we have been careful to avoid that, and  
19 so we have not invited it. We have not alleged it. We  
20 have not tried to prove it.

21 And so I don't think that injecting that into  
22 the trial would serve to do anything other than confuse  
23 the jury and result in an undue consumption of time on  
24 matters that are not at issue.

25 THE COURT: It would be easier to address the

1 government's objection if the court knew more about what  
2 Dr. Cornew is going to testify to pertaining to the  
3 impact of Silver Screen trading on stock price.

4           Perhaps you can explain, Mr. Sayre. In the  
5 disclosure to the government on June 24th, which is  
6 Exhibit 2 to the government's motion, it is stated on  
7 page 3 that the expert will testify about charts he has  
8 prepared and will testify as to the impact of Silver  
9 Screen orders on the market and activity of the market.  
10 Perhaps you can be more specific because here -- the  
11 government's objection that there was insufficient  
12 disclosure has merit.

13           MR. SAYRE: Yes, Your Honor. The government  
14 charts inferred by indicating that the purchases occurred  
15 at certain times, and then they have the bars of the  
16 price of e-Connect rising, and they infer that the IFR  
17 releases caused the increase in value by only isolating  
18 the IFR reports as well as the Silver Screen Industries'  
19 purchases.

20           So clearly, the charts speak for themselves,  
21 as Mr. Robinson has said so many times today. And that  
22 is going to speak to the jury just as loudly as any  
23 testimony would. And we need to contradict the  
24 implications of the charts.

25           And what we will be doing in that regard is

1 simply adding the information that has been left out by  
2 the government. And that is really the intention of the  
3 charts that we have in regard to the charts that will be  
4 presented by Dr. Cornew.

5 THE COURT: And what opinions will he be asked to  
6 give regarding these charts? What conclusions?

7 MR. SAYRE: The conclusions will be entirely  
8 statistical in regard to the buys and sells of the  
9 e-Connect stock by Silver Screen Industries. So it will  
10 show the impact on the market that these buys and sells  
11 had by statistical analysis of the actual fluctuation  
12 price before, during, and after these trades occurred.

13 And it would be very brief. We don't intend  
14 to take more than 15, minutes I don't believe. It is  
15 just showing the documentation of the statistics to prove  
16 that the market did not move and was not subject to any  
17 type of influence by these trades.

18 MR. REED: Your Honor, Dr. Cornew indicated that  
19 he can give you more details if you wish them.

20 THE WITNESS: If it would help the court.

21 THE COURT: All right. If there is no objection.

22 THE WITNESS: Your Honor, I have not been in here  
23 to hear all the back and forth, but I understand that the  
24 issue of the mix of information as it relates to this  
25 case, that the court has indicated that that testimony



1 can be received on it, but that it would not be --

2 THE COURT: It would perhaps be more appropriate  
3 if, instead of making an argument to me, which would  
4 really not be permissible, if you would just outline the  
5 testimony that you plan to give in this area. This would  
6 serve several purposes. I could assess the defendant's  
7 position that it is admissible, and it would also give  
8 the government the Rule 16 disclosure they are entitled  
9 to.

10 THE WITNESS: Yes. The purpose of the charts is  
11 to show that a reasonable investor would not have been  
12 persuaded at all by the evidence that appears there  
13 relating to Mr. Sayre's IFR press releases, that he  
14 should consider or would purchase shares in that  
15 particular stock.

16 THE COURT: And which charts are you referring to?

17 THE WITNESS: Well, it depends somewhat on what  
18 Mr. Robinson has in. But we are clearly referring to  
19 chart number 101 and perhaps another one that I do not  
20 know the number of, but it is the one that has the  
21 two marks on it that look like bolts of lightning  
22 striking.

23 MR. ROBINSON: Neither of those are in evidence,  
24 Your Honor.

25 THE WITNESS: Have they been shown to the jury?

1 MR. ROBINSON: If they are not in evidence, they  
2 don't get shown to the jury.

3 THE COURT: I am asking the questions here,  
4 Dr. Cornew. So what charts would you seek to introduce?

5 THE WITNESS: 101 and an overlay to it. I don't  
6 have the charts in front of me, but -- I have the charts  
7 in front of me now.

8 Exhibit 101 and an overlay to it.

9 THE COURT: What do you mean, what overlay? Is it  
10 one of your exhibits?

11 THE WITNESS: There is an acetate overlay that  
12 will go on top of this particular chart.

13 THE COURT: All right.

14 THE WITNESS: That would be one thing we would  
15 seek to introduce.

16 THE COURT: And for what purpose?

17 THE WITNESS: For indicating the insignificance of  
18 Mr. Sayre's press releases in view of the actions of  
19 ECNC.

20 THE COURT: What do you mean by insignificance?

21 THE WITNESS: Well, Your Honor, there are  
22 something in excess of 25 other press releases at the  
23 same time, and our view is that his release of those  
24 press releases would not have had an impact on a  
25 reasonable investor.

1 THE COURT: So that the -- in other words, the  
2 press releases were not material?

3 THE WITNESS: Yes. But I am not going to say  
4 anything about law, Your Honor. You are the expert of  
5 law here. I am just going to say what the facts are and  
6 then the legal interpretation.

7 THE COURT: Any other charts?

8 THE WITNESS: Yes. There is another set of  
9 exhibits -- again, I am hampered by lacking the numbers  
10 on these, but they are these charts right here which show  
11 relevant --

12 THE COURT: I can't see. If you could give me an  
13 exhibit number. Whose exhibit are you referring to, a  
14 government exhibit?

15 THE WITNESS: No. This now is an exhibit that has  
16 been prepared under my direction. And it shows that for  
17 the ten days from February 28th through March 10th, the  
18 market went up every morning. So any inference from  
19 previous testimony that the four press releases of  
20 Mr. Sayre caused those rises has no basis. That is the  
21 nature of that charge.

22 THE COURT: And looking at the exhibits before me,  
23 just for the record, it seems like you're referring to  
24 2352.

25 THE WITNESS: 2351, Your Honor.

1 THE COURT: 2351. Okay. Thanks. All right.  
2 Please continue.

3 THE WITNESS: Yes. And then there is another  
4 exhibit --

5 MR. ROBINSON: Your Honor, if I may --

6 THE COURT: Yes.

7 MR. ROBINSON: -- he has not given the reasons for  
8 that conclusion. He has just stated the conclusion and  
9 said here is a chart.

10 THE COURT: Well taken. What is the reason for  
11 this conclusion that -- as you assert, that the IFR  
12 reports did not --

13 THE WITNESS: The answer is that what a reasonable  
14 investor relies upon, based upon the event analysis work  
15 that I told you about before, is information relating to  
16 earnings increases or revenue increases or new products,  
17 there is an unending series of releases from ECNC in this  
18 period relating to those subjects. That, we believe, is  
19 the reason why the price rose.

20 THE COURT: So this relates to the materiality  
21 issue?

22 THE WITNESS: Well, yes, but I am not going to  
23 introduce any -- we will be introducing evidence but not  
24 making any decision on that issue.

25 THE COURT: Mr. Robinson.

1 MR. ROBINSON: I would like to know what is the  
2 premise for that conclusion, that a so-called reasonable  
3 investor pays attention to one thing and not another. I  
4 mean, there is no empirical data that has been supplied  
5 in any Daubert sense to show a reliable methodology. He  
6 reached that conclusion, but he hasn't provided any  
7 reasons why that conclusion has any validity.

8 THE COURT: Dr. Cornew, what is the basis for that  
9 conclusion?

10 THE WITNESS: The basis of it is my experience as  
11 a teacher and as someone working in this field as to what  
12 it is that makes prices rise.

13 THE COURT: Are you relying upon any empirical  
14 data or any methodology in arriving at this decision?

15 THE WITNESS: I am relying on my knowledge and  
16 experience.

17 MR. ROBINSON: Your Honor, that makes it. I would  
18 have a whole slew of Daubert objections on an expert who  
19 just says, based on my experience, I am a litmus test for  
20 what a reasonable investor would do.

21 THE COURT: I would agree. The defense would have  
22 to make a better showing of the basis for the decision  
23 to -- the basis for the opinion to have it admissible,  
24 more than it is based upon my experience.

25 But please continue. I would like to

1 hear --

2 THE WITNESS: There is another exhibit here, 2363  
3 is written at the bottom of it, Your Honor.

4 It shows what really happened to poor  
5 Mrs. Cattani. It is an exhibit that shows her buy of 75  
6 shares, and immediately afterward it, there is a very  
7 large volume of short selling that is the reason she lost  
8 the money that she did. That plus the fact that the  
9 prices were elevated through the press releases of ECNC.

10 MR. ROBINSON: Your Honor, we would to object to  
11 that because, first of all, the issue wasn't why she lost  
12 money. She just testified that she read the opinion and  
13 it was important to her, and she explained why it was  
14 important to her in her purchase. This is not a civil  
15 class action where she was claiming damages and we are  
16 trying to show what was the causality of her loss. She  
17 was called simply to testify about what she read and why  
18 it was important to her as an investor. And she  
19 testified about what was in the IFR releases that was  
20 important to her.

21 So on 403 grounds, I would object that some  
22 after the fact postmortem of what loss she sustained  
23 isn't important. I mean, if it is just for impeachment  
24 purposes, he could have impeached her at the time, asking  
25 about her loss and whether it caused any bias in her

1 testimony. But I don't see what the relevance, or, given  
2 the 403 considerations, what the justification is for  
3 this complex analysis about what happened to her trading  
4 after she made her decision to purchase e-Connect stock  
5 after reading the IFR opinion that she testified to.

6 THE WITNESS: May I respond?

7 THE COURT: You are not an advocate in this case.  
8 I will hear from Mr. Sayre.

9 MR. SAYRE: Yes, Your Honor. In that regard, I am  
10 fairly certain Mr. Robinson is likely to refer to  
11 Mrs. Cattani having suffered a loss because of the IFR  
12 opinion she read. And certainly, the inference is  
13 already there. The inferences are there in regard to  
14 everything that the government has stated in their  
15 charts.

16 And the inferences and the implications of  
17 what they are saying is clearly that the omission of  
18 Silver Screen Industries caused the stock to rise and  
19 caused to confuse people so terribly that they bought the  
20 stock by some -- I don't know, generally speaking, he is  
21 saying that the omission of Silver Screen Industries  
22 caused all the problems with e-Connect. That was what  
23 the implications on those charts clearly indicate. And  
24 we need to somehow contradict that through common sense  
25 and logic.

1 THE COURT: I would sustain the objection under  
2 Evidence Code Section 403.

3 Reviewing Ms. Cattani's testimony given on  
4 July 3rd, 2008 and commencing at 1:38 in the afternoon,  
5 the focus of her testimony was essentially that she saw  
6 the IFR opinions regarding e-Connect and she relied on  
7 them in purchasing the stock and she placed weight on the  
8 representation in the IFR opinions that the opinions were  
9 independent and that the author of the opinion, IFR, did  
10 not hold stock in e-Connect.

11 I don't believe the -- although there was  
12 evidence as to the price she paid and the trading, I  
13 understand that the government will not be arguing that  
14 she suffered a loss.

15 MR. ROBINSON: That is not an element of the  
16 offense, Your Honor, and we are not going to argue it as  
17 to her. I will go back and look at the transcript, but I  
18 don't think we got into -- she ultimately sold her  
19 shares, but we didn't even have much testimony on what  
20 happened in that regard.

21 THE COURT: She did testify that she wasn't paying  
22 attention to price and she placed a limit order and the  
23 price was going up quickly past her limit order. She  
24 placed another limit order. It was cancelled. She  
25 finally put in a market order because the stock kept



1 going up. She was influenced by the IFR opinion that  
2 said 20 to \$25. And on March 8th, she paid \$19.75 higher  
3 than she expected to.

4 If you can -- my ruling is to sustain the  
5 objection under 403, finding that the probative value as  
6 to Ms. Cattani is quite limited and outweighed by the  
7 dangers set forth in 403, including confusion of issues  
8 and wasting time -- confusion, unfairly so.

9 Please continue, Dr. Cornew, to list the  
10 charts you wish to introduce and your opinions. Then I  
11 will hear argument from the government and the defendant.  
12 And we will start at 8:00 tomorrow if there is anything  
13 in addition counsel or the government or -- or the  
14 defendant wishes to add, I will hear that at  
15 8:00 o'clock.

16 Yes.

17 THE WITNESS: Let me say that with regard to the  
18 exhibits, the final conclusion is going to be based on  
19 all the factors in the charts, especially the total mix  
20 of information, but even without it --

21 THE COURT: Can you -- can you -- since they are  
22 not listed in any disclosure to the government, can you  
23 list the charts that you intend to introduce and the  
24 opinions that you intend to state based on those charts?  
25 Is that --

1 THE WITNESS: I think that would be fair if we  
2 could do that tomorrow morning.

3 THE COURT: No. Now is the time.

4 Does that address the government's Rule 16?

5 MR. ROBINSON: Yes, Your Honor. Because then we  
6 will have an opportunity to prepare --

7 THE COURT: And also, I will be better able to  
8 assess the government's arguments and the defendant's  
9 arguments on the admissibility of the expert's testimony.

10 THE WITNESS: Your Honor, if I heard correctly,  
11 you have ruled every exhibit to be inadmissible.

12 THE COURT: That is not correct. And I was going  
13 to call you counsel. You are behaving like an advocate.

14 THE WITNESS: I am trying not to.

15 THE COURT: With all due respect, I need to know  
16 what opinions the defendant intends to elicit from you  
17 and the basis of those opinions. And it would be of  
18 great assistance if you, Dr. Cornew, or the defendant  
19 would list the opinions and the bases of the opinions and  
20 also, to the extent possible, cross-reference to the  
21 exhibits you have provided the court so I can appreciate  
22 the significance of the exhibits and properly consider  
23 the defendant's arguments that the exhibits are relevant  
24 and admissible.

25 THE WITNESS: All right. It has been pointed out

1 to me that there were some charts that were excluded when  
2 I went through this. Let me try to respond directly to  
3 your request.

4 THE COURT: I was handed -- another was a group of  
5 exhibits this morning entitled Dr. Cornew's exhibits,  
6 Exhibit 2340 through 2363. In addition to your opinions,  
7 the bases of the opinions, it would help if you would  
8 also address the significance of these exhibits to your  
9 opinions.

10 THE WITNESS: There are a group of charts under  
11 Exhibit Number 2346, I believe --

12 THE COURT: All right.

13 THE WITNESS: -- which -- there is one of them for  
14 each day that Mr. Sayre made an order. They show that  
15 his order had no impact on market price. And these are  
16 intended to be a defense against the argument that there  
17 was manipulation here.

18 Again, it is fundamental that evidence showing  
19 that his actions did not move the market, whether it was  
20 his purchases, as they were, his sales, or beyond that,  
21 that his press releases moved the market. If none of  
22 those things are true, and I believe we are in a position  
23 to show them, then it substantially enhances his defense,  
24 I believe.

25 THE COURT: All right. With respect to 2346, how

1 was it prepared?

2 THE WITNESS: It was prepared under my direction  
3 from data that was made available from FINRA, which is  
4 the new name for Nasdaq. They maintain a database in  
5 which it is possible to get a disk with all the prices of  
6 ECNC and also the changes in price of market maker,  
7 changes in their bid ask price. We have charts on those  
8 things.

9 THE COURT: So I fully appreciate this chart, can  
10 you exhibit -- with respect to this chart, can you go  
11 through just across the chart what is lined, what is  
12 date, what is our time, what is EX time, what is the  
13 control number, ST, volume, price, et cetera?

14 THE WITNESS: I would be glad to do that, Your  
15 Honor.

16 This again is a chart for January 31, 2000.  
17 It shows prices from that data source I just mentioned of  
18 Silver Screen -- sorry -- of ECNC both before and after  
19 the 10,000 share purchase. The line number on the left  
20 indicates the transaction number and the sequence for  
21 that day. I do not know if it begins with one, but every  
22 number, every line has a unique number.

23 THE COURT: All right.

24 THE WITNESS: The date, of course, is all the date  
25 of January 31, 2000. The R time refers to when the

1 transaction is actually being reported. The transaction  
2 is going to be on that line. The X time refers to when  
3 the transaction was actually executed. Those times are  
4 typically very close, but sometimes they are not.

5 Sometimes a trade will be an out trade. It won't be  
6 matched perhaps until the end of the day. Then you will  
7 have a recording of something that happened much earlier.

8 The control number is a number that I do not  
9 know the nature of, but it is obviously important to NASD  
10 to pin down this particular transaction.

11 Now, the ST code that appears there, there is  
12 a so-called regular way in which the transactions occur,  
13 and that is what the R is and, in most cases, that is  
14 what you are going to find in that column.

15 The M, frankly, I have forgotten what it is  
16 because it is really the R'S that are were going to be.  
17 I say that, but I see I am wrong. I see on that line  
18 that the M is there. And frankly, at this moment, Your  
19 Honor, it is not in my head what that is.

20 The volume is 10,000, indicating that the size  
21 of the transaction occurring at that instant of time,  
22 which happens to be, if you go back over to the line,  
23 9:34 and 43 seconds in the morning. That is Eastern  
24 Standard Time. So at 9:34 -- sorry -- 9:34:46 a.m.,  
25 10,000 shares were traded.

1 THE COURT: I understand. I still don't  
2 understand what the ST is. I haven't heard any  
3 information as to the ST code, what R or M is. But I  
4 understand your point.

5 THE WITNESS: It shows that there is no change in  
6 the price at that moment. That is what it shows.

7 THE COURT: All right. And you have that --

8 THE WITNESS: For each one of these days.

9 THE COURT: Okay. I see that on Exhibit --

10 THE WITNESS: Each day, there was an order from  
11 Silver Screen.

12 THE COURT: 2347, 2348 --

13 THE WITNESS: Yes.

14 THE COURT: -- 2349 through 2350.

15 THE WITNESS: Yes.

16 THE COURT: Okay. I understand that point. What  
17 about -- and I will consider the government's objection  
18 on grounds of relevancy and 403 and Mr. Sayre's argument  
19 to the contrary that this is, in fact, correct,  
20 Mr. Sayre, in rebutting the assertion that you engaged in  
21 a scheme to defraud. It is also responsive to  
22 Mr. Loveman's testimony and the exhibits introduced  
23 through Loveman; is that correct?

24 MR. SAYRE: That's correct, Your Honor.

25 THE COURT: Continue, please. I will reserve

1 ruling on this.

2 THE WITNESS: 2344 -- 2344 is a similar one, but  
3 this deals with the sale on March 9th.

4 THE COURT: All right. I think that's fairly  
5 clear.

6 THE WITNESS: It's a similar thing, yes, that his  
7 sale did not drive the market down.

8 THE COURT: You have explained 2346 through 2350.  
9 Any other charts you intend to introduce?

10 THE WITNESS: Yes. There is one here that's  
11 called 2361 where you see all the bid ask prices of the  
12 various market makers on March the 3rd, which is the  
13 one day where one of Mr. Sayre's press releases is  
14 released during the trading day. We have an opportunity  
15 there to see what the impact of that press release was on  
16 the market makers.

17 And once again, after this is presented, I am  
18 sure someone will argue that it shows that there was no  
19 impact on the market makers. And that is particularly  
20 important because those people make a living following  
21 the market and paying attention to any news that matters.

22 THE COURT: Thank you. What is the government's  
23 position on Exhibit 2361 and anticipated testimony by the  
24 expert on 2361?

25 MR. ROBINSON: Same position as we had before

1 under 403, Your Honor. We think it would just confuse  
2 the issues. We have never claimed that the buying and  
3 selling of stock by Mr. Sayre caused a change in the  
4 price of the stock.

5 The focus of the case is on whether or not  
6 the Independent Financial Reports releases are  
7 misleading. And to the extent that we had a chart that  
8 showed that there was an increase in the price of the  
9 stock during the period, it was just a way of  
10 illustrating that he would buy and sell and gain as the  
11 price of the stock went up.

12 MR. SAYRE: Your Honor, I believe the chart also  
13 shows, and Dr. Cornew can correct me if I am wrong, that  
14 the IFR releases also had no effect on the market makers  
15 or the price that they were quoting for the stock.

16 I believe those charts were used for the  
17 same --

18 THE COURT: What about the government's  
19 position --

20 THE WITNESS: I just explained that --

21 THE COURT: Excuse me. I am addressing the  
22 defendant, Dr. Cornew.

23 Mr. Sayre, what about the government's  
24 position that they are not contending that you had an  
25 impact on the market, the stock prices are only admitted



1 and only relevant to show that you bought when the stock  
2 price went up?

3 MR. SAYRE: All right. So I --

4 THE COURT: Not to show that you caused  
5 fluctuation in the stock prices or caused an increase in  
6 the stock price.

7 MR. SAYRE: All right. And the government is  
8 contending that the IFR reports did not cause any  
9 fluctuation in the stock price? Am I understanding that  
10 correctly?

11 MR. ROBINSON: We are taking the position that we  
12 don't have to prove that as an element of the offense,  
13 and I think that's consistent with the court's jury  
14 instructions.

15 THE COURT: Is the government going to argue that  
16 the IFR reports caused the stock prices to go up?

17 MR. ROBINSON: No, Your Honor. We have never  
18 argued that it was a cause. We have said it coincided  
19 with the increase in price and he profited as the price  
20 went up. We have argued that -- and we will argue that a  
21 reasonable investor would find that information material,  
22 but we haven't tried to establish through any empirical  
23 evidence a causal link that a certain press release or a  
24 certain opinion caused a certain price change in the  
25 stock.

1           So -- and frankly, this other thing about  
2           somehow market makers are the litmus test for a  
3           reasonable investor, I have never seen any case law that  
4           held that to be the case.

5           THE COURT: Mr. Sayre.

6           MR. SAYRE: I suppose if the government isn't  
7           contending that the IFR release is causing the increase  
8           in stock price, if that could be stipulated, then, there  
9           would be no need to disprove it.

10          Again, if the government is going to just  
11          remain moot on the subject and show the charts which  
12          clearly imply, in fact, not only imply, their charts  
13          misleadingly indicate that the IFR reports caused every  
14          singular increase in e-Connect stock price, because they  
15          don't even include any of the other materials that were  
16          out on the market at the time.

17          THE COURT: All right. With respect to 2361, the  
18          court would sustain the government's objection under 403,  
19          considering the content of 2361. And the reference to  
20          the market makers and the market maker identifiers, I  
21          find limited probative value in any event and that it is  
22          substantially outweighed by the danger, particularly of  
23          undue delay and waste of time, and also substantially  
24          outweighed by the danger of unfair prejudice. The  
25          objection is sustained to 2361.

1           Doctor, do you have any other exhibits or  
2 charts or other opinions that we haven't addressed?

3           THE WITNESS: Did we cover Exhibit 109, Your  
4 Honor?

5           THE COURT: Government's Exhibit 109? Is that in  
6 evidence, Mrs. Sanchez?

7           THE CLERK: I don't show it, Your Honor.

8           MR. SAYRE: Your Honor, there was one question I  
9 had. I believe the prosecution had mentioned that there  
10 was a change to chart 101. We could cover that chart now  
11 if we a copy of the changes to chart 101.

12          THE COURT: I will review the evidence as to 101.  
13 But 109 isn't in evidence.

14          So please move on, Dr. Cornew. Any other  
15 opinions you intend to state, and please cross-reference  
16 to the exhibits?

17          THE WITNESS: Yes. Did you make a decision with  
18 regard to 2363? This is the one that shows that Steven  
19 Sayre, through trading at Silver Screen, did not cause  
20 the losses.

21          THE COURT: I don't believe you have mentioned  
22 2363 yet.

23          THE WITNESS: Let me do that. It shows her 75  
24 share buy. Perhaps we could put this on the graph.

25          MR. ROBINSON: I believe, Your Honor, this was the

1 Cattani-related exhibits.

2 THE COURT: I apologize, yes. I did exclude that,  
3 I'm sorry, under Evidence Code 403.

4 MR. ROBINSON: Your Honor, I think that 2362 is  
5 still left. And perhaps we could learn whether or not  
6 that would be at issue.

7 THE COURT: Thank you.

8 Doctor, will you be seeking to introduce --  
9 to refer to and testify about 2362 and draw conclusions  
10 from 2362? If so, can you explain what it is?

11 THE WITNESS: Yes. 2362, every one of those bars  
12 is another press release that was issued at the time of  
13 Mr. Sayre's press releases and shows the total set of  
14 things that a reasonable investor would be considering at  
15 that point in time in determining whether or not he or  
16 she would be likely to buy the shares of e-Connect.

17 THE COURT: And what opinions will you be  
18 rendering in connection with 2362? What additional  
19 opinions?

20 THE WITNESS: That a reasonable investor under  
21 these circumstances would not have been influenced at all  
22 by the press release or three press releases of Mr. Sayre  
23 that had the offensive language, let alone by that  
24 language in those press releases, for reasons that I  
25 have -- that I need to testify to before Your Honor would

1 understand why that is relevant.

2 THE COURT: And what reasons?

3 THE WITNESS: Well, the reason again goes back to  
4 what I was telling you about event analysis, it being the  
5 fact that you have earning surprises, revenue surprises,  
6 and the release of information relating to new products  
7 being the things that move market makers and markets.  
8 Those are coming out in an unending succession from  
9 ECNYC, as an analysis of that would show.

10 THE COURT: Excuse me. Doctor, if you see me  
11 looking to my right, I am looking at real time, the  
12 reporter's printout of what you are saying. So I am not  
13 disregarding you. I am just listening to and reading  
14 what you are saying.

15 Thank you, please continue.

16 THE WITNESS: Mr. Sayre has felt it is vital to  
17 his defense to be able to show this environment and from  
18 that, be able to infer, even under the Tarrallo standard,  
19 that a reasonable investor would not be purchasing based  
20 upon his press release.

21 THE COURT: All right. What is the government's  
22 position?

23 MR. ROBINSON: Your Honor, I believe that the  
24 court has previously ruled in its law of the case that in  
25 order for the government to establish the offense --

1 offenses charged here, it is not necessary to show that  
2 the price of the stock was affected, that anybody was  
3 injured, or that there was a gain taken.

4 And in connection with the materiality motion  
5 that the defendant made that the court denied, I believe  
6 that the court ruled on that basis. It seems to me that  
7 the ultimate conclusion which the witness wants to derive  
8 is that if he can show that the market didn't change,  
9 therefore, it is impossible for what Mr. Sayre did to be  
10 material, and I think that's absolutely improper.

11 THE WITNESS: Your Honor, we are talking about  
12 press release --

13 THE COURT: Wait. Wait. Doctor, I am not  
14 addressing you. You are not an advocate. I would like  
15 to hear from Mr. Robinson, and then I'd like to hear from  
16 Mr. Sayre.

17 THE WITNESS: He is misunderstanding what I said.

18 THE COURT: You may be seated, sir.

19 Mr. Robinson, please continue.

20 MR. ROBINSON: Your Honor, it seems to me what the  
21 premise of the testimony is and why it would in effect be  
22 a misstatement of the applicable law is that the witness  
23 wants to give an opinion that ultimately tells the jury  
24 you cannot find that what Mr. Sayre did here with regard  
25 to the IFR opinions was material because my opinion is,

1 based on my experience, that no empirical analysis that I  
2 have given to the government to assess, based on my  
3 experience, I can tell you that anything he said didn't  
4 affect the price of the stock.

5 And that is simply not a legal requirement for  
6 establishing the elements of the offense in this case,  
7 and it would invade the province of the jury by saying  
8 that this expert has concluded that what Mr. Sayre said  
9 did not matter as an empirical matter because of some  
10 analysis which I have yet to hear explained other than it  
11 has been labeled "my experience."

12 THE COURT: So the government's objections include  
13 irrelevant and --

14 MR. ROBINSON: Improper opinion evidence.

15 THE COURT: -- improper opinion evidence?

16 MR. ROBINSON: And I would say one thing, Your  
17 Honor, also. If we had received the Rule 16 disclosure  
18 which would have indicated that there was going to be  
19 this kind of testimony on this kind of basis, we might  
20 have considered hiring our own expert who has a different  
21 litmus test for materiality and a different methodology.  
22 But we didn't get that disclosure. Now we are hearing  
23 about these things for the first time with real -- with  
24 no real articulation that I think would satisfy Daubert  
25 as to the reliability of this.

1           Also, under Daubert, I am sure the court knows  
2 that an expert's opinion which doesn't take into account  
3 all of the facts is not reliable. And I have heard  
4 nothing about his opinion that takes into account many of  
5 the facts in this case, including that we have had a  
6 witness who testified that she certainly found it  
7 material.

8           But setting that aside, I just don't  
9 understand this analysis. There is no empirical basis  
10 for offering it. It is just a summary conclusion that,  
11 based on his experience and looking at an event analysis,  
12 he has decided there was no event here resulting from  
13 Mr. Sayre's opinions that is material.

14           I just think under 702, 403, the fact that he  
15 is invading the province of the jury on a legal  
16 conclusion, it is entirely improper. He needs to lay a  
17 foundation for that kind of opinion, and he hasn't done  
18 it.

19           THE COURT: Mr. Sayre.

20           MR. SAYRE: Yes, Your Honor. I don't believe that  
21 Dr. Cornew intends to speak to the issue of materiality.  
22 What he wants to -- and he would exclude that from his  
23 language. But what he wants to do is simply show what  
24 effect the IFR opinion this had on the market by  
25 empirical research and statistics, because clearly,



1 despite what Mr. Robinson says that he is not going to  
2 claim that it caused injury or loss or gain or any of  
3 these issues, the whole concept of materiality becomes  
4 irrelevant. If it didn't cause anything, then why is it  
5 material? Obviously, a material fact has to have some  
6 form of causation.

7 THE COURT: Looking at 2362 and considering the  
8 Exhibit 2 to the government's motion and your argument  
9 and the doctor's statements, the court will sustain the  
10 objection to 2362, defendant's exhibit, and testimony  
11 regarding it.

12 I find that it is not relevant or its  
13 probative value is minimal and outweighed by -- or de  
14 minimus and outweighed by factors set forth in 403.

15 Moreover, the testimony is not admissible  
16 under Evidence Code 702. It is improper opinion  
17 testimony not shown to be reliable, invades the province  
18 of the jury, and there is a serious Rule 16 issue as  
19 well.

20 It is ten to 3:00. I know you need to get  
21 back. I have hearings commencing at 3:00 in other  
22 criminal cases. We will continue at 8:30 o'clock  
23 tomorrow if there is no objection. And I would order  
24 Dr. Cornew to be here and continue to list his opinions,  
25 the bases of his opinions, and cross-reference the

1 exhibits he intends to introduce. And I will hear brief  
2 argument on that tomorrow. Thank you very much.

3 (The proceedings were concluded.)  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

WITNESS NAME PAGE

CARL KNUDSON  
Direct Examination by Mr. Sayre 27  
Voir-Dire Examination by Mr. Robinson 81  
Cross-examination 85  
Redirect Examination 117  
Recross-Examination 122  
Redirect Examination 125

RONALD CORNEW  
Direct Examination by Mr. Sayre 125

EXHIBIT I.D. IN EVIDENCE

2001 - Press releases 35  
2291A - Spreadsheet 80 82

CERTIFICATE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: August 18, 2008

---

Katie E. Thibodeaux, CSR No. 9858

# **Exhibit L**

[REDACTED]

UNITED STATES DISTRICT COURT

[REDACTED]

-----X

[REDACTED],

Plaintiff,

[REDACTED] (PKC)

-against-

ORDER

[REDACTED],

Defendant.

-----X

[REDACTED], U.S.D.J.

The Court held a telephone conference with parties on [REDACTED] to address the discovery dispute raised in plaintiff's letter of [REDACTED]. (Doc. 52).

- (1) The parties agree that an evidentiary hearing is not required to decide the motion for a preliminary injunction, which therefore will be decided on written submissions and oral argument alone.
- (2) The scheduled depositions may proceed with no restrictions placed on plaintiff's ability to question witnesses regarding the issues raised in plaintiff's [REDACTED] letter. (Doc. 52).
- (3) The Court denies, without prejudice, plaintiff's application to compel the production of defendant's bank records. (Doc. 52). By [REDACTED], defendant shall set forth in a declaration a proposed schedule for a review of the requested bank records to ensure that production of such records complies with foreign data privacy laws.

[REDACTED]

SO ORDERED.

[REDACTED]

[REDACTED]  
United States District Judge

Dated:

[REDACTED]