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### **Disputed Message: In Landmark Quattrone Trial, New Momentum for Prosecution; Under Cross-Examination, Tech Financier Concedes A Role in IPO Allocations; Impact of Revealing E-Mails**

*Randall Smith and Kara Scannell. Wall Street Journal. (Eastern edition). New York, N.Y.: Oct 13, 2003. pg. A.1*

#### **Abstract (Summary)**

Pressing Mr. [Frank Quattrone] to acknowledge that the shares were awarded to help CSFB win new banking business, Mr. [Steven Peikin] next asked, "did you ever tell anybody you wanted to use IPO allocations as part of a strategy?" Mr. Quattrone replied warily: "I don't recall. I might have." Mr. Peikin then showed Mr. Quattrone an e-mail in which he had urged his subordinates to "make sure we are being strategic" about the IPO allocations. He also showed an e-mail in which Mr. Quattrone on May 1, 2000, had asked Mr. [John Schmidt]: "John could we schedule a time to review q1 results and ipo allocations past and future?"

Mr. Peikin also sharply questioned Mr. Quattrone about his describing as "legal mumbo jumbo" a September 2000 e-mail from a CSFB lawyer notifying him that he might be called as a witness in the SEC's probe of IPO allocations. Repeating the same phrase sarcastically four times, Mr. Peikin asked, " 'You may be called as a witness' was legal mumbo jumbo?" Quoting from a section of the e-mail warning Mr. Quattrone not to discuss the probe with another CSFB employee to avoid the appearance of influencing testimony, Mr. Peikin asked: "Is that the part you meant with 'legal mumbo jumbo'?"

On Thursday, Mr. [John Keker] had lifted a large three-paneled blue and green chart onto an easel to paint a picture of Mr. Quattrone's busy day. Its title: "Quattrone Sent and Received Over 200 Emails on December 5, 2000." Mr. Quattrone was often interrupted, he told the jury, by his secretary, phone calls and people barging into his office, and the banker often sent quick one-line e-mails. Mr. Quattrone testified that he led an "interrupt-driven" life and it was his "habit" to send quick notes endorsing other peoples' e-mails.

#### **Full Text (2553 words)**

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As the date drew near for the trial of Frank Quattrone, the top technology financier of the dot-com age, it looked like federal prosecutors faced an uphill battle.

The three criminal charges of obstruction of justice and witness tampering rested on a single e-mail that Mr. Quattrone, then a Credit Suisse First Boston banker, forwarded in December 2000, urging colleagues to "clean up" their files.

The prosecutors called that obstruction because Mr. Quattrone fired off the message after he had learned that a federal grand jury was investigating CSFB's allocations of initial public offerings. Regulators also were probing whether brokers at CSFB had received kickbacks from hedge funds in exchange for hot IPOs. The government had a daunting task: persuading a jury that the e-mail -- which merely forwarded a subordinate's advice to discard documents based on the bank's own policy -- showed unlawful intent by Mr. Quattrone.

But now the prosecutors' case looks stronger than ever. Mr. Quattrone's risky decision to appeal directly to jurors, an act of supreme confidence in his own vaunted sales ability, appeared to backfire on the ninth day of his trial in Manhattan on Friday.

The prosecution, flashing dozens of the high-tech banker's own e-mails on screens before the judge and jury, forced Mr. Quattrone to backtrack on testimony that he played little or no role in IPO allocations, blowing a hole in one of the main pillars of his defense. If jurors are convinced that Mr. Quattrone played an active role in allocations, that could lead them to conclude that Mr. Quattrone wanted to see documents in his unit destroyed. The courtroom action opened up a revealing window into how Mr. Quattrone ruled a Wall Street empire that bankrolled some of the leading technology highfliers of the 1990s.

To be sure, the jurors may still sympathize with the rags-to-riches rise of the pants presser's son from South Philadelphia who earned \$120 million in 2000. And it's impossible to know how they responded to Mr. Quattrone's latest testimony. But since the dramatic beginning of

the government's cross-examination of Mr. Quattrone, a conviction doesn't seem as much of a long shot as it did when Mr. Quattrone was charged in April.

Mr. Quattrone is the biggest Wall Street player to go on trial on criminal charges in decades, and the first in a series of tycoons facing trials for alleged abuses during the stock-market bubble of the 1990s.

In late September, New York prosecutors opened their case against L. Dennis Kozlowski and Mark Swartz, two former Tyco International Ltd. executives on trial for corruption. Lifestyle maven Martha Stewart is preparing to fight obstruction and securities-fraud charges at a January trial in federal court. The government's case against Ms. Stewart is also considered to be a challenge, so how the jury views Mr. Quattrone's defense could influence how the Stewart case proceeds.

Criminal cases also are proceeding against former executives of Adelphia Communications Corp., WorldCom Inc. and Enron Corp.

The prosecution's go-for-the-jugular strategy against Mr. Quattrone attacked a legalistic approach he has taken since the beginning of the IPO probes in mid-2000. He has argued that even though he wielded great clout within CSFB and had input into who would receive IPO shares, he wasn't bureaucratically responsible for the final decisions. For example, brokers who worked within his technology group, based in Palo Alto, Calif., and handed out IPOs to their clients, had their brokerage commissions and trading records reviewed by another executive in New York.

The IPO shares were widely coveted because they commonly exploded in value on their first day of trading, showering big profits on the lucky few who got in at the start. Under questioning by his own lawyer on Thursday, Mr. Quattrone cited a convoluted, dotted-line reporting structure at CSFB to bolster his denial that he had responsibility for handing out hot stocks. So while he had been alerted to the various IPO-allocation probes, he had nothing to fear from them, he maintained.

But the credibility of his denials was shaken once chief prosecutor Steven Peikin showed the jury dozens of e-mails putting Mr. Quattrone in the thick of IPO-allocation discussions, and indeed holding them out as a lure to win new investment-banking business for CSFB.

As it became clear that Mr. Peikin was going to bring up the so-called "Friends of Frank" program, a look of apprehension crossed Mr. Quattrone's face, and the breezy confidence he displayed in his opening testimony Thursday faltered.

Under that program, as many as 300 corporate directors and executives, chosen for their ability to steer investment-banking business to CSFB, were given shares in hot IPOs in 1999 and 2000. The program, which symbolized a Silicon Valley culture of excess and insider back-scratching, became the basis for disciplinary charges, contested by Mr. Quattrone, in March 2003 by the National Association of Securities Dealers.

CSFB eventually paid \$100 million, without admitting or denying wrongdoing, to settle Securities and Exchange Commission and NASD charges that it improperly shared IPO profits with hedge funds. Although three brokers who worked in Mr. Quattrone's group were fired for violating company policy in the matter, Mr. Quattrone himself was given a clean bill of health by CSFB on the kickback issue. He was forced to resign from CSFB in March, after he refused to testify before the NASD. His lawyers said the testimony could have been used against him in the obstruction case.

In the courtroom Friday, the standing-room crowd of 150, including two rows of Mr. Quattrone's family members anchored by his mother, grew hushed as Mr. Peikin confronted Mr. Quattrone with the answer he had given the day before, on direct examination, that he had had no responsibility for IPO allocations.

"Isn't it a fact," he asked, "that you did participate" in the allocation process? And, he asked in a follow-up question, "on some deals you were greatly involved in the allocation process?"

Mr. Quattrone answered in a quiet voice, "I might have participated in some discussions. But I did not make any decisions."

Mr. Peikin then asked about an e-mail Mr. Quattrone sent on Aug. 4, 2000, to Ernesto Cruz, then head of CSFB's equity-capital markets department, which manages stock allocations. "In the future when a deal like this looks difficult bill brady and or I should get involved in some of the decisions on allocation, as is the case when andy fisher is running the deal." Mr. Brady and Mr. Fisher were senior members of Mr. Quattrone's group. Mr. Fisher, also a CSFB capital-markets executive, "sat in your office," Mr. Peikin reminded Mr. Quattrone.

Mr. Peikin then showed an e-mail Mr. Quattrone sent on July 26, 2000, to the top two brokers in his technology private-client services group, who catered to executives of Mr. Quattrone's corporate clients and ran the "Friends of Frank" program. The subject was "proposed allocations" of the IPO of Corvis Corp., an optical-networking company, which CSFB was leading. "Given high profile nature of this deal i would like to review specific allocations for tech pcs [private-client services] along with andy fisher," Mr. Quattrone said.

Asked whether John Schmidt, the head of Mr. Quattrone's group of brokers, referred to the accounts kept for technology-industry executives as "Friends of Frank," Mr. Quattrone first replied, "I can't recall."

Pulling a government exhibit from a cardboard-accordion file folder and walking toward the witness box, Mr. Peikin said, "Tell me whether that refreshes your recollection whether Mr. Schmidt ever used that name with you."

"He used it on this one occasion," Mr. Quattrone replied.

"I asked whether this refreshes your recollection . . . yes or no?" Mr. Peikin said.

"I gave you my answer," Mr. Quattrone replied. "It refreshes my recollection that he used it on this one instance."

Mr. Peikin next raised the subject of a "term sheet" between CSFB and Mr. Quattrone promising that his tech-group brokers would be able to allocate 2% to 4% of the stock of each CSFB technology IPO. Mr. Quattrone acknowledged that he reviewed lists of the accounts of brokers in his group "a small number of times."

Then Mr. Peikin handed Mr. Quattrone government exhibit No. 2051, an e-mail to Mr. Quattrone and a colleague, from Mr. Schmidt and his top deputy, Michael Grunwald, with an attachment listing 208 different "Friends of Frank" accounts. The Schmidt-Grunwald e-mail, dated March 21, 2000, urged Mr. Quattrone to get the group's allocation boosted "to 5% on IPOs now with the ability to go 6-7% down the road . . ."

Among those entitled to receive the most stock, under a four-tier ranking system, were Gary Betty, then CEO of EarthLink Inc.; Masood Tayebi, then president of Wireless Facilities Inc.; Roger Siboni, then CEO of Epiphany Inc.; Andrew J. Filipowski, then CEO of Divine Interventures Inc.; Anthony Maher, a director of the venture group of Siemens AG, and James Carol, then CEO of PacketVideo Corp.

Mr. Peikin asked: "The more important the person, the more IPO stock they got?" When Mr. Quattrone disagreed, the prosecutor asked sarcastically, "You don't think so? You think it was the less important, the more IPO stock?" The executives' accounts were awarded the IPO stock at a time of sizzling market returns, Mr. Quattrone conceded.

Pressing Mr. Quattrone to acknowledge that the shares were awarded to help CSFB win new banking business, Mr. Peikin next asked, "did you ever tell anybody you wanted to use IPO allocations as part of a strategy?" Mr. Quattrone replied warily: "I don't recall. I might have." Mr. Peikin then showed Mr. Quattrone an e-mail in which he had urged his subordinates to "make sure we are being strategic" about the IPO allocations. He also showed an e-mail in which Mr. Quattrone on May 1, 2000, had asked Mr. Schmidt: "John could we schedule a time to review q1 results and ipo allocations past and future?"

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Just before Friday's lunch break, Mr. Peikin displayed a series of e-mails between Mr. Quattrone and Michael Dell, chief executive of computer maker Dell Inc., discussing Mr. Dell's request for 250,000 Corvis shares at the same time as Mr. Quattrone was attempting to secure Mr. Dell's commitment to be the keynote speaker at a CSFB technology conference.

Mr. Quattrone wrote to Mr. Dell on July 19, 2000: "hi michael, it was fun having breakfast with you in ny last month . . . my team has gotten word to me that you are personally interested in having dell ventures receive a meaningful allocation on the ipo of corvis."

Mr. Dell replied less than two hours later: "Frank, It was great to see you too. We would like 250k shares of Corvis. I know there have been efforts on both sides to build the relationship [between Dell and CSFB] and an offering like this would certainly help."

Mr. Quattrone also asked Mr. Dell how he would like to divide the allocation between Dell's venture-capital unit and Mr. Dell's own family office. A proposed list of the allocations showed the company's venture unit getting 100,000 Corvis shares and the Dell family office getting 50,000. The list of final allocations wasn't made public.

Another money manager, Amerindo Investment Advisers, indicated in an e-mail that it might recommend the use of CSFB as a banker more often to start-up companies if the firm could get shares of an IPO. Responding to a colleague who asked if Amerindo should get "special consideration," Mr. Quattrone replied vaguely that he would like to "get closer" to Amerindo. The same list of proposed Corvis allocations showed Amerindo with 200,000 shares.

Mr. Peikin also sharply questioned Mr. Quattrone about his describing as "legal mumbo jumbo" a September 2000 e-mail from a CSFB lawyer notifying him that he might be called as a witness in the SEC's probe of IPO allocations. Repeating the same phrase sarcastically four times, Mr. Peikin asked, " 'You may be called as a witness' was legal mumbo jumbo?" Quoting from a section of the e-mail warning Mr. Quattrone not to discuss the probe with another CSFB employee to avoid the appearance of influencing testimony, Mr. Peikin asked: "Is that the part you meant with 'legal mumbo jumbo'?"

Mr. Quattrone answered, "Right."

Mr. Quattrone, a dapper, mustachioed banker, has worn sport jackets to court instead of fancy suits. His lawyer, John Kecker, is a former Marine with a military bearing and the raspy voice of a drill sergeant. The chief prosecutor, Mr. Peikin, is pale and stoop-shouldered, with

drab gray suits and a deceptively hang-dog look. Presiding is an 81-year-old semi-retired judge, Richard Owen, who airily waved away Mr. Keker's objections to Friday's cross-examination.

As Mr. Quattrone faltered under questioning on Friday, Mr. Peikin also attempted to undermine another main line of his defense: that the banker had such a busy life -- inundated with e-mail, phone calls and meetings -- that he hadn't given nearly as much thought to the Dec. 5, 2000, e-mail as the government would like jurors to believe.

On Thursday, Mr. Keker had lifted a large three-paneled blue and green chart onto an easel to paint a picture of Mr. Quattrone's busy day. Its title: "Quattrone Sent and Received Over 200 Emails on December 5, 2000." Mr. Quattrone was often interrupted, he told the jury, by his secretary, phone calls and people barging into his office, and the banker often sent quick one-line e-mails. Mr. Quattrone testified that he led an "interrupt-driven" life and it was his "habit" to send quick notes endorsing other peoples' e-mails.

The unstated message: The banker was so busy dealing with a variety of tasks that he couldn't have been thinking about the probes when he forwarded the subordinate's e-mail.

To drive home that point, Mr. Keker took the jury through the 20 e-mails Mr. Quattrone had sent and received in the 48 minutes leading up to the fateful clean-up message. They included a response to a request for an interview for a book about the Internet ("will try to make time but would want complete control over any quotes") a note telling employees to collect information on tech deals for an advertising campaign, and one joking about the fee he would charge for advising on a deal: "we'll be happy to charge you a higher fee if you'd like, but no more than 100% of proceeds," he wrote.

Summarizing the e-mails, Mr. Quattrone testified that he inquired about an employee's move to a different office, asked his lawyer if he could get a mortgage for a property in Pebble Beach, Calif., and joked with a colleague who he said was not normally good at diplomacy, writing, "nice work, mikey." He was also trying to improve relationships with Solectron Corp. and AOL Time Warner Inc., and get more business. Finally, he was seeking help on dealing with a potential e-mail virus.

But on Friday, Mr. Peikin sent the jury a different message: E-mail wasn't background noise -- it was how this high-tech financier conducted his business. Mr. Peikin asked the banker if he sent and received some of his most important communications by e-mail. "Yes," Mr. Quattrone said.

The cross-examination continues tomorrow, when Mr. Quattrone will celebrate his 48th birthday. Closing arguments will follow and the case is expected to go to the jury as early as Wednesday.

#### Indexing (document details)

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