UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

UNITED STATES OF AMERICA **PLAINTIFF**

v. **CRIMINAL ACTION NO: 4:17-CR-12-GNS**

RICHARD G. MAIKE, *et. al.* **DEFENDANTS**

MOTION TO EXCLUDE TESTIMONY OF MANNING GILBERT WARREN III and REQUEST FOR DAUBERT HEARING

Because it is not proper expert testimony, this Court should exclude the proposed testimony of University of Louisville law professor Manning Gilbert Warren III. The United States moves the Court to exclude that testimony or, in the alternative, conduct a *Daubert* hearing to determine its admissibility.

Background

Between February 2013 and September 2014, defendants organized and promoted the company Infinity 2 Global ("I2G").[1] In promoting I2G, defendants told investors they could join the company by purchasing one of four ranks: Novice, Player, High Roller, or Emperor. All ranks received use of I2G's purported products: the I2G Touch (a social media software application), Songstagram (a music software application introduced in March 2014), and the I2G casino (an online casino open only to overseas gamblers). An Emperor—limited to 5,000 participants-- received an additional perquisite: for the rest of time, 50% of the I2G casino profits would be divided among the

[1] In July 2014, I2G changed its name to Global 1 Entertainment ("G1E").

Emperors. As it turns out, there were no casino profits.[2] But all members could earn commissions by recruiting new members to buy into the company. Recruitment is where the money was made.

One issue at trial is whether I2G was a pyramid scheme (in which participants obtain their monetary rewards primarily through enrolling new people into the program) or a legitimate multilevel marketing program (in which participants obtain their monetary rewards by selling goods and services to the public).

Defendants Rick Maike and Doyce Barnes plan for Professor Warren to (1) opine on the law relating to pyramid schemes, and (2) argue that the "Emperor" portion of defendants' pyramid scheme—because it was capped at 5,000 participants—featured an "effective anti-saturation program." *See* Exhibit 1, Disclosure of Expert Manning Warren (attached). For the reasons discussed below, the United States objects to that testimony.

Discussion

A. The *Daubert* Standard

Expert testimony must "help the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702(a). "This condition goes primarily to relevance." *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 591 (1993). The question "is whether expert testimony proffered in the case is sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute." *Id.* (quotation marks omitted). The requirement that the testimony be helpful "requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility." *Id.* at 591–92.

In *Daubert*, the Supreme Court explained that a district court faced with a proffer of expert testimony must assess whether the reasoning or methodology underlying the testimony is scientifically valid and can properly be applied to the facts in issue. *Daubert*, 509 U.S. at 592-93.

[2] Over the course of its seventeen-month existence, I2G spent over $180,000 to set up and operate the casino, which only had two profitable months ($15,701 in April 2013 and $11,032 in May 2013).

Many factors may bear on that inquiry, including: (1) whether the theory or technique has been or can be tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential error rate; and (4) whether the theory or technique is widely accepted. *Id*. at 593-94. The Supreme Court emphasized that the inquiry is "a flexible one," the ultimate goal of which is to determine the evidentiary relevance and reliability of the proposed expert testimony. *Id*. at 594-95.

B. Lack of Qualifications

Professor Warren is not qualified to testify as an expert on pyramid schemes. Professor Warren is certainly accomplished: he has been a law professor for just under forty years, and he has published numerous articles and books. *See* Exhibit 2, Warren Curriculum Vitae (attached). But defendants have offered zero evidence that Professor Warren has published any work on the subject of pyramid schemes or testified on the subject of pyramid schemes. *Compare* Exhibit 2, Warren Curriculum Vitae *with F.T.C. v. BurnLounge, Inc.*, 753 F.3d 878, 888 (9th Cir. 2014) (finding an expert's testimony reliable given "his previous experience analyzing pyramids; his previous experiences testifying in court in five similar cases and providing expert deposition testimony in seven similar cases; [and] his published article on the difference between pyramids and legal MLMs.").

From the materials provided, it appears that Professor Warren is an expert in securities and corporate law, but he has published nothing on pyramid schemes, much less on how the concept of anti-saturation relates to pyramid schemes. Nonetheless, defendants seek to qualify him as an expert based on one thing: "He teaches classes to law students that include illegal pyramid schemes." Exhibit 1, Disclosure of Expert Manning Warren at 1. Defendants have not provided Professor Warren's classroom materials, nor do they detail the depths of his teachings (do pyramid schemes receive a passing mention in his class or are they the subject of thorough analysis?). Professor Warren's expertise in securities law does not qualify him as an expert on pyramid schemes. *See*

Berry v. City of Detroit, 25 F.3d 1342, 1352 (6th Cir. 1994) ("A divorce lawyer is no more qualified to opine on patent law questions than anyone else, and it is a mistake for a trial judge to declare anyone to be generically an expert."). Due to his lack of experience and expertise, this Court should bar him from testifying as an expert on pyramid schemes.

C. Opining on the Law

No expert should opine on the law. This Court has found that "an expert witness should not instruct the jury as to the applicable principles of law." *Walden v. Pryor*, No. 5:18-CV-171-TBR, 2022 WL 736115, at *3 (W.D. Ky. Mar. 10, 2022) (citing *United States v. Zipkin*, 729 F.2d 384, 387 (6th Cir. 1984); and *Marx & Co., Inc. v. Diner's Club*, 550 F.2d 505, 509–10 (2d Cir. 1977)) (internal quotation marks omitted). Instead, "[i]t is the function of the trial judge to determine the law of the case, and it is impermissible to delegate that function to a jury through the submission of testimony on controlling legal principles." *Id.* (internal quotation marks omitted).

Ignoring this directive, Professor Warren's disclosure includes an analysis of *United States v. Gold Unlimited, Inc.*, 177 F.3d 472 (6th Cir. 1999), concluding that "[t]he line between legal MLM companies and illegal pyramid schemes has been unclear and has shifted" and "[u]ncertainty in the law has resulted in difficulty for courts, regulators, and legal scholars to determine whether an MLM structure is viable." Exhibit 1, Expert Disclosure of Manning Warren at 2-3. None of this section of Professor Warren's disclosure is appropriate for the jury. It is the function of the trial judge alone to determine the law of the case.

Professor Warren continues his analysis with a discussion of the relevance of "internal consumption," citing a Kentucky statute, an FTC Staff Advisory Opinion, the Ninth Circuit's decision in *BurnLounge*, and more discussion of *Gold Unlimited*. Exhibit 1, Expert Disclosure of Manning Warren at 5-6. This Court's jury instructions will likely include an instruction on the relevance of internal consumption, as this is a legal question. *See Gold Unlimited*, 177 F.3d at 483 (noting that "[i]n subsequent cases involving alleged pyramid schemes, prudent district courts might

supplement [the jury instruction] to reflect the difference between legitimate multi-level marketing and illegal pyramids")." But Professor Warren's task is not to instruct the jury on the law. That testimony should be excluded. *Walden v. Pryor*, No. 5:18-CV-171-TBR, 2022 WL 736115, at *3 (W.D. Ky. Mar. 10, 2022).

D. The Anti-Saturation Defense

Professor Warren plans to present testimony that in his opinion I2G had an effective anti-saturation program. Exhibit 1, Disclosure of Expert Manning Warren at 4-5. Presumably, defendants hope to request a jury instruction on the anti-saturation defense, as posited in *United States v. Gold Unlimited, Inc.*, 177 F.3d 472, 482 (6th Cir. 1999) ("a defendant carr[ies] the burden of establishing that it has effective anti-saturation programs"). But "where there is insufficient evidence, as a matter of law, to support an element of the affirmative defense, the defendant can be precluded from presenting any evidence of [the affirmative defense] to the jury." *Id*. (internal quotation omitted). That testimony should be excluded.

First, given Professor Warren's lack of expertise on pyramid schemes, the Court should greet his novel theory with skepticism. Professor Warren's simplistic theory—that a numerical cap (here, to 5,000 victims) can qualify as an effective anti-saturation program—has not been tested, has not been subjected to peer review and publication, and defendants have provided no evidence that Professor Warren's theory is widely accepted. The United States has identified zero cases in which an anti-saturation program consisting of a simple numerical cap has been approved. *Gold Unlimited* references five anti-saturation programs: Ger-Ro-Mar; Amway; Omnitrition; International Heritage; and Cooper. *Id.* at 481-82. None of the programs featured a numerical cap. *See Ger–Ro–Mar, Inc. v. FTC*, 518 F.2d 33, 36–38 (2d Cir.1975); *In re Amway Corp.*, 93 F.T.C. 618, 716-17 (1979); *Webster v. Omnitrition Int'l, Inc.*, 79 F.3d 776, 783 (9th Cir. 1996); *SEC v. International Heritage, Inc.*, 4 F.Supp.2d 1378, 1384 (N.D.Ga.1998); *People v. Cooper*, 421 N.W.2d 177, 183 (Mich. Ct. App.1987). For example, Amway successfully defended the FTC charge with a program featuring

the following policies: "(1) participants were required to buy back from any person they recruited any saleable, unsold inventory upon the recruit's leaving Amway, (2) every participant was required to sell at wholesale or retail at least 70% of the products bought in a given month in order to receive a bonus for that month, and (3) in order to receive a bonus in a month, each participant was required to submit proof of retail sales made to ten different consumers." *Webster v. Omnitrition Int'l, Inc.*, 79 F.3d 776, 783 (9th Cir. 1996). Omnitrition, which featured a program facially similar to Amway's, failed to pass muster, as "the crucial evidence of the actual *effectiveness* of its anti-pyramiding distribution rules is missing." *Id.* at 784 (noting: "The FTC held that Amway was not a pyramid scheme as a matter of fact because its policies were *enforced* and were *effective* in encouraging retail sales.").

Ignoring all this, defendants blindly maintain that because "the Emperor program was limited to 5,000 participants, it cannot constitute an illegal pyramid scheme as a matter of law." (R. 306 Barnes' Motion in Limine at 2118, *rejected* at R. 347 Memorandum Opinion and Order at 2808-10). Because Professor Warren's theory has not been tested, subjected to peer review and publication, or accepted, this Court should not allow it to be presented to the jury. *Daubert*, 509 U.S. at 593-94.

Second, saturation (and thus anti-saturation) is not at issue in this case. The anti-saturation affirmative defense appears to have first been posited in *Gold Unlimited, Inc.*, 177 F.3d at 481. There, after the United States presented evidence that saturation was a potential problem, the defense argued that the jury instruction should have included the following: "A pyramid is improper only if it presents a danger of market saturation—that is, only if at some point, persons on the lowest tier of the structure will not be able to find new recruits." *Id.* Gold requested that instruction to counter the United States' arguments regarding saturation. *See id.* at 481 (noting the United States' argument that Gold's scheme was "masked with cosmetic anti-saturation policies"). Similarly, in both *Ger–Ro–Mar, Inc. v. FTC*, 518 F.2d 33 (2d Cir.1975) and *In re Amway Corp.*, 93 F.T.C. 618 (1979), the United States (through the FTC) complained of the danger of saturation. *Id.*

For I2G, however, saturation is not the problem. Unlike in *Gold Unlimited*, the United States has no plans to present a witness to testify on the dangers of market saturation. *See Gold Unlimited, Inc.*, 177 F.3d at 481. Unlike in *Ger-Ro-Mar*, the United States has no plans to argue that "the laws of geometrical progression would make it impossible to recruit continually since inevitably a point of saturation would be reached." *Ger–Ro–Mar, Inc. v. FTC*, 518 F.2d at 36. Instead, the United States plans to show that I2G is a pyramid scheme—not because of any saturation problem, but rather because I2G's scheme meets the definition approved in *BurnLounge*: "[A] pyramid scheme is an organization in which the participants obtain their money rewards primarily through enrolling new people into the program rather than selling goods and services to the public." *BurnLounge*, 753 F.3d at 889.

Finally, even if the Court finds that saturation is at issue, Professor Warren's analysis is insufficient to support a jury instruction for the affirmative defense of anti-saturation. As the Sixth Circuit said in *Gold Unlimited*, "[T]he actual effect of the plan[] deserves far more weight than . . . the existence of alleged anti-saturation policies shown by the government already to have failed." *Gold Unlimited, Inc.*, 177 F.3d at 481-82. Rather than focusing on the actual effect of the plan, Professor Warren's analysis appears to be limited to I2G's business model. Professor Warren provides no discussion (and may be unaware) that approximately 97% of investors who purchased Emperor positions lost money, and that 90% of I2G's revenue came from the buy-in fees for Emperor memberships, not product sales. To the extent I2G had an anti-saturation policy, it failed miserably. And *Gold Unlimited* only allows an affirmative defense for an *effective* anti-saturation program. *Gold Unlimited, Inc.*, 177 F.3d at 482 (emphasis added).

Conclusion

This Court should exclude the testimony of Professor Warren, as it lacks both the relevance and reliability to assist the jury in its task. In the alternative, the United States requests

this Court conduct a *Daubert* hearing to determine the reliability, relevance, and qualifications of Professor Warren's proposed testimony.

Respectfully submitted,

MICHAEL A. BENNETT
United States Attorney

/s/ Marisa J. Ford
Marisa J. Ford
Assistant United States Attorney
717 W. Broadway
Louisville, Kentucky 40202
PH: (502) 582-5911

Madison T. Sewell
Assistant United States Attorney
241 East Main Street, Suite 305
Bowling Green, Kentucky 42101
PH: (270) 781-4438

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

/s/ Marisa J. Ford
Marisa J. Ford
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA	:	
	:	
PLAINTIFF,	:	
v.	:	CASE NO. 4:17-CR-12-JHM
	:	
RICHARD G. MAIKE, *et al.*	:	
	::	
DEFENDANTS.	:	

DISCLOSURE OF EXPERT MANNING WARREN BY DEFENDANTS RICHARD MAIKE AND DOYCE BARNES

Defendants Doyce Barnes and Rochard Maike hereby give notice that Defendants intend to call Professor Manning Warren as an expert witness.

Professor Warren's qualifications can be summarized as follows.[1] Professor Warren received his B.A. from the University of Alabama and his J.D., with Honors, from the George Washington University National Law Center. After graduating from law school, he served as a law clerk to U.S. District Judge Seybourn H. Lynne, Chief Judge for the Northern District of Alabama. Professor Warren was in private practice from 1974 until 1983, when he joined the faculty at the University of Alabama School of Law.

Professor Warren joined the faculty at the University of Louisville Brandeis School of Law in 1990 as the Harold Edward Harter Endowed Chair of Commercial Law. Professor Warren's scholarship is directed toward securities regulations, corporate law, and European Union law. He teaches classes to law students that include illegal pyramid schemes. He has published articles in the United States and Europe, has been frequently interviewed by the Wall

[1] Professor Warren's CV is attached hereto.

Street Journal, Business Week and other periodicals, and has testified before the United States Senate on the regulation of securities markets. He was a member of the SEC's Federal Advisory Committee on Market Transactions and has served as a consultant to the London Stock Exchange, the U.S. Congress Office of Technology Assessment and numerous state securities commissions.

Professor Warren has published articles in the Harvard International Law Journal, the University of Pennsylvania Journal of Business Law, the Business Lawyer, the Common Market Law Review, the Washington University Law Quarterly, the Washington & Lee Law Review and the Duke Journal of Law and Contemporary Problems, among others, addressing corporate and securities law issues.

In addition to his teaching and research, Professor Warren serves on a number of American Bar Association committees and is an active member of the Kentucky, Alabama and District of Columbia Bar Associations and the American Law Institute. He has twice served as Chair of the Business Law Section of the Kentucky Bar Association.

Professor Warren will testify that multilevel marketing ("MLM") companies are legal and effective at marketing innovative products, which I2G offered. Many well-known companies and products are marketed and sold by MLM companies, such as Avon, Mary Kay, and Tupperware. Highly innovative products, which many customers will be unfamiliar with, benefit from direct selling through a MLM structure because it allows the customer to be introduced to highly technical or innovative products by someone who is both familiar with the product and with whom the customer is acquainted.

In *United States v. Gold Unlimited, Inc.*, 177 F.3d 472 (6th Cir. 1999), the Sixth Circuit noted, "No clear line separates illegal pyramid schemes from legitimate multilevel marketing

programs…." The court held that an illegal pyramid scheme constitutes a "scheme or artifice to defraud" under the mail fraud statute. The majority in *Gold* agreed with the following definition of an illegal pyramid scheme: a "plan, program,…or other process characterized by the payment by participants of money to the company in return for which they receive the right to sell a product and the right to receive in return for recruiting other participants into the program rewards which are unrelated to the sale of the product to ultimate users." The Sixth Circuit held, "In subsequent cases involving alleged pyramid schemes, prudent district courts might supplement the [the definition used] to reflect the difference between legitimate multi-level marketing and illegal pyramids…." The court then cited examples of state statutes that prohibit only plans that compensate participants "primarily" for recruitment of new participants as opposed to sales of goods or services. The Sixth Circuit also cited Kentucky's statute which explicitly permits payment for sales of goods or services to participants in the MLM. The concurring opinion in *Gold* viewed this as confirmation that the definition used in the *Gold* instructions was flawed because it encompassed legal MLMs. For example, the concurring opinion (in footnote 1) noted that the FTC determined Amway was not fraudulent even though it paid a fixed fee for bringing in recruits. The court in *Gold* also addressed another unpreserved issue and held that the establishment of "anti-saturation" policies provides a defense.

The line between legal MLM companies and illegal pyramid schemes has been unclear and has shifted. Uncertainty in the law has resulted in difficulty for courts, regulators, and legal scholars to determine whether an MLM structure is viable.

Professor Warren has examined the business model, marketing materials, and documentation (all of which was provided by the United States) pertaining to a company doing business as Infinity 2 Global ("I2G") and later as Global 1 Entertainment ("G1E"). He will

testify about the business model and, in particular, about the distinction between so-called "Emperor" and non-Emperor packages. Then, Professor Warren will describe why the Emperor package and non-Emperor packages both lack necessary elements of illegal pyramid schemes.

Professor Warren will testify that the I2G "Emperor" package was inconsistent with an illegal pyramid scheme because the revenue generated as a result of this package was related to the sale of products to the ultimate user. In exchange for the $5,000 payment for the Emperor package, the purchaser received access to the entire spectrum of functions of the I2G Touch as well as all of the other company products and services (presently available and which became available in the future) with no monthly fees. The purchaser of the Emperor package was the ultimate user. Also, an Emperor received an opportunity to earn money from the participation of ultimate users of an online casino that was accessible outside of the United States. Therefore, all of the revenue generated from Emperor packages were related to the sales of product or services to the ultimate user. As FBI Agent McClelland indicated during his preliminary hearing testimony, the Emperors were told that recruitment was not required and many Emperors never signed anyone up.[2] The revenue generated from the online casino was entirely dependent on revenue generated from the ultimate consumer, which included I2G and non-I2G IBOs. Finally, the fact that Emperors were limited to a total of 5,000 prohibited any possibility of market saturation by Emperor participants. In fact, the fact that Emperors were dividing certain portions of the on-line casino profits created an economic disincentive to recruit other Emperors. The proportion of company revenue that was generated by the Emperor packages indicates that the company was not an illegal pyramid scheme.

Regarding both Emperor and non-Emperor positions, MLM companies are less likely to be illegal pyramid schemes where they market a product or products of value. Where the

[2] Preliminary Hearing Transcript, Page ID# 93–94.

customer receives a product of value in exchange for money, the customer is engaging in a consumer purchase or ordinary commercial transaction involving the sale of a product rather than a recruitment opportunity. Since the revenue generated from the non-Emperor packages was received in exchange for the sale of products and services to the ultimate user, this is directly contrary to the second element in *Gold*. Moreover, the business model precluded the possibility of "deceptive" market saturation because, if every possible consumer became substantive users of the products and services, significant corporate value would be generated because of the creation of a massive social network of users. Professor Keep's report notes that saturation was not a risk for this business as well.

Moreover, the fact that a valuable product was provided in exchange for the payments militates against an MLM company being an illegal pyramid scheme because the selling of an *investment* opportunity, as opposed to an ordinary *commercial* transaction, is integral to a pyramid scheme. Professor Warren will explain that an investment of money requires the consumer to expose herself to the risk of losing money, but that, where the product sold is of significant value relative to the price paid, there is no risk of loss and thus no investment of money. In other words, in exchange for the payment of money the consumer is receiving a valuable product or service. Instead, such transactions are simply consumer purchases, *i.e.*, ordinary commercial transactions and not financial investments. In short, Professor Warren will describe the characteristics of investments and contrast those with consumer purchases and other commercial transactions.

Furthermore, Professor Warren will testify that the product sales need not be to customers outside of the distributor network in order to count as retail sales. Professor Warren will testify that the important question is whether there were real sales to real consumers. In determining

who is a "real consumer," it is irrelevant whether the ultimate user is a member of the MLM network. Such "internal consumption" can support a legitimate MLM company. Indeed, during the relevant time frame, Professor Warren will testify that the FTC's guidance was that "the amount of internal consumption in any multilevel marketing compensation business does not determine whether or not the FTC will consider the plan a pyramid scheme."[3] Instead, the critical question is whether the sale of products or services is simply incidental to "the right to participate in the money-making venture."[4] *Gold Unlimited*, the leading case in the Sixth Circuit on illegal pyramid schemes, advises that courts and regulators look to state anti-pyramiding statutes for guidance. Professor Warren will testify that, under Kentucky's anti-pyramid statute, sales to those within the MLM company are treated the same as sales to consumers outside the MLM company[5] and the Ninth Circuit's decision in *FTC v. BurnLounge, Inc.*, rejected the FTC's argument that internal sales could not be sales to ultimate end users.[6] Thus, Professor Warren's testimony will serve to rebut Dr. Keep's assertion that I2G was more likely a pyramid scheme because it "fail[ed] to distinguish between distributor purchases for their own consumption and purchases made by non-distributor customers."[7]

/s/ R. Kenyon Meyer
R. Kenyon Meyer
G. Luke Burton
DINSMORE & SHOHL LLP
101 S. Fifth Street, Suite 2500
Louisville, Kentucky 40202
(502) 540-2300
(502) 585-2207

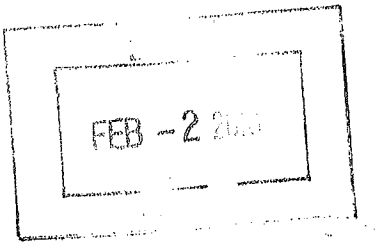
[3] James A. Kohm, FTC Staff Advisory Opinion, Jan. 14, 2004.
[4] James A. Kohm, FTC Staff Advisory Opinion, Jan. 14, 2004.
[5] KRS 367.830(5) "Compensation does not include payment based on sales of goods or services by the person or by other participants in the plan to anyone, **including a participant in the plan**, who is purchasing the goods or services for actual use or consumption." (emphasis added)).
[6] *FTC v. BurnLounge, Inc.*, 753 F.3d 878, 887 (9th Cir. 2014).
[7] Dr. Keep's Report, p. 2.

CERTIFICATE OF SERVICE

On May 31, 2018, I provided the foregoing to the United States via email and U.S. mail.

/s/ R. Kenyon Meyer
Counsel for Defendant Doyce Barnes

MANNING GILBERT WARREN III
Louis D. Brandeis School of Law
University of Louisville
Louisville, Kentucky 40292
(502) 852-7265 Office
mgw333@gmail.com



Current Position

H. Edward Harter Chair of Commercial Law, UNIVERSITY OF LOUISVILLE (1990-present). Courses include Business Organizations, Comparative Company Law, Securities Regulation, Entrepreneurial Law, European Union Law and International Law.

Previous Positions

Visiting Professor of Law, UNIVERSITY OF ARIZONA (2006).

Senior Fulbright Scholar and Visiting Professor of Law, Queen Mary College, UNIVERSITY OF LONDON (1988-89).

Visiting Professor of Law, EMORY UNIVERSITY (1988).

Visiting Professor of Law, GEORGE WASHINGTON UNIVERSITY (1984-85).

Professor of Law, UNIVERSITY OF ALABAMA (1983-90).

Associate Professor of Law, Cumberland School of Law, SAMFORD UNIVERSITY (1980-83).

Partner, RITCHIE, REDIKER AND WARREN, Birmingham, Alabama (1976-83).

Associate, BRADLEY, ARANT, ROSE & WHITE, Birmingham, Alabama (1974-76).

Law Clerk, U.S. DISTRICT JUDGE SEYBOURN H. LYNNE (N.D. Ala.), Birmingham, Alabama (1973-74).

Bar Admissions

District of Columbia (1973); Alabama (1974); Kentucky (1990).

Education

J.D., with Honors, The National Law Center, GEORGE WASHINGTON UNIVERSITY (1973).

B.A., International Studies, UNIVERSITY OF ALABAMA (1970); UNIVERSITY OF GEORGIA (1966-67).

Advisory Activities

Member, Panel of Academic Contributors, BLACK'S LAW DICTIONARY (Thomson West) (2010-present).

Member, U.S. Securities and Exchange Commission Federal Advisory Committee on Market Transactions (1991-97).

European Union Editor, INTERNATIONAL SECURITIES LAWS HANDBOOK (Bowne & Co.) (1995-2002).

Board of Advisors, INTERNATIONAL SECURITIES REGULATION REPORTS (1996-99).

Consultant on International Securities Markets, U.S. Congress Office of Technology Assessment (1989-90).

Consultant on Securities Distributions, London Stock Exchange (1988-89).

Expert Witness on Shareholder Voting Rights, U.S. Senate Committee on Banking, Housing and Urban Affairs (1988).

Reporter, Securities Law Committee, Alabama Law Institute (1985-90) [Drafter, Revised Alabama Securities Act].

Reporter, Public Finance Study Committee, Alabama Law Institute (1981-84).

Other Professional Activities

Fellow, European Law Institute (2016-present).

American Bar Association Liaison to European Law Institute (2017-present).

Life Member, American Law Institute (1991-present).

Member, American Law Institute Consultative Group on Principles of Government Ethics (2013-present).

Member, American Law Institute Consultative Group on Employment Law (2012-present).

Member, American Law Institute Consultative Group on the Law of Trusts (1999-2012).

Member, American Law Institute Consultative Group on the Law of Agency (1998-2005).

Member, American Law Institute Consultative Group on the Law Governing Lawyers (1992-99).

Fellow, American Bar Foundation (2014-present).

Board of Directors, American Judicature Society (1997-2004).

State of Kentucky Liaison, ABA Committee on State Regulation of Securities (1991-present); State of Alabama Liaison (1983-91).

Chair, Corporation, Banking and Business Law Section, Kentucky Bar Association (2014-15); Chair (2007-08).

Member, Ethics Committee, Kentucky Bar Association (1995-99).

Volunteer Activities

Chair, Board of Directors, Kentucky Region, American Red Cross, (2017-present), Board of Directors (1991-present); Board of Directors, Birmingham Area Chapter (1977-83).

Board of Directors, Louisville Zoo Foundation (2008-2017).

President, Louisville Orchestra (2003-2005), Executive Committee (1997-2005), Board of Directors (1992-2005), Board of Overseers (2008-2010).

Board of Directors, Kentucky Shakespeare Festival (2001-2005).

Member, Board of Governors International Services Committee, American Red Cross (1985-91), Senior Advisor (1985-94), Chairman, Subcommittee on Magen David Adom (1989-94).

Special Counsel for International Affairs, American Red Cross (Geneva 1984-93), (Bhopal, India Union Carbide Disaster 1985-90), (Rio de Janeiro 1987), (Ethiopia-Sudan Famine 1984-85).

Delegate, XXVIth International Conference of the Red Cross and Red Crescent Movement (Budapest 1991).

Delegate, XXVth International Conference of the Red Cross and Red Crescent Movement, Drafting Committee, Commission I (Geneva 1986) [U.S. Delegation Chair Adm. Elmo Zumwalt].

Member, Group of Experts on Human Rights, Commission on the Red Cross and Peace (Geneva 1987-89).

Founder and Director, Friendship Guatemala, American Red Cross Volunteer Medical Training Program (Huehuetenango, Coban, Quetzaltenango, Retalhuleu, Mazatenango, Guatemala 1978-81).

President, Board of Directors, Birmingham Area Legal Services Corporation (1981-84), Executive Committee (1979-84), Board of Directors (1979-85) [Birmingham Bar Association Representative].

President, Federal Bar Association, Birmingham Chapter (1977-78).

President, Student Bar Association, George Washington University (1971-72).

Chair, University of Alabama Homecoming Pageant (1969).

Honors and Awards

Faculty Favorite 2009, University of Louisville Outstanding Professor (Student Awarded).

University of Louisville Brandeis School of Law Outstanding Teaching Award (2000).

Jefferson County Public Schools Certificate of Excellence (1999).

University of Louisville President's Award for Outstanding Scholarship, Research and Creative Achievement (Social Sciences) (1996).

Spirit of Louisville Foundation Certificate of Honor for Volunteer Service (1996).
University of Louisville Community Services Award (1994), (1995), (1996), (1997), (2000), (2003).

University of Louisville Brandeis School of Law Outstanding Scholarship Award (1994), (1996) (2003).

Fulbright Scholar, University of London (1988-89).

American Red Cross International Services Achievement Award (1980).

Trustee Scholar, National Law Center, George Washington University (1971-73).

Omicron Delta Kappa (1972).

Who's Who in American Colleges and Universities (1970).

Books

BUSINESS ENTERPRISES: LEGAL STRUCTURES, GOVERNANCE AND POLICY with Douglas Branson, Joan Heminway, Mark Loewenstein and Marc Steinberg, 3rd Ed. (Carolina Academic Press 2016).

BUSINESS ENTERPRISES: LEGAL STRUCTURES, GOVERNANCE AND POLICY with Douglas Branson, Joan Heminway, Mark Loewenstein and Marc Steinberg, 2nd Ed. (Lexis/Nexis 2012).

Forfeiture of Executive Compensation: The Common Law Remedy for an Agent's Breach of Fiduciary Duty, Russell Weaver, François Lichère (eds./dir.), RECOGNITION AND ENFORCEMENT OF JUDGMENTS: COMPARATIVE AND INTERNATIONAL PERSPECTIVES (Presses Universitaires D' Aix-Marseille 2010).

BUSINESS ENTERPRISES: LEGAL STRUCTURES, GOVERNANCE AND POLICY with Douglas Branson, Joan Heminway, Mark Loewenstein and Marc Steinberg, 1st Ed. (Lexis/Nexis 2008).

EUROPEAN SECURITIES REGULATION (Kluwer 2003).

A Guide to Parallel Proceedings, Sections I (B) and II (G), NEW YORK ATTORNEY GENERAL SECURITIES ENFORCEMENT MANUAL, N.Y. State Attorney General's Office (2001).

Practical Guide on the European Community Directives: Summary of EC Directives on Securities Regulation, INTERNATIONAL SECURITIES LAWS HANDBOOK (Bowne & Co. 1995-2003).

SECURITIES REGULATION IN THE COMMON MARKET: A REPORT TO THE U.S. CONGRESS OFFICE OF TECHNOLOGY ASSESSMENT (1989).

SOUTHEAST LITIGATION GUIDE, Volumes 1 - 6, 11 and Annual Supplements (Matthew Bender & Co. 1981-93), with former U.S. District Judge Sidney O. Smith, Jr. and Bill Colson.

ALABAMA SECURITIES ACT: PROPOSED REVISION WITH COMMENTARY (Alabama Law Institute 1989).

Articles

"The Deconstruction of the Administrative Judiciary," 45 *Securities Regulation Law Journal* 369 (2018).

"The Regulatory Vortex for Private Placements," 45 *Securities Regulation Law Journal* 9 (2017).

"The False Promise of Publicly Offered Private Placements," 68 *Southern Methodist University Law Review* 899 (2015).

"The Role of the States in the Regulation of Private Placements," 102 *Kentucky Law Journal* 971 (2014); reprinted in 57 CORPORATE PRACTICE COMMENTATOR 253 (2015) as one of top ten corporate and securities articles of 2014.

"The Prospects for Convergence of Collective Redress Remedies in the European Union," 47 *International Lawyer* 325 (2014).

"The U.S. Securities Fraud Class Action: An Unlikely Export to the European Union," 37 *Brooklyn Journal of International Law* 1075 (2012).

"Equitable Clawback: An Essay on Restoration of Executive Compensation," 12 *University of Pennsylvania Journal of Business Law* 1135 (2010).

"An Essay on Rule 506 of Regulation D: Its Questionable Origins, Regulatory Oblivion and Judicial Revitalization," 38 *Securities Regulation Law Journal* 4 (2010).

"Revenue Recognition and Corporate Counsel," 56 *Southern Methodist University Law Review* 885 (2003); reprinted in M. Regan and J. Bauman, LEGAL ETHICS AND CORPORATE PRACTICE (Thomson West 2006).

"The Harmonization of European Securities Law," 37 *International Lawyer* 211 (2003).

"Reflections on Dual Regulation of Securities: A Case for Reallocation of Regulatory Responsibilities," 78 *Washington University Law Quarterly* 497 (2000).

"Federalism and Investor Protection: A Constitutional Shield Against Congressional Assault on the Common Law of Fraud," 60 *Journal of Law and Contemporary Problems* 169 (Duke University 1998); reprinted in 32 SECURITIES LAW REVIEW 545 (2000), as one of top ten articles in field.

"The Primary Liability of Securities Lawyers," 50 *Southern Methodist University Law Review* 383 (1996).

"The European Union's Investment Services Directive," 15 *University of Pennsylvania Journal of International Business Law* 181 (1994).

Co-Author, "Review of Developments in State Securities Regulation," 49 *Business Lawyer* 403 (1993).

"The Investment Services Directive: The North Sea Alliance Victory Over the Club Med," 6 *International Securities Regulation Report* (No. 3) 6 (1993); reprinted in H. Scott and P. Wellons, INTERNATIONAL SECURITIES REGULATION (Foundation Press 2002);H. Scott and P. Wellons, INTERNATIONAL FINANCE (Foundation Press 1995); 4 *Eurowatch: Economics, Policy and Law in the New Europe* (No. 6) (1993).

"The Regulation of Insider Trading in the European Community," 48 *Washington and Lee Law Review* 1037 (1991); reprinted in CORPORATE SECRETARY'S GUIDE (CCH) ¶ 48,200 (1992).

"The Treatment of *Reves* 'Notes' and Other 'Securities' under State Blue Sky Laws," 47 *Business Lawyer* 321 (1991).

"The Global Harmonization of Securities Laws: The Achievements of the European Communities," 31 *Harvard International Law Journal* 185 (1990); reprinted in M. Steinberg, SECURITIES REGULATION 1366 (Matthew Bender).

"The Common Market Prospectus," 26 *Common Market Law Review* 687 (1990).

"Regulatory Harmony in the European Communities: The Common Market Prospectus," 16 *Brooklyn Journal of International Law* 19 (1990); reprinted in H. Scott and P. Wellons, INTERNATIONAL SECURITIES REGULATION (Foundation Press 2002); H. Scott and P. Wellons, INTERNATIONAL FINANCE (Foundation Press 1995).

"Euroequity Offerings: A Preliminary Note on Worldwide Regulatory Harmony," 5 *Gestion 2000 Management & Prospective* 17 (Universite Catholique de Louvain, Belgium 1989).

"One Share, One Vote: A Perception of Legitimacy," 14 *Journal of Corporation Law* 89 (University of Iowa 1988); *One Share/One Vote: Hearing Before the Senate Committee on Banking, Housing and Urban Affairs*, 100th Congress, 2nd Session 82 (1988).

"A Foreword on Insider Trading Regulation," 39 *Alabama Law Review* 337 (1988).

"Who's Suing Who? A Commentary on Investment Bankers and the Misappropriation Theory," 46 *Maryland Law Review* 1222 (1987); reprinted in 21 SECURITIES LAW REVIEW 189 (1989).

"Legitimacy in the Securities Industry: The Role of Merit Regulation," 53 *Brooklyn Law Review* 129 (1987).

"The Status of the Marketplace Exemption from State Securities Registration," 41 *Business Lawyer* 1511 (1986).

"The Effect of Warranty Disclaimers on Revocation of Acceptance Under the Uniform Commercial Code," 37 *Alabama Law Review* 307 (1986) (with Michelle Rowe).

"Developments in State Takeover Legislation: *MITE* and its Aftermath," 40 *Business Lawyer* 671 (1985).

"Reflections on Dual Regulation of Securities: A Case Against Preemption," 25 *Boston College Law Review* 258 (1984).

"A Review of Regulation D: The Present Exemption Regimen for Limited Offerings Under the Securities Act of 1933," 33 *American University Law Review* 355 (1984); reprinted in M. Steinberg, SECURITIES REGULATION 134 (Matthew Bender) and in 1985 CORPORATE COUNSEL'S ANNUAL 227 (Matthew Bender).

"The Notice Requirement in Administrative Rulemaking: An Analysis of Legislative and Interpretive Rules," 29 *Administrative Law Review* 367 (1977).

Book Reviews

Book Review, Steinberg, INTERNATIONAL SECURITIES LAW: A CONTEMPORARY AND COMPARATIVE ANALYSIS, 35 *International Lawyer* 231 (2001).

Book Review, Poser, INTERNATIONAL SECURITIES REGULATION: LONDON'S "BIG BANG" AND THE EUROPEAN SECURITIES MARKETS, 29 *Columbia Journal of Transnational Law* 653 (1992).

Book Review, Clark, THE LAW OF SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE, 11 *Cumberland Law Review* 799 (1981).

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

UNITED STATES OF AMERICA **PLAINTIFF**

v. **CRIMINAL ACTION NO: 4:17-CR-12-GNS**

RICHARD G. MAIKE, *et. al.* **DEFENDANTS**

ORDER

This matter is before the Court on the motion of the United States to exclude from trial the testimony of defendants' expert witness Manning Gilbert Warren III or, alternatively, for a hearing pursuant to *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 591 (1993).

The Court having considered the motion, and being otherwise sufficiently advised,

IT IS ORDERED that this matter is scheduled for a hearing on _____, 2022, at _____, in the U.S. District Courthouse, Owensboro, Kentucky.