# Collecting Evidence for Financial Fraud Cases: Insider Trading

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## Introduction

Putting together a case, whether civil or criminal, involves the application of facts to law. Laws, whether statutory or common, can be broken down into the various elements necessary to prove the case. At trial, the Plaintiff or prosecutor must keep an eye on the elements necessary to prove the case and introduce the admissible evidence required to prove the elements.

A case starts with an investigation targeted to collect information. Undoubtedly, the catalyst for the investigation is information indicating the existence of wrongful conduct and wrongdoers. In the criminal context, when a prosecutor has sufficient information to believe that an individual has engaged in wrongdoing, he or she is loosely known as a "target of the investigation." Naturally, a prosecutor may commence an investigation and either not find evidence of wrongdoing or not find sufficient evidence to merit the government's expenditure of resources to prosecute (or to continue to investigate). The decision to prosecute should be made after due consideration of the evidence and the conclusion that the Defendant is guilty and not merely a possibility that the Defendant is guilty.

Once the decision to prosecute is reached, what is ultimately introduced at trial to prove a case is generally known as admissible evidence. During the course of an investigation prosecutors will seek to find both admissible evidence and information that will lead to admissible evidence. For example, a witness owning a computer may be a fact that itself is not relevant to proving the elements of a claim. Yet, finding out whether a witness owned a computer may be a fact that leads to an entire repository of evidence that will be admissible at trial. Thus, the investigation for evidence necessary to prove a case involves both the search for evidence that will be used to prove the elements of the claim and for information that will lead to that evidence.

An investigation involves an effort requiring oral communication with witnesses and a search for documents. In the legal sense, a document is a term of art. In the United States, the Federal Rules of Civil Procedure, which govern the processes by which civil cases are litigated, contains a broad definition of "document": documents and electronically stored information include "writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations – stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form." Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 34(a)(1)(A).

Securing documents is a critical element of the investigation. Documents can be secured directly from the target. They can be secured from government agencies. They can be secured from social media and the internet. They can be secured from individuals and/or entities that have relations with the target.

Interviewing witnesses is also central to an investigation. The order by which witnesses are interviewed and the formation of the questions must be well thought out. The investigator must clearly understand the difference between fact and conclusion. He or she must elicit core facts upon which to build conclusions. An investigator can ask a target the conclusory question: Did you kill the victim? Or, the investigator can ask the following questions: Did you know the victim? Were you in town on the date in question? Do you own a gun? Did you have an argument with the victim? Perhaps even these questions can be broken down to elicit facts that are even more basic. For example, the question, "Did you have an argument with the victim?" requires the witness to render a conclusion that an exchange of words was "an argument." It is therefore necessary to structure lines of questioning that eliminate the need for any conclusions about the facts leaving only the witness to respond to the existence of facts.

This paper outlines these issues and provides insight into how prosecutors may approach an investigation of financial wrongdoing including insider trading.

## Insider Trading Laws and Regulations in the United States

Insider trading law in the United States are found in a combination of general regulations, agency rules, and court interpretations. After the stock market crash of 1929, the United States Congress enacted the Securities Exchange Act of 1934.[3] Section 10(b) of the Securities and Exchange Act of 1934 makes it unlawful for any person "to use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [Securities and Exchange Commission] may prescribe." In 1942, the Securities and Exchange Commission (SEC) acted on its rulemaking power and promulgated Rule 10b-5:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national security exchange,

To employ any device, scheme, or artifice to defraud,

To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

These provisions make it unlawful to engage in fraud or misrepresentation in connection with the purchase or sale of a security, but do not speak expressly to insider trading.

Following the United States' common law tradition, judicial opinions have created a body of law that divides permissible trading from illegal insider trading. As the courts have defined it, insider trading is "the

purchase or sale of securities, with scienter, while in possession of material, non-public information in breach of a duty arising out of a fiduciary relationship or other relationship of trust and confidence."[4] (Scienter is a Latin word that roughly translates to "intent.") There are two primary theories of liability for insider trading: the classic theory and the misappropriation theory. In the classic theory, a corporate insider, like an officer or director, who trades on material nonpublic information and violates his duty to corporate shareholders to disclose his intent to trade or to abstain from trading is liable for insider trading. Under the misappropriation theory, an individual who trades based on material nonpublic information he or she has as a result of breaching a pre-existing relationship of trust and confidence to the source of the confidential information is liable for insider trading.

Despite the evolution of these two theories of liability, two issues remained unsettled for a number of years: what causal connection must be shown between possession of inside information and trading and what non-business relationships may provide a duty of trust or confidence. To settle these issues, the SEC promulgated Rule 10b5-1 and Rule 10b5-2 in 2000.[5]

Rule 10b5-1 explains that when an insider has traded "on the basis of material nonpublic information," that person was making the purchase or sale when aware of the material nonpublic information. Awareness of the inside information prior to the purchase or sale of securities, therefore, is enough to make the trade be on the basis of the inside information. Rule 10b5-1 also sets out specific affirmative defenses for traders with inside information that made a contract or written plan to trade the securities before they became aware of the inside information and could not change the contract or plan after they gained the inside information.[6]

Rule 10b5-2 defines when a duty of trust or confidence may exist for the misappropriation theory of insider trading liability: when a person agrees to maintain confidentiality, when there is a history, pattern or practice of sharing confidences between the individuals involved, or when the communication is between spouses, parents, children, or siblings, unless otherwise established.[7]

Insider trading laws can be enforced through civil cases, typically brought by the SEC, and through criminal cases, brought by the Department of Justice. On the civil side, the SEC has broad investigation authority. Informal investigations that request information on a voluntary basis may be conducted by SEC staff without the Commissioners' authorization; formal investigations can use the SEC's subpoena power to compel witnesses to testify or produce books, records, and other evidence. If the civil case is brought to trial, the attorneys for the SEC must show guilt by a preponderance of the evidence although the use of a presumption may shift the burden of proof to the defendant under certain circumstances. On the criminal side if the case is brought to trial, the U.S. Attorney for the Department of Justice must prove guilt beyond a reasonable doubt – a very difficult task, as most evidence of insider trading is circumstantial. A large majority of individuals prosecuted by the Department of Justice for involvement in insider trading are convicted of conspiracy and obstruction of justice – lying to cover up the insider trading.

## Potential Targets

Potential targets commonly include traditional company insiders, temporary insiders, misappropriators, and tippees – and anyone between the original insider and the last tippee.[8]

A company insider could be anyone from a secretary to a corporate director/executive. In the twenty cases analyzed for this paper, eight included company insiders.[9] These individuals included vice presidents, corporate financial officers, analysts, patent agents, and secretaries of executives. These are the types of individuals that commonly have access to material information about a company before it was released to the public.

Temporary insiders, also called constructive insiders or quasi-insiders, include a wide-ranging category of outside individuals that have been hired by the company. This was the most populated group of the individuals from the cases analyzed. This group includes the investment bank (Merrill Lynch, Goldman Sachs, and Lehman Brothers) analysts who were responsible for analyzing the potential ramifications of a merger or acquisition as well as the attorneys who worked for law firms charged with advising the company on its upcoming merger or acquisition. This group also includes the public relations account executive who was responsible for preparing the public relations campaign to start once the merger or acquisition was announced.

Misapprorpriators are a bit more difficult to discover. These individuals include, among others, the company insider or temporary insider who used the information of their company or client to make a decision to trade in the stock of another company.[10] None of the cases analyzed included one of these individuals; however, in the hypothetical developed for this training, had Zach or Robert sold shares in Jenson & Jenson, instead of buying shares in AnayaZocka upon learning the private AnayaZocka information, they may have been considered misappropriators.[11]

Finally, tippees are individuals who are told the inside information, the material nonpublic information, with the expectation that he or she will trade on the information. These can include the family or friends of company insiders or temporary insiders – or anyone thereafter. So, for example, in SEC v. Fiore J. Gallucci, et al., Ronald Manzo was a tippee – he was told the inside information specifically because he would trade on it.[12]

When investigating an insider trading case, it is important to discover all of the individuals who could possibly have known the material, nonpublic information – or were told to trade by someone who knew that inside information. The list of potential targets can grow from the original lead to something much more complex and involved, such as in the SEC v. Guttenberg, et al. case.[13]

## Developing Leads

Whether subtly or in an open and direct manner, law enforcement authorities actively recruit leads.

First, leads can be developed through general education campaigns that inform the public about conduct that may be unlawful. Insider trading, for example, is proscribed activity which may or may not be obvious to the general public. In the United States, most of the "Bar" rules – which are the rules that lawyers must follow - actually encourage lawyers to educate the public on the parameters of the law. For example, the preamble to the Texas Disciplinary Rules of Professional Conduct states: "As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education."[14] The American Bar Association's Standing Committee on Public Education produces pamphlets encouraging lawyers to educate the public and provides suggestions to lawyers of methods and opportunities to do so.[15]

For prosecutors, public education can take the form of speaking engagements, appearing on new shows, and actually disseminating written information. In the United States, agencies, including the Department of Justice, issue written reports analyzing the incidents of particular crimes and laying out the elements of the crimes. Cases that are indicted, tried, or settled almost always result in a press release which outlines the wrongful conduct and the penalty imposed. The American public may not necessarily understand the specific elements of insider trading but they understand generally, because of public prosecutions, that it is an area which requires extreme diligence.

Second, relationships with quasi-government regulatory bodies, including FINRA, may result in leads.[16] Working relationships between the SEC, the Department of Justice, and FINRA have resulted in situations where FINRA turns over trading anomalies to federal authorities who may elect to initiate an investigation. In every case analyzed, except one, the investigation likely started with the recognition that a trading anomaly had occurred and moved on from that point. This is a frequent starting place. For example, on February 15, 2013, the SEC froze a Swiss account at Goldman Sachs after it gained $1.7 million in value after H.J. Heinz's stock soared with the announcement that Berkshire Hathaway and 3G Capital had agreed to buy it. The only information publically known is the trading anomaly, but the SEC is undoubtedly investigating the names of the investors, their motivations, and other relevant information.

Existing investigations may spin off leads for additional investigations of wrongful conduct including insider trading cases. This occurs frequently. Indeed, prosecutors typically pursue a large investigation initially and settle on smaller prosecutions that spun off from the larger effort. In the SEC v. Guttenberg, et al. case, for example, the investigation started with Guttenberg who shared inside information with Franklin and Tavdy.[17] Franklin would tip Lenowitz, Okada and Babcock. The Franklin link to Babcock turned up a second string of insider trading: Collatta and her husband would tip Jurman, who in turn would tip Babcock, who in turn would tip Okada and Franklin. Each of these individuals, and a few more, despite being wrapped into one SEC case, pleaded individually to separate prosecutions.

Whistleblowers are also a major source of leads for prosecutors. The SEC has for some time paid bounties to individuals who come forward with information about insider trading. The SEC bounty system was expanded by the passage of the Dodd-Frank Act which was signed into law by President Obama on July 21, 2010.[18] The law requires the SEC to award bounties of between 10-30 percent of the government's monetary to recovery to whistleblowers who provide the SEC with original information or analysis enabling the Government to recover money from individuals or entities that violate U.S. securities laws including, for example, the Foreign Corrupt Practices Act (FCPA).[19]

The Dodd-Frank law follows on a history of U.S. laws that pay bounties to whistleblowers, the oldest of which is the Federal False Claims Act of 1864.[20] The Federal False Claims act pays bounties to individuals, without regard to their citizenship or domicile, who blow the whistle on individuals or entities that engage in conduct that causes the misuse of U.S. government dollars.[21]

## Planning Your Investigation

Once a lead has been received, the work of collecting evidence of financial fraud must begin. Investigators must have a plan that includes the legal elements necessary to prove the claim and the evidence that will be necessary to satisfy those elements.

In the United States, many civil and criminal prosecutors look ahead at the instructions the court will ultimately give the jury as a measure of what evidence must be secured during the course of the investigation. While the judge is the ultimate decider of what instructions will be given to the jury, "pattern jury instructions" often provide guidance on the drafting of instructions. These pattern instructions can be used as a loose road map for lawyers who are putting a case together. These pattern jury instructions usually include definitions of key terms and the key elements to the legal claim that is at issue. [22]

In most jurisdictions within the United States, a prosecutor must show the following, with some variation in phrasing and terminology used to demonstrate that someone has violated the insider trading laws:

- The defendant has traded in a security
- On the basis of
- Material,
- Nonpublic information
- Which has been obtained in breach of a trust or confidence.

With these elements in mind, the next step is to consider where evidence of each element might be found. One method to plan out a fact investigation is to use these elements of a claim to create a y-axis for a chart with the x-axis consisting of the facts that prove the element, the witnesses or

documents from whom or which these facts can be gathered, the method of discovery to be used to gather these facts, and/or an assessment of how to proceed considering all of the information.[23]

As mentioned above, anomalistic trading in a security is typically the initial indication that insider trading has taken place, and can be evidence to prove the first element of an insider trading case. This data, in the United States, is typically provided by FINRA or the New York Stock Exchange; although the SEC will occasionally find it without the help of independent, nongovernmental regulatory organizations. For example, a whistleblower may also provide evidence that insider trading has occurred, is planned to occur, or was planned to occur. The anomalistic nature of the trade is often also evidence necessary to prove other elements. An expert witness may be necessary at this point to demonstrate that the trading that took place was anomalistic, as well as to explain how the system for catching anomalous trading patterns works, and why it should be relied upon.

The second element, "on the basis of," the reason for the trade, is perhaps the most difficult element. Rule 10b5-1 has defined "on the basis of" to mean that if an individual is aware of material nonpublic information when they trade, then they are guilty of insider trading. Evidence to demonstrate that the trader was aware of inside information may be difficult to discover. Sources of this information often included witnesses that can state that they told the trader this information on a date prior to the trade, and documents that can demonstrate that the witness knew the information (such as e-mails to or from the trader including the inside information).

The third element - that the information of which the trader was aware was material - is frequently a topic for witness testimony. Expert witnesses, such as economists and other analysts, will be able to explain the effect of the information on the share prices and company earnings estimates, or other relevant company data. They may also be able to compare the effect of similar information on other similar stocks to demonstrate the materiality of the information. Corporate directors or officers may be able to testify how long was spent discussing the information in board meetings or high-level staff meetings which is another indicia of materiality.

That this information had not yet been released to the public, the fourth element, will likely be proved through witness testimony or documentary evidence. For example, in the case In the Matter of John M. Youngdahl, Jr., discussed in the analysis table, the nonpublic information was the United States Treasury's announcement about the upcoming treatment of the bond rate.[24] This information was nonpublic until the Treasury decided to release it to the public. When the consultant called the broker in New York to share the news of the Treasury's impending announcement; nonpublic information was shared. Another clear example of nonpublic information is an executive responsible for writing press releases containing material information trading on the information before releasing the press release. To determine when the information was made public, a search of news organizations and company press releases would provide documentary evidence.

Finally, proving the last element -- the information was obtained in violation of a breach of duty or trust and confidence -- will rely mostly upon witness testimony and knowledge of the relationship between the trader and the company or other individual. If the trader was a corporate executive or board member, the existence of such a duty might be codified in the laws of the state of incorporation. If the trader did not have a legal duty, evidence of a trust or confidence will come from the source of the information, but may also be assumed based on Rule 10b5-2 (parents, spouses, children, and siblings are assumed to have a relationship of trust and confidence that can be rebutted).

In addition to the five elements of an insider-trading claim, one also must be aware of the affirmative defenses that might be raised once such a claim is brought. For example, did the target have a long term plan to trade the security or was the decision made contemporaneous with the acquisition of inside information?

As you may have noticed, the most important source of evidence in an insider trading case is almost always a witness who has decided to "flip" and implicate others. Most SEC cases and DOJ cases settle after a target has decided to cooperate with the government in exchange for a reduced sentence or an agreement not to prosecute. An inside witness will be able to provide information about the trader's knowledge and intentions – and often each of the five elements outlined above.

## Witnesses in General

Interviewing witnesses is an art. It necessitates an understanding of the ultimate elements of the claim and requires a degree of psychological skill in order to "read" the witness so that the appropriate strategy is formulated for securing information. While an experiential learning process probably poses the best method for teaching interviewing techniques, below are some basic rules:

- "Read" the Witness Going Into the Interview
- Distinguish between eliciting pure fact and conclusions
- Test the witness on facts that should not be disputed
- Formulate a sequence of questioning to best conceal your theory
- Judiciously use documents and time their use

Reading the witness means that the interviewer will turn on his information gathering process from the minute he or she makes verbal or visual contact with the witness. What is the witness's demeanor? Is the witness nervous? Has the witness been coached? Is the witness willing to talk to you without consulting others or with others present? Does the witness have a grudge or a bias?

The initial read of the witness will guide the interviewer on what approach to take. It is not only a question of getting the witness

to come forward with information but it is also a question of determining witness bias, whether the witness is competent to render the testimony – i.e. was he or she actually at the scene of the event or did he or she actually personally hear admissions or statements – and whether the witness will change his or her story at the time of trial.

When interviewing the witness, the goal is to elicit facts first and perhaps later test the

witness with conclusions. Cases are built around facts, admissible facts. Prosecutors who organize facts properly can place their case in front of the decision maker (the judge or the jury) so that the decision maker is left with only one conclusion: the defendant is guilty.

A conclusory question would be:

> Q. Did you kill Mr. Smith when you were in Shanghai on December 7th?
> A. witness is not likely to admit this conclusion and those who are deciding cases need the

facts to support the conclusion anyway. In order to establish a set of facts, the interviewer may ask the following questions:

> Q. Are you a citizen of the United States?
> A. Yes.
>
> Q. Did you apply to the PRC to secure a visa?
> A. Yes.
>
> Q. Is this a copy of your United Airlines plane ticket from Kennedy airport in New York to Shanghai?
> A. Yes.
>
> Q. Is this a copy of your hotel receipt for the Portman Hotel on December 6th and 7th?
> A. Yes.
>
> Q. Is this your American Express charge for the purchase of a gun at Kans' shop in Shanghai?
> A. Yes.

The above is a line of questioning eliciting pure facts which place the witness in the city of the crime and in possession of a weapon which could have been used to commit the crime. The questions are so fact specific that each one taken alone does not clearly communicate theories of the case.

Asking questions that elicit pure facts serves several purposes. First, witnesses – particularly defendants – have a preconceived plan to deal with the ultimate question in a case. (Did you commit the crime?) In addition, conclusory questions telegraph the theory of the case and witnesses are easily prepared to deal with these types of questions. Questions that elicit pure fact easily force the interviewee into a choice of having to outright lie or admit to a building block for the case. In addition, questions that elicit pure fact do not have to be asked in sequential order and can be randomly distributed throughout the line of questioning in such a way as to make it more difficult for the interviewee to understand the theory of the case.

Testing the witness on facts that should not be disputed is also a baseline measure of whether the witness will make an effort to tell the truth. (Keep in mind that everyone perceives things differently and just because a witness does not recite facts exactly as you perceive them does not necessarily mean that the witness is lying.) Starting off an interview with facts that should not be disputed is also a way to begin the questioning by establishing a rhythm of question and answer that will lead to the flow of information. Easy questions that may not be in dispute can also settle a witness who is nervous. One technique that flows from this approach is using simple questions to establish a bond between the witness and the interviewer. Here is an example:

> Q. Where were you born?
> A. New York.
>
> Q. Where did you grow up?
> A. New York.

Interviewer comment: I also grew up in New York but moved to Shanghai but I still follow New York sports.

Witness: Me too.

Interviewer: Which New York sports teams do you like?

Techniques to establish a common bond interspersed between factual inquiries can be very effective in that they develop trust and make it more difficult for the witness to ascertain a pattern and pinpoint a theory. The "ice breaker" lines of questioning – as noted above – need not necessarily involve questions that seek information directly relevant to the case.

Questions need not be asked in the same order as the elements of the claim. Indeed, it is sometimes best to order the questions so that the witness cannot read into the theory of the case. Witnesses who want to be helpful can sometimes skew their answers to state what they think is needed for the case. In addition, witnesses who want to be obstructionist will have an easier time doing so if they understand where you are going with the questioning. Not only can the questions be posed out of the sequence of proof, but questions eliciting hard fact can be interspersed with questions that have marginal relevance, if any, to the case. The goal is to keep in mind that any time you are with a witness, he or she has an opportunity to learn as much from you as you do from him or her.

The use of documents is a critical component of the interview process. When to use documents and how to use them is an art form.

One of the biggest mistakes an inexperienced interviewer will make is showing a witness a document that the witness has authored and posing the following questions:

> Q. You wrote this didn't you?
> A. Yes.
>
> Q. Read it to me.

This line of questioning elicits no new information about the case. If the interviewer has a document that he or she knows the witness authored, there must be a calculated reason for showing the witness the document. Perhaps the interviewer just wants to confirm that the witness authored the document (do you recognize this handwriting or is this your signature?). Or the interviewer may want to ask who the document was transmitted to. Keep in mind that if the witness is asked: "who

received the document," an evasive witness will say "I have no personal knowledge as to receipt." Or the interviewer may want to ask what prompted the witness to draft the document.

Documents can also be valuable even if they are never shown to a witness. For example, interviewers who have documents can conduct entire lines of questions based on information garnered from documents but not shown to the witness. Suppose an interviewer has a postcard that a witness wrote while vacationing in Paris, an interviewer may ask the following questions:

Q. Have you ever been to Paris?
A. No.

Q. Do you ever write postcards?
A. I've never written a postcard in my life.

The interviewer now has the upper hand because he knows from the possession of the postcard that the witness has lied. In the United States, it is a federal crime to lie to a government investigator. 18 U.S.C. § 1001 (2006). Many convictions flow from false statements to investigators during the course of their inquiry. Famed media mogul Martha Stewart was convicted of a crime because she gave false statements to a federal investigator looking into insider trading allegations. United States v. Stewart, 433 F.3d 273 (2d Cir. 2006) (upholding convictions).

## Interviewing Witnesses in Insider Trading Cases

The selection of who to interview, the order by which witnesses will be interviewed, and what questions to ask are all variables that should be considered in formulating a plan for investigation.

The attached "target chart" provides some guidance on what to consider when deciding the order of interviews.[25] Who to interview first may vary depending on whether the target is a corporation or an individual. Because insider trading cases necessarily involve individuals as targets, prosecutors often see a value in starting with the target first and locking in his or her "story." In cases where the target is a corporation, as in a market manipulation scheme, prosecutors may want to start with former employees of the target and slowly work closer to the target by interviewing vendors and ultimately ending with the highest levels of corporate decision makers.

## Endnotes

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2 Jennifer A. Williams is an attorney with the firm of Grant & Eisenhofer P.A. in its Wilmington, Delaware office and is a member of the firm's False Claims Litigation Group.

3 The Securities Act of 1933, 15 U.S.C. § 77a, was also passed as a result of the stock market crash of 1929; however, it does not address insider trading.

4 Linda Chatman Thomsen, Director, Div. of Enforcement, U.S. Sec. and Exch. Comm'n, U.S. Experience of Insider Trading Enforcement, Remarks Before the Australian Securities and Investments Commission 2008 Summer School (February 19, 2008), available at http://www.sec.gov/news/speech/2008/spch021908lct.htm.

5 See Final Rule: Selective Disclosure and Insider Trading, available at http://www.sec.gov/rules/final/33-7881.htm.

6 See Attachment A for the language of Rule 10b5-1.

7 See Attachment A for the language of Rule 10b5-2.

8 See Robert A. Prentice, Permanently Reviving the Temporary Insider, 36 J. Corp. L. 343, 349 (2011).

9 See Attachment B for a chart analyzing these twenty cases.

10 36 J. Corp. L. at 349. Do not confuse misappropriators with the misappropriation theory of insider trading. Some of the individuals listed as tippees in our twenty case analysis could have been prosecuted under the misappropriation theory.

11 See Attachment D for the hypothetical and witness background.

12 See Attachment B page 2.

13 See Attachment B page 5.

14 Available at http://www.law.cornell.edu/ethics/tx/code/TX_CODE.HTM.

15 See http://www.americanbar.org/content/dam/aba/migrated/publiced/educatingpublicprint1.authcheckdam.pdf.

16 FINRA, the Financial Industry Regulatory Authority, is an independent, not-for-profit organization that writes and enforces rules governing the activities of nearly 4,400 securities firms, including approximately 630,000 brokers. The Office of Fraud Detection and Market Intelligence within FINRA is primarily responsible for uncovering instances of insider trading, as well as other illegal schemes.

17 See Attachment B page 5.

18 See 15 U.S.C. § 78u-6.

19 See also SEC rules § 240.21F-1 et seq., http://www.sec.gov/about/offices/owb/reg-21f.pdf.

20 See 31 U.S.C. §§ 3729 – 3733.

21 For more information on whistleblower laws go to www.whistleblowerlaws.com.

22 The [United States Court of Appeals] Eleventh Circuit's pattern jury instructions for a civil insider trading case, the Ninth Circuit's pattern jury instructions for a criminal securities fraud charge, and the Third Circuit's pattern jury instructions for a conspiracy charge are all included in the separate materials packet.

23 See Paul J. Zwier and Anthony J. Bocchino, Fact Investigation: A Practical Guide to Interviewing, Counseling, and Case Theory Development, National Institute for Trial Advocacy, 2000.

24 See Attachment B page 1.

25 See Attachment C for the target chart.


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