

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. OIG-509
OIG-509)

WITNESS: Number 57

ORIGINAL

PAGES: 1 through 176

PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.

DATE: Wednesday, June 3, 2009

The above-entitled matter came on for hearing, pursuant to notice, at 12:10 p.m.

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2

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22 On behalf of the Witness:

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1 P R O C E E D I N G S

2 MR. KOTZ: We are on the record at 12:10 on June 3,
3 2009 at the United States Securities and Exchange Commission,
4 Office of Inspector General.

5 I'm going to swear you in, if that's all right.
6 Whereupon,

7 DORIA GAIL BACHENHEIMER
8 was called as a witness and, having been first duly sworn,
9 was examined and testified as follows:

10 EXAMINATION

11 BY MR. KOTZ:

12 Q Could you state and spell your full name for the
13 record?

14 A It's Doria Gail Bachenheimer. D-o-r-i-a, G-a-i-l,
15 B-a-c-h-e-n-h-e-i-m-e-r.

16 Q You're represented by counsel?

17 MS. POSMAN: Eva Posman. P-o-s-m-a-n.

18 BY MR. KOTZ:

19 Q My name is David Kotz. I'm the Inspector General
20 of the United States Securities and Exchange Commission. I
21 have with me my colleagues from the Office of Inspector
22 General, David Witherspoon, David Fielder, Chris Wilson, and
23 Heidi Steiber, who temporarily left but will be back in a
24 moment.

25 This is an investigation by the Office of Inspector

1 Commission, one of the reasons I was interested in coming to
2 the Commission was in the U.S. Trustee's Office, there had
3 been a Ponzi scheme that the SEC had brought and then it came
4 over to the U.S. Trustee's Office as needing a Chapter 7
5 trustee, not unlike the Madoff situation.

6 We got involved there in reviewing the claims, so I
7 was familiar with that. That was the Churchill Mortgage
8 case.

9 I don't think I had investigated a Ponzi scheme
10 before, but I did after.

11 Q When you say you didn't investigate, do you mean as
12 a staff attorney or also as a branch chief and assistant
13 regional director?

14 A By November 2005, I don't think anything we had was
15 a Ponzi scheme at that point.

16 Q Do you know if at that point in time by November of
17 2005 whether Meaghan Cheung had ever investigated or overseen
18 the investigation of a matter involving a Ponzi scheme?

19 A I don't know.

20 Q What about Simona Suh?

21 A I don't know. Actually, no, I do know, and the
22 answer would be no.

23 Q For Simona or Meaghan?

24 A For Simona.

25 Q For Meaghan, you don't know?

1 A Right.

2 Q Why don't we show the first document. We're going
3 to mark this as Exhibit 2.

4 (SEC Exhibit No. 2 was marked for
5 identification.)

6 BY MR. KOTZ:

7 Q This is an e-mail from you to Meaghan Cheung and
8 Simona Suh, 11/3/05, 5:07 p.m.

9 If you see in this e-mail at the bottom of the
10 page, there's an e-mail from John Dugan from the Boston
11 office dated Tuesday, October 25, 2005 at 4:26 p.m. which
12 references a meeting with an informant. Do you see that?

13 A I do.

14 Q In this second paragraph, "The informant believes
15 that Madoff may be running one giant Ponzi scheme, and there
16 are signs that it may be close to crashing down."

17 Do you see that?

18 Walter Ricciardi sends it to Mark Schonfeld, who I
19 guess was the head of the New York office at the time. It
20 goes to Andrew Calamari and then to you, and then you say in
21 an e-mail to Meaghan Cheung and Simona Suh on Thursday,
22 November 3, 2005 at 5:05 p.m., "Here's a new case for Simona.
23 Do you want to come by and we'll call John Dugan to see what
24 he can tell us?"

25 Does that indicate that you were the one that

1 decided to give the case to Simona, the case referenced in
2 this e-mail, or was that some kind of joint decision?

3 A Yes, that is the way this e-mail reads, and
4 actually, it's not the way I remember it.

5 Q How do you remember it?

6 A I remember Meaghan telling me that she had spoken
7 to somebody in the Boston office about this case, that she
8 had gotten a call from somebody in Boston, and it was an
9 informant they had worked with in the past, that he had mixed
10 results, that sometimes he had been very helpful with them,
11 and it involved a sophisticated trading strategy, and Meaghan
12 and I together thought it would be a great case for Simona
13 because we were looking for something challenging for her to
14 do.

15 Q Was Simona available at that time? In other words,
16 she had time to work on a new matter?

17 A I believe she was. I can't recall exactly. It's
18 sort of an unfair -- I can't answer that question in a
19 vacuum.

20 Most people in the New York office were never
21 really available to take on a new matter, but I think Simona
22 was -- Simona was in high demand because of her accounting
23 and other skills. She had been working on a re-insurance
24 case, I believe, and I think they had decided the
25 re-insurance case was not going to go anywhere, and so I did

1 think she had some band width to work on something else.

2 Q Was that one of the reasons or the main reason why
3 she was given this case, because something else she had been
4 working on just ended, so it made sense to give it to her?

5 A No, actually. The main reason she was given this
6 case was because she was a super star. She was one of the
7 smartest lawyers I had ever seen right out of the box. This
8 looked like -- with the options trading strategy, quite
9 frankly, Meaghan and I thought if there's anybody who is
10 going to be able to understand this, it's going to be Simona.

11 Q Did you understand at the time -- we were told in
12 testimony from Simona that by that time, she had never worked
13 on a case that she had run, this would be her first case that
14 she had ever worked on by herself.

15 Did you understand that at that time?

16 A Yes.

17 Q Was there any discussion between you and Meaghan
18 about who to give the case to, the fact that it was an
19 allegation of a Ponzi scheme?

20 A I don't know that we discussed that it was an
21 allegation of a Ponzi scheme in terms of that being the basis
22 of how we would make our decision. A Ponzi scheme would
23 not -- the Ponzi scheme in and of itself is not something
24 that would require special expertise.

25 What I was more concerned about was what was the

1 basis, how was he doing it, and that he was a sophisticated
2 person dealing with sophisticated investors, and this was a
3 sophisticated trading strategy.

4 A Ponzi scheme is a very simple thing to understand
5 once you get to what's going on. You may not be able to find
6 what's going on, but once you get there, it's very simple.
7 You're taking money from Peter to pay Paul.

8 What's more complicated are the other issues going
9 on. What Meaghan and I discussed were there were other
10 complicated issues where and Simona, based on both of our
11 observations, was the right person for it.

12 Q You said a Ponzi scheme is kind of easy to
13 understand. Was there an understanding of how one would go
14 about and investigate a Ponzi scheme?

15 A I understood how to investigate a Ponzi scheme. We
16 had training, I believe. No, I want to withdraw that. I'm
17 not sure if that's something that's covered.

18 Q How would one go about investigating a Ponzi
19 scheme? You said you know or knew at the time.

20 A What you would want to do is you would want to
21 obtain account statements. You would want to talk to
22 investors. You would want to review e-mails to the extent
23 they were available.

24 You would want to talk to investors. My first big
25 question would be had a payment ever been missed, late,

1 unexplained, an off amount, something of that nature.

2 Q How would you go about determining whether there
3 was actual trading? If there was an allegation that a person
4 wasn't trading, how would you go about confirming whether
5 there were trades being done? Wouldn't that be part of a
6 determination of looking at a Ponzi scheme?

7 MS. POSMAN: It seems to me there would have to be
8 an allegation. I don't think -- I'll let Doria answer, but
9 it doesn't seem to me that would be an assumption.

10 MR. KOTZ: I'd like to ask her. You're not being
11 interviewed here. I'd really like to ask her the questions.
12 If we get to a point where I can't ask the questions, we're
13 going to stop.

14 MS. POSMAN: Okay. I just think it assumes stuff.

15 MR. KOTZ: Well, she can say that.

16 THE WITNESS: I would want to look at the account
17 statements and sample the trades.

18 BY MR. KOTZ:

19 Q Anything else to determine whether there is actual
20 trading going on?

21 A Ask for order tickets.

22 Q What about going to a counterparty? Would that be
23 something that would be done to determine if there's trading
24 going on?

25 A At this period of time, actually, that's something

1 that probably would have been frowned upon by the Commission.
2 It's not something that we did routinely and it's not
3 something I would have done during this period of time.

4 Q How is it frowned upon by the Commission?

5 A We certainly didn't have enough here to go to a
6 counterparty to suggest that Mr. Madoff was doing anything
7 wrong, and to raise that suggestion in this Commission in
8 2005 would have been viewed as the wrong way to go about
9 this.

10 Q We'll get into that in the details as we go through
11 it. I guess I'm asking generally. Generally, if one were to
12 do an investigation involving a Ponzi scheme to determine
13 whether there is trading going on, would any of the steps
14 include going to any independent outside entities to confirm
15 that there were trades?

16 A That is certainly one thing you could do;
17 absolutely.

18 Q Would that be an essential part of what one were to
19 do an investigation of a Ponzi scheme?

20 A I don't think you can say it's essential. I think
21 it would be a good thing to do but I don't think you can say
22 it's essential.

23 BY MR. FIELDER:

24 Q You said you would get order tickets; am I correct?

25 A Yes.

1 Q Who would you get order tickets from?

2 A The broker-dealer where the trades were being
3 executed.

4 Q What if the broker-dealer where the trades were
5 being executed was the alleged perpetrator of the Ponzi
6 scheme? Would that make sense then to get order tickets from
7 the same person you're investigating?

8 A You're asking me questions when we sort of know a
9 little bit more than what's in your questions. We know the
10 broker-dealer exam staff went in and did an examination and
11 it was my understanding they had done that and they had those
12 documents.

13 It's a different scenario if I am starting the
14 investigation from scratch and I don't have any information.
15 There are certain things I would do if I'm getting an
16 investigation where my broker-dealer exam team has been in
17 and reviewed certain things, I am going to rely for the most
18 part, unless I find a reason not to, I would rely on the work
19 of the broker-dealer exam staff.

20 It was my understanding in this particular case
21 that they had done that.

22 There were other cases subsequent to Madoff where I
23 did things differently based on different facts either from
24 an exam staff or different facts from an informer.

25 In this case, that's what happened.

1 BY MR. KOTZ:

2 Q Why don't we get into some of this, the specifics.
3 Why don't we show you the next document. We're going to mark
4 the next document as Exhibit 3.

5 (SEC Exhibit No. 3 was marked for
6 identification.)

7 BY MR. KOTZ:

8 Q This is an e-mail dated 11/3/05 at 6:10 p.m. from
9 you to Andrew Calamari. You see in this e-mail it's a
10 continuation of the previous e-mail. You ask Andrew Calamari

11 "Do you know who the exam team is on this?" He says "I
12 don't, the team should check with Bob." You say "We will."

13 Basically, you did find out who the exam team was?

14 Did you find out who the exam team was?

15 A Oh, I didn't realize that was a question. Yes, we
16 did, but sitting here today, I don't recall who they were.

17 Q Is it fair to say as soon as you learned of this
18 issue, the informant coming forward, at that same time, you
19 also understood that the exam team from OC had done an exam
20 of this same entity?

21 A I think they were contemporaneous.

22 Q Andrew Calamari says "Sure, they should open a
23 MUI." Do you know if a MUI was opened?

24 A I don't recall.

25 Q We'll go to the next document. We'll mark the next

1 document as Exhibit 4. This is an e-mail from Meaghan Cheung
2 to Simona Suh, 11/4/05 at 12:08 p.m. It attaches an e-mail
3 from Harry Markopolos to Meaghan Cheung on November 4, 2005
4 at 11:59 a.m. with an attachment.

5 (SEC Exhibit No. 4 was marked for
6 identification.)

7 BY MR. KOTZ:

8 Q Have you ever seen this document, the document
9 that's attached, which is stated "The World's Largest Hedge
10 Fund is a Fraud?"

11 A Well, I now have seen it --

12 Q Had you seen it at the time?

13 A In the Wall Street Journal. I believe that I did,
14 but I can't say with certainty that I did.

15 Q Do you remember whether you had any impression of
16 this document, which led to the investigation?

17 A I don't remember if I had an impression of the
18 document.

19 Q What was your understanding of what the allegation
20 was that the informant, Harry Markopolos, was making in this
21 document at that time?

22 A I'm not sure that I recall exactly what my
23 understanding was at the time. I knew we were concerned it
24 was a Ponzi scheme. I knew we were concerned about front
25 running, and that's sort of the big things that I remember.

1 Q The investigation that was conducted, was that
2 focused on the Ponzi scheme issue, front running, or both, or
3 something else?

4 A My recollection -- again, you've shown me two
5 e-mails that quite frankly I believe what's in the e-mails,
6 I'm not quarreling with them -- they are clearly just not
7 what I recall. I'm being very frank with you about what my
8 recollection is.

9 My recollection of the investigation was we did
10 start with whether it was a Ponzi scheme. Fairfield -- at
11 least Fairfield, we knew how much money Fairfield had given
12 to Madoff, and it was accounted for, and given the size and
13 the fact that it was accounted for, I remember thinking it
14 was unlikely it was a Ponzi scheme.

15 Then I think we did focus on front running, and I
16 did for the most part, for the next several months, I thought
17 of it more as front running.

18 Q Was it a focus on front running or was it a focus
19 on getting Madoff to register as an investment advisor?

20 A No, it was a focus on front running.

21 Q Are you sure about that? Simona testified that you
22 didn't focus at all on front running.

23 A My concern in numerous conversations that I had
24 with Simona, Peter and Meaghan was -- there were a number of
25 things I was concerned about, especially how could he

1 generate the returns as consistently as he could and why was
2 he only taking whatever the commission rate was. It was
3 quoted in the press. I don't know if I knew that's what it
4 was at the time.

5 I was under the impression that they were
6 investigating how he was generating his returns and was the
7 options strategy that he told us he was running, was he
8 really running that.

9 I thought it was an investigation -- we can get
10 into that more -- you haven't asked me the question.

11 To get back to the investment advisor, my thoughts
12 on the investment advisor piece of this was it would help the
13 situation -- he was doing this without being -- he was
14 conducting this activity without being registered.

15 Without being registered, he had no books and
16 records' requirement as an investment advisor. If we could
17 get him to register, he would have to keep all the books and
18 records that are required under Section 204 of the Advisors
19 Act. He would have to have a compliance program, and he
20 would be subject to an examination by our IA team.

21 For me, it was a side offshoot. I thought it was a
22 positive step that we could take. I didn't think it was the
23 purpose of the investigation.

24 Q One of the purposes that you said previously in the
25 investigation was to determine how Madoff was able to

1 generate those returns as consistently as he was.

2 A Right.

3 Q At the end of the investigation, was that question
4 answered?

5 A My understanding is from what I remember Peter
6 telling me, that he had tested the strategy and that it
7 worked. My understanding of "testing" was that it had been
8 sampled.

9 Did we sample the entire strategy and test every
10 single month? That's not my understanding of what Peter was
11 telling me he did.

12 My understanding was that he had tested the
13 strategy and he thought it could work, and he thought it
14 could generate the returns. Yeah, that's my understanding.

15 Q I'm going to have this marked as Exhibit 5. It's
16 an e-mail from Meaghan to Harry Markopolos dated Monday,
17 November 7, 2005 at 1:49 p.m. It forwards another e-mail
18 from Harry Markopolos to Meaghan Cheung dated November 7,
19 2005 at 1:15 p.m. with an attachment as well.

20 (SEC Exhibit No. 5 was marked for
21 identification.)

22 BY MR. KOTZ:

23 Q This document is a little bit different than the
24 document I showed you before. It's an updated version, I
25 guess. It says "The World's Largest Hedge Fund is a Fraud,

1 November 7, 2005."

2 Do you remember if you saw this document at that
3 time?

4 MS. POSMAN: "This document" meaning the one
5 attached?

6 MR. KOTZ: Yes.

7 THE WITNESS: You know, I don't know whether I saw
8 a version that is attached as Exhibit 4 or as Exhibit 5, or
9 if there's even another version. I don't know. I wouldn't
10 know what version I saw. I wouldn't remember.

11 BY MR. KOTZ:

12 Q Do you think you saw one of the versions?

13 A Yes, I do think I saw one of the versions.

14 Q Did you at that time go through one of those
15 versions, look at it, read it over?

16 A I believe that I did.

17 Q Do you remember if there were particular items in
18 it that struck you as matters that either should be looked
19 into or didn't need to be looked into or particularly of
20 concern?

21 A I had areas of concern. I don't know if they were
22 based on the way you have said, an analysis of the document.
23 I was concerned, as I've already said, that he was not
24 getting an advisor fee. I didn't know whether the options
25 strategy could work or not.

1 Q Do you consider the document that Harry Markopolos
2 provided in either version to be a detailed document?

3 A Yes.

4 Q Did you consider the document that Markopolos
5 provided was a comprehensive, thorough analysis?

6 A I wouldn't know if it was comprehensive and
7 thorough. He was not working -- he had no inside
8 information -- those are the wrong words to use -- he was not
9 an employee, and as far as I knew, received no information
10 from Madoff directly.

11 I would have no way of knowing, and I actually
12 would assume -- I guess you might think it was a
13 comprehensive and thorough statement of what he knew, but not
14 what was going on with Madoff. I don't know.

15 Q In Markopolos' complaint, he identifies 29 red
16 flags. Did you view that as a significant number of
17 concerns?

18 A I thought he raised a lot of questions. I don't
19 know that -- I thought he raised a lot of questions that were
20 worth our looking into.

21 Q Do you know if at any point in time anyone kind of
22 went through each red flag or each question raised by Harry
23 Markopolos and looked into each one?

24 A It was my understanding that the team did because
25 again, I have a recollection of having a case planning

1 meeting with Simona and Peter in which they told me they had
2 been through this and that some of the matters in it were
3 false.

4 Q Do you remember any particular matters that were
5 false?

6 A I've been trying to think about it. I don't. I
7 don't remember.

8 Q Do you know what the basis of the determination
9 that there were matters in Markopolos' complaint that were
10 false?

11 A I don't remember.

12 Q Based on some testimony we have heard, from what we
13 understand from Peter Lamore, he stated there were certain
14 aspects of Markopolos' complaint that were false. However,
15 he based that simply on what Bernie Madoff had told him.

16 Do you know if that was the case?

17 A I didn't believe that to be the case. That was not
18 my understanding; no.

19 Q If you could turn to page 10 of this document
20 attached to Exhibit 5, I want to ask you about red flag
21 number 17.

22 "Madoff does not allow outside performance audits.
23 One London based hedge fund, Fund of Funds, representing Arab
24 money, asked to send in a team of Big 4 accountants. They
25 were told no, only Madoff's brother-in-law who owns his own

1 accounting firm, is allowed to audit performance for reasons
2 of secrecy."

3 If it were true that Madoff's accounting firm was
4 run by his brother-in-law, and they didn't allow outside
5 performance audits, would that be a matter that the SEC
6 should follow up on? Would that be a matter of concern?

7 A You can't answer that question without leaving out
8 the fact that Madoff was an unregistered advisor, so there
9 was nothing that we could do about who was auditing his books
10 or records. He was an unregistered advisor, and it was up to
11 his investors as to who they were comfortable with.

12 Q I'm not talking about taking a specific action with
13 respect to his accountant. I'm talking about if you were to
14 get allegations that someone was engaged in a Ponzi scheme
15 like Madoff and one of the red flags was the fact that his
16 accounting firm was run or owned by his brother-in-law, would
17 that be something that would be of concern in the context of
18 a fraud investigation?

19 A Yes and no. You know, of course, you're always
20 going to look for familial relationships and they're always
21 going to be suspect; absolutely.

22 My understanding of the hedge fund world at the
23 time and people were talking about Madoff as a hedge fund,
24 there were a lot of close knit relationships, and again,
25 because this was unregistered space, people were comfortable

1 with it and there wasn't anything at the Commission that we
2 could necessarily do about it.

3 Is it something that made me think yeah, you know,
4 it's definitely a red flag, but it's not a big alarm bell is
5 what I'm trying to say.

6 Q Do you know if there was any activity or actions in
7 the Madoff investigation that looked into the issue of
8 whether Madoff's brother-in-law was his accountant?

9 A I don't recall.

10 Q You don't recall if there was or you don't recall
11 either way?

12 A I just don't recall.

13 Q Have you ever spoken to Harry Markopolos?

14 A No.

15 Q Harry Markopolos says in this e-mail to Meaghan
16 Cheung in Exhibit 5 "I'm out of the office all day on
17 Tuesday, November 8, but available the rest of the week to
18 teleconference if you'd like me to answer any questions."

19 Do you know if Meaghan Cheung called Harry
20 Markopolos to have him answer any questions?

21 A I don't know if she called on this day. I was
22 advised by Meaghan that she had conversations with
23 Markopolos. I don't recall the dates or if they were in
24 response to this e-mail.

25 Q Do you know about how many conversations she had

1 with Markopolos?

2 A I don't know the number at all.

3 Q Was it a dozen, a few?

4 A I don't know.

5 Q Do you know if they were substantive conversations
6 about the allegations?

7 A I believe they were.

8 Q Why don't we go to the next one? We're going to
9 mark the next document as Exhibit 6.

10 (SEC Exhibit No. 6 was marked for
11 identification.)

12 BY MR. KOTZ:

13 Q This is an e-mail from Simona to Meaghan Cheung,
14 11/4/05 at 2:18 p.m. In this e-mail, Simona e-mails Meaghan
15 Friday, November 4, 2005 at 2:16 p.m., referencing some prior
16 statements from Harry Markopolos about Bush's re-election
17 hopes.

18 Do you have any idea why Simona was referencing
19 statements Harry Markopolos made about Bush's re-election
20 hopes?

21 A I don't know why, other than it shows that he
22 worked at Rampart. Markopolos worked at Rampart.

23 Q Meaghan says to Simona on Friday, November 4, 2005
24 at 2:17 p.m. "I have some qualms about a self identified
25 independent fraud analyst, but who knows."

1 Who you know what that referred to?

2 A I don't know. I think the words speak for
3 themselves. I didn't have -- no.

4 Q Were you aware at any time that Meaghan Cheung had
5 qualms about Harry Markopolos?

6 A I don't have a specific recollection where she put
7 it quite this way. I know I had concerns about some of the
8 information that he was giving us or his position, I should
9 say, and I don't know if I discussed them with Meaghan.

10 The reason I pointed out to you the Rampart
11 situation, I had concerns that he was a competitor of
12 Madoff's who had been criticized for not being able to meet
13 Madoff's returns, and that he was looking for a bounty.

14 It didn't mean that we weren't going to investigate
15 what he said, but it's just when you're conducting an
16 investigation, as you all know, you put together every little
17 piece. That was one of the pieces on the board.

18 Q Did you believe that Harry Markopolos was seeking a
19 bounty for the Ponzi scheme investigation if you found
20 evidence of a Ponzi scheme?

21 A I believe he was seeking a bounty if we found
22 Madoff had engaged in wrongdoing. I didn't think it was -- I
23 didn't --

24 Q Could you look back at Exhibit 5, Harry Markopolos'
25 complaint, which is attached to Exhibit 5. If you look on

1 the second page -- I'm sorry. Go to the first page of his
2 complaint, the November 7 submission.

3 He says "There are two possible scenario's that
4 involve fraud by Madoff Securities. Scenario number one,
5 unlikely. I'm submitting this case under Section 21A(e) of
6 the 1934 Act in the event that the broker-dealer and ECN
7 depicted is actually providing the stated returns." He talks
8 about front running.

9 He says "We've obtained approval from the SEC's
10 Office of General Counsel and the bounty program
11 administrator and is able and willing to pay 21A(e) rewards."

12 Then he says "Scenario two, highly likely. Madoff
13 Securities is the world's largest Ponzi scheme. In this
14 case, there is no SEC reward payment due to whistleblower, so
15 basically, I'm turning the case in because it's the right
16 thing to do."

17 Do you see that with respect to the allegations of
18 a Ponzi scheme, Markopolos was not seeking any bounty?

19 A That's right.

20 Q Why would the fact that he was seeking a bounty for
21 front running, which he viewed as unlikely, how would that
22 affect his credibility or why would that be factored at all
23 into the investigation?

24 A It was a factor because often times people will
25 come forward either anonymously or they'll just come forward,

1 and they just won't mention the money. The fact that he
2 mentions money, I honestly don't recall paying attention to
3 the fact that he wanted it, and in one case he didn't want
4 it, and in another case -- I felt I had to consider all facts
5 that I was aware of, and this was one fact that I was aware
6 of.

7 Q You were less likely to believe someone if they
8 specifically state they want money under the bounty program
9 that the SEC runs?

10 A If the first thing I hear from someone is what's in
11 it for me, then it raises my antenna a little bit. It
12 doesn't mean I don't investigate what they're doing. It
13 doesn't mean I don't listen to what they have to say.

14 It just, you know, kind of makes me wonder a little
15 bit.

16 Q You would characterize Markopolos' complaint as the
17 first thing he says, what's in it for me, when he says
18 "Scenario one, unlikely," and requests money and then says
19 scenario two, highly likely?

20 A In all honesty, I didn't parse it out that finely.

21 Q What about the fact that he was a competitor of
22 Madoff? What's the effect of that?

23 A You know, often you get complaints from people who
24 are trying to do harm to their competitors, so you have to be
25 concerned that what they want is some public indication that

1 also indicates "Markopolos has very good sources." Do you
2 know if any of Markopolos' sources were sought out or anybody
3 at the SEC who worked on the investigation ever talked to any
4 of Markopolos' sources?

5 A I don't know if we spoke to his sources.

6 Q At the time that you first learned about this
7 complaint, had you heard the name "Bernie Madoff" or "Madoff
8 Securities?"

9 A No.

10 Q Did you have any sense as you were starting to do
11 the investigation of the reputation of Bernie Madoff or
12 Madoff Securities?

13 A I want to be clear that we're talking about the
14 same thing when you use the word "reputation." Shortly after
15 learning about these allegations, I learned that people had
16 been making allegations about Madoff for years and they
17 hadn't stuck, and that's what I knew as far as his
18 reputation.

19 Q In what way hadn't they stuck, to your
20 understanding?

21 A Nobody had been able to find that he was doing
22 anything wrong, was my understanding.

23 Q Do you know if there was any effort to look into
24 whether he was doing anything wrong?

25 A It was my understanding that our exam staff had

1 done repeated exams.

2 Q You're talking about the SEC?

3 A Right.

4 Q Let's go to the next document. I'll mark the next
5 document as Exhibit 8.

6 (SEC Exhibit No. 8 was marked for
7 identification.)

8 BY MR. KOTZ:

9 Q This is an e-mail from Meaghan to Simona on
10 11/16/05 at 12:46 p.m. Do you see in here Simona sends an
11 e-mail to Meaghan on Wednesday, November 16, at 12:36, the
12 second e-mail in the string?

13 She says "This language is in the standard subpoena
14 cover letter from Enforcement. Also, not sure whether to
15 include the standard paragraph on SEC policy concerning
16 settlements, and I skipped it for now, given that this is a
17 voluntary cooperation request and our inquiry is more in the
18 nature of an audit."

19 Do you have any idea why Simona would refer to the
20 investigation that was being undertaken as more in the nature
21 of an audit?

22 A You know, if you don't mind, let me just take a
23 quick look.

24 Q Sure.

25 A No, I don't know why Simona referred to it that

1 exam team has already been in there and looked at it.

2 Would it be fair to say that the exam team's
3 impressions would have an impact, maybe even a significant
4 impact, on how you viewed the case?

5 A Yes.

6 Q If the exam team had just been in there, and they
7 said we don't think there's anything here, then you would
8 think well, they were just there, they would know, and that
9 would in some way color your view of the case?

10 A Yes.

11 Q Do you understand generally what the exam team was
12 talking about? Were they talking about the Ponzi scheme or
13 what specifically when they said they don't think there is
14 anything here?

15 A I don't recall.

16 Q Do you recall that it was kind of generally the
17 information that was brought to your attention as a result of
18 Markopolos' complaint, do you understand the exam team was
19 essentially saying generally they don't think there's
20 anything there with respect to those allegations?

21 A My recollection is the exam team was saying
22 generally they don't think there's anything there with
23 respect to his allegations of false performance.

24 Q It wasn't as if the exam team was saying well,
25 there's one aspect of Markopolos' complaint we don't agree

1 with, others, we don't know anything about?

2 A I have no recollection, specific recollection, of
3 my conversations with the exam team. I can't tell you if
4 we -- I just have no recollection, other than this general
5 sense of what I came away with. I mean, I remember sort of
6 the sense of this e-mail but not any of the specifics.

7 Q In this e-mail that Sollazzo sends to you on
8 Thursday, November 3, 2005, he says "I remember looking into
9 similar allegations back in the 1990s at Madoff."

10 Did you have any understanding at the time what he
11 was talking about?

12 A I think I thought he was talking about the options
13 strategy and the steady performance.

14 Q Were you aware at the time of an actual
15 investigation that was open regarding Madoff in the 1990s?

16 A I don't believe I was. I think even though Bob
17 uses the word "investigated" here, I think because it was
18 Bob, I was thinking about exams.

19 Q You weren't aware while you were conducting or
20 overseeing the Madoff enforcement investigation that in 1992,
21 there was an enforcement investigation of Avellino and BMS
22 which related to Madoff?

23 A That's correct, I was not aware of that.

24 Q Peter Lamore was asked to assist with the
25 enforcement investigation; right?

1 A Yes.

2 Q That was because he had been involved in the
3 examination; is that right?

4 A Yes.

5 Q Were you aware of the examination that Peter Lamore
6 had been involved in? Were you aware that there was an
7 examination in Washington as well at that time of Madoff?

8 A No, I was not aware of that. As I sit here today,
9 I don't recall being aware of that.

10 Q Do you remember ever speaking to John Nee
11 specifically about the Madoff exam?

12 A I don't recall whether I did or not.

13 Q Do you remember how Lamore characterized the exam
14 that he had worked on involving Madoff?

15 A No, I don't recall.

16 Q Do you remember at any point Lamore saying that
17 there were matters in connection with the Madoff examination
18 that he and Bill Ostrow, who worked with him on the exam,
19 wanted to follow up on, but weren't allowed to do so?

20 A I don't recall that, but I'm not saying it didn't
21 happen. I'm really saying I don't recall.

22 Q Was your sense of how from Lamore at the time, of
23 how the examination of Madoff went, was it that there were
24 significant open questions at the end of the exam, or did you
25 have the impression that the exam kind of went forward and

1 came to a conclusion and that was it?

2 A My sense was that the exam came to a conclusion,
3 but I did have the sense that -- you know, Peter was
4 enthusiastic about working on the investigation, so I do
5 remember that.

6 Q Do you remember why he was enthusiastic if he had
7 just done an exam?

8 A No, I don't remember.

9 Q Did you have a sense that there were some
10 unanswered questions that Peter had at the end of the
11 examination?

12 A I really don't recall that.

13 Q Let me show you the next document. The next
14 document is Exhibit 12. This is an e-mail from you to Bob
15 Sollazzo on 11/4/05 at 10:33 a.m.

16 (SEC Exhibit No. 12 was marked for
17 identification.)

18 BY MR. KOTZ:

19 Q In this e-mail string, Sollazzo says to you on
20 Friday, November 4, 2005 at 9:33 a.m. "Please call if you
21 have any questions. The exam scope lays out what we
22 investigated on page 2 to 3. One of the examiners, Peter
23 Lamore, was a hedge fund trader in past life, and fairly in
24 command of the trading issues."

25 You respond "Thanks."

1 Do you remember if you read the exam report?

2 A I don't recall specifically. It would have been my
3 practice to do so.

4 Q Do you remember any impressions of the exam report?

5 A No, actually, I really don't.

6 Q Did you have a sense of what the exam focused on,
7 the OC exam?

8 A I may have at the time. I don't remember now.

9 Q Do you remember if you got the impression from
10 reading the exam report that was done by OC that they seemed
11 to rely to a significant degree on what Bernie Madoff told
12 them?

13 A I just don't remember; sorry.

14 Q Why don't we go to the next document. I'll mark
15 the next document as Exhibit 13. It's an e-mail from you to
16 Meaghan Cheung, copy to Simona, 12/1/05 at 3:11 p.m.

17 (SEC Exhibit No. 13 was marked for
18 identification.)

19 BY MR. KOTZ:

20 Q Meaghan says in an e-mail to you with a copy to
21 Simona on Thursday, December 1, 2005 at 2:59 p.m., "The
22 financial fraud investigator who gave us the Madoff case
23 called again to offer us any further information. He's also
24 threatening to go to the press, especially the Wall Street
25 Journal, if he doesn't feel we're making progress on our

1 investigation."

2 You respond "Well, at least he didn't threaten to
3 go to Spitzer" with a smiley face.

4 Do you recall this, that there was some kind of
5 threat made to go to the press?

6 A Yes, I do. Well, no, actually, I don't remember
7 that he threatened to go to the press. I remember that
8 Meaghan was having a hard time with Markopolos, which she
9 described to me was he was getting frustrated because she
10 couldn't share with him the details of our investigation and
11 so he felt we weren't making any progress because she
12 couldn't tell him what we were doing.

13 He was frustrated and she was feeling, I think,
14 eaten up by him. That's what I think this relates to.

15 Q The relationship between Markopolos and Meaghan had
16 become a little adversarial?

17 A That was my understanding; yes.

18 Q You said that Meaghan couldn't share with
19 Markopolos the details of the investigation. Could she ask
20 Markopolos questions about what he provided?

21 A You know, sure, she could ask him questions. Yes,
22 she could ask him questions about what he provided.

23 Q Do you know if Meaghan Cheung did ask Markopolos
24 questions about what he provided to try to get further
25 information from him?

1 A I believe that she did; yes.

2 Q Did she ever report back to you of that specific
3 fact, that she had talked to Harry Markopolos and got further
4 information?

5 A Again, I don't have -- my sense of this, this is a
6 sense, it's not a specific recollection of a conversation, my
7 sense was that we were desperate for hard evidence as opposed
8 to a theory, and she was pushing Markopolos to give us hard
9 evidence or somebody inside Madoff that we could talk to,
10 something more concrete, and he wasn't giving that to her.

11 Based on that, I concluded she was asking him
12 questions.

13 Q You felt that the Markopolos' complaint was not
14 concrete?

15 A It wasn't evidence. You know, it wasn't something
16 we could take and bring a lawsuit with. We had to
17 substantiate it. We had to test it and substantiate it.
18 It's theoretical.

19 Q Isn't it the Enforcement Division's job to develop
20 the evidence? Would you expect an informant to come in and
21 give you evidence? What would you do?

22 A You've asked a couple of different questions. Let
23 me step back. Yes, it is the Enforcement Division's job to
24 develop evidence. It is very difficult to develop evidence,
25 and the best way and often the only way we can develop

1 evidence, particularly in a Ponzi scheme, is if we have
2 somebody on the inside or if we have better documents than we
3 had in this case.

4 Law Enforcement
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18 It's very challenging to develop evidence that
19 something is going wrong until the thing actually falls
20 apart.

21 Q What about getting independent confirmation of
22 whether there are trades going on, is that difficult to do?

23 A In this case, I think one of the issues was that he
24 was doing some of his trades or he told us he was doing some
25 of his trades in Europe, but the other thing was my

1 understanding was, what the team was relaying, I thought what
2 the team relayed to me was they had tested some of his trades
3 and found they were real.

4 Q Do you know how they tested those trades?

5 A I don't remember.

6 Q Do you know if they tested those trades through any
7 mechanism outside of Madoff?

8 A I don't remember.

9 Q In general, would you agree that in a Ponzi scheme
10 case where there was an allegation that they weren't actually
11 conducting trades, it wouldn't be that difficult to go to an
12 independent source to confirm if there was trading?

13 A It would depend on what kinds of trades were being
14 executed.

15 BY MR. FIELDER:

16 Q That's a fair point. How about trades in --

17 A I think I thought that you would go to DTC records,
18 you know, be checking some other source for them. I think I
19 thought Peter had done some of that sampling.

20 BY MR. KOTZ:

21 Q You thought that either Peter or the other
22 Enforcement attorneys on the team had gone to DTC and got
23 records?

24 A I didn't know if they had gone to DTC and got
25 records in the course of the investigation or if it was

1 something they did in the exam. I don't know if it was just
2 an assumption I had in my head based on what Peter was
3 telling me. I guess the answer and what it took me five
4 minutes to say is I don't know.

5 Q Would that be something that you would have
6 suggested to Meaghan to do in an investigation like this of a
7 Ponzi scheme?

8 A I don't know if I would have or I would not have.

9 Q Is it fair to say you wouldn't need an
10 insider -- the information that Harry Markopolos would be
11 sufficient for the Enforcement Division to take that
12 information, go to DTC and check whether there was trading?

13 A I don't think so.

14 Q You don't think --

15 A I think you would need a lot more information on
16 the broker-dealer before you could go to DTC.

17 Q Was that information that you could get from the
18 broker-dealer?

19 A That's what I thought, that Peter had looked into
20 this.

21 Q You were saying earlier that you didn't get
22 anything concrete from Harry Markopolos, Meaghan Cheung was
23 calling Harry trying to get more concrete stuff, [REDACTED]

24 Law Enforcement [REDACTED]

25 [REDACTED]

1 What I'm asking is based on the information that
2 Harry Markopolos provided in the Madoff case, based on the
3 abilities of the Enforcement Division, without that inside
4 information or more concrete information, wouldn't it have
5 been possible for Enforcement to simply go to DTC and check
6 the records?

7 A I suppose it would have been possible for us to do
8 that. We chose to pursue a different path, and that was to
9 reach out to some of his investors.

10 BY MR. FIELDER:

11 Q Just so the record is clear, was that because you
12 thought -- you can't recall exactly why -- that OC/Peter had
13 either or was going to go to DTC or you just thought going to
14 DTC was unnecessary?

15 A No, I can't tell you that I thought about it one
16 way or the other is the honest answer.

17 I will tell you along these lines, at one point, I
18 asked them are we sure that the account statements are real,
19 and Peter assured me that they were. I don't remember more
20 about it.

21 BY MR. KOTZ:

22 Q Did he indicate to you why he knew they were real?

23 A I just don't remember.

24 Q We'll go to the next document. The next document
25 I'm going to mark as Exhibit 14.

1 (SEC Exhibit No. 14 was marked for
2 identification.)

3 BY MR. KOTZ:

4 Q This is an e-mail from you to Meaghan Cheung,
5 12/15/05 at 12:23 p.m. In this e-mail, you're responding to
6 Meaghan Cheung's e-mail to you on Thursday, December 15, 2005
7 at 11:17 a.m., where she says "Do you have a few minutes to
8 talk about Madoff, it may actually be something of concern
9 since Madoff failed to produce a whole set of accounts to the
10 examiners and in those accounts, he's using the options
11 strategy that he told our examiners he was no longer using.
12 He seems to have failed to disclose to the examiners several
13 billion dollars worth of options accounts."

14 You respond "Sure."

15 My first question is Meaghan is saying to you "It
16 may actually be something of concern." Does that indicate
17 and do you remember that initially the consensus was there
18 really wasn't much concern there in connection with
19 Markopolos' allegations?

20 A My recollection of this is that consensus of what
21 this was sort of ebbed and flowed, which is typical in an
22 investigation, depending on what we were finding. You know,
23 we looked and we found answers that made sense, and then you
24 might hear a fact, so you dig deeper.

25 This was a situation where -- I don't remember what

1 specifically was happening in December, and I don't know why
2 she used that word. You know, we -- I don't know why she
3 used that word.

4 Q Do you remember talking to her about Madoff?

5 A In general?

6 Q Yes.

7 A Yes.

8 Q How often did you talk with Meaghan about the
9 Madoff investigation?

10 A That, I don't recall.

11 Q Do you have any sense, once a week, once a month,
12 once every three months?

13 A I don't recall. I can tell you it was my practice
14 to hold case planning meetings with my teams, and that we did
15 discuss Madoff in those case planning meetings. Those case
16 planning meetings could be every two weeks. They could be
17 once a month, depending on what else was going on.

18 Q In those case planning meetings, you talk about a
19 lot of different matters, not just one?

20 A Right; right.

21 Q Do you remember any conversations or meetings you
22 had with Meaghan or Simona other than the case planning
23 meetings that you talked about Madoff?

24 A Yeah. I know from time to time either Meaghan and
25 Peter -- I'm sorry -- Simona and Peter would come to my

1 office. Meaghan would call me or e-mail me with questions.

2 Q Do you know about how often that occurred, apart
3 from the larger meetings?

4 A I really don't recall.

5 Q Was it more than five times throughout the course
6 of the investigation?

7 A I would think it was more than five times but I
8 really don't recall.

9 Q Do you remember this particular issue that Meaghan
10 references here in this e-mail on Exhibit 14 that Madoff
11 failed to produce a whole set of accounts to the examiners,
12 and in those accounts, he's using the options strategy that
13 he told our examiners he was no longer using?

14 A You know, I just have a very vague sense of this,
15 of learning this, but I really can't remember the specifics
16 of it.

17 Q Do you remember generally that Madoff had lied to
18 the examiners on numerous occasions in the examination, that
19 was the conclusion of the exam staff?

20 A As I remember it, I don't think my thought was that
21 he had lied numerous times. I think he had lied. I was
22 concerned that he had lied.

23 Q I'm going to show you the next document marked as
24 Exhibit 15. This is an e-mail from Meaghan to Simona on
25 12/19/05 at 1:06 p.m.

1 seems to indicate, does it not, in Exhibit 19, that the MUI
2 was opened on January 4, 2006; is that right?

3 A I don't know because it says the initial request
4 was submitted by Simona, and this is the one submitted by
5 Andy.

6 Q Wouldn't a request for a MUI have to go to Andy's
7 level?

8 A I don't remember at that point in time, actually.
9 It's possible this is the date the MUI opened. I just don't
10 know. I just don't remember.

11 Q You see where it says "MUI MNY07563, certain hedge
12 fund trading practices, date opened, January 4, 2006?"

13 A Yeah, I do see that.

14 Q Does that indicate that the MUI was opened in the
15 Madoff case on January 4, 2006?

16 A It would appear to; yeah.

17 Q Is there any reason why if the matter was first
18 brought to your attention in November, that the MUI wouldn't
19 be opened until January?

20 A No, it should have been opened sooner.

21 Q Is one of the reasons why you would open a MUI is
22 if a complaint comes in separately that the person or entity
23 that gets the complaint could look up on NRSI to see whether
24 there's an open investigation or a MUI?

25 A Yes.

1 After you've had a minute to read it, my question
2 is do you remember at any point Simona or Meaghan reporting
3 back or Peter reporting back to you that they did actually
4 check certain dates and found no records of options
5 positions?

6 A One, I don't recall that at all, and I would have
7 had a strong reaction to that, but I'm also confused. This
8 says Susan said this is not necessarily a reporting violation
9 if the London affiliate is writing the contracts and holding
10 the positions, then there is no violation.

11 I'm not sure they are convinced there's no trade or
12 just it's not recorded. In any event, I don't recall hearing
13 this information from anyone.

14 Q Were you aware that in the examination that was
15 done by OC that there was a request made to Barclays Bank to
16 confirm a certain time period when trading activity was
17 supposed to occur and the response from Barclays was there
18 was no trading activity during that time period?

19 A I don't recall being aware of that.

20 Q Would that have been something that was of concern
21 to you?

22 A Yes, it would have been of concern to me.

23 Q Would it surprise you to hear that while there were
24 discussions about going to CBOE, NASD and DTC, at the end of
25 the day, there were no documents that were obtained from

1 those entities?

2 A Yes, it would surprise me to know that if we
3 reached out to them, that we did not get documents.

4 Q Would that have been something that should have
5 been done in this kind of investigation of Markopolos'
6 complaint?

7 A I don't know. I know Steve had experience in
8 dealing with options and if they were things that he
9 recommended, they seemed like reasonable recommendations, so
10 I wouldn't see a reason not to, and I would not have
11 prevented anybody from doing that. It would seem like a
12 reasonable approach to me to do.

13 Q Let's go to the next one. Did you become more
14 involved in the investigation as it got closer to Bernie
15 Madoff's testimony?

16 A Somewhat more, but I had a number of pressing
17 matters that were going on.

18 Q I'm going to mark this next document as Exhibit 27.
19 It's an e-mail from you to Simona on 5/19/06 at 8:17 a.m.

20 (SEC Exhibit No. 27 was marked for
21 identification.)

22 BY MR. KOTZ:

23 Q This document attaches an outline of Bernie
24 Madoff's testimony, the questions to be asked in Bernie
25 Madoff's testimony.

1 My question is did you review Simona's outline?

2 A The e-mail would indicate that I received it. It
3 was my practice to do so, but I don't have a specific
4 recollection of doing so.

5 Q In the e-mail, she asked if you have a few minutes
6 during the next hour to talk, she had a couple of questions
7 about the approach to his prior disclosures to the exam
8 staff.

9 Do you remember that?

10 A I don't. I'm sorry.

11 Q You don't remember Simona saying she wasn't sure
12 how to deal at the testimony of Bernie Madoff with the issue
13 that he had lied to the exam staff about the options trading
14 and that maybe in fact you ask those questions at Bernie
15 Madoff's testimony?

16 A I don't remember.

17 Q Do you remember anything about discussions about
18 Bernie Madoff's testimony, what to ask or how to go about it?

19 A I don't recall.

20 Q Did you have substantive conversations with Simona
21 about how to conduct Bernie Madoff's testimony?

22 A I don't recall.

23 Q Were you aware that Peter Lamore had suggested a
24 couple of questions for Simona to ask in Bernie Madoff's
25 testimony, one of which related to the fact that someone

1 associated with the firm had conducted Madoff's annual audits
2 but Simona chose not to put that in her outline?

3 A I was not aware of that and I am surprised to learn
4 of it, and I also -- Peter was at the testimony and got to
5 ask questions, so I don't know why he didn't ask the
6 question.

7 Q You were at the testimony as well; right?

8 A Yeah.

9 Q Did you note that Bernie Madoff came in without a
10 lawyer?

11 A Yes, I did.

12 Q Did you find that significant at all?

13 A I did find it interesting.

14 Q What was your sense? Why was it interesting?

15 A What I thought was he was so arrogant that he
16 assumed that he did not need legal advice to deal with the
17 SEC Enforcement staff.

18 Q Any other possible --

19 A No.

20 Q Were you aware that during the examination that
21 Peter Lamore and William Ostrow conducted, they dealt almost
22 exclusively with Bernie Madoff himself?

23 A I don't think I was aware of that.

24 Q You weren't aware of a time when Peter Lamore was
25 talking to another individual who worked for Madoff and

1 Bernie came in, told the person they had to go to lunch, even
2 though it was 3:00 in the afternoon, to ensure that Bernie
3 was the only contact person with the examiners?

4 A I don't recall hearing that. Also, it wouldn't
5 surprise me that somebody would have direct contact with the
6 head of the firm. I mean, the exam staff would sort of want
7 that kind of access actually.

8 Q We talked to a lot of people on the exam staff.
9 People who worked on exams over years. They testified they
10 had never heard of a situation in all their years where the
11 head of such a big firm would be the point person for
12 examiners.

13 BY MR. FIELDER:

14 Q I think the point is not that they had access to
15 Mr. Madoff, which that is great, I think the point is what
16 was unusual was they were effectively denied access to anyone
17 else in the firm.

18 A I was not aware of that.

19 BY MR. KOTZ:

20 Q Did you have any sense on how the testimony of
21 Bernie Madoff went?

22 A It raised additional questions and I asked Simona
23 to follow up.

24 Q What were the additional questions?

25 A What I remember, it may have been more than this,

1 but what I remember is that there were, I think, family
2 accounts that he had. I asked her to get more information
3 about those accounts.

4 Q Anything specific about these family accounts?

5 A I was concerned. I thought he was -- at this
6 point, I was not thinking a Ponzi scheme. I was thinking
7 he's doing something to smooth earnings. I was trying to
8 come up with a theory of what he was doing, so I was thinking
9 was this like an accounting case, is this like cookie cutter
10 reserves, does he have some money somewhere else.

11 When he said he had these other accounts, I just
12 thought let's get the records and see if there is some way
13 he's smoothing earnings. I don't even know if you can do
14 that. I was wondering. That's what I remember. There may
15 have been other questions but that's --

16 Q Why at that point were you not thinking Ponzi
17 scheme?

18 A Going back to what I testified to earlier about the
19 Fairfield Century thing, that the money had been accounted
20 for, and it was too big. I thought it was more about
21 performance.

22 Q Let me show you some excerpts from the testimony.
23 The next document I'm going to mark as Exhibit 28.

24 (SEC Exhibit No. 28 was marked for
25 identification.)

1 BY MR. KOTZ:

2 Q This is a portion of Bernie Madoff's testimony on
3 Friday, May 19, 2006. It is pages 76 through 79. You can
4 take a look at that.

5 While you're reading, I'll just tell you the issue.
6 The question here is about the consistency of his returns.
7 You had testified earlier that you felt that the issue of how
8 Bernie Madoff was able to achieve such solid, consistent
9 returns was an issue that you were looking at in the
10 investigation.

11 This is a situation where that question was asked
12 of Bernie Madoff, and you can read his answer.

13 THE WITNESS: Did you want me to stop at the top of
14 page 79?

15 BY MR. KOTZ:

16 Q Yes. Do you think Bernie Madoff gave a sufficient
17 answer to the question asked about how he was able to achieve
18 such consistent returns?

19 A You know, taken out of the context of his whole
20 testimony, I don't know what else he said about it. Given
21 what else we knew about it, I mean, what I understood him to
22 be saying here is because he was hedged in both directions,
23 you would not expect there to be a lot of volatility, and I
24 think that is while not 100 percent responsive, not a perfect
25 answer, it does answer the question.

1 about learning about Fairfield and learning about Fairfield
2 sending its auditors in. When in time was that?

3 THE WITNESS: I want to say that was in the winter
4 of 2006, I think. I think it was in the January/February
5 time frame, but I'm not 100 percent certain.

6 BY MR. KOTZ:

7 Q Why don't I show you the next document marked as
8 Exhibit 29. This is another portion of Bernie Madoff's
9 testimony on Friday, May 19, 2006, pages 85 and 86.

10 (SEC Exhibit No. 29 was marked for
11 identification.)

12 BY MR. KOTZ:

13 Q Before you read that, I guess my question is did
14 you understand that the issue of custody of assets would be
15 an issue that would be looked at in this investigation of
16 Madoff?

17 A I don't recall. I guess I thought because of the
18 broker-dealer and because he was an unregistered advisor,
19 they sort of were what they were.

20 Q That wasn't an issue that was addressed in the
21 Madoff investigation, the custody of assets?

22 A I don't remember.

23 Q Is that an issue that you would normally look at in
24 connection with investigating a Ponzi scheme, custody of
25 assets?

1 A Yeah, of course, you want to know where the assets
2 are.

3 Q Did you find out where the assets were in the
4 Madoff investigation?

5 A I thought they were custodied at the broker-dealer,
6 I think.

7 Q You thought that the investment advisor side assets
8 were custodied at the broker-dealer?

9 A I really don't remember actually.

10 Q Was there any request at any point made to Bernie
11 Madoff to show where the bank accounts were for this very,
12 very large investment advisor business, show where the money
13 was?

14 A I thought Peter and Simona had looked at that, and
15 I thought they had seen where the money was, when it went
16 into cash in particular. I thought they had seen that and
17 knew where that was and it was all there and accounted for.

18 Q And Madoff had given them bank account information?

19 A I don't know.

20 BY MR. FIELDER:

21 Q Is it possible that based on your understanding
22 that you had just seen internal records that Madoff kept that
23 reflected say at year end he was all in cash?

24 A That is possible; yes.

25 Q That would be consistent with what your

1 understanding was at the time, that they --

2 A I don't know. I'm sorry to cut you off. I don't
3 remember what my understanding was at the time, but that is
4 entirely possible that's what they saw.

5 BY MR. KOTZ:

6 Q Let me show you the next excerpt that is marked as
7 Exhibit 30. This is another portion of Bernie Madoff's
8 testimony, pages 87 to 89, on May 19, 2006.

9 (SEC Exhibit No. 30 was marked for
10 identification.)

11 BY MR. KOTZ:

12 Q Before you read that, I just want to get a sense of
13 what you remember. The issue of segregation of accounts
14 between the investment advisor side and the other firm
15 transactions at DTC, do you remember that being an issue?

16 A I don't recall any conversations around that.
17 Again, I want to be clear that I just don't remember. I'm
18 not saying it wasn't an issue. I just don't remember.

19 Q If you look at the bottom of page 87 and the top of
20 page 88, the question is "Is there any segregation of that
21 account into subaccounts or some other segregation where you
22 separated institutional trading transactions from other firm
23 transactions?"

24 Bernie Madoff answers "Yes, the institutional
25 accounts are separate from the firm's accounts."

1 assessment that was a mistake on Meaghan's part, and if she
2 had not made that decision, it would have likely uncovered
3 the Ponzi scheme.

4 A I am here in good faith, and I am testifying under
5 oath as an officer of the Court, and I don't appreciate
6 having to have your colleague rephrase a question.

7 BY MR. KOTZ:

8 Q It wasn't any different than what I said.

9 A Yes, it was. I am doing the best I can here to be
10 as truthful as possible, and -- to answer the question, I
11 don't know. I think it was a mistake not to pursue those
12 accounts. I have no way of knowing had we pursued those
13 accounts we would have uncovered the Ponzi scheme.

14 MR. FIELDER: Mr. Kotz was just asking you if you
15 agreed with Simona's assessment that it was a mistake not to
16 pursue those accounts. The way I phrased the question was no
17 different substantively. I realize you had made an
18 assumption about what he was saying that was incorrect.
19 That's all I wanted to clarify.

20 BY MR. KOTZ:

21 Q You don't have any recollection of this issue
22 arising at that time, Meaghan ever coming to you and saying,
23 you know, running this decision by you?

24 A I have no recollection of it; no.

25 Q Can you think of any reason not to follow up on

1 this matter?

2 A No.

3 Q Why don't we go to the next document. I'll mark
4 the next document as Exhibit 35. This is an e-mail from
5 Simona to Meaghan, Peter Lamore and Steven Johnson.

6 (SEC Exhibit No. 35 was marked for
7 identification.)

8 BY MR. KOTZ:

9 Q Do you see in this e-mail it says "On Monday,
10 Madoff produced a tax explanation for the trades that Peter
11 had pointed out during his review of the account statements,
12 as well as the attached list of previously undisclosed
13 accounts that Madoff trades pursuant to the split strike
14 conversion strategy.

15 In all, the list includes 86 accounts with a total
16 value as of 4/30/06 of approximately \$336.5 million. Most of
17 the accounts are in the names of various trusts belonging to
18 approximately ten families."

19 Were you aware of the fact there were previously
20 undisclosed accounts in Madoff's trades to that amount,
21 \$336.5 million?

22 A I think I became aware of this issue at the time of
23 his testimony.

24 Q What was the issue you became aware of?

25 A I think if you look --

1 I haven't read this yet.

2 We asked him, does he trade money for anybody else,
3 and ultimately he said yes, so that's when we asked to follow
4 up, to get this information.

5 BY MR. KOTZ:

6 Q You were aware he had not disclosed 86 accounts
7 with a total value of \$336.5 million or just generally?

8 A No, you know, the way he explained it was that it
9 was family money but you know, yes, I became aware there were
10 these other accounts, and I asked the team to follow up on
11 them.

12 Q Did you have any concern that you were finding out
13 things during the course of the investigation that Madoff
14 hadn't disclosed before?

15 A Yes and no. It's not atypical in our
16 investigations for people to be less than truthful and to
17 only answer you when they feel they absolutely have to or
18 when you have a document. Yes, it's troubling, but it's not
19 that unusual.

20 MS. POSMAN: I'll note it looks like he said in his
21 testimony that it was a few hundred million dollars, his
22 guess would be a few hundred million dollars in those
23 accounts.

24 MR. KOTZ: That was afterwards.

25 THE WITNESS: "Madoff also produced options trading

1 data. I have checked this data against the Fairfield account
2 statements and found no discrepancies. From this, it looks
3 like Madoff passes the options trades onto the customer at
4 the price he gets from the counterparties with no mark up or
5 mark down."

6 Somebody made the statement there were real trades
7 here.

8 BY MR. FIELDER:

9 Q Literally, what I think that is saying is Madoff
10 was giving Fairfield account statements that jived with other
11 documents that Madoff was creating for internal uses. That's
12 all we're saying.

13 This is an important point. Is it your reading of
14 that document or your understanding at the time that they
15 were checking the trades against some documents, some
16 records, that weren't created by Madoff, that the Fairfield
17 account statements they are referring to were in fact just
18 created by Madoff.

19 A I don't recall what my understanding was at the
20 time of how they were checking the documents, how they were
21 checking the trades.

22 I trusted Peter as having worked and being a member
23 of our exam team to know the proper way to test and sample.

24 Q I'm just asking for your judgment and opinion on
25 this. I hear you, I really do, and I hear your frustration.

1 In your opinion, independent of what you were told at the
2 time, is it really of any value in this kind of investigation
3 to compare one type of documents that in this case Madoff has
4 created against another type of documents that Madoff has
5 created and say oh, they're consistent?

6 A Except, you know, he was running what I thought was
7 a large broker-dealer and to be able to doctor up that much
8 information, so as a general question, of course, you should
9 be checking more, but the ability, and I still would like to
10 understand how he could doctor that many trades and that many
11 account statements at that level.

12 It didn't register with me that -- I thought about
13 that and I thought he would have to have some massive
14 operation, and if he had that massive operation, how would
15 we not know about it.

16 Q Was that based on -- had you actually seen the
17 account statements to see some of the detail that was being
18 provided to the customers and have a sense that it would take
19 a long time to just falsify these?

20 I don't purport to have seen all the documents.
21 Some of the documents I've seen that purport to be account
22 statements are very short.

23 A No, but in general, what I was saying is as a
24 broker-dealer, his statements in general, to be doing it -- I
25 guess I didn't think if he was doing it, he was only doing it

1 BY MR. KOTZ:

2 Q This is an e-mail from you to Simona, 8/3/06, at
3 8:58. You are e-mailing Simona. You say "This outline is
4 excellent, thanks." I guess Simona did an outline of the
5 Madoff investigation.

6 If you look in the second full paragraph of
7 Simona's outline, she says "We initially began looking at
8 BLM's institutional trading business because of the
9 suggestions in the press that there were terms reported by
10 BLM's customers that were too good to be true, and that BLM
11 could be engaging in some improper conduct, or false
12 reporting of returns."

13 I'm a little struck by the fact that I thought you
14 initially began looking at it because of Harry Markopolos'
15 complaint about a Ponzi scheme, not because of suggestions in
16 the press that the returns were too good to be true or that
17 BLM was engaging in improper conduct.

18 A I think that's right.

19 Q Is there any reason why Simona would have said
20 something different in this outline?

21 A No, I don't think it was really relevant to our
22 discussion, you know, where the case came from was not really
23 relevant to the discussion of why he should register. It
24 wasn't a significant point to focus on.

25 Q What about the fact that the allegation initially

1 was a Ponzi scheme?

2 A Again, we were going to be talking to IM about
3 whether or not he needed to register as an advisor, so it
4 would not have been relevant to IM. That would have no
5 relevance to the issue of whether or not he should register
6 as an advisor.

7 Q Wouldn't you nevertheless accurately portray why
8 you began looking at the -- initiating the investigation and
9 what were the allegations?

10 A Sure. I would always want to be accurate and I
11 guess I made a mistake. I don't know why.

12 Q Is it possible that at a certain point in time, the
13 investigation shifted from the Ponzi scheme issue, you were
14 no longer looking at the Ponzi scheme issue, so when you are
15 trying to wrap up the case solely on the issue of whether he
16 should register as an investment advisor, if you were to
17 describe it as coming from an informant who said there was a
18 Ponzi scheme, then it would kind of look funny that your
19 solution is have him register as an investment advisor.

20 If you focus only on suggestions like the returns
21 were too good to be true or front running, so far we have
22 found no evidence of any alleged wrongdoing, the solution
23 which is to have him register as an investment advisor looks
24 more reasonable?

25 A You know, what you're suggesting, I would consider

1 unethical. It was not done by anyone that I am aware of, and
2 would not hold water because I believe our opening narrative
3 probably referred to the Ponzi scheme.

4 All you'd have to do is go back to our opening
5 narrative and say look, there was a Ponzi scheme, what
6 happened with that.

7 Q I'm going to mark the next document as Exhibit 39.

8 (SEC Exhibit No. 39 was marked for
9 identification.)

10 BY MR. KOTZ:

11 Q This is a referral from the Office of Investor
12 Education and Assistance dated December 14, 2006. Then I'm
13 going to show you also marked as Exhibit 40 an e-mail from
14 Meaghan to Simona on 1/09/07 at 1:09 p.m.

15 (SEC Exhibit No. 40 was marked for
16 identification.)

17 BY MR. KOTZ:

18 Q This complaint that came in on April 26, 2006, did
19 you ever see that complaint?

20 A I don't believe I did.

21 Q If you look at the e-mail, Exhibit 40, there is a
22 reference from Simona to Meaghan, "Brandon Becker called me
23 to report that Bernie says he has not managed money for
24 Normal F. Levy, the investor referenced in the anonymous
25 letter."

1 Do you have any idea why a complaint comes in from
2 an investor alleging improper actions on the part of Bernie
3 Madoff and the way to resolve it would be to go to Bernie
4 Madoff's lawyer and ask him if he managed money for that
5 investor and once he answers no, the response from Meaghan
6 would be I think we're done and we don't have to worry about
7 it any further?

8 A Yeah, I think you have to look at the context of
9 this, and that is once Mr. Madoff, I guess -- Simona now
10 viewed Brandon Becker to be representing Madoff. We would,
11 of course, reach out to Madoff's counsel, you know, send him
12 a document request, do whatever we would have to do.

13 As a member of a top firm, as a member of the Bar,
14 we would expect him to investigate and report back to us and
15 rely on the answer.

16 Q You don't think he would have just asked Bernie
17 Madoff, relied on what Bernie Madoff told him?

18 A You know, I guess everybody -- no.

19 Q You think Brandon Becker would have done more than
20 just ask Bernie Madoff whether he managed money for Norman
21 Levy?

22 A I would hope that he would, but I don't know what
23 he did.

24 Q Okay. I'm going to mark the next document
25 Exhibit 41. This is an e-mail from Steve Johnson to Simona

1 Suh dated 1/17/07 at 10:33 a.m.

2 (SEC Exhibit No. 41 was marked for
3 identification.)

4 BY MR. KOTZ:

5 Q Below in the e-mail chain, Simona says to Peter
6 Lamore and Steve Johnson "I am preparing this case for
7 closing."

8 Do you know who in the end made the ultimate
9 decision to close the case, or was it a joint decision?

10 A I think it was a joint decision but I think it
11 comes to me and based on the facts that the staff had
12 presented to me, it didn't seem like there was anything else
13 we could do.

14 Q Did anyone on the staff express any reservations
15 about closing the case?

16 A No.

17 Q I'm going to mark this next document as Exhibit 42.
18 This is an e-mail from Meaghan to Simona on 6/29/07 at
19 4:08 p.m.

20 (SEC Exhibit No. 42 was marked for
21 identification.)

22 BY MR. KOTZ:

23 Q It forwards an e-mail from Harry Markopolos to
24 Meaghan dated June 29, 2007. Harry Markopolos says "Attached
25 are some very troubling documents that show the Madoff scheme

1 is getting even more brazen."

2 He says "when Madoff finally does blow up, it's
3 going to be spectacular and lead to massive selling by hedge
4 fund Fund of Funds as they face investor redemptions."

5 Were you aware that Harry Markopolos came back in
6 this time frame and provided additional documents?

7 A I don't have any recollection of this; no.

8 Q Nobody at any point came to you and said we're far
9 down the line, we have been investigating this for a while,
10 but Harry Markopolos showed us some new documents?

11 A I don't remember that happening.

12 Q The next document is marked Exhibit 43, a 10/24/07
13 at 4:09 p.m. e-mail from Simona to Meaghan.

14 (SEC Exhibit No. 43 was marked for
15 identification.)

16 BY MR. KOTZ:

17 Q Do you see at the bottom of the e-mail chain on the
18 first page Simona says to Meaghan on Wednesday, October 24,
19 2007, "I have to say I'm a bit concerned this may be another
20 fishing expedition ala Madoff. That's why I would like to
21 confirm with the tipper the reason for his concern."

22 Meaghan responds "I, too, have no interest in
23 another Madoff. I think that's why Andy and Mark want to
24 address this at the exam level first. Doria's take is that
25 they almost certainly did something wrong, but we may never

1 find it."

2 It's unclear whether you're referring to Madoff or
3 this other Goldman case there.

4 A I'm not referring --

5 Q It looks like you're referring to this Goldman
6 case?

7 MR. FIELDER: Meaghan is saying that.

8 BY MR. KOTZ:

9 Q I'm sorry. Meaghan is saying your take is they
10 almost certainly did something wrong.

11 A I'm sorry. Your question is -- I was talking about
12 Goldman in this e-mail.

13 Q Do you have any idea why Simona would refer to this
14 as "another fishing expedition ala Madoff?"

15 A Because we all thought we had done a thorough
16 investigation and there was nothing there and Markopolos was
17 wrong, and this person who was calling us was another
18 Markopolos.

19 Q A "fishing expedition" refers to the fact -- what
20 exactly? What is the reference to "fishing expedition?"

21 A I don't know. You're asking me to interpret what
22 Simona meant by it.

23 Q When Meaghan references your take that they almost
24 certainly did something wrong but we may never find it,
25 you're referring to Goldman?

1 Q I'll show you the next document and will mark this
2 as Exhibit 47.

3 (SEC Exhibit No. 47 was marked for
4 identification.)

5 BY MR. KOTZ:

6 Q This is an e-mail from [REDACTED] to Marvis
7 Kelly, Wednesday, May 21, 2003, with attachments, and I'll
8 ask if you ever saw these documents before.

9 A I don't think I've seen the document.

10 Q When you say "the document," you mean the e-mail
11 from [REDACTED] to Marvis Kelly?

12 A I don't know -- this PowerPoint, I may have seen
13 it.

14 Q You might have seen the PowerPoint?

15 A I don't know.

16 Q Do you think you might have seen it after December
17 11, 2008 in the paper, or do you think you might have seen it
18 at the time?

19 A No, I don't think it's anything I've seen in the
20 paper. Actually, I don't recall. I don't think I saw the
21 e-mail, so I probably didn't see what's attached to it.

22 Q Do you think if you had those two documents that
23 might have assisted in the investigation?

24 A I'm sorry.

25 MS. POSMAN: Give her some time to really look at

1 these.

2 MR. KOTZ: Okay.

3 THE WITNESS: Well, they appear to be corroborative
4 of what Markopolos was saying. I can't say that we would
5 have been able to get more information, but yeah, they are
6 certainly something I would have liked to have seen and
7 considered.

8 BY MR. KOTZ:

9 Q When Simona was working on the Madoff case, she was
10 a staff attorney; is that right?

11 A Right; yes.

12 Q Subsequently, she got promoted to branch chief?

13 A Yes.

14 Q When was that, do you know?

15 A It was in the fall of 2008, after I had left the
16 Commission.

17 Q You weren't involved in that at all?

18 A I was consulted about her performance and I
19 recommended she be promoted.

20 Q Did her promotion have anything to do with her work
21 on the Madoff case?

22 A I don't think so. I mean, I don't know --

23 Q Was it a particular case that she worked on that
24 got her promoted?

25 A No. She had been a super star from the time she

1 greater knowledge in that area.

2 I think the fact that Simona didn't know more, that
3 any of us didn't know more, related more to a lack of
4 training and that no training is available for us on these
5 issues, that we didn't have broker-dealer resources that we
6 could go to, you know. We asked for additional options help,
7 and it wasn't there to be had.

8 I don't think it's her lack of experience. I think
9 it's a knowledge gap, absolutely.

10 Q Do you think that knowledge gap contributed to the
11 failure to uncover the Ponzi scheme of Madoff?

12 A I don't know actually. I mean, it would appear
13 that way from some of the things you've shown me today, that
14 may be, but you know, on some of these issues of getting
15 documents out of Europe, I don't know that we would have ever
16 been able to get the documents out of Europe because I always
17 had great difficulty getting documents out of Europe and was
18 only successful when I was working with the U.S. Attorneys
19 Office.

20 I don't know that we would have ultimately gotten
21 the documents. I think it's not unreasonable for you to draw
22 that conclusion, but I can't say with certainty that's right.

23 I still come back to we needed a search warrant.
24 We needed an insider, I think.

25 Q Looking back now after all the documents we've

1 shown you today, do you think there was sufficient actions
2 taken by the Enforcement staff to uncover the Ponzi scheme,
3 to investigate the Ponzi scheme issue?

4 A I think given the resources that we had available
5 to us and given what else we all had to do at the time, this
6 was the best we could do.

7 Q What was your reaction when you heard in December
8 of 2008 that Madoff had confessed to a Ponzi scheme?

9 A I was shocked. In fact, when I first heard the
10 news that Madoff had been arrested, I didn't think it was in
11 relation to this. I thought he had done something different,
12 and it wasn't until the next day that I realized it was this.

13 Q You were shocked even though you actually -- you
14 would have been in a better position to be less shocked than
15 pretty much everybody else because at least you had known
16 there were these allegations out there that he had ran a
17 Ponzi scheme; right?

18 Do you understand what I'm saying? I'm trying to
19 understand why you were so shocked.

20 A Because we had concluded our investigation and
21 thought he hadn't done anything wrong, so he wasn't somebody
22 who had engaged in fraud. I didn't think he was likely to do
23 something again, yes, or different or whatever.

24 Q Have you had any conversations post-December 11,
25 2008 with anybody, Meaghan or Simona, anybody in the agency

1 about what happened in the investigation?

2 A I have had no contact with Meaghan, Simona or Peter
3 since December 11. Andy Calamari called me -- I called him
4 because the Post was situated outside my door for a day,

5  Personal Privacy

6
7 I left a message for Andy to that effect. He
8 called me back to tell me that because of the recusal -- I
9 was calling him just to let him know that -- the Post was
10 calling also. I wanted to get what I was supposed to say to
11 the Post basically, which was "no comment."

12 I left a message for Andy. Andy called me back and
13 said you know, we can't have any contact. I said I
14 completely understand, and we look forward to talking again
15 when this is over. I have friends at the Commission that I
16 talk to. We don't talk about this.

17 Q Is there any other perspective or context or
18 additional information that you would like us to know that we
19 haven't covered, or any issues generally that we haven't
20 covered that are relevant, you think?

21 A I think there's a lot that we haven't covered today
22 that's relevant to what happened here in terms of -- I think,
23 you know, the Enforcement Division was traditionally -- the
24 Enforcement Division began, in New York, began to be under
25 staffed beginning some time in 2005.

1 We had this great hiring spree under Chairman
2 Donaldson and we had actually expanded the way the office
3 worked, and then it just all got shut down. When people
4 left, we could not fill those slots.

5 Meaghan only had three people in her branch.

6 Personal Privacy had, I forget how many people in her branch.

7 We had cases then coming -- this whole thing with
8 the complaints and whistleblower, there actually is a
9 complaint referral system, so you have cases coming at you
10 from the complaint referral system that you're supposed to be
11 taking on. We had a significant backlog of market timing
12 cases that we still had not had an opportunity to
13 investigate.

14 We had significant resource demands for the
15 re-insurance cases that were being investigated by the
16 office, and they were pulling bodies. They pulled one of
17 Personal Privacy best lawyers to work on the AIG matter. I was
18 having to produce documents. I had worked on the Credit
19 Suisse and Goldman Sachs' IPO cases.

20 Then there was the companion class action suits
21 going on before Judge Schenwin.

22 I, by myself, had to review 300 plus boxes of
23 documents and produce that, during this time frame, during
24 when Madoff was going on, on my own because I didn't want to
25 take my staff attorneys away from doing investigations, so I

1 did that on my own and did the production on my own.

2 There were a number of investigations -- there were
3 just dozens of cases that we had that were waiting to be
4 worked on, and that we put things aside and we put Simona,
5 who we viewed to be one of our best lawyers, on this because
6 we thought it was worth looking at.

7 While we were working on this, you know,
8 Meaghan -- what started to happen in this time, you have
9 people leaving. You can't replace them. You have
10 cases -- in Personal Privacy branch, Personal Privacy had been pulled over to
11 work on the re-insurance case.

12 We had a trading suspension and a TRO back in early
13 2005 but then the staff attorney who was supposed to work on
14 that left the Commission, so I had to support the trial
15 lawyer who had to work on that.

16 I could go on and on. The point is your day is not
17 just -- you don't have the ability to just focus on Bernie
18 Madoff. There are a million things coming at you.

19 When you're getting things, it's sort of checking
20 out and you think it's institutional investors who are
21 involved, and you are getting referrals all the time about
22 other cases which might -- they might be what Madoff turned
23 out to be, so then you have so what do I do? Do I work on
24 that, do I work on this? Just what do I do?

25 It doesn't make for -- far from 100 percent

1 results, I guess. I think it's unfair, and when I think
2 about what you could do differently to change the system, I
3 don't know that you could ever have enough Enforcement
4 lawyers to change that.

5 We didn't have a lot of resources. When you showed
6 me the e-mail about the Goldman case, because this is
7 confidential, I guess I can talk about it -- that was a
8 subprime investigation.

9 We had to wait -- when you subpoena documents or
10 you receive documents, however, in an electronic form,
11 basically, what I'm trying to say I was getting documents in
12 from Goldman, and this didn't start happening in 2007. I was
13 getting hard drives of documents. That's how many documents
14 there were, with these humongous spreadsheets of shock tests
15 they had done on CDOs.

16 I wouldn't know where to begin to understand what
17 really goes into -- I can get a sense of what your
18 assumptions should be for shock testing, but there is no way
19 me by myself was going to be able to figure that out.

20 I was getting hard drives of documents, CDs of
21 documents. I had to send them down to DC to be loaded. I
22 had to wait a month for them to be loaded.

23 Meanwhile, I had to be having conversations with
24 Sullivan & Cromwell who represented Goldman, to keep their
25 feet to the fire to be producing documents to me, and sort of

1 pretending that I already knew what was in the production
2 they had already made because I didn't want to tell them that
3 we didn't have the resources to load up the documents, and I
4 didn't have an expert nor did I have the funds to hire an
5 expert to look at the documents.

6 Here, while this was going on, we were settling the
7 Bear Stearns' market timing case. Bear Stearns agreed to pay
8 \$250 million. I'm not going to remember the exact month, but
9 six to nine months before we actually got that order
10 resolved, it took an enormous amount of mine and Allison's
11 time to get that order done.

12 When we finally got it done, the Chairman came out
13 with the penalty statement, so we had to go back and rewrite
14 the action memo and revise the order while Madoff is going
15 on. Bear Stearns was March 31 or March 16, 2006.

16 While Madoff is going on, that's what I'm doing,
17 rewriting an action memo where a company has agreed to settle
18 nine months ago.

19 Simona was taken off that because it's sort of
20 like, okay, now we're at the place where it's done, there's
21 no more investigative work, let's put Simona to more use.
22 That case is in the bag, let's move on. Let's deploy Simona
23 where she's more useful.

24 There were just so many other things going on. I
25 guess the point I want to make is we all really tried our

1 best. We don't want to just go home and let Madoff off the
2 hook.

3 You know, when I looked for a job, I will tell you
4 when I looked for a job, I put the cases by biggest cases on
5 my resume, because they were feathers in my cap. It would
6 have been a feather in my cap. This is not what I want to
7 mark my career, and I wanted to let you know -- I'm sorry,
8 I'm getting all emotional.

9 I wanted to highlight for you some highlights of my
10 career at the Commission, not to tell you that I'm the
11 world's greatest lawyer, but to show you that I am someone
12 who genuinely cared about my job.

13 In 2001, I received an award for integrity and
14 devotion to individual investors. In 2003, I was part of a
15 team that brought the Lehman research analyst case. I
16 received the Chairman's Award for Excellence for that.

17 In 2001, we brought the Credit Suisse case, which
18 was a \$100 million judgment against Credit Suisse. In 2005,
19 we brought a \$50 million case against Goldman Sachs for tying
20 after market bids, indications of interest, to IPO
21 allocations.

22 Bear Stearns, Meaghan and I spent Mother's Day
23 weekend in 2007 working on an action memo to bring a TRO
24 against these two crooks who basically were going across the
25 country to old people, soliciting investments in real estate

1 developments when really what they were doing was taking the
2 money to build their house in New Jersey. We went in and we
3 shut that down. The last case I brought was a Ponzi scheme.

4 Yeah, we didn't catch this. It's horrible that we
5 didn't catch this, but it's not because we didn't try, and
6 it's not because we didn't do our best or tried to do our
7 best every day.

8 Q Do you feel that the resource issue really kind of
9 inhibited your ability to kind of do a totally thorough job
10 on each and every investigation since you had so many to deal
11 with?

12 A Absolutely. If you read the GAO report, I think
13 it's right on.

14 Q In terms of what, specifically?

15 A The resource issues and the challenges that we were
16 facing, everything. Everything in that report, I think I
17 agree with. We had to buy our own legal pads. We had to buy
18 our own pens. It got to the point where we didn't have paper
19 for the printers.

20 There is a lot of metrics that were put into place
21 that were very good metrics but the problem was you only had
22 one person to be doing the same jobs.

23 We had cases that had remained open for years. You
24 had to have people writing closing memo's, which is of
25 course, you should be shutting down your old cases, but

1 that's what Meaghan spent a lot of her time doing, writing
2 closing memo's because she had inherited a branch where
3 everybody had left and left these old cases in shambles, and
4 you had to go back to the court records, pulling all these
5 court files, and recreating files to close them. Meaghan had
6 tons of this stuff, much more than Personal Privacy. It was crazy.

7 Then you had to have six month memo's on cases,
8 whether or not you should keep them open, memo's to write.

9 The joke that we had in the office was that you had
10 to write a memo to get permission to write a memo.

11 You know, a lot of this was to make the performance
12 measurable, which is great, and it should be measurable, but
13 you have to provide people the resources to do it.

14 The other point that I want to make that I think is
15 really important is they stopped -- when I got to the
16 Commission, it was great, you actually had money for
17 training, because I came from the Department of Justice, the
18 U.S. Trustee's Office, we had no money for training. When I
19 got to the Commission, I thought this was the greatest thing
20 in the world.

21 In 2005, and maybe before 2005, they shut down our
22 money for training. You couldn't get an expert. What I had
23 started to say was in Bear Stearns, we wanted to get an
24 expert and ultimately we couldn't get an expert because there
25 was no money.