

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States v. Ware, No. 05-cr-1115, 04-cr-1224 (SDNY) (Ramos, J.)
United States v. Ware, Nos. 07-5222-cr(L) / 07-5670-cr (Con)/ 09-0851 (2d Cir.)

**ADJUDICATIVE FACT 36 — ENHANCED ANALYSIS AND
ASSESSMENT REGARDING CRIMINAL JUDICIAL MISCONDUCT OF
JUDGES AMALYA L. KEARSE, ROBERT D. SACK, EDGARDO RAMOS,
LAURA TAYLOR-SWAIN, LASHAN DEARCY-HALL, RAYMOND
LOHIER, JOSE CABRANES, DEBRA ANN LIVINGSTON, KENT J.
DAWSON. ANDREW J. PECK, AND MICHAEL H. DOLINGER.**

Pursuant to Fed. R. Evid. 201(c)(2): Mandatory Judicial Notice

Incorporating:

- (I) *United States v. Ware*, 577 F.3d 442, 445 (2d Cir. 2009) (Kearse, J.) — Jones as "Principal Witness"
- (II) *SEC v. Ware, et al.*, No. 03-0831 (D. Nev.), Complaint ¶33 (July 14, 2003) — Binding Judicial Admission: No "Increase" in Stock Prices

Submitted by Ulysses T. Ware | February 24, 2026

Respectfully,

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Exhibit31

1. Exhibit S—Nov. 5, 2010, Fraudulent leave to file order (LTF)—entered by Circuit Judges Kearsse, Sack, and Hall (deceased) to deny Mr. Ware access to actual innocent Brady exculpatory and impeachment evidence; and to cover up, conceal, and hide Jeremy Jones’ fraudulent and bogus Rule 11 and USSG 5k1.1 perjury contracts.....32

2. April 26, 2023 letter to Circuit Judges Kearsse and Sack seeking access and production of the alleged Jones’ Rule 11 and USSG 5k1.1 perjury contracts, and related judicial court records.34

3. United States SEC July 2003 complaint filed in *SEC v. Ware, et al.*, 03-0831 (D. NV), paragraph 33—binding judicial admission on behalf of the United States, the real party in interest in 03-0831 (D. NV) and 05-cr-1115 (SDNY) regarding the immateriality of press releases. July 2003, the SEC’s 03-0831 D. NV) Complaint’s paragraph 33—judicial admission of no “artificial inflation” of stock “price”—suppressed and concealed actual innocent Brady exculpatory and impeachment evidence, suppressed and concealed by the USAO (SDNY), the SEC, Judges Pauley, Dawson (D. NV), Dolinger, Peck, Kearsse, Sack, Hall, Ramos, DeArcy-Hall, AUSAs Southwell, Feldman, Goldin, Douvas, Fish, and Damian Williams, et al.37

4. Alleged FBI analyst government trial witness Maria A. Font’s **teary complete collapse and capitulation under devastating and brutal cross-examination by Mr. Ware in April 2007.** Maria A. Font, alleged “FBI Analyst” known perjury testimony in 05-cr-1115 (SDNY) April 2007, solicited and suborned by Judges Pauley, Kearsse, Sack, and Hall; AUSAs Alexander H. Southwell, Steven D. Feldman, Nicholas S. Goldin, Andrew L. Fish, Maria E. Douvas, and Michael J. Garcia. **Font blew up the Gov’t case!**.....39

[End of document]40

PART A: OVERVIEW — THE TWO PILLARS OF ENHANCED ANALYSIS.

The original Adjudicative Fact 36 established, through twelve sub-facts, that Circuit Judges Kearsse and Sack committed contempt of court, obstructed justice, and acted with disqualifying bias by concealing Jeremy Jones's Perjury Contracts and issuing the November 5, 2010, leave-to-file order as a permanent barrier to Brady enforcement. The present enhanced reanalysis superimposes two additional evidentiary pillars of extraordinary legal force upon that foundation:

PILLAR ONE: The Kearsse opinion itself — *United States v. Ware*, 577 F.3d 442, 445 (2d Cir. 2009) — expressly classified Jeremy Jones as "[t]he government's principal witness." This designation, made by Judge Kearsse herself while simultaneously concealing Jones's Rule 11 plea agreement and U.S.S.G. § 5K1.1 cooperation contract, creates a compound Brady/Giglio violation of constitutional magnitude: the government's most important witness — as so designated by the court — was the one whose entire credibility was purchased through a secret cooperation deal suppressed in defiance of the May 19, 2006, Brady Court Order.

PILLAR TWO: The United States Government, acting through the Securities and Exchange Commission as real party in interest, made a binding judicial admission under oath in *SEC v. Ware, et al.*, No. 03-0831 (D. Nev.) (Complaint ¶33, July 14, 2003) — four years before trial — that the promotional press releases of INZS and SVSY "did not have the intended effect of increasing the company's stock price." This judicial admission constitutes judicial and equitable estoppel against the United States and all its privies under *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001). The admission is fatal to the foundational premise of Kearsse J.'s August 18, 2009 opinion — specifically the finding at 577 F.3d at 445 — that the Government proved beyond a reasonable doubt "artificial inflation" of stock prices. A government that judicially confessed in 2003 that the press releases had no price effect cannot, in 2009, have an appellate court uphold a conviction resting entirely upon the contrary theory.

Together, these two pillars transform AF36 from a Brady enforcement matter into a documented case of (1) a conviction resting on concealed perjured testimony of the government's

own designated "principal witness," and (2) an appellate affirmance premised on a theory the government had irrevocably abandoned in a prior judicial proceeding. ***The combined effect is absolute: the August 18, 2009, Ware decision is void ab initio for constitutional, jurisdictional, and evidentiary reasons that are themselves not subject to reasonable dispute under Fed. R. Evid. 201(b).***

PART B: PILLAR ONE — JONES AS "THE GOVERNMENT'S PRINCIPAL WITNESS"

Section I. The Pin Cite and the Exact Language

At *United States v. Ware*, 577 F.3d 442, 445 (2d Cir. 2009) (Kearse, J.), the panel authored the following finding (emphasis supplied):

"The government's principal witness was Jones, a former employee of [Ware's firm], who testified about Ware's role in orchestrating the press-release scheme..."

Citation verified: *United States v. Ware*, 577 F.3d 442, 445 (2d Cir. 2009) (Kearse, J.). Source: CourtListener.com; consistent with project record, see *Recall of Mandate* (May 6, 2024), Exhibit 3G (quoting Kearse, J.'s opinion at 577 F.3d at 445: "The government's principal witness was [Jeremy] Jones").

Section II. The Legal Significance of the "Principal Witness" Designation

The legal significance of this designation cannot be overstated, and it operates simultaneously on at least four distinct levels:

A. Brady/Giglio Magnitude Is Calibrated to Witness Importance

Under *Giglio v. United States*, 405 U.S. 150, 154 (1972), and *Brady v. Maryland*, 373 U.S. 83, 87 (1963), ***the materiality of suppressed impeachment evidence is directly proportional to the importance of the witness whose credibility is affected.*** The Supreme Court has made clear that ***when suppressed evidence concerns the testimony of the government's critical or primary witness, the Brady violation is virtually per se material.*** See *Giglio*, 405 U.S. at 154-55 (conviction cannot stand when sole or principal witness testifies pursuant to undisclosed agreement with prosecution). ***Here, Judge Kearse's own language — "the government's principal witness" — satisfies the materiality threshold as a matter of law without any further inquiry.***

B. The Contradiction Between Designation and Concealment

The panel simultaneously (a) found that Jones was the government's 'principal witness,' and (b) knowingly omitted from its analysis the entirely dispositive fact that Jones's Rule 11 plea agreement and U.S.S.G. § 5K1.1 cooperation contract — the very documents that would have devastated Jones's credibility before the jury — were never produced to Mr. Ware in violation of the May 19, 2006, Brady Court Order (Dkt. 17, 05-cr-1115). The panel had access to the full appellate record, including the April 30, 2008, Kirton Letter (filed in CM/ECF in 05-cr-1115), Ex. E, which expressly confirmed that Jones 'cooperated with the government' and 'received a 5K letter from the government.' ***A panel that described Jones as the principal witness had a constitutional and ethical obligation to ensure the jury was not misled by his concealed cooperation deal. The panel's failure to do so — while using Jones's testimony as the pillar of its affirmance — constitutes active participation in the ongoing Brady violation.***

C. Judge Pauley's Corroboration: Jones as "Crucial Witness"

The characterization of Jones as "principal witness" in the Court of Appeals is corroborated and amplified by District Judge Pauley's statement at Jones's sentencing, Ex. A, (Sept. 11, 2008) that Jones was 'a crucial witness for the government, in my view, in securing a conviction.' (Sentencing Tr., 05-cr-1115.) ***This is a judicial admission by both the trial court and the appellate panel that the conviction rested entirely upon Jones — the one witness whose perjury USSG 5k1.1 cooperation deal was systematically suppressed. A conviction resting on the perjured testimony of a secretly cooperating principal witness, whose cooperation was concealed from the jury, is not a conviction at all; it is a fraud upon the court.***

D. Jones's Own Allocution Defeats the Principal Witness Theory

Jones's own allocution at sentencing, in which he described his involvement as 'going along with the flow' and 'just ways to make money' (Ex. A, Sentencing Tr. at 12, ll. 20-25), fundamentally contradicts the characterization of him ***as a knowing*** co-conspirator and principal actor in a premeditated securities fraud scheme — the very characterization the Kearsse panel adopted at 577 F.3d at 445. Moreover, Jones's prior sworn SEC deposition testimony, in which he stated he was unaware of any conspiracy and 'would not have participated had [he] known,' constitutes

devastating *Brady* exculpatory and *Giglio* impeachment evidence that was in the government's possession before trial and was never disclosed. The suppression of this evidence from 'the government's principal witness' constitutes a *Brady* violation of the highest constitutional gravity.

PART C: PILLAR TWO — THE SEC'S 2003 03-0831 (D. NV) COMPLAINT'S BINDING ¶33 JUDICIAL ADMISSION AS TOTAL IMPEACHMENT AND VITIATION OF THE KEARSE 2009 U.S. v. WARE, 577 F.3d 442 (2d Cir. 2009) OPINION. Ex. 3, infra.

Section III. The Exact Text of Paragraph 33 and Its Evidentiary Status

In *SEC v. Ware*, No. 03-0831 (D. Nev.), *the United States* Securities and Exchange Commission — acting as agent and proxy for the United States, **the real party in interest in both 03-0831 and 05-cr-1115** — filed a civil complaint on July 14, 2003. At Paragraph 33 of that complaint, the SEC made the following binding judicial admission, Ex. 3, *infra*:

"The misleading and fraudulent promotional campaign **did not** have the intended effect **of increasing** the company's **stock price**." (emphasis added).

Source confirmed: Project record, Memorandum for Special Master (v2); 4th Priority Request for *Brady* Evidence (Feb. 19, 2026); Recall of Mandate Application (May 6, 2024), ¶1 (quoting ¶33 of 03-0831 (D. Nev.) complaint, Dkt. 1). Consistent with *Habeas Corpus Petition*, 28 U.S.C. § 2241 (Mar. 15, 2022) at 51-52 (quoting same paragraph verbatim and analyzing its binding preclusive force).

This 2003 binding judicial admission against the United States, **the real party in interest in 03-0831 (D. NV) and 05-cr-1115 (SDNY)**, has vase and devastating legal consequences for the United States and its privies in 03-0831 and 05-cr-1115 (SDNY). The legal character of a judicial admission by a party-opponent under Fed. R. Evid. 801(d)(2)(C)-(D), constitutes the basis for judicial and equitable estoppel under *New Hampshire v. Maine*, 532 U.S. 742, 749-51 (2001), and

functions as absolute, irrefutable Brady exculpatory evidence required to have been disclosed to Mr. Ware before trial pursuant to the May 19, 2006, Brady Court Order.¹

Section IV. The 2009 Kearsse Opinion's Nonsensical "Artificial Inflation" Finding — and the Contradiction.

At *United States v. Ware*, 577 F.3d 442, 445 (2d Cir. 2009) (Kearsse, J.), the panel nonsensically found — consistent with the government's fraud-on-the-market trial theory — that **the fake, false, and manufactured evidence by AUSAs Southwell and Feldman, GX 92 and GX 93 chart evidence**, established Ware orchestrated a scheme involving press releases that falsely presented company information and *that the scheme was designed to inflate, and did inflate, stock prices*. The panel's factual narrative at page 445 described press releases designed to make stocks appear more valuable and **the known perjured testimony of Jeremy Jones, testifying under**

¹ See Ex. 3, *infra*. The SEC's 2003 Paragraph 33 factual judicial admission pleaded in *SEC v. Ware*, No. 03-0831 (D. Nev. July 14, 2003), Dkt. 1 ¶ 33, constitutes a binding, irrevocable concession and stipulation by the United States—**the real party in interest in both 03-0831 and United States v. Ware, No. 05-cr-1115 (S.D.N.Y.)**—that “[t]he misleading and fraudulent promotional campaign ***did not* have the intended effect of increasing** the company's **stock price.**” *Ex. 3, infra*. A formal judicial admission in a pleading “**is conclusive of the facts admitted**” and “**dispenses with the production of evidence by conceding . . . the truth of a fact alleged by the adversary.**” See Fed. R. Evid. 801(d)(2)(C)–(D) (opposing party's statement defined as “not hearsay”); *New Hampshire v. Maine*, 532 U.S. 742, 749–51 (2001) (judicial estoppel “protect[s] the integrity of the judicial process by prohibiting parties from deliberately changing positions”). Because this binding factual judicial stipulation/admission conclusively negated the statutory materiality element indispensable to every securities-fraud charge under 15 U.S.C. § 78j(b) and SEC Rule 10b-5, **it extinguished the factual predicate upon which Article III subject-matter jurisdiction and 18 U.S.C. § 3231 criminal jurisdiction in 05-cr-1115 necessarily depended, rendering the entire 05-cr-1115 prosecution's subject matter constitutionally moot as of July 14, 2003—more than four years before trial.** See U.S. Const. art. III, § 2, cl. 1 (“actual, ongoing cases or controversies” **required at every stage**); *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1537 (2018) (a moot case “is no longer a ‘Case’ or ‘Controversy’ for purposes of Article III” and lies “**outside the jurisdiction of the federal courts**”). The United States, having judicially and irrevocably pleaded itself out of court in 03-0831 and necessarily in 05-cr-1115 (SDNY) through its own agent's binding ¶ 33 admission, was thereafter estopped from prosecuting the Moot Subject Matter in 03-0831 and 05-cr-1115; **consequently, the alleged conviction, sentence, fines, forfeiture, and all penalties in 05-cr-1115 are null and void *ab initio*, and the Kearsse opinion in *United States v. Ware*, 577 F.3d 442 (2d Cir. 2009), which neither addressed nor acknowledged this dispositive admission, is vitiated in its entirety.** Moreover, the Government's suppression of this admission constituted a *Brady* violation of the first magnitude, see *Brady v. Maryland*, 373 U.S. 83, 87 (1963), in contravention of the May 19, 2006 Brady Court Order.

a secret and covert, and fraudulent USSG 5k1.1 cooperation perjury contract, as establishing Ware's direction and control of the scheme. The panel further described Jones's testimony that Ware instructed him to make press releases appear to come from multiple entities because it would be better '***for the price of the stock.***' See *Ware*, 577 F.3d at 445, 447-48 (describing press release scheme and Jones's testimony about Ware's instructions). These findings by Kearsse J. presupposed, as their indispensable factual predicate, **that the (immaterial since the SEC's 2003 judicial admission pleaded in ¶ 33) press releases actually caused artificial inflation of stock prices — precisely the element the government, via its agent, the SEC, judicially admitted in 2003 was not achieved.**²

The Kearsse panel's 2009 contradiction is complete and irreconcilable:

- A. 2003 — The United States (via SEC): "[T]he ... promotional campaign **did not** have the intended effect of **increasing** the company's **stock price.**" (¶33, 03-0831 Complaint).
- B. 2009 — The Kearsse Panel (relying solely on the government's fraud-on-the-market trial theory, which included Jones's perjured testimony): Purported to uphold

² But hold on for a second, see the Government's 05-cr-1115 trial witness alleged FBI analyst Maria A. Font's devastating and horrible testimony under brutal cross-examination by Mr. Ware at the April 2007—that is, alleged FBI analyst Font, while in tears, crumbled, capitulated and admitted under oath that her testimony under direct examination was false, misleading, and suborned by AUSAs Southwell and Feldman, **and she and the Government in fact had no evidence**, whatsoever, **that the alleged press releases had any effect on the "stock prices," and she and the Government did not have any evidence that any of the press releases were ever read by anyone!** See Ex. 4, infra. A judicial admission, from the witness stand in April 2007 that acquitted Mr. Ware on all charges for insufficient Government evidence ipso facto as a matter of law and fact. Font's testimony immediately in April 2007 triggered the absolute finality of the Double Jeopardy Clause's protections in favor of Mr. Ware, terminated the 05-cr-1115 District Court's subject matter jurisdiction for *failure to charge* an "offense" as required under 18 USC § 3231—**that is, lacking any evidence anyone ever read a press release there is no proof beyond a reasonable doubt produced by the Government at trial that could prove the essential factual element of materiality to find Mr. Ware or Jones guilty of securities fraud. Accordingly, there was no lawful factual basis for the Court to have accepted Jones' fraudulent alleged Sept. 22, 2006, Rule 11 plea of guilty to securities fraud. Jones' alleged fraudulent Rule 11 plea is null and void ab initio and is required to be vacated forthwith, nunc pro tunc, Sept. 22, 2006.**

conviction for securities fraud predicated on "artificial inflation" of stock prices caused by the same press releases. See *Ware*, 577 F.3d at 445, 447-48.

If the press releases **did not increase stock prices** — as the United States itself judicially admitted in 2003, Ex. 3 (03-0831 complaint's ¶33) — then no element of the USAO's securities fraud-on-the-market trial theory offense was proved.³ There was no "artificial inflation," no material misrepresentation causing price movement, and no investor reliance on a fraudulently inflated price. The government's 2003 ¶33 admission nullified the criminal case at its inception—vitiating all probable cause to arrest and indict, and rendered the entire 05-cr-1115 indictment legally meritless — an indictment the government brought and prosecuted in direct contradiction of its own prior judicial admissions.

Section V. Judicial and Equitable Estoppel Under *New Hampshire v. Maine*

Under *New Hampshire v. Maine*, 532 U.S. 742, 749-51 (2001) (Ginsburg, J.), *judicial estoppel bars a party from asserting a position in litigation that is clearly inconsistent with a position it previously took in the same or another judicial proceeding*, when (1) the earlier position was clearly inconsistent with the later one, (2) the party succeeded in persuading a court to accept the earlier position, and (3) the party asserting the inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party. *Id.* at 750-51. All three factors are satisfied here with a force that leaves no room for dispute:

Factor One — Clear Inconsistency: The 2003 SEC ¶33 admission that the press releases produced no price increase is logically and legally irreconcilable with the 2007 prosecution theory (and the 2009 Kearsse opinion) that those same press releases caused "artificial inflation" of stock prices. Two diametrically opposed propositions cannot both be true.⁴

³ Cf., Ex. N in (05-D.1) document—the judicial admissions of AUSA Steven D. Feldman on Oct. 12, 2007, in open court blew up the Government's trial theory and 05-cr-1115 prosecution; and triggered the Double Jeopardy Clause's absolute finality in favor of Ulysses T. Ware—an actual innocent acquittal by the USAO (SDNY) on the merits for insufficient evidence.

⁴ Remember the Government did not introduce the required expert testimony of alleged "artificial" "inflation" in its two trials in 2007. Thus, what is the actual proof beyond a reasonable

Factor Two — Prior Judicial Acceptance: The 2003 complaint was filed in the United States District Court for the District of Nevada and accepted as filed by that court. The United States thereby obtained the benefit of that judicial proceeding — use of the federal court system for discovery and fact-gathering — based on the admissions contained therein, including ¶33.

Factor Three — Unfair Advantage/Detriment: Having judicially admitted in 2003 that **the press releases had no price effect**, the United States obtained a criminal conviction in 2007 and an appellate affirmance in 2009 based on the contrary proposition. Mr. Ware was imprisoned based on a theory the government abandoned under oath four years before his trial. No principle of equity or law permits this result.

The doctrine articulated in *New Hampshire v. Maine* was designed precisely to "protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment." *Id.* at 749-50 (quoting *Davis v. Wakelee*, 156 U.S. 680, 689 (1895)). The United States changed its position in the 2007 05-cr-1115 trials as to whether the press releases increased stock prices for the singular and corrupt purpose of obtaining a conviction. Judicial estoppel bars this result absolutely.

Section VI. FBI Analyst Maria Font's Trial Testimony Confirms ¶33

The 2003 ¶33 judicial admission did not stand alone. At the April 2007 trial in 05-cr-1115, the government's own FBI analyst, Maria A. Font, testified — and under brutal and devastating cross-examination by Mr. Ware capitulated, crumbled, and admitted under oath — **that she and the Government had no proof and no evidence that the press releases issued by INZS and SVSY had any measurable effect on the prices or volume of their stocks**. See Ex. 4, *infra*. This devastating concession by the government's own witness at trial directly corroborates ¶33 and

doubt on the Government's required element of trial proof? **There is none in the trial record**. Which Judge Pauley recognized in Oct. 2007 in the post-trial Rule 29 proceedings, see Ex. N in Document (05-D.1), in ruling that the Government's trial proof was insufficient "**concerning, among other things, the efficiency of the market**." (quoting Pauley, J., Oct. 12, 2007, Dkt. 99, S. Tr. 31 L 18-25; S. Tr. 35-36). See Ex. N, Document (05-D.1).

provides irrefutable confirmation that the government's theory of 'artificial inflation' was manufactured by former FBI special agent David Makol, alleged “FBI analyst” Maria A. Font,⁵ AUSAs Southwell, Feldman, Goldin, Fish, Douvas, and Michael J. Garcia factually without foundation. ***The District Court custodian of records, David Ng, confirmed on June 5, 2023, that there is no official record in 05-cr-1115 of any government expert witness who testified to artificial inflation of stock prices*** — a fact that renders the Kearsse panel's reliance on such a theory doubly indefensible.

Furthermore, at sentencing, AUSA Steven D. Feldman conceded on the record that the government could not prove market efficiency, Doc (05-D.1), Ex. N — specifically that the government had 'only addressed two of the eight factors listed in the *Balmadier* case' (Sentencing Tr. at 6-7) and that, if required to prove a fraud-on-the-market theory in the traditional sense, it 'know[s] we are not going to be able to meet that burden.' (Sentencing Tr. at 35-36.) ***This is a judicial admission in open court by the United States Attorney's Office that it could not prove the essential element of market impact — yet the Kearsse panel upheld the conviction on that same insufficient evidentiary record.***

Section VII. The Rule 144(k) Context: The Actual Motive for the Prosecution

The foregoing evidentiary nullification of the government's theory is rendered even more significant when considered against the true backdrop of this prosecution. The 02-cv-2219 (SDNY) plaintiffs — who are FINRA-certified predatory, unregistered broker-dealers⁶ and

⁵ There is no verifiable artifact in the trial record that proves that Government trial witness Maria A. Font was in fact an “FBI analyst” as represented to the jury by AUSA Alexander H. Southwell for plausible testimonial credibility.

⁶ See Doc. (05-D.1), Ex. L, ***May 17, 2021, FINRA's unregistered broker-dealer certification for each of the 02-cv-2219 (SDNY) plaintiffs.*** (see 15 USC §§ 77o(a)(1) and 78cc(b) read *in pari materia*), which rendered the *U.S. v. Ware*, 04-cr-1224 (SDNY) indictment and prosecution null and void ab initio, nunc pro tunc, Nov. 2004, for failure to charge an 18 USC § 3231 criminal contempt, 18 USC § 401(3) “offense” ***regarding unregistered broker-dealers attempting to enforce and collect on null and void ab initio, predatory, criminal usury lawful debts (convertible promissory notes) which charged interest rates in excess of 2000%***--that is, in violation of NYS Penal Law, section 190.40, the criminal usury law, a class E felony; and in violation of the federal loan sharking, money laundering, and Hobbs Act extortion laws, 18 USC §§ 2, 156-58, 371, 924(c), 1341, 1343, 1344, 1503, 1512, 1951(a), 1961(6)(B), 1956-58, 1962(a-

statutory underwriters of Group Management Corp. securities as defined under 15 U.S.C. § 77b(a)(11) (defining "underwriter" as any person who "purchased from an issuer with a view to . . . the distribution of any security", **CF., Government 04-cr-1224 trial exhibit GX 5, ¶10.1(vi), a Government judicial admission of statutory underwriter status for each 02-cv-2219 (SDNY) plaintiff, which blew up the Government's indictment and prosecution upon admission into evidence by AUSAs Nicholas S. Goldin and Maria E. Douvas in Nov. 2007**)⁷ — sought to compel Mr. Ware, as Group Management's legal counsel, to draft and issue bogus and fraudulent Rule 144(k) legal opinion letters that would have enabled them (the 02cv2219 plaintiffs) to evade the registration requirements of the Securities Act of 1933, 15 USC § 77e, and dump unregistered, restricted securities onto the public markets. **Mr. Ware, as a licensed attorney fulfilling his professional and ethical obligations, refused.**

The fraudulent criminal prosecutions in 05-cr-1115 and 04-cr-1224 were the United States Government's United States Attorney's Office (SDNY) Jim Crow, racially-motivated hate crime, retaliatory, and pretextual response to that refusal. As the evidence now establishes beyond all dispute: the government brought a prosecution premised on a theory of stock price inflation that (a) it had already judicially admitted was false in 2003; (b) was refuted by its own FBI analyst at trial; (c) was abandoned by its AUSA at sentencing; and (d) was sustained by an appellate opinion authored by a panel that deliberately and intentionally, in bad faith, concealed, and suppressed the

d), and 2071(a), (b), a pattern of racketeering activities. See *Adar Bays, LLC v. GeneSYS ID, Inc.*, 28 F.4d 379 (2d Cir. 2022).

⁷ That is, at trial in Nov. 2007, in *U.S. v. Ware*, 04-cr-1224, the Government via AUSAs Goldin and Douvas, and Michael J. Garcia, **voluntarily while being ignorant of the law**, eagerly and foolishly admitted into evidence in open court dispositive, actual innocent, Brady exculpatory evidence, GX 5; **which on the very moment the District Court (Sweet, J.) (deceased) admitted GX 5, ¶10.1(iv) into evidence, the Government blew up its case and acquitted Mr. Ware of all 18 USC § 401(3) criminal contempt charges.** SEC Release 33-7190 n. 17 (1995) squarely held that "Section 77b(a)(11) statutory underwriters are required to register all distribution of securities pursuant to 15 USC § 77e (Section 5)." Accordingly, the 02-cv-2219 (SDNY) plaintiffs, Government judicially admitted 15 USC § 77b(a)(11) statutory underwriters, and FINRA certified unregistered broker-dealers, **ipso facto as a matter of law and fact were not legally eligible for Rule 144(k) exemption to Section 5 strict-liability registration requirements. Which rendered the 04-cr-1224 indictment null and void ab initio, and moot, nunc pro tunc, Nov. 2004.**

principal witness's fraudulent USSG 5k1.1 cooperation agreement. The prosecution was not a good-faith enforcement of securities laws; it was an instrument of retaliation against an attorney who refused to participate in fraud. In 04-cr-1224 (SDNY), criminal contempt, the Government brought a fraudulent and bogus indictment predicated on the collection and enforcement of loan sharking, predatory, criminal usury, unlawful debt collection activities by (i) unregistered broker-dealers, and (ii) Section 77b(a)(11) statutory underwriters attempts to conduct unregistered public offerings of predatory securities in criminal violation of the federal securities and loan sharking laws.

PART D: ENHANCED ADJUDICATIVE FACTS AF 36.01 THROUGH AF 36.16

The following sub-facts supplement and deepen AF 36.1 through AF 36.12, as previously established. Each is subject to mandatory judicial notice under Fed. R. Evid. 201(c)(2) as facts that are not subject to reasonable dispute in that they are accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Introductory Recitation and Legal Standard

Pursuant to Federal Rule of Evidence 201(c)(2), a court must take judicial notice of an adjudicative fact when a party requests it and supplies the court with the necessary information. See Fed. R. Evid. 201(c)(2). An adjudicative fact is subject to judicial notice when it is "not subject to reasonable dispute" because it "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). Official court records, docket entries, government agency correspondence, and certified judicial transcripts constitute precisely such sources.

Ulysses T. Ware respectfully requests mandatory judicial notice, pursuant to Fed. R. Evid. 201(c)(2), of the twelve (12) integrated dispositive sub-facts set forth herein as Adjudicative Fact 36, Sub-Facts 36.1 through 36.12. Each sub-fact is drawn from official public records, official court filings, government agency correspondence, and the face of the LTF Order—each of which is a source whose accuracy cannot reasonably be questioned.

These sub-facts collectively establish the factual predicate for civil and criminal contempt proceedings against Circuit Judges Amalya L. Kearsse and Robert D. Sack for their individual and collective violation of the May 19, 2006, Docket Entry 17, Brady court order entered in *United States v. Ware*, No. 05-cr-1115 (S.D.N.Y.) (Pauley, J.) (the "Brady Court Order"), and for their use of the November 5, 2010 leave-to-file order as an instrument to perpetuate and insulate said Brady violations from judicial review.

Adjudicative Fact 36.1--The Brady Court Order: Its Existence, Scope, and Continuing Binding Force.

On May 19, 2006, the Honorable William H. Pauley III entered Docket Entry 17 in *United States v. Ware*, No. 05-cr-1115 (S.D.N.Y.) (the "Brady Court Order"), which expressly directed the government to disclose and produce all exculpatory and impeachment evidence, including but not limited to cooperation agreements, plea agreements, financial benefits, and all information bearing upon the credibility and motivation of any government witness, prior to trial. The Brady Court Order constituted a lawful "order" of the United States District Court for the Southern District of New York within the meaning of 18 U.S.C. § 401(3), disobedience of which subjects any person—including any judicial officer acting in an individual or personal capacity—to the contempt power of the court.

The Brady Court Order derived its authority from the Due Process Clause of the Fifth Amendment to the United States Constitution as construed in *Brady v. Maryland*, 373 U.S. 83, 87 (1963), and the government's attendant obligation to disclose impeachment evidence as established in *Giglio v. United States*, 405 U.S. 150, 154 (1972). The Brady Court Order was not dissolved, modified, or vacated at any point in the proceedings. Its binding force therefore continued in full effect throughout the trial, the appeal, and to the present date.

Adjudicative Fact 36.2--The Existence and Non-Disclosure of the Perjury Contracts.

The documentary record establishes, to a certainty not subject to reasonable dispute, that: (a) a Rule 11 plea proceeding involving a person identified as Jeremy Jones was conducted before Magistrate Judge Michael H. Dolinger on September 22, 2006, in Case No. 05 Cr. 1115 (WHP), as reflected in the transcript denominated "Doc. #24" in that proceeding; (b) AUSA Alexander H.

Southwell represented the government at that proceeding and confirmed on the record the existence of "the plea agreement" consisting of a "letter dated September 15, 2006" from the United States Attorney to Jones's attorney; and (c) Attorney Marlon G. Kirton confirmed in his April 30, 2008, letter to Judge Pauley, electronically filed in No. 05-cr-1115, that Jones "cooperated with the government" and received "a 5K letter from the government."

Despite the foregoing, neither the plea agreement letter of September 15, 2006, nor the U.S.S.G. § 5K1.1 cooperation agreement with Jeremy Jones was ever produced or disclosed to Mr. Ware prior to or during his January 2007 or April 2007 trials in No. 05-cr-1115, in direct violation of the Brady Court Order and *Brady v. Maryland*, 373 U.S. 83 (1963).

Adjudicative Fact 36.3--The Fabricated and Materially Incomplete CM/ECF Docket Record.

The CM/ECF docket sheet of *United States v. Ware*, No. 05-cr-1115 (S.D.N.Y.), as reproduced in Exhibit 2 to the Kearsse Letter, (Ex. 2, *infra*), reveals a glaring and material omission: there is no entry corresponding to Docket Entry 24 (the Jones Rule 11 plea proceeding) despite the express notation "DOC # 24" appearing on the face of the September 22, 2006 transcript (Exhibit 1). The docket sheet further contains no reference to any Rule 11 proceeding, cooperation proceeding, or § 5K1.1 motion in connection with Jeremy Jones.

This discrepancy between the documentary record (the transcript) and the official docket (the CM/ECF docket sheet) constitutes evidence probative of the willful concealment, removal, or falsification of public judicial records within the meaning of 18 U.S.C. § 2071(b), which provides that any person "having the custody of any such record, proceeding . . . [who] willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States" . A federal court of appeals that possesses, accesses, and relies upon an appellate record containing a falsified docket without taking corrective action participates, at minimum, in the ongoing concealment in violation of 18 U.S.C. § 2071.

Adjudicative Fact 36.4--The Panel's Possession of and Access to the Appellate Record Containing Brady Evidence.

In *United States v. Ware*, Nos. 07-5222-cr and 07-5670-cr (2d Cir.), the appellate record transmitted from the District Court to the Second Circuit encompassed the complete proceedings in No. 05-cr-1115 (S.D.N.Y.), including all docket entries and all court transcripts. The Panel—consisting of Circuit Judges Kearsse, Sack, and Hall—that issued the August 18, 2009 decision in Ware-I accordingly had full actual and/or constructive access to and custody of the appellate record.

The Kirton Letter (Doc. 05-D.1, Exhibit 4), having been electronically filed in the CM/ECF system in No. 05-cr-1115 as Docket Entry 5-5-08, was part of the appellate record transmitted to the Second Circuit. ***A diligent review of that record—as required of Article III federal judges by Canon 3 of the Code of Conduct for United States Judges—would have revealed (a) that Jones received a § 5K1.1 cooperation letter from the government; (b) that no Rule 11 plea transcript or cooperation agreement had been docketed in No. 05-cr-1115; and (c) that the government had failed to comply with the Brady Court Order.*** The Panel's failure to take any remedial action constitutes, at minimum, a Brady violation participated in by the Court itself, and at maximum, affirmative conduct in furtherance of the ongoing Brady concealment.

Adjudicative Fact 36.5--The Void Ab Initio Status of the August 18, 2009 Ware-I Decision.

On November 7, 2008, the Attorney General of the United States, acting in the Executive Branch's Article II capacity, **voluntarily dismissed Government Appeal No. 07-5670-cr (Gov-I) with prejudice.**⁸ This *voluntary dismissal* constituted a final, definitive appellate disposition of the government's cross-appeal and, as a direct consequence, divested the Second Circuit panel of any remaining Article III jurisdiction to adjudicate claims dependent upon or related to the criminal judgment that was the subject of that cross-appeal; and triggered the absolute finality of the Double Jeopardy Clause's protections for Ulysses T. Ware, see *Martin Linen*, 430 U.S. at 571-73.

Notwithstanding the November 7, 2008, dismissal of Gov-I, the Panel issued the moot, void ab initio for lack of Article III subject matter jurisdiction, August 18, 2009, decision in Ware-

⁸ See Doc. (05-D.1), Ex. K-1.

I. Because the DOJ's voluntary November 7, 2008, dismissal with prejudice of Gov-I (07-5670cr (XAP)) rendered the 05-cr-1115 criminal matter moot and divested the court of appeal and the district court of jurisdiction—**that is, no live case or controversy existed between the parties after the Government's voluntary dismissal of the cross-appeal, Gov.-I, the August 18, 2009, Ware-I decision was entered without Article III jurisdiction and is therefore void ab initio.** See *Steel Co.*, 523 U.S. at 93-95. A judgment entered without jurisdiction cannot be accorded legal effect, cannot serve as a predicate for any subsequent judicial action, and cannot shield the authoring judges from accountability for the underlying Brady violations that infected the proceedings. *Steel Co.*, Id. Circuit Judges Kearsse and Sack, as authors of a void decision and “advisory,” cannot avail themselves of that **void | advisory** decision to legitimize their subsequent enforcement of a Brady-tainted conviction through the Nov. 5, 2010, LTF Order, Ex. 1, *infra*.

Adjudicative Fact 36.6--The November 5, 2010 Leave-to-File Order as an Act of Judicial Misconduct and Bad Faith. See Ex. 1, *infra*.

The moot and void ab initio November 5, 2010, LTF Order (reproduced in the second attached document) was issued by the identical panel—Judges Kearsse, Sack, and Hall—that had authored the void and “advisory” and moot August 18, 2009 Ware-I decision. The LTF Order characterized as “frivolous” a series of motions filed by Mr. Ware, including a motion “to hold Assistant United States Attorneys in criminal contempt” (filed August 10, 2009) and a motion “to compel the United States to certify that a former SEC lawyer did not bribe a district judge” (filed September 7, 2010), among others.

Each of these motions was, in substance, a demand for judicial enforcement of the Brady Court Order and an effort to expose the pattern of Brady concealment documented in the Kearsse Letter. Ex. 2, *infra*. The Panel's deliberate and bad faith mischaracterization of Brady enforcement motions as “frivolous”—while simultaneously withholding from the docket any reference to the Perjury Contracts—is inconsistent with the application of the *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) standard in good faith. A motion grounded in documented, undisclosed Brady evidence cannot be “based on an indisputably meritless legal theory” or present “factual contentions [that] are clearly baseless” when the underlying Brady evidence confirming the motion's factual premises existed in the court's own appellate record—the concealed and suppressed Sept. 22, 2006, alleged

Rule 11 and USSG 5k1.1 perjury contracts and related judicial court records in the possession of former District Judge Pauley, the USAO, and the Court of Appeals.

Adjudicative Fact 36.7--Violation of 18 U.S.C. § 401(3): Contempt of the Brady Court Order.

Title 18 U.S.C. § 401(3) provides that a United States court has power to punish "[d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command." The May 19, 2006, Dkt. 17 (Pauley, J.), 05-cr-1115 (SDNY) Brady Court Order was a "lawful . . . order" of the United States District Court for the Southern District of New York, binding upon all parties and counsel of record, and enforceable by the Second Circuit in its appellate capacity.

The following acts and omissions by Circuit Judges Kearsse and Sack constitute disobedience of and resistance to the Brady Court Order within the meaning of 18 U.S.C. § 401(3), actionable in their individual and personal capacities to the extent such acts were taken outside the scope of legitimate judicial function or in bad faith:

- (a) failing to order the government to produce the Perjury Contracts when adjudicating the Brady-related claims in Ware-I;
- (b) issuing the August 18, 2009, Ware-I decision without requiring compliance with the Brady Court Order as a threshold condition;
- (c) characterizing Brady enforcement motions as "frivolous" in the LTF Order; and
- (d) using the LTF Order as a permanent barrier to Mr. Ware's ability to seek enforcement of the Brady Court Order. Each of these acts, taken individually and cumulatively, evidences knowing and deliberate disobedience of the Brady Court Order.

Adjudicative Fact 36.8--Violation of 18 U.S.C. § 2071(b): Concealment of Public Judicial Records.

Title 18 U.S.C. § 2071(b) imposes criminal liability **upon any person** "having the custody of any such record, proceeding, map, book, document, paper, or other thing, [who] willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same," with the

additional consequence **that such person "shall forfeit his office and be disqualified from holding any office under the United States."**

The appellate record of the Second Circuit in Nos. 07-5222-cr and 07-5670-cr constituted "records" and "proceedings" within the meaning of § 2071(b). District Judges Ramos, Taylor-Swain, DeArcy-Hall (EDNY), Magistrates (SDNY) Peck and Dolinger; and Circuit Judges Kearsse, Sack, Cabranes, Livingston, Lohier, and Hall (deceased) as judicial officers with custody of and access to that appellate record, *were charged with the duty to identify and act upon any discrepancies between the docket record and the underlying transcripts*—including the conspicuous absence of Docket Entry 24 from the CM/ECF docket and the non-disclosure of the alleged September 15, 2006, perjury plea agreement, and the USSG 5k1.1 perjury cooperation contract.

Their deliberate, intentional, and willful criminal failure (18 USC §§ 241, 242) to compel production of those records, and their affirmative use of the LTF Order to prevent further disclosure demands, constitutes conduct that, if willful, violates § 2071(b) and subjects them to its disqualification consequences.

Adjudicative Fact 36.9--Violation of 42 U.S.C. §§ 1985(2) and (3): Conspiracy to Obstruct Justice and Deny Equal Protection.

Title 42 U.S.C. § 1985(2) prohibits two or more persons from conspiring "for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice . . . with intent to deny to any citizen the equal protection of the laws." Title 42 U.S.C. § 1985(3) prohibits two or more persons from conspiring "for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws."

The combined conduct of Circuit Judges Kearsse, Sack, Hall; District Judges Pauley, Ramos, DeArcy-Hall, Peck, and Dolinger, acting in concert and in collusion with the USAO in the fraudulent and completely bogus issuance of the void Ware-I decision and the subsequent LTF Order, satisfies the elements of a § 1985(2) and § 1985(3) conspiracy to the extent such conduct: (a) involved two or more persons (Judges Kearsse, Sack, Hall, Lohier, Cabranes, Livingston, Pauley, Peck, Dolinger, and DeArcy-Hall, at minimum); (b) was directed at impeding the due

course of justice by permanently foreclosing Brady enforcement proceedings; and (c) was intended to deprive Mr. Ware—a citizen of the United States—of his equal protection rights, specifically his right to receive Brady-compelled disclosure of exculpatory and impeachment evidence that every criminal defendant is constitutionally entitled to receive under *Brady v. Maryland*, 373 U.S. 83 (1963).

Adjudicative Fact 36.10--Disqualifying Bias Under 28 U.S.C. § 455: The Appearance of Partiality and Actual Conflict of Interest.

Title 28 U.S.C. § 455(a) requires disqualification whenever a judge's "impartiality might reasonably be questioned." Section 455(b)(1) mandates disqualification where the judge "has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding."

A reasonable, objective observer—possessed of knowledge of (a) the Panel's authorship of the August 18, 2009 Ware-I decision; (b) the existence of the Perjury Contracts (confirmed by the Kirton Letter filed in the court's own docket); (c) the Panel's receipt and characterization as "frivolous" of Mr. Ware's Brady enforcement motions; and (d) the Panel's use of the LTF Order to extinguish further Brady enforcement efforts—would necessarily question the impartiality of Judges Kearsse and Sack. Such conduct satisfies both the objective § 455(a) standard and the personal bias/personal knowledge standard of § 455(b)(1). **Because the disqualifying bias arose from, and was compounded by, Judges Kearsse's and Sack's own extrajudicial conduct in suppressing the Perjury Contracts, no principle of judicial immunity insulates them from the disqualification consequences or from accountability in their individual and personal capacities.**

Adjudicative Fact 36.11--The EOUSA FOIA Response: Continuing Brady Violation and Government Complicity.

The March 20, 2023, EOUSA response (Request No. EOUSA-2023-000907), reproduced as Exhibit 5 to the Kearsse Letter, (Ex. 2, *infra*), constitutes an official government document confirming that the USAO SDNY maintains "over 15 boxes of records" potentially responsive to Mr. Ware's Brady-related FOIA request, *none of which have been searched or produced as of the date of the response*. This official government acknowledgment independently establishes that: (a)

the government continues to possess Brady material; (b) that material has not been produced in over seventeen (17) years since the commencement of the 1115 Proceeding; and (c) the government's ongoing non-disclosure is willful, deliberate, and in bad faith.

The EOUSA response further constitutes affirmative evidence that the Brady Court Order has never been complied with and remains in contempt by the government. **Circuit Judges Kearsse and Sack, by virtue of their actions in Ware-I and the LTF Order, affirmatively enabled and facilitated this continuing Brady violation by neutralizing Mr. Ware's ability to judicially enforce the Brady Court Order. Their conduct is therefore causally linked to the continued deprivation of Mr. Ware's constitutional and statutory rights.**

Adjudicative Fact 36.12--Relief Warranted: Civil and Criminal Contempt; Disqualification; and Vacatur of the LTF Order.

On the basis of Adjudicative Facts 36.1 through 36.11, each of which is subject to mandatory judicial notice pursuant to Fed. R. Evid. 201(c)(2) from official, undisputed public records and government documents, the following relief is warranted and hereby requested:

- (a) A finding of civil and criminal contempt against Circuit Judges Amalya L. Kearsse and Robert D. Sack, Raymond Lohier, Jose Cabranes, Debra Ann Livingston, and others; District Judges Ramos, Taylor-Swain, and DeArcy-Hall; Magistrates Andrew J. Peck, and Michael H. Dolinger, in their individual and personal capacities, for their disobedience of the May 19, 2006 Brady Court Order (Dkt. 17), *United States v. Ware*, No. 05-cr-1115 (S.D.N.Y.), pursuant to 18 U.S.C. § 401(3);
- (b) Immediate vacatur of the moot November 5, 2010, leave-to-file order in *United States v. Ware*, Nos. 07-5222-cr and 07-5670-cr (2d Cir.); and 09-0851 (2d Cir.) as an unconstitutional abridgment of Mr. Ware's First Amendment right of access to the courts and a product of biased, bad-faith judicial conduct;
- (c) A judicial determination that Circuit Judges Kearsse, Sack, Lohier, Cabranes, and Livingston; and District Judges Ramos, Taylor-Swain, Garnett, DeArcy-Hall, and Polk-Failla, are disqualified from any further participation in any proceeding touching upon

United States v. Ware, Nos. 05-cr-1115 (S.D.N.Y.), 04-cr-1224 (S.D.N.Y), and 07-5222cr / 07-5670cr (2d Cir.)/09-0851 (2d Cir.), pursuant to 28 U.S.C. § 455(a) and (b)(1);

(d) An order compelling the USAO SDNY to immediately produce the complete Perjury Contracts—including the September 15, 2006 plea agreement, the Rule 11 transcript, the U.S.S.G. § 5K1.1 cooperation agreement, and all related court records—to Mr. Ware, consistent with the Brady Court Order, *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972); and

(e) Such additional relief as the Court deems just and proper to remedy the ongoing and continuing Brady violations, restore the integrity of the judicial record, and vindicate Mr. Ware's Fifth Amendment due process rights and his First Amendment right of access to the courts.

Adjudicative Fact 36.13 — Jones's Designation as "The Government's Principal Witness" and the Compounded Brady/Giglio Violation.

It is an indisputable adjudicative fact, subject to mandatory judicial notice pursuant to Fed. R. Evid. 201(c)(2), that Circuit Judge Amalya L. Kearsse, writing for the panel in *United States v. Ware*, 577 F.3d 442, **445** (2d Cir. 2009), expressly designated Jeremy Jones as "the government's **principal witness**." This designation, drawn directly from the panel's own published opinion, establishes the following irrefutable legal conclusions:

(a) Jones was the linchpin of the government's case. Without Jones, there was no witness who could purportedly testify to Mr. Ware's knowledge of and direction over the press-release scheme. Every other government witness (Epps, Williams, Sadler, Jackson) was subordinate to Jones in the government's case.

(b) The non-disclosure of Jones's Rule 11 plea agreement and U.S.S.G. § 5K1.1 cooperation contract — suppressed in defiance of the May 19, 2006, Brady Court Order (Dkt. 17) — constituted a per se material Brady violation under *Giglio*, 405 U.S. at 154: "[W]here the 'reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within [Brady]." (quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959)).

(c) The panel's decision to designate Jones the 'principal witness' while simultaneously refusing to order disclosure of the Perjury Contracts — documents that would have destroyed Jones's credibility — reflects either reckless, irresponsible willful blindness or knowing complicity in the ongoing suppression of Brady material, likely the latter. Either constitutes disqualifying judicial conduct under 28 U.S.C. § 455(a)-(b)(1).

(d) District Judge Pauley's corroborating statement at sentencing that *Jones was 'a crucial witness for the government, in my view, in securing a conviction'* independently confirms that the conviction rested entirely upon the testimony of a secretly, corrupt cooperating witness whose deal the jury never knew about. A conviction secured on this basis is constitutionally void.

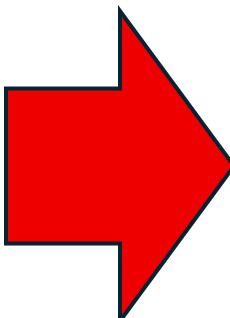
Adjudicative Fact 36.14 — The SEC's ¶33 Judicial Admission as Absolute Brady Exculpatory Evidence and Total Impeachment of the Kearsse Opinion's "Artificial Inflation" Finding.

It is an indisputable adjudicative fact, subject to mandatory judicial notice pursuant to Fed. R. Evid. 201(c)(2), that in *SEC v. Ware*, No. 03-0831 (D. Nev.), Complaint Dkt. 1, ¶33 (July 14, 2003), Ex. 3, *infra*, the United States Securities and Exchange Commission — as the designated legal and litigation proxy of the United States, **the real party in interest in both 03-0831 and 05-cr-1115** — made the following binding judicial admission: that the promotional press releases of INZS and SVSY **"did not have the intended effect of increasing the company's stock price."** This admission operates as follows:

(a) Judicial and Equitable Estoppel: Under *New Hampshire v. Maine*, 532 U.S. 742, 749-51 (2001), *this admission absolutely estops the United States from maintaining in any subsequent proceeding — including 04-cr-1224, 05-cr-1115, or 07-5222-cr — that the same press releases artificially inflated stock prices.* The government cannot prevail in 2007-2009 on a theory it expressly abandoned in a federal court complaint in 2003.

(b) Brady Exculpatory Evidence: The SEC’s 2003 ¶33 judicial admission constitutes the most powerful category of Brady exculpatory evidence: *a government document, filed in a federal court proceeding, by the Government’s own securities regulator, directly negating the essential element of the offense charged.* Under *Brady v. Maryland*, 373 U.S. 83, 87 (1963), this evidence was required to be disclosed to Mr. Ware prior to trial. Its suppression — by the USAO, which had access to the 03-0831 complaint, and the Kearsse panel — was a deliberate, calculated act of prosecutorial and judicial fraud that vitiated all probable cause for the arrest, indictment, and prosecution of Mr. Ware.

(c) Total Impeachment of Kearsse J.’s Panel’s 2009 “Artificial” “Inflation” of Stock “Prices” Finding: The Kearsse panel at 577 F.3d 445 sustained Mr. Ware’s alleged moot and void ab initio Oct. 2007 (Pauley, J., 05-cr-1115 (SDNY) Dkt. 99, S. Tr. 31 L 18-25; S. Tr. 35-36) conviction by accepting the government’s manufactured and debunked by (i) the SEC in 2003 at ¶33 of the 03-0831 (D. NV) complaint, see Ex. 3, *infra*, risible trial theory, and (ii) by alleged “FBI analyst” April 2007 disastrous and devastating cross-examination, perjured testimony of Maria A. Font (see Ex. 4, *infra*), that Jones’ known, perjured trial testimony established Ware directed a scheme producing *artificial inflation of stock prices.* This finding is irreconcilably contradicted by the government’s own 2003 ¶33 judicial admission that the press releases produced no price increase. *The Kearsse opinion is therefore factually false and legally infirm on its foundational premise. An appellate opinion that rests on a factual predicate the government had already judicially confessed was untrue cannot stand as a valid exercise of Article III judicial power.*



(d) Jurisdictional Consequence: *Because the SEC’s 2003 ¶33 judicial admission pleaded on the face of the 03-0831 (D. NV) complaint demonstrates that the press releases were legally immaterial, pleaded the United States out of court — producing no price effect and no cognizable securities fraud injury — the 05-cr-1115 indictment failed to charge an offense under 18 U.S.C. § 3231 as a matter of law.* Accordingly, the District Court (Pauley, J.) lacked statutory subject matter jurisdiction over the 05-cr-1115 proceedings, and the purported conviction and sentence entered therein are null and void ab initio. See *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 93-95 (1998) (Scalia,

J.) (subject matter jurisdiction is a threshold issue that a court must raise and resolve sua sponte; if lacking, the court's only remaining function is to dismiss the cause).

Adjudicative Fact 36.15 — The Combined Effect: A Prosecution Built on Concealed Perjury and Judicially Admitted Falsity.

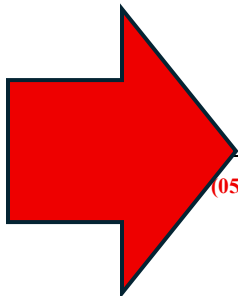
The combined effect of AF 36.13 and AF 36.14 is legally devastating and admits of no innocent explanation. The architecture of the prosecution, as now revealed by irrefutable documentary evidence, is as follows:

Step 1 — The government's own SEC filed a complaint in **2003** (03-0831 D. NV) admitted on the face of the complaint that the press releases **did not cause** an **increase** in **stock prices** (¶33 admission). This admission nullified the theoretical and factual basis for any Government probable cause and fraud-on-the-market trial theory prosecution.

Step 2 — Despite ¶33, the USAO deliberately and intentionally to retaliate against Mr. Ware for his refusal to issue the bogus and fraudulent Rule 144(k) legal opinions, brought the moot and void 05-cr-1115 indictment in **2005** based on the contrary theory, **using FBI agent Makol's perjured and fraudulent arrest warrant affidavit that rested on the artificial inflation theory the government had already abandoned in 2003 during the 03-0831 (D. NV) proceedings.**

Step 3 — To prove the impossible (inflation that ¶33 conceded did not occur), the USAO procured and fraudulently induced CJA lawyer Marlon G. Kirton and Jeremy Jones's corrupt perjury cooperation via a secret Rule 11 plea and § 5K1.1 contract, suborned Jones's perjury at trial (including testimony that the press releases had a 'discernible effect' on stock price — Tr. at 12, l. 15-19), and suppressed the Perjury Contracts from Mr. Ware in willful resistance to and defiance of the 05-cr-1115 (SDNY) District Court's May 19, 2006, Dkt. 17, Brady Court Order, Pauley, J.

Step 4 — When the government's own alleged "FBI analyst" Maria Font at trial in April 2007, admitted, in tears, under devastating, brutal, and thorough cross-examination by Mr.



Ware, that she and the Government had no evidence the press releases affected stock prices, or that anyone ever actually read any press release, the prosecution's artificial inflation, fraud-on-the-market trial theory collapsed under its own weight at trial from the witness stand. See Ex. 4, *infra*.

Step 5 — On Oct. 12, 2007, AUSA Feldman under the pressure Mr. Ware place him under, crumbled and capitulated, and then conceded and judicially admitted in open court at sentencing, (Doc. 05-D.1, Ex. N), **that the government could not prove market efficiency — a judicial admission that the theory underlying the conviction was legally unproven beyond a reasonable doubt for insufficient trial evidence.** (05-cr-1115, Dkt. 99, Sentencing Tr. at 35-36.). **AUSA Feldman as a matter of law and fact announced Mr. Ware's actual innocence on all charges in open court on Oct. 12, 2007.**

Step 6 — Despite all of the above, the Kearsse panel at 577 F.3d at 445 fraudulently reconstructed and validated the government's debunked artificial inflation theory, relying on Jones's perjured testimony as the narrative backbone, without once acknowledging: (a) ¶33; (b) Font's trial concession; (c) Feldman's sentencing admission; (d) Jones's hidden cooperation deal.

This six-step architecture constitutes a complete fraud on the appellate court by the Government — and/or, worse, a knowing appellate ratification of a constitutionally void conviction, likely both.

Adjudicative Fact 36.16 — The Rule 144(k) Motive and 15 U.S.C. § 77b(a)(11) Predatory, Statutory Underwriter Status for Each 02-cv-2219 (SDNY) Plaintiff.

It is an indisputable adjudicative fact, subject to mandatory judicial notice pursuant to Fed. R. Evid. 201(c)(2), that the true motive for the prosecution of Mr. Ware in 05-cr-1115 was his lawful refusal to draft and issue bogus and legally fraudulent Rule 144(k) legal opinion letters enabling the plaintiffs in 02-cv-2219 (SDNY) to distribute unregistered, restricted securities in violation of the Securities Act of 1933, 15 USC § 77e, strict liability registration requirements, see SEC Release 33-7190 n.17 (1995). Those plaintiffs — Alpha Capital Anstalt, Amro International,

S.A., Markham Holdings, Ltd., and others — were FINRA-certified predatory, unregistered broker-dealers, see Ex. L, and statutory underwriters of Group Management Corp. securities within the meaning of 15 U.S.C. § 77b(a)(11), see GX 5, ¶10.1(iv),⁹ which defines the term "underwriter" to include "any person who has purchased from an issuer *with a view to . . .* the distribution of any security." 15 U.S.C. § 77b(a)(11).

As persons or entities who purchased convertible notes (GX 1, GX 2, GX 3, and GX 4), via GX 5, in 2001 from Group Management Corp. ***with a view to converting them into equity and distributing that equity into the public market***, (cf., GX 5, ¶10.1(iv)) the 02-cv-2219 plaintiffs ***were not bona fide investors***, but, were in fact 15 USC § 77b(a)(11) statutory underwriters prohibited by Section 5 of the Securities Act from selling unregistered securities without a valid registration statement. See SEC Release 33-7190 n. 17 (1995) (same); also see *Gilligan, Will & Co. v. SEC*, 267 F.2d 461, 466-68 (2d Cir. 1959) (“The Commission was justified in concluding that petitioners ***were not investors but were acting as conduits for a public distribution***.”) (emphasis added).

Mr. Ware refused — consistent with his professional and ethical obligations as a licensed attorney — to issue fraudulent and bogus Rule 144(k) legal opinions in violation of federal law by facilitating securities law violations on behalf of predatory statutory underwriters. **The government's response was to engineer a prosecution in which Jones (himself the sole participant in the press-release scheme, who received three years' probation in exchange for perjury) was deployed as the 'principal witness' to falsely characterize Mr. Ware as the architect of a securities fraud scheme.** The 04-cr-1224 and 05-cr-1115 prosecutions were retaliatory, pretextual, constitutionally impermissible, and rested on a theory the government had already judicially abandoned in 2003.

PART E: CONSOLIDATED RELIEF DEMANDED

⁹ *U.S. v. Ware*, 04-cr-1224 (SDNY) trial exhibit—the Government’s so-called predatory, criminal usury “subscription agreement.”

Based upon AF 36.1 through AF 36.16, each of which is subject to mandatory judicial notice under Fed. R. Evid. 201(c)(2) from official, undisputed, and authoritative records, Mr. Ware respectfully demands the following relief:

(1) Immediate mandatory judicial notice, pursuant to Fed. R. Evid. 201(c)(2), of all 16 adjudicative facts established herein, including the pin cite at *United States v. Ware*, 577 F.3d 442, 445 (2d Cir. 2009) designating Jones as "the government's principal witness," and the SEC's binding ¶33 admission in 03-0831 (D. Nev.).

(2) A judicial declaration that the August 18, 2009, *United States v. Ware*, 577 F.3d 442 (2d Cir. 2009) decision is void ab initio for the following independently sufficient reasons:

(a) it rested on Jones's perjured testimony, the materiality of which is established by the panel's own designation of Jones as 'principal witness';

(b) it affirmed a conviction predicated on a theory — artificial inflation of stock prices — that the government had judicially abandoned in ¶33 of its 2003 SEC complaint; and

(c) it was decided after the Court of Appeals lost Article III jurisdiction when the USAG voluntarily dismissed Gov-I (07-5670-cr) with prejudice on November 7, 2008.

(3) Immediate vacatur of the November 5, 2010, leave-to-file order, which was issued by the identical panel that authored the void Ware-I decision, constitutes a continuing instrument of Brady suppression, and was entered in bad faith to immunize the panel from accountability for the matters identified herein.

(4) Immediate order compelling the USAO (SDNY) to produce the complete Perjury Contracts (Jones's Rule 11 plea agreement of September 15, 2006; the Rule 11 allocution transcript; the U.S.S.G. § 5K1.1 cooperation contract; all related records), as required by the unenforced May 19, 2006, Brady Court Order (Dkt. 17).

(5) A civil and criminal contempt finding against Circuit Judges Kearsse, Sack, Cabranes, Lohier, and Livingston; and Judges Ramos, Taylor-Swain, DeArcy-Hall (EDNY), Dawson (D. NV), Dolinger, Peck, Garnett, and Polk-Failla, in their individual and personal capacities pursuant to 18 U.S.C. § 401(3), for knowing and deliberate disobedience of the Brady Court Order(s), including Dkt. 32, 04-cr-1224 (SDNY), through: (a) failing to order production of the Perjury Contracts when adjudicating Ware-I; (b) characterizing Brady enforcement motions as 'frivolous' while concealing the evidence that validated those motions; and (c) using the LTF order as a permanent barrier to Brady enforcement.

(6) A judicial declaration that Judges Kearsse, Lohier, Cabranes, Livingston, Ramos, Taylor-Swain, Garnett, Polk-Failla, DeArcy-Hall, Dawson, Peck, Dolinger, and Sack are disqualified from further participation in any proceedings related to *United States v. Ware* under 28 U.S.C. § 455(a) and § 455(b)(1), given their demonstrable disqualifying bias, personal knowledge of disputed evidentiary facts, and conduct constituting independent violations of 18 U.S.C. §§ 401(3) and 2071(b) and 42 U.S.C. §§ 1985(2)-(3).

(7) A judicial declaration that Mr. Ware is actually and factually innocent of all charges in 04-cr-1224 and 05-cr-1115, based upon: (a) the SEC's ¶33 binding judicial admission that the press releases did not increase stock prices; (b) the government's own FBI analyst's trial concession; (c) AUSA Feldman's sentencing admission of the government's inability to prove market efficiency; (d) Jones's own SEC deposition testimony disavowing the conspiracy; and (e) the Rule 29 acquittals in October 2007, rendered constitutionally final by the November 7, 2008, voluntary dismissal with prejudice of Gov-I.

Respectfully submitted,

Ulysses T. Ware, Defendant-Appellant

The Office of Ulysses T. Ware

123 Linden Blvd., Ste. 9-L

Brooklyn, NY 11226

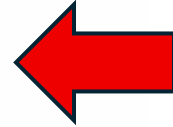
(718) 844-1260 | Utware007@gmail.com

February 24, 2026

Exhibit

1. Exhibit S—Nov. 5, 2010, Fraudulent leave to file order (LTF)—entered by Circuit Judges Kearsse, Sack, and Hall (deceased) to deny Mr. Ware access to actual innocent Brady exculpatory and impeachment evidence; and to cover up, conceal, and hide Jeremy Jones’ fraudulent and bogus Rule 11 and USSG 5k1.1 perjury contracts.

S.D.N.Y.
05-cr-1115
Pauley, J.



United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 5th day of November, two thousand ten,

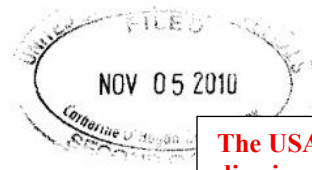


Present:



Amalya L. Kearsse,
Robert D. Sack,
Peter W. Hall,

Circuit Judges.



United States of America,

Appellee-Cross-Appellant,

v.

07-5222-cr(L),
07-5670-cr(Con)

Ulysses Thomas Ware, also known as Thomas Ware,

Defendant-Appellant-Cross-Appellee.

The USAO on Nov. 7, 2008, voluntarily dismissed Gov-I with prejudice which triggered the Double Jeopardy Clause’s absolute finality in favor of Mr. Ware with respect to the now moot 05-cr-1115 (SDNY) proceedings—the Government conceded that the market for INZS and SVSY’s securities was not efficient, which blew up the Government’s 05-cr-1115 indictment, and acquitted Mr. Ware and Jones of all charges. See Ex. H, infra.

By order dated October 8, 2010, we instructed Appellant Ulysses Thomas Ware to show cause why he should not be required to obtain permission of the Court before making future filings in this Court, in light of his past frivolous motions. Ware’s only response was to demand that this Court identify with particularity the frivolous motions he has filed. Our procedure requires that we give a litigant an opportunity to show cause why a leave-to-file requirement should not be imposed, *see In re Martin-Trigona*, 9 F.3d 226, 229 (2d Cir. 1993), and, if the litigant fails to show why sanctions are not appropriate, we will issue a sanctions order, *see Board of Managers for 2900 Ocean Ave. Condo. v. Bronkovi*, 83 F.3d 44, 45 (2d Cir. 1996) (per curiam).



Due process required specificity and particularity regarding each alleged frivolous motion be provided BEFORE any alleged sanction was imposed. But there were no frivolous motion ever filed by Mr. Ware by seeking access to Jeremy Jones’ concealed and removed Rule 11 and USSG 5k1.1 judicial court records—actual innocent Brady exculpatory and impeachment evidence in the possession the USAO (SDNY), the District Court (SDNY), and the Second Circuit Court of Appeals. A knowing and intentional complete scam and a fraud on the court by Kearsse, Sack, and Hall, JJ.

A filing is frivolous if it lacks an arguable basis in law or fact — *i.e.*, if it is “based on an indisputably meritless legal theory” or presents “factual contentions [that] are clearly baseless.” *Neitzke v. Williams*, 490 U.S. 319, 325, 327 (1989). As a former attorney, Ware knew or should have known that many of the motions he filed in this case were frivolous. *See, e.g.*, Mot. filed 3/24/2008 (to compel the Bureau of Prisons to, *inter alia*, provide a typing ribbon for a Swintec 7000 typewriter); Mot. filed 4/10/2008 (to dismiss the indictment and appoint a special prosecutor to investigate a district judge, the United States Attorney, and his own former counsel); Mot. filed 5/26/2009 (“for an Order of Referral to the Securities and Exchange Commission’s Enforcement Division and Referral to the Department of Justice’s Criminal Division of the Individuals, Proxies, Surrogates, and Alter-Egos of the Badian Gang”); Mot. filed 6/2/2009 (essentially the same); Let. filed 6/10/2009 (informing the Chief Judge of supposed judicial misconduct by certain district judges in failing to prevent his “illegal arrest”); Mot. filed 8/10/2009 (to hold Assistant United States Attorneys in criminal contempt); Mot. filed 9/7/2010 (to compel the United States to certify that a former SEC lawyer did not bribe a district judge to enter a certain order). Ware has continued to file frivolous motions in a more recent criminal appeal. *See, e.g.*, Mot. filed 5/20/2009 in No. 09-0851-cr (to compel a magistrate judge, via writ of mandamus, to issue arrest warrants for a number of judges, Assistant United States Attorneys, and other lawyers); Mot. filed 8/10/2009 in No. 09-0851-cr (to refer the members of this panel to the Department of Justice for misprision of felony).

Afforded an opportunity to explain his filings, Ware has elected not to do so. Because Appellant has failed to show cause why a leave-to-file sanction should not be imposed, it is hereby ORDERED that the Clerk of the Court refuse to accept for filing any further submissions from Appellant unless he first obtains leave of the Court to file such papers.

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk



Note that Kearsse, Sack, or Hall did not state any legal or factual reason why the alleged motions were frivolous—exactly because there was no reason for Mr. Ware to not file a motion to enforce Judge Pauley’s May 19, 2006, Dkt. 17, Brady court order, see Ex. B, supra, seeking access to Jeremy Jones’ alleged Sept. 22, 2006, Rule 11 and USSG 5k1.1 judicial court records, cf., Ex. E, supra (Kirton’s ltr to Pauley confirming the existence of Rule 11 and 5k.1 records) then actively being concealed by Judges Dolinger, Pauley, Kearsse, Sack, and Hall, and the USAO (SDNY)—a conspiracy to obstruct the due administration of justice.

2. April 26, 2023 letter to Circuit Judges Kearsse and Sack seeking access and production of the alleged Jones' Rule 11 and USSG 5k1.1 perjury contracts, and related judicial court records.

07-5222cr/07-5670-cr (XAP) (01)

**United State Court of Appeals
For the Second Circuit**

The Office of Ulysses T. Ware

123 Linden Blvd.

Ste 9-L

Brooklyn, NY 11226

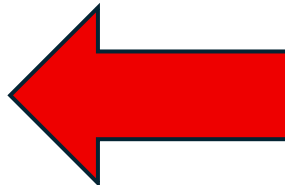
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Filed on April 26, 2023, 10:05:22 AM

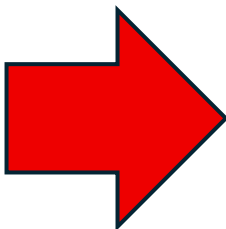
Deliver to Circuit Judge Amalya L. Kearsse and Robert D. Sack.

Via email to the Office of Hon. Circuit Judges
Amalya L. Kearsse and Robert D. Sack
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall Courthouse
40 Foley Sq.
New York, NY 10007



Re: **United States v. Ware**, 07-5222cr (Ware-I)/07-5670cr (XAP) (Gov-I):

(1) Immediate production and disclosure of the alleged September 2006 (i) Rule 11 perjury contract, (ii) USSG 5k1.1 perjury cooperation contract, jointly, (the "Perjury Contracts"), and (iii) related judicial court records associated with the government's "principal witness" a person who is claimed to be "Jeremy Jones;" and (2) **a judicial referral to the Director of the FBI to open a criminal investigation regarding the theft of the alleged Sept. 2006 Perjury Contracts.**



Submitted by:
The Office of Ulysses T. Ware
Ulysses T. Ware
/s/ Ulysses T. Ware.

Page 1 of 23

Wednesday, April 26, 2023

Re: Immediate Brady production and disclosure of the alleged Sept. 2006 Rule 11 and USSG 5k1.1 perjury contracts regarding the government's "principal witness" in U.S. v. Ware, 05cr1115 (SDNY), a person **claimed to be** "Jeremy Jones."

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End of Document.....	23

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Wednesday, April 26, 2023

Re: Immediate Brady production and disclosure of the alleged Sept. 2006 Rule 11 and USSG 5k1.1 perjury contracts regarding the government’s “principal witness” in *U.S. v. Ware*, 05cr1115 (SDNY), a person **claimed to be** “Jeremy Jones.”

Dear Circuit Judges Kearsse and Sack:

Introduction.

Mr. Ware, the appellant (Ware-I)/cross-appellee (Gov-I) in the appeals writes to the U.S. Court of Appeals for the Second Circuit, and to you in your official capacity as an Article III United States Circuit Judge, subject to the Code of Conduct for Federal Judges, regarding the troubling conduct of you and the Court in the matter of Ulysses T. Mr. Ware—*U.S. v. Ware*, 07-5222cr (Ware-I)/07-5670cr (XAP) (Gov-I) (2d Cir. 2009).

The Court's deliberate and intentional suppression and concealment of the Perjury Contracts—that is, the government's "principal witness" in the *U.S. v. Ware*, 05cr1115 (SDNY) proceeding: (i) the alleged September 22, 2006, Rule 11 *perjury* contract, and (ii) the alleged USSG 5k1.1 *perjury* cooperation agreement, jointly, (the "**Perjury Contracts**"), judicial public records, and the failure to provide Mr. Ware with First Amendment and Brady access to these Perjury Contracts raises serious concerns about the integrity of our judicial system *and your judicial fitness to continue to serve as an Article III federal judge.*¹

Judge Kearsse the record is clear that you and the Court have violated specific provisions of the Code of Conduct for Federal Judges, including Canon 2, which requires judges to avoid impropriety and the appearance of impropriety in all activities, and Canon 3, which requires judges to perform the duties of their office impartially and diligently. By suppressing and

¹ See Ex. 1-4, *infra*.

Page 3 of 23

Wednesday, April 26, 2023

Re: Immediate Brady production and disclosure of the alleged Sept. 2006 Rule 11 and USSG 5k1.1 perjury contracts regarding the government's "principal witness" in *U.S. v. Ware*, 05cr1115 (SDNY), a person **claimed to be** "Jeremy Jones."

3. United States SEC July 2003 complaint filed in SEC v. Ware, et al., 03-0831 (D. NV), paragraph 33—binding judicial admission on behalf of the United States, the real party in interest in 03-0831 (D. NV) and 05-cr-1115 (SDNY) regarding the immateriality of press releases. July 2003, the SEC’s 03-0831 D. NV) Complaint’s paragraph 33—judicial admission of no “artificial inflation” of stock “price”—suppressed and concealed actual innocent Brady exculpatory and impeachment evidence, suppressed and concealed by the USAO (SDNY), the SEC, Judges Pauley, Dawson (D. NV), Dolinger, Peck, Kearsse, Sack, Hall, Ramos, DeArcy-Hall, AUSAs Southwell, Feldman, Goldin, Douvas, Fish, and Damian Williams, et al.

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SEC/DOJ's unsigned complaint.

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

vs.

INVESTMENT TECHNOLOGY, INC.,
THOMAS D. VIDMAR,
ROSENFIELD, GOLDSMAN & WARE, INC.,
ULYSSES "THOMAS" WARE,
SMALL CAP RESEARCH GROUP, INC.,
and CENTENNIAL ADVISORS, L.L.C.,
Defendants.

COMPLAINT

Plaintiff, Securities & Exchange Commission ("Commission"),
alleges as follows:

SUMMARY

1. This case involves a fraudulent "pump and dump" scheme involving the common stock of Investment Technology, Inc. ("Investment Technology"), a shell corporation based in Las Vegas, Nevada. The stock

the market place concerning the track record and prospects of Investment Technology and its on-line casino operation. Through April 22, 2002, when the Commission issued a trading suspension of Investment Technology stock, Defendants jointly issued over 20 press releases or "analyst reports" under the names RGW, Small Cap and Centennial. The press releases and reports were prepared by, or under the direction of Ware, and approved in advance by Vidmar. The releases and reports were distributed over the business, were and several were posted on a financial website prepared by Ware.

30. The information disseminated into the market place by Defendants was rife with blatant misrepresentations and omissions. The releases and analysts reports, for example, referred to Investment Technology as "a leader in the on-line gaming industry" and touted the company's "experienced management", its "innovative marketing and costs structure," its "established customer base," and its "traffic growth." A February 7, 2002 release by Ware and Centennial Advisors made the outlandish claim that on February 3, 2003 alone, the day of the Super Bowl, Investment Technology scooped over 100,000 wagers, totaling more than \$4 million. The releases and reports recommended that readers should purchase Investment Technology stock, stating repeatedly that the stock was undervalued and projecting that the price of Investment Technology shares, then trading at prices ranging from \$0.17 to \$0.4, would quickly accelerate to a price of \$40 per share and could realistically be expected to attain a price of \$5.00 per share.

SEC v. Investment Technology, Inc., et al.
COMPLAINT

9133 below

SEC's concession of immateriality.

31. In reality, these glowing descriptions and rosy predictions had no basis in fact. Far from being the leader in the on-line casino business, the Investment Technology website did not generate a single cent of revenue for Investment Technology. Indeed, during the approximately three-month blitz of reports and press releases touting the company's casino operation and stock, not a single wager was placed on the on-line casino's website. Moreover, no wager has ever been made on the website at any time.

32. The reports produced by Ware, RGW, Small Cap Research, and Centennial presented their recommendations of Investment Technology and its stock in terms that led readers to believe the recommendations were objective and disinterested. None of the reports disclosed that Ware and/or RGW had received 7.5 million Investment Technology shares for their capital-raising and promotional efforts.

33. For the two months prior to the casino promotion, Investment Technology stock had an average daily volume of 194,000 shares. During the three-month campaign, the average daily volume increased to 757,000 shares traded, with volume in excess of 2 or 3 million on several days. The misleading and fraudulent promotional campaign did not have the intended effect of increasing the company's stock price, however, because of the demand generated by the dissemination of positive, but false, information about Investment Technology, Vidmar and Ware, as set forth below, were able to sell collectively approximately 8.8 million shares of Investment Technology stock without causing a complete collapse of the stock's price.

VI.
Enter an Order for such further relief as this Court may deem just and proper.

Not signed by Norris, cf. Dkt. #155 n.3 (03-0831) See Rule 11(a)

SEC/DOJ fraud on 11
Respectfully submitted,
Jeffrey B. Norris
JEFFREY B. NORRIS
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- ✓ ROBERT C. HANNAN Texas Bar No. 08924703
- ✓ JOHN C. MARTIN District of Columbia Bar No. 443435

SEC v. Investment Technology, Inc., et al.
COMPLAINT

SEC v. Investment Technology, Inc., et al.
COMPLAINT

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In 2003, the SEC's civil investigation concluded: (i) there was no conspiracy; (ii) there was no "artificial inflation" of stock "prices"; and (iii) there was no crime committed by Mr. Ware, Jones, or the other Government trial witnesses. The orchestrated 04-cr-1224 (SDNY) and 05-cr-1115 (SDNY) persecutions were reactionary, and retaliatory Jim Crow racially-motivated persecutions because Mr. Ware, an attorney at law, refused to draft and issues bogus and fraudulent Rule 144(k) legal opinions to enable the plaintiffs in 02-cv-2219 (SDNY), 15 USC § 77b(a)(11) statutory underwriters, and FINRA certified predatory, 15 USC § 78o(a)(1) unregistered broker-dealers, to conduct a Hobbs Act extortion of Mr. Ware's corporate client, Group Management Corp., (OTCBB: GPMT), then a publicly-traded company, out of +\$522 million in free-trading stock that would have enabled the 02-cv-2219 (SDNY) plaintiffs to cover a massive naked short position in GPMT's stock. See SEC Release 33-7190 n. 17 (1995) (statutory underwriters are strictly ineligible for Rule 144(k) exemption).

4. Alleged FBI analyst government trial witness Maria A. Font's **teary complete collapse and capitulation under devastating and brutal cross-examination by Mr. Ware in April 2007.** Maria A. Font, alleged "FBI Analyst" known perjury testimony in 05-cr-1115 (SDNY) April 2007, solicited and suborned by Judges Pauley, Kearsse, Sack, and Hall; AUSAs Alexander H. Southwell, Steven D. Feldman, Nicholas S. Goldin, Andrew L. Fish, Maria E. Douvas, and Michael J. Garcia. **Font blew up the Gov't case!**

Case 1:12-cv-04397-TWT Document 1-5 Filed 12/19/12 Page 38 of 49
SA-94
P. 37
51

Compare the USAO's witness (FBI analyst's chart testimony with the supervening case U.S. v. Ferguson, 653 F.3d 61 (2d. Cir. 2011) (rejecting chart evidence as "overly prejudicial" and "violated the substantial rights of the defendants." Id. at 75.

1 more pertinent points that he addressed.
2 I think Mr. Feldman's opening statement he said
3 alleged which is correct, your Honor, there is no information
4 at trial or here for restitution, that any press release caused
5 any stock -- INZS or SVSY -- to raise or to fall.
6 Now, Mr. Feldman wants to say the government brought
7 forth charts, Government Exhibit 92, 93, etc., during the trial
8 that "allege that a press release caused INZS, SVSY stock to
9 rise." But I want to take you to one of the government's
10 witnesses in that case, your Honor. That was Maria Font. She
11 testified on behalf of the government and under
12 cross-examination questions put to Ms. Font:
13 "Q. Is it your testimony that you do not know whether or not
14 press releases caused the volume to increase or decrease?
15 "A. I have no idea whether press releases did."
16 "Q. And is it also your testimony you have no way to determine
17 whether or not press releases were read by anyone or anyone
18 person, is that correct?
19 "A. I can't determine who read them."
20 "Q. Or if they were read at all, is that correct?
21 "A. I can't determine if they were read."
22 So you have the only government witness that testified
23 regarding government exhibits, the charts 92, etc., Ms. Font,
24 the FBI agent testify that she had no idea of whether or not
25 the press leases caused the stock to go up or down.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

The Gov't chart evidence (GX-92, GX-93 series), per Ferguson, supra "violated the substantial rights" of Mr. Ware ... the USAO's charts were "overly prejudicial" and violated Mr. Ware's due process rights.

8/25/2012

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