



## I N D E X

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1 Monday Morning Session

2 November 18, 2013

3 10:08 a.m.

4 -- -- --

5 P R O C E E D I N G S

6 -- -- --

7 (In open court:)

8 THE COURT: Good morning. This the trial in SEC  
9 versus Schvacho, which is Civil Action No. 12-2557.

10 Would counsel announce their appearances, please?

11 MR. MAYES: Joshua Mayes on behalf of the  
12 Securities and Exchange Commission.

13 THE COURT: Good morning

14 MR. MAYES: Good morning.

15 MR. KIM: Paul Kim on behalf of the Securities and  
16 Exchange Commission.

17 MR. ALBERT: Ross Albert of Morris Manning & Martin  
18 on behalf of defendant Larry Schvacho.

19 MR. RABIN: Good morning, Your Honor. David Rabin  
20 representing Mr. Schvacho.

21 MR. LEVY: Good morning, Your Honor. Brian Levy  
22 representing Mr. Schvacho.

23 THE COURT: Well, let's begin with the submissions  
24 that you made to me on this judicial notice issue.  
25 I reviewed those over the weekend.

1           And basically the SEC contends that the Court can  
2 take judicial notice of approximately fifteen hundred stock  
3 prices of firms that Mr. Schvacho had listed in his  
4 deposition, and that those price are allowed to be judicially  
5 noticed for an eight-month period. The SEC I think  
6 essentially contends that it is relevant on the issue of the  
7 defendant's credibility.

8           The defendant contends it's not admissible because  
9 it was not disclosed in the pretrial order. And I would  
10 note, as I said before, that it's unfortunate that this issue  
11 has come up, and while Mary Jo White wants to try more cases,  
12 I hope that she impresses upon especially counsel in her  
13 agency that the goal here is for a just result and not just  
14 for a result.

15           I went back and have read our local rule and read  
16 the language of the pretrial order, and I think this is a  
17 case where the SEC has taken a litigating position to try to  
18 argue and justify their nondisclosure of this position  
19 earlier. And I think, as correctly noted, that this is the  
20 result of lawyers looking at a case late and finding an issue  
21 and evidence that they want to admit and trying to find a  
22 rationalization for it.

23           But my job is to determine whether or not the  
24 position of Mr. Schvacho that it wasn't in the pretrial order  
25 has merit.

1           The pretrial order only requires -- and maybe we  
2 should look at the pretrial order and the disclosures  
3 required again, but I think that the SEC has taken advantage  
4 of the ambiguity in the order, and I find that the pretrial  
5 order does not require the disclosure of requests for  
6 judicial notice of facts.

7           And I'm going to recommend to our committee that,  
8 now that we have somebody that has contested whether or not  
9 they are required to judicially -- to state that they intend  
10 to rely upon judicially-noticed fact, that that now  
11 regrettably now has to be I think included in our pretrial  
12 orders.

13           What I ultimately conclude, though, is that I don't  
14 know, one, whether judicially-noticed facts of the kind that  
15 the SEC wants are relevant in this case. I thought hard over  
16 the weekend, and find that there are a number of different  
17 scenarios where they would not be relevant. It could be that  
18 all or part of what the SEC wanted me to rule is admissible  
19 would not be admissible.

20           And so I'm not taking a position on that until I  
21 have some context for making a ruling, and I will have to see  
22 how the government intends for me to admit these or take  
23 judicial notice of these facts. And so I will just let that  
24 occur as it occurs.

25           Although I want the defendant to know and I will

1 offer again that I think that there is a scenario where it  
2 might be relevant in whole or in part, that the fact that it  
3 wasn't listed in the pretrial order -- while others would  
4 have listed it, it hasn't been listed here -- it was not  
5 required to be listed, so that is not a reason to preclude  
6 it. And I think you should assume that there is the  
7 possibility that it will come in.

8 And I will renew my offer to continue the trial if  
9 you want to do that.

10 MR. ALBERT: Your Honor, I think we would like to  
11 see how this plays out, and the offer that we would consider  
12 is for a limited continuance. And obviously if you wind up  
13 excluding it, we will not take you up on that. But if it  
14 comes in at that time, we would like to have the opportunity  
15 to consider a limited continuance.

16 We are prejudiced by any form of continuance, and  
17 that's what our reluctance here is. And as I'm sure you can  
18 appreciate, the opportunity --

19 THE COURT: How are you prejudiced by any kind of  
20 continuance? I mean, I could try this later in the week, we  
21 could try it next week.

22 And I am -- you are going to have to make a  
23 decision now. I am not going to have an advisory  
24 continuance.

25 MR. ALBERT: We decline the offer then,

1 Your Honor.

2 THE COURT: Thank you.

3 Do you want sequestration of witnesses?

4 MR. MAYES: We would like Mr. Enterline  
5 sequestered, Your Honor.

6 THE COURT: Is he in the courtroom?

7 MR. MAYES: He's not here yet. He's going to be  
8 here like around one.

9 THE COURT: Since you intend to call him, it will  
10 be your responsibility to have somebody from your side see  
11 who is walking in and out of the courtroom and to make sure  
12 that he does not walk in and listen to anybody else's  
13 testimony.

14 MR. MAYES: Yes, Your Honor.

15 THE COURT: The other thing I would suggest is  
16 that, if you want, although it's not required, but in looking  
17 at the file over the weekend, I'm really not sure what the  
18 SEC's theory of the case is today and I'm not sure  
19 I understand what the defense's defense is today.

20 And so if you wanted to take five minutes and give  
21 me a thumbnail sketch of what the theory is and how you think  
22 the evidence supports it, that would probably give me a  
23 framework.

24 So with that, anything else we need to take up  
25 before we begin?

1 MR. MAYES: I don't think so, Your Honor.

2 THE COURT: It's the government case. You may, if  
3 you want to, make your short statement and then call your  
4 first witness.

5 MR. MAYES: Thank you, Your Honor.

6 Your Honor, we think this is a simple case. There  
7 is really one key fact for the Court to decide, and that is  
8 is it more likely than not that Larry Schvacho bought  
9 \$742,000 worth of Comsys stock in the three months before a  
10 merger announcement because he got inside information from  
11 his best friend, Comsys CEO Larry Enterline, or because he  
12 got lucky.

13 The majority of the facts that are going to be  
14 relevant to that aren't even in dispute. The parties are  
15 going to give the Court a stipulated summary exhibit that  
16 sets forth all of the major deal events, the phone calls, and  
17 the trading by Mr. Schvacho.

18 And we expect that undisputed evidence is going to  
19 show that Larry Schvacho talked regularly with his best  
20 friend Larry Enterline during the deal period, many times  
21 three times per week to multiple times per day.

22 It's going to show that Schvacho invested more than  
23 half of the \$742,000 that he put into Comsys in the twelve  
24 days before the merger announcement with a third of that  
25 amount coming on the two trading days before the merger



1 announcement. At that point, the stock was trading near --  
2 at or near it's 52-week high.

3 The evidence is going to show that Schvacho and  
4 Enterline talked frequently during this period, they met in  
5 person on several occasions, and there were plenty of  
6 opportunities for Enterline to reveal confidential  
7 information about the deal to Mr. Schvacho.

8 We expect there is going to be a very tight fit  
9 between major deal events and the trading of Mr. Schvacho.  
10 You are not going to see a continuous run-up of stock  
11 trade. You are going to see trades, gaps, trades, gaps,  
12 trades, that correspond with major events in the deal.

13 We expect the evidence is also going to show that  
14 Schvacho had a prior trading -- history of trading in the  
15 stock, but that trading is not at all like the trading that  
16 he did in the run-up to the merger, with a couple of  
17 exceptions.

18 Two of the three times he previously acquired a  
19 position of over \$85,000 in the stock of Comsys, it was in  
20 serious negotiations to be acquired by another company.  
21 Three out of the four.

22 We expect the evidence is going to show they had a  
23 very close relationship. They talked about business,  
24 finance, investing, investment strategy, personal medical  
25 information, and Enterline even appointed Schvacho as

1 executor of his will, that's how close these two were.

2 We expect to show that despite that close  
3 relationship, Schvacho never told Enterline at any point  
4 about his trading in Enterline's companies over a course of  
5 ten years, from 2001 until 2010. Nine years.

6 We expect the evidence is going to show that  
7 Enterline felt betrayed when he learned of Schvacho's  
8 trading, that he removed him as executor of his will, he felt  
9 like there had been a breach of trust by Schvacho to trade in  
10 Comsys.

11 Enterline removed him as executor of his will.  
12 They don't talk to each other anymore.

13 We expect the evidence is going to include  
14 Schvacho's explanations for this trading. And I'm not going  
15 to go into detail about those because you are going to hear  
16 all about them in a little while, but I think when you hear  
17 them, you are going to find that they are full of holes, and  
18 I will leave you to decide whether they are plausible after  
19 you have heard what he has to say about why he made these  
20 purchases.

21 Finally, we are expecting the defendant to try to  
22 distract from the key period at issue. The key period at  
23 issue here is from October 2009 to February 2010. That's the  
24 period in which Schvacho purchased \$742,000 in advance of a  
25 merger that was announced on February 2nd.

1           I think when the Court focuses on the evidence of  
2 that relevant time period, there is only going to be one  
3 reasonable explanation for Schvacho's actions, and that's  
4 that he got inside information in one way or another from his  
5 best friend Larry Enterline, the CEO of Comsys.

6           Thank you, Your Honor.

7           THE COURT: Do you want to give your short sketch  
8 now or you can also wait until you present your case?

9           MR. ALBERT: Your Honor, I would like to go now.

10          Your Honor, may it please the Court. The key  
11 factor that the SEC left out of its brief summary there was  
12 the fact that Larry Enterline, for all the reasons Mr. Mayes  
13 went into in detail, who is in no position to do any favors  
14 for Mr. Schvacho, denies ever knowingly conveying inside  
15 information to Mr. Schvacho. And that makes this a very  
16 unusual type of misappropriation case.

17          As to the evidence of the trading, we think that  
18 the trading in the period 2001 to 2008 is directly comparable  
19 to the trading in the 2009 to 2010 period given that  
20 Mr. Schvacho had increased financial resources available to  
21 him, including financial resources because he took an early  
22 retirement package from his employer.

23          He retired at the end of September of 2009, he  
24 had -- so he got a lump-sum payment a few weeks after that.  
25 He had forced exercise of stock options from his employer,

1 Cisco, formerly Scientific Atlanta. And then you will also  
2 hear testimony about the liquidation of a private company that  
3 Mr. Enterline ran, and Mr. Schvacho along with I believe  
4 approximately ten others were investors in.

5 So when you add in all those funds, the trading in  
6 the 2009 to 2010 period becomes very, very comparable to the  
7 earlier trading. In fact, we think there was a time in early  
8 2005 when Mr. Schvacho's holdings in Comsys amounted to  
9 roughly 15 percent of his net worth. In February 2010, the  
10 number we get is about 21 percent of his net worth. So it is  
11 directly comparable.

12 And as to all these communications, it's simply  
13 noise, Your Honor. The SEC is trying to argue after this,  
14 because of this, which is a logical fallacy. This is a weak  
15 circumstantial case.

16 The testimony will show that Mr. Enterline and  
17 Mr. Schvacho talked for over a 20-year period an average of  
18 two to three times a week, and it would not be unusual for  
19 them to talk three or more times in a single day.

20 At this time, the end of -- from August 2009 to the  
21 end of 2009, it was a period in which they were winding up  
22 the private company that Mr. Enterline ran and they were both  
23 investors in, Strategic Management, Inc., and so there was a  
24 reason for them to be talking often.

25 And again, they were best friends. They are not

1 anymore.

2           So the fatal flaw in the SEC's case -- well, there  
3 are several of them -- is why would Mr. Enterline lie about  
4 ever having provided Mr. Schwacho with inside information?  
5 And they communicated so often and there were so many trades  
6 that just as a matter of fortuity, they are going to be  
7 proximate to one another.

8           And in the earlier period, the SEC has tried to  
9 cast doubt on them, but they have no evidence at all of  
10 communications during that period. So all they have done for  
11 the earlier period is to try to match up material events with  
12 Schwacho's trading, and we submit you will hear evidence that  
13 and it's apparent from the joint exhibit, the timeline, that  
14 the match up is very, very poor.

15           And I just would say that when you hear all the  
16 evidence, there is no reason for Mr. Enterline to lie. He's  
17 not lying to protect himself. The SEC has admitted in their  
18 30(b)(6) deposition that he is a credible witness and that  
19 they don't know that he's been untruthful in any of his  
20 testimony, in his investigative testimony and his deposition  
21 testimony.

22           It's also important to remember that this case  
23 started -- you can look at the complaint -- the only specific  
24 events where inside information was conveyed listed in the  
25 complaint were overhearing telephone calls and Mr. Schwacho

1 allegedly rifling through Mr. Enterline's briefcase during a  
2 sailing trip to Florida in December of 2009.

3 Mr. Mayes didn't even mention that. We will prove  
4 that none of those phone calls -- none of that ever happened,  
5 so the SEC went to Plan B. It's just much harder for us to  
6 refute Plan B because we estimate during the time period  
7 October 2009 to February of 2010, there might have been a  
8 hundred phone calls and I think there were more than a  
9 hundred individual trades.

10 So the noise factor, there is just -- you shouldn't  
11 confuse after this, because of this, and I think when you  
12 hear the testimony of Mr. Enterline and when you hear the  
13 testimony of Mr. Schvacho, you will conclude that no inside  
14 information was ever transmitted in the 2009 to 2010 time  
15 period or earlier.

16 THE COURT: Thank you.

17 Mr. Mayes, call your first witness, please.

18 MR. MAYES: Your Honor, we call Larry Schvacho to  
19 the stand.

20 THE COURT: Mr. Schvacho, you will need to come up  
21 and follow the Court Security Officer who will show you to  
22 the witness stand, and then Jessica will swear you in.

23 (The oath is given by the Courtroom Deputy Clerk.)

24 MR. MAYES: Your Honor, before I begin questioning  
25 Mr. Schvacho, we would just like to move for the admission of

1 all the joint exhibits which have been stipulated as  
2 authentic and nonhearsay.

3 THE COURT: And where are they, and do I have a  
4 copy?

5 MR. MAYES: You should.

6 MR. ALBERT: Your Honor, we agree.

7 THE COURT: Well, let's see what it is first.

8 MR. ALBERT: I don't believe --

9 THE COURT: We don't admit things in the abstract.

10 MR. LEVY: Your Honor, while they bring those up,  
11 may I bring the defendant's up for your reference later on?

12 MR. MAYES: These are the joint exhibits.

13 THE COURT: First, what is the exhibit that you  
14 want to be part of the record?

15 MR. MAYES: All 177 exhibits, Your Honor. We would  
16 like all of them to be in the record.

17 THE COURT: And where is my copy of those?

18 MR. MAYES: These are all your copies, and we have  
19 got another set that we can designate just for the record.

20 THE COURT: I need to designate those and make them  
21 a part of the record.

22 MR. MAYES: Your Honor, I do want to note with  
23 respect to Joint Exhibit 138, which is in these notebooks as  
24 well, there are two copies. There is one marked 138 and  
25 138-A.

1           138 is going to be this actual physical trading  
2 notebook. And there were a few pages of it that were not  
3 produced in discovery in the investigation, and so 138 that's  
4 in your notebook as 138 is the pages that were produced in  
5 discovery. 138-A is a color copy of this whole  
6 notebook. I just want to make --

7           THE COURT: Let's take this one step at a time.

8           MR. MAYES: Sure.

9           THE COURT: You have presented to be admitted into  
10 evidence Joint Exhibits 1 through 176; is that correct?

11           MR. MAYES: Through 177, Your Honor. There was  
12 one -- 177 is a joint stipulated summary exhibit. It is the  
13 last one.

14           THE COURT: Let's take what you have given me.

15           MR. MAYES: Yes, we have moved to admit 1 through  
16 176, Your Honor.

17           THE COURT: Is there any objection to the admission  
18 of these exhibits?

19           MR. ALBERT: No, Your Honor.

20           THE COURT: They are admitted.

21           And they are in the three binders. My copies say  
22 Binder 1 is 1 through 125 in joint exhibits, Binder 2 is 126  
23 through 165, and Binder 3 is 166 through 176.

24           Now, this 177, where is that?

25           MR. MAYES: It should be behind the last tab in the



1 notebook, Your Honor, just not listed on the index.

2 THE COURT: All right. So somebody made a mistake  
3 when they did this title page. It's really 177?

4 MR. MAYES: Correct.

5 THE COURT: So 177 is the range. It's 166 through  
6 177 --

7 MR. MAYES: Correct.

8 THE COURT: -- of the third volume.

9 Is there any objection to 177?

10 MR. ALBERT: No, Your Honor.

11 It's an example of the cooperation between the  
12 parties.

13 THE COURT: I'm very happy about that.

14 So then Exhibits 1 through 177 are admitted.

15 Now, this -- now there is this notebook. Is that  
16 going to have a different exhibit number?

17 MR. MAYES: It's numbered as Exhibit 138 on the  
18 sticker. It was produced to us initially without several of  
19 the pages in discovery and in the investigation, and that was  
20 the version we had initially in your notebook. And I am  
21 going to refer to the original version during my  
22 examination.

23 We also have marked in there a color copy of this,  
24 which we just put 138-A in both of those notebooks to note  
25 that it's a color copy of all of the pages of this

1 notebook. And there is a red divider between the two of  
2 them.

3 THE COURT: All right. So 138 is really two  
4 exhibits, 138 and a second exhibit, 138-A. Is there any  
5 objection to those -- 138-A being included?

6 MR. ALBERT: Not at all, Your Honor.

7 THE COURT: All right. Then that's admitted as  
8 part of the compilation.

9 All right. So those are in evidence.

10 -- -- --

11 LADISLAV SCHVACHO

12 being first duly sworn by the Courtroom Deputy Clerk,

13 testifies and says as follows:

14 -- -- --

15 DIRECT EXAMINATION (AS UPON CROSS)

16 BY MR. MAYES:

17 Q. Mr. Schvacho, would you please state your name for the  
18 record?

19 A. My name is Larry Schvacho.

20 Q. Mr. Schvacho, you had a close friendship with  
21 Larry Enterline, didn't you?

22 A. Yes, I did.

23 Q. And Enterline was the CEO of Personnel Group of America  
24 beginning in 2001; correct?

25 A. Yes, he was.

1 Q. And at some point that company changed its name to  
2 Venturi Partners; correct?

3 A. That's right.

4 Q. And Enterline was CEO of the company Venturi Partners;  
5 correct?

6 A. Correct.

7 Q. And then Venturi merged into Comsys at some point;  
8 correct?

9 A. Yes.

10 Q. And by at least 2009, Enterline was CEO of Comsys;  
11 correct?

12 A. Yes.

13 Q. And you and Larry Enterline were business partners?

14 A. Yes.

15 Q. You shared an interest as founders and majority  
16 shareholders of Strategic Management, Inc., a small private  
17 investment vehicle; correct?

18 A. I was a shareholder, yes.

19 Q. Were you also a founder?

20 A. Originally, sort of, yes. But it was Mr. Enterline's  
21 company really.

22 Q. You talked with Mr. Enterline very frequently, didn't  
23 you?

24 A. Very frequently.

25 Q. You were on the phone multiple times per week and even

1 multiple times per day; correct?

2 A. That's correct.

3 Q. That was true during the entire time period from 2001  
4 until the middle of 2010; correct?

5 A. That's correct.

6 Q. And you shared confidential information with each other;  
7 correct?

8 A. It depends on what you define to be confidential  
9 information. I just --

10 Q. You discussed the business of Strategic Management,  
11 Inc.; correct?

12 A. Yes.

13 Q. You discussed investments?

14 A. From time to time, yes.

15 Q. You discussed your investment strategy with --  
16 investment strategies with him?

17 A. Sometimes.

18 Q. You shared medical information with one another;  
19 correct?

20 A. Only casually.

21 Q. You did share medical information with him; correct?

22 A. Not mine. He might have shared his with me.

23 Q. Did he share medical information with you?

24 A. He told me at one time once or twice that he had an  
25 injury, sports injury and those kinds of things.

1 Q. You asked him for advice about whether to take your  
2 early retirement package?

3 A. Oh, absolutely.

4 Q. And he, in fact, gave you some advice about your early  
5 retirement package; correct?

6 A. It wasn't really advice. It was his opinion.

7 Q. It was his opinion that he gave in response to your  
8 request for advice about your early retirement package; is  
9 that correct?

10 A. Indirectly, yes.

11 Q. What do you mean indirectly?

12 A. I didn't really ask him should I take this or  
13 not. I asked him what do you think of this offer from Cisco  
14 or from Scientific Atlanta/Cisco.

15 And from my memory, he said typically when companies  
16 downsize, their first offer is the best one. If they  
17 continue downsizing, then in the subsequent rounds, the  
18 offers decline to the employees.

19 Q. Okay. And you did ask him for his advice on that;  
20 correct? Because you needed his opinion; correct?

21 A. I may have asked him, but it was not a determining  
22 factor whether I would --

23 Q. Mr. Schvacho, you gave --

24 THE COURT: Excuse me.

25 MR. MAYES: I'm sorry, Your Honor.

1 THE COURT: Don't do that.

2 MR. MAYES: I'm sorry, Your Honor.

3 BY MR. MAYES:

4 Q. Were you finished with your answer?

5 A. I think so.

6 MR. MAYES: I apologize, Your Honor.

7 BY MR. MAYES:

8 Q. Mr. Schvacho, you gave sworn testimony in the  
9 investigation of this matter; correct?

10 A. Yes.

11 Q. And in that, you were asked, Did you tell Mr. Enterline  
12 that you had received a payout?

13 And your answer was, Yes. Correct?

14 A. That's correct.

15 Q. And then you were asked --

16 THE COURT: Can you do that with his -- is this --

17 MR. MAYES: For impeachment.

18 THE COURT: -- purported prior inconsistent  
19 statement?

20 MR. MAYES: Yes, Your Honor.

21 THE COURT: You should do that with the original  
22 transcript.

23 MR. MAYES: Okay. Instead of a copy, you mean,  
24 Your Honor?

25 THE COURT: Well, you are showing one page. The

1 way that you do this under the Federal Rules, of course, is  
2 to have him identify that he testified under oath and that  
3 that's the transcript of his testimony --

4 MR. MAYES: Yes, Your Honor.

5 THE COURT: -- rather than just showing him a page  
6 of it.

7 MR. MAYES: Sure.

8 THE COURT: While your staff is sorting this out,  
9 can we go on to something else?

10 MR. MAYES: Sure, Your Honor.

11 BY MR. MAYES:

12 Q. Did Mr. Enterline believe that you would keep  
13 confidential information he shared with you to yourself?

14 A. I suppose so. We never really discussed it.

15 Q. And you believe that Enterline knew you well enough that  
16 you would not repeat anything that might be questionable to  
17 anyone else; right?

18 A. I think he might have trusted me, yes.

19 THE COURT: Don't put your hand on the base of that  
20 because it turns the mike off.

21 THE WITNESS: Sorry.

22 BY MR. MAYES:

23 Q. That was the nature of your relationship with  
24 Mr. Enterline, wasn't it? You were close enough that he  
25 believed you would not repeat anything questionable;

1 correct?

2 A. Oh, absolutely. He was my friend.

3 Q. And you had a discussion with Mr. Enterline about being  
4 appointed executor of his will; correct?

5 A. You know, I remember very vaguely that we discussed it  
6 maybe once, and I don't remember if there was any resolution  
7 or disposition. I never signed anything. There was nothing  
8 official.

9 Q. But you do recall --

10 A. We did -- he did mention it to me, yes.

11 Q. You do not actually remember being appointed executor of  
12 his will, though; is that correct?

13 A. That's correct.

14 Q. So assume with me that he did appoint you as executor of  
15 his will, it's your testimony that you never had a discussion  
16 with him after the appointment; is that correct?

17 A. I wasn't aware that I was officially the executor.

18 Q. And you would discuss Comsys with Enterline; correct?

19 A. Only in the sense that that's the company that he was  
20 working for.

21 Q. Well, he would send you analyst reports about Comsys;  
22 correct?

23 A. Very infrequently, and mostly during the last year or so  
24 of their existence.

25 Q. So the answer to my question is yes?



1 A. Sometimes.

2 Q. He did?

3 A. Sometimes he did.

4 Q. And you would discuss the staffing industry generally  
5 with him; correct?

6 A. Yes, I did.

7 Q. So, for instance, he sent you an analyst report on the  
8 staffing industry with a message that said, I think this  
9 makes the point we have been talking about; correct?

10 A. That happened one time, yes.

11 Q. So you were talking about points related to the staffing  
12 industry with Mr. Enterline?

13 A. I don't remember what the points were, but apparently he  
14 thought the report addressed what I might have been asking  
15 him before.

16 Q. That was in May 2009; correct?

17 A. If that's what I submitted in the e-mails, then, yes. I  
18 don't recall. I don't remember the dates. It would have  
19 been 2009.

20 Q. It was in 2009?

21 A. I think so.

22 Q. He sent you other reports like that as well; correct?

23 A. As I say, very infrequently, and mostly in 2009.

24 Q. You don't talk to Mr. Enterline anymore, do you?

25 A. Unfortunately, I don't.

1 Q. You haven't spoken or seen him -- spoken to him or seen  
2 him since the middle of 2010; correct?

3 A. That's correct.

4 Q. And you never told Larry Enterline that you traded in  
5 the stock of his companies until the FINRA investigation?

6 A. That's correct.

7 Q. Not at any point during the entire eight-year period you  
8 were trading in his stock did you tell him; correct?

9 A. That's correct.

10 Q. And you didn't tell Enterline that you were trading  
11 because you were afraid it would distort the relationship?

12 A. Absolutely.

13 Q. And by distort the relationship, you gave an example as  
14 if you suffered a big loss, Enterline might feel bad or feel  
15 responsible; correct?

16 A. Correct.

17 Q. You were not at all concerned about insider trading  
18 liability; right?

19 A. There was never any exchange of insider information  
20 between the two of us. There was nothing to be concerned  
21 with.

22 Q. So the reason you didn't tell Mr. Enterline about your  
23 trading had nothing to do with concern about insider  
24 trading?

25 A. That's correct.

1 Q. Since the merger between Comsys and Manpower, Enterline  
2 was no longer CEO of Comsys or Manpower; correct?

3 A. Since the merger of Comsys and Manpower, that's  
4 correct. He stopped being a CEO of Comsys.

5 Q. But you did not tell him about your big win in his stock  
6 at that point, did you?

7 A. That's correct.

8 Q. There was no longer a potential to distort the  
9 relationship at that point, was there?

10 A. Yes, there might have been.

11 Q. But you had shared a big success with him, hadn't you?

12 A. I did not share the success with him, no.

13 Q. Well, you made a lot of money off the Comsys/Manpower  
14 merger, didn't you?

15 A. Yes, I did.

16 Q. And Mr. Enterline did too; right?

17 A. I think he did, yes.

18 Q. Wouldn't it have made your best friend feel good to know  
19 that you had made a lot of money too off the deal?

20 A. He may have. I just did not think it was appropriate  
21 for us to discuss that.

22 Q. Enterline wasn't pleased when he learned of your  
23 trading, was he?

24 A. Absolutely not.

25 Q. He was concerned for his reputation; correct?

1 A. Yes.

2 Q. And he was concerned of the potential implications of an  
3 investigation for him; correct?

4 A. Correct.

5 Q. In fact, Enterline told you he believed that just him  
6 being asked was damaging to his reputation; right?

7 A. Absolutely.

8 Q. You got together with Larry Enterline after FINRA  
9 contacted him to ask about your trading; correct?

10 A. Yes.

11 Q. And that was in roughly June of 2010; correct?

12 A. Probably, yes.

13 Q. At that time, you told Mr. Enterline you couldn't  
14 remember the extent of your trading; is that true?

15 A. Yes.

16 Q. Your seven hundred thousand dollar plus investment in  
17 Comsys was the biggest investment in a single equity that you  
18 had made to that point in your life; is that right?

19 A. In terms of absolute dollars, yes. In terms of my net  
20 worth percentage, not even close.

21 Q. And it had resulted in an enormous profit to you;  
22 correct?

23 A. Certain profit, yes.

24 Q. Okay. More than five hundred thousand dollars;  
25 correct?

1 A. Yes.

2 Q. In just three months; correct?

3 A. Yes, potential profit.

4 Q. And you were asked by Mr. Enterline only a few months  
5 later, right, in June of 2010; correct?

6 A. Yes.

7 Q. But you told him you couldn't recall the extent of your  
8 trading just a few months after you had made the biggest  
9 profit you had ever made in your life; is that right?

10 A. Well, I think he was asking me about the prior trading  
11 with Comsys and the predecessor companies. He was interested  
12 in my entire trading history.

13 And I had no idea at that time what I was trading and  
14 how often I had traded, what the dollar amounts were and what  
15 the results were.

16 Q. But you didn't talk with Mr. Enterline at that time  
17 about your prior trading before 2009, did you?

18 A. Sure, I did.

19 Q. Didn't you tell Mr. Enterline that you had made a trade  
20 in January and done some earlier trading in the fall?

21 A. In January of --

22 Q. 2010?

23 A. '10, yes.

24 Q. And some earlier trading in the fall; isn't that what  
25 you told him?

1 A. Yes. I'm sure at that point I told him that I traded  
2 for a number of years.

3 Q. You went back to gather documents so you could report  
4 back to Mr. Enterline about how much trading you had done; is  
5 that correct?

6 A. Correct.

7 Q. And when you did, you told him you bought thirty to  
8 forty thousand shares; right?

9 A. I am sure I gave him the accurate numbers that I had  
10 quickly added up before our meeting.

11 Q. Okay. You actually bought over seventy thousand shares;  
12 right?

13 A. Yes.

14 Q. So if Mr. Enterline said you only told him you purchased  
15 thirty or forty thousand shares, he would just be  
16 misremembering the conversation?

17 A. I still have the sheet where I added it all up, and I'm  
18 quite certain that it covered everything that I did from two  
19 thousand -- from November of 2009 until February of 2010.

20 Q. Okay. So you calculated that up, but you didn't  
21 calculate up any of your prior trading?

22 A. I did. I am not sure exactly at what point I did that,  
23 that portion of it, that calculation.

24 Q. When Enterline asked you why you weren't -- why you  
25 didn't tell him that you were trading, you told him that you

1 were trying to protect him; isn't that correct?

2 A. I may have said something like that. I can't remember  
3 the context.

4 Q. And you don't talk to Mr. Enterline anymore, do you?

5 A. I was forbidden from talking to him.

6 Q. You haven't talked to him since I took your deposition,  
7 have you?

8 A. Oh, no, not at all.

9 Q. I want to talk about your trading and investment  
10 philosophy.

11 Prior to 1999, you had developed a software to identify  
12 stocks that overreacted to bad news; correct?

13 A. That's correct.

14 Q. And you would buy those stocks hoping that they would  
15 rebound and you could catch a small profit; correct?

16 A. Absolutely correct.

17 Q. And you used that software up until around 1999; is that  
18 right?

19 A. I may have used it in -- I certainly used it in  
20 1999. I may have used it some in 2000 and 2001, and I used  
21 it in 2010.

22 Q. When you used it in 2010, that was after the  
23 announcement of the Manpower merger; correct?

24 A. That's correct.

25 Q. You discussed that trading strategy with Mr. Enterline,

1 didn't you?

2 A. Over the years it's possible I mentioned it to him. He  
3 wasn't interested really in what I was doing with that, but  
4 he might have thought it might be -- that it was something  
5 I did.

6 Q. After you stopped using this software in either the late  
7 '90s or the early 2000s, you used a different approach;  
8 right?

9 A. After about 2001, I cut back on my investment in  
10 markets, period.

11 Q. And you no longer used the software; correct?

12 A. I didn't during that period, after 2001 -- 2000, 2001.  
13 I resumed using it in 2010.

14 Q. Correct, okay. So between 2000ish and 2010, you didn't  
15 use the software. You used a different investment approach;  
16 correct?

17 A. That's correct.

18 Q. And your approach was that you prior to 2009 -- so now  
19 talking about 2009 right now -- your approach prior to 2009  
20 going back to the time you used the software was to get into  
21 the market to try to catch small increases and then take the  
22 profit; correct?

23 A. That's correct. I mean, there would have been  
24 exceptions, but that was my goal.

25 Q. And that's generally consistent with what you did in the



1 shares of Mr. Enterline's company; correct?

2 A. Yes.

3 Q. And part of the reason you wanted to get in and get out  
4 of the shares of Comsys and its predecessor companies is that  
5 Comsys and Personnel Group of America and Venturi were quite  
6 volatile stocks; correct?

7 A. Very volatile, yes.

8 Q. And they would just go crazily up and down all the time;  
9 correct?

10 A. When you say crazily, they were more volatile than  
11 regular stocks.

12 Q. And you said they go crazily up and down all the time,  
13 didn't you, Mr. Schvacho?

14 A. They had what they called a high beta for stocks, where  
15 within a single day they might go up or down ten or  
16 fifteen percent, which is kind of unusual in the stock  
17 market.

18 Q. Okay. And so you did say that they would -- the stock  
19 would just go crazily up and down all the time; correct?

20 A. I am not sure if I used the word crazily, but certainly  
21 they had large, large variations in price intra-day.

22 Q. You became convinced that Comsys and its predecessor  
23 companies were not a stock that you would just buy and sit on  
24 and just leave in your portfolio for a number of years and  
25 hope for appreciation; correct?

1 A. That became apparent fairly quickly after 2001, 2002.

2 Q. Instead you would buy when you thought the price had  
3 decreased for no reason and wait for it to come back; is that  
4 correct?

5 A. There were occasions when I -- whenever I saw it drop  
6 without a reason that I could see, I would do the contrarian  
7 move and acquire the stock and then saw it appreciate -- when  
8 I saw it appreciate, I would lock in the profits.

9 Q. You retired in September of 2009 from Cisco; correct?

10 A. Correct, September 29th.

11 Q. And that was early retirement; correct?

12 A. That was early retirement.

13 Q. And you had a massive shift in your investing philosophy  
14 at the time of your requirement in 2009; correct?

15 A. A planned massive shift.

16 Q. So the answer is yes, you did have a massive shift in  
17 your investment philosophy?

18 A. Yes.

19 Q. And you had more funds at the time; correct?

20 A. Yes.

21 Q. And more time; right?

22 A. Everything was larger, yes.

23 Q. You had approximately five hundred more -- thousand  
24 dollars more in income in the year 2009 than you had the year  
25 before; correct?

1 A. The difference between 2008 and 2009 was five hundred  
2 thousand or more, yes.

3 Q. We will come back to the massive shift later, but for  
4 clarity, that massive shifted happened in the fall of 2009  
5 after you retired; is that right?

6 A. That's correct.

7 Q. I want to talk about some of the trading you did in  
8 Comsys before 2009, Mr. Schvacho.

9 MR. MAYES: Your Honor, may I approach the  
10 witness?

11 THE COURT: Yes.

12 BY MR. MAYES:

13 Q. Mr. Schvacho, I would like you to turn to Joint  
14 Exhibit 1 in this notebook right here. It should be behind  
15 the first tab.

16 Mr. Schvacho, do you know what Joint Exhibit 1 is?

17 A. You know, this looks like my initial trading in Comsys  
18 that started in February of 2001.

19 Q. Mr. Schvacho, you are aware that the parties have  
20 stipulated to your prior trading or all of your trading up  
21 through February 2nd, 2010, in the shares of Larry  
22 Enterline's company; correct?

23 A. Could you repeat that question?

24 Q. Sure. You are aware that the parties have stipulated  
25 that the trading records show the extent of your trading in

1 Larry Enterline's company from 2001 to 2010, correct,  
2 February of 2010?

3 A. So are you saying all of these documents capture all  
4 those trades, or are you asking me that or --

5 Q. I'm asking you if you are aware that the parties have  
6 stipulated to that?

7 A. Which parties?

8 Q. The Securities and Exchange Commission and your  
9 counsel.

10 A. Okay.

11 Q. Are you aware of that?

12 A. These are most likely the records that I turned over to  
13 the SEC of my trading.

14 Q. Okay. Mr. Schvacho, you accumulated a big position in  
15 Personnel Group of America in 2001; correct?

16 A. In 2001, yes. Starting in 2001.

17 Q. And that was when Enterline first became CEO; correct?

18 A. Yes.

19 Q. And you thought Enterline would quickly turn the company  
20 around, and that's why you bought it; correct?

21 A. I was hoping.

22 Q. Then you sold because the stock price did not appreciate  
23 and the market did not appreciate Mr. Enterline's abilities  
24 you thought; correct?

25 A. Yes, it turned that whatever problems Mr. Enterline was

1 facing with the company were greater than I thought they  
2 might be and it became a grind instead of an overnight  
3 success.

4 Q. So that's why you sold your position in May of 2001;  
5 correct?

6 A. I don't remember when I sold it, but that probably would  
7 have been one of the factors.

8 Q. You never told Enterline about this trading, did you?

9 A. No, I did not.

10 Q. And after this 2001 trading where you get back out in  
11 May of 2001, you began using the in-and-out strategy we  
12 talked about?

13 A. Yes.

14 Q. And you followed that strategy up through October of  
15 2003; correct? Buying some, selling some, buying some;  
16 correct?

17 A. Well, more often than not, yes.

18 Q. All right. And then from October 9th, 2003, to December  
19 30th, 2003, you made a very large -- you took a very large  
20 position in what was at the time Venturi Partners; correct?

21 A. Which dates were they?

22 Q. October 9th, 2003, through December 30th, 2003.

23 A. Okay.

24 Q. Do you recall that?

25 A. No.

1 Q. But if the trading records show that you made all those  
2 purchases, you are not going to dispute that?

3 A. I'm sure it's accurate.

4 Q. And you invested approximately \$145,000 during that  
5 period; correct?

6 THE COURT: Well, do you want him -- shall we give  
7 him a calculator to add those up?

8 MR. MAYES: We have a calculator, Your Honor.

9 THE COURT: Or, look, you know, I'm not a good math  
10 major, but I could add that up myself. I don't understand  
11 the point of having him do this mental arithmetic.

12 MR. MAYES: Sure, Your Honor.

13 BY MR. MAYES:

14 Q. Mr. Schvacho, just assume with me that those add up to  
15 \$145,000. Do you recall taking a large position in Comsys in  
16 the fall of 2003?

17 A. I don't recall it, no.

18 Q. Okay. You did recall that at some point in 2005 the  
19 value of your holdings had gone up to roughly \$256,000;  
20 correct?

21 A. That's correct.

22 Q. Okay. And this is the period in which you actually  
23 acquired that state, wasn't it, October 2003 through December  
24 2003?

25 A. Whatever it says in these records that I turned over,

1 that would be the accurate --

2 Q. Okay. And you said that was a large portion of your net  
3 worth that you had in the value of Comsys stock at that time;  
4 correct?

5 A. I would say that was probably at the peak of the market,  
6 which was I think \$265,000, it represented about 15 percent  
7 of my net worth.

8 Q. And at the time of those purchases in fall 2003, the  
9 company was named Venturi; correct?

10 A. I don't remember.

11 Q. Enterline was the CEO of Venturi, wasn't he?

12 A. Yes, he was.

13 MR. MAYES: Your Honor, may I approach the  
14 witness?

15 THE COURT: And what is that?

16 MR. MAYES: This is -- I'm going to hand him a  
17 notebook that contains Plaintiff's Exhibit 2, and then I will  
18 give you a copy as well.

19 THE COURT: All right. You may.

20 BY MR. MAYES:

21 Q. Mr. Schvacho, I'm handing you what's marked here as  
22 Plaintiff's Exhibit 2. This is a proxy statement that was --  
23 this is a proxy statement that was put out by Venturi  
24 Partners in connection with a merger with Comsys.

25 Have you seen that document before?

1 A. I may have seen it at the time. I have no recollection  
2 of it.

3 Q. Okay.

4 MR. MAYES: Your Honor, we move to admit  
5 Plaintiff's Exhibit 2 into evidence as a stipulated  
6 nonhearsay and authentic document.

7 THE COURT: Any objection?

8 MR. ALBERT: No, Your Honor.

9 THE COURT: It's admitted.

10 BY MR. MAYES:

11 Q. Mr. Schvacho, could you turn to page 102 and 103 of  
12 Plaintiff's Exhibit 2, please?

13 A. Which tab is that under?

14 Q. It's pages 102 and 103 of the document behind Tab 2.

15 THE COURT: There are sometimes two page numbers on  
16 a page. What are you referring to?

17 MR. MAYES: I'm referring to pages 102 and 103 as  
18 they are set forth kind of in the document itself. So you  
19 will see page with 102 and page with 103.

20 So there is a page that says page 102 in the middle  
21 of it, and they are sequentially numbered throughout the  
22 document.

23 THE COURT: Well, they are just hard to find.

24 THE WITNESS: I have got it.

25 THE COURT: So they are about that far back.



1 THE WITNESS: Yes, I know.

2 Okay, I am on 102.

3 MR. MAYES: Okay. Great. Thank you.

4 BY MR. MAYES:

5 Q. Mr. Schvacho, you don't have any basis to dispute that  
6 during the months of October 2003 through December 2004, that  
7 Venturi Partners was engaged in merger negotiations with  
8 Comsys, do you?

9 A. I had no -- I had no knowledge of it. But if that's  
10 what it says in here, then that's probably true, I have no  
11 doubt.

12 Q. So the fact that you accumulated a large position in the  
13 shares of Venturi from October 2003 to December 2003, it's  
14 just coincidental that there were merger negotiations going  
15 on at the time; correct?

16 A. Yes.

17 Q. And this buying pattern here from October 2003 to  
18 December 2003 doesn't fit the strategy you described of  
19 getting in, taking profits, and getting back out, does it?

20 A. I don't remember.

21 Q. Okay. Please turn to Joint Exhibit 137 in the joint  
22 exhibits notebook. Not that notebook. The first notebook  
23 that you were looking at earlier.

24 MR. MAYES: Your Honor, may I approach the  
25 witness?

1 THE COURT: He will find it.

2 MR. MAYES: All right.

3 THE WITNESS: Which tab?

4 MR. MAYES: 137.

5 THE WITNESS: 137. I go up to 125 on this  
6 one. Let's see.

7 Oh, here it is, here it is. Okay.

8 BY MR. MAYES:

9 Q. Mr. Schvacho, Joint Exhibit 137 is a report that the  
10 parties have stipulated to that lists the opening price,  
11 closing price, high, low, and volume in the shares of Comsys  
12 and its predecessor companies from 2001 through 2010.

13 A. Okay.

14 Q. I want you to flip to page 15 of that, which will be in  
15 October 2003.

16 A. Okay.

17 Q. Or November of 2003. Do you see that?

18 A. Yes.

19 Q. And isn't it true that the stock went all the way up to  
20 an opening of \$13.50 per share on November 4th?

21 A. Thirteen -- well, intra-day it did, yes. Closing price  
22 was thirteen dollars.

23 Q. Okay. And the opening price was \$13.50; correct?

24 A. Correct.

25 Q. And it traded as high as fourteen dollars intra-day on

1 the day before that, November 3rd; right?

2 A. Yes.

3 Q. And this is at a time when your cost basis was less than  
4 ten dollars per share; correct?

5 A. Perhaps, yes.

6 Q. Okay. You can turn back to -- you can just assume with  
7 me that it was.

8 A. Okay.

9 Q. But you can see that on Joint Exhibit 1 in the column  
10 that is the second one to the right. Correct?

11 A. Yeah.

12 Q. And the stock price then declined all the way down to  
13 eleven dollars per share by 11-12; correct?

14 A. Correct.

15 Q. And you didn't sell and take any profit when it got up  
16 as high as \$13.50 or \$14.00, did you?

17 A. Correct.

18 Q. You just kept buying; right?

19 A. I would have to refer back to the buying chart, but I  
20 will take your word for it.

21 Q. Okay. You can assume with me that Joint Exhibit 1 is  
22 going to show that you just kept buying throughout that  
23 period.

24 A. Okay.

25 Q. And you kept buying right up until December 31st;

1 correct? Or sorry, December 30th; correct?

2 A. Okay.

3 Q. So it's just a coincidence that the time you stopped  
4 buying was at the time the merger negotiations broke off;  
5 right?

6 A. What merger negotiations?

7 Q. The merger negotiations between Venturi and Comsys that  
8 were going on at that time as set forth in Plaintiff's  
9 Exhibit 2 that we looked at earlier.

10 A. I wasn't aware that they broke off, no.

11 Q. So it was a coincidence then that your trading stopped  
12 in December at the same time as the merger negotiations broke  
13 off; right?

14 A. I really don't remember. I mean, these are events that  
15 happened eight years ago.

16 Q. Okay. Well, your trading here is not because  
17 Mr. Enterline was telling you about the Comsys and Venturi  
18 merger?

19 A. Correct.

20 Q. Was it?

21 A. No, it was not.

22 Q. So it's just a coincidence then; correct?

23 A. Most likely.

24 Q. Venturi actually announced the merger with Comsys in  
25 July of 2004; correct? Do you recall?

1 A. I don't recall it, but I have since reviewed some  
2 documents that you showed me that I know that's true.

3 Q. Okay. And it didn't move the price, though, did it?

4 A. I think it went down.

5 Q. Now, you claim you were not aware of the Comsys/Venturi  
6 merger at the time; correct?

7 A. Correct.

8 Q. You are only vaguely aware that it even happened;  
9 right?

10 A. Correct.

11 Q. And you don't remember the announcement of the  
12 Comsys/Venturi merger; right?

13 A. I don't remember it. I probably saw it at the time, but  
14 I don't remember it.

15 Q. And that was even though you had nearly \$200,000 worth  
16 of Venturi stock, which was a significant portion of your net  
17 worth invested in it at that time; correct?

18 A. I think it was \$265,000.

19 Q. At the time in 2004, at the time of the merger  
20 announcement, you think it was \$256,000?

21 A. Well, whatever the numbers. I mean, you have all the  
22 numbers.

23 Q. And you didn't notice it even though the ticker symbol  
24 changed from VPTR to CITP; is that right?

25 A. I am sure I noticed it at the time when they had an

1 announcement, but I just don't recall eight years later.

2 Q. And you didn't remember it when I asked about it at your  
3 deposition either; right?

4 A. I -- unless you -- until you reminded me. I know  
5 I forgot that they had merged with them.

6 Q. And you thought Enterline stayed on as CEO of the  
7 combined company when Venturi was merged into Comsys;  
8 correct?

9 A. That was my impression. I know now it's inaccurate, but  
10 that is the best I could tell.

11 As far as I could tell, Mr. Enterline didn't get fired  
12 by the new company. He continued to travel to their  
13 headquarters in Houston. Nothing changed.

14 So I'm sure I knew about it, but I didn't notice it. It  
15 made no difference to me.

16 Q. Okay. And I asked you multiple times at your deposition  
17 whether you remembered that, and you said multiple times he  
18 was CEO the whole time, didn't you?

19 A. To this day I don't remember. I'm not going to dispute  
20 that I knew at the time.

21 Mr. Enterline said he told me. I'm sure I read it in  
22 the paper when it happened. But I just don't remember, I'm  
23 sorry.

24 THE COURT: Mr. Mayes, I'm going to ask you that if  
25 you want to use deposition testimony, this is a trial --

1 MR. MAYES: Yes, Your Honor.

2 THE COURT: -- it's not a general discussion about  
3 what he -- and so if you want to use prior deposition  
4 testimony, you will use it as allowed by the Federal Rules,  
5 which is not the way you are using it.

6 MR. MAYES: Yes, Your Honor.

7 BY MR. MAYES:

8 Q. And you said that even though -- you said just a minute  
9 ago that nothing changed after the Comsys/Venturi merger?

10 A. Not to me it did not as an investor.

11 Q. Okay.

12 A. Mr. Enterline was -- as far as I was concerned,  
13 Mr. Enterline was in some kind of a leading role with the new  
14 company. He was either chairman of the board or he was a  
15 board member or something to do with the company.

16 Q. Okay. You didn't know that he sold --

17 A. He didn't get -- I'm sorry, he didn't get a different  
18 job with a different company. He just -- to my mind, he  
19 continued being Mr. Comsys, Mr. Venturi.

20 Q. Okay. Even though Mr. Enterline sold his house in  
21 Charlotte? Were you aware of that?

22 A. I was aware when he sold the house in Charlotte.

23 Q. And the headquarters of Venturi was actually in  
24 Charlotte, wasn't it?

25 A. It may have -- I know he was based in Charlotte for a

1 while. I'm not sure which company he was with.

2 Q. Okay. Then after the merger, Comsys was headquartered  
3 in Houston; right?

4 A. I sort of realize it now, but if you just asked me that,  
5 I wouldn't remember that.

6 Q. Okay. So you didn't know when your best friend sold his  
7 house in Charlotte and started living in Atlanta again  
8 full-time?

9 A. I am not sure he began living in Atlanta full-time.

10 Q. The headquarters of Comsys was in Houston, wasn't it?

11 A. I believe so. It was, yes.

12 Q. You wouldn't have cared if Enterline stepped down as  
13 CEO, would you have?

14 A. I think if the event of him stepping down was some sort  
15 of a memorable event where maybe he got fired or something of  
16 that sort or he assumed a similar role with a different  
17 company, I would have probably remembered it more.

18 But as I look back on those years, as I said, he  
19 continued being involved with that entity of Venturi slash  
20 Comsys and to my mind just continued to work there.

21 Q. So even though you had a very large portion of your net  
22 worth in the market value of Comsys stock, it wouldn't have  
23 mattered whether Enterline was actually CEO versus just being  
24 a board member?

25 A. It's difficult to remember --



1 MR. ALBERT: Object.

2 A. -- what I felt like, you know, eight years ago.

3 Q. You never told Mr. Enterline about this large  
4 accumulation of stock in 2003, did you?

5 A. Oh, no, absolutely not.

6 Q. And you sold it in 2005 for a substantial profit;  
7 correct?

8 A. Yes.

9 Q. And you didn't tell him about the significant profit off  
10 of the trades you had made in his company, did you?

11 A. Absolutely correct, I did not tell him.

12 Q. And the reason for that was because it was none of his  
13 business?

14 A. It was none of his business, and plus all the other  
15 reasons I talked about earlier.

16 Q. You mean fear of distorting the relationship?

17 A. Correct.

18 Q. But this was a profit you made. You hadn't made a loss,  
19 had you?

20 A. That's correct, but it didn't matter.

21 Q. After your sale in May -- April and May of 2005 of your  
22 significant position in Comsys, you next began trading in  
23 early 2006; right?

24 A. Okay.

25 Q. And you invested a little over fifty thousand dollars in

1 January of 2006; is that right?

2 A. If that's what it says in the records, then that's  
3 correct.

4 Q. Okay. Assume with me that you did. That was less than  
5 one month before Larry Enterline came back as CEO of Comsys,  
6 wasn't it?

7 A. Okay.

8 Q. Do you know now that it was less than a month before  
9 Larry Enterline came back as CEO as Comsys?

10 A. You pointed it out to me. I wouldn't have remembered  
11 that.

12 MR. MAYES: Your Honor, move to admit Plaintiff's  
13 Exhibit 6, which is an announcement that was publicly filed  
14 with the Commission by Comsys.

15 THE COURT: Any objection?

16 MR. ALBERT: No, Your Honor.

17 THE COURT: It's admitted.

18 BY MR. MAYES:

19 Q. Mr. Schvacho, can you turn to Plaintiff's Exhibit 6?

20 A. Okay.

21 Q. Mr. Schvacho, this is an announcement filed by Comsys  
22 with the Securities and Exchange Commission on February 2nd,  
23 2006, isn't it?

24 A. I must have the wrong -- which --

25 Q. It's right on the cover of Plaintiff's Exhibit 6.

1           THE COURT: So there are three binders with numbers  
2 that are called joint exhibits. There is one binder at the  
3 bottom that says plaintiff's exhibits.

4           THE WITNESS: Joint exhibits.

5           THE COURT: So look for the binder that on the  
6 front says plaintiff's exhibits.

7           THE WITNESS: Oh, plaintiff's exhibits,  
8 okay. Thanks.

9           THE COURT: You are welcome.

10          THE WITNESS: Let's see.

11          THE COURT: Customarily the lawyers do that, but  
12 I'm happy to help.

13          THE WITNESS: Comsys Partners, yes.

14 BY MR. MAYES:

15 Q. This is a report that was filed with the Securities and  
16 Exchange Commission on February 2nd, 2006, correct, right  
17 there on the front page?

18          THE COURT: Well, it is what it is. This is not a  
19 reading test.

20          THE WITNESS: Okay.

21 BY MR. MAYES:

22 Q. And, Mr. Schvacho, if this says that Larry Enterline  
23 came back as CEO, was coming back as CEO on February of 2006,  
24 you wouldn't dispute that; right?

25 A. If that's what it says, that's what it says.

1 Q. And you didn't make your trades in January of 2006  
2 because you knew your friend Larry Enterline was coming back  
3 as CEO, did you?

4 A. Not to my recollection, no.

5 Q. So this wasn't the same as your strategy of 2001 to buy  
6 and hope that Enterline would turn the company around;  
7 correct?

8 A. Yes.

9 Q. It was not; is that correct?

10 A. Can you ask me again?

11 Q. Sure. This was not the same as your strategy in 2001 to  
12 buy and hope Larry Enterline would turn the company around,  
13 was it?

14 A. I really don't know.

15 Q. Okay. You got back out of Comsys stock that summer;  
16 correct?

17 A. Okay. If that's what the record says, then, yes.

18 Q. That is what the record says. I mean, it's Joint  
19 Exhibit 1, if you want to follow along.

20 A. Okay, I will trust you.

21 Q. You purchased a large position in December 2006 to  
22 January 2007; right? Do you recall that?

23 A. I don't recall it, but if that's what the record says,  
24 then I am not disputing it.

25 Q. Okay. You don't recall why you made that purchase, do

1 you?

2 A. In 2006?

3 Q. December 2006 through January 2007.

4 A. No, I don't.

5 Q. Okay. And you sold that all for a small profit by the  
6 end of January. If you did, that would be consistent with  
7 your in-and-out strategy; correct?

8 A. Okay.

9 Q. Would it be consistent with your in-and-out strategy?

10 A. It sounds like it, but I can't remember what it  
11 was. But just based on the pricing and the fact that I made,  
12 you know, a few dollars on it, then that would seem  
13 consistent, yes.

14 Q. Okay. And your next large purchase was July 24th  
15 through July 30th, 2007, when you purchased over \$97,000  
16 worth of Comsys stock. Do you recall that?

17 A. I don't recall it, but I have seen it in the records.

18 Q. And you purchased that stock, purchased that because the  
19 stock was just soaring at that time; correct?

20 A. That was correct.

21 Q. And it was approaching twenty dollars a share is what  
22 you said; right?

23 A. Well, actually I remember that in the May or June time  
24 frame of that year, perhaps before I bought those shares that  
25 you just referred to, I think I've seen it over twenty-five

1 dollars for no reason.

2 Q. Was it a very exciting time for Comsys?

3 A. It was -- in retrospect, it was a very exciting time.

4 Q. So if I heard what you just said a minute ago, the stock  
5 was at twenty-five dollars in May or June; is that correct?

6 A. I don't remember exactly what the dates were, but  
7 roughly that was the time frame, yes.

8 Q. So your biggest regret wasn't selling your Comsys stock  
9 at the very beginning of August? Is that what you are  
10 saying?

11 A. My biggest regret for 2007 was seeing it soar up to  
12 almost twenty-six dollars, and this is a stock I had been  
13 playing for a number of years --

14 THE COURT: Mr. Mayes, give him the courtesy of  
15 listening to his answer rather than turning around.

16 MR. MAYES: I'm sorry, Your Honor.

17 A. My biggest regret in 2007 was seeing a stock that I had  
18 been playing for a number of years trying to make a few  
19 dollars on soar from, you know, fifteen, sixteen dollars to  
20 twenty-six dollars, and me just being totally out of it,  
21 taking no advantage of that, being a nonbeliever.

22 Q. Mr. Schvacho, you gave a deposition in this case. Do  
23 you recall that?

24 A. Yes.

25 MR. MAYES: Your Honor, may I approach the

1 witness?

2 THE COURT: You may.

3 BY MR. MAYES:

4 Q. Mr. Schvacho, this is a certified copy of the transcript  
5 of your deposition.

6 A. Okay.

7 Q. Do you see that?

8 A. Okay.

9 Q. You were sworn to tell the truth at that deposition;  
10 correct?

11 A. Yes.

12 Q. So it's your testimony that it was not your biggest  
13 regret selling your stock at the beginning of August 2007  
14 because the stock went to twenty-five dollars in August of  
15 2007; is that correct?

16 A. Frankly, you asked me about the stock price movement in  
17 2007 during this deposition this year, in 2013, which was,  
18 you know, six years after the fact. And my memory at the  
19 time was that the stock went to 25 in August. I thought it  
20 went to 25 in August.

21 I have since reviewed the records and I have discovered  
22 that the stock actually went to 25, 26, a little bit earlier  
23 than August of 2007.

24 Q. So it wasn't true that when you bought in July of 2007,  
25 the stock was actually soaring. It had actually come down

1 from 25 down to 20; is that correct?

2 A. It decayed somewhat from the 25 that it briefly reached  
3 earlier that year, but it was still pretty high considering  
4 their historical averages.

5 Q. And you know now that it's not true that the stock went  
6 to 25 in August; right?

7 A. I do now, because I have been able to review the records  
8 after I gave my testimony.

9 Q. So it couldn't have been that your biggest regret was  
10 actually selling in early August 2007, because the stock  
11 didn't actually go up. It actually went down after you sold,  
12 didn't it?

13 A. No. I mean, in August, I think I sold on August 2nd at  
14 about \$19.20, I think, and then I bought it back a month --  
15 I'm sorry, a week later at fifteen dollars after it  
16 declined.

17 Q. So it's true that when you sold in early August 2007,  
18 the price actually significantly declined after that;  
19 correct?

20 A. Correct. Not after that. Even before that.

21 Q. I'm sorry?

22 A. I bought it when it went down to fifteen dollars from  
23 twenty dollars in August.

24 Q. Yeah, you bought two thousand shares on one day and sold  
25 on one day, but I'm talking about the significant -- the



1 ninety thousand dollar plus purchase that you made at the end  
2 of July.

3 A. Okay.

4 Q. And when I asked you about that, you told me your  
5 biggest regret was selling that in early August because the  
6 stock had gone to 25, didn't you?

7 A. I was under the mistaken impression -- you know, trying  
8 to remember events from six years prior, my impression was  
9 the stock went to 25 in August. It turns out it didn't. It  
10 went to 25 a little bit earlier.

11 Q. Mr. Schvacho, turn to Joint Exhibit 176 in the joint  
12 exhibit notebook, please. It's the last one in the -- second  
13 to the last one in the third notebook.

14 A. Okay.

15 Q. Please turn to page seven of Exhibit 176, which is the  
16 14D-9 filing that Comsys made with the Securities and  
17 Exchange Commission after the Manpower/Comsys acquisition.

18 A. Okay. Pages again are -- what page, I'm sorry?

19 Q. Page seven.

20 A. Seven. Okay.

21 Q. On that page seven, there is a description of merger  
22 negotiations between Comsys and another party that began in  
23 the middle of July and then broke off in early August. Do  
24 you see that?

25 A. I remember reading it, yes.

1 Q. And you are aware of that -- now at least you are aware  
2 of that, that there was in fact merger negotiations between  
3 Comsys and another company in late July; right?

4 A. Late July of two thousand and --

5 Q. Seven.

6 A. -- seven, yes.

7 Q. And it's just a coincidence you bought over \$90,000  
8 worth of the stock of Comsys at the time of those  
9 negotiations and then sold it in early August, correct, after  
10 the negotiations broke off?

11 A. I am not sure when the negotiations broke off.

12 Q. Okay. Well, you can see it right there in the 14D-9.

13 It says they broke off in August; right?

14 A. Which paragraph does it say that?

15 Q. It's on page seven.

16 A. I know. Which paragraph, do you know?

17 Q. It's the second to last -- second full to last  
18 paragraph --

19 A. Okay.

20 Q. -- where it says the parties made substantial progress  
21 on the transaction during the months of July, but by the end  
22 of the month and before the merger agreement could be signed,  
23 the dramatic deterioration of the U.S. and global credit  
24 markets had begun. Over the next several weeks the  
25 increasing difficulties and uncertainties of financing, the

1 transaction --

2 THE COURT: I'm sorry, where are you reading?

3 MR. MAYES: Second to last paragraph.

4 THE COURT: The one that starts off, The company --

5 MR. MAYES: Correct. I started in the sentence,  
6 Over the next several weeks.

7 BY MR. MAYES:

8 Q. It's just a coincidence that your purchases and your  
9 sale match up with the timing of these negotiations; isn't  
10 that right, Mr. Schvacho?

11 A. When I look at it, I don't see -- I don't see any  
12 evidence whatsoever that I knew anything at all about these  
13 negotiations.

14 Q. That wasn't my question, Mr. Schvacho. My question is  
15 is it a coincidence that your purchases and your sale  
16 coincide with the time of these negotiations?

17 A. Well, yes, I was buying -- I was trading that stock so  
18 often that it was almost inevitable. Whatever they were  
19 doing, some of that -- there would be some overlap in  
20 whatever they were doing.

21 But I certainly took no advantage of their run-up to 25,  
22 which in retrospect I see had to do with their negotiations  
23 with Spherion.

24 Q. Well, that's not actually true. After those  
25 negotiations broke off, the stock price actually went down,

1 didn't it?

2 A. Yes, but during the negotiations it went up to 25 and  
3 almost 26.

4 Q. Not in July of 2007.

5 A. I don't think they were negotiating in July. I read  
6 somewhere that they were negotiating, you know, quite a bit  
7 earlier.

8 Q. Okay. If Mr. Enterline says those negotiations started  
9 in the middle of July and ended right at the end of July, you  
10 wouldn't have any basis to dispute him, would you?

11 A. I really don't know. I mean, I wasn't aware of the  
12 negotiations, so I can't tell.

13 Q. Okay. If you had known, you would have stayed in; is  
14 that correct?

15 A. If I had known, I wouldn't have traded.

16 Q. Mr. Schvacho, you gave a sworn deposition in this case;  
17 correct?

18 A. Yes.

19 Q. And I have got the certified copy of the transcript up  
20 there for you. And I would like you to turn to page 135 of  
21 that transcript, please.

22 MR. MAYES: Jessica, would you please switch to the  
23 video?

24 THE WITNESS: Which tab?

25 MR. MAYES: Page 135.

1 THE WITNESS: Okay.

2 MR. MAYES: Jerome, could you bring up the video  
3 clip at line 8 through line 17, please? Lines 8 through 17  
4 of page 135. Page 135, lines 8 through 17.

5 THE COURT: Is this for the purposes of a prior  
6 inconsistent statement?

7 MR. MAYES: Yes, it is, Your Honor.

8 THE COURT: Any reason why we can't just use the  
9 transcript?

10 MR. MAYES: We can just use the transcript,  
11 Your Honor.

12 THE COURT: I mean, it's up to you. As I tell a  
13 lot of lawyers, when you start using technology, it slows  
14 things down when you are not familiar with it, and I think  
15 this is an example of it.

16 MR. MAYES: Okay.

17 THE COURT: I have been practicing over 30 years,  
18 so I understand all this.

19 MR. MAYES: Yes, Your Honor.

20 BY MR. MAYES:

21 Q. Mr. Schvacho, I asked you at your deposition whether  
22 this was just a coincidence, and your testimony was, And had  
23 I known, I would have stayed in. Isn't that --

24 THE COURT: Why don't --

25 MR. MAYES: I'm sorry, Your Honor?

1           THE COURT: Why don't you have him read it and then  
2 I will determine if it's a prior inconsistent statement or  
3 not.

4           MR. MAYES: Okay, Your Honor.

5 BY MR. MAYES:

6 Q. Mr. Schvacho, can you read your testimony from on page  
7 135, lines 15 through 18?

8 A. Yes. Do you want me to read it out loud or --

9           THE COURT: That would be fine since I don't have a  
10 copy of it.

11           THE WITNESS: The question is, This was just a  
12 coincidence?

13           And the answer was, And had I known, I would have  
14 stayed in. But I dumped it quickly.

15           Is that what --

16 BY MR. MAYES:

17 Q. That was your testimony, wasn't it, Mr. Schvacho?

18 A. Correct.

19           MR. MAYES: Excuse me, that's the wrong binder,  
20 Your Honor.

21 BY MR. MAYES:

22 Q. So then you said if I had known, you would have stayed  
23 in; right?

24 A. You were asking me, at least the way I took this  
25 question to be, would a person that knew about the

1 negotiation where the offering company -- in this case,  
2 Spherion -- was offering twenty-five dollars for Comsys, you  
3 know, had I known -- had a person known that, why would they  
4 be selling?

5 Q. Did you say they were offering 25 for Comsys?

6 A. I believe so.

7 Q. That's not anywhere in that filing, is it?

8 A. Twenty-five or 26 or something like that. I read that  
9 somewhere. Maybe I conjectured it because the stock went to  
10 25 or 26.

11 Q. So you think that the offer was twenty-five dollars or  
12 twenty-six dollars?

13 A. Somebody knew something, because it went from 25 to 26  
14 for no reason whatsoever.

15 Q. You now know it's actually true that the stock had  
16 declined from twenty-five dollars down to twenty dollars at  
17 the time you were purchasing it in July 2007; correct?

18 A. That's correct.

19 Q. So it's not true that the stock was soaring at that  
20 time. It had actually declined by over 30 percent?

21 A. It was soaring earlier that year.

22 Q. But not at the time you bought; correct?

23 A. By then it was already coming down, yes.

24 Q. And you now know it's also not true that the stock went  
25 to twenty-five dollars in August; correct?

1 A. Looking at the price chart, it did not go to 25 in  
2 August.

3 At the time you first asked me that question, I thought  
4 it did, but that was just my recollection.

5 Q. You later learned from Larry Enterline that Comsys was  
6 within a few days of announcing a deal in that time period;  
7 correct?

8 A. Absolutely, within a few days, yes.

9 Q. I'm sorry?

10 A. Absolutely, within a few days they were about to make  
11 the announcement that the acquisition was going to proceed.

12 Q. And he told you that after the Manpower deal, though,  
13 not after --

14 A. It was -- I saw the description of that process in the  
15 Manpower narrative, and I remember just asking him after the  
16 Comsys deal was announced with Manpower, you know, What was  
17 this? You had a negotiation two years earlier for basically  
18 a larger price than you are selling it now? That was the  
19 gist of my conversation.

20 Q. Okay. And you didn't tell him at that time that you had  
21 been trading?

22 A. Correct.

23 Q. Not during the year earlier period; correct?

24 A. That's correct.

25 Q. You didn't tell him you just made a lot of money on the



1 deal that just went through?

2 A. Absolutely not.

3 Q. So you were just talking with him about the deal after  
4 the fact?

5 A. Yes. I was stunned.

6 And, sir, that explained to me to my mind why that stock  
7 went to 25 or 26 in 2007. There was just absolutely no  
8 reason for it. This was an explanation to me.

9 Q. So after the Manpower deal, you were talking with  
10 Larry Enterline about the details of that 14D-9 filing?

11 A. I congratulated him on his deal with Manpower and, among  
12 other things, I asked him about this particular paragraph  
13 that had to do with the Spherion negotiations in 2007.

14 Q. And were you asking him did you see that filing because  
15 of the investment that you had in Comsys?

16 A. Did I see the narrative?

17 Q. Correct.

18 A. Oh, yes. I got it in the mail. As a part of the  
19 Manpower takeover of Comsys, they sent it to all the  
20 shareholders.

21 Q. But after the 2004 merger, you didn't know about it --

22 A. Correct.

23 Q. -- and didn't read that filing?

24 A. Correct. I don't think there was any narrative or  
25 anything along the lines of the document that Manpower

1 produced after their merger with Comsys.

2 Q. Well, there is the proxy statement that I showed you in  
3 Plaintiff's Exhibit 2; right?

4 A. Okay. I didn't really read it at the time. I wasn't  
5 interested.

6 Q. And even when you were talking with Larry Enterline  
7 about that 2007 deal after you saw it in 2010, you didn't  
8 tell him about your 2007 purchases, did you?

9 A. That's correct.

10 Q. So, Mr. Schvacho, assume with me that two of your --  
11 that at the time, your purchase of July of 2007 and your  
12 purchases in October to December of 2003 were two of your  
13 three largest purchases in Comsys prior to 2009; okay?

14 A. Okay.

15 Q. Is it just a coincidence that two out of your three  
16 largest purchases lined up with significant merger  
17 discussions by Comsys or by Enterline's company?

18 A. The way I remember the Comsys -- I'm sorry, the way  
19 I remember the Venturi and I guess it was Comsys merger, it  
20 was not an acquisition of one part or the other. It was  
21 simply a merger of two peers.

22 Now, very typically in the market if you have one  
23 company acquiring another, they will acquire it for a  
24 premium over the market. So that's an opportunity to make  
25 money.

1           Very rarely do peer companies merge together where it's  
2 a stock-for-stock swap with no company really benefiting, no  
3 shareholders of either company benefiting.

4           So it was a nonevent to me. It was like who cares.

5 Q.    Okay. Mr. Schvacho, my question is is it a coincidence  
6 that two of your three largest purchases in Enterline's  
7 company occurred at a time when serious merger negotiations  
8 was going on?

9 A.    In retrospect, yes.

10       At the time, to me, as I said, the Comsys/Venturi was a  
11 nonevent. And it was borne out by the stock price. It  
12 didn't do anything. It declined.

13 Q.    The rest of your trading in 2007 and 2008 were  
14 in-and-out trades where you would buy a few thousand shares  
15 and then sell those few thousand shares for a small profit;  
16 correct?

17 A.    Correct.

18 Q.    None of those other trades in 2007 and 2008 were over  
19 \$85,000, were they?

20 A.    Whatever the records state.

21 Q.    Okay. I will leave it to the Court to do that  
22 math. But just assume with me that that's the case.

23 A.    Okay.

24 Q.    You then got out of all of your equities, including  
25 Comsys, in early 2008; correct?

1 A. Yes.

2 Q. And you didn't trade again in Comsys until the fall of  
3 2009; is that correct?

4 A. That's correct.

5 Q. You mentioned earlier that there was a massive shift in  
6 your investment philosophy in the fall of 2009?

7 A. Yes.

8 Q. At that time, you decided that one of the most lucrative  
9 approaches would be for you to select a given stock and then  
10 go deep in it; correct?

11 A. That seemed to be the best idea I had at the time, yes,  
12 given my circumstances.

13 Q. And by go deep, you meant make a very large acquisition  
14 in that stock and then hold it for a defined period of time  
15 and then hopefully get out with a profit; right?

16 A. That's correct.

17 Q. You didn't have a defined period of time for your Comsys  
18 purchase, did you?

19 A. In 2009?

20 Q. Yeah.

21 A. Fall of 2009?

22 You can't have a definite holding period. You don't  
23 know what's going to happen in the future. But my  
24 assessment, based on the past performance of the stock in  
25 2007, I felt quite sure that Comsys would reach -- go back to

1 the 25, 26, 27 level within a year or so all by themselves.

2 Q. Were you trying to do dollar-cost averaging with your  
3 purchase?

4 A. No. Sorry, no.

5 Q. In going deep -- your strategy of going deep was in  
6 contrast to scattering the funds in a number of stocks;  
7 correct?

8 A. I had never had a strategy where I really did a  
9 scattering type of investment.

10 Q. You are aware that mainstream wealth planning advice is  
11 that it's good to diversify your holdings; correct?

12 A. It depends on the investor.

13 Q. Well, an investor like you who is retired would  
14 generally try and take a lower-risk portfolio; correct?

15 A. Not at all. Just the opposite. I think that kind of a  
16 strategy might be more appropriate for someone like me prior  
17 to 2009 who is not really devoting a lot of time to managing  
18 their portfolios and treats it more as a hobby sort of, side  
19 line.

20 Q. Okay. And you think that's the mainstream wealth  
21 planning advice?

22 A. To me it would have been.

23 Q. And Comsys was a stock that was quite volatile; right?

24 A. It had been, yes.

25 Q. And it was a stock with a high beta; correct?

1 A. Up until the fall of 2009.

2 Q. So at the time when you were making your decision to go  
3 deep, it was a stock with a high beta; correct?

4 A. It had been a stock with a high beta in the prior  
5 years. That changed in 2009, in the fall of 2009.

6 Q. So your testimony is that in fall of 2009, Comsys was no  
7 longer a stock that went up and down a lot?

8 A. Correct.

9 Q. Okay.

10 A. It was mostly going up.

11 Q. Comsys was a thinly-traded stock, wasn't it?

12 A. You know, I don't remember what the average -- what the  
13 average volume was. It wasn't a very popular stock. It  
14 wasn't an extremely thinly-traded stock either. It was sort  
15 of in between.

16 Q. Okay. Mr. Schvacho, could you turn back to your  
17 deposition transcript at page 263.

18 A. Now, we are talking about 2009 now that I just  
19 categorized it.

20 I'm sorry, turn to where?

21 Q. 263 in your deposition.

22 A. Is that page 263?

23 Q. Yes.

24 A. Okay.

25 Q. Please read the lines one through four outloud?

1 A. Would you describe Comsys as a thinly or a liquid --  
2 thinly-traded stock or a liquid stock?

3 Relatively thinly traded, but it is tradable.

4 And on through five? Could you describe your trading  
5 protocol --

6 Q. No, one through four, please.

7 That was your testimony; right?

8 A. Yes, and it's true. This was, as I said, prior to the  
9 fall of 2009.

10 Q. That's not what you said there, was it?

11 A. Does it refer to a period?

12 Q. Would you read lines one through four again for me?

13 A. Would you describe Comsys as a thinly or a liquid --  
14 thinly-traded stock or a liquid stock?

15 Answer: Relatively thinly traded, but it is tradable.

16 Q. Okay. You didn't say prior to 2009?

17 A. Well --

18 THE COURT: You didn't ask either.

19 THE WITNESS: Right.

20 BY MR. MAYES:

21 Q. You said before that you had decided that Comsys was not  
22 a good buy-and-hold stock; correct?

23 A. Correct, prior to 2009.

24 Q. So in 2009, you decided it was a good buy-and-hold  
25 stock?

1 A. I didn't decide. It just was. It just turned that  
2 way.

3 Basically from almost the start I began buying it in  
4 2009, in November of 2009, it pretty much went straight up,  
5 which was highly unusual for that stock. It used to  
6 fluctuate before that, in the years before that.

7 Q. Okay. So your testimony is that as soon as you started  
8 buying it in November of 2009, it just kept going straight  
9 up; correct?

10 A. It was not a dramatic -- at first it was not a dramatic  
11 increase in price, but it was very steady.

12 I don't recall ever having a day after I began buying it  
13 November 6, 2009, I don't recall waking up in the morning  
14 saying, Oh, my God, you know, I just lost ten thousand  
15 dollars because the stock declined.

16 Q. You didn't write anything down or take any notes while  
17 you were doing your research on your stocks, did you?

18 A. When I was researching a stock?

19 Q. Correct.

20 A. No.

21 Q. We are going to talk about the reason you decided that  
22 Comsys was a good bet to go deep in in 2009.

23 You decided that staffing companies were leading  
24 indicators of the overall market direction going into and  
25 coming out of a recession; correct?



1 A. That's correct.

2 Q. And so you decided that Comsys was a lagger compared to  
3 other general staffing companies; correct?

4 A. Correct.

5 Q. And it was your estimation from looking at the data,  
6 there was a three-month gap between the time the first-line  
7 staffing companies saw an improvement and a specialty  
8 staffing company like Comsys saw an improvement; correct?

9 A. That was a theory, yes. There were no guarantees, but  
10 that was my theory.

11 Q. And the other staffing companies you looked at included  
12 Kelly Services; correct?

13 A. Kelly Services, yes.

14 Q. And Kforce?

15 A. Kforce.

16 Q. And Robert Half International?

17 A. Yes.

18 Q. And True Blue?

19 A. Yes.

20 Q. Did you look at Manpower?

21 A. I probably did. I don't recall it, but I expect I did.

22 Q. How about True Blue, that was one you looked at; right?

23 A. I suspect I did, yes. In fact, I mentioned it at the  
24 time.

25 Q. How about On Assignment, ticker symbol ASGN? Did you

1 look at that one?

2 A. Yeah, I can't remember. At some point I think  
3 I actually owned it, but I can't find my records. It's  
4 possible I looked at it.

5 Q. And you used Yahoo! Finance for your research?

6 A. Yahoo! Finance.

7 Q. You relied on Yahoo! Finance for things like stock price  
8 information; correct?

9 A. Correct, and news items and those kinds of things.

10 Q. So your theory was that these stocks that we had just  
11 talked about would lead the market as a whole for six months;  
12 correct?

13 A. That was my theory, yes.

14 Q. Okay. So general market indicies like the Dow Jones and  
15 the S&P 500 should appreciate months after a run-up in these  
16 staffing companies; correct?

17 A. Roughly, yes. It was a theory.

18 Q. And Comsys should be somewhere in between there, roughly  
19 three months; correct?

20 A. That was my theory.

21 Q. And that was the theory that you had in October and  
22 November of 2009; correct?

23 A. Yes.

24 Q. Before you first bought Comsys shares on October 28th,  
25 2009?

1 A. Yes.

2 Q. And you were afraid that you were almost late in  
3 catching the run-up when you first started buying in October  
4 of 2009, because the other staffing companies had already  
5 appreciated tremendously during that year; correct?

6 A. Not only they appreciated tremendously, but on a  
7 percentage basis, Comsys also appreciated.

8 Of course, Comsys was different in the sense that during  
9 the market decline, they got really, really whacked badly  
10 outside of -- much more on a percentage basis than all the  
11 other staffing companies.

12 Q. So you know now, don't you, that Comsys stock had  
13 actually tripled in value at the time you started going deep  
14 in the prior eight months; isn't that true?

15 A. That's why -- sorry. That's why I thought I might be  
16 too late in Comsys.

17 Q. Well, I thought the reason you thought you were too late  
18 was about because the other staffing companies had already  
19 appreciated tremendously; isn't that true?

20 A. I'm sorry, it was both that and the fact that Comsys had  
21 already run up from their very lowest, like two or three  
22 dollars that they hit earlier that year.

23 Q. So if Comsys had more than tripled since March of 2009  
24 to October of 2009, it wasn't actually lagging the other  
25 staffing companies, was it?

1 A. I don't -- I don't think it was less than two  
2 dollars. It was in that range.

3 Q. You don't think it traded less than two dollars?

4 A. It may have. It was pretty low there, yes, I would  
5 agree. I don't know how low it went.

6 Q. Well, why don't you turn to Exhibit 137 at page  
7 35. Joint Exhibit 137 at page 35.

8 A. Just can you tell me what it was? I mean --

9 Q. Yeah, the stock traded -- isn't it true that in March --  
10 January and March, you can assume with me that Comsys  
11 frequently traded under two dollars a share.

12 A. It did? Okay.

13 Q. And you were buying it more than seven dollars a share  
14 in November; right?

15 A. Yes, six dollars.

16 Q. Six dollars in October. In November you were buying it  
17 over seven dollars a share; right?

18 A. Yes, correct.

19 Q. But it's your testimony that Comsys had not experienced  
20 the same tremendous appreciation as the other staffing  
21 companies?

22 A. It was my opinion that Comsys was affected much more on  
23 the down side than it should have been like the other  
24 companies were.

25 Q. Okay. You never mentioned this testimony you are giving

1 right now at your investigative testimony, did you?

2 A. Maybe it never came up.

3 Q. Okay. You never mentioned it during your deposition,  
4 did you?

5 A. I don't think it came up.

6 Q. So this is the first time you are getting a chance to  
7 tell this story; is that right?

8 A. Okay.

9 Q. Had the other staffing companies that you looked at more  
10 than tripled? Had they quadrupled or quintupled?

11 A. Some of them did, yes.

12 Q. Some of them quintupled or quadrupled?

13 A. Tripled for sure. Tripled for sure.

14 Q. Okay. But not more than Comsys. Comsys had more than  
15 tripled?

16 A. Yes, that's true.

17 Q. If Comsys lagged by three months and that was your  
18 theory, we should see a big run-up in the other staffing  
19 companies in August or July; right?

20 A. The biggest run-up I saw in all the staffing -- the  
21 majority of the staffing companies I looked at were between  
22 April of 2009 and when I began buying, which was in November  
23 of 2009.

24 Q. Comsys also had a big run-up during that period, didn't  
25 they?

1 A. So did they, yes.

2 Q. But your theory was that Comsys would lag them by three  
3 months?

4 A. Somewhat, yeah. This was not a scholarly thesis that  
5 I had. This was just a hunch. It was a theory. It was  
6 actually advanced to me by Mr. Enterline originally, but  
7 I sort of agreed with it.

8 Q. Your theory was that Comsys would lag three months  
9 behind the other companies; isn't that true?

10 A. It was a corollary. It may or may not have. What was  
11 important was that the markets overall would be led by the  
12 staffing industry itself, and the number that I heard about  
13 was six months.

14 And when I looked at the graphs of a number of the  
15 staffing companies, I did see a six-month -- a bottoming out  
16 six months prior to that and pretty much straight line up  
17 after that.

18 Q. Right. And the reason you didn't buy something else  
19 that would follow by six months was because your theory was  
20 that Comsys would lag behind those staffing companies too,  
21 wasn't it?

22 A. The biggest reason I bought Comsys was that it was the  
23 stock that I was most familiar with. I was familiar with  
24 their management and I saw that on a percentage basis, when  
25 they got whacked down to two dollars, whereas the others,

1 other staffing companies also declined, but not nearly so  
2 aggressively as Comsys did. So I was convinced that Comsys  
3 had a lot more to run from the six dollar level where I began  
4 buying it.

5 I was absolutely convinced that just prior, two years  
6 prior to that they were at 26, and I was convinced that  
7 within a year or two, we would be back at 26. I did not have  
8 as much confidence that the other staffing companies, which  
9 had already -- also had already increased in price, would  
10 double or triple even more.

11 Q. That wasn't the reason that you gave when you were asked  
12 about this in your investigative testimony, was it?

13 A. Investigative testimony was the first one?

14 Q. Yes.

15 A. I am not sure we got into it in such detail.

16 Q. So you didn't say there that -- well, strike that.

17 You didn't have a theory that Comsys was going to lag  
18 behind these other staffing companies by three months?

19 A. Classically that was the way it was explained to me,  
20 that if you see the staffing industry in general go up,  
21 expect companies like Comsys to continue -- to follow that  
22 trend within three months. It was not a -- as I say, there  
23 were no guarantees. It was just a general -- sort of general  
24 rule.

25 Q. Okay. And that was the thesis on which you decided to

1 invest over seven hundred thousand dollars in Comsys, wasn't  
2 it?

3 A. That was a part of it. That was a part of the  
4 picture. There were other overwhelming factors which caused  
5 me to jump into Comsys starting November 6 of 2009. It just  
6 sort of filled in the picture.

7 Q. Mr. Schvacho, you didn't mention any other overwhelming  
8 reasons when I asked you about it at your deposition, did  
9 you?

10 A. I'm sure I did.

11 Q. Well, what were those other reasons?

12 A. There were a number of them.

13 The first one was the fact that I retired; okay? All of  
14 the sudden, instead of working eight or ten hours a day for a  
15 large company, I now was retired. I had plenty of time to  
16 continue to manage my stock portfolio.

17 And in fact, that was the biggest reason I retired. I  
18 had been considering retiring and doing the stock playing for  
19 about ten years prior to my retirement. So now on September  
20 29th of 2009, I retired.

21 About three weeks later, I got a very large -- you know,  
22 to me a very large payout, which included my Cisco package,  
23 early retirement package, my share of the SMI company, which  
24 I was a shareholder in with Mr. Enterline and a number of  
25 other investors. So I had a very large chunk of money which



1 I had to park somewhere besides zero percent money markets,  
2 which is where all the rest of my money was.

3 Another factor was simply the performance of Comsys  
4 during 2009. Comsys used to be a very, very sort of a staid  
5 company, very conservative, very cautious in their business  
6 announcements. Sometime during 2009 they all of the sudden  
7 changed their model of when they were making their  
8 quarterly's announcements of the results, they would for the  
9 first time in history, they began making forward-looking  
10 statements for next quarters, which was extremely  
11 aggressive.

12 In fact, knowing Mr. Enterline as I did for, you know,  
13 ten -- for twenty years, I knew how cautious and conservative  
14 he was. So when I saw him making those statements, basically  
15 kind of bragging to the market how well they were doing, it  
16 was just an unmistakable sign that things were doing well.

17 And of course, sort of the last element in my investment  
18 in Comsys was their preannouncement of excellent results at  
19 the end of December -- at the beginning of January of 2010  
20 when they just stunned the world with announcing results  
21 which were much, much better than anyone anticipated.

22 And consequently their stock took off, you know, went up by  
23 50 percent overnight.

24 Q. That was in January?

25 A. All of that -- yeah, that was in January -- early

1 January of 2010.

2 All of that gave me tremendous confidence to continue  
3 buying Comsys, to continue increasing my stake, because I was  
4 making money.

5 Q. Okay. So I heard you say you retired. That doesn't  
6 explain why you chose Comsys, does it?

7 A. I chose Comsys because, number one, I knew the stock the  
8 most. Of all stocks that I had traded over the last thirty  
9 years, I traded the most frequently.

10 It was run by my friend, so I had confidence that  
11 someone with his ability and his integrity would somehow --  
12 eventually it was going to be successful. It was a long  
13 grind, it took nine years, but eventually it looks like it  
14 was bearing fruit, his hard work was bearing fruit for, you  
15 know, the investors.

16 And you know, then I had to park the money. I had to  
17 park the money somewhere.

18 Q. You had to park the money somewhere, but that doesn't  
19 explain why you chose Comsys.

20 A. That what I just -- I chose Comsys because of what  
21 I just said.

22 Q. Okay. And you didn't mention this part about the  
23 forward statements in the earnings releases during your  
24 deposition or your investigative testimony, did you?

25 A. I don't recall if I did explicitly or not. But when you

1 ask -- when you ask about events that happened so many years  
2 ago, it's difficult to just bring everything back up to what  
3 you were thinking at the time.

4 Over the years -- I mean, I have been working on this --  
5 you guys have been working with me on this for the last three  
6 and a half years. You know, it's been painful, but  
7 eventually I keep remembering new things that I just didn't  
8 remember immediately when you challenged me.

9 THE COURT: Can I just get an estimate of how much  
10 longer you have to go? Because at some point I need to give  
11 Nick a break.

12 MR. MAYES: With him? Your Honor, I have a lot  
13 left to do with him. Pages and pages.

14 THE COURT: So you are over your two-hour estimate  
15 of his testimony.

16 MR. MAYES: It was two to three hours, that's true,  
17 I'm going to be over that, Your Honor, for sure.

18 THE COURT: Is --

19 MR. MAYES: This is a good time for a break for me.  
20 I can stop anytime.

21 THE COURT: Well, it's noon, I think. So let's --  
22 is that noon?

23 MR. MAYES: Yes. Yes, Your Honor.

24 THE COURT: I guess it makes sense, rather than  
25 come back for just a short bit of his testimony, let's take a

1 lunch break. So we will break for an hour.

2 Mr. Schvacho, you cannot talk to anybody about your  
3 testimony since you are in the middle of it. That would  
4 include your lawyers since we are just taking a lunch break.

5 THE WITNESS: Yes.

6 THE COURT: And we will continue with your  
7 testimony after lunch, which will be at 1:00.

8 We will be in recess.

9 (A recess is taken at 12:04 p.m.)

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1 Monday Afternoon Session

2 November 18, 2013

3 1:04 p.m.

4 -- -- --

5 (In open court:)

6 THE COURT: You may continue.

7 MR. MAYES: Are you ready, Your Honor?

8 THE COURT: I am.

9 BY MR. MAYES:

10 Q. Mr. Schvacho, before our lunch break, you were  
11 describing that you had described the reasons why you  
12 invested -- or decided to go deep in Comsys. Do you recall  
13 that?

14 A. Yes.

15 Q. And that was in the fall of 2009; correct?

16 A. Correct.

17 Q. So you first started buying Comsys on October 28th,  
18 2009; is that correct?

19 A. Correct.

20 Q. And you bought a thousand shares on that day; correct?

21 A. Correct.

22 Q. For an average purchase price of 6.82 per share?

23 A. Okay.

24 Q. And then you sold those shares the very next day,  
25 October 29th, 2009; correct?

1 A. Correct.

2 Q. And you sold them at an overall profit; correct?

3 A. Yes. Very small profit, but a profit.

4 Q. And this was at the time you already decided to go deep  
5 in Comsys; right?

6 A. It was the beginning of my decision to go deep in  
7 Comsys, yes.

8 Q. And you sold, because you made a bet that the stock  
9 would go up and wanted to take advantage of that, but you  
10 were wrong; correct?

11 A. I knew that they were going to have a quarterly  
12 announcement of their earnings on the 29th, and based on what  
13 I had seen with the previous announcements, I took a gamble  
14 that, you know, they would have a good announcement.  
15 I happened to be wrong.

16 Q. Okay. And you said you started losing money the next  
17 day, got panicked and sold; correct?

18 A. Well, yes. The other factor was that I made a technical  
19 mistake in how I purchased the stock.

20 Q. Okay. But it was an intra-day price swing against you  
21 that made you panic and sell the stock?

22 A. Correct.

23 Q. And that was because during the day of the 29th, the  
24 stock price dropped; correct?

25 A. Immediately after the opening of the market, yes.

1 Q. Okay. And that intra-day price swing that led you to  
2 sell was pennies; correct? Or less than a dollar; correct?

3 A. It was less than a dollar, yes.

4 Q. You also sold because you made the mistake and used the  
5 market order rather than using a limit order; is that  
6 correct?

7 A. Absolutely, yes.

8 Q. And this led you to decide that you needed to watch the  
9 stock for some period to get a handle on the patterns before  
10 continuing your purchases; is that correct?

11 A. That's correct.

12 Q. And it took you about a week to do that; is that  
13 correct?

14 A. A week or a few more days, yes.

15 Q. So you watched the stock every day from October 29th  
16 until 11-9 when you -- November 9th when you started buying  
17 again?

18 A. Yes.

19 Q. And so you did begin purchasing again on November 9th;  
20 correct?

21 A. Yes.

22 Q. There was no publicly-released information about Comsys  
23 between your sale on October 29th and when you started buying  
24 on the 9th, was there?

25 A. That's correct.

1 Q. Between your purchase on November 9th and the  
2 announcement of the merger on February 2nd, you never sold  
3 any of your other purchases, did you?

4 A. No, I did not.

5 Q. And the reason you didn't make any sales when there are  
6 intra-day decreases during that period is because you didn't  
7 really see any intra-day decreases; correct?

8 A. That's correct, there were no significant decreases.

9 Q. In fact, as soon as you started buying it, for the  
10 entire process of acquiring seventy thousand odd shares, you  
11 don't recall a single day when the stock declined; correct?

12 A. I'm not going to swear to that, but that was my  
13 impression, that as soon as I began buying November 9th, that  
14 the stock continued to appreciate, yes, which was unusual for  
15 that stock.

16 Q. Do you recall -- I mean, is it your testimony you don't  
17 recall a single day when the stock declined; correct?

18 A. I don't recall it. If I went through the records, there  
19 might be a few hours or maybe a day where it might have  
20 declined somewhat, but it wasn't anything serious.

21 Q. And you were watching the stock every day during that  
22 period; correct?

23 A. I was watching it by the second.

24 Q. And that was true for the whole period from November 9  
25 through February 2nd?



1 A. No. It was true for the first at least three weeks  
2 I would say from November 9th, and after that it slowed  
3 down.

4 Q. Okay. And when did it slow down?

5 A. I would have to look at my records. The notebook that  
6 you have that has been shown around a little bit, that  
7 contains all of the transactions that I actually personally  
8 watched and wrote down physically on a piece of paper. So as  
9 long as those run -- as long as those notations run  
10 continuously, that's how long I was watching it every second  
11 of the day.

12 Once I -- once those notes sort of disappear, I was  
13 watching it -- I was watching it, but I wasn't writing it  
14 down and it wasn't up to the second. I might be looking at  
15 it every few minutes or so.

16 Q. So you weren't writing down trades up until the time of  
17 the announcement?

18 A. That's correct.

19 Q. You were not?

20 A. I was not.

21 Q. Okay. And so how about in January? Were you writing  
22 down trades in January?

23 A. I don't think by January I was writing down any  
24 individual trades.

25 Q. Okay. So in your trading notebook, then, what we should

1 see are trades that are in the first three weeks of November  
2 or, you know, maybe into early January?

3 A. Something like that, yes.

4 Q. You made multiple purchases on multiple days between  
5 11-9 and 11-19; correct?

6 A. Yes.

7 Q. In total, you purchased over a hundred fifty-seven  
8 thousand dollars during that eleven-day period; correct?

9 Does that sound like the ballpark?

10 A. I'm not sure about the amount, but it was -- my guess is  
11 about twenty thousand shares. So that was buying around six  
12 dollars a share. So \$180,000 would not be out of the  
13 question.

14 Q. Okay. And that's right, it was twenty thousand shares  
15 that you purchased, if you look at Exhibit 1 during that  
16 period.

17 A. Okay.

18 Q. And on November 6th, you met with Larry Enterline,  
19 didn't you?

20 A. Yes.

21 Q. And you had dinner and drinks with him at SABistro?

22 A. To the best of my recollection, yes.

23 Q. You had a purchase on your credit card receipt for that  
24 day at least, that date, at SABistro; is that correct?

25 A. I did, yes.

1 Q. And you produced that record in the investigation;  
2 correct?

3 A. Correct.

4 Q. If you would turn to Plaintiff's Exhibit 10 in the  
5 plaintiff's exhibit notebook, please, Mr. Schwacho.

6 A. The microphone keeps falling apart.

7 I'm on it.

8 Q. Do you see that?

9 A. I'm on it, yes.

10 Q. Okay.

11 MR. MAYES: Your Honor, we move to admit  
12 Plaintiff's Exhibit 10 into evidence.

13 THE COURT: Any objection?

14 MR. ALBERT: No, Your Honor.

15 THE COURT: It's admitted.

16 BY MR. MAYES:

17 Q. That's a copy of -- Plaintiff's Exhibit 10 is a copy of  
18 your credit card receipt -- or credit card statement, I'm  
19 sorry, showing at the very last line a charge at SABistro;  
20 correct?

21 A. Correct. My copy is kind of bad, but is it twenty-four  
22 dollars and some cents?

23 Q. Yes.

24 A. Okay.

25 Q. And you actually produced that document, that credit

1 card statement twice during the investigation, didn't you?

2 A. Correct.

3 Q. And the first time, it had those bottom few lines cut  
4 off, didn't it?

5 A. That particular entry --

6 MR. ALBERT: Objection, Your Honor. We produced  
7 the document.

8 Can you explain?

9 THE WITNESS: Me?

10 MR. ALBERT: Yes.

11 THE WITNESS: Yeah.

12 BY MR. MAYES:

13 Q. Go ahead, fine. Can you please explain?

14 A. Sure. When I was asked to submit records from my credit  
15 card receipts, I just took whatever I had in house and  
16 I put -- I scanned it, Xeroxed it. And this particular entry  
17 was at the very end of the page, and it inadvertently got cut  
18 off.

19 Within a day or two, while I was reviewing it, reviewing  
20 the copy, you know, to my horror, I realized that that last  
21 entry was missing. So I resubmitted it.

22 Q. So the first time you copied this page to produce in the  
23 investigation, it was missing the line that showed SABistro;  
24 correct?

25 A. It was missing it, but it was only missing it for a day

1 or two while we submitted the second version of it.

2 Q. And that was the only page that had items missing on it  
3 from the copies; correct?

4 A. Correct.

5 Q. Okay.

6 A. It was just the way the paper was folded, you know, it  
7 just cut it off.

8 Q. So it was just a coincidence that the only page with a  
9 copy error was the page that had your SABistro --

10 A. It was an accident. I was mortified to have discovered  
11 that. And as soon as I noticed it, I contacted my attorney  
12 and gave them the -- a better copy.

13 Q. I want you to please turn to Joint Exhibit 177.

14 MR. MAYES: Actually, Your Honor, may I approach  
15 the bench? I'm not sure if his notebook has a copy of 177 in  
16 it.

17 THE COURT: Would you check and see in the  
18 notebooks, it's the one that has the range that says it ends  
19 in 176. Do you have a 177 in that notebook?

20 THE WITNESS: 176, I do.

21 THE COURT: See at the very end of that there is  
22 another exhibit that says 177? It would be at the very end,  
23 there should be a tab that says 177. Is there?

24 THE WITNESS: I have got 175, 176, and that's it.

25 THE COURT: So mark that as a separate exhibit.

1 MR. MAYES: Yes.

2 THE COURT: Is it marked as 177 now?

3 MR. MAYES: It is, Your Honor.

4 THE COURT: And I guess this is -- there is no  
5 objection to this?

6 MR. ALBERT: This is the cooperation of the  
7 parties, Your Honor. No objection.

8 THE COURT: It's already been admitted. Go ahead.

9 BY MR. MAYES:

10 Q. Mr. Schvacho, I'm handing you Exhibit 177.

11 A. Okay.

12 Q. This is a stipulated summary chronology that the parties  
13 have put together that shows what the underlying voluminous  
14 documents show as far as phone records, trading records in  
15 the 14D-9 that was filed with the Commission.

16 A. Okay.

17 Q. Have you seen this before?

18 A. Yes.

19 Q. Okay. I want you to turn to page 36 -- I'm sorry, 39 of  
20 Joint Exhibit 177.

21 A. Okay.

22 Q. And this shows that you had multiple phone calls with  
23 Larry Enterline on November 6th; is that correct?

24 A. That's correct.

25 Q. And it also shows that that day, Enterline had a call

1 with Manpower's CFO in which Manpower's CFO told  
2 Larry Enterline that Comsys was Manpower's preferred  
3 acquisition target; correct?

4 A. Which call was that?

5 Q. That's the third row on page 39.

6 A. Third row from top?

7 Q. Correct.

8 A. Third row from top is one minute from Schwacho to  
9 Enterline.

10 Q. Are you on page 39?

11 THE COURT: He is. That's exactly what that says,  
12 it's from the witness to Enterline -- I'm sorry, Enterline to  
13 the witness for one minute.

14 BY MR. MAYES:

15 Q. I'm sorry, look at the last entry.

16 Okay. I'm sorry, look at the last row on that page.

17 A. Got you.

18 Q. Did Mr. Enterline tell you that he had received a call  
19 from Mr. Van Handel saying that Manpower -- that Comsys was  
20 Manpower's preferred acquisition target?

21 A. No, he did not.

22 Q. And did you overhear it?

23 A. No, I did not.

24 Q. You also had another call with Mr. Enterline the next  
25 day, correct, for six minutes, 3:29 p.m.?

1 A. It looks that way, yes.

2 Q. Okay. And that November 9th was the next trading day  
3 after your dinner with Mr. Enterline at SABistro; correct?

4 A. Correct.

5 Q. And that's the day you started purchasing Comsys and  
6 never sold again; correct?

7 A. That's correct.

8 Q. And you bought -- you started buying at 9:40 in the  
9 morning; correct?

10 A. That's what it looks like, yes.

11 Q. And NASDAQ doesn't open until 9:30; correct?

12 A. I think markets overall open at 9:30, both NASDAQ and  
13 NYSE.

14 Q. And Comsys was traded on NASDAQ; correct?

15 A. I think so.

16 Q. So you bought forty-one hundred dollars' worth of  
17 shares. You don't have to do the math, but you bought  
18 forty-one hundred shares that day; correct?

19 A. That day, okay.

20 Q. And after these purchases from 11-9 to 11-19, you bought  
21 twenty thousand shares. And we saw that on Joint Exhibit 1;  
22 correct?

23 A. 11 -- you are saying November --

24 Q. The period from November 9th to November 19th, you  
25 bought twenty thousand shares?



1 A. Yes.

2 Q. Correct?

3 A. Yes.

4 Q. The evening of November 9th, you spoke to Enterline at  
5 eleven minutes at 7:09 p.m.; right?

6 MR. MAYES: It's on page 41, Your Honor.

7 THE COURT: Can I ask your litigating strategy  
8 here? I mean, these are all admitted facts. You have agreed  
9 to those. And actually by asking questions, I begin to  
10 wonder whether or not there is inconsistencies from the  
11 agreed-upon entries.

12 MR. MAYES: Okay. There were not -- I'm not trying  
13 to elicit any inconsistencies from these.

14 THE COURT: Well, I'm not saying that you are. I'm  
15 just saying usually in a case like this, if you have agreed  
16 to these, then I have to consider that in connection with  
17 your circumstantial evidence theory of the case.

18 MR. MAYES: Okay.

19 THE COURT: I'm trying to save you from some  
20 tedium.

21 MR. MAYES: Okay. I appreciate that, Your Honor.

22 THE COURT: I'm trying to save myself from some  
23 tedium.

24 MR. MAYES: So I am just going to assume that you  
25 will go through these, Your Honor, and I won't belabor them.

1           THE COURT: By the way, did anybody ever go and get  
2 the telephone records of this call between Enterline and  
3 Manpower for November 6th with a date and time on which that  
4 occurred?

5           MR. MAYES: That call was not reflected in the  
6 phone records, Your Honor. We didn't have his actual office  
7 line number, and we are assuming that the call was made to  
8 his office line or from his office line.

9           THE COURT: How about the Manpower CFO's?

10           And I will tell you, Mr. Kim, one more time you  
11 walk up and whisper something, I am going to nail you to your  
12 chair.

13           MR. KIM: My apology, Your Honor. I should have  
14 asked for permission.

15           MR. MAYES: I'm sorry?

16           THE COURT: That's what happens, because he's not  
17 listening to my question, he's listening to you whispering in  
18 his ear.

19           Did anybody ever go to the Manpower CFO and ask him  
20 what time the call was or get his phone records?

21           MR. MAYES: I don't believe we got Mr. Van Handel's  
22 phone records. We didn't ask for his cell phone records. We  
23 never subpoenaed his cell phone records.

24           We asked Manpower, and they didn't have a record of  
25 that call.

1 THE WITNESS: So may I ask a question? This  
2 November 6th call to Manpower CFO, how was that -- where did  
3 that come from? I mean --

4 MR. MAYES: Your Honor --

5 THE COURT: Well, you are not here to ask the  
6 questions. You are here to answer them.

7 BY MR. MAYES:

8 Q. On November 17th, in the middle of this purchasing spree  
9 we talked about, you sold seven thousand shares of RF  
10 Microdevices for proceeds of approximately thirty-two  
11 thousand; correct?

12 A. November 17th?

13 Q. That's not reflected on this joint summary exhibit.  
14 That's why I'm asking you about it. Do you recall that?

15 A. I'm sorry, could you ask me -- you are saying on  
16 November 17th I sold shares that are not reflected on here?

17 Q. Shares of RF Microdevices.

18 A. Oh, RF Micro? It's possible, yes.

19 Q. Okay. Please turn to Joint Exhibit 113.

20 THE COURT: Is it okay since this is already in  
21 evidence that --

22 MR. MAYES: Sure, Your Honor.

23 THE COURT: You made your point that he sold it.

24 BY MR. MAYES:

25 Q. Mr. Schvacho, assume with me that you sold seven

1 thousand shares of RF Microdevices on November 17th for  
2 approximately thirty-two thousand dollars. That sale was at  
3 a loss; correct?

4 A. Correct, probably.

5 Q. And your testimony is that you did not make that sale to  
6 free up funds to make additional purchases of Comsys;  
7 correct?

8 A. It is difficult to remember that, but I don't recall  
9 selling it because of Comsys. I recall selling it as a tax  
10 loss.

11 Q. So you believe it was a tax sale?

12 A. Yes. It was getting later in the year and I was losing  
13 money in it and I needed a write-off.

14 Q. Mr. Schvacho, you said before that you hadn't been  
15 investing since 2008. So you didn't have any trading profits  
16 to take a loss against, did you?

17 A. It doesn't matter. I mean, if I'm losing money in the  
18 stock, it's still a loss that I can write off against other  
19 income.

20 THE COURT: That is true, isn't it?

21 MR. MAYES: I don't know.

22 THE COURT: Well, you should know if you are going  
23 to ask that question, because you said it was a loss to be  
24 offset against a trading gain.

25 MR. MAYES: That was my understanding was that

1 capital losses got offset against capital gains.

2 THE COURT: Can't you have a capital gain other  
3 than a stock gain?

4 MR. MAYES: That's true, Your Honor.

5 BY MR. MAYES:

6 Q. Did you have any capital gains, Mr. --

7 THE COURT: Look, I'm not going to help you with  
8 your interrogation. But, young man, if you ever ask a  
9 question and represent that it has to be a loss applied  
10 against only a stock gain, you be very careful about the  
11 representations you are making to a witness or to me.

12 MR. MAYES: I apologize, Your Honor. I understood  
13 it to be a capital loss had to be offset against a capital  
14 gain. That's still how I understand it, Your Honor. Maybe  
15 I misunderstood.

16 THE COURT: Well, you need to be a little more  
17 practiced in the law.

18 And I will tell you, that offends me, that you  
19 reach an assumption that's consistent with your theory rather  
20 than eliciting information from which I can make a decision,  
21 not you.

22 MR. MAYES: I apologize, Your Honor.

23 BY MR. MAYES:

24 Q. In any event, you did use the proceeds of that sale to  
25 purchase Comsys stock; correct?

1 A. Probably, yes.

2 Q. All of that trading on 11-17 happened after you had a  
3 call with Larry Enterline at 11:56 a.m.; correct?

4 A. I'm sorry, can you tell what the timing of the RFMD sale  
5 was, what the transaction time was?

6 Q. Yeah, you can assume with me that Joint Exhibit 113 will  
7 show those sales as having taken place at 2:45 -- I'm sorry,  
8 3:27 and 2:18.

9 A. Okay. So that was several hours after a call with  
10 Mr. Enterline.

11 Q. And you began purchasing Comsys at 1:10, bought some  
12 shares, sold RF Microdevices, and then bought more shares;  
13 correct?

14 A. It is possible, yes, if that's what it says in the  
15 record.

16 Q. You didn't make any purchases between November 9th --  
17 19th and December 16th; correct?

18 A. November 9th --

19 Q. November 19th and December 16th, you didn't make any  
20 purchases, did you?

21 A. It doesn't look like I did, that's correct.

22 Q. You explained the gaps in your purchases generally by  
23 saying there were days on which you couldn't buy Comsys  
24 stock; correct?

25 A. I'm sure there were various reasons. I got busy with

1 something else possibly. I was waiting for what the stock  
2 was going to do. It was still too stressful. This was not a  
3 stock you buy and walk away; it's something you have to watch  
4 continuously.

5 I thought by then at twenty thousand shares I had  
6 reached, you know, a good number of shares that I could stick  
7 with for a while and see how the stock progression went.

8 Q. Your goal during this period was to buy as many shares  
9 as you could?

10 A. No. The initial goal was that -- I remember the initial  
11 goal was twenty thousand shares. And as things got better in  
12 terms of the performance of the stock, the announcements of  
13 the company, I just continued to increase my targets for  
14 acquisition.

15 Q. So you are saying that the reason you stopped on 11-19  
16 and didn't buy again until December 16th was because you had  
17 a target of twenty thousand?

18 A. The initial target was definitely twenty thousand.

19 Q. Do you recall earlier when you said that you didn't  
20 recall there being a single day when the Comsys stock  
21 declined when you were accumulating your seventy thousand  
22 shares?

23 A. I don't recall it. I'm not going to swear to it. Maybe  
24 there were some hours where it maybe had declined, but my  
25 overall remembrance of that time was that it continued to

1 gradually increase in price.

2 Q. Would you turn to Joint Exhibit 137, please,  
3 Mr. Schvacho?

4 A. Yes. Stock prices?

5 Q. Isn't it true that on November 24th -- please turn to  
6 page 37 of Joint Exhibit 137.

7 A. I'm on 24.

8 Q. You are on page 37?

9 A. Oh, 37?

10 Q. Yes.

11 A. I am on 37.

12 Q. Isn't it true that on November 24th, Comsys stock closed  
13 at 9.21 per share?

14 A. On November the 27th?

15 Q. 24th.

16 A. 24th?

17 THE COURT: I have got that. Let's move on.

18 BY MR. MAYES:

19 Q. Okay. And at that time, your cost basis in the shares  
20 you own as shown on Joint Exhibit 1 was \$7.89 per share;  
21 right?

22 A. Okay.

23 Q. And then Comsys opened at 9.29 per share the next day,  
24 November 25th, and reached a high of 9.32 that day; correct?

25 A. Correct.



1 Q. I want you to turn to the next page and look at December  
2 10th. Isn't it true that Comsys stock closed at \$7.68 a  
3 share that day?

4 A. It looks that way, yes.

5 Q. And it reached a low of \$7.52 per share during that day;  
6 correct?

7 A. Okay.

8 Q. And in fact, it reached lows below your average cost  
9 basis each day from December 9th through December 15th,  
10 didn't it, Mr. Schvacho?

11 A. That's possible, yes.

12 Q. So you watched what was over a twenty-five thousand  
13 dollar profit run all the way down to a spot where you are  
14 showing several thousand dollars in losses, didn't you?

15 A. It appears that way, although in terms of the overall  
16 investment that I had by then, a few thousand dollars was not  
17 something that I was concerned with.

18 Q. But on October 29th, you panicked and sold because of a  
19 few pennies or less than a dollar's intra-day swing on a ten  
20 thousand dollar investment; correct?

21 A. Yes.

22 Q. So you didn't panic when you watched a twenty-five  
23 thousand dollar gain go all the way down to a several  
24 thousand dollar loss; correct?

25 A. Yeah. The difference was that the decline in

1 December 8 or 9 or 11 was really not caused by any external  
2 event, it was just what happens to the stock, whereas on  
3 the -- on October 28th, 29th, it was just a bad quarterly  
4 announcement.

5 Q. On December 9th, you had over one hundred fifty thousand  
6 dollars invested in the stock; right?

7 A. December 9th?

8 Q. You had twenty thousand shares.

9 A. Okay. Okay.

10 Q. You didn't panic with a big move against you with twenty  
11 thousand shares, but you did panic with a small movement  
12 against you with a thousand shares; right?

13 A. Yes.

14 MR. MAYES: May I approach the witness,  
15 Your Honor?

16 THE COURT: You may.

17 BY MR. MAYES:

18 Q. Mr. Schvacho, I'm handing you Joint Exhibit 138, which  
19 is your trading notebook?

20 A. Yes.

21 Q. That is your trading notebook; correct?

22 A. Yes.

23 Q. And you produced pages of this at your investigative  
24 testimony; correct?

25 A. Yes.

1 Q. You did not produce the actual notebook, though, did  
2 you?

3 A. I didn't do what?

4 Q. Produce that actual notebook, did you?

5 A. To my lawyer I did.

6 Q. You did not actually bring it with you to the  
7 investigative testimony you gave?

8 A. I gave it to my lawyer, and whatever pages they brought,  
9 I don't know exactly.

10 Q. If you look at on page -- not the first page, but the  
11 second page of Exhibit 138, do you see handwritten  
12 notations? Are these handwritten notations the notes of the  
13 transactions you saw going across your trading screen?

14 A. It looks that way, yes.

15 Q. And you would record the volume and the price; correct?

16 A. Typically what I was doing -- and it's been a while  
17 since I have done this -- but I would watch in front --  
18 I would sit in front of the screen and I would write down  
19 every transaction that I saw in that stock happen.

20 So if at, you know, ten o'clock and twenty seconds I saw  
21 someone bought or sold, you know, 500 shares at \$7.82,  
22 I would actually physically write that down.

23 Q. Okay. So you would write down the price, and that's  
24 what's in the -- for example, just look the the far left-hand  
25 column where starting at the top, I see 430 and 7.55?

1 A. Yes.

2 Q. The 430 would be volume?

3 A. Would be the beginning volume of the day usually, yes.

4 Q. And then 7.55 would be the price of a transaction?

5 A. Price of the transaction.

6 Q. And as you recorded those down, that's cumulative volume  
7 going farther down the left-hand column; correct?

8 A. That's correct.

9 Q. You did not date these, did you?

10 A. No. But as I made the point before, if someone was  
11 interested when this was done, I can actually correlate the  
12 dates by the pricing and by the volumes.

13 Q. Right. So if we wanted to, we can look and look at this  
14 stock data that's in Joint 137 and track it up with the price  
15 and volume that you have recorded; right?

16 A. Correct.

17 Q. You tracked every transaction like this, because it  
18 wasn't like you went out there and said give me twenty  
19 thousand shares and walked away?

20 A. Correct.

21 Q. You wanted to make sure you got the best price?

22 A. Correct.

23 Q. And you accounted for every fifty or hundred shares that  
24 you were buying; correct?

25 A. I think -- no. I accounted for every shares that

1 transacted, not just by me, but by anyone in the market.

2 Q. You kept that all in that one notebook that you have got  
3 there; right?

4 A. It's in the notebook, yes.

5 Q. And you went in order; correct?

6 A. Pretty much in the order, right.

7 Q. So the first two pages here are records of transactions  
8 that you would assume were in November; right?

9 A. Yes.

10 Q. And I see that -- for example, turn to the second  
11 page -- or I'm sorry, the third page, which is the next  
12 page. See that line drawn down there in the second column?

13 A. Yes, in between the thirteen thousand and three  
14 whatever, 396 or 39.6 or whatever that is. Is that the line  
15 you are talking about?

16 Q. I see a line between 15,975 and 423 on the next  
17 page. Is that right?

18 THE COURT: No. Well, you had him to go to -- I am  
19 lost. So there is -- the first page is some diagram.

20 MR. MAYES: Correct.

21 THE COURT: The second page is the beginning of the  
22 trading volume of 630 versus 7.55.

23 MR. MAYES: Correct.

24 THE COURT: So are you just going to the next  
25 page?

1 MR. MAYES: Correct, the next page.

2 THE WITNESS: What is the next page?

3 MR. MAYES: It's the page that you have got  
4 actually in your hand with Andrea written in the top  
5 right-hand corner.

6 THE WITNESS: Okay.

7 BY MR. MAYES:

8 Q. Do you see that line there in the second column?

9 A. Right. Yes, I do.

10 Q. Is that a division between days?

11 A. It looks like a division between days, because the next  
12 day starts at 423 shares.

13 Q. And that was your practice, you would separate the end  
14 of trading days with a line; correct?

15 A. In that particular case, yes.

16 Q. Okay.

17 A. There were other lines which signified other things, but  
18 in this case it was the next day.

19 Q. And so if we look on -- I'm sorry, flip back to the page  
20 before that. Looking in the top right-hand corner, we see  
21 16,248 and 7.61. Do you see that?

22 A. Yes.

23 Q. And if you can look at -- I'm going to ask you to go  
24 ahead and take -- or keep Exhibit 137 handy, Joint Exhibit  
25 137.

1 A. Okay.

2 THE COURT: Well, there is another line on that  
3 page.

4 MR. MAYES: There is another line on that page.

5 THE COURT: Actually there are three lines, four  
6 lines on that page.

7 MR. MAYES: Yeah.

8 THE COURT: So you are only talking about that one  
9 line.

10 MR. MAYES: For right now that's the one I'm  
11 talking about, Your Honor.

12 BY MR. MAYES:

13 Q. So you see the 16,248 with 7.60 or 7.61 written there?

14 A. Give me those two numbers again, please?

15 Q. 16,248 and 7.61. This is the second page of your  
16 trading notebook.

17 A. Which column?

18 Q. It's in the third column, the very top.

19 THE COURT: Did it occur to you that it might help  
20 this if you put it on the ELMO so that we can follow along?

21 MR. MAYES: That's a good point, Your Honor.

22 Right here is where I'm talking about.

23 THE COURT: It would help if you turn it so we can  
24 read it.

25 BY MR. MAYES:

1 Q. There you go. Right here, do you see that?

2 A. Yes, I do.

3 Q. Okay. And if you look at Exhibit 137, on page 37,  
4 that's the Comsys stock. You see that on November 10th, the  
5 volume was seventeen thousand -- or 16,248.

6 A. Okay.

7 Q. And the closing price was 7.60.

8 A. So that matches the notebook, yeah.

9 Q. So this is 11-10 right here; right? November 10th?

10 A. It appears that way, yes.

11 Q. So the line before that over here, we see six  
12 thousand. Now, we don't have -- November 9th doesn't have  
13 that low volume. Do you think this was November 9th?

14 A. I'm sorry, repeat the question?

15 Q. Okay. So this -- you just agreed with me that this line  
16 is November 10th. Is this the day before, November 9th,  
17 right here?

18 A. It appears that way, yes.

19 Q. Okay.

20 THE COURT: Well, that can't be, because the  
21 trading volume is ten thousand the next entry.

22 MR. MAYES: And that was going to be my question.

23 BY MR. MAYES:

24 Q. Mr. Schvacho, you didn't record all the trades on all of  
25 the days you traded, did you? Some days you stopped



1 early. Maybe you had to go somewhere?

2 A. Yeah. Early on I recorded everything. Now, there were  
3 instances where I had to get up and go to the bathroom, let's  
4 say, so instead of having a discontinuity, I would just put a  
5 line through the last good entry, and then knowing that when  
6 I came back that I did something else, I wasn't recording --  
7 I was missing some transactions where that line was.

8 Q. Okay. So that could be just a gap on November 10th  
9 between the 6,532 and 10,932?

10 A. That's the only reason I could see putting a line like  
11 that.

12 Q. So if you flip to the next page, we see on Exhibit --  
13 Joint Exhibit 137 that the volume on November 11th was 17,939  
14 and the closing price was 7.85?

15 A. Okay.

16 Q. Did you stop early on that day?

17 THE COURT: Can I interrupt for a second? There  
18 were some markings on the exhibit that you are showing on the  
19 ELMO that are not on mine.

20 MR. MAYES: Oh, this one? That's my copy,  
21 Your Honor. Let me grab the clean one.

22 THE COURT: You are welcome to use mine if you  
23 can't find one for your own use.

24 MR. MAYES: Mine has some notations on it,  
25 Your Honor.

1 THE COURT: Then you shouldn't show those, because  
2 that --

3 MR. MAYES: Yeah, I understand.

4 THE COURT: I mean, your theory is on that. What I  
5 want to see is the evidence.

6 MR. MAYES: I understand, Your Honor.

7 THE COURT: Here, just use this. We need to get  
8 this moving along.

9 MR. MAYES: Okay. Thank you, Your Honor. I  
10 apologize.

11 BY MR. MAYES:

12 Q. Why don't you go ahead and flip to the page, the fifth  
13 page in, the one that looks like this?

14 THE COURT: He can just look at it up there. He  
15 doesn't have to look at the one he has.

16 MR. MAYES: Okay, sure.

17 BY MR. MAYES:

18 Q. So if we look at the very last column, you have got  
19 written here 23,031, \$8.39, and then look at November 20th,  
20 you will see that's an exact match; correct? On Exhibit 137,  
21 volume of 23,031, closing price of \$8.39?

22 A. Okay.

23 Q. So this is November 20th right here; correct?

24 A. Okay.

25 Q. And the day before, you see volume of 43,090, and

1 8.33. That's this line right here. And that's November  
2 19th; correct?

3 Correct, Mr. Schvacho?

4 A. Okay.

5 Q. If you go back to the page before, the next line that  
6 you see on the far right-hand side, that one is not an exact  
7 match for the day before?

8 MR. MAYES: Your Honor, can I just use the actual  
9 notebook, put it up on the ELMO if he's just going to watch  
10 to follow along? I think that might be more productive.

11 THE COURT: That's out of mine -- that's exactly  
12 the same thing, unless I am being accused of --

13 MR. MAYES: No, I'm not accusing you of anything.  
14 I'm accusing myself of having -- oh, here they are --  
15 misshuffled the pages that you gave to me.

16 BY MR. MAYES:

17 Q. Okay. Mr. Schvacho, if you go back to the page  
18 before -- that's this page -- you will see that this number  
19 up here doesn't precisely correspond to a day on the trading  
20 records, but if you go to this one right here, twenty-nine  
21 thousand -- or 27,738 with a closing price of 8.48, that will  
22 correspond exactly with November 17th.

23 A. Okay.

24 Q. Right?

25 So this day in between would be 11-18, because we have

1 got 11-19, 11-17. 11-18; right?

2 A. Okay.

3 Q. Okay. So we know that at this point, you have tracked  
4 stocks here from at least November 10th through November  
5 19th -- or, sorry, through November 20th; right?

6 A. November 9th, probably. November 9th.

7 Q. Right.

8 A. Starting November 9th.

9 Q. Till November 20th; correct?

10 A. Okay.

11 Q. Then we see that the next page after this one that has  
12 November 19th and November 20th on it, is this one that has  
13 something to do with a race? Is that right?

14 A. Yes.

15 Q. What was that? That was an arthritis race?

16 A. That was an arthritis or diabetes race, yes.

17 Q. Were you helping to organize that race?

18 A. Yes, I was.

19 Q. So these numbers that you have written down here, they  
20 don't correspond to your trading; they correspond to  
21 something you were doing with the race?

22 A. They correspond to the measurement of the race course.

23 Q. The measurement of the race course?

24 A. Yes, a five kilometer race, so I had to measure it.

25 Q. Okay. The next page that we have in the exhibit is --

1 there is actually something on the back of that page with the  
2 race stuff on it; correct?

3 A. Yeah. I see it, yes.

4 Q. Okay. That arthritis race, was that in December?

5 A. It was in December.

6 Q. Okay. It was December 12th?

7 A. It was a Saturday, so if that was December 12th, then  
8 that would be correct.

9 Q. Did you actually run in the race?

10 A. No, I just helped organize it. On December 12th, I went  
11 to Florida with Mr. Enterline on a sailing trip.

12 Q. Okay. And the next page in here, we see more trading  
13 records; right?

14 A. Yes.

15 Q. Okay. I want you to look at this number right here,  
16 59,076 with 8.35. Do you see that?

17 That corresponds with December 21st exactly; correct?

18 A. I will take your word for the dating. You have got me  
19 lost on that, but, okay.

20 Q. Okay. You can take my word that December 20th -- this  
21 is December 21st, this is December 22nd, this is December  
22 24th, this is December 23rd.

23 So these trades here and if you go backwards, you will  
24 see that there is not that much difference in the prices;  
25 right?

1 A. Okay.

2 Q. Do you think you started tracking these again on  
3 December 16th?

4 A. I'm sure I began tracking them as soon as I began  
5 trading again.

6 Q. And you began trading again on December 16th?

7 A. December 16th.

8 Q. So you didn't track and write down the stocks in between  
9 November 9th and December 16th?

10 A. No. I pretty much wasn't home. I was in Florida.

11 Q. And then on the next page we see -- and you can take my  
12 word on these again -- that this third column, 61,468, 9.10,  
13 corresponds precisely to January 5th; that this number down  
14 here, 246,200, 12.29, corresponds exactly to January 7th.

15 A. I'm not sure where your finger is.

16 Q. Right there.

17 A. Okay.

18 Q. This number here corresponds exactly to January 8th.

19 A. Okay.

20 Q. And you were tracking -- the next day here doesn't  
21 correspond exactly, but it could be January 11th looking at  
22 the volume, which was the next trading day; right?

23 A. Could be.

24 Q. And you were trading on that day -- or you weren't  
25 trading on that day, were you?

1 A. I don't know. You would have to look at the records.

2 Q. So we know you were tracking trades in December and  
3 January, in early January on those two pages I just showed  
4 you; right?

5 A. It certainly looks that way, yes.

6 Q. Then on this page, I will represent to you that this  
7 50,570 and the 12.64 corresponds exactly to January 29th.

8 A. Okay.

9 Q. Which is just a few days before the merger, right,  
10 announcement, January 29th?

11 A. Okay.

12 Q. And the next trade -- the only other trading day after  
13 that before the merger was February 1st; right? And we see  
14 more trades here; right?

15 A. Okay.

16 Q. So this is February 1st; right?

17 A. Okay.

18 Q. And I see over here on the right-hand side you have got  
19 some numbers written down where it looks like you were  
20 calculated your profits that day. Is that what those are?

21 A. That's correct.

22 Q. So it makes sense that this was February 1st, same day  
23 as the announcement, you are calculating your profits?

24 A. It sounds reasonable, yeah.

25 Q. So you actually did track stocks all the way out through

1 the entire period while you were trading; right?

2 A. It looks that way, yes.

3 Q. During the gap from November 20th to December 16th, you  
4 didn't track the stock every day; correct?

5 A. Probably because I wasn't trading.

6 Q. Okay. You said before that you thought you were  
7 tracking it every day at least in the earlier period and then  
8 you stopped; right?

9 A. I think when I was tracking it, it was only during the  
10 times when I was actually trading. It was just -- I saw no  
11 point in writing it down like this in detail when I simply  
12 wasn't buying.

13 Q. Okay. You started buying again on December 16th;  
14 right?

15 A. Yes.

16 Q. There wasn't any public information released about  
17 Comsys between November 20th and December 16th, was there?

18 A. That's correct.

19 Q. But you did go on a boat trip with Mr. Enterline?

20 A. Yes, I did.

21 Q. And you left on December 12th and drove down to Tampa;  
22 correct?

23 A. Yes, I did.

24 Q. And you then sailed the boat on December 13th through  
25 December 14th when you arrived at Fort Meyers; correct?



1 A. That's correct.

2 Q. And you were with Mr. Enterline on December 14th in  
3 Fort Myers; correct?

4 A. Yes.

5 Q. And the next day, December 15th, David Stamford and his  
6 girlfriend drove you and Mr. Enterline back to Fort Myers;  
7 correct?

8 A. Yes.

9 Q. And then you drove Larry Enterline's car from Tampa to  
10 your home in Atlanta; correct?

11 A. Yes.

12 Q. And then on December 15th, I will stipulate that the  
13 stipulated summary is going to show you talked to  
14 Mr. Enterline for twenty-five minutes at 5:49 p.m. That was  
15 while you were on the road back; correct?

16 A. December --

17 Q. 15th at 5:30 -- or 5:49.

18 A. Yes.

19 Q. He then sent you a text message at seven p.m. By that  
20 point were you home?

21 A. I -- most likely I was still on the road.

22 Q. Okay. And at this point, you haven't traded in Comsys  
23 stock since November 19th; correct?

24 A. Correct.

25 Q. You haven't even been tracking it in your notebook?

1 A. That's correct.

2 Q. And then Enterline calls you again the next morning,  
3 December 16th, at 7:56 a.m., and you talk for seven minutes;  
4 right?

5 A. Okay. If that's what the record says, then, yes.

6 Q. And so you -- then that's the day you start trading  
7 again; right?

8 A. Yes.

9 Q. On December 14th, while you are on the boat trip with  
10 Enterline, Manpower's CFO contacted Comsys's investment  
11 bankers and told them that they were willing to go forward  
12 with the deal at the valuation of 17.50 per share for Comsys;  
13 correct?

14 A. I don't know.

15 Q. Well, I will represent to you that's in the  
16 stipulation.

17 Did you know about that 17.50 --

18 A. 17.50?

19 Q. -- offer from Manpower to Comsys?

20 A. No, not at all.

21 Q. Okay. That 17.50 was never disclosed to the public  
22 until the filing of the 14D-9 that you know of, was it?

23 A. Was it disclosed? I read about it after the deal was  
24 consummated after the 2nd of February of 2010.

25 Q. Okay. So on December 14th, Mr. Enterline or Comsys at

1 least learns that Manpower is offering 17.50. And that  
2 doesn't come out until after the deal; right?

3 A. Right.

4 Q. I want you to turn back to Exhibit 138-A, your trading  
5 notebook.

6 A. Okay.

7 Q. I want you to go back to your arthritis page.

8 A. Okay.

9 Q. This is a page that wasn't produced to us until last  
10 Thursday. You provided it to your lawyers before that, the  
11 whole notebook?

12 A. Yeah, I'm sure I did.

13 Q. Okay. Mr. Enterline, you have 17.50 written here on  
14 this page in your notebook that's directly in between the  
15 time we established was November 20th and when you start  
16 tracking trades again on December 16th, don't you?

17 A. Where is the 17.50?

18 Q. Right here. Doesn't that say 17.50, and it's circled?

19 A. Yes.

20 Q. That's in between November 20th and when you start  
21 tracking again on December 16th, isn't it, Mr. Enterline --  
22 Mr. Schvacho?

23 A. I don't know when that was put in. I have no idea.

24 Q. But it appears sequentially on the page in between  
25 trades you are tracking on November 20th and trades you are

1 tracking in early December -- on December 16th, doesn't it?

2 It doesn't say 17.5. It says 17.50, doesn't it?

3 A. Yes.

4 Q. And 17.50 doesn't tie into any of these equations up  
5 here where you are figuring out the length of the race  
6 course, does it?

7 A. I don't know.

8 Q. Those are all in the thousands and the hundreds, aren't  
9 they? There is no decimal points up there, are there?

10 A. I -- if you went through it and you couldn't find any,  
11 then you are right, yes.

12 Q. And, again, this is a page that is in the middle of the  
13 investment notebook; right?

14 A. Yes.

15 Q. And we got produced in discovery in the investigation  
16 the pages before it and the back of that page and the pages  
17 after it, but we didn't get that page? You didn't have  
18 anything to do with that, did you?

19 A. What --

20 Q. Did you have anything to do with the fact that we didn't  
21 get this page that has 17.50 on it until last Thursday?

22 A. No. I turned the whole thing over to my attorneys.

23 Q. It's just a coincidence that you wrote down and circled  
24 17.50 in your investment notebook?

25 A. I have no idea when that was written in there. I have

1 no idea.

2 Q. This is a page that refers to your arthritis race in  
3 December; right? And this is before you start tracking  
4 trades again on December 16th, right?

5 A. December 8th or 9th, yes. No, actually it had to be  
6 earlier than that, the 7th. Because on the -- because on the  
7 11th -- on the 11th, I was actually doing the measurement  
8 during that week prior to December 12th.

9 So it may -- that 17.50, whatever that means, may have  
10 gotten written down during that week while I was doing the  
11 measurements for the course, or afterwards.

12 Q. It doesn't tie to any of those numbers that you were  
13 writing down for the measurement of the course, does it?

14 A. I don't know if it does or not. I would have to -- I  
15 don't know.

16 Q. In any event, on December 16th at 10:57 in the morning,  
17 you sold twenty-five hundred shares of UNG for proceeds of  
18 twenty-five thousand; right?

19 A. Okay. If that's what the record says.

20 Q. And that sale was at a loss; right?

21 A. Yes, that was a losing stock for me for a long time.

22 Q. And the only way you could purchase additional shares of  
23 Comsys in that particular account was to make a sale; right?

24 A. I don't know.

25 Q. Mr. Schvacho, if you could turn to your deposition

1 transcript, flip to page 203?

2 A. Is this a tab?

3 Q. It's page 203 of your deposition transcript.

4 A. Okay.

5 Q. Starting on line 17, I asked you, But in this -- as far  
6 as this account goes, the only way that you could purchase  
7 shares of CITP at this time was to sell something; correct?

8 And you said, This may have been the IRA account.

9 And I said, Yes, that's right, it is.

10 Okay -- and your answer was, Okay. Okay. Then, yes.

11 In the IRA account, the only way I wanted -- the only way I  
12 could have gotten more CITP shares was to get rid of some  
13 other stock.

14 That was your testimony; right?

15 A. Which lines are those?

16 Q. 17 through 25.

17 A. 17 through 25?

18 That's what I said, yes.

19 Q. And you used those funds from the sale to purchase  
20 Comsys shares that day and the next day; correct?

21 A. Probably.

22 Q. So you buy on 12-16 and 12-17, and then on 12-19 you  
23 pick Larry Enterline up from the airport; correct?

24 A. Yes.

25 Q. His flight was supposed to land at 8:46 in the morning?

1 A. Yes.

2 Q. You got a text from him at 8:27, and then a one-minute  
3 call from him after that at 8:50 something?

4 A. Then I returned his call saying I'm here at 8:51, I  
5 think.

6 Q. Okay. And then you drove Mr. Enterline from the airport  
7 to your house; correct?

8 A. Yes.

9 Q. Okay. And where is your house?

10 A. It's in Lilburn.

11 Q. And you drove from Hartsfield airport; correct?

12 A. From Hartsfield baggage to my house.

13 Q. And that was a Saturday; right?

14 A. Saturday morning.

15 Q. How long did it take to drive from the airport to your  
16 house?

17 A. I don't know. I wasn't keeping track. But it was less  
18 than 33 miles. I have driven that course over the last 25  
19 years traveling to various places using the airport. So if I  
20 had to estimate, it would be, you know, in the order of 25 to  
21 35 minutes, depending on the traffic, which on Saturday  
22 mornings was virtually nonexistent.

23 Q. So you had all that time when you could talk to  
24 Mr. Enterline; right?

25 A. Potentially, yes.

1 Q. And he had a call that morning with his in-house counsel  
2 at 9:33 a.m. Were you in the car when he had that call?

3 A. I don't recall it.

4 Q. The next day, the 23rd -- I'm sorry, you bought more  
5 shares on the 22nd; right?

6 A. Okay.

7 Q. You talked to Enterline again that day.

8 The next day, the 23rd, you talk with Enterline at  
9 9:57 a.m. That was in the middle of the workday; right?

10 A. Could be.

11 Q. And Enterline had gotten board meeting materials this  
12 minute -- that morning at six a.m. for a board meeting that  
13 day. That's in the stipulated record as well. I will just  
14 represent that to you.

15 Those presentation materials -- would you turn to  
16 Plaintiff's Exhibit 14?

17 A. I'm sorry, which is that?

18 Q. Plaintiff's Exhibit 14.

19 THE COURT: So are you showing him this because you  
20 believe he has seen it before or are you showing this to make  
21 your argument?

22 MR. MAYES: I'm showing it to make my argument,  
23 Your Honor. Do you want me to skip that?

24 Your Honor, I move to admit Plaintiff's Exhibit 14  
25 into evidence.



1 MR. ALBERT: No objection, Your Honor.

2 THE COURT: It's admitted.

3 BY MR. MAYES:

4 Q. Assume with me that Larry Enterline got an e-mail at  
5 6:00 that morning that showed Manpower increased it's offer  
6 to 17.65. When you talked with him at 9:57 a.m. that  
7 morning, did he tell you that?

8 A. No, he did not.

9 Q. Okay. You started purchasing at 10:45 a.m. that day and  
10 bought an additional twenty-two hundred shares.

11 A. Okay.

12 THE COURT: What day are you talking about?

13 MR. MAYES: December 23rd.

14 BY MR. MAYES:

15 Q. You next traded on December 30th, buying five hundred  
16 shares. And you talked to Enterline for 18 minutes the night  
17 before that; correct?

18 A. Okay.

19 Q. All right. I want to move on to early -- or at this  
20 point, you put about \$261,000 into Comsys stock between  
21 November 9th and December 31st. Does that sound right to  
22 you?

23 A. That would be about right.

24 Q. The market was closed on January 1st through 3rd because  
25 of the New Year and the weekend; right?

1 A. Right.

2 Q. You didn't trade on January 4th; correct?

3 A. Correct.

4 Q. You didn't talk to Larry Enterline on January 2nd, 3rd  
5 or 4th; correct?

6 A. I --

7 Q. You can assume the records didn't show a call. Do you  
8 recall having a call with him during that time?

9 A. I don't recall. I could have talked to him on my  
10 regular phone, my house phone, but I don't recall it.

11 Q. Okay. He called you in the morning of January 5th and  
12 you talked for nine minutes at 7:39 in the morning; correct?

13 A. Okay.

14 Q. On that date, starting at 10:52, you purchased fifty-six  
15 hundred shares for over fifty-one thousand dollars; correct?

16 A. Okay.

17 Q. Did he tell you something that made you want to buy such  
18 a big lot that day when you bought such smaller lots in the  
19 preceding days?

20 A. No.

21 Q. That was your largest single-day purchase up to that  
22 point; right?

23 A. Okay.

24 Q. And the next day, January 6th, you got another early  
25 morning call from Enterline, and you spoke for three minutes

1 at 8:36 a.m.; right?

2 A. Okay.

3 Q. You bought another thirty-seven hundred shares for  
4 thirty-seven thousand. That was your next biggest daily  
5 purchase up to that point?

6 A. Okay.

7 Q. Right?

8 So in those two days, you put in eighty-five thousand  
9 dollars, right, January 5th and January 6th; correct?

10 A. It's possible.

11 Q. What happened on January 7th?

12 A. Did I stop buying on the 7th?

13 Q. Do you recall if there was an earnings announcement that  
14 shot the price of the stock up over 30 percent in one day?

15 A. Yes. If the records shows that I stopped buying on the  
16 7th, then that would have been the day of the announcement.

17 Q. Okay. So it's just a coincidence that you put in your  
18 largest purchases on the days before that earnings  
19 announcement that drove the price up over 30 percent?

20 A. Well, don't forget, by then I already had like fifty  
21 thousand shares.

22 Q. If you look at Exhibit 137, the price -- I think you  
23 already mentioned this -- went dramatically up then on  
24 January 7th; right?

25 A. Correct.

1 Q. So at that point, you are showing a big profit on the  
2 investments you made; right?

3 A. A huge profit.

4 Q. At that point, your cost basis was \$8.44 a share, if we  
5 look at Joint Exhibit 1.

6 A. Okay.

7 Q. And the stock was trading between 12 and 13; right?

8 A. Okay.

9 Q. So you were sitting with a profit of at least \$140,000  
10 on your \$347,000 that you had put in to that point?

11 A. Somehow I calculated that profit to be about two hundred  
12 thousand, but --

13 Q. So it could have been even more than a hundred forty  
14 thousand?

15 A. It was probably either that or more.

16 Q. You didn't take any of that profit, did you?

17 A. No. I stopped buying, though.

18 Q. And after that run-up, Comsys was trading at or near  
19 it's 52-week high; right?

20 A. 52-week high, yes.

21 Q. It was tempting to take those profits; right?

22 A. It was agonizing.

23 Q. And that was because you didn't really have a lot of  
24 confidence that it would not go back down; right?

25 A. I still had my doubts about whether the stock would

1 maintain that price.

2 Q. It was agonizing to see it that high; right?

3 A. The agonizing part was do I buy more or do I sell.

4 Q. You said you did not -- you didn't really have a lot of  
5 confidence that it would not go back down; right?

6 A. I was beginning to have a lot more confidence than  
7 I used to have in that stock, but it was still -- I was still  
8 shaky on it. Therefore, I stopped buying.

9 Q. Okay. You stopped buying until January 20th; right?

10 A. That's correct.

11 Q. On -- if you want, I want you to turn to Joint Exhibit  
12 137, and I want you to turn to page 38 of that.

13 A. Okay. Got it.

14 Q. And on January 20th, the opening price was \$13.38;  
15 right?

16 A. January 20th? January 20th was 13.38, correct.

17 Q. Right. And at that time, you had about forty-one  
18 thousand shares of Comsys; right?

19 A. Okay. I will take your word for it.

20 Q. Okay. And by January 22nd, it drops down to an  
21 intra-day low of twelve dollars, doesn't it? That's a  
22 dollar -- over a \$1.36 -- or it's a \$1.36 drop; right?

23 A. From January -- which?

24 Q. From January 20th --

25 A. Right.

1 Q. -- to January 22nd; right?

2 A. Right.

3 Q. So it opens at 13.38 on January 20th, and by just two  
4 days later, it's down where -- it goes down to where it's  
5 trading actually down to a low of 12.02. That's a fifty-five  
6 thousand dollar swing against you, isn't it, Mr. Schvacho?

7 A. But that was the low for the day, yes.

8 Q. Okay. So at a time when we know from your investment  
9 notebook that you are tracking this stock every day, you  
10 didn't panic and take any of your profits as you watch a  
11 fifty-five thousand dollar swing against you; correct?

12 A. Yes.

13 Q. Even though back in October, you had panicked over a few  
14 pennies on a thousand dollar share lot?

15 A. Correct. There is a reason for that, but, okay.

16 Q. You didn't talk very much with Larry Enterline in  
17 between January 6th and January 20th. Was there any reason  
18 for that?

19 A. He was -- the one thing that I remember during that  
20 period was that he was very busy. He could not come back to  
21 Atlanta for some reason and I was not able to get through to  
22 him on his cell phone.

23 Q. In hindsight, he was probably very busy with the deal;  
24 right?

25 A. Which I thought in retrospect was a very good deal --

1 very good development.

2 Q. Okay.

3 A. He was working hard. And I had a substantial investment  
4 in the company, so I was kind of glad to see him remaining in  
5 Dallas and working hard for the company.

6 Q. Okay. But you did talk to him three times on January  
7 19th; correct?

8 A. If that's what the record says.

9 Q. You talked to him for five minutes at 10:36 a.m.;  
10 right? And then ten minutes at 8:48 p.m., and finally for 21  
11 minutes at 9:08 p.m.?

12 A. If that's what the record says, then that's true.

13 Q. Did Mr. Enterline tell you anything that was going on  
14 with the deal at that point?

15 A. No, he did not.

16 Q. Okay. The next -- the very next day, you purchased  
17 eighty-eight hundred shares of Comsys for \$113,284; right?

18 A. Which date was that?

19 Q. January 20th.

20 A. 20th, okay.

21 Q. Correct?

22 A. If that's what the record says, that's true.

23 Q. So to this point, that's by far your largest single-day  
24 purchase; right?

25 A. Could be. Again, there was a reason for that.

1 Q. Even though you were agonizing just a couple of weeks  
2 before about whether to take your profits, you shoved in a  
3 hundred thousand dollars more on January 20th?

4 A. Yes.

5 Q. Okay.

6 A. Again, with a good reason.

7 Q. When I asked you what the reason was in your deposition,  
8 you said it was because probably the offers became available  
9 that day, didn't you?

10 A. What offers?

11 Q. Offers for Comsys shares.

12 A. No, I don't recall that.

13 THE COURT: You really can't do that. You can ask  
14 him what his reason was --

15 MR. MAYES: Okay, fair enough, Your Honor.

16 BY MR. MAYES:

17 Q. What was your reason that you put in over a hundred  
18 thousand dollars on January 20th?

19 A. By late January, I had so much paper profit in my  
20 acquisitions of Comsys, I was looking at probably two or  
21 three hundred thousand dollars paper profit for myself, there  
22 was very little that I could get hurt by.

23 My biggest concern when I was buying Comsys was to lose  
24 my interest basically, and by late January I had so much  
25 profit, I was not playing with my money anymore; I was



1 playing with the house money. It was all gambling money. I  
2 had nothing to lose, basically. I hadn't taken the  
3 profits.

4 So it was much safer to be buying larger portions of  
5 shares. It was very important.

6 Q. That doesn't explain why you did it on January 20th  
7 rather than having done it on January 7th or January 8th or  
8 January 9th, does it?

9 A. Correct. January 7th and 8th were just a day or two  
10 after Comsys made the stunning announcement about their  
11 improving profits. That was just totally unexpected. And  
12 even though it was so good, I still -- I have to admit,  
13 I didn't trust it.

14 I thought the stock would go down, I thought the stock  
15 would go back down from the thirteen, fourteen dollar range  
16 which it shot up to on the heels of that announcement,  
17 I thought it would go down to ten bucks. Frankly, if it had  
18 gone to ten bucks, I would have bought more.

19 But it just -- it just never came down. It just never  
20 came down.

21 Q. Well, other than the fifty-five thousand dollar swing we  
22 just talked about.

23 A. Other than, you know, fifty cents or a dollar, which was  
24 insignificant.

25 THE COURT: I'm going to ask this question anyway

1 because it would help me understand this.

2 Now, at the time you bought these eighty-eight  
3 thousand shares, what was your approximate value of your  
4 holdings in cash and securities total?

5 THE WITNESS: You mean like my net worth?

6 THE COURT: Not net worth. Just liquid assets,  
7 cash and securities? When you bought these, about what was  
8 it?

9 THE WITNESS: Well, by midJanuary, I probably had  
10 maybe sixty-five thousand shares in Comsys.

11 THE COURT: I know that. I want to know of all  
12 holdings, cash and securities --

13 THE WITNESS: Yes.

14 THE COURT: -- when you bought these eighty-eight  
15 thousand shares --

16 THE WITNESS: Yes.

17 THE COURT: -- approximately what was the total in  
18 cash and securities that you had, including Comsys?

19 THE WITNESS: It was approximately 21 percent of my  
20 net worth.

21 THE COURT: Not net worth. I'm going to get to net  
22 worth in a second. Net worth would include whatever homes  
23 you own and automobiles.

24 I'm just looking at on your net worth statement,  
25 what was the total amount of your holdings in cash and

1 securities?

2 THE WITNESS: Including things like 401(k) and  
3 deferred salary and all that?

4 THE COURT: Not deferred salary. What did you  
5 actually own, not what you might get in the future?

6 THE WITNESS: My liquid assets, in addition to what  
7 I had in Comsys, my liquid -- additional liquid assets, not  
8 my house, not my deferred income, was about -- I believe we  
9 figured it out to be about 1.3 million dollars.

10 THE COURT: In liquid assets?

11 THE WITNESS: Liquid assets.

12 THE COURT: And what was your --

13 THE WITNESS: Mostly cash.

14 THE COURT: What was your total net worth at that  
15 time?

16 THE WITNESS: At the time?

17 THE COURT: Yes.

18 THE WITNESS: 3.6 million dollars.

19 THE COURT: All right. Go ahead. Thank you.

20 BY MR. MAYES:

21 Q. At this point, these purchases on January 20th cleaned  
22 out your -- the funds you had available in your regular  
23 brokerage accounts in E\*Trade?

24 A. In one of them.

25 Q. And you had already cleaned out your IRA account;

1 right?

2 A. In two of them, I'm sorry.

3 Q. Yeah, your IRA account and your brokerage account?

4 A. My regular sort of daily brokerage account. I had  
5 another brokerage account that had a very large amount of  
6 money in it.

7 Q. You are talking about your Cisco 401(k)?

8 A. No. Well, yes, but it turns out that was the Chase  
9 brokerage account.

10 Q. Okay.

11 THE COURT: Let me ask another question. So you  
12 cashed out of your qualified -- some part or all of your  
13 401(k)?

14 THE WITNESS: I didn't cash out of it. There was a  
15 provision -- there was a brand new provision which I noticed  
16 in midJanuary where you can take your 401(k) funds under the  
17 Chase savings account and transfer it under Chase into a  
18 Chase brokerage account. It remained a 401(k) account, but  
19 now it was something called a brokerage account which you  
20 could, you know, trade stocks.

21 So I transferred a portion of that into that  
22 brokerage account.

23 THE COURT: And did you remove from your qualified  
24 account once it was at Chase in this brokerage account, as  
25 you call it, did you ever take any of those funds out and

1 have to pay a penalty on it?

2 THE WITNESS: No, no, it stayed as a 401(k). They  
3 just reclassified it as a brokerage account, which was, you  
4 know, quite nice.

5 THE COURT: All right. Thank you.

6 BY MR. MAYES:

7 Q. Okay. So these purchases on January 20th cleaned out  
8 your regular brokerage account at E\*Trade of available funds;  
9 correct?

10 A. Correct.

11 Q. And you had already done the same in your IRA account  
12 earlier; correct?

13 A. Which is also E\*Trade, yes.

14 Q. So at that point --

15 THE COURT: No, I don't think that's a fair  
16 characterization. All he did was put it from one qualified  
17 account, as I understand his testimony, to another qualified  
18 account.

19 MR. MAYES: That's not correct, Your Honor. This  
20 was -- he had an E\*Trade IRA, all of the proceeds of which  
21 had been invested in Comsys, and an E\*Trade brokerage  
22 account, which by this point all of the proceeds had been  
23 invested in Comsys.

24 And then right after this he transferred funds from  
25 his Cisco 401(k) at Chase to a self-directorate brokerage

1 account at Chase.

2 THE COURT: But a qualified account; correct?

3 MR. MAYES: Correct. Yeah, I'm about to get to  
4 that with him, Your Honor.

5 THE COURT: Because if it stayed a qualified, he  
6 didn't have to pay any penalties because he didn't remove any  
7 funds from the qualified account.

8 MR. MAYES: That's right, Your Honor. I'm not  
9 saying he paid a penalty or anything like that.

10 THE COURT: Now I'm still confused. Did you have  
11 an IRA account at E\*Trade as well?

12 THE WITNESS: Yes.

13 THE COURT: Where did that -- did you take any of  
14 that money out?

15 THE WITNESS: I didn't take it out. It stayed in  
16 the 401 -- it stayed in the IRA account, but the rules in the  
17 IRA account are different. You get to treat it as a  
18 brokerage account within the IRA account. You don't take it  
19 out.

20 So if you make money, if you invest stock under the  
21 IRA account and you make money, you don't pay any taxes on  
22 it.

23 THE COURT: Right, because it's deferred. It's  
24 probably a Roth IRA as opposed to a regular IRA.

25 THE WITNESS: Right.

1 THE COURT: I just wanted to make sure that you  
2 never had to pay to the IRS a penalty for removing money from  
3 an IRA account?

4 THE WITNESS: Never.

5 THE COURT: All right.

6 BY MR. MAYES:

7 Q. So it was around this time on January 20th after you  
8 cleaned out your E\*Trade account that you actually discovered  
9 your ability to convert your Cisco 401(k) into a  
10 self-directorate brokerage account; correct?

11 A. That's correct.

12 Q. And you just happened to notice that on their website;  
13 correct?

14 A. I noticed it in midJanuary or so. I remember I was  
15 astonished that I could -- you know, there is so much money  
16 in there doing nothing, you know, it was a very pleasant  
17 surprise that I could actually convert that money into a  
18 brokerage account under the auspices of a 401(k) and be able  
19 to use that money in the market.

20 Q. But before that, you could only invest in a certain  
21 limited range of mutual funds; right?

22 A. That's correct. That was something new that they  
23 instituted.

24 Q. And you actually got an e-mail confirmation of the  
25 opening of that account on January 22nd; right?

1 A. Whatever the e-mail, you know, that I forwarded to you  
2 says, that's what happened.

3 Q. Okay. You believe it took a day or two for that account  
4 to be opened after you requested it to be opened; right?

5 A. It took a day or two waiting for them to do the  
6 paperwork, and then still not being all that comfortable with  
7 doing business with a different brokerage company, I did a  
8 very small trade in Comsys.

9 I bought a few shares. It went perfectly, so then the  
10 next day I transferred more money into that brokerage  
11 account, and I was planning to buy more.

12 Q. So that was your trade on January 25th where you bought  
13 five hundred shares; correct?

14 A. Correct.

15 Q. That was just a -- that was a trial out of the new Chase  
16 system?

17 A. That was a trial. Exactly, that was a trial.

18 Q. And we don't have actual times that the trades were made  
19 in your Chase account because those records weren't  
20 available; correct?

21 A. I don't -- I gave you what I had, what I could get.

22 Q. And the following day, after that 500-share trial  
23 purchase, January 26th, you bought twenty-six hundred shares  
24 of Comsys for thirty-three thousand dollars, roughly?

25 A. Yeah. By then I was more comfortable with the new



1 brokerage, how it all worked, so I was able to buy more  
2 shares.

3 Q. Okay. You specifically established that  
4 self-directorate brokerage account so you could buy more  
5 shares of Comsys; right?

6 A. Absolutely.

7 Q. And that was your plan when you transferred that money  
8 over was to buy more shares of Comsys; correct?

9 A. Correct.

10 Q. You didn't trade on January 27th or 28th; correct?

11 A. I don't know. I would have to look at the record.

12 Q. Okay. Well, I will tell you that Joint Exhibit 1, which  
13 is your stipulated trades, doesn't show any trades that day.

14 A. Okay, then I didn't.

15 Q. On January 28th, there was a Comsys board meeting at  
16 which Baird reported to the Comsys board that due diligence  
17 was completed and Manpower was ready to go ahead with the  
18 deal at the 17.65 price. Were you aware of that at the  
19 time?

20 A. I was not aware.

21 Q. You talked to Mr. Enterline the next morning, January  
22 29th, at 8:12 in the morning for fifteen minutes; right?

23 A. Whatever the records say.

24 Q. Okay. I will represent to you that the records show  
25 that.

1           Then you called him back and talked with him for three  
2 more minutes at 9:03; right?

3           A.     9:03 in the morning?

4           Q.     In the morning, right.

5           A.     Okay.

6           Q.     And so NASDAQ didn't open until 9:30, so we know those  
7 calls were actually before you started trading that day;  
8 right?

9           A.     Okay.

10          Q.     On that day, after your call with Enterline, you  
11 purchased ten thousand shares of Comsys for \$127,000, didn't  
12 you?

13          A.     Okay. That's possible.

14          Q.     That was your largest ever single-day purchase; right?

15          A.     I had unlimited funds at that point, I was secure that,  
16 you know, I was making money, and I was playing with the  
17 house money, in fact.

18                 So my goals had changed from the original twenty  
19 thousand shares that I wanted in Comsys. My new goal was to  
20 get a hundred thousand shares.

21          Q.     Why did you buy that large of a position on just one  
22 day, that large of a volume on just one day?

23          A.     It just seemed like that was the right thing to do. I  
24 was no longer constrained, you know, not having enough funds  
25 in my brokerage accounts.

1 Q. Mr. Schvacho, turn to your deposition transcript at page  
2 240.

3 A. Is that a particular tab?

4 Q. It's page 240. The transcript is at the beginning and  
5 it's sequentially numbered.

6 A. Okay. 240.

7 Q. You might want to start on 239 just so it's clear that  
8 we are talking about this trade.

9 At page 22, I ask you, I want you to look back at the  
10 Chase trading records, and pages LS 207 through LS 211 show  
11 you purchasing an additional ten thousand shares of Comsys  
12 that day at a cost of \$127,541.40.

13 And you say, That's correct. Right?

14 A. Which line is that?

15 Q. That's line 22 of 239 through line 1 of 240.

16 Do you see that?

17 A. Yes.

18 Q. Okay. And then at line 10 of 240, I ask you, Why did  
19 you buy such a large --

20 And you say, Oh. Oh.

21 And then I say -- volume that day?

22 And your answer was, Probably because it was -- it  
23 became available.

24 Wasn't that your answer?

25 A. That could well have been, yes.

1 Q. You didn't reference any of this stuff you just said a  
2 minute ago, did you?

3 A. Which stuff?

4 Q. The entire answer you gave right before I asked you  
5 this, you didn't say any of that when I asked you, did  
6 you?

7 A. See, I'm trying to recall what I said just a while  
8 ago.

9 THE COURT: You know, I will remember the record.

10 MR. MAYES: Fair enough, Your Honor.

11 BY MR. MAYES:

12 Q. It's not true that there was an abnormally high volume  
13 on January 29th, 2010, is it, Mr. Schvacho?

14 A. I don't know.

15 Q. You can look at Joint Exhibit 137 on page 38. You see  
16 there was fifty thousand shares traded that day. That's not  
17 abnormally high for Comsys, is it?

18 A. Probably not.

19 Q. The prices weren't any better that day, were they?

20 A. This is February --

21 Q. January 29th.

22 A. January 29th?

23 Q. Correct.

24 A. Yeah, looks like fifty thousand shares.

25 Q. There were a lot of days earlier in the month that had a

1 lot higher volume, weren't there?

2 A. There were some at 246,000.

3 Q. Some that had a hundred thousand, ninety-four thousand,  
4 eighty-two thousand. A lot of days that had higher volume  
5 than fifty thousand; right?

6 A. Yes.

7 Q. The prices were actually lower on January 27th than they  
8 were on January 29th, weren't they?

9 A. The prices on the 27th were \$12.11 -- no, I'm sorry,  
10 that's the low for the day. 12.49 and 13.57. So it was  
11 about a dollar ten higher.

12 Q. So you actually bought when it was higher, at a worse  
13 price you made this big purchase; correct?

14 A. Correct.

15 Q. And that's a time when you were tracking the stock every  
16 day; right?

17 A. Based on that notebook that we just went over, looked  
18 like I was still tracking it, yes.

19 Q. And no public information about Comsys had been released  
20 between the time that you cleaned out your E\*Trade accounts  
21 on January 20th and the time of this purchase on January  
22 29th; correct?

23 A. No new information was released, but I remember that I  
24 was aware that their quarterly announcement would be sometime  
25 in March, and I expected another bump up in price based on

1 their January -- early January announcement of future  
2 profits.

3 Q. But you had known about that since early January?

4 A. Correct. But the closer -- in my opinion, the closer we  
5 got to the actual announcement, I expected another bump up in  
6 the price on the day of the quarterly announcement.

7 My goal was to fill my quota, which was a hundred  
8 thousand shares, before that March announcement.

9 Q. Well, you still had a long time before the March  
10 announcement; right?

11 A. Not that much. Not that much.

12 Q. We are talking about January 29th.

13 A. The end of January. So I only had like less than thirty  
14 days.

15 Q. There had been a significant nonpublic event the day  
16 before this January 29th purchase. You weren't aware of  
17 that, were you?

18 A. No, I don't remember that --

19 THE COURT: You have made that point now about four  
20 times.

21 MR. MAYES: Sorry, Your Honor.

22 BY MR. MAYES:

23 Q. This largest ever single-day purchase in Comsys occurred  
24 just four days before the merger announcement; right?

25 A. Okay.

1 Q. And January 30th and January 31st weren't trading days,  
2 were they?

3 A. If that was the weekend, then, yes, that would not have  
4 been trading days.

5 Q. And you can see that actually on Exhibit 137.

6 A. Okay.

7 Q. So you couldn't buy shares on those days; right?

8 Sometime that evening there was another Comsys board  
9 meeting. The evening of the 31st there was another Comsys  
10 board meeting, and was informed that the agreement would be  
11 ready for consideration at the board meeting the next day.  
12 And you can just assume with me that the stipulated facts  
13 will show that.

14 You talked to Mr. Enterline that night for seven minutes  
15 at 9:02 p.m.?

16 A. What date?

17 Q. January 31st.

18 A. Okay.

19 Q. Did he tell you that the merger agreement was going to  
20 be ready for the board the next day?

21 A. Mr. Enterline never said anything to me about any  
22 mergers at all.

23 Q. Okay. That next day, February 1st, the day before the  
24 merger announcement, you bought another 8,779 shares of  
25 Comsys for \$115,243; right?

1 A. Correct.

2 Q. That was your second biggest single-day purchase ever;  
3 correct?

4 A. Correct.

5 Q. And your average share price of 13.13 wasn't a  
6 particularly good one compared to the prices the previous  
7 week, was it?

8 A. Correct.

9 Q. And the volume was a little higher than the day before,  
10 but still -- sixty thousand, that's still within the normal  
11 range for Comsys, isn't it?

12 A. Yes.

13 Q. So in total, in the twelve days before the merger  
14 announcement, you invested \$392,588?

15 A. Okay. If you add up the figures, I will accept that.

16 Q. Okay. And 242,000 of that came in the two trading days  
17 before the announcement?

18 A. Okay.

19 Q. Right?

20 So from November 9th, shortly after you decided you  
21 wanted to go deep until January 6th, you purchased roughly  
22 \$347,000 worth of Comsys stock.

23 Then the price shoots up by more than 30 percent on  
24 January 7th, and you agonized about whether to take your  
25 profits; right?



1 A. Correct.

2 Q. Instead of doing that, you waited until twelve days  
3 before the merger announcement, and then you more than  
4 doubled your investment in Comsys; right?

5 A. Okay.

6 Q. Even though no new public information had been released  
7 about Comsys during that time; right?

8 A. I became convinced that this was the real thing, that  
9 this stock was sustainable and that it was likely to go  
10 higher.

11 THE COURT: I'm actually going to give you a chance  
12 to summarize your argument. We don't have to do that right  
13 now.

14 MR. MAYES: Fair enough, Your Honor.

15 I have no more questions right now.

16 THE COURT: I thought that might be.

17 Now Mr. Loomis wants --

18 MR. LOOMIS: May I confer with Mr. Mayes for a  
19 moment?

20 MR. MAYES: We are finished, Your Honor. Thank  
21 you.

22 THE COURT: Thank you.

23 Do you want to question your client now?

24 MR. ALBERT: Sure. Yes, Your Honor.

25 Good afternoon. May it please the Court.



1 probably use five exhibits.

2 So what you should do is take out the exhibits you  
3 are going to use and don't burden me or the witness with the  
4 notebooks.

5 MR. ALBERT: Can we wait until a break to do that,  
6 or would you want -- like us to take a break now?

7 THE COURT: Well, the other thing, I have been as  
8 patient as I can -- although I got a little more impatient  
9 this afternoon -- I don't need for you to make your  
10 arguments. I will give you plenty of time to do that.

11 I just -- the information is here. Like my mother  
12 used to say because she broke her nose when she was a child  
13 and it never got set, she said, My nose may look like a  
14 banana, but I didn't come over on the boat yesterday.

15 I understand the theory of the cases. This case,  
16 I understand, I think, what the evidence is. I will have  
17 to -- I am going to give you a chance and give you some  
18 instruction on what I want you to submit. There will be  
19 another submission where you get to make all of your  
20 arguments and tell me how the charts interplay with the  
21 chronology with the series of phone calls and the trades.

22 And then I'm going to have to make a determination  
23 on whether or not these purchases were made based upon inside  
24 information, which I am assuming there will be no direct  
25 evidence of.

1 MR. ALBERT: Correct, Your Honor. And I promise  
2 not to make any arguments. Our theory is there is no  
3 connection and there is no pattern.

4 But we just on the joint exhibit which is 177, we  
5 put in what we regarded as all the relevant information, a  
6 lot of --

7 THE COURT: So that's all in evidence.

8 MR. ALBERT: Yes.

9 THE COURT: So you want to go through with  
10 Mr. Schvacho and show me -- have you ask questions and have  
11 him answer so it's consistent and you can advocate your  
12 theory.

13 MR. ALBERT: Correct.

14 THE COURT: Which is exactly what I criticized  
15 Mr. Mayes for doing.

16 MR. ALBERT: Okay.

17 THE COURT: But -- I will give you some time to do  
18 that, but if it gets as tedious as it's been --

19 MR. ALBERT: Oh, I promise, Your Honor, we are not  
20 going to do that same exercise, I promise.

21 THE COURT: We will see.

22 MR. ALBERT: I realize I am on a short leash,  
23 Your Honor.

24 BY MR. ALBERT:

25 Q. Mr. Schvacho, do you have your trading notebook?

1 THE COURT: I still want my exhibit back.

2 MR. MAYES: I have it right here.

3 THE WITNESS: This? Ross, this?

4 MR. ALBERT: Yeah. Actually let me just start with  
5 a few basics.

6 BY MR. ALBERT:

7 Q. Did Larry Enterline ever provide you with any material  
8 nonpublic information about Comsys?

9 A. Absolutely not.

10 Q. In the period from October 2009 through February 2010,  
11 did you ever possess any material nonpublic information about  
12 Comsys?

13 A. I did not.

14 Q. Was any of your trading in the stock of Comsys or  
15 predecessor companies -- and we will say from 2001 through  
16 2010 -- was any of that trading ever based on material  
17 nonpublic information?

18 A. It was not.

19 Q. Okay. Let's look at the trading notebook.

20 A. Okay.

21 Q. Do you recall giving that trading notebook to us as your  
22 lawyers?

23 A. Probably the first day we met.

24 Q. Okay. Did you direct us to produce or not produce any  
25 pages from that?

1 A. No.

2 Q. So any omissions in what was produced to the SEC, that  
3 had nothing to do with you?

4 A. Right.

5 Q. Just so we are sort of complete here, I believe the  
6 first page of 138-A, that's one of the pages that wasn't  
7 produced. Could you tell me what that is on that page, the  
8 first page?

9 A. I think that's something to do with the wiring in my  
10 house. I think it's a close-circuit TV or some video or  
11 audio, something like that.

12 Q. Okay. That doesn't have anything to do with Comsys,  
13 does it?

14 A. No, it doesn't.

15 Q. Okay. Let's go to the --

16 THE COURT: Before we -- when I got this back, is  
17 that part of this exhibit?

18 MR. MAYES: It is, Your Honor.

19 THE COURT: And it goes before the wiring diagram?

20 MR. MAYES: I asked her to give me a clean copy  
21 because I shuffled the pages of yours. You might have the  
22 produced version and the unproduced version.

23 The version you gave me was the color copy that  
24 would have been behind the red divider.

25 THE COURT: Right, and this reappeared now. When I

1 got it, it had the wiring diagram and now it's got this  
2 E\*Trade.

3 MR. MAYES: Here is a clean color copy, Your Honor,  
4 that doesn't -- it's just a clean copy.

5 THE COURT: I'm just saying, where am I supposed to  
6 put this page? It's called E\*Trade training?

7 MR. MAYES: That's the last page, Your Honor.

8 MR. ALBERT: Page 13. That was one of the pages  
9 that was not produced, but we will get to it.

10 THE COURT: So this is not part of the exhibit?

11 MR. ALBERT: Well, it's part of 138-A. It's not  
12 part of 138.

13 I want to go through all the pages that weren't  
14 produced so we can see what a smoking gun they are for the  
15 SEC.

16 BY MR. ALBERT:

17 Q. All right. Let's turn --

18 THE COURT: Well, I will say this. I understand  
19 why they are interested in this one page, and that's the only  
20 page we paid any attention to.

21 MR. ALBERT: Well, there is another -- there is a  
22 whole bunch of other pages too, and I want Mr. Schvacho --  
23 part of the reason for we think the 17.50 --

24 THE COURT: No, don't say it. Let him explain what  
25 that 17.50 means.

1                   MR. ALBERT: Well, I will get to it, Your Honor.  
2 I'm sorry.

3 BY MR. ALBERT:

4 Q. All right. Turn to page five. That's actually the page  
5 with the 17.50. Can you -- and there seems to be all sorts  
6 of calculations on sort of the southwestern quadrant of that  
7 page. Can you tell me what those calculations are?

8 A. I would guess it's distances in feet that I was  
9 measuring on the course.

10 Q. Do you know whether the 17.50 relates at all to that?

11 A. I have no idea. I don't know when that was put in.  
12 After all, this is just -- you know, it's a notepad. I mean,  
13 it's got all kinds of scratchings on it all over the  
14 place. I don't know when that was put in and what it means.

15                   THE COURT: Are there any blank pages, by the way,  
16 at the end of that notepad, or is it all filled in?

17                   MR. ALBERT: I believe there are blank pages. Do  
18 you want to see it, Your Honor?

19                   THE COURT: What I have makes it looks like those  
20 are -- all the pages were used.

21                   MR. ALBERT: I believe -- Larry, why don't you let  
22 the Court Officer --

23                   THE COURT: So in this notebook, which is really  
24 just a legal pad from Office Depot, there are about fifteen  
25 blank pages at the end?



1 MR. ALBERT: That's my understanding, Your Honor.

2 THE COURT: Well, the record needs to show that  
3 because it's not in the exhibit, and if the Appeals Court  
4 wants to look at it --

5 MR. ALBERT: My understanding is the original  
6 notebook is going to be admitted into evidence.

7 THE COURT: Good. All right. Is that what  
8 everybody understands?

9 MR. MAYES: It is, Your Honor.

10 THE COURT: Thank you. Have I done that already?

11 MR. ALBERT: I will move the admission of the  
12 original that has been marked as 138-A.

13 MR. MAYES: Yeah, I believe we did it earlier, but  
14 we have no objection to that.

15 THE COURT: I have not done it earlier because  
16 nobody has done it before. Now that it has been done, it is  
17 admitted.

18 MR. ALBERT: Thank you, Your Honor.

19 BY MR. ALBERT:

20 Q. The page after that, which I believe is also not  
21 produced, do you know what is on that page? The page after  
22 it -- I think it's the sixth, as in one, two, three, four,  
23 five, six pages in?

24 THE COURT: The page after that was produced. This  
25 is the back --

1                   MR. ALBERT: I believe it's the back of page five  
2 but it was also not produced.

3 BY MR. ALBERT:

4 Q. Do you know what that is?

5 A. Is it this one?

6 Q. Yes, correct. Can you tell --

7 A. There is nothing on it.

8 Q. Oh, I thought there were, excuse me, a series of  
9 calculations. Do you see that on the back?

10 A. Yeah.

11 Q. Do you know what that is?

12 A. It looks to me like it's distances again.

13 Q. Do you think that has anything to do with Comsys?

14 A. No, I don't think so.

15 Q. Okay. Let's skip over to I think it's pages twelve and  
16 thirteen, which were also not produced.

17 A. Can you show me what that is?

18 Q. It's the one with 3596 at the top. It's the last two  
19 pages with writing on them.

20 A. This one?

21 Q. I'm not sure.

22 A. Oh, 3596, yes.

23 Q. Okay. Can you tell us what's on this page?

24 A. It's difficult to say, but I would say this is a result  
25 of a computer troubleshooting session for a computer that I

1 was maintaining.

2 Q. Sure. What are -- the lists of items one through ten,  
3 what are those?

4 THE COURT: Well, can I interrupt him on that? The  
5 entry 3596 that's circled is a dollar amount, next to it it  
6 says Q2, which I think means second quarter, deferred  
7 something?

8 THE WITNESS: Payment.

9 THE COURT: So is that what your computer problem  
10 is, that your computer company had a deferred payment for you  
11 in the second quarter of \$3,596?

12 BY MR. ALBERT:

13 Q. Do you know what that is, Mr. Schvacho?

14 A. Q2 deferred payment? It could be -- could have to do  
15 with my -- with my calculations with Cisco. I don't  
16 know. Q2 deferred payment.

17 THE COURT: Well, it's not a troubleshooting  
18 session with an IT --

19 THE WITNESS: Right. The stuff below that is a  
20 troubleshooting session. But 3596 Q2 deferred payment, it's  
21 quarter two deferred payment.

22 BY MR. ALBERT:

23 Q. Could it relate to your taxes?

24 A. It could have been that. It could have been something  
25 from SMI. I have no idea at this point.

1 Q. The numbered list items one through ten, do you know  
2 what that is?

3 A. No.

4 Q. Okay. Just looking at the other numbers written here,  
5 do you know -- oh, there is a Skype number. Do you know what  
6 that is?

7 A. Where do you see a Skype number?

8 Q. It's the sixth line from the bottom, close to the  
9 margin, the left margin.

10 THE COURT: Is your point here that there was no  
11 bad intent in making a production of a portion of an original  
12 document?

13 MR. ALBERT: But there is also a larger point when  
14 I get to the next page.

15 BY MR. ALBERT:

16 Q. I just would like to establish, as far as you can tell,  
17 Mr. Schvacho, looking at this page, none of it relates to  
18 Comsys?

19 A. I suspect that on the average 357 slash calls hedge  
20 fraud, eleven thousand shares, that might actually be hedging  
21 of the Manpower shares that I decided to keep after the  
22 merger.

23 Q. You would have made that entry after February 2nd, 2010,  
24 on or after?

25 A. Yeah, after. I would have just scribbled it on here,

1 you know, unfortunately in a disorganized manner.

2 THE COURT: My question is why was that not  
3 produced?

4 MR. ALBERT: Two and a half years later,  
5 Your Honor, we don't know why. It was certainly not out of  
6 any evil intent. We can't reconstruct it now.

7 But the client gave us the entire notebook sometime  
8 in either 2010 or 2011.

9 BY MR. ALBERT:

10 Q. Had you finished your answer, Mr. Schvacho?

11 A. Yes.

12 Q. Let's turn to the next page.

13 A. Yes.

14 Q. Can you tell us what's on this page?

15 A. Yes. This was my first cut at Mr. Enterline's  
16 request -- on behalf of Mr. Enterline's request when he found  
17 out about the FINRA investigation as to what I traded, you  
18 know, in the last few months with Comsys.

19 Q. Is this a summary, very abbreviated summary of all your  
20 holdings in Comsys stock as of the February 2nd, two  
21 thousand --

22 A. Yes, it was my first cut. I'm not sure how accurate it  
23 is, but it is probably fairly accurate?

24 Q. When did you make this list?

25 A. It would have been right after I was notified that the

1 FINRA was looking at my transactions.

2 Q. Does June 2010 sound about right?

3 A. Sometime in June, yeah, of 2010.

4 Q. Do you recall what the final acquisition price of Comsys  
5 was?

6 A. 18.65 maybe.

7 Q. I'm just asking. And just going back to the page the  
8 SEC asked you about, you have no knowledge of when you might  
9 have made that entry of 17.50?

10 A. I have no idea.

11 Q. Could it have been in June of 2010?

12 A. It appears to have a different, you know, kind of pencil  
13 mark style, so it could have been at any time. Any  
14 time. It's amazing nobody noticed it before.

15 THE COURT: Yes, isn't it?

16 A. That's the trouble with some of this stuff. You know,  
17 it's so many years afterwards and you are trying to remember  
18 what you were thinking, what you were scribbling. It's quite  
19 difficult.

20 Q. Mr. Schvacho, we will start from the beginning. What is  
21 your personal background?

22 A. Well, I'm retired now from Cisco.

23 Q. Were you born in this country?

24 A. I was born in Europe.

25 Q. Where?

1 A. In Czechoslovakia.

2 Q. When did you come to the United States?

3 A. In 1966.

4 Q. Did you attend college?

5 A. Yes.

6 Q. Where did you go?

7 A. I went to Georgia Tech. I have a degree in Electrical  
8 Engineering.

9 Q. Do you recall what year you graduated?

10 A. 1972.

11 Q. Briefly sketch out your employment history after you  
12 graduated from Georgia Tech?

13 A. My first job was with Westinghouse Electric as an  
14 electrical engineer. Second job was with a company called  
15 Reliance Electric also as a service slash electrical  
16 engineer.

17 Then I went to a consulting company in Atlanta and in  
18 Canada called Simons, and then I went to Scientific Atlanta  
19 for about twenty years.

20 Q. Do you recall when you met Larry Enterline?

21 A. I met Enterline I would say while I was at Reliance,  
22 which was in the '80s sometime, in the early or mid'80s.

23 Q. Did you start your friendship with him right then?

24 A. It was an acquaintance. We worked on the same project,  
25 same product for the company.

1 Q. Did you lose contact with Mr. Enterline at any point?

2 A. Yeah. After I left Reliance, I lost -- completely lost  
3 contact with him for about five years.

4 Q. And how did you resume contact with him?

5 A. When I came to work for Scientific Atlanta here in town,  
6 I ran into him in the hallway. You know, just unbeknownst to  
7 me he had worked there for a year prior to that.

8 Q. Did you strike -- restrike up your friendship with  
9 Mr. Enterline then?

10 A. Yes. We were acquaintances, so since we were no longer  
11 working for the same -- in the same division of the company,  
12 we simply sort of took up the old friendship -- the  
13 acquaintance that we had before, which developed later on  
14 into friendship.

15 Q. Approximately what year was that again?

16 A. It was about 1991, 1992.

17 Q. Is it fair to describe Mr. Enterline as your best  
18 friend?

19 A. Over the years, he became one of my closest friends,  
20 yes.

21 Q. And you haven't talked to him since approximately June  
22 2010?

23 A. June or August of 2010, yes.

24 Q. In very general, in succinct terms, what did you do when  
25 you -- when did you retire from Cisco -- let me step back for



1 a second. Strike that.

2 Was there a time when Scientific Atlanta became acquired  
3 by another company?

4 A. Yes. In roughly 2005, Cisco, which is, you know, a huge  
5 company, acquired Scientific Atlanta.

6 Q. How did that change your job, if at all?

7 A. It hadn't changed it much.

8 Q. When did you retire from Cisco?

9 A. In 2009.

10 Q. Is that September?

11 A. September 29th, 2009.

12 Q. Again, in very general terms, what did you do when you  
13 retired from Cisco?

14 A. The five years prior to retirement, I was in charge of  
15 the intellectual property for various technical patents for  
16 the company.

17 Q. After you retired, what did you do?

18 A. Well, nothing for a few weeks. I just consolidated my  
19 life and took a few days off.

20 Q. And after that, what did you do?

21 A. After that I began doing my new job, which is one of the  
22 reasons I retired, which was to invest heavily in the stock  
23 market and manage my money that way.

24 Q. What are you doing now?

25 A. I take care of my parents.

1 Q. How old are your parents?

2 I withdraw the question.

3 Are you the primary caregiver and caretaker of your  
4 parents?

5 A. Yes.

6 Q. Are your parents in poor health?

7 A. Yes.

8 Q. Okay. Have you ever been arrested?

9 A. No.

10 Q. Have you ever had any contact with the criminal justice  
11 system?

12 A. No.

13 Q. Have you ever been fired?

14 A. No.

15 Q. Have you ever been accused of any illegal or improper  
16 activity?

17 A. No.

18 Q. While you were at Scientific Atlanta and Cisco, do you  
19 know if either of those companies had an insider trading  
20 policy?

21 A. Oh, absolutely.

22 Q. Could you explain for the Court the basics of the  
23 insider trading policy?

24 A. Well, it was a classic instruction in what you can and  
25 what you cannot do and what the restrictions are, if you come

1 across insider information, what you are supposed to do and  
2 what you can't do.

3 And it was an annual course that you had to take and  
4 take a certification that was a condition of employment.

5 Q. Did you comply with Scientific Atlanta and Cisco's  
6 insider trading policy?

7 A. You had to; otherwise, you wouldn't be working there.

8 Q. What was your approximate income from Scientific  
9 Atlanta, Cisco -- slash Cisco from the period of 2001 to  
10 2010?

11 A. It varied from I'd say -- I'd say started from a hundred  
12 thousand salary in the early 2000s with another twenty or  
13 thirty thousand in bonus. And then towards my retirement, I  
14 was up to a hundred fifty, a hundred sixty thousand with  
15 about forty thousand dollars' worth of bonus.

16 Plus there were some other -- there were options that  
17 were granted to us.

18 Q. Sure. How does what you just testified to reconcile  
19 with what appears on your tax returns?

20 A. It better be matching 100 percent.

21 Q. Well, my question is while you were at Scientific  
22 Atlanta or Cisco, did you ever have the option to defer some  
23 of your salary?

24 A. Yes. For the last five years or so, I was able to defer  
25 basically all of my salary and all of my bonus.

1 Q. What was your approximate income in 2008?

2 A. 2008? I think I was making either less than or right  
3 around a hundred thousand dollars.

4 Q. And what was your approximate income in 2009?

5 A. 2009? It was six hundred -- I believe it was six  
6 hundred and fifty-eight thousand.

7 Q. What happened that your income shot up so much in 2009?

8 A. Well, essentially two things. Number one, I got a large  
9 employment -- early retirement package from Cisco. That was  
10 a large slug of money.

11 And then the second large slug was I got as an investor  
12 in SMI, which was the partnership with Enterline and some  
13 other investors, it was liquidated mostly in 2009-2010. And  
14 I got, you know, a good chunk of money out of that.

15 Q. How did that increase in income affect your investing  
16 and your investing strategy, if at all?

17 A. It completely changed it. Because not only was  
18 I retired now and I had all the time in the world to devote  
19 to my investing portfolio, but I had all this money that had  
20 come in, which I had no place to park it.

21 All of my other liquid money was parked in zero percent  
22 money markets and CDs, which were earning virtually  
23 nothing. So I had to find something more rational to put the  
24 money in.

25 Q. Have you ever heard of a company called Millennium

1 Software?

2 A. Yes.

3 Q. What is that?

4 A. It's a company that started on the side as a side line  
5 while working for at the time Scientific Atlanta. It was a  
6 small consulting company in the telecommunications field.

7 And this was about the time that Mr. Enterline and  
8 I sort of became -- were becoming friends and he became  
9 interested in what I was doing, and he got interested and  
10 took it over.

11 Q. What was your role -- when he took over Millennium  
12 Software, did the name of the company change?

13 A. It changed several times, yes. I can't remember all the  
14 changes, but the one change I do remember is in the end, it  
15 was called SMI, Strategic Management, Incorporated.

16 Q. And after what became SMI acquired Millennium Software,  
17 did your role change?

18 A. Yes. I became a lot more passive than I used to be with  
19 Millennium.

20 While I was doing Millennium, I was Mr. Millennium. I  
21 was everything. After he took over, I became sort of a  
22 figure head, and I think I was VP or something like that.

23 Q. Were there other investors in SMI?

24 A. Yes.

25 Q. How many?

1 A. Oh, it varied, you know, as people came in and out, but  
2 I would say between half a dozen to a dozen at a time.

3 Q. Did you solicit these investors, did Mr. Enterline  
4 solicit these investors? How were these investors found?

5 A. I did not solicit anyone. It was Mr. Enterline.

6 Q. Is it fair to say that after the takeover, that SMI was  
7 essentially Larry Enterline's company?

8 A. Yes.

9 Q. What is Tipping Point Gaming?

10 A. Mr. Enterline had all kinds of ventures under the  
11 auspices of SMI. You know, he bought and sold  
12 distributorships, he bought and sold commercial real estate,  
13 he bought and sold patents, he bought and sold some high-tech  
14 technologies, small companies.

15 And I think Tipping Point was some kind of an offshoot  
16 of SMI.

17 Q. What was your approximate net worth on September 1st,  
18 2003?

19 A. Between 1.5 and 1.8 million dollars.

20 Q. And in rough terms, how would you break that down into  
21 asset categories?

22 A. Whew, that's a tough one. A lot of it was in cash.  
23 Probably most of it was in cash. I had my house paid for,  
24 which was valued at about two hundred or two hundred fifty  
25 thousand dollars. I had a 401(k), you know, a fairly large

1 building-up 401(k), and I had CDs, and some, some market  
2 holdings, stock market holdings.

3 Q. Okay. And we have a stipulated chart with your  
4 investments in Comsys and predecessor companies, so we  
5 already know that.

6 Apart from Comsys, did you have other securities  
7 holdings at this time?

8 A. In 2003?

9 Q. Three.

10 A. I probably had, but fairly minor. I think 2003, it was  
11 maybe two or three hundred thousand dollars in the market the  
12 whole year.

13 Q. So at that time, Comsys stock was the majority of your  
14 securities holdings?

15 A. In those years, yes.

16 Q. What was your approximate net worth on May 31st, 2005?

17 A. Between 1.8 and 2.1 million.

18 Q. And that's the same breakdown in asset categories as for  
19 the previous question?

20 A. Yes. The various pieces, you know, would grow. You  
21 know, the 401(k) would get larger and all that. But  
22 nothing -- but there were no major changes in the makeup.

23 Q. What was your approximate net worth on October 1st,  
24 2009?

25 A. I would say between 3.6 and 3.9 million.

1 Q. And that's the same breakdown in asset categories?

2 A. Yes. On a relative basis, yes.

3 Q. What was your approximate net worth on February 2nd,  
4 2010?

5 A. I would say about 4.4 million, because that already  
6 included the appreciation in the stock of Comsys.

7 Q. Prior to 2009, do you recall what was the largest  
8 position you ever held in Comsys stock including the stock of  
9 predecessor companies?

10 A. I remember that in maybe 2004, 2005, my holdings got up  
11 to \$265,000 overall in market value.

12 Q. What was the approximate date again of that?

13 A. In two thousand -- I'm guessing about 2004, 2005.

14 Q. How large a percentage was your net worth -- of your net  
15 worth was your Comsys holdings at that time?

16 A. About 15 percent.

17 Q. On or about February 1st, let's say right before the  
18 announcement of the transaction, what percentage of your net  
19 worth was invested in Comsys stock?

20 A. Right before the appreciation?

21 Q. After your last trade but before the announcement.

22 A. About 21 percent.

23 Q. Please describe your investment background?

24 A. Oh, I have been investing in the stock market for better  
25 than thirty years.



1 Q. Do you have a theory of investing?

2 A. I do, but it changes from time to time. It's fairly  
3 dynamic. It depends on what I am looking at at the time.

4 Q. Has that theory changed over time?

5 A. Yes, it has.

6 Q. And in brief terms -- I'm not looking for a ten-minute  
7 answer, perhaps a two-minute answer -- can you describe the  
8 evolution of your theory of investing?

9 A. Initially I began speculating. It was almost 100  
10 percent speculation. I would pick a stock, I would put all  
11 the money I had in it, and just in the hope of hitting a  
12 homerun. In fact, I used to put money that I didn't have  
13 into it by taking loans against my house and, you know, it  
14 was quite difficult to handle over the years.

15 Then in the late '90s I developed this software which  
16 was very successful in picking out companies that, if you  
17 maintained the discipline and followed the rules of the  
18 software, you could make very good money at it.

19 For instance, in 1999 and 2000, I did over a million  
20 dollars' worth of investment, and I did quite well. I did  
21 about \$150,000 in profit in the stock market using that  
22 system.

23 During the 2000s, you know, we had various -- we had  
24 various recessions, various forms of recession, and so I kind  
25 of backed away from the market, I just thought it was too

1 dangerous, and my investment levels decreased from three  
2 hundred to five hundred thousand annually.

3 And then, of course, after I retired, then I had a  
4 complete paradigm change again in what I was doing, what I  
5 was supposed to be doing with the market.

6 Q. In your answer you referenced a time that you took out a  
7 loan on your house to make an investment. Can you tell us  
8 about that?

9 A. Yes. I think it was 1997 or so, in that time frame,  
10 I took a \$150,000 equity loan on my house and I put it all  
11 into the market.

12 Q. Did you invest that all in a single stock or did you --

13 A. At the time, unfortunately, it was all a single  
14 stock. I made a mistake, the stock went against me for a  
15 couple of years, and I didn't get much sleep over the next  
16 two years. But in the end, the stock appreciated  
17 substantially and I did very well.

18 Q. What was that stock?

19 A. It's called -- a company called Wegenner, which is a  
20 manufacturer of cellular communications equipment, which was  
21 in my area, sort of, of expertise.

22 Q. Did you have a personal connection with any of the  
23 employees or management at Wegenner?

24 A. Yes. What put Wegenner on my radar was some very good  
25 people who left Scientific Atlanta to go to Wegenner, so

1 I began paying attention to what they were doing. I became  
2 convinced they might be a good investment pretty much early.

3 Q. I understand you thought it was a good investment, but  
4 wasn't it risky to put essentially -- bet your house on the  
5 stock?

6 A. It was tremendously risky, and I had never done that  
7 before. I have never done that since then.

8 Q. Do you recall the ultimate return you made on that  
9 investment?

10 A. Yes. I at least doubled my money, maybe more.

11 Q. In dollar terms, what would be that be?

12 A. I probably made between two and three hundred thousand  
13 dollars.

14 Q. Do you have an investment advisor, stock broker?

15 A. No, I do not.

16 Q. As to your investment style, is it buy and hold, or do  
17 you day trade or momentum trade? How would you describe  
18 that?

19 A. I would say it's closer to momentum trade. Some people  
20 call it day trade, but it's not really day trade, because day  
21 trading is like hourly or minute-type trading. I look at it  
22 in terms of days or a few weeks.

23 I rarely hold on to a stock for, you know, months at a  
24 time, rarely. I do, but it's quite rare.

25 Q. How do you get your investment advice?

1 A. From various sources. I peruse the financial internet  
2 sites, I continuously watch the CNBC, you know, financial  
3 channel, I read the paper, and I talk to people like  
4 Mr. Enterline who are also doing similar things.

5 Q. What sort of research do you do?

6 A. Most of my research is on the internet, and that's  
7 either company announcements, company characterizations on  
8 sites like Yahoo! Finance, and then SEC filings.

9 Q. Do you keep records of the research you do?

10 A. I do not keep any records --

11 Q. Why is that?

12 A. -- or archive records.

13 I just never felt the need for it. Even if I in the  
14 past have tried to keep records, I found I never referred  
15 back to them.

16 Q. Did your investment style change in the period from 2001  
17 to 2008?

18 A. I don't think so.

19 Q. How did that style from the earlier period compare to  
20 what you were doing in the market in 2009 to 2010?

21 A. It was much less aggressive. It was very much a  
22 hobby.

23 I had a full-time -- excellent full-time job. I really,  
24 even though I liked doing the dabbling in the market, I found  
25 it to be so incredibly taxing that I was afraid it might

1 affect my, you know, my employment position. I just wasn't  
2 willing to do that.

3 Once I retired, all that went away.

4 Q. During this early period, from 2001 to 2008, you were  
5 making the trades in Comsys while you had a full-time job; is  
6 that correct?

7 A. Yes, that's correct.

8 Q. And you would make these trades during the workday?

9 A. Unfortunately I had no choice. I mean, you had to make  
10 some of the trades during the workday. You tried to, you  
11 know -- you were doing it on your break or doing it during  
12 the lunch hour.

13 Even if you were not sitting in front of your computer  
14 in your office doing it, your mind was still thinking about  
15 that, and it was a very distracting time.

16 Q. Did the fact that you had a full-time job, did you feel  
17 that affected your ability to make quality investments?

18 A. Oh, it killed it for me. I mean, when I looked at my  
19 track record in 1999 and 2000 and 2001, I put a lot more time  
20 into trading, and I did very well. Like I said, I invested  
21 over a million dollars in every one of those years, and  
22 I netted, you know, well over a hundred thousand dollars  
23 every year.

24 Q. When you were questioned by Mr. Mayes earlier, he  
25 referred to the modern portfolio theory. What is your

1 understanding of that term?

2 A. Modern portfolio?

3 Q. Yes, or --

4 A. I guess it means different things to different  
5 people. I realize that a lot of the financial advisors will,  
6 you know, recommend to you things like dollar-cost averaging  
7 and those kinds of more conservative investments, and I just  
8 never found that attractive.

9 Q. Do you understand in the context of securities  
10 investments what the term diversification means?

11 A. Of course I do.

12 Q. Could you please again briefly explain?

13 A. Diversification means not putting your money into, you  
14 know, a few stocks. It's a matter of shotgunning your -- it's  
15 a shotgunning investment approach. You take a bunch of  
16 stocks, stick them on a wall, and you shoot a shotgun at it,  
17 and wherever you get a hole, that's where you randomly  
18 invest.

19 And the idea is that even if they are not all winners,  
20 you will get enough winners to make up for the losers.

21 Q. I take it from the way -- your sort of skeptical tone of  
22 your last answer that you are not a fan of diversification;  
23 is that correct?

24 A. In my opinion -- maybe some people can benefit with  
25 that. I think you have to have a certain temperament for

1 that, and I don't have it, so I don't even try it.

2 Q. So at any time over the last thirty or so years that you  
3 have invested in the stock market, have you ever had a  
4 diversified portfolio?

5 A. Only when I was following my software model, which  
6 really spread out the investment, but there was a reason,  
7 there were specific reasons why I would go into certain  
8 stocks. They wouldn't be because I wanted to have sort of an  
9 average, average holding in the world of the stock  
10 market. There were specific reasons why I would pick several  
11 unrelated stocks and put money into them. But that was only  
12 because my software told me to do that.

13 Q. And as I recall, you stopped using that software in  
14 2000; is that correct?

15 A. Yes.

16 Q. So from 2000 when you stopped using it, 2000 through  
17 February 2010, you never had a diversified portfolio; is that  
18 correct?

19 A. That's correct.

20 Q. How did you get interested in the temporary staffing  
21 industry?

22 A. 100 percent through knowledge of Mr. Enterline.

23 Q. Was it a fact that Mr. Enterline was CEO of I guess it  
24 started out as PGA, is that right, or the Comsys predecessor  
25 company --

1 A. PGA.

2 Q. -- PGA in or about January of 2001?

3 A. Yes.

4 Q. How did that affect your interest in investing with  
5 PGA?

6 A. Well, it was a natural thing for me to have -- he was my  
7 friend, so it was natural for me to try to follow it, what he  
8 was trying to do. Plus I knew that he was a very capable  
9 person, very capable manager, a person of unquestioned  
10 integrity. And I thought I could benefit just by associating  
11 myself with what he was doing.

12 Q. During your friendship with Mr. Enterline, what sort of  
13 discussions would you have?

14 A. Oh, we discussed a number of things. I mean, we had  
15 some things in common. We had -- you know, we were both  
16 sailors, we were both runners, we were both sort of amateur  
17 athletes, and we certainly were both of us interested in our  
18 mutual views on the market.

19 Q. Did you talk about your families with Mr. Enterline?

20 A. I did not talk about my family. I knew some members of  
21 Mr. Enterline's indirect family, so sometimes we would  
22 mention them, but not in any, you know, any detail.

23 Q. Did you talk about romantic matters?

24 A. No.

25 Q. Did you ever have discussions with Mr. Enterline about



1 his investment portfolio?

2 A. Mr. Enterline would -- from time to time, he would  
3 mention to me the kinds of investments he was making, kinds  
4 of stocks he was looking at, kinds of stocks he was  
5 analyzing.

6 He also -- he didn't have a program like I did, but he  
7 had a method of looking at the stock market and picking up or  
8 filter out companies that he might be interested in which  
9 fulfilled certain of his criteria, and he might mention those  
10 to me.

11 Q. Did you ever feel that anything Mr. Enterline told you  
12 about his investment portfolio or his investment strategy was  
13 confidential in the sense that you couldn't tell others about  
14 it?

15 A. No.

16 Q. Did Mr. Enterline ever ask you for investment advice?

17 A. No.

18 Q. Did he ever ask you for financial advice?

19 A. No.

20 Q. Did he ever ask you for career advice?

21 A. No.

22 Q. Did he ever ask you for personal advice?

23 A. No.

24 Q. Did you and Mr. Enterline ever invest in the same  
25 stocks?

1 A. Yes.

2 Q. What were they?

3 A. Well, the first one that I talked about earlier was  
4 Wegenner, which I believe I brought to Mr. Enterline's  
5 attention. Not just to Mr. Enterline's attention, but to  
6 also some other people at Scientific Atlanta. I know there  
7 were some, you know, a bunch of people at SA that were buying  
8 it.

9 In return he put me on to a stock called T Triple I,  
10 which is a manufacturer of electrical equipment, and that was  
11 one of his favorite stocks. And I ended up investing in it.

12 Q. Did Mr. Enterline ever tell you how much he had invested  
13 in Wegenner?

14 A. No, he did not.

15 Q. Did he ever tell you how much he had invested in  
16 T Triple I?

17 A. I don't recall him saying that to me.

18 Q. Did you ever have a sense of how he allocated his funds  
19 in his investment portfolio?

20 A. I asked him a few times, and it seemed like so  
21 complicated to me, he had all kinds of jumbo CDs, and he had  
22 REITs, real estate, stuff that I never really understood, so  
23 it kind of just went over my head.

24 Q. Did Mr. Enterline ever provide you with any inside  
25 information about Comsys?

1 A. No, he did not.

2 Q. Did you ever ask Mr. Enterline for inside information  
3 about Comsys?

4 A. I did not.

5 Q. Did he ever tell you anything about Comsys that he  
6 indicated or you understood that you could not tell other  
7 people?

8 A. Never.

9 Q. What sort of discussions would you have with  
10 Mr. Enterline about Comsys?

11 A. The only discussion that I recall that we had was,  
12 number one, about the markets in general, which included all  
13 the stocks and all the economic activity in the  
14 United States -- I mean, the world really.

15 And then specifically in the staffing industry, which he  
16 was -- over the years he became sort of an expert on.  
17 Because he's got a very similar background to mine,  
18 engineering, so to him initially I think staffing was  
19 something new. But, you know, he's a very intelligent person  
20 so he picked it up pretty quickly.

21 Sometimes he would, you know, share some of that  
22 information with me that he's learned -- that he had  
23 learned.

24 Q. I think you testified earlier that Mr. Enterline would  
25 occasionally send you research reports about the staffing

1 industry?

2 A. He did.

3 Q. Is that correct?

4 A. He did. And I think it was mostly in 2009 when they  
5 began to do better.

6 And there were a couple of reasons, I think, why he did  
7 that. Number one is whenever we were discussing the staffing  
8 industry and I might have questions, and instead of answering  
9 me, he would just the next few days, he would send me some  
10 analyst's view of the area that I might have been asking  
11 about rather than, you know, give me his own  
12 interpretation.

13 The other reason that he sometimes sent me those reports  
14 is when he was personally mentioned in these reports,  
15 especially in a positive light.

16 Q. In a positive way, when he sent you the research  
17 reports, was that a form of bragging?

18 A. Mr. Enterline was proud of what he was doing. He was  
19 proud of his abilities. He's not a braggart, but, you know,  
20 being a friend, he just thought that I might appreciate what  
21 other people were saying about him.

22 Q. And they were good things that other people --

23 A. Yeah, they were always good things.

24 Q. Sure. Do you know one way or another if he sent these  
25 same reports to others?

1 A. I have no idea.

2 Q. But he may have?

3 A. He may have, yes.

4 Q. Did you regard the reports that he sent you as  
5 confidential in the sense that you couldn't tell other people  
6 about them?

7 A. No, not really. They were public reports.

8 Q. Did you and Mr. Enterline ever have an express agreement  
9 to keep any information confidential?

10 A. No.

11 Q. Did you think that any of the information you discussed  
12 with Mr. Enterline about Comsys was confidential? Why or why  
13 not?

14 A. I'm sorry, could you --

15 Q. I will do one at a time.

16 Did you think that any of the information Mr. Enterline  
17 discussed with you about Comsys was confidential?

18 A. No, I don't think so.

19 Q. I think your testimony earlier was that Mr. Enterline  
20 didn't know you were trading in Comsys stock?

21 A. That's correct.

22 Q. Why didn't you tell him?

23 A. As I said before, I just did not feel like sharing that  
24 information with him because I was afraid that it would  
25 affect our friendship.

1 I mean, we were friends, and I was afraid -- I was  
2 mostly afraid that if I shared with him that I let's say  
3 bought a bunch of stock in his company and then that stock  
4 didn't do well, that he might feel, you know, guilty that,  
5 you know, he personally cost me the money.

6 And I just thought there was no room for that kind of a  
7 development in our relationship. It was not worth it.

8 Q. Do you regard yourself as an active investor?

9 A. I'm sorry?

10 Q. Do you regard yourself as an active investor?

11 A. Well, I certainly was after I retired.

12 Q. Do you regard yourself as an aggressive investor?

13 A. After I retired, yes.

14 Q. I think you testified earlier about the term  
15 contrarian. Could you explain what the significance of that  
16 term is in connection with securities investing?

17 A. There were times when -- this was even before 2009 when  
18 I noticed that, for instance, Comsys was a volatile stock,  
19 there was -- it was a fairly high beta stock compared to some  
20 of the others, and that quite often, based on some  
21 announcement that the company made which was not perceived to  
22 be positive by the market, when I read it, I didn't see it to  
23 be as negative as the market seemed to.

24 So whenever the market took it out of the stock and the  
25 value decreased, I -- there were a few times when I actually

1 bought on those kind of declines. So I was going against --  
2 sort of against the grain, against what the other market  
3 participants were doing. And I think I did quite well with  
4 that approach.

5 Q. So it's fair to describe your style at least in part as  
6 a contrarian investor?

7 A. In those few instances, yes.

8 Q. What's a limit order?

9 A. A limit order is an order to buy or sell stock at a  
10 price that you determine, you tell the market makers to get  
11 you, otherwise you are not interested in the stock.

12 So if the stock is in the six dollar to seven dollar  
13 range and you want to buy it for six dollars, you don't allow  
14 the market -- you don't give the option to the market maker  
15 to give it to you at seven dollars. You tell him to get you  
16 the stock or sell the stock at six dollars, otherwise there  
17 is no deal. That's called a limit order.

18 Q. What's a market order?

19 A. Market order is the other one, where you just simply  
20 throw a quantity of stock you want, and you don't specify a  
21 price, and you basically are at the mercy of the market  
22 maker. He can give you anything he wants, anything he  
23 wants. There is no rules on that, as far as I know.

24 Q. When you invested, did you typically place market orders  
25 or limit orders?

1 A. In my entire investment life, unless I made a mistake,  
2 which didn't happen very often, it was always a limit  
3 order. I knew what I wanted. You know, I knew the price  
4 I wanted, and I was willing to not do the transaction until  
5 I got that limit order price.

6 Q. Did you ever make a mistake in placing an order for  
7 Comsys stock?

8 A. It happened a few times, yes.

9 Q. When was that, do you recall?

10 A. Well, certainly in October, late October of 2009 when  
11 I accidentally punched the market order buy, and I got --  
12 stock was selling at, I don't know, six dollars, and I got  
13 six dollars and fifty cents, which was kind of devastating.

14 Q. Do you recall accumulating a significant position in the  
15 stock of a Comsys predecessor company, I'm thinking it's  
16 Venturi, during the period from roughly October 2003 through  
17 December 2003?

18 A. I don't remember it. It's been so long ago that -- the  
19 record says that I did -- if the record says that I did, then  
20 I did.

21 Q. I think Mr. Mayes asked you about that, those trades  
22 earlier, so we are clear what we are talking about.

23 A. Okay.

24 Q. Do you recall how much that position was, roughly?

25 A. No, I don't. I'm sure you have the numbers.



1 Q. At the time you were accumulating the stock position,  
2 were you aware that Venturi and Comsys were negotiating the  
3 terms of a possible merger?

4 A. I did not know.

5 Q. Did your stock trades have anything to do with the  
6 Venturi/Comsys negotiations?

7 A. No.

8 Q. Do you recall whether Venturi and Comsys eventually did  
9 merge?

10 A. I believe they did, yes.

11 Q. What happened to the stock price after that merger was  
12 announced?

13 A. I certainly checked it since then, and I discovered that  
14 the stock price went down after the announcement.

15 Q. From your experience, do merger announcements always  
16 result in an increase in the stock price?

17 A. Only if one company is actually acquiring another  
18 company at some premium over the market price. In that case  
19 the company that's being acquired increases in price, and if  
20 you hold that stock, then you make a profit.

21 In this particular case, from my hazy memory of it,  
22 these were two peer companies. There was no exchange of  
23 funds; they were simply stock-for-stock transfers. So it was  
24 not good for either company or not bad for either company,  
25 and the market price reflected that ambiguity.

1 Q. I understand that you did not know at the time of the  
2 merger negotiations, but had you known, would that have  
3 struck you as a promising opportunity to invest, assuming you  
4 could do it legally?

5 A. If I had known that these were two peer companies  
6 getting together, then it would -- I would realize that it  
7 would make no difference to either price.

8 Q. And your testimony is that's ultimately how the market  
9 judged the merger; is that --

10 A. Correct.

11 Q. From your experience, how does a company's announcement  
12 of a financial restructuring affect its stock price?

13 A. It depends on what the financial restructuring is. It  
14 could be good or bad.

15 I have seen companies financially restructure where they  
16 had to borrow more money, for instance, for their credit  
17 facility. That would be a negative development because now  
18 they have taken on more debt.

19 There are other instances where a company might get a  
20 new loan and perhaps the new terms will be slightly better  
21 than the old terms, in which case that might be a slightly  
22 positive development for the -- for that company.

23 But it is almost never any kind of a dramatic change one  
24 way or the other for the company.

25 Q. So it's fair to say that knowing in advance of the

1 company undergoing a financial restructuring, that would not  
2 necessarily be valuable information to trade on?

3 A. Not at all.

4 Q. How about if a company was putting in a new debt  
5 facility? Is that something that would make a difference in  
6 the market price from your experience?

7 A. Just hearing you say that, I would say a new debt  
8 facility would mean that it's a negative. You know, they ran  
9 out of money, so they need to borrow more, so how can that be  
10 good?

11 Q. Do you recall accumulating -- and just so we are clear,  
12 to help you out a little bit, you testified about this  
13 earlier when Mr. Mayes was questioning you. Do you recall  
14 accumulating a significant position in Comsys stock during  
15 the end of July of 2007?

16 A. I don't -- 2007?

17 Q. It was in a six-day period, from July 24th to July 30th,  
18 2007.

19 A. I don't -- without going through the notes, I don't  
20 remember, no.

21 Q. So you don't recall why you did that?

22 A. No.

23 Q. Okay. Were you aware that Comsys and Spherion were  
24 engaged in negotiations about a possible acquisition at this  
25 time?

1 A. When was this?

2 Q. July 2007.

3 A. Oh, no, I had no idea. I had no idea.

4 Q. All right. There was testimony earlier about this  
5 November 6th dinner at -- how do you pronounce it? Is it  
6 SABistro or SABistro?

7 A. Yeah, some bistro.

8 Q. Okay. I would like you to look at Joint Exhibit  
9 No. 177. That's the timeline.

10 A. Okay. I remember it.

11 Q. Let's turn to page 39.

12 Oh, let me ask you a general question. Are you aware  
13 that telephone records -- extensive telephone records have  
14 been produced in this case?

15 A. Yes. I turned them over, yes.

16 Q. Are you aware on those phone records that there are a  
17 number of entries for one-minute telephone calls?

18 A. Yes, I am.

19 Q. Do you know if an entry for a one-minute telephone call  
20 means that, for instance, you and Mr. Enterline actually  
21 spoke?

22 A. I think if I see a one-minute telephone call, that's got  
23 one of three meanings. Either we had a very, very short  
24 conversation, number one; number two, there was no answer  
25 and, you know, one of us left a message; or there was no

1 pick-up.

2 Q. So that just so I understand, the first option is a  
3 very, very brief conversation?

4 A. Yes.

5 Q. Two is the caller left a voice mail?

6 A. Right.

7 Q. And the third option is the caller hung up?

8 A. Correct.

9 Q. What was your usual practice?

10 A. I typically did not leave a message.

11 Q. Was Mr. Enterline's practice the same?

12 A. Sometimes he would leave a message, but not often.

13 Q. So it's your testimony that for most of the entries for  
14 one minute that we see in this timeline -- because I think we  
15 have got all the phone calls in the October 2009 to February  
16 2010 period here -- that most of the one-minute entries were  
17 hang-up calls?

18 A. I would guess that, yes, or very short conversations,  
19 which would be very unusual to have a one minute or less  
20 conversation unless we were really just discussing something  
21 brief.

22 Q. Of the telephone records you produced, do you know  
23 whether they capture all the telephone conversations you had  
24 with Mr. Enterline during this time period?

25 A. No, they did not.

1 Q. Why is that?

2 A. Because some of the calls we had were between -- from  
3 station to station between our homes and, you know, for some  
4 reason the phone companies don't keep records of that.

5 Q. Well, let me make clear. Those are local calls; right?

6 A. Local calls, right.

7 Q. And they are from land lines, so they are not cell  
8 phones?

9 A. Right.

10 Q. And there is no record made of those?

11 A. Yeah, but --

12 Q. Do you have any idea --

13 A. That you can get them.

14 Q. Yeah. Do you have any idea of the number of telephone  
15 calls between your land line and Mr. Enterline's land line?

16 A. I didn't keep a log of anything like that, so I assume  
17 there is some there.

18 Q. Could it have been fifty calls during this period?

19 A. Sure, could have been.

20 Q. So, again, your testimony is, even though we have this  
21 timeline with all these phone calls listed on it, that that's  
22 not a complete list of phone calls?

23 A. Oh, definitely not.

24 Q. All right. Let's -- Exhibit -- Joint Exhibit 177, let's  
25 turn to page 39, please.

1 A. Okay.

2 Q. And this is the day on which the last entry on page 39,  
3 Larry Enterline and Manpower's CFO talked by telephone?

4 A. Okay.

5 Q. But Mr. Enterline never told you that and you were never  
6 aware of that otherwise; is that correct?

7 A. That's correct.

8 Q. All right. I think the first phone call from you --  
9 turn back to page 38. It starts on page 38.

10 A. Okay.

11 Q. There is a one-minute phone call from you to Enterline  
12 at 5:48. Do you recall what you talked about?

13 A. I don't --

14 Q. Do you recall if you even talked?

15 A. I don't recall whether we talked. I don't recall what  
16 it was about.

17 I can guess that this was a Friday night and I know we  
18 were getting together later on that Friday night, so this  
19 could have been part of the set-up of that Friday night  
20 evening get-together.

21 Q. During this one-minute phone call, did Mr. Enterline  
22 provide you with any inside information about Comsys?

23 A. No, he did not.

24 Q. Okay. Let's go down to the next one. That's at 5:48,  
25 and actually the next one is at 5:49. So there is probably a

1 suggestion there -- I will just make an inference that the  
2 first one was a hang-up call, but different parties can make  
3 different inferences from the same record.

4 That's a four-minute phone call from Larry Enterline to  
5 you?

6 A. Yes.

7 Q. Do you recall what was discussed in that telephone  
8 call?

9 A. I am not 100 percent sure, but I feel confident that  
10 that was more arrangements for that night for going out to  
11 dinner.

12 Q. Okay. And then skipping down one entry, there is a  
13 one-minute phone call at 6:23 from you to Larry Enterline.

14 Oh, let me just say that the four-minute call, did  
15 Mr. Enterline provide you with any insider information about  
16 Comsys during that call?

17 A. No, of course not.

18 Q. Okay. The 6:23 p.m. phone call from you to  
19 Mr. Enterline, do you recall whether you talked or what you  
20 talked about?

21 A. I suspect we talked, and it had to do with, you know,  
22 what time we are going to be meeting.

23 Q. Did Mr. Enterline tell you any inside information about  
24 Comsys during that call?

25 A. No, he did not.



1 Q. Okay. And I think there is just one more at 6:30 from  
2 Larry Enterline to you, another one-minute telephone  
3 call. Do you recall what you talked about on this call?

4 A. Yeah. Based on that call and the timing of the call,  
5 I would say that was the final call that we had between the  
6 two of us where we actually pinned down the dinner time.

7 Q. During that one-minute phone call, did Mr. Enterline  
8 tell you any insider information about Comsys?

9 A. No, he did not.

10 Q. Do you recall what time you were meeting for dinner that  
11 night?

12 A. I don't recall, but just based on these calls and my  
13 memory of that evening where I know that a person who was to  
14 join us for that meeting was working late that night and  
15 I considered saying no to the dinner because it was getting  
16 so late. I am guessing in the 7:30 range.

17 Q. When you say a person who was to attend the dinner was  
18 working late, so the dinner wasn't just between you and  
19 Mr. Enterline; is that right?

20 A. That's correct.

21 Q. Who else was at that dinner?

22 A. From my memory -- and I'm 100 percent sure -- that  
23 Kathy -- Kathy Richards was there, and Mr. Kathy -- Ms. Kathy  
24 Richards is Mr. Enterline's long-time companion. They live  
25 together.

1           And there was another person -- there was a fourth  
2 person, who was Kathy's either friend from work or one of her  
3 family.

4 Q.    Had you met the friend of -- had you met Kathy Richards  
5 before?

6 A.    Oh, a number of times.

7 Q.    How long has she had a relationship with Mr. Enterline?

8 A.    I don't know. Twenty plus years.

9 Q.    Had you met the friend she brought with her to dinner  
10 before?

11 A.    My best recollection is that this was someone I knew,  
12 yes.

13 Q.    How did you arrive at the dinner? Did you all come in  
14 one car or how was it?

15 A.    Yeah. I'm sorry, I remember Kathy and I arriving in our  
16 separate cars at the same time. We parked at the same time,  
17 we got out of the car at the same time, we greeted each  
18 other. Then the second person was getting out of the car,  
19 from Kathy's car, we greeted each other.

20           Enterline wasn't there yet. We walked to the  
21 restaurant, which was right there, and we went to the lobby  
22 and we waited. And I don't know how long, how many minutes  
23 we waited, but eventually Enterline showed up, and then we  
24 had the dinner.

25 Q.    So it's your testimony that the scheduled meeting time

1 was 7:30; is that correct?

2 A. That's my best guess. I have no means of, you know,  
3 confirming that one way or another.

4 Q. And your testimony is Mr. Enterline arrived late?

5 A. Definitely arrived late.

6 Q. Do you recall how late?

7 A. I want to say -- it wasn't really late. It was maybe  
8 ten minutes, fifteen minutes at most.

9 Q. What did you all talk about during dinner?

10 A. I don't remember what we talked about at dinner. It  
11 wasn't important, I can tell you that much.

12 Q. Did you talk about Comsys?

13 A. We never talked about Comsys.

14 Q. Did Mr. Enterline whip out his cell phone and place a  
15 call to another Comsys executive while he was sitting at the  
16 table with you, Ms. Richards and her friend?

17 A. Not in front of me, no.

18 Q. Would it be consistent with Mr. Enterline's usual custom  
19 and practice to talk about Comsys business, financial or  
20 investment matters in front of Kathy Richards and her  
21 friend?

22 A. I would never expect him to do that, not only the three  
23 of us sitting around the table within earshot, but we were in  
24 a busy restaurant. I just -- you know, I can't imagine that  
25 he would pick up the phone and make that kind of a call.

1 Q. And just to cover all the possibilities, while the four  
2 of you are sitting at the table there at SABistro,  
3 Mr. Enterline didn't tell the four of you that, you know,  
4 I just got a call from Manpower's CFO today, we are going to  
5 do a deal?

6 A. No.

7 Q. Did he do that?

8 A. Of course not, of course he didn't say that.

9 Q. Do you recall how long the dinner lasted?

10 A. It wasn't very long because we got together so  
11 late. I think I had a race the next morning, so we did not  
12 linger. But I'm guessing maybe an hour and a half, at most  
13 two hours.

14 Q. Do you recall Mr. Enterline placing any deal -- any  
15 calls whatsoever during dinner?

16 A. No.

17 Q. Do you recall him receiving any calls?

18 A. No, I don't recall him receiving any calls.

19 Q. Was it Mr. Enterline's usual practice to make sensitive  
20 business calls involving confidential information in front of  
21 you?

22 A. I have never seen him do that. I have seen him pick up  
23 the phone when he was getting a call from somebody that he  
24 knew that I also knew, you know, mutual friend, maybe an  
25 investor at SMI, and very frequently after he got done with

1 the call, he would discuss the call with me. But not with  
2 any kind of a Comsys connection.

3 Q. If you were to describe Mr. Enterline as careful and  
4 scrupulous with confidential information, is that true?

5 A. Mr. Enterline is the most cautious person I know.

6 Q. Do you know one way or another whether Comsys had an  
7 insider trading policy?

8 A. I have no idea.

9 THE COURT: Before we get too far away from this  
10 November 6th dinner, who paid for dinner?

11 THE WITNESS: Mr. Enterline paid for the dinner  
12 itself. I paid for the drinks. I paid I think either twenty  
13 or twenty-five dollars for the drinks. Mr. Enterline paid, I  
14 don't know, a hundred and eighty dollars or so.

15 MR. ALBERT: \$187.

16 THE WITNESS: \$187 for the dinner.

17 BY MR. ALBERT:

18 Q. Looking at that, that's also on page 39, looking at the  
19 amount of the tab, you would say that that is Mr. Enterline  
20 paying for a dinner for four at SABistro?

21 A. And when you add my twenty or twenty-five dollars, it's  
22 looking at over two hundred dollars for four people in a, you  
23 know, reasonably-priced neighborhood. You know, it's  
24 impossible for two people to incur that kind of a charge.

25 Q. There was testimony earlier about a sailing trip you

1 went on with Mr. Enterline to Florida from December 12th  
2 I think to December 15th, 2009. Do you recall that?

3 A. Yes, I do.

4 Q. Would you please provide some background for that trip?

5 A. I think Mr. Enterline bought a brand new sailboat in  
6 Tampa, Florida, in August or September of 2009, and for some  
7 reason he wanted to take the boat from there to Fort Myers,  
8 Florida, which is, you know, down south, the southern coast,  
9 western coast of Florida.

10 So about the 12th of December, we left -- Mr. Enterline  
11 and I left from Atlanta driving his car to Tampa to board the  
12 boat, and then we took it down, sailed it down, down the  
13 coast of Florida to Fort Myers.

14 Q. So you got to Florida from Atlanta by driving; is that  
15 correct?

16 A. Yes, Mr. Enterline picked me up at my house and drove  
17 down to Tampa.

18 Q. How long was that drive?

19 A. You know, maybe five hours. I don't know.

20 Q. Did Mr. Enterline do all the driving?

21 A. I think he was, yes.

22 Q. What did you talk about during the drive?

23 A. Just chitchatting, whatever you normally talk about when  
24 you are driving.

25 Q. Did you talk about Comsys?

1 A. No, we did not.

2 Q. During that drive, did Mr. Enterline just say, you know,  
3 You are my good buddy, Larry, I have got to tell you we are  
4 about to do a deal and I want you to know about it?

5 A. Never.

6 Q. Okay. From when to when were you on the boat?

7 A. That's hard to pin down, but I think we got to the boat  
8 probably early afternoon or sometime in the afternoon of  
9 twenty -- of December 12th. We spent the night on the boat,  
10 then we left the next day sometime, maybe midday. We sailed  
11 overnight to Fort Myers, and then we parked in the marina in  
12 the morning in Fort Myers.

13 Q. While you were on the boat, did you talk to  
14 Mr. Enterline?

15 A. Not while we were sailing. We were sailing at  
16 night. It's very taxing to be sailing at night. You don't  
17 really -- you are not on the deck at the same time. You get  
18 four hours on, four hours off.

19 When you get four hours off at night, you go down below  
20 and you just pass out, because four hours later you need to  
21 get behind the wheel again and have all your senses attuned  
22 to the sea and make sure you don't get run over, you don't  
23 run somebody else over, that you don't, you know, drown.

24 Q. While you were on the sailboat, did you talk about  
25 Comsys?

1 A. No, we did not.

2 Q. Now, as I recall your earlier testimony, you sailed from  
3 St. Petersburg to Fort Myers; is that correct?

4 A. That's correct.

5 Q. What happened when you got to Fort Myers?

6 A. When we got to Fort Myers, we parked the boat in a  
7 marina, and we relaxed a little bit and went to dinner. Met  
8 some friends, met some mutual friends, went to a restaurant  
9 and some nightclubs.

10 And then in the morning, sometime early, you know,  
11 midmorning, we -- this mutual friend gave us, both of us, a  
12 ride back to from Fort Myers to Tampa.

13 Q. Who were these mutual friends?

14 A. It was a gentleman called David Stamford, who is -- he  
15 was a long-time friend of Mr. Enterline and he also happens  
16 to be a shareholder in SMI, and it was also either his  
17 girlfriend or his wife.

18 Q. So on the drive from Fort Myers to St. Petersburg,  
19 Mr. Stamford and his girlfriend or wife were with you the  
20 whole time; is that correct?

21 A. The entire time.

22 Q. Do you recall how you were -- what vehicle did -- was it  
23 Mr. Stamford's vehicle?

24 A. Yes, it was.

25 Q. Do you recall what sort of vehicle it was?



1 A. It was a -- I recall that being a small pickup truck,  
2 like a Ranger. I know Mr. Enterline and I were in the back  
3 seat and there wasn't much room, but we made it.

4 Q. All right. Please turn to page 50 of Joint Exhibit 177,  
5 please.

6 A. Okay.

7 Q. Do you see that? Are you there?

8 A. I'm there.

9 Q. Okay. Let's focus on the two phone calls from Enterline  
10 to Kerr at 1:47, and the one below it, one-minute call from  
11 Kerr to Enterline?

12 A. Which date?

13 Q. And that's at 1:57.

14 A. On the 14th?

15 Q. Correct. And that would have been when you were in  
16 St. Petersburg?

17 A. I think that would be on the drive back from Fort Myers  
18 to Tampa.

19 Q. How long does that drive take?

20 A. I would say two, two and a half hours. I can't  
21 remember.

22 Q. Do you recall what time that drive started?

23 A. What time?

24 Q. What time you started driving from Fort --

25 A. It wasn't too early in the morning.

1 Q. 11:30 or so?

2 A. Could have been, yeah.

3 Q. Okay. To the best of your recollection -- and these  
4 were both calls placed by Mr. Enterline -- did they occur in  
5 your presence?

6 A. No.

7 Q. Okay. And again, one of them is just a one-minute phone  
8 call, so we can't even be sure that there was a connection  
9 there.

10 All right. Please turn to page 53 of Joint Exhibit  
11 177.

12 A. Okay.

13 Q. Do you recall picking up Mr. Enterline at the Atlanta  
14 airport?

15 A. Yes.

16 Q. Was there a reason why you had to pick him up?

17 A. Mr. Enterline was coming back from somewhere, I forget  
18 where, and I had his car, so it was natural for me to go to  
19 the airport to get him and so he could, you know, match up  
20 with his car and go home with it.

21 Q. Yeah, let me step back. When you came back from the  
22 Florida boat trip, you drove Mr. Enterline's car back to  
23 Atlanta; is that correct?

24 A. Yeah. Mr. Enterline had to go on some business trip, I  
25 don't know where, but he had to fly off somewhere, and so he

1 asked me to drive his car back, and I had to drive back by  
2 myself.

3 So by Saturday I was back in Atlanta, and he was  
4 arriving back into Atlanta at the airport. So the  
5 arrangement was that I would pick him up at the Atlanta  
6 airport early on Saturday morning, on the 19th, I guess.

7 Q. Let me skip back one. On page 51, the third entry down,  
8 December 15th, it's a 29-minute phone call from you to  
9 Mr. Enterline at 5:49 p.m. Do you recall that call?

10 A. Which date was that?

11 Q. December 15th. It's on page 51, the third entry down.

12 A. Yeah. That was most likely when I was driving back from  
13 Tampa to Atlanta by myself. So we probably -- Enterline and  
14 I chatted just to pass time.

15 Q. Did you talk about Comsys?

16 A. No, of course not.

17 Q. Did he provide you with any inside information about  
18 Comsys during that call?

19 A. No.

20 Q. All right. Let's go back to page 53, please.

21 A. Okay.

22 Q. The second entry down on this page is an SMS. I think  
23 that's commonly known as a text message; is that correct,  
24 Mr. Schvacho?

25 A. I think so.

1 Q. And that's from Enterline to you. Do you know -- do you  
2 recall what the substance of that text message was?

3 A. I'm guessing that it was -- there were -- he was  
4 arriving that morning from wherever it was, so I think the  
5 SMS was sort of, you know, we have landed or something like  
6 that.

7 Q. All right. The next entry down is a one-minute  
8 telephone call from you to Enterline at 8:51 a.m. Do you  
9 recall what the substance of that call was about?

10 A. I remember that one.

11 Q. What was it?

12 A. That was an "I am here" message.

13 Q. What happened after that telephone call?

14 A. I was worried that I was going to be late, so I drove  
15 fairly fast. As soon as I parked in front of the baggage  
16 claim, I called him and I said I am here. And just as I am  
17 telling him that, I see him walking out the terminal.

18 Q. So after 8:51, you say it was no more than two or three  
19 minutes until Mr. Enterline got into his car that you were  
20 driving?

21 A. You know, my memory is like it was right then and  
22 there.

23 Q. Maybe even within a minute?

24 A. It could have been within a minute, yeah. It was like,  
25 I can see you, you know, I'm talking to him on the phone, I

1 am here, oh, I can see you coming out, so I'm blowing my horn  
2 or something.

3 Q. Sure. And I think your earlier testimony was that it  
4 took you, depending on traffic, between 25 and 35 minutes to  
5 drive from the airport to your home in Lilburn?

6 A. We measured it, and I have been driving that distance  
7 for, you know, 25, 30 years from my house to the airport. I  
8 know it's less than 33 miles, all on the freeway.

9 Q. Okay. Looking down at the fourth entry on page 53, it's  
10 a 23-minute phone call from Enterline to Ken Bramlett. Do  
11 you know who Ken Bramlett is?

12 A. Which call is that?

13 Q. It's the fourth one down, fourth entry down. One is a  
14 text message.

15 A. Yes, Mr. Bramlett is a -- number one, he's the C -- he's  
16 the attorney for --

17 Q. General counsel?

18 A. General counsel for Comsys. He's also the general  
19 counsel for SMI, he's a shareholder in SMI, and he's a  
20 personal friend of Mr. Enterline, and I had met him also.

21 Q. Did that phone call take place in your presence?

22 A. I don't recall.

23 Q. But your testimony is that within a minute or two after  
24 8:51, Mr. Enterline gets in your car and you start driving,  
25 and it takes at most 35 minutes to get to your house?

1 A. That's my memory.

2 Q. Okay. So if we do the math, adding 35 minutes on to  
3 8:51 -- well, what happened when you got to your house? You  
4 were driving; correct?

5 A. I was driving -- I was driving, and I kind of assumed  
6 that I was driving his car, but it's also possible I was  
7 driving my pickup truck, and he just -- I had to park his  
8 car -- his car was parked in my driveway. Maybe he just  
9 switched over. But it could be the other way. That part I  
10 don't remember.

11 Q. Okay. Is it your best interpretation of this sequence  
12 of events that the call to Mr. -- from Enterline to  
13 Mr. Bramlett would have occurred after he dropped you off and  
14 as he started driving to -- or what did Mr. Enterline do  
15 after he dropped you off, do you know?

16 A. After he dropped me off at my house?

17 Q. Yes.

18 A. He immediately took off for his house.

19 Q. Okay. Is it your best interpretation of this series of  
20 events that he dropped you off, and while he was driving to  
21 his own home --

22 THE COURT: It's his job to tell me facts, not to  
23 interpret them. That's my job.

24 MR. ALBERT: Okay.

25 A. It's my best recollection --

1 Q. Do you have any recollection of this call occurring in  
2 your presence?

3 A. I do not. And it's my best recollection that he got  
4 into his car immediately and drove off. It was a Saturday  
5 morning. He just wanted to -- you know, he had been on the  
6 road for a while. He just wanted to get home.

7 Q. All right. Do you recall -- this is just some random  
8 questions I have. I think we are getting towards the end  
9 here.

10 Do you recall when Comsys and Venturi merged?

11 A. I think it was announced on the 2nd of February of  
12 2010.

13 Q. No, no. The Comsys/Venturi, the earlier --

14 A. Oh, Comsys/Venturi? I have no recollection of that.

15 Q. Does July 2004 sound about right?

16 A. It could be, yeah.

17 Q. Did your relationship with Larry Enterline change at all  
18 after the Comsys/Venturi merger?

19 A. Everybody tells me it should have, but I don't  
20 remember. I don't remember. As I said before, he continued  
21 to be involved with this new entity, with Comsys, he  
22 continued to travel to Houston.

23 To me, you know, he was either chairman of the board of  
24 the new company or just a board member, I'm not sure. I  
25 don't remember the detail. But he continued to be Mr. Comsys

1 to me.

2 I suspect he told me, and I probably read it in the  
3 paper as an announcement, but it made no impression on me.

4 Q. Did you and Mr. Enterline continue to meet in person as  
5 often after the merger as you did before?

6 A. My memory is that nothing changed. You know, we would  
7 still get together when he was in town on Fridays for a  
8 beer.

9 Q. And he had a residence in Atlanta or his companion --

10 A. He had a residence in north Atlanta, yes.

11 Q. Before and after the merger?

12 A. Before and after.

13 Q. I think Mr. Mayes earlier asked you several questions  
14 about cleaning out your IRA account and your 401(k). Again,  
15 Mr. Mayes made some rhetorical license there.

16 Basically what you did was all within the confines of  
17 the same tax-advantaged account. You changed your investment  
18 from one option to another option; is that correct?

19 A. I don't understand your --

20 Q. Let me try it this way. Did you incur any tax penalties  
21 for any of your trading in Comsys stock?

22 A. Tax penalties?

23 Q. Yes.

24 A. No.

25 Q. So the monies that were in the tax-advantaged account,



1 the IRA and the 401(k), they stayed in the account the whole  
2 time?

3 A. They stayed, that's correct.

4 Q. You just had a different investment before and after?

5 A. Right.

6 Q. Do you know if there are any circumstances under which  
7 capital losses can be deducted against ordinary income?

8 A. Yes.

9 Q. Okay. Do you know the amount that you can deduct  
10 against ordinary income?

11 A. Yeah. I think it's like three thousand dollars.

12 Q. So when you testified earlier that you sold stock to  
13 take a tax loss, even if you didn't have any capital gains  
14 that year, you could have obtained a tax benefit from that  
15 sale; is that correct?

16 A. I'm still carrying it, you know, to this day, yeah,  
17 portions of it.

18 Q. Again, when Mr. Mayes was going through his examination  
19 and asking about various telephone calls between you and  
20 Larry Enterline, many of them seemed to be in the  
21 morning. Was there a reason why you would usually talk in  
22 the morning?

23 A. Yes. It was primarily because of Mr. Enterline -- well,  
24 also because of me. While I was working, we did not  
25 frequently talk in the morning because, you know, I had

1 things to do and I might have had meetings or whatnot, I was  
2 busy, so we would rarely talk in the morning.

3 After I retired, Mr. Enterline usually took the  
4 opportunity to speak with me before his business day  
5 started. So, you know, he knew that I would be available,  
6 I would be sitting in front of the computer doing something,  
7 and then, you know, he could call me without waking me up.

8 Q. So it wasn't like he was calling you to give you a hot  
9 stock tip that you could enter as soon as the markets opened;  
10 is that right?

11 A. Mr. Enterline never in his life ever gave me any kind of  
12 a tip.

13 Q. How did Larry Enterline find out that you were trading  
14 in Comsys stock?

15 A. I told him.

16 Q. When was that?

17 A. It was in June of 2010.

18 Q. What was the substance of that conversation, as best you  
19 can recall?

20 A. With Mr. Enterline and myself?

21 Q. In June 2010, yes, correct.

22 A. First, he wanted to know what that was all about, so  
23 I had to explain it to him that I had been trading, that in  
24 fact I had been trading very close to his announcement of  
25 being taken over.

1           And then he -- you know, he was more interested in how  
2 many shares and exactly what the timing was and all that.

3 Q.    Did he tell you he felt betrayed?

4 A.    Not to me he didn't.

5 Q.    Did he tell you that he thought you did anything wrong?

6 A.    No.

7 Q.    Did you say --

8 A.    He knew --

9 Q.    I'm sorry?

10 A.    He knew it was going to be trouble, a lot more than  
11 I did. I didn't take it seriously. I thought they would  
12 just ask me a few questions. I had a trading history, there  
13 is nothing suspicious here, it would just go away.

14           He said, no, be careful, get an attorney.

15 Q.    Do you recall what you said to him when he told you --  
16 your name had appeared on a list; is that correct?

17 A.    That's correct.

18 Q.    What did you tell him?

19 A.    I admitted that I traded. That's probably the reason.

20 Q.    Did you say anything about whether you thought it was  
21 wrong or improper to make trades?

22 A.    Mr. Enterline was just mortified that he was connected  
23 with something like this potentially, and seeing that,  
24 I became much more concerned myself.

25           Although I told him, I said, You know, you know I didn't

1 do anything wrong.

2 He said it didn't matter. He said just being asked  
3 questions about my trading was reflecting negatively on him.  
4 So there was nothing I could do.

5 Q. Do you know what, if anything, did Mr. Enterline tell  
6 you about what he told FINRA? In particular, about whether  
7 he told FINRA that he had shared any inside information with  
8 you?

9 A. He told me very unequivocally that he told them the  
10 truth, that, you know, he had never shared anything with me.

11 Q. If you had everything to do all over again in context of  
12 your trading in Comsys stock, would you do it?

13 A. The problem is that to this day, I don't feel like I did  
14 anything wrong, so I can't be sorry for that.

15 What I'm profoundly sorry for is that, you know,  
16 I caused my -- I caused my friend, you know, some concern,  
17 some pain, and that I, you know, lost him as a friend.

18 Q. Beyond that, do you have any regrets?

19 A. That I lost him as a friend, yes.

20 Q. How has this affected you, if at all?

21 A. Oh, it's devastated me.

22 Q. How so?

23 A. That's all I have lived with for the last three and a  
24 half years. That's all you think about. You go to sleep  
25 with that and you wake up thinking about that. It's the

1 first thing you think about, and there is nothing you can  
2 do.

3 MR. ALBERT: All right. Your Honor, we have a  
4 number of exhibits that we would like to introduce through  
5 this witness.

6 I would like to take a recess, because I hope  
7 Mr. Mayes will just stipulate so we -- I will tell you  
8 exactly what they are. They are bank records, records of  
9 CDs, records of financial assets, and I believe there is  
10 about twenty of them.

11 THE COURT: Mr. Mayes, have you looked at those  
12 yet?

13 MR. MAYES: I have noted objections to some of  
14 their exhibits. The ones he's describing right now are not  
15 the ones. We have no objection to those.

16 THE COURT: So you think probably they will come in  
17 without objection?

18 MR. MAYES: Yes, Your Honor, I do believe that.

19 MR. ALBERT: Can we take a recess, and when we come  
20 back I will read the numbers of the exhibits and you can  
21 check them off. But they are all records of financial  
22 assets.

23 THE COURT: First of all, before -- I mean, we will  
24 do that. I might let you do that overnight. But Mr. Mayes  
25 can ask some questions.

1 MR. ALBERT: Well, yeah, but I wanted to conclude  
2 my examination, and then he can do whatever he wants to do,  
3 yes.

4 THE COURT: Do you have them conveniently that you  
5 could just look at them, or do you really need a recess?

6 MR. MAYES: Your Honor, I wouldn't mind a  
7 five-minute recess just to use the restroom, if that's all  
8 right as well?

9 MR. ALBERT: Actually I have one more question now  
10 and then we can recess.

11 BY MR. ALBERT:

12 Q. During the boat trip to Florida --

13 A. Yes.

14 Q. -- December 12th to December 15th, do you recall whether  
15 Mr. Enterline had a briefcase with him?

16 A. No, I do not recall.

17 Q. If he had a briefcase, which you don't recall --

18 THE COURT: Come on. Come on.

19 THE WITNESS: Thank you. Thank you.

20 MR. ALBERT: It's an allegation in the complaint,  
21 Your Honor.

22 THE COURT: Well, I know. There are lots of  
23 allegations in the complaint. This is a trial where we take  
24 evidence.

25 MR. ALBERT: They are seeking 2.4 million dollars

1 from my client, so we have to take even what we regard as --

2 THE COURT: My only objection is you asked him what  
3 he knows, he doesn't remember a brief case, and now you were  
4 going to ask him if he had a briefcase, would you have rifled  
5 through it. And it doesn't matter if he didn't have a  
6 briefcase.

7 MR. ALBERT: If everyone is in agreement, we would  
8 like to take a five-minute recess and come back --

9 THE COURT: Just quickly, I have got a few  
10 questions I want to ask before we break.

11 MR. ALBERT: Okay, sure.

12 THE COURT: This trading that you did after you  
13 retired --

14 THE WITNESS: Yes.

15 THE COURT: -- where do you do that?

16 THE WITNESS: Where?

17 THE COURT: Yes.

18 THE WITNESS: I do it at my home in my home  
19 office. I have a couple of computer screens, and I have an  
20 account with a company called E\*Trade, and they allow me to  
21 have a realtime look at what's actually going on in the  
22 market. They show all the transactions, all the pricing, all  
23 the bid-ask type --

24 THE COURT: And did you while you were at home have  
25 conversations with Mr. Enterline from time to time?

1 THE WITNESS: It's possible.

2 THE COURT: So what did your family think about you  
3 in your room in this office doing this while --

4 THE WITNESS: They don't know. I live alone.

5 THE COURT: All right.

6 MR. ALBERT: Your parents have a separate  
7 residence?

8 THE WITNESS: They have a separate residence.

9 THE COURT: All right. Do people visit you at your  
10 home?

11 THE WITNESS: Sometimes, but not very often.

12 THE COURT: And I think there was some reference to  
13 Mr. Enterline -- I think I heard this -- living with somebody  
14 from time to time or --

15 THE WITNESS: He's got a permanent, you know,  
16 companion.

17 THE COURT: Is that the woman who was at the  
18 restaurant?

19 THE WITNESS: The woman, yes, Kathy Richards.

20 THE COURT: All right. Thank you.

21 MR. ALBERT: May we take a recess?

22 THE COURT: You may take a short recess. I do want  
23 to finish about five, so my thinking would be that when we  
24 come back, Mr. Mayes, if there is anything you want to follow  
25 up, we get the exhibits in, and hopefully we can conclude



1 with this witness today.

2 MR. MAYES: That -- we should have no trouble doing  
3 that, Your Honor.

4 THE COURT: We will be in recess.

5 (A recess is taken at 4:35 p.m.)

6 -- -- --

7 (In open court at 4:50 p.m.):

8 THE COURT: All right. What's next?

9 MR. ALBERT: Your Honor, with the Court's  
10 indulgence, one of my colleagues reminded me of one topic  
11 I didn't cover. I mentioned it to Mr. Mayes. He didn't have  
12 any objection. I think we are talking about three minutes.

13 THE COURT: Go.

14 BY MR. ALBERT:

15 Q. Mr. Schvacho, have you heard of a company called  
16 Adecco?

17 A. Yes.

18 Q. What is Adecco?

19 A. Adecco is a very -- the largest staffing company in the  
20 world. At least they were at the time in 2009.

21 And sometime in midOctober of 2009, they announced an  
22 acquisition of a U.S. company, a large U.S. staffing company  
23 called I think called MPS, which as a matter of fact turned  
24 out to be about three times the size of Mr. Comsys. It was a  
25 stunning development in the staffing industry.

1 Q. How did that acquisition by Adecco affect your decision  
2 to resume investing in Comsys stock?

3 A. As I said, it was absolutely stunning. I never realized  
4 that -- the staffing company is fairly staid, there were not  
5 that many acquisitions one way or another, certainly not the  
6 large ones. And the fact that Adecco saw that much value and  
7 could put so much money into a huge company like MPS just  
8 indicated to me that there was life in the industry, there  
9 was hope in the industry.

10 At the time the reports were that, you know, employment  
11 was still going down and that the staffing companies were  
12 road kill, basically, they were history. And it turns out,  
13 you know, Adecco saw some value, some huge value in a large  
14 staffing company. So I thought that might increase the value  
15 of all staffing companies, the relative value of all staffing  
16 of companies, which happened to be true.

17 Q. Okay.

18 MR. ALBERT: That's all I have on that.

19 I just want to move the admission of a number of  
20 plaintiff's exhibits. We have binders for Your Honor. And I  
21 believe these are all going to be stipulated to, but I will  
22 just read the numbers. Oh, they are defendant's exhibits,  
23 excuse me.

24 Defendant's 32, 33, 34, 35, 36, 38, 39, 40, 41, 42,  
25 43, 44, 48, 49, 50, 51, 56, 57, 58, 59, 61, 62, 63, 64, 66,

1 68, 69, 70, 71, 72, 73.

2 These are -- basically they are tax returns,  
3 account statements and other financial records, with one  
4 exception. We did a Google Maps printout of Hartsfield  
5 Airport to his home and that says 35 minutes, and they are  
6 stipulating to it.

7 THE COURT: Have you redacted all personal  
8 information from all of those exhibits?

9 MR. ALBERT: Well, it's his personal information.

10 THE COURT: So he wants his Social Security number  
11 and home residence address -- otherwise, it violates the  
12 local rules, as you know, that that has to be redacted before  
13 it becomes a public record.

14 So I take it you haven't done that?

15 MR. ALBERT: We have not done that, Your Honor.

16 THE COURT: And I'm not going to let him and I'm  
17 not going to be responsible as a Court to allow you to --  
18 even if he agreed to do that, I'm just not going to allow  
19 that to happen.

20 MR. ALBERT: Could we do that overnight,  
21 Your Honor?

22 THE COURT: You may.

23 MR. ALBERT: Thank you, I appreciate the  
24 indulgence. We won't do it again.

25 THE COURT: Yes.

1                   MR. MAYES: I just have a few questions,  
2 Your Honor.

3   -- -- --

4   CROSS EXAMINATION

5 BY MR. MAYES:

6 Q. First, you testified -- could you please turn to page 50  
7 of Joint Exhibit 177?

8 A. Page 50? What was the page number?

9 Q. 50.

10 A. Okay.

11 Q. Mr. Schvacho, you testified a minute ago about these  
12 calls here from Enterline to Kerr and Kerr to Enterline on  
13 December 14th at 1:47 and 1:57. Do you recall that  
14 testimony?

15 A. My only testimony that I recall is that I don't recall  
16 those calls.

17 Q. Okay. You were not in fact driving back from Fort Myers  
18 to Tampa on December 14th, were you?

19 A. I think we were.

20 Q. Didn't you drive back on December 15th, which is the day  
21 that you drove back to Atlanta? It was the same day you  
22 drove back to Atlanta that you drove to Tampa, wasn't it?

23 A. That's a good question.

24 My recollection is that I dropped Mr. Enterline off at  
25 the Tampa airport, and I think it was on December 14th. And

1 I really thought that I drove back on the 15th, because there  
2 is a -- I think there is a cell phone record from my cell  
3 to -- from various towns in south Georgia like Valdosta back  
4 to Enterline's number.

5 So I sort of assumed that I was driving back on the  
6 15th. I would have to confirm that, but I definitely dropped  
7 him off at the Tampa airport on the 14th.

8 Q. Did you spend the night in Tampa?

9 A. I may have. It doesn't seem plausible, but I don't know  
10 how else it could have worked out.

11 Q. Well, it could have worked out that you drove back from  
12 St. Pete to Fort Myers on the 15th; right?

13 A. Can you tell me what day the 14th was, what day of the  
14 week?

15 Q. The 14th was a Monday.

16 A. Yeah, I think we drove back -- I think we drove back on  
17 a Monday.

18 Q. So the 14th isn't a day that you had dinner with David  
19 Stamford and his girlfriend?

20 A. It would have been the night before, which would have  
21 been the 13th.

22 Q. So you drove down on the 12th -- you left on the 12th;  
23 right? Then you started sailing the boat, and that took over  
24 twenty-four hours; right?

25 A. It took overnight. We left in the afternoon and we got

1 there in the morning.

2 Q. You just don't recall which day it was that you got in?

3 A. I could probably, you know -- I thought we had all this  
4 straightened out. I could probably reconstruct it from the  
5 phone records, but -- if I can find my phone records in all  
6 these documentation.

7 THE WITNESS: Ross, do we know which -- where my  
8 records are, my phone records?

9 BY MR. MAYES:

10 Q. If you don't mind, I will ask the questions for now and  
11 he may have a chance to ask another question.

12 MR. ALBERT: I think he's asking for an exhibit  
13 number, that's all.

14 BY MR. MAYES:

15 Q. Mr. Schvacho, didn't you spend the night in Fort Myers  
16 on the boat?

17 A. Yes.

18 Q. Okay. Mr. Schvacho, I want to ask a few more questions  
19 just about the Adecco merger. That merger was announced on  
20 October 21st; right?

21 A. Okay.

22 Q. And you learned of the announcement the day that it came  
23 out; right?

24 A. Either the day it came out or the day before. I saw it  
25 on a financial news program.

1 Q. And you were excited about that?

2 A. Yes.

3 Q. Ecstatic; correct?

4 A. Yes. In fact, I called Mr. Enterline to let him know  
5 the news. He already knew, unfortunately, but --

6 Q. You called Mr. Enterline or talked to Mr. Enterline  
7 about that merger as soon as you could; correct?

8 A. Correct.

9 Q. Even though you didn't talk with him other than  
10 generalities about his own company, you talked to him because  
11 of this other development in a staffing company?

12 A. Absolutely I would have, you know, mentioned Adecco to  
13 him.

14 Q. So you saw that merger announcement before you made your  
15 sale of a thousand shares on the 29th; right?

16 A. Most likely, yes.

17 Q. Okay. And you never mentioned this Adecco merger at all  
18 when you were asked about the reasons for your trades in your  
19 investigative testimony, did you?

20 A. I thought I did. I saw it somewhere. I don't know  
21 whether it was in the narrative I submitted to the SEC  
22 initially. I remember seeing it somewhere.

23 Q. Okay. But you didn't say it when you were asked about  
24 the reasons until I asked you about it in a deposition;  
25 right?

1 A. I definitely said it to you when you asked me about it  
2 in the deposition. It may have -- I can't recall if I said  
3 it in the investigative testimony.

4 MR. MAYES: I have no more questions right now,  
5 Your Honor. Thank you.

6 THE COURT: So his testimony is concluded? Is his  
7 testimony concluded?

8 MR. ALBERT: Yes, Your Honor.

9 THE COURT: Thank you very much. It's been a long  
10 day for you. You can return to counsel table.

11 Do you intend to call him again in this case?

12 MR. ALBERT: I do not believe so, Your Honor.

13 THE COURT: Then he will be able to talk to you  
14 about the case. But if you do that, then he is absolutely  
15 precluded from testifying.

16 MR. ALBERT: I understand, Your Honor.

17 THE COURT: And just going through these other  
18 exhibits, there are lots of account numbers, there are lots  
19 of addresses, there are brokerage account numbers, all of  
20 which need to be redacted.

21 MR. ALBERT: I understand, Your Honor. We wanted  
22 to demonstrate --

23 THE WITNESS: Yes.

24 THE COURT: See, even the witness would like his  
25 account numbers not being public.



1 THE WITNESS: Yes, absolutely.

2 MR. ALBERT: Yes, Your Honor. It's our fault. I  
3 apologize.

4 THE COURT: Well, no, they are joint exhibits, so  
5 it's both your fault.

6 MR. MAYES: It's both our fault. I apologize too,  
7 Your Honor.

8 THE COURT: So those -- Jessica won't release those  
9 to the public, even if somebody were to call about it. There  
10 are no press people here, so they are not going to ask. So  
11 they have -- they ought to be redacted overnight or have  
12 somebody do that so that we can introduce the actual exhibits  
13 as redacted tomorrow.

14 MR. ALBERT: I understand, Your Honor.

15 THE COURT: No, you can step down.

16 THE WITNESS: Thank you.

17 THE COURT: So tomorrow we call Mr. Enterline  
18 first; is that correct?

19 MR. MAYES: That is correct, Your Honor.

20 THE COURT: Do you think we can do him in less than  
21 a day?

22 MR. MAYES: I do think that, Your Honor.

23 THE COURT: Well, you thought we could do Mr. --

24 MR. MAYES: That's correct, I did think it would be  
25 a little shorter for Mr. Schvacho as well.



## C E R T I F I C A T E

1  
2  
3 UNITED STATES OF AMERICA :  
4 NORTHERN DISTRICT OF GEORGIA :

5  
6 I, Nicholas A. Marrone, RMR, CRR, Official Court  
7 Reporter of the United States District Court for the Northern  
8 District of Georgia, do hereby certify that the foregoing 235  
9 pages constitute a true transcript of proceedings had before  
10 the said Court, held in the city of Atlanta, Georgia, in the  
11 matter therein stated.

12 In testimony whereof, I hereunto set my hand on  
13 this, the 19th day of November, 2013.

14  
15  
16 /s/ Nicholas A. Marrone

17 \_\_\_\_\_  
18 NICHOLAS A. MARRONE, RMR, CRR  
19 Registered Merit Reporter  
20 Certified Realtime Reporter  
21 Official Court Reporter  
22 Northern District of Georgia  
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