

1 THE CLERK: THANK YOU. PLEASE BE SEATED. WOULD YOU
2 PLEASE STATE AND SPELL YOUR FULL NAME FOR THE RECORD.

3 THE WITNESS: YES. LYNNE, L-Y-N-N-E, LAST NAME
4 DEWHURST-MCBURNEY, D-E-W-H-U-R-S-T HYPHEN M-C-B-U-R-N-E-Y.

5 THE COURT: THANK YOU. YOU MAY PROCEED.

6 MR. BLOOMFIELD: THANK YOU, YOUR HONOR.

7
8 DIRECT EXAMINATION

9 BY MR. BLOOMFIELD:

10 Q GOOD AFTERNOON, MS. DEWHURST. IS IT OKAY IF I
11 CALL YOU MS. DEWHURST?

12 A ANYTHING YOU LIKE.

13 Q OKAY.

14 MR. MANN: I'M SORRY. WHAT? WHAT NAME WOULD YOU
15 PREFER?

16 THE WITNESS: MY LAST NAME IS DEWHURST-MCBURNEY.

17 Q BY MR. BLOOMFIELD: MS. DEWHURST-MCBURNEY, WHAT
18 IS YOUR OCCUPATION?

19 A I'M A MANAGER OF LEGAL SERVICES AT E*TRADE
20 FINANCIAL.

21 Q WHERE ARE YOU BASED?

22 A I WORK IN THE SAN FRANCISCO BRANCH.

23 Q WHAT IS YOUR TITLE?

24 A MANAGER, LEGAL SERVICES.

25 Q HOW LONG HAVE YOU BEEN WITH E*TRADE?

26 A TEN YEARS AND FIVE MONTHS.

27 Q HAVE YOU ALWAYS BEEN IN THE LEGAL SERVICES
28 DEPARTMENT WITH E*TRADE IN THAT TEN YEARS AND FIVE MONTHS?

1 A WELL, I'M IN THE LEGAL AFFAIRS DEPARTMENT.
2 WHEN I STARTED, I WAS A SENIOR PARALEGAL. AND I THINK MY
3 TITLE CHANGED ABOUT A YEAR AND A HALF AGO.

4 Q SO DO YOU OVERSEE A NUMBER OF PEOPLE?

5 A NO.

6 Q CAN YOU DESCRIBE YOUR DUTIES WITHIN E*TRADE?

7 A ESSENTIALLY, I MANAGE LITIGATION, WHICH MEANS
8 THAT I MANAGE OUTSIDE COUNSEL WHEN THEY ARE REPRESENTING
9 THE COMPANY TYPICALLY IN DEFENSE MATTERS. I HANDLE ALL
10 TYPES OF THE DOCUMENTATION OF OUR FINANCIAL SERVICES
11 BUSINESS, BANKING AND BROKERAGE, FOR ARBITRATION,
12 LITIGATION, SUBPOENAES, REGULATORY INQUIRIES.

13 Q AND HAVE YOU RECEIVED TRAINING AND EXPERIENCE
14 RELEVANT TO YOUR JOB NOW?

15 A WELL, I WAS A TRIAL PARALEGAL FOR TEN YEARS,
16 AND IN THE TEN YEARS THAT I'VE BEEN AT E*TRADE, I HAVE
17 BECOME FAMILIAR WITH THE OPERATIONS OF THE COMPANY SO THAT
18 I CAN PRODUCE DOCUMENTS THAT ARE RELEVANT TO THOSE
19 OPERATIONS.

20 Q NOW, WE'VE ALL PROBABLY SEEN THE ADS, BUT JUST
21 FOR A LITTLE BIT OF BACKGROUND, CAN YOU TELL US WHAT
22 E*TRADE IS, WHAT IT DOES?

23 A E*TRADE FINANCIAL CORPORATION IS PARENT OF
24 FINANCIAL SERVICES GROUP OF COMPANIES. WE HAVE A BANK, WE
25 HAVE A RETAIL BROKERAGE, WE HAVE AN INVESTMENT ADVISORY
26 SERVICE, AND UNTIL LAST YEAR WE HAD AN INSTITUTIONAL
27 BROKERAGE THAT DEALT WITH BIGGER CUSTOMERS, BIGGER MONEY.

28 Q DOES E*TRADE CONSIDER ITSELF AN ONLINE COMPANY?

1 THE SCREENS TO POPULATE AN ONLINE ACCOUNT.

2 Q WHAT KIND OF INFORMATION DO YOU NEED TO PROVIDE
3 AS YOU OPEN AN E*TRADE ACCOUNT?

4 A YOU HAVE TO HAVE NAME, DATE OF BIRTH, ADDRESS,
5 PHONE NUMBER, A FORM OF I.D. SO THAT, IN OTHER WORDS, IF
6 YOU HAVE A CALIFORNIA DRIVER'S LICENSE, YOU WOULD PUT IN
7 THAT LETTER AND SEVEN DIGITS.

8 Q YOU'RE TALKING ABOUT A DRIVER'S LICENSE NUMBER?

9 A RIGHT.

10 Q SO YOU DON'T ACTUALLY SEND THE DRIVER'S LICENSE
11 TO E*TRADE?

12 A NO.

13 Q WHAT ELSE?

14 A NAME, ADDRESS, DATE OF BIRTH. SOCIAL SECURITY
15 IS THE LAST DATA POINT.

16 Q DOES E*TRADE DO ANYTHING TO MAKE SURE THAT YOU
17 KNOW -- SAY IF I GAVE MY NAME, THAT MY SOCIAL SECURITY
18 NUMBER CORRESPONDS WITH MY NAME WHEN AN ACCOUNT IS FUNDED?

19 A WE HAVE AN AUTOMATED PROCESS. IT'S AUTOMATED
20 BECAUSE WE HAVE MORE THAN FOUR MILLION ACCOUNTS, AND
21 THERE'S JUST NOT ENOUGH STAFF IN THE WORLD TO VERIFY
22 EVERYTHING. SO IT GOES INTO A DATABASE THAT'S POPULATED
23 ELSEWHERE, AND IT WILL KICK BACK, FOR EXAMPLE, SOMETHING
24 THAT DOESN'T MATCH OR SOMETHING THAT IS SUGGESTIVE OF
25 IDENTITY THEFT, OR IF SOMEBODY TURNS UP ON THE OFAC LIST,
26 SUCH AS A MONEY LAUNDERER OR TERRORIST. SINCE 2001
27 FINANCIAL SECURITY LAWS ARE MUCH STRONGER. THEY'RE STILL
28 NOT FOOLPROOF, BUT THEY LED TO THE CREATION OF A BUNCH OF

1 DIFFERENT DATABASES THAT GET PINGED WITH INFORMATION THAT
2 IS PROVIDED, PARTICULARLY BY CUSTOMERS OF ONLINE
3 COMPANIES.

4 Q SO THEY'RE -- YOU SAID IT'S NOT FOOLPROOF.
5 THERE ARE STILL WAYS TO ACCOMPLISH I.D. THEFT,
6 NOTWITHSTANDING E*TRADE'S BEST EFFORTS?

7 A OF COURSE.

8 Q NOW, WHEN SOMEBODY OPENS A NEW BANK ACCOUNT
9 WITH E*TRADE, HOW IS THE BANK ACCOUNT FUNDED?

10 A ALTHOUGH YOU CAN WALK INTO A BRANCH AND GIVE A
11 CHECK, TYPICALLY BECAUSE SOMEBODY IS ALREADY ONLINE, THEY
12 SET UP A QUICK TRANSFER, WHICH IS YOU GIVE YOUR EXISTING
13 BANK OR BROKERAGE ACCOUNT INFORMATION, AND IT IS LINKED TO
14 YOUR NEW ACCOUNT, AND SO YOU THEN TRANSFER. THE MINIMUM
15 IS A HUNDRED DOLLARS FOR A BANK ACCOUNT, A THOUSAND FOR A
16 BROKERAGE ACCOUNT.

17 Q WHAT INFORMATION WOULD YOU NEED FROM YOUR OLD
18 BANK ACCOUNT TO TRANSFER MONEY TO YOUR NEW BANK ACCOUNT?

19 A YOU NEED A BANK ROUTING NUMBER AND A BANK
20 ACCOUNT NUMBER.

21 Q IS THAT INFORMATION CONTAINED WITHIN A CHECK?

22 A IT IS. IT'S AT THE BOTTOM OF ALL CHECKS.

23 MR. BLOOMFIELD: YOUR HONOR, I'D LIKE TO SHOW THE
24 WITNESS, FOR DEMONSTRATIVE PURPOSES, A PICTURE OF A CHECK.

25 THE COURT: ALL RIGHT.

26 Q BY MR. BLOOMFIELD: NOW, DOES THIS APPEAR TO
27 YOU TO BE AN E*TRADE CHECK?

28 A IT DOES.

1 Q THOSE NUMBERS AT THE BOTTOM OF THE CHECK, ARE
2 THOSE WHAT YOU DESCRIBED AS THE BANK ROUTING NUMBER AND
3 ACCOUNT NUMBER?

4 A AND A CHECK NUMBER. THERE'S THREE SEQUENCES OF
5 NUMBERS ON THERE. THE SEQUENCE ON THE LEFT, WHICH HAS
6 THAT SMILEY FACE THING TO START WITH, 25600, THAT IS THE
7 BANK ROUTING NUMBER. THERE'S ANOTHER WIDGET, AND
8 271000759 IS THE ACCOUNT NUMBER, AND ANOTHER WIDGETY
9 THING, 0126 IS THE CHECK NUMBER. SO YOU LOOK AT THE UPPER
10 RIGHT-HAND COLUMN, IT SHOULD SAY 0126, DEPENDING ON THE
11 PRINTING CONVENTION.

12 Q SO IF SOMEBODY IS SETTING UP AN E*TRADE ACCOUNT
13 AND THEY HAVE A ROUTING NUMBER AND ACCOUNT NUMBER, NOT OF
14 OF AN E*TRADE ACCOUNT BUT OF ANOTHER BANK, IS THAT ALL
15 THAT'S NEEDED TO TRANSFER MONEY FROM ONE ACCOUNT TO
16 ANOTHER?

17 A IT IS.

18 Q I MEAN, IN THE COURSE OF YOUR EMPLOYMENT, ARE
19 YOU AWARE OF ANY SECURITY PROCEDURES BY THE OTHER BANK TO
20 STOP THAT FROM HAPPENING WITHOUT FURTHER VERIFICATION?

21 A NO, BECAUSE THERE'S A NATIONAL ASSOCIATION OF
22 CLEARING HOUSE, NATIONAL CLEARING HOUSE ASSOCIATION.
23 BANKS PARTICIPATE IN IT. AND WHAT IT DOES IS IT REGULATES
24 THE ELECTRONIC TRANSFER OF MONEY SO THAT YOU CAN, I THINK
25 INITIALLY SO THAT YOU CAN TRANSFER MONEY FROM YOUR OWN
26 ACCOUNTS, BUT NOW THEY'VE MADE IT SO THAT IF I WANTED TO
27 TRANSFER MONEY TO YOU OR TO MY MOM OR SOMETHING, YOU CAN
28 DO IT PRETTY READILY. IT HAS A PULL-BACK PROVISION SO

1 THAT IF, FOR EXAMPLE, I'M LOOKING AT MY STATEMENT FROM MY
2 BANK AND I SEE THAT MONEY IS GONE AND I DON'T KNOW WHERE
3 IT'S GONE, I CAN CALL THEM AND SAY, "WHERE DID THIS GO?"
4 AND THEY'LL TELL ME WHERE IT WENT AND I CAN GET IT BACK.
5 SO I THINK THAT'S THE SECURITY THAT'S BUILT INTO THE
6 SYSTEM.

7 Q I'M SORRY TO BELABOR THE POINT, BUT SAY THERE'S
8 MONEY IN THIS PARTICULAR BANK ACCOUNT AND THERE'S A CHECK.
9 DOES THAT MEAN I CAN SET UP A QUICK TRANSFER INTO MY
10 ACCOUNT?

11 A YOU COULD.

12 Q ARE YOU FAMILIAR WITH E*TRADE'S PROCEDURES WITH
13 DEALING WITH ACCOUNTS THAT SHOW INDICATIONS THAT FRAUD
14 MIGHT HAVE OCCURRED?

15 A YES.

16 Q WHAT TYPES OF PROCEDURES DOES E*TRADE DO?

17 MR. MANN: I'LL OBJECT FOR LACK OF FOUNDATION AT
18 THIS TIME. I JUST KNOW KNOW HER AS A CUSTODIAN OF
19 RECORDS.

20 THE COURT: OVERRULED. I THINK SHE'S TESTIFIED TO
21 OTHER QUESTIONS.

22 Q BY MR. BLOOMFIELD: IF YOU COULD GENERALLY
23 DESCRIBE WHAT E*TRADE'S PROCEDURES ARE WHEN E*TRADE HAS
24 NOTICED ON AN ACCOUNT OR SUSPICIOUS TRANSACTIONS.

25 A IT DEPENDS ON THE WAY THAT THEY'RE NOTICED.
26 BECAUSE THERE ARE -- I WAS SAYING THERE ARE AUTOMATED
27 KICKBACKS. AND THEN ALSO WE DO GET COMMUNICATIONS FROM
28 CUSTOMERS OR FROM OTHER PEOPLE. BUT IN ANY EVENT, WE HAVE