

1 The dates are easily checkable here. I could have sworn that
2 we hadn't taken (b)(6),(b)(7)(C) testimony by January 4, 2010. I could
3 be wrong. It's very close in time, but I -- I don't think
4 that we had. And certainly we hadn't made the final charging
5 decisions by January 4, 2010. After -- the reason I'm saying
6 that is because I -- I remember after (b)(6),(b)(7)(C) testimony as I
7 said there was another round of robust discussion around
8 charging (b)(6),(b)(7)(C)

9 Q The case was put on the calendar for December 17.
10 Then it was taken off to take (b)(6),(b)(7)(C) testimony. Then in
11 early January 2010 it was pretty aggressively placed back on
12 the calendar even before (b)(6),(b)(7)(C) testimony was taken.

13 A I -- I -- honestly I don't -- I don't know what the
14 chronology was here so I don't know even then why it happened
15 that way. As I said, again, it would be -- what would be
16 inconsistent with my memory is that once we took (b)(6),(b)(7)(C)
17 testimony we then immediately made a charging decision and
18 put it back on the calendar. I -- I do remember ongoing -- I
19 was surprised that there was still rigorous, ongoing debate
20 about charging (b)(6),(b)(7)(C) after his testimony.

21 Q Because it was then taken off the calendar a second
22 time as well.

23 A As I said, I don't really remember that, but I
24 don't doubt it.

25 (b)(6),(b)(7)(C): Is there a good time to take a

1 break, I don't know how much more you have, but in the next 5
2 to 10 minutes if there's an opportune time? I don't want to
3 break up your rhythm.

4 MR. KOTZ: Sure. Let me do a little more.

5 [REDACTED]: Good. Just a thought.

6 MR. KOTZ: Let me show you the next document that
7 we're going to mark as Exhibit 6. This is an e-mail exchange
8 between Robert Khuzami, [REDACTED] Lorin Reisner and Cheryl
9 Scarborough with a copy to you, 1/15/10 at 10:51 a.m. Robert
10 Khuzami sends an e-mail and says, I thought about this after
11 our meeting last night. An inquiry may be one additional
12 reason to continue with the case and Wells [REDACTED] on parallel
13 tracks assuming that is the result we reach with [REDACTED]

14 And that is responses to an e-mail from [REDACTED]
15 who says: According to outside counsel Sullivan and
16 Cromwell, Goldman has provided copies to the Senate of all
17 documents produced to the SEC pursuant to a me-to request.

18 Let me show you another document at the same time
19 and that we're going to mark as Exhibit 7. That's an e-mail
20 from you to [REDACTED] and [REDACTED] on 1/15- 2010 at
21 5:38 p.m. In this e-mail, the e-mail exchange continues from
22 the last one where it says: According to outside counsel,
23 Goldman has provided copies to the Senate, et cetera.

24 And then there's: Do we know who in the Senate
25 asked for documents?

1 Then it goes up and finally you have the answer and
2 you say: The Permanent Subcommittee on Investigations
3 chaired by Senator Levin. Goldman believes they are working
4 somewhat in tandem but separately from the separate
5 investigation into the causes of the financial crisis chaired
6 by Mr. Angelides.

7 (Exhibit Nos. 6 and 7 were marked
8 for identification.)

9 BY MR. KOTZ:

10 Q When Robert Khuzami says in the e-mail in Exhibit
11 6, "The inquiry may be one additional reason to proceed with
12 the case and Wells [REDACTED] on parallel tracks," is he talking
13 about this Permanent Subcommittee on Investigations?

14 A I don't know. Let me try to give some context to
15 be helpful if I can.

16 Q Okay.

17 A Obviously I don't what Mr. Khuzami means. I'm CC'd
18 on this which I wasn't CC'd on everything having to do with
19 this, so what I remember is we -- at some time in early 2010,
20 we learned that Goldman had -- Goldman was being investigated
21 everyone. Right? Goldman had already settled with
22 Massachusetts on something involving RMBS. I mean, we knew
23 that Goldman was, you know, being investigated by everyone.
24 We didn't know that Goldman was being investigated by a
25 Senate committee pretty late and this is the start of it. I

1 remember talking -- as -- as Exhibit 7 reflects, I remember
2 talking with Goldman's attorneys to try and sort this out.

3 I mean, look, as you can appreciate from a [REDACTED]
4 [REDACTED] perspective, they're producing things to what I --
5 I'm beginning to learn in this e-mail is the PSI. I didn't
6 really know who they were. But they were beginning to
7 produce things to them. I want them. I mean, I'm just --
8 we're document greedy. And so -- and I remember there being
9 some concern about them sharing our testimony transcripts. I
10 don't remember why, but I think in general we like things to
11 be confidential and we get nervous when our testimony
12 transcripts just get out there. So that's why I -- I'm
13 trying to be helpful. That's why I remember the context of
14 me asking Goldman a round-about what is this Senate committee
15 about?

16 Q What about Robert Khuzami's e-mail which indicates
17 that one of the factors in the decision on when to go forward
18 with the case related to the inquiry?

19 A I don't remember that and I apologize. I don't
20 know what Mr. Khuzami means and I don't know if that was -- I
21 don't know if that was part of the thinking. What -- what --
22 maybe if I can be helpful, what I can tell you what I -- what
23 I see in Exhibit 6 is an additional reason to proceed with
24 the case and Wells [REDACTED] on parallel tracks. What this
25 reflects to me is two things. By this point we had taken

1 (b)(6),(b)(7)
(C) testimony. Right? I think. I mean, we can confirm
2 that, but this is January 15. This -- this confirms my
3 recollection that we weren't done with (b)(6),(b)(7)
(C) Despite my --
4 my impression with testimony, it was still under option to
5 charge (b)(6),(b)(7)(C)

6 Separately this also confirms my recollection that
7 there was consideration of charge Goldman and then -- and
8 continue to consider against (b)(6),(b)(7)
(C) including Wells, bring a
9 recommendation to the Commission and then maybe amend the
10 complaint. That certainly was happening at this time.

11 Q Do you recall that one of the considerations given
12 in deciding to proceed with the case and charge Goldman at
13 that time was this Permanent Subcommittee on Investigations
14 here?

15 A I don't remember that.

16 Q Do you remember that the matter was very quickly
17 put on the calendar again for January and then withdrawn when
18 the Permanent Subcommittee on Investigations decided to push
19 off their hearing?

20 A I don't remember that. And I -- I apologize. I
21 don't remember -- look, I remember the thing going on and off
22 the calendar twice. I don't remember the second when that
23 happened or why. Maybe -- if there's documents maybe it
24 would help, but I don't remember.

25 Q You might not have been involved in that

1 discussion.

2 A I -- I can't say for certainty, but it would be
3 consistent with my -- it would be consistent with my other
4 memories that I may have not been in the room when that
5 decision was made or why.

6 MR. KOTZ: We could take a break now if you want.

7 (A brief recess was taken.)

8 MR. KOTZ: We are back on the record. Let me show
9 you another e-mail. This is an e-mail exchange between
10 Cheryl Scarborough and (b)(6),(b)(7)(C) dated 1/22/10 at 6:09 p.m.
11 We're going to mark this as Exhibit 8.

12 (Exhibit No. 8 was marked for
13 identification.)

14 BY MR. KOTZ:

15 Q In this e-mail there's further discussion in
16 January 2010 about when to file it, and Cheryl Scarborough
17 says in an e-mail which you were copied on Friday, January
18 22, 2010, at 4:57 p.m., I would prefer not to file on a
19 Friday. I suggest Monday, Feb. 1. (b)(6),(b)(7)(C) responds: I
20 realize that's the approach we have taken in the past. My
21 sense is we really are in a 24/7 news cycle nowadays, et
22 cetera.

23 Then Cheryl Scarborough responds: I disagree. Do
24 you remember a discussion about whether to file the case on a
25 Friday or not?

1 A I'm just reading the e-mail. I remember a
2 discussion but I don't even think it reached (b)(6),(b)(7)(C)
3 level. I think me and (b)(6),(b)(7)(C) for lack of a better
4 word sort of talking the breeze and talking about it and
5 saying there's a reason you don't file on Friday because
6 people -- people don't pay attention to the news on Friday
7 and then you're in this weekend schedule. But I'm not even
8 -- I know that -- that -- he and I informally talked about
9 that but going to (b)(6),(b)(7)(C) no, I don't remember that.

10 Q Did you understand that generally the Commission's
11 approach was not to file cases that could get media attention
12 on Friday?

13 A No, I -- honestly I don't even know what the
14 Commission approach is. I'm sorry. I'm sure there might be
15 one. I just -- I don't know it.

16 Q Subsequently, in late January 2005, there was a
17 meeting with Commissioner Paredes. Do you remember that?

18 (b)(6),(b)(7)(C) : Do you mean 2010?

19 BY MR. KOTZ:

20 Q I'm sorry. Yes, late January 2010, there was a
21 meeting with Commissioner Paredes.

22 A I -- I remember meeting with Commissioner Paredes.
23 Maybe there were multiple meetings because I remember one --
24 I remember meeting with Commissioner Paredes. I don't know
25 when it was.

1 **Q What do you remember about that meeting?**

2 A I remember a meeting, again not sure when it was,
3 but someone, I don't know who, I think I briefed one of his
4 staff members whose name is escaping me, forgive me, about
5 the case. Commissioner Paredes wanted a meeting. We met in
6 his office with (b)(6),(b)(7)(C) me, (b)(6),(b)(7)(C) and maybe Cheryl
7 Scarborough was there and Lorin I think was there as well --
8 Lorin Reisner, and Commissioner Paredes and his staff member
9 again whose name escapes me. We reviewed the draft action
10 memo and certainly there was -- what I really remember was a
11 long discussion about the merits of the case. Commissioner
12 Paredes asked a lot of -- Commissioner Paredes and his staff
13 member asked a lot of questions about the merits of the case.
14 Frankly, I thought they had a good understanding of how the
15 CDO worked and he asked the right -- I mean again this is a
16 staff attorney's perspective on Commissioner Paredes's
17 questions so it's not worth much, but I certainly remember
18 him asking the right questions and challenging, you know,
19 aspects of the case.

20 **Q Was he skeptical of certain aspects of the case?**

21 A Yes.

22 **Q Any particular aspects that you can recall?**

23 A Yes. The one that I remember most -- there may
24 have been more than this, right, but the one that I remember
25 particularly was he felt that the representation ACA selected

1 the portfolio which is really our main misrepresentation as
2 to investors -- he felt that that may have -- that that could
3 have been accurate, that -- you know, that what -- and he --
4 there was a long discussion on what the meaning of the word
5 "select" is and he felt that if ACA and Paulson, for example,
6 chose the portfolio together mutually you could still say
7 that ACA selected the portfolio. That's not false.

8 Q Did you feel that by the end of the meeting you had
9 allayed his concerns or addressed his concerns?

10 A No, not at all. I mean, as I said, a robust
11 discussion. I feel -- particularly Lorin was talking. It
12 wasn't -- I think I may have said a word or two, but Lorin
13 certainly, you know, while acknowledging his point laid out
14 why we felt that it was misleading, why in the market it
15 would be misleading to say, you know, the collateral manager
16 selected the portfolio when. In our view it wasn't that way.
17 But I certainly didn't leave the meeting feeling that
18 Commissioner Paredes was persuaded.

19 Q Was there concern within the Enforcement staff that
20 the case that would be brought to the Commission would not be
21 approved?

22 A I think -- I think there's always that concern.
23 And one other thing if I could about that meeting.
24 Commissioner Paredes wasn't not persuaded. In other words, I
25 remember Commissioner Paredes asking us to provide additional

1 evidence that would help him get comfortable with the idea
2 that ACA selected the portfolio if that statement was false
3 and misleading. So I remember we were tasked for example
4 with preparing a chart showing why that was false and showing
5 how investors were told that. And so this is a roundabout
6 way of answering your question. So we worked on that
7 diligently largely because, you know, we wanted to if at all
8 possible get Commissioner Paredes the facts to get
9 comfortable with what we thought was, you know, a good
10 charge.

11 Q Was there concern specifically? You had met with
12 the Commission and he expressed skepticism. Was there
13 concern specifically in the Abacus case that it might go up
14 to the Commission and get rejected?

15 A That was my impression from talking to Commissioner
16 Paredes, that he -- that he was -- after that meeting I
17 didn't know either way. He didn't indicate I'm not going to
18 recommend this, but ht certainly indicated I have -- it's a
19 hard case and I have specific concerns, but he was very open
20 what those were and we felt that the evidence -- we could
21 marshal evidence that could alleviate those concerns.

22 Q Were there any changes made in the investigation of
23 the case or how the case was brought as a result of feedback
24 from Commissioner Paredes or any other Commission?

25 A I -- not that I can recall. I think it was more of

1 an effort to find evidence that would address his specific
2 concern but it didn't change the charging, it didn't change
3 the theory of the case.

4 MR. KOTZ: Let me show you another document. I'm
5 going to mark this as Exhibit 9. This is an e-mail between
6 [REDACTED] with
7 a copy to you dated 1/28/10 at 3:56 p.m.

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

10 BY MR. KOTZ:

11 Q I know you said you didn't recall a lot about the
12 second time that the matter was pulled from the calendar, but
13 this may be helpful. [REDACTED] sends an e-mail saying:
14 Here's the memo. I guess he's referring to the action memo.
15 And he says: We pulled to give time to Wells another
16 possible D, assuming he refers to defendant.

17 Does this refresh your recollection that at this
18 point in time the matter was pulled to Wells [REDACTED] It
19 looks to us like the first time it was pulled to take [REDACTED]
20 [REDACTED] testimony and the second time it was pulled to Wells

21 [REDACTED]
22 A I'm sorry. I'm just reading through this. Yeah,
23 the reason I'm having a hard time reading through this, we
24 worked with [REDACTED] and them and [REDACTED] and we
25 -- we were always trying to be helpful to other Enforcement

1 people as a resource on CDOs so that's the context for us
2 talking with him about it. And [REDACTED] I'm just sorry to read
3 aloud, [REDACTED] writes: We pulled to give time to Wells another
4 possible defendant. That -- again, I wish I had a better
5 recollection of this. But that seems right and why I'm
6 saying that seems right, we did Wells [REDACTED] We Wellsed him
7 in -- that's easily confirmable again, but late January or
8 early February.

9 And that -- having decided to do that, I mean, I
10 don't remember this but it certainly would be a good enough
11 reason not to bring the case before my Commission. My
12 personal thinking on that would be it would be strange to be,
13 hey Commission, we recommend charges and sort of in the memo
14 say, by the way, we're still in the process of Wellsing
15 someone else. You don't -- it just looks like you're
16 recommending something incomplete to your client and so that
17 would be impression, but specifically I don't.

18 Q Would there be a strategic reason also not to bring
19 a case and then Wells [REDACTED] right after you brought the case?

20 A I don't remember talking about that, but, yes, for
21 the reasons I -- that -- when you asked me there is certainly
22 a reason not to be in the middle of litigation and having to,
23 you know, make charging decisions or otherwise get
24 information from [REDACTED] That -- that would have been a hard
25 thing to do.

1 Q Try and explain for me if you can the decision-
2 making process. There was robust debate in your words about
3 whether to take (b)(6),(b)(7)(C) testimony. (b)(6),(b)(7)(C) testimony was
4 taken. You and I guess others kind of concluded after (b)(6),(b)(7)(C)
5 testimony that perhaps there was less of a chance even that
6 he should be charged. And then the decision is made to Wells
7 (b)(6),(b)(7)(C) How did you get from point A to point B?

8 A He was -- well, in general he was a very close
9 call. Right? There was -- there were -- on substance -- and
10 I'll get to your question about process, on substance it was
11 a question of is he like Tourre? Is he a writer of the
12 misreps? Could we charge him under a failure-to- supervise
13 theory which we were getting it from all corners from other
14 divisions that failure to supervise would be a phenomenal
15 claim. I looked at it and felt -- my own research was, no,
16 it's not and it doesn't fit these fact patterns. But there
17 were any number of charges that could be brought.

18 I -- as I said, robust debate happened. I don't
19 remember substantively how we got to the -- to the decision
20 to Wells (b)(6),(b)(7)(C) My general recollection is that the idea was
21 if it's this close, that's the purpose the Wells process. In
22 other words, if you think it's likely or probable that you
23 could recommend to your client charges, the purpose of Wells
24 is in part to hear good reasons why he shouldn't be charge
25 and that certainly was the spirit in which we Wellsed (b)(6),(b)(7)(C)

1 His -- he was very ably represented and presented good
2 arguments.

3 To answer your question though, the decision-
4 making process, what I remember, and if there's e-mails I'd
5 be happy to go through this, I remember an awful lot of
6 meetings in Rob or Lorin's office generally late in the day
7 with the Enforcement staff team. (b)(6),(b)(7)(C) tended to
8 prepare memos or other large documents to support his
9 arguments and Lorin, Rob, Cheryl. There was a lot of
10 discussion and decisions were made through that discussion.
11 There would be, you know, very open debate about these
12 things. I'd be showing documents and doing the sort of
13 gopher work that a staff attorney has to do. Decisions would
14 be made usually at the end of the meeting with Rob and Lorin
15 saying here's where we should come out. I don't specifically
16 remember the decision on why to Wells (b)(6),(b)(7)(C) as I said. It
17 would be consistent with my memory that it happened that way.

18 Q In the context of those meetings where these
19 decisions were made, was there any discussion about matters
20 other than the investigation's substance in terms of
21 strategic issues within the Commission, when it would be good
22 for the Commission to file something or otherwise? Or any
23 other factors other than a discussion of the merits of the
24 potential case against (b)(6),(b)(7)(C) or another individual?

25 A I don't specifically remember that. I don't -- I

1 mean, I -- I think by this point, we're in January or
2 February of 2010, the staff, myself, me, (b)(6),(b)(7)(C)
3 (b)(6),(b)(7)(C) certainly felt that we jumped through a number
4 of hoops to get here, we'd taken (b)(6),(b)(7)(C) testimony, that we
5 felt that the -- the case -- there were -- that there were
6 diminishing returns on fact discovery. And so from that
7 angle we certainly felt that, you know, once the -- once the
8 rigorous debate is complete we hoped that the -- the core
9 charging decisions survived because we think they had merit
10 and that they should be brought. But I don't -- again, I'm
11 trying to be helpful.

12 In that context it's possible that particularly
13 someone on the staff said, you know, this is an important
14 case from our perspective and there -- if there's diminishing
15 returns on debate, let's go. But I remember a sort of
16 broader discussion about strategy in the Commission and
17 things like that.

18 Q Do you remember any discussion about the fact that
19 the SEC had some negative press with respect to Madoff or
20 other matters and the bringing of a Goldman case would give
21 it some positive attention which would be helpful overall for
22 the Commission's reputation?

23 A I don't remember that.

24 MR. KOTZ: Let me go to the next document. This
25 we're going to mark as Exhibit 10. It's an e-mail from (b)(6),(b)(7)(C)

1 [redacted] to [redacted] you and [redacted] 2/5/10 at 12:42
2 p.m.

3 (Exhibit No. 10 was marked for
4 identification.)

5 BY MR. KOTZ:

6 Q This is a back-and-forth I guess between you and
7 [redacted] and [redacted] At the top of the page [redacted]
8 says, Ken and I had an interesting conversation with a couple
9 of Bloomberg reporters yesterday. They are all over this
10 issue which is worrisome. I'm not sure what if anything we
11 can do about it. What do you remember if anything about this
12 issue where the Bloomberg reporters seemed to be getting
13 information?

14 A Nothing. I'm sorry. I certainly didn't talk to
15 any Bloomberg reporters. I don't remember this at all. Just
16 in case it's not clear, at the bottom of Exhibit 10 there's
17 me being long-worded in describing a totally different
18 investigation. I mean, it's -- it's related because it has
19 to do with CDOs, but not Goldman.

20 MR. KOTZ: Let me show you another document. We
21 can mark it as Exhibit 11. It's an e-mail from [redacted] to
22 [redacted] and Ken Lench with a copy to you and a couple
23 others dated 2/25/10 at 2:05 p.m.

24 (Exhibit No. 11 was marked for
25 identification.)

1 BY MR. KOTZ:

2 Q It actually highlighted the part that I wanted to
3 ask you about. [REDACTED] has a reference to time
4 constraints in this e-mail.

5 A For the record, the highlights on that are CI
6 staff.

7 [REDACTED]: That's a two-pager?

8 THE WITNESS: Yeah.

9 BY MR. KOTZ:

10 Q I wonder if you could look at that and tell me if
11 you know what [REDACTED] was referring to when it mentioned
12 time constraints.

13 A Okay. Yeah, I don't know specifically what [REDACTED]
14 [REDACTED] means, but let me provide what I do remember if it's
15 helpful. We were looking to hire an expert because this
16 shows [REDACTED] who was a very nice guy. The reason we were
17 doing that is there was concern that our analytics of the --
18 we didn't have a good analysis of the underlying portfolio.
19 In other words, we knew that Paulson helped to select it. We
20 didn't know precisely -- it would have been really great --
21 and I think it was told to us by among other people the
22 General Counsel that it would have been really great to be
23 able to show that the assets were quantitatively worse. I
24 can do that by using e-mails and by using a staff attorney's
25 sense of what bad RMBses were in 2006 and 2007. That's not

1 very good. Right? I mean a staff attorney is not an expert
2 witness and we were trying to line up an expert witness.

3 I'm giving you the context there because, because
4 these concerns had been raised I think at this point by
5 people in the building, decision makers in the building
6 including the General Counsel, we felt that lining up an
7 expert was important to get the case through. The worry was
8 if we didn't line up an expert who could do this analysis, we
9 couldn't even get the case through the building and we would
10 in other words have one holdup for an entire case. It would
11 have been just -- it's -- it's sort of like there's many
12 parts to this case and you're trying to move trains like on a
13 mobilization timetable. There was no sort of -- I don't
14 remember there being some sort of rush or deadline to file
15 the case, but we can't -- with all these moving parts, if one
16 holds up you've basically held up the case. So that's --
17 that's what I remember in terms of time constraints.

18 MR. KOTZ: Let me show you another document. I'll
19 mark it as Exhibit 12. This is an e-mail from [REDACTED]
20 to [REDACTED], [REDACTED], you and [REDACTED] 2/25/10
21 at 12:57 p.m.

22 (Exhibit No. 12 was marked for
23 identification.)

24 BY MR. KOTZ:

25 Q In this e-mail [REDACTED] is saying: We've been

1 pulling together the chart together for Paredes, I think
2 maybe the chart that you mentioned earlier, But it's not
3 complete yet. Then he says: Given the change in timing I
4 temporarily moved to different projects. Do you know what he
5 was referring to with the change in timing?

6 A Gosh, I really don't. I mean, let me just read
7 through (b)(6),(b)(7)(C) and then (b)(6),(b)(7)(C) to see if I can be more
8 helpful.

9 From this context let me tell you what I do
10 remember. We were drafting a complaint and we'd been
11 drafting a complaint and Lorin Reisner was really involved in
12 that making it, frankly, a stronger, more crisp complaint.
13 So that's going on. You can see we're pulling together the
14 chart that I mentioned for Commissioner Paredes.

15 Given the change in timing, I'm -- I'm -- I'm sorry
16 that I don't. What's clearly happening here is we've gotten
17 Wells submission and my guess is we haven't met with (b)(6),(b)(7)(C) yet
18 because you -- you -- you put together these thoughts. I
19 think, for example, I drafted some thoughts criticizing his
20 Wells submission. You do that before you meet with the guy.
21 My guess is because we haven't met with him yet, based on the
22 documents you've shown it, it appears, I don't specifically
23 remember this, but that we pulled the case from the calendar
24 for the second time because we decided to Wells (b)(6),(b)(7)(C)

25 Now we're saying, okay, we've Wellsed him. We have

1 to meet with him. That suggests that the -- the sort of
2 train I described is slowing down because now we have to wait
3 to meet with [REDACTED] counsel, he had good counsel, digest what
4 he says and think about that. My guess is that this is
5 reflecting the slowdown caused by the [REDACTED] charging decision.

6 MR. KOTZ: Let me show you another document. We'll
7 mark this as Exhibit 13. It's an e-mail exchange between you
8 and [REDACTED] dated 3/4/10 at 12:35 p.m.

9 (Exhibit No. 13 was marked for
10 identification.)

11 BY MR. KOTZ:

12 Q In this e-mail exchange you say to [REDACTED]
13 on Thursday, March 4, 2010: That sux. We should talk re
14 Goldman, kinda troubling news.o you remember what the
15 troubling news was about Goldman in March 2010?

16 A Let me think, and I'm thinking aloud to see if I
17 can get context here.

18 Q Sure.

19 A I mean, I apologize for my bad language in this
20 e-mail, but -- "sux" isn't that bad I guess. He and I --
21 this is BlackBerry obviously. He and I are going to El Paso
22 for another case. What troubling news about Goldman came out
23 then? We were -- so to help me with context, around -- during
24 that trip was the Wells meeting with Goldman.

25

BY [REDACTED]

1 Q If it's helpful, I think March 4 was the date of
2 the meeting.

3 A So yeah, that sounds right. Right, because [REDACTED]
4 screwed up in flying back. We're like -- I'm in an airport
5 hotel so it's really -- it's glamorous to say the least. We
6 had just had a Wells call. I said with Goldman but it was
7 with [REDACTED] counsel. Goldman I think was there. What was
8 troubling me about this? I can't remember. If there's
9 another e-mail or if I write back to [REDACTED] I could be more
10 helpful. I just can't remember.

11 BY MR. KOTZ:

12 Q Do you think it was something to do with the Wells
13 meeting or the Wells call?

14 A That's what I'm trying to think of. I -- I
15 remember the Wells call because I was sitting in a hotel in
16 Dallas-Fort Worth. I remember the usual rigorous debate
17 regarding, you know, with his counsel. That wouldn't have
18 troubled me, though. I mean, I'm used to them presenting
19 able and good defenses that I think are half-baked but that
20 are persuasive. That wouldn't have troubled me. So it must
21 -- it -- it must have been something internally after the
22 meeting, but what that is I'm sorry I -- obviously it -- it
23 ultimately wasn't troubling because if it -- if it really was
24 a problem I probably would remember it right now, so my
25 speculation is I'm being dramatic because I'm in airport

1 hotel and it wasn't a big deal, but if you have anything else
2 I'd be happy to try and remember more.

3 Q But it didn't have anything to do with something
4 outside of the agency such as the financial reform
5 legislation or something other than that? In other words,
6 something going on that would affect the timing of bringing
7 the case.

8 A No. That would be absurd for me to e-mail [REDACTED]
9 Let me give you some context. [REDACTED] and I were working on a
10 separate case involving CDOs. [REDACTED] doesn't really -- I mean
11 [REDACTED] a nice guy, [REDACTED] doesn't really care professionally
12 about our Goldman Sachs case. He's not on the case. But he
13 and -- Goldman being our first, he and I are talking
14 constantly about, you know, how the front office of
15 Enforcement, how [REDACTED] and how anyone else feels about Goldman
16 so he knows that in terms of our other cases, in other words,
17 what's the thinking on -- do they like a misrep about this,
18 you know? Could -- could we build a case involving that? My
19 intuition is that probably [REDACTED] persuaded someone about some
20 element of our charges that I felt, no, [REDACTED] you need to
21 know that because for our other CDO cases this could damage
22 some piece of it. It certainly wouldn't have been about, you
23 know, outside of the Commission stuff.

24 Q Are you speculating now?

25 A I am -- I am -- as I said, I don't remember what

1 the troubling news was. I am -- I -- I do not remember at
2 all raising concerns with [REDACTED] about things happening
3 outside the Commission. I do remember we were constantly
4 talking about Goldman and the investigation with [REDACTED]
5 because he just needs to know how CDO theories are being
6 perceived in the building so I am speculating that that's
7 what we were talking about. Thanks.

8 Q What do you remember about the ultimate decision
9 not to charge [REDACTED]

10 A It may not surprise you to hear that there were
11 further meetings in Rob and Lorin's office, and that was
12 great. I mean, again, this was to me -- I'm a young staff --
13 I'm not age-wise young but I'm a new [REDACTED] who had
14 never really -- I didn't have any frame of reference for how
15 decisions we being made. There was a phenomenal amount of
16 thought and care put into the decision. After he Wells
17 meeting there were further meetings in Rob and Lorin's office
18 where this issue was debated. [REDACTED] had a fully airing
19 in which he still argued that [REDACTED] should be charged. By
20 that point [REDACTED] was asserting that [REDACTED] should not be
21 charged. I'm -- I'm far from a decision-maker but I agreed
22 with [REDACTED] and began to, you know, present why the evidence
23 supported [REDACTED] point of view.

24 Ultimately what I remember, again, there's a lot of
25 meetings. I can't remember any specific or what was said.

1 What I remember is there was one argument or discussion that
2 went on into the evening at the end of which Rob Khuzami
3 circulated an e-mail where essentially he was the referee and
4 said: Great debate. Thanks for all this. We're not going
5 to do this. We're not going to charge him. Thanks,
6 everyone. And that was the end of it.

7 Q At that point is it your recollection that the
8 decision was then made to go ahead and bring the case to the
9 Commission?

10 A Yes. It would have been in mid-March I think. The
11 e-mails are there so you can -- you can confirm that, but it
12 would have been in mid-March.

13 Q Then the case was eventually brought in April.
14 Right?

15 A April 16.

16 MR. KOTZ: Let me show you an e-mail with respect
17 to that. We're going to mark it as Exhibit 14, an e-mail
18 between [REDACTED] and [REDACTED] dated 4/13/10.

19 (Exhibit No. 14 was marked for
20 identification.)

21 THE WITNESS: Before we get into this e-mail, just
22 looking at one thing here really refreshes my recollection
23 about something else that should be helpful. [REDACTED] was one

24 thing and you can see us moving -- doing a lot of work on

25 [REDACTED] A second concern that I forgot about but now remember

1 vividly was our main victim investor in this case is a German
2 bank called IKB. They invested \$150 million relying on the
3 fact that there was a collateral manager. We knew that they
4 relied on the fact -- and the fact that they relied on a
5 collateral manager was a really important point to our case.
6 It made materiality. Right?

7 We know that they -- they had that reliance -- at
8 the time because of a visit we made to Dusseldorf, a lively
9 city, in 2008 where we talked to people. We were not able to
10 take testimony because of the incredible difficulty of doing
11 so overseas when I'm -- I'm sure you guys might be familiar
12 with. We only had -- we had them talking about it. From me
13 and [REDACTED] perspective that was great. They were solid
14 witnesses. If ever called, they would say we wanted a
15 collateral manager, and we had other contemporaneous
16 documents to support that.

17 In 2010, when there were real serious discussions
18 with Rob and Lorin about this case, that as not good enough.
19 They were very concerned about bringing this case without it
20 being buttoned down what IKB would say and it's not good
21 enough for me and [REDACTED] to say they're solid, boss. Don't
22 worry about it. The decision was made to send us to
23 Dusseldorf again in 2010. We went -- again, it's easily
24 confirmable. It was relatively cold and nasty so I'd assume
25 it was February or March. I think, frankly, my impression

1 was at the time that the case would not happen and certainly
2 was delayed until we were able to get better evidence from
3 IKB that they relied on the presence of ACA.

4 BY MR. KOTZ:

5 Q Why was it placed on the calendar both in December
6 2009 and January when you didn't have that evidence?

7 A I don't remember. I mean I certainly -- that may
8 have been part of the reason it was pulled off the second
9 time. I wish I could more specifically remember this time
10 and that it was taken on and off because of a particular
11 reason. I just can't. [REDACTED] was -- the two issues I remember
12 were [REDACTED] whether to charge Paulson and the third issue is
13 "buttoning down" IKB. I can't explain why then things were
14 brought on and off the calendar. The reason I'm bringing
15 this up, and I'm sorry for being so longwinded, in Exhibit 14
16 you see reference in [REDACTED] bottom e-mail to affidavits
17 obtained recently from ACA and IKB. That was very important
18 to us to get that. So I'm sorry.

19 Q What do you recall about then the decision with
20 respect to that week, the week of April 13, bringing it to
21 the Commission's attention and then filing it? What do you
22 recall about the timing of that? Let me show you an e-mail
23 actually that might help.

24 I'll mark the next document as Exhibit 14, an
25 e-mail exchange between you and [REDACTED] and

1 (b)(6),(b)(7)(C)

2 A Could I interrupt? Maybe 15. I think this one is
3 15.

4 Q I'm sorry.

5 A No problem.

6 MR. KOTZ: The 4/13/10, 9:12 p.m. e-mail from you
7 to (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) is Exhibit 15.

8 (Exhibit No. 15 was marked for
9 identification.)

10 BY MR. KOTZ:

11 Q (b)(6),(b)(7)(C) sends an e-mail on the 13th, which was
12 a Tuesday. Just curious, did we hear back to file tomorrow
13 after the meeting or Thursday morning? You respond: No word
14 either way today. I think staff's preference, i.e., (b)(6),(b)(7)(C)
15 (b)(6),(b)(7)(C) and me still Thursday morning but will let you know if
16 we are instructed otherwise. What was going on there?

17 A Yeah, I think you can see my sort of class
18 consciousness coming out. This -- I remember feeling that we
19 needed to file quickly and not for any sort of fancy reason
20 prosaically. Once you start circulating action memos, once
21 you start getting a lot more people involved in a complaint,
22 you run the risk of someone leaking and you run the risk of
23 someone, God forbid, trading on that information. I mean,
24 that's -- that's unacceptable. Right? And so I remember
25 feeling that way and saying that, and saying this -- we

1 didn't have a real sense of whether the complaint would be
2 material to Goldman Sachs for example, but I sensed that it
3 would be somewhat information and that you don't go through
4 the process of getting an action memo approved and then wait
5 while you're doing other things.

6 Q Would there also be a concern that if it got out in
7 the press before you made the announcement, the press effect
8 of the announcement would be undercut?

9 A I never had that concern. I mean, it makes senses
10 when you say it, but I don't -- I never had that concern and
11 no one said that to me. I was -- I know it sounds corny. I
12 was much less fixated personally -- and again I'm not a
13 decision-maker, I was much less fixated on, you know, how the
14 press announcement would go and how much attention it got
15 versus the idea of a leak would be catastrophic to me, you
16 know, that -- that we -- it had to be professionally done.
17 And, I mean, the real catastrophe is if there's any trading
18 in Goldman Sachs' stock. That can't happen with the SEC.
19 Right? And so I remember generally expressing that concern
20 in one of those meetings and being -- and saying the timing
21 is not mine -- you know, the timing is not at all a function
22 of my decision making but surely there is an interest in
23 filing as soon as we can.

24 Q Were you instructed otherwise or how come it wasn't
25 filed on Thursday?

1 A I'm piecing together the chronology of events. I
2 think on Wednesday we got Commission approval or
3 authorization and it wasn't filed on Thursday, it was filed
4 on Friday. And so the question then is why? I don't know.
5 What I do remember is as I think this e-mail reflects, we
6 weren't completely in the loop. [REDACTED] is the [REDACTED]
7 for example, and he didn't know. At that time the
8 decision-makers for when to file were more senior to me if I
9 remember. Obviously they're more senior to me. I remember
10 that we were waiting for word from Rob and Lorin, frankly.
11 At the same time I -- we were drafting and redrafting that
12 complaint like madmen that week.

13 We'd already had a draft, but, for example, I -- I
14 became very paranoid in the middle of the week that had we
15 done enough fact-checking, that every fact in that complaint
16 could be confirmed? So I remember Thursday when I guess in
17 theory we were authorized to file the complaint still doing
18 what might be sort of obsessive fact-checking. In other
19 words, this sentence in paragraph 33, how do you know that
20 and why? And so from my perspective while I -- as I said I
21 wanted it to happen soon because I was scared of leaks, there
22 was work to be done on the complaint and so Thursday we -- I
23 think probably there's an e-mail on this. I think on
24 Thursday there were still edits to the complaint being made.
25 So those were necessary edits. And I don't know why it

1 wasn't filed on Thursday not Friday, but I do know that stuff
2 was still happening.

3 MR. KOTZ: We'll mark the next document as Exhibit
4 16. This is an e-mail exchange between [REDACTED] and [REDACTED]
5 [REDACTED] 4/15/10 at 6:33 p.m.

6 (Exhibit No. 16 was marked for
7 identification.)

8 BY MR. KOTZ:

9 Q When it was eventually filed on Friday there seemed
10 to be some concern about the timing. [REDACTED] sends an
11 e-mail to [REDACTED] Thursday, April 15, 2010, at 6:27
12 p.m. with a copy to you that says: Yes, but you need to
13 shoot to file this bad boy at 9:30 a.m. sharp. I know this
14 sounds crazy but it's true.

15 A Yes, I do remember context around this that might
16 be helpful. [REDACTED] you can see by his weird e-mail
17 address, he -- at this time his e-mail address is usany.s. He
18 was on whatever you call it, special assignment as a Southern
19 District prosecutor so he's working in New York like a dog --
20 working very hard at that time. The plan was [REDACTED]
21 would on his way to court file the thing on Friday the 16th.
22 Okay? The problem was, there -- there was some drama around
23 this, the -- in Enforcement there were -- there was a media
24 person from Enforcement and a media person from the
25 Commission. [REDACTED] and I'm blanking on his name, it's

1 a male, the media people, had -- had set up a schedule.

2 Q John Nester?

3 A Maybe. I don't think -- it's not the name I --
4 there were two media people who had planned a schedule for
5 Friday.

6 Q Would that be Myron Marlin?

7 A Myron? Yeah, it's definitely Myron. Yeah. They
8 had planned a schedule for Friday and the -- the dilemma was
9 you don't want to -- there was a press conference that as
10 planned. We had to have a press conference, give a courtesy
11 notice to Goldman Sachs and to other people involved, like
12 Paulson & Co would have liked a heads-up and ACA would have
13 liked a heads-up. To try and do that with -- and to file the
14 complaint on time. And so coordinating that was a logistical
15 worry that almost didn't work out, and so we were very
16 fixated on that. In fact, I remember I had a list of call
17 the following people outside the building right now within
18 like a 15-minute window to make the window as narrow as
19 possible. The nightmare, right, is you call Paulson &
20 Company 2 days before you file the complaint and they're now
21 in possession of material nonpublic information so we were
22 tight on that schedule that day.

23 Q In your experience have you seen other cases where
24 actually the SEC would inform an entity like Goldman after
25 the Commission had approved the staff's recommendations to

1 file an action to give them just generally a heads-up that
2 the case was going to be coming?

3 A You'll have to forgive me. This is the first case
4 I've ever filed with the SEC so my experience is this case.

5 Q Were you aware that there was a specific decision
6 in this case not to inform Goldman in advance which was
7 different than the general policy?

8 A I was -- let me explain. I was -- I was aware that
9 we weren't going to tell Goldman in advance.

10 Q Do you know what the reason for that was?

11 A I don't remember. That's what I was trying to
12 remember. I liked that decision. Again, I wasn't the
13 decision-maker. I liked the decision because again I'm just
14 terrified of a leak. Like, for one thing, for example, I was
15 aware that Goldman probably had an ability -- Goldman could
16 step out ahead of us and issue a press release refuting our
17 complaint before we file it. That's silly and --

18 Q Were you aware that there is an SEC administrative
19 regulation that says every effort should be made to avoid the
20 possibility that defendants in an SEC Enforcement action
21 first learn of the action when they read about it in the
22 newspapers or when they are called for a reporter for comment
23 about the SEC's complaint? The Division Regional and
24 District Office primarily responsible for the filing of a
25 particular complaint shall take all necessary steps to see

1 that the defendant and/or their counsel are given timely
2 advice concerning the action.

3 A I was not aware of that. Can -- can I address that
4 though? Just a thought.

5 Q Sure, please.

6 A Goldman was Wellsed. Goldman had two Wells
7 meetings. Goldman knew that we were considering bringing
8 charges against them. I believe that around the time the
9 complaint was filed and certainly before the press release
10 came out we contacted Goldman's counsel and told them that we
11 were going to bring -- filing a complaint. It was that day.
12 It was Friday, April 16. And you're correct, prior to that,
13 so days before that we did not inform Goldman Sachs that we
14 were going to file it.

15 Q Right. And you were aware that there was a
16 specific decision made not to inform Goldman Sachs?

17 A I was aware of that.

18 Q One of the reasons why historically the SEC would
19 inform an entity that the Commission had approved staff's
20 recommendation to file an action is to give the entity one
21 last chance to maybe settle. Did you understand that was the
22 case?

23 You're shaking your head. You're nodding your
24 head.

25 A I'm sorry. I didn't mean to do anything with my

1 head. I -- as I said I wasn't aware of that policy that --
2 that you're referring to so --

3 Q But did you understand that the reasons why you
4 would go about giving them a heads-up is to say this is
5 serious? The Commission has approved this. We're going to
6 go forward. Here's an opportunity for you to say all right,
7 we'll work it out. We'll resolve it.

8 A I agree that that's sort of not to say obviously
9 but that's -- that's certainly a -- that's -- that's a good
10 reason to inform people prior to filing. I -- I remember
11 thinking about that and thinking about it in terms of another
12 case. We'd had another case where a defendant said go to the
13 Commission. We'd Wellsed them. We're not going to give you
14 a settlement offer the defendant said. We're not going to
15 respond to anything. But once you go to the Commission we
16 want to get a heads-up, right, and then we'll make a
17 settlement offer. To me that was obnoxious because what
18 they're essentially saying is give us a free bite at the
19 Commission and go through the process of doing that and then
20 we want to reserve the right once you've shown that at least
21 your case has merit to be approved by your client, then we
22 want the right to negotiate. To me that's the purpose of a
23 Wells notice.

24 And I acknowledge I'm not familiar with that policy
25 and the purposes behind it, but I felt that Goldman was given

1 more than enough -- personally, I was not a decision maker
2 here, but I felt that Goldman was given more than enough
3 notice that we were thinking about filing charges. They had
4 -- the Wells notice we gave them was in the middle of 2009.
5 If they wanted to make a settlement offer --

6 **Q Were there any settlement discussions prior to**
7 **filing of the action?**

8 A There was no -- no settlement offer was made by
9 either side. It could have. Again not that I was aware of
10 and I -- I would have hope I would have been made aware of
11 that.

12 **Q Was there any discussion within the Enforcement**
13 **team about the possibility of settling with Goldman?**

14 A Yes, abstractly. Again, at the level of me, [REDACTED]
15 and potentially [REDACTED] along the lines of what would a
16 potential settlement look like. What would be fair? How
17 would you calculate Goldman's disgorgement and penalty? I
18 mean, that's -- it's not -- again, the case isn't sort of
19 elaborately complex, but for purposes of disgorgement of
20 penalty calculations, more than insider trading. And so we
21 had a lot of discussions about if we were to make a
22 settlement offer what would the number look like.

23 **Q How come there was no settlement discussion?**

24 A I don't know.

25 **Q We've talked to a lot of different people and I**

1 think invariably when we ask the question of attorneys in the
2 Enforcement group at different levels about this issue of
3 providing notice, their answer is generally I've never seen a
4 case that didn't settle. Their answer is all my cases have
5 always settled so, you know, of course we've had discussions
6 with them. It just seems very common that the cases that
7 SEC's Enforcement brings settle not good or bad, just as a
8 fact. Yet in this case it seems there were no settlement
9 discussions at all. There wasn't this opportunity given to
10 Goldman at the end to say the case is bring brought. Do you
11 know any reason why it seems this case was handled
12 differently than other cases?

13 A No, I don't. I mean I certainly see your point and
14 a couple of thoughts. I don't know why we never approached
15 them with a settlement offer. I personally had my own views.
16 Right? I personally felt that it wasn't necessary that we
17 had extended a Wells notice, had let them know precisely what
18 our thinking was. I don't think there's a requirement to
19 make a settlement offer, and I think there is a requirement
20 in usual circumstances to give them Wells notices and we did
21 that.

22 I certainly personally didn't feel that it was
23 necessary to give them a heads-up that the Commission agreed
24 with our charging decisions and felt that the case had merit
25 to be brought. But let me -- I mean, just to give some

1 context here, this was my first case that was filed really
2 and so I really didn't have -- I was thinking of it in terms
3 of tactics and what seemed fair, not what's the Commission's
4 usually -- staff's usual practice.

5 Q We don't have to get into too many specifics about
6 this and this is very sensitive information, but at what
7 point after the case was brought did settlement discussions
8 start?

9 A After the case was brought, access to information
10 within the Commission has been limited. And I'm not saying
11 talk to you guys. I'm saying I am not completely in the loop
12 on the status of settlement negotiations over time. I was
13 moved off of litigation. I'm not actively involved in
14 litigation. I -- I think though they were initiated -- they
15 have been initiated.

16 Q Do you know how soon after the case was filed were
17 the negotiations begun?

18 A What I'm -- no. What I do remember is for about a
19 week there was a lot of back and forth about Goldman's
20 response in the media and concern about that. And then I
21 don't -- I think -- settlement negotiations my understanding
22 commenced at some point at very high levels of Enforcement,
23 so Rob and Lorin's level and then Goldman Sachs. I just
24 wasn't involved, so I apologize.

25 Q But do you know if it was within a few weeks or a

1 few months after it was filed?

2 A It was -- I don't know a specific date. I believe
3 it was within a month or two. I mean, what is it? Three
4 months since we've filed? So it's certainly within a month
5 or 2 months.

6 Q Do you know about whether the SEC informed the New
7 York Stock Exchange that it intended to file the complaint
8 against Goldman Sachs prior to the filing of the complaint?

9 A I personally didn't inform the New York Stock
10 Exchange and I don't know if anyone else did or not.

11 Q Do you know if there was any discussion or
12 communication about whether the complaint should be filed
13 during New York Stock Exchange trading hours?

14 A No. I don't believe there was any discussion on
15 that point.

16 Q Do you if generally the exchange's trading hours
17 are a consideration on the SEC's decisions as to when a file
18 a complaint against a publicly traded company?

19 A I don't know either way. I mean, right.

20 Q Do you have an understanding about the third Friday
21 of each month with respect to its significance for the
22 expiration of options?

23 A I do now, yes. I -- I think the day the complaint
24 was filed obviously -- let me be clear. I don't know what
25 the anticipation was of other members of the team about the

1 effect of the complaint. I personally wasn't anticipating
2 the effect that the complaint had on the markets. I hadn't
3 given it much thought to be perfectly honest because I was
4 drafting and redrafting the complaint and was focused on my
5 world. When the complaint was filed we watched the news and
6 that issue came up, that option resets happen the third
7 Friday of every month and that wasn't a consideration that I
8 was aware of in filing the complaint.

9 Q How did it come up?

10 A On the news.

11 Q Did you have discussions internally about the
12 effect of that?

13 A I think discussions along the lines of -- I mean,
14 the general discussions I remember having was I was
15 personally surprised at the market reaction. Goldman's
16 market cap went -- market capitalization went down I think by
17 10 percent that day, which by any measure of calculation is
18 probably an overreaction, but markets do what markets do. I
19 remember reacting in that way and saying this is crazy and
20 realizing that the options reset takes place the third Friday
21 of every month.

22 Q Was there any discussion about perhaps with
23 hindsight it might have been a mistake to file on that day
24 given both the market effect and the fact that it was the
25 third Friday of the month?

1 A I don't remember any discussion about that. Again
2 personally -- personally, I think you -- you know, you file a
3 complaint when the time -- time is ready -- when the
4 complaint is ready, but I don't remember a discussion.

5 Q Were you surprised at the extent of the media
6 attention about the complaint?

7 A I was, yes.

8 Q You said you were. Were there others not
9 surprised?

10 A It's hard to remember. I think -- I think (b)(6),(b)
11 (b)(6),(b)(7) may have been but I can't specifically recall. And (7)(C)
12 beyond that, I mean, the -- the press guys were really kind
13 of I think -- I don't remember talking with them about that,
14 but those would have been the people I would assume who would
15 be more in tune to how the press would react. I --

16 Q Do you know if they were surprised?

17 A I don't know. I -- I was trying to remember if I
18 talked with them about it. I don't.

19 Q Were you aware generally that the national
20 regulatory reform legislation that has been advancing through
21 Congress and I think it's about to be passed?

22 A Can you repeat that? I'm sorry.

23 Q Were you aware generally of the financial
24 regulatory reform legislation that has been advancing through
25 Congress this year and is about to be passed?

1 A I -- I have been generally aware of it, yes.

2 Q Has anybody at the SEC ever mentioned this
3 legislation in connection with the Goldman Sachs
4 investigation or in connection with a filing of an action
5 against Goldman Sachs?

6 A Not prior to filing the complaint, no. The reason
7 I'm pausing is after the complaint was filed, for example, we
8 got a document preservation notice and I think I was
9 forwarded a letter from a congressman, whose name is escaping
10 me, indicating that there is some investigation into whether
11 the complaint was filed with an eye towards the politics of
12 that.

13 Q That's the investigation we're doing.

14 A Right. And so, yes, of course, after the complaint
15 was filed I'd heard of that. Prior to the complaint being
16 filed, no. Nothing, in other words, that would connect the
17 legislation and the fate of that legislation to the Abacus
18 case.

19 Q Do you have any reason to believe that the SEC's
20 action against Goldman Sachs or the timing of that action
21 related to or was to advance financial regulatory reform
22 legislation?

23 A No.

24 Q Are you aware of any information indicating that
25 the SEC's action against Goldman Sachs or the timing of that

1 action was related to or to advance financial regulatory
2 reform legislation?

3 A No.

4 Q Are you aware of any information indicating that
5 the SEC coordinated its action against Goldman Sachs with the
6 Executive Office of the President, the White House or any of
7 its employees?

8 A No.

9 Q Are you aware of any information indicating that
10 anyone at the SEC shared any information concerning its
11 Goldman Sachs investigation with the Executive Office of the
12 President, the White House or any of its employees prior to
13 the complaint being filed?

14 A No.

15 Q Are you aware of any information that the SEC
16 coordinated its action against Goldman Sachs with any members
17 of Congress or any congressional employees?

18 A No, not that I can recall. No.

19 Q You paused there. Is there something more to it?

20 A Well, what I'm thinking of it is I mean certainly
21 the timing of the complaint was never discussed. I've talked
22 with someone on the PSI at some point, a staff attorney there
23 and I just don't remember when it was, but the --

24 Q Who is that?

(b)(6),(b)(7)(C)

25 A No,

(b)(6),(b)(7)(C)

1 Q What was that discussion about?

2 A Documents. They held a hearing about Goldman and
3 they brought in a bunch of Goldman people. The reason I'm
4 pausing, I think it was after the complaint was filed.

5 Q Right.

6 A But I remember talking with him about like
7 documents. I think, in fact -- this was after the complaint
8 was filed. I'm sorry.

9 Q So you don't remember any conversations with any
10 member of the PSI before the complaint was filed?

11 A I don't.

12 Q Are you aware of any information indicating that
13 anyone at the SEC shared any information concerning its
14 Goldman Sachs investigation with any members of Congress or
15 any congressional employees prior to the complaint being
16 filed?

17 A I'm not aware of that.

18 Q Are you aware of any information that the SEC
19 coordinated its action against Goldman Sachs with the
20 Democratic National Committee, the Democratic Senate Campaign
21 Committee, the Democratic Congressional Campaign Committee or
22 any of its employees?

23 A No.

24 Q Are you aware of any information indicating that
25 anyone at the SEC shared any information concerning its

1 Goldman Sachs investigation with the Democratic National
2 Committee, the Democratic Senate Campaign Committee, the
3 Democratic Congressional Campaign Committee or any of their
4 employees prior to the complaint being filed?

5 A No.

6 Q Are you aware of any information indicating that
7 anyone at the SEC shared any information concerning its
8 Goldman Sachs investigation with the news media or any
9 journalists prior to the complaint being filed?

10 A I'm not aware of that. There were -- there were a
11 bunch of inquiries from a Wall Street Journal reporter named
12 Kara Scannell. Right? That essentially we tried like mad to
13 fend off in compliance with our media policy. I think all
14 those happened after the complaint was filed. You know, I'm
15 just trying to be careful. I certainly never called anyone
16 in the media prior to the complaint being filed.

17 Q Do you know if anybody called anyone in the media
18 even just very briefly before the complaint was filed just to
19 have them ready for the press conference?

20 A I -- I don't know specifically but I think that
21 happens when you have to set up a press conference. I don't
22 think you set up -- I don't know, but I think the press
23 conference was set up with they're not saying coming to the
24 press conference because we're charging Goldman Sachs,
25 they're saying come to the press conference. I think that

1 happened. I vaguely remember in that last week discussions
2 with Myron and --

3 Q (b)(6),(b)(7)(C)

4 A (b)(6),(b)(7)(C) saying, just saying, you know, a press
5 conference is being set up. So I want to be honest. I think
6 I heard that, but certainly not a -- that they told the
7 journalists why the press conference was being set up.

8 MR. KOTZ: Why don't we go off the record, take a
9 few minutes and see what else we have?

10 (A brief recess was taken.)

11 MR. KOTZ: We're back on the record.

12 BY MR. KOTZ:

13 Q There was some testimony that we had that right
14 immediately after the Commission approved the case against
15 Goldman Sachs going forward in April that there was a quick
16 huddle among a variety of people who worked on the case where
17 there were discussions about when to file, the media, et
18 cetera. Do you remember that?

19 A It sounds familiar and I'm -- the e-mail you showed
20 me with me and (b)(6),(b)(7)(C) I don't know if that's day, but that
21 does refresh my recollection somewhat, that e-mail, that --
22 that there had been a huddle. I think by that point media
23 people were involved and I keep referencing those two people
24 because they were new at the time.

25 Q But do you think those media people were in this

1 huddle?

2 A I cannot remember. I know that by that time I had
3 met them and so it's possible they were involved.

4 Q Do you remember discussions in that huddle about
5 trying to maximize media coverage of the Goldman case?

6 (b)(6),(b)(7)(C): Would it help him to know if you
7 know when and where that huddle was?

8 MR. KOTZ: I already explained that to him I think.

9 BY MR. KOTZ:

10 Q You remember the huddle. Right?

11 A I mean I'm in a lot of huddles. If it -- if it
12 happened it was probably, I don't remember specifically, but
13 Lorin or Rob's office. Getting -- and the question was
14 getting bang for the buck out of the media. Is that correct?

15 Q Right.

16 A Something about Friday, essentially the old
17 discussion of do you get enough attention on Friday or not.
18 That might have been me and, frankly, (b)(6),(b)(7)(C) talking, but I --
19 in the broader group in the huddle I don't remember sort of
20 who said what and what the -- what the decision was or why.

21 Q What was the discussion about in terms of Friday or
22 not Friday?

23 A I'm sorry. This -- I -- I vaguely remember me and
24 (b)(6),(b)(7)(C) again the definition of not the decision makers,
25 but she and I talking about, you know, on Friday do people

1 read the newspaper, that sort of thing. But look, I wish --
2 again, I wish I could be more helpful. The -- the idea of a
3 huddle happening after the Commission meeting to decide when
4 to file and how to best get impact out of that I don't
5 specifically remember. I have -- it sounds consistent with
6 what I remember and I've nothing that -- to say it didn't
7 happen, but I just -- you know, I can't remember precisely
8 who said what.

9 Q Is there anything that we haven't covered that you
10 think might be relevant?

11 A No.

12 Q We're done with the questioning. There's just one
13 further matter and this is actually very important, which I'm
14 sure you could appreciate. In order to preserve the
15 integrity of the investigation we would ask that you not
16 discuss the content of your testimony with anyone. Obviously
17 you can discuss it with your representative, but beyond that
18 do not discuss with anyone.

19 A Okay.

20 MR. KOTZ: We are off the record.

21 (Whereupon, at 11:47 a.m., the examination was
22 concluded.)

23 * * * * *

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REPORTER'S CERTIFICATE

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I, (b)(6),(b)(7)(C) reporter, hereby certify that the foregoing transcript of 86 pages is a complete, true and accurate transcript of the testimony indicated, held on July 15, 2010, at 9:38 a.m. in the matter of: OIG-534.

I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared under my direction.

Date:

7/15/10
(b)(6),(b)(7)(C)

Official Reporter:

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

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In the Matter of: OIG-534
Witness: Number 15
File Number: OIG-534
Date: Thursday, July 15, 2010
Location: Washington, D.C.

This is to certify that I, (b)(6),(b)(7)(C) (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

(b)(6),(b)(7)(C)

7/21/10

(Proofreader's Name)

(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

ORIGINAL

In the Matter of:)
) File No. OIG-534
OIG-534)

WITNESS: Number 16

PAGES: 1 through 158

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

DATE: Tuesday, July 20, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 1:05 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

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11 On behalf of the Witness:

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15 Washington, D.C. 20006-1600

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C O N T E N T S

1			
2			
3	WITNESS		EXAMINATION
4	[REDACTED]		8
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	Confidentiality and Nondisclosure	
8		Agreement of [REDACTED]	12
9	2	November 24, 2009, E-mail,	
10		[REDACTED]	18
11	3	September 2, 2009, E-mail,	
12		[REDACTED]	22
13	4	September 17, 2009, E-mail,	
14		[REDACTED] and Cohen	26
15	5	October 8, 2009, E-mail,	
16		[REDACTED] and Cohen	31
17	6	October 8, 2009, E-mail,	
18		[REDACTED] and Scarborough	33
19	7	November 24, 2009, E-mail,	
20		[REDACTED]	36
21	8	December 20, 2009, E-mail,	
22		[REDACTED]	37
23	9	December 4, 2009, E-mail,	
24		[REDACTED] and Scarborough	38
25			

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4	11	December 8, 2009, E-mail,	
5		[REDACTED]	43
6	12	December 8, 2009, E-mail,	
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12	15	December 22, 2009, E-mail,	
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14	16	December 24, 2009, E-mail,	
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16	17	January 4, 2010, E-mail,	
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22	20	January 15, 2010, E-mail,	
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9		[REDACTED] and Scarborough	80
10	26	January 25, 2010, E-mail,	
11		[REDACTED] and Cohen	82
12	27	January 26, 2010, E-mail,	
13		[REDACTED]	84
14	28	January 26, 2010, E-mail,	
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22	32	February 25, 2010, E-mail,	
23		[REDACTED] Lench	101
24	33	March 4, 2010, E-mail,	
25		Lench and [REDACTED]	104

1	EXHIBITS:	DESCRIPTION	IDENTIFIED
2	34	March 5, 2010, E-mail,	
3		[REDACTED]	106
4	35	March 8, 2010, E-mail,	
5		[REDACTED]	108
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9		Khuzami, [REDACTED] and Lench	109
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11		Lench, [REDACTED] and Reisner	112
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13		[REDACTED] Reisner, Lench, and Scarborough	116
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21		[REDACTED] and Lench	124
22	44	April 14, 2010, E-mail,	
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25		[REDACTED]	129

1	EXHIBITS:	DESCRIPTION	IDENTIFIED
2	46	April 16, 2010, E-mail,	
3		(b)(6),(b)(7) (C) Reisner, and Calamari	130
4	47	April 16, 2010, E-mail,	
5		Nester, (b)(6),(b)(7) (C) et al.	131
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P R O C E E D I N G S

1
2 MR. KOTZ: We are on the record at 1:05 p.m. on
3 July 20, 2010, at the United States Securities and Exchange
4 Commission.

5 I'm going to swear you in.

6 Would you raise your right hand?

7 Whereupon,

8 (b)(6),(b)(7)(C)

9 was called as a witness and, having been first duly sworn,
10 was examined and testified as follows:

11 EXAMINATION

12 BY MR. KOTZ:

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

14 A (b)(6),(b)(7)(C)

15 (b)(6),(b)(7)(C)

16 Q Okay, (b)(6),(b)(7)(C) My name is David Kotz.

17 I'm the Inspector General of the United States

18 Securities and Exchange Commission. I have with

19 me my colleague from the Office of Inspector

20 General, (b)(6),(b)(7)(C) And you have with you your

21 counsel. Would you like to identify yourself for

22 the record?

23 (b)(6),(b)(7)(C) : Sure. My name is (b)(6),(b)(7)(C)

24 (b)(6),(b)(7)(C) I'm with the firm of K&L Gates, and I'm

25 representing the witness today.

1 BY MR. KOTZ:

2 Q Great. This is an investigation by the
3 Office of Inspector General, Case Number OIG-534.
4 I'm going to ask you certain questions and you'll
5 be providing answers under oath. The court
6 reporter will record and later transcribe
7 everything that is said. Please, therefore,
8 provide verbal answers to the questions as a nod
9 of the head or other nonverbal response won't be
10 picked up by the court reporter.

11 Also, so the record will be clear,
12 please let me finish my question before you
13 provide your response. In addition, it is
14 important you understand the questions and give
15 accurate answers. If there's anything you don't
16 understand or anything you do not know or are not
17 sure about, please let me know. Otherwise, I will
18 assume that you heard and understood the question.

19 Do you understand those instructions?

20 A Yes, I do.

21 Q Great. I'm going to give you the
22 standard perjury warning language. As you can
23 see, your responses and statements given today are
24 provided after you've sworn an oath and will be
25 taken down verbatim by the court reporter. This

1 is an official U.S. Government law enforcement
2 investigation. The claims asserted in this case
3 are serious ones. It is very important you tell
4 me everything you know about the matter at hand
5 and are completely forthcoming and truthful with
6 me. I am formally advising you that your
7 testimony today is as to the laws of perjury.
8 Providing false or misleading testimony under oath
9 is a serious offense. If the evidence shows that
10 the testimony you've given is false, we may refer
11 it as appropriate. Do you understand those
12 instructions?

13 A What are the claims asserted?

14 Q Well, there's a variety of claims. I
15 mean, a lot of them were put in a letter that
16 Congressman Issa sent to Chairman Schapiro which is
17 available to review. But essentially the timing
18 of the filing of the Goldman case was affected by
19 improper influences outside of the agency,
20 particularly political considerations in terms of
21 the legislation on the financial reform bill, and
22 that there were improper communications or
23 something worked out between the SEC and either
24 the White House or various Democratic committees
25 with regard to orchestrating the timing for

1 something other than what relates to the SEC as an
2 independent body. And then most recently, there
3 were some questions about the timing of the
4 announcing of the settlement, as the settlement
5 was announced on the day that the financial reform
6 bill was finally passed.

7 A Are there any other claims asserted?

8 Q Well, those were the claims that were
9 given to us. In our investigation, we are going
10 to look at the process that the SEC went through
11 in determining when to file the case against
12 Goldman. And we are going to look at whether
13 there were any outside factors that affected that
14 decision other than involving the actual case and
15 the facts and the law of the case.

16 A Okay.

17 Q So why don't we put into evidence first
18 the Confidentiality and Nondisclosure Agreement
19 that (b)(6),(b)(7)(C) signed. If you could give me
20 the Exhibit? So we're going to mark this as
21 Exhibit No. 1, Confidentiality and Nondisclosure
22 Agreement. And, (b)(6),(b)(7)(C) if you could just
23 state for the record that this is your signature
24 on the document?

25 A It is.

1 Q So we're going to mark that as Exhibit
2 1.

3 (Exhibit No. 1 was marked for
4 identification.)

5 So we will start with some background.

6 If you could, describe for me your education
7 beginning with college.

8 A (b)(6),(b)(7)(C)

9 Q

10 A

11 Q

12 A

13 Q

14 (b)(6),(b)(7)(C)

15 A (b)(6),(b)(7)(C)

16 (b)(6),(b)(7)(C)

17

18

19 Q (b)(6),(b)(7)(C)

20 (b)(6),(b)(7)(C)

21 A (b)(6),(b)(7)(C)

22 (b)(6),(b)(7)(C)

23 Q (b)(6),(b)(7)(C)

24 (b)(6),(b)(7)(C)

25 A (b)(6),(b)(7)(C)

1 Q [REDACTED]

2 A [REDACTED]

3 Q Okay. [REDACTED]

4 [REDACTED]

5 A [REDACTED]

6 [REDACTED]

7 Q [REDACTED]

8 A [REDACTED]

9 Q [REDACTED]

10 A Sounds right.

11 Q [REDACTED]

12 [REDACTED]

13 A Yeah.

14 Q [REDACTED]

15 [REDACTED]

16 A [REDACTED]

17 Q Okay. [REDACTED]

18 [REDACTED]

19 A [REDACTED] started at the SEC in 1998.

20 Q And [REDACTED]

21 [REDACTED]

22 A Yes.

23 Q What was your first position with the

24 SEC in [REDACTED]?

25 A [REDACTED] Division of Enforcement.

1 Q How long were you a [REDACTED]

2 A [REDACTED]

3 Q And what were your duties as [REDACTED]

4 [REDACTED]

5 A Investigate potential violations of
6 federal securities laws.

7 Q Who was your supervisor during that
8 period?

9 A I had four branch chiefs in that period.

10 Q Really? In a two-year period? Who were
11 they?

12 A [REDACTED] let me try to, I mean, you
13 know, let's see. [REDACTED] was one for a little
14 while. I think her first name was [REDACTED]

15 [REDACTED] Her last name is definitely [REDACTED] [REDACTED]

16 [REDACTED] and I'm blanking on the fourth.

17 Q And in 2000, what position did you
18 obtain?

19 A [REDACTED]

20 Q How long did you serve as [REDACTED]

21 [REDACTED]

22 A About [REDACTED].

23 Q And what were your duties as [REDACTED]

24 [REDACTED]

25 A Supervise a branch in their

1 investigation of potential violations of the
2 federal securities laws.

3 Q How many people did you supervise?

4 A About four or five, depending upon what
5 period of time we're talking about.

6 Q And then what position did you get in
7 [redacted]?

8 A [redacted]

9 Q And that's your current position?

10 A I am an [redacted] and also
11 [redacted] of the Structured and New Products
12 [redacted], or [redacted] I think is the title.

13 Q So in [redacted] you became [redacted]
14 [redacted] and then you supervised various Branch
15 Chiefs?

16 A Yes.

17 Q How many Branch Chiefs did you
18 supervise?

19 A I had two branches. One was headed by
20 [redacted] and the other by [redacted]

21 Q And then there was a reorganization,
22 right, after that?

23 A Uh huh.

24 Q Things changed with respect to the
25 branches? How did that work?

1 A Well, as a result of the recent
2 reorganization, I now wear two hats. I'm [REDACTED]
3 [REDACTED] in the Structured and New
4 Products Unit. I think now I've got five
5 attorneys working for me. And then I'm also [REDACTED]
6 [REDACTED] of the Unit.

7 Q And when did that take effect?

8 A Recently, in the last few months.

9 Q Who do you currently report to?

10 A Ken Lench, the Chief of the Structured
11 and New Products Unit.

12 Q Who were you reporting to when you were
13 [REDACTED] before the reorganization?

14 A Cheryl Scarborough.

15 Q Did there come a point in time when you
16 became aware of or became involved in an
17 investigation by the SEC into the sale of
18 collateralized debt obligations by Goldman Sachs?

19 A Yep.

20 Q When did that happen?

21 A Spring of '08.

22 Q And did you come into this investigation
23 at its inception?

24 A Yes.

25 Q So what was your role in the

1 investigation?

2 A I supervised it on a day-to-day basis.

3 Q And this investigation was referred to
4 as the ABACUS investigation? Is that right?

5 A Shorthand, yeah.

6 Q So you supervised it on a day-to-day
7 basis. Who did you supervise in conducting the
8 ABACUS investigation?

9 A The Branch Chief was [REDACTED]
10 [REDACTED] until [REDACTED]
11 [REDACTED] was [REDACTED] and then [REDACTED]
12 [REDACTED] sort of took the lead at the [REDACTED]
13 [REDACTED] level through the filing of the case.

14 Q And then at some point Trial Unit folks
15 became involved, too?

16 A Yep.

17 Q When was that?

18 A During the Wells process.

19 Q Do you remember what year? What time of
20 year?

21 A We Wellsed -- I think we Wellsed Goldman
22 I believe in July of '09, and then Fabrice Tourre
23 a couple of months later. And in that timeframe a
24 Trial Unit attorney was assigned.

25 Q Who was that Trial Unit attorney?

1 A (b)(6),(b)(7)(C)

2 Q And did you have any supervisory
3 authority over him?

4 A No.

5 Q But for the first year or so of the
6 investigation, it was just your group who were
7 involved. Is that right?

8 A We were conducting the investigation,
9 yes.

10 Q So (b)(6),(b)(7)(C) didn't get involved until
11 after a year or about, after the investigation
12 began?

13 A That's right.

14 Q Let me show you a document. We're going
15 to mark this as Exhibit 2. It's an e-mail between
16 you and (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C)

17 (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

18 A (b)(6),(b)(7)(C)

19 Q Okay, I got them both wrong.
20 Dated 1 -- no, I'm sorry, I think it's 11-24-2009,
21 10:43 a.m.

22 (Exhibit No. 2 was marked for
23 identification.)

24 And if you see in this document, Exhibit
25 2, there's an exchange between you and (b)(6),(b)(7)(C)

1 -- initially in an e-mail you sent Tuesday,
2 November 24, 2009 at 9:35 a.m. -- you refer to it,
3 this, as a "national priority case against Goldman
4 Sachs." And (b)(6),(b)(7)(C) asks, "What's a national
5 priority case?" And you answer, "Top ENF," which
6 I assume is Enforcement priority. If you could
7 just elaborate on that; what did you understand
8 that to mean, that Goldman Sachs was a national
9 priority case?

10 A That it was on the Front Office's
11 National Priority Case List.

12 Q How many cases were on that list?

13 A I don't know.

14 Q You don't know? Did you have -- have
15 you ever worked on any others that were national
16 priority cases?

17 A A handful, yes.

18 Q At that time you had more than one on
19 the list?

20 A Yes.

21 Q How many did you have on the list? Do
22 you know?

23 A Three or four.

24 Q And was there any hierarchy within the
25 list?

1 A No.

2 Q And so what did -- did it mean anything
3 different in terms of how you went about the
4 investigation that it was on the list?

5 A No.

6 Q Did it mean anything different in terms
7 of providing information to the Front Office about
8 how the investigation was going?

9 A Yes.

10 Q In what way?

11 A Every week or so I would have to give a
12 two- or three-sentence summary of where we were on
13 my three or four national priority cases.

14 Q And who did you give that summary to?

15 A It was someone in the Front Office. The
16 names changed.

17 Q So when you say the Front Office, you
18 mean the Front Office of the Front Office
19 Division?

20 A Yes.

21 Q So would that have been Rob Khuzami?

22 A Nope.

23 Q Lorin Reisner?

24 A No. I mean they're in the Front Office,
25 but my e-mail went to somebody. I don't remember

1 the name.

2 Q Do you know what position they held?

3 A No. I think they just collated all the
4 updates on the priority cases, but I don't know.

5 Q So you just had to send an e-mail out
6 that gave kind of the -- where you were in the
7 case?

8 A Yep.

9 Q Do you know when it was determined that
10 the Goldman Sachs case was considered a national
11 priority?

12 A No.

13 Q Did you understand that that was the
14 case from the beginning of the investigation, or
15 did that happen over time?

16 A Well, it happened -- it didn't happen at
17 the beginning because the National -- because --
18 as I understand it, the National Priority Case
19 List was created by the new management team, and
20 they weren't around when we opened the
21 investigation.

22 Q Do you know when the new management team
23 first put together this National Priority List?

24 A No.

25 Q Were you informed that the several cases

1 you had were on the National Priority List around
2 the same time?

3 A Yes.

4 Q Let me show you the next document.
5 We'll mark it as Exhibit 3. This is an e-mail
6 between [REDACTED] you, and [REDACTED]
7 9-2-2009 at 3:13 p.m.

8 (Exhibit No. 3 was marked for
9 identification.)

10 So if you look at -- take whatever time
11 you need to read it -- but if you look at the
12 second page, you're giving an update on I guess
13 three of your cases. I mean, were these all on
14 the National Priority List?

15 A Let us just read it first.

16 Q Sure.

17 A Thanks. Well, it looks like I had five
18 cases on the National Priority List from this
19 e-mail.

20 Q Feel free to read it after I ask the
21 question -- but the e-mail from [REDACTED]
22 Wednesday, September 2, 2009, 2:55 p.m., says
23 "Read the initial target date for ABACUS CDO," et
24 cetera, et cetera, "is August 2009. We revised it
25 to September 2009." What'd that mean that was a

1 target date?

2 A No idea.

3 Q And then you go back and give a little
4 explanation of where you are in the case, and then
5 you say "assuming we decide at that point to move
6 ahead with the current proposed changes, we will
7 not get onto the Commission calendar until
8 November." From reading that, do you understand
9 that she was referring to target date meaning when
10 it would get on the calendar? The Commission
11 calendar?

12 A No idea.

13 Q You say, "Unless Cheryl objects, my
14 preference is to reset the target date to December
15 2009." Do you know what you were referring to
16 when you said, "reset the target date?"

17 A Yeah. I don't -- I mean, I'm explaining
18 where we are in the investigation and the
19 additional work that needs to be done and then
20 recommending that the target date be reset to
21 December 2009.

22 Q And so what is the target date? What
23 does that mean?

24 A You know, I'm not sure. It's either --
25 I'll say I don't know, but I suppose my thought at

1 the time was that it was either the target date
2 for getting it on the calendar or for filing.
3 But, you know, those two dates usually are pretty
4 close together, so --

5 Q Do you know of any reason why [REDACTED]
6 [REDACTED] would be asking you what the date at this
7 stage in the process is for either getting it on
8 the calendar or filing?

9 A You're asking --

10 Q With respect to every case you work on,
11 somebody would ask you, "When is this going to be
12 ready?" Is that what was going on here? Or is it
13 just this particular case or just the priority
14 cases? I'm just trying to understand how the
15 process worked. Why would she want to know?

16 A What I'm trying to do in my e-mail is
17 provide information relating to the amount of work
18 that's left to complete the investigation, and
19 given my view of the -- of what needed to be done,
20 we were going to need until December of '09.

21 Q You say in the e-mail that you sent to
22 [REDACTED], "That is the very quickest I see this
23 thing moving forward." Was there some kind of
24 urgency with this matter that you were trying to
25 get it done as quickly as possible or --

1 A No, but I will say that over the years
2 I've prided myself on moving all of my cases
3 forward expeditiously.

4 Q Would there be more of an effort or more
5 of a concern to move a case that's on the National
6 Priority List expeditiously than other cases?

7 A Not from my perspective.

8 Q And do you have any idea why they would
9 be setting a target date for your case for August
10 2009?

11 A I don't know where that date came from.
12 I'm suggesting December of '09.

13 Q And where does this go? It says,
14 "Thanks, [REDACTED] we'll go with December." Is this
15 for scheduling purposes? Do you know? I mean,
16 why do they need these dates?

17 A I don't know.

18 Q So at this point in time, in September
19 of 2009, you're projecting that the case will be
20 ready to go to the Commission by December. Is
21 that fair?

22 A Yes.

23 Q Let me show you the next document and
24 we're going to mark it as Exhibit 4. It's an
25 e-mail exchange between you and Stephen Cohen,

1 Thursday, September 17, 2009, 9:58 a.m.

2 (Exhibit No. 4 was marked for
3 identification.)

4 Stephen Cohen works in the Chairman's
5 office. Is that right?

6 A That's my understanding.

7 Q And did Stephen Cohen or others in the
8 Chairman's office express an interest in the
9 Goldman case?

10 A I would speak with Steve from time to
11 time about the Goldman case.

12 Q Did you speak with Steve about any of
13 your other cases?

14 A Sure.

15 Q Now Stephen Cohen says to you in an
16 e-mail Thursday, September 17, 2009, 9:52 a.m.,
17 "I've heard about the case. Will any individuals
18 be Wellsted? The Chairman actually asked about
19 that investigation specifically yesterday." What
20 did you know about the Chairman's particular
21 interest in the Goldman case?

22 A Nothing.

23 Q But in the e-mail that Stephen Cohen
24 sent to you on Thursday, September 17, 2009, 9:58
25 a.m., Stephen Cohen says, "The Chairman will be

1 glad to hear we are going after an individual."

2 So you knew that, or at least you knew that at the
3 time.

4 A And the question's what?

5 Q Didn't you know at the time that the
6 Chairman had a particular interest in the Goldman
7 case and was interested in the fact that you were
8 going after an individual?

9 A No.

10 Q So you didn't get this e-mail from
11 Stephen Cohen?

12 [REDACTED]: Which e-mail are we
13 talking about because there are a bunch on the
14 page?

15 MR. KOTZ: At the top of the page.

16 [REDACTED]: Okay.

17 BY MR. KOTZ: From Stephen Cohen to [REDACTED]

18 [REDACTED] Thursday, September 17, 2009, 9:58 a.m.

19 "The Chairman will be glad to hear we are going
20 after an individual."

21 A Right, and the question is?

22 Q Well, you said before that you didn't
23 know that the Chairman had expressed any view on
24 the case, but you got an e-mail of the view from
25 the Chairman. So I'm trying to reconcile the two.

1 A All I know is what Steve is saying here.

2 Q Do you understand why the Chairman would
3 be glad to hear that you are going after an
4 individual?

5 A No.

6 Q Did you ever have any follow-up
7 conversations with Steve Cohen about what the
8 interest was of the Chairman in your case?

9 A Not that I remember.

10 Q Do you have any idea why the Chairman
11 was particularly interested in the Goldman case?

12 A No.

13 Q Did you ever have another case where it
14 was told to you that the Chairman expressed an
15 interest about who you were going after in a
16 particular matter?

17 A Yes.

18 Q What were those other cases? What were
19 those other situations? You don't have to give me
20 all the details, but just generally.

21 A [REDACTED]

22 Q And what was the view there?

23 A [REDACTED] there -- I mean I never had any
24 communications with her. However, with [REDACTED]
25 there was an issue over whether or not we would

1 insist on a corporate penalty and I forgot who
2 told me it, but I do have it in my head that the
3 Chairman had a view that we should seek a
4 corporate penalty, and we negotiated one.

5 Q Do you know if the Chairman particularly
6 thought it was a good idea to go after individuals
7 or was this just referring to this particular
8 case?

9 A I have no idea what the Chairman's views
10 on that were.

11 Q Did you ever have a briefing with the
12 Chairman about the ABACUS Goldman case?

13 A Never.

14 Q How often did you talk to Steve Cohen
15 about the Goldman case?

16 A Very infrequently.

17 Q Was it usually by e-mail or did you have
18 in- person conversations with him?

19 A E-mail.

20 Q Did you understand what Steve Cohen's
21 particular interest was in the case?

22 A Nope.

23 Q Let me show you the next document.

24 A There are other cases that for which my
25 understanding is the Chairman -- that I have --

1 that my understanding is the Chairman had some
2 level of interest in because she has spoken
3 publicly about our generic CDO investigation.

4 Q Okay.

5 A I think in Congressional testimony and
6 elsewhere described some of what we've been doing
7 in that space.

8 Q Did the fact that Stephen Cohen let you
9 know that the Chairman "will be glad to hear
10 you're going after an individual," did that have
11 any impact on decisions in the Goldman case
12 vis-à-vis any individuals?

13 A Irrelevant.

14 Q So the Chairman's perspective on a case
15 is irrelevant to you?

16 A No.

17 Q But in that particular situation it was
18 irrelevant?

19 A We had decided to charge Fabrice Tourre
20 based upon the merits of the case and the evidence
21 against him. That's the basis for the decision to
22 charge Mr. Tourre.

23 Q And that decision was made before Steve
24 Cohen relayed what the Chairman's thoughts were?

25 A I drafted the Wells outline for Mr.

1 Tourre personally and e-mailed it around for
2 comment and review. And I think I'd done that
3 weeks if not months prior to the e-mail traffic
4 here.

5 Q But the final decision -- I guess the
6 final recommendation hadn't been made at that
7 point?

8 A I mean the final decision to Wells
9 Tourre had been made long before September 17.

10 Q So the decision to Wells Tourre had been
11 made before Cohen conveyed this information, but
12 the decision to recommend to charge Tourre was
13 made afterward?

14 A I think that's right.

15 Q Let me show you the next document. It's
16 an e-mail between you and Steve Cohen, 10-8-2009,
17 10:20 a.m. We're going to mark it as Exhibit 5.

18 (Exhibit No. 5 was marked for
19 identification.)

20 It's a pretty short one. Just says --
21 it looks like you attach a draft of the ABACUS CDO
22 complaint and it says, "This will cheer you up."
23 What did you mean by that?

24 A I don't remember.

25 Q Do you have any idea why Steve Cohen

1 would be cheered up by a copy of the ABACUS
2 complaint?

3 A No.

4 Q Was it ever expressed to you that Steve
5 Cohen was interested in this case and would be
6 happy to hear that it's gotten to the stage of a
7 complaint being drafted?

8 A Steve Cohen -- the first case -- to my
9 knowledge, the first case that he litigated when
10 he got to the SEC was a case out of my group. A
11 very successful Ponzi scheme case called Tri
12 Energy. And that was a very fruitful working
13 experience, I think, for everybody, and I grew to
14 respect Steve's litigation skills. He's a
15 fantastic attorney. I thought he'd like to see
16 the complaint in this case.

17 [REDACTED]: He used to be in the
18 Trial Unit, I think, before he went with the
19 Chairman.

20 A Yeah, he was in the Trial Unit, and he
21 was working nights and weekends on this TRO and
22 this Ponzi scheme case and really impressed me.
23 And I -- when I think of Steve Cohen, I think of a
24 litigator, you know? That's his skill set to me.

25 BY MR. KOTZ:

1 Q But did you understand that the
2 Chairman's office was interested in the case? And
3 so the Chairman's office, not just Steve Cohen
4 personally, would also be happy to hear that a
5 complaint had been drafted?

6 A Yeah.

7 Q Let me show you the next document. It's
8 an e-mail between you and Cheryl Scarborough,
9 10-22-2009, 7:58 p.m., Exhibit 6. This is another
10 short one.

11 (Exhibit No. 6 was marked for
12 identification.)

13 It says, "ABACUS vote changed today, now
14 5 to 0, thumbs down." What did that mean?

15 A That was a staff vote of no confidence
16 in the litigator assigned to the case, [REDACTED]

17 Q And how did that come about?

18 A He had antagonized the staff.

19 Q In what way?

20 A He's impossible to work with.

21 Q Can you give me more detail?

22 A I'd rather not.

23 Q You'd rather not?

24 A That's why we took a vote. We said,

25 "Who feels comfortable working with [REDACTED]

1 And it was five no's.

2 Q And what was the effect of that?

3 A I conveyed this information to [REDACTED]
4 immediate supervisor and my immediate supervisor,
5 and my understanding is he quit temporarily.

6 Q As a result of the information that was
7 conveyed?

8 A I don't know.

9 Q Let me ask you about [REDACTED] a little
10 bit. And I'm interested really in the substantive
11 issues. And there has been some testimony that
12 we've gotten in this case about a disagreement, a
13 substantive disagreement, about primarily [REDACTED]
14 [REDACTED] whether to Wells and/or charge [REDACTED] So
15 could you just give me what you recall about that
16 kind of substantive disagreement?

17 A Well, I had two disagreements with [REDACTED]
18 [REDACTED] relating to how to charge the case. The
19 first related to whether or not to charge the
20 Paulson Hedge Fund, and we worked through that.
21 And then he suggested we should charge [REDACTED]
22 [REDACTED] and we worked through that.

23 Q What was the nature of the disagreement
24 on [REDACTED]

25 A From my perspective?

1 Q Yep.

2 A We did not have sufficient evidence to
3 charge [REDACTED]

4 Q What about in terms of Wellsing [REDACTED]

5 [REDACTED] Did you think that was a good idea?

6 A I did. Well, I got to the point where I
7 felt like we should do that.

8 Q And what was the specific evidence that

9 [REDACTED] pointed to that would lead to a
10 potential charge against [REDACTED]

11 A He -- [REDACTED] created several packets
12 of documents that he believed supported charging

13 [REDACTED] So there were, I would say, numerous
14 collections of documents that [REDACTED] put together
15 that he believes supported charging [REDACTED]

16 Q And you've reviewed all those?

17 A At great length.

18 Q But were not convinced that they

19 demonstrated that he should be charged?

20 A That's right.

21 Q But the 5-0 vote and the concern about

22 [REDACTED] was that based on a substantive
23 disagreement or more of personal style?

24 A Well, there are five votes so, you know

25 --

1 Q You're --

2 A I was one of the votes.

3 Q So your vote, was it based on just the
4 disagreement over how to proceed with respect to
5 certain aspects of the case or was it beyond that?

6 A I didn't think -- me personally?

7 Q Yeah.

8 A I didn't think [REDACTED] had the work
9 ethic or the mental fire power to litigate this
10 case.

11 Q And do you know what the perspectives of
12 the other folks were?

13 A I don't.

14 Q Let me show you the next document.

15 We're going to mark it as Exhibit 7. It's an
16 e-mail exchange between [REDACTED]

17 [REDACTED] and you, 11-24-2009, 3:41 p.m.

18 (Exhibit No. 7 was marked for
19 identification.)

20 "FYI, got an apologetic call from [REDACTED]

21 [REDACTED] in the [REDACTED] Apparently

22 [REDACTED]
23 after reading some of the recent press about

24 Paulson's Trade." Do you know what that press
25 was?

1 A No.

2 Q Did you ever look to see what the
3 articles were to the extent it potentially could
4 have related to the investigation you were working
5 on?

6 A Not that I recall.

7 Q Did you get any -- was there any
8 investigatory work done by the folks in [REDACTED] or
9 was this just kind of a procedural thing to merge
10 into your case?

11 A I don't know.

12 Q Do you recall that the Goldman ABACUS
13 case was initially calendared for December of
14 2009?

15 A Sounds right.

16 Q Let me show you this document. We're
17 going to mark it as Exhibit 8, an e-mail exchange
18 between you and [REDACTED] 12-20, 6:37 p.m.

19 (Exhibit No. 8 was marked for
20 identification.)

21 There's a little back and forth here
22 about when to calendar the case. And at the top
23 of the page, there's an e-mail where you say to
24 [REDACTED] "Cheryl will be out of town and my
25 understanding is that other senior officers also

1 would like to see this matter considered on
2 December 17 if at all possible." What senior
3 officers were you referring to?

4 A I don't remember.

5 Q Do you remember anything about folks
6 wanting to see it considered on December 17?

7 A I remember Cheryl and I felt like the
8 case was ready to bring. That's what I remember.

9 Q And (b)(6), (b)(7)(C) actually asked if it could be
10 calendared for 12-22, and then you respond you'd
11 prefer December 17. Why would the five days make
12 such a difference or make a difference?

13 A Well, I don't remember, but the e-mail
14 says Cheryl will be out of town on the 22nd.

15 Q I'll show you the next document. An
16 e-mail exchange between you and Cheryl Scarborough
17 dated 12-4-2009, 5:35 p.m. We're going to mark as
18 Exhibit 9.

19 (Exhibit No. 9 was marked for
20 identification.)

21 So this is an e-mail exchange between
22 you and Cheryl Scarborough. "We sending this up
23 today? If not what next? (b)(6), (b)(7)(C)" And then Cheryl
24 says, "Call me." Do you know what that was about?

25 A No.

1 Q You mentioned earlier that [REDACTED]
2 had quit the matter for a short time. How did you
3 learn of that?

4 A I forgot.

5 Q And what were the consequences of his
6 leaving as litigation counsel?

7 A What do you mean? I mean he was --

8 Q Well, if you were without a litigation
9 counselor, wouldn't that be a problem, that if
10 this guy was --

11 A I may have renewed our efforts to get
12 competent litigation counsel on the case, which I
13 try to do at the outset and was unsuccessful. So
14 it's conceivable to me that when I learned that
15 [REDACTED] had quit, that I tried again to get some of
16 our stronger trial attorneys on the case. But
17 ultimately, that didn't happen. We wound up with
18 [REDACTED] again.

19 Q Do you know for how long of a period was
20 he off the case?

21 A I don't remember.

22 Q Was it months or was it a very short
23 time period?

24 A At least a couple of weeks. Maybe two
25 to four weeks.

1 Q And was there somebody else in his place
2 during that two-to-four-week period?

3 A I think [REDACTED] may have been
4 performing the Trial Unit function during that
5 period. I think [REDACTED] was involved.

6 Q Do you remember if that was around the
7 time that it was going up for the calendar or
8 before?

9 A I don't remember.

10 Q Let me show you the next document. It's
11 dated 12-8-2009, 11:39 a.m., Exhibit 10. An
12 e-mail from you to [REDACTED] and I guess you
13 were copying yourself.

14 (Exhibit No. 10 was marked for
15 identification.)

16 And you say, [REDACTED] wed" -- I assume
17 you meant we'd -- "like to pull this from today's
18 2B calendar. Thanks." How come the Goldman
19 ABACUS case was pulled from the calendar in
20 December of 2009?

21 A My best recollection is that we were
22 going to revisit at that time the decision not to
23 charge the Paulson Hedge Fund. I mean, in broad
24 strokes, it was pulled twice. And my memory is
25 the first time it was pulled to take another look

1 at the decision not to charge Paulson, and we
2 decided once again not to charge Paulson. And it
3 was pulled a second time to revisit the decision
4 not to charge [REDACTED] That's my best recollection.

5 Q And I'll show you the e-mail so maybe
6 your recollection will come back. Who -- just
7 before we get to that -- who was it -- who made
8 the decision to pull it back, say the first time?

9 A I think that -- my memory of it was that
10 [REDACTED] must have been back on the case I believe
11 and expressing the view that we should charge the
12 Paulson Hedge Fund which he'd been doing for a
13 while. And then my memory is that there was just
14 a decision to take another look at that charging
15 decision.

16 Q So the decision wasn't made by you?

17 A No.

18 Q Was it made by somebody within the
19 Commissioner offices or was it made by somebody
20 within the Front Office Division?

21 A I don't know, but my memory of it was it
22 was pulled to -- because the Trial Unit wanted to
23 take another look at the decision not to charge
24 Paulson. So I think it was in deference to the
25 Trial Unit's view regarding the charging, you

1 know, an important charging decision. And so
2 let's make sure we're all comfortable with the way
3 we're doing it.

4 Q And so why wasn't that decided before it
5 was put on the calendar to begin with?

6 A Well, it was. The decision was not to
7 charge Paulson.

8 Q Right, but I mean whatever issues --
9 well, see what I'm trying to understand, this
10 investigation's about timing. So if you look at
11 it from the outside, something goes on the
12 Commission calendar and then it's pulled, the
13 assumption is that it was somebody from the
14 Commissioners who made that decision. Otherwise
15 you would think that the decision would be made
16 internally before it was brought up to the
17 calendar.

18 A My understanding was [REDACTED] was very
19 vocal in expressing the view that we needed to
20 charge the Paulson Hedge Fund on a scheme
21 liability theory, and my understanding is the case
22 was pulled to reexamine that issue. Which I had
23 given great thought and consideration to over the
24 previous year and formed a view that was contrary
25 to [REDACTED]

1 Q Did you have an opportunity to advocate
2 in favor of not pulling it and just going forward?

3 A I don't understand that question.

4 Q Well, it seems as though [REDACTED] went
5 to somebody and expressed this view and that
6 person, whoever it was, made the decision to pull
7 it. Did that person or anyone else come back to
8 you and say, [REDACTED] is saying 'X.' What do
9 you think?" In other words, you would have had an
10 opportunity to express the opposite view and maybe
11 the decision would come out differently.

12 A My view was the case was ready to be
13 brought in December, however, if people wanted to
14 reexamine critical charging decisions like this
15 one, I was comfortable doing that.

16 Q Let me show you the next document.
17 We're going to mark it as Exhibit 11. It's an
18 e-mail exchange between you and [REDACTED]
19 12-8-2009, 11:59 a.m.

20 (Exhibit No. 11 was marked for
21 identification.)

22 Now who's [REDACTED]

23 A He's an [REDACTED] in my group or my old
24 group.

25 Q Was he one of the five who voted?

1 A You know, I can't remember. [REDACTED]
2 yes, okay, so [REDACTED] is a [REDACTED] in my
3 group but he's a fantastic [REDACTED] He
4 recently played a key role in our trial victory
5 against [REDACTED]
6 A big win for us. He's a great litigator. And so
7 what I was attempting to do, I think at this point
8 since [REDACTED] was back on the case, was try to get
9 [REDACTED] working on the case because I felt that
10 given [REDACTED] limitations, having someone
11 like [REDACTED] working the case, working the
12 litigation portion of the case, would be a really
13 good idea.

14 Q And so the e-mail you sent here Tuesday,
15 December 8, 2009, 10:46 a.m., [REDACTED] at
16 Cheryl's request we pulled this recommendation
17 from today's 2B and scheduled [REDACTED] testimony for
18 January 7." Does that refresh your recollection
19 anymore about --

20 A Yeah, okay. It looks like then -- well,
21 you know -- look, there were the two charging
22 decisions that [REDACTED] was essentially second
23 guessing during this period, was do we charge
24 Paulson and do we charge [REDACTED] And so -- and we
25 had to pull the recommendation off the calendar

1 because of those issues that he was raising. And
2 this e-mail is suggesting that we -- well, here,
3 we're not pulling it from a calendar. We're
4 pulling it from a 2B just because we were going to
5 take [REDACTED] testimony. Well, I mean --

6 Q Let me show you the next e-mail, too.
7 Okay? And this is an e-mail from [REDACTED] to
8 you, 12-8-2009, and we're going to mark it as
9 Exhibit 12.

10 (Exhibit No. 12 was marked for
11 identification.)

12 A Okay, yeah, I remember this one. See,
13 it says, "in consultation with the Trial Unit, it
14 was determined we should take testimony from
15 [REDACTED]
16 [REDACTED] prior to making a recommendation." This I
17 do remember.

18 Q And let me tell you what else has been
19 told to us because I want to make sure that you
20 have the full recollection and we get this exactly
21 right. What I think maybe one or two other folks
22 have told us is that there was a disagreement
23 about whether to interview or take testimony from
24 [REDACTED] And that [REDACTED] believed that
25 you should take testimony from [REDACTED] You

1 and potentially others believed it wasn't
2 necessary to take testimony from [REDACTED]

3 A That sounds right.

4 Q And the reason that this was pulled was
5 to take testimony from [REDACTED] as opposed to
6 having to deal with the Paulson matter.

7 A That's what the e-mail suggests, yeah.
8 And I just can't remember if the Paulson issue was
9 laid to rest by this point or not.

10 [REDACTED]: The Paulson thing came
11 before the [REDACTED] thing?

12 A In my -- yeah, in my -- what I remember
13 is the first issue that [REDACTED] and I disagreed on
14 was whether or not Paulson should be charged. And
15 I thought we'd worked that through and then the
16 [REDACTED] issue came up. But maybe there was some
17 overlap? I don't know.

18 BY MR. KOTZ:

19 Q Let me show you the next document and
20 that maybe will help you even further. It's an
21 e-mail exchange between you and [REDACTED]

22 [REDACTED] -- [REDACTED] --
23 12-8-2009, 6:04 p.m., Exhibit 13.

24 (Exhibit No. 13 was marked for
25 identification.)

1 And in this one, at the bottom of the
2 page it says, "The above-captioned matter had been
3 withdrawn from the December 17 closed-meeting
4 agenda by the staff. In consultation with the
5 Trial Unit, it was determined that staff will take
6 testimony from [REDACTED]
7 [REDACTED] prior to making a
8 recommendation to the Commission." And then you
9 say, "Trial Unit wants to take additional
10 testimony," and [REDACTED] says,
11 "because?" and you say, "good question." So did
12 -- these e-mails, did they further assist in your
13 recollection that it seems as though it was
14 specifically to take [REDACTED] testimony that this
15 was pulled the first time?

16 A I mean that's what the e-mails suggest.
17 The only thing -- I just don't remember if the
18 Paulson issue was laid to rest at this point.
19 Probably, actually, probably to this day, [REDACTED]
20 [REDACTED] thinks we should have charged the Paulson
21 Hedge Fund. So in his mind probably no. But I
22 can't remember if the Paulson issue was still a
23 live issue at this point or not.

24 Q But in reviewing these e-mails, you do
25 recall this other issue about taking [REDACTED]

1 testimony?

2 A Yep.

3 Q Let me ask you this question, and this
4 isn't, you know -- I want to make sure to get your
5 perspective. So I'm going to convey what has been
6 said to us and get your reaction. Okay? And that
7 is I guess the argument by (b)(6),(b)(7)(C) or at least
8 potentially by (b)(6),(b)(7)(C) was why not at least
9 take (b)(6),(b)(7)(C) testimony? What does it hurt
10 to take his testimony? Maybe if we take his
11 testimony we'll get more information about the
12 possibility of charging him even if we don't
13 necessarily feel like we can charge him now. And
14 he expressed that he didn't understand why there
15 was a position not to even take his testimony. So
16 could you explain that further to me?

17 A You want my thinking on what again?

18 Q On why it would be -- why you would
19 recommend not taking (b)(6),(b)(7)(C) testimony. What
20 would be the reason not to take his testimony?

21 A I thought that the record we had at that
22 point was such, that, it was highly unlikely that,
23 we would ever charge (b)(6),(b)(7)(C) and that it would
24 have been not a good use of staff resources to go
25 and do that because, again, I felt like at the end

1 of the day, we were highly unlikely, highly
2 unlikely to have a case against him. And that
3 wound up being, in fact, what happened except we
4 did have to spend the time and effort to take his
5 testimony.

6 Q Let me show you another document. We're
7 going to mark this as Exhibit 14. It's an e-mail
8 from [REDACTED] to you, Cheryl Scarborough, and
9 [REDACTED] 12-7-2009, 12:13 p.m.

10 (Exhibit No. 14 was marked for
11 identification.)

12 And it looks in this e-mail exchange
13 that there was an effort even prior to the matter
14 getting pulled from the calendar to take [REDACTED]
15 testimony, to try to take [REDACTED] testimony. It
16 says, "On November 2 we sent a subpoena to Goldman
17 Sachs' counsel for [REDACTED] testimony." So I
18 guess I'm confused because we've been hearing from
19 a variety of sources the documents seem to show
20 that the matter was pulled in order to take [REDACTED]
21 testimony. But it looks like there were efforts
22 to take [REDACTED] testimony even before this.

23 A And your question is what?

24 Q Do you recall that there were efforts
25 made to take [REDACTED] testimony even before this

1 issue was raised by (b)(6),(b)(7)(C) in the Trial Unit?

2 A No, but that is what this e-mail
3 suggests. But I have no independent recollection
4 of it.

5 Q Do you think there might have been an
6 effort to take (b)(6),(b)(7)(C) testimony, there was push
7 back, and then it was decided that it wasn't
8 necessary at least for that interim period until
9 December?

10 A I don't know. Push back? I don't
11 understand the question.

12 Q Well, if you read this exchange, it
13 says, "On November 2, we sent a subpoena. On
14 November 13, after receiving multiple staff
15 requests for an update, he advised would be
16 separately represented. Then he wanted to
17 schedule testimony dates in early December." In
18 this recitation under a (b)(6),(b)(7)(C) timeline, it
19 looks like there was at least some difficulty in
20 getting a date for (b)(6),(b)(7)(C) testimony. Do you
21 see that?

22 A Well, I mean I actually don't remember
23 this e-mail. I do remember that -- I mean, I
24 would tell you on the subject of (b)(6),(b)(7)(C) that when we
25 Wellsted Goldman -- when we geared up to Wells

1 Goldman, as a supervisor of the case, I took it
2 upon myself to basically learn the case in a way
3 that would allow a judgment to be made over what,
4 if any, individuals ought to be charged. And I
5 spent time and effort mostly in the summer of '09
6 doing that. And at the end of that process, it
7 was my judgment that the record supported charging
8 one and only one person, Fabrice Tourre. So
9 during this time period, I personally was of the
10 view that there was no point taking [REDACTED]
11 testimony. It wasn't really on my radar. I was
12 trying to get the case wrapped up.

13 Q So do you know why in November, early
14 November, [REDACTED] would have sent a
15 subpoena to Goldman Sachs' counsel for [REDACTED]
16 testimony?

17 A I don't know. Maybe [REDACTED] had him do
18 it. I don't know. But again, my view was there
19 was no case against [REDACTED] so what's the point?

20 Q And eventually the team did take [REDACTED]
21 testimony, right?

22 A Yes.

23 Q And you were involved in that?

24 A I attended.

25 Q What do you recall from that testimony?

1 A (b)(6),(b)(7)(C) was incredibly smart,
2 careful in thought and speech. We didn't lay a
3 glove on him. And we came back more or less with
4 the same case that we had really in the summer of
5 '09 when I made the decision to Wells Fabrice
6 Tourre and only Tourre.

7 Q So was there anything in (b)(6),(b)(7)(C)
8 testimony that changed your opinion of whether to
9 consider charging him?

10 A We factored it in, but all the answers
11 were the ones that I personally expected. The
12 testimony was consistent with the balance of the
13 record and supported, I thought, my judgment not
14 to charge him.

15 Q You asked questions at the testimony?

16 A Very few, if any.

17 Q Again, I want to just give you an
18 opportunity to respond some. I'm going to just
19 characterize what has been said, that you asked
20 questions at this testimony in such a way to
21 elicit kind of your perspective of the case,
22 particularly an issue about (b)(6),(b)(7)(C) being
23 involved in other projects and so maybe didn't
24 spend as much time on this particular matter. And
25 so you asked questions to try to elicit him to say

1 that he was working on other matters. Is that the
2 case or do you remember the questions you asked?

3 A No, I don't.

4 Q Was there any effort made by you in
5 questioning to try to come to some kind of
6 preconceived notion that you had of what he was
7 going to say?

8 A No.

9 Q Do you remember there being an issue
10 about the fact that he had worked on many
11 different matters, and so that would be a reason
12 why he wouldn't have been involved in this
13 particular matter and, therefore, affect the
14 question of whether to charge him? Do you
15 remember that issue?

16 A I remember that the record was that
17 Fabrice Tourre was really the deal captain or main
18 deal guy on ABACUS 2007-AC1. I remember that
19 (b)(6),(b)(7)(C) was busy on something else during
20 the relevant time period and had really in my view
21 insufficient involvement in the transaction to be
22 charged.

23 Q After the testimony of (b)(6),(b)(7)(C) did you
24 guys discuss what the impact of the testimony was?
25 Was there some kind of meeting?

1 A After (b)(6),(b)(7)(C) testimony, my recollection
2 is that there was probably a series of meetings
3 with the Front Office at which the record was
4 reviewed with the view towards reassessing the
5 decision not to charge (b)(6),(b)(7)(C) and, ultimately, the
6 decision was not to charge him.

7 Q Do you remember if anyone other than (b)(6),(b)(7)(C)
8 (b)(6),(b)(7)(C) expressed a view after (b)(6),(b)(7)(C) testimony
9 that based on (b)(6),(b)(7)(C) testimony there should be a
10 renewed interest in looking to charge him?

11 A I don't remember.

12 Q Do you remember if folks got any
13 impression either way from (b)(6),(b)(7)(C) testimony?
14 Either it made them more convinced not to charge
15 him or less convinced?

16 A Other people's views -- I remember my
17 view was unchanged which was that there was
18 insufficient evidence before we took his testimony
19 to charge (b)(6),(b)(7)(C) and there continued to be
20 insufficient evidence after we charged (b)(6),(b)(7)(C)
21 to charge him. I remember (b)(6),(b)(7)(C) was of the
22 opposite view. That's what I remember.

23 Q You don't remember anybody else's
24 perspectives on that matter?

25 A I remember at the end of the day, Rob

1 Khuzami said that in his view we weren't going to
2 charge (b)(6),(b)(7)
(C)

3 Q Let's keep going. Next document is
4 dated 12-22- 2009, 1:40 p.m., e-mail exchange
5 between you and (b)(6),(b)(7)(C) and we're going to
6 mark it as Exhibit 15.

7 (Exhibit No. 15 was marked for
8 identification.)

9 And you can take a minute or two to look
10 at this. It relates to a potential news story in
11 the New York Times.

12 A Okay.

13 Q Do you remember this issue? That there
14 was some concern I guess about a story in the New
15 York Times, and then I think then there was
16 eventually a story? Do you remember this
17 occurring?

18 A I remember the story which I guess ran
19 on Christmas Eve. It was about a number of CDOs
20 that we had been investigating for quite a while.
21 I don't remember this e-mail, but obviously, you
22 know, I received it.

23 Q And do you remember there being just
24 concern that this information was out there in the
25 press?

1 A I don't understand the question.

2 Q Do you remember there being concern on
3 the part of the investigative team that there was
4 -- that the New York Times was writing an article
5 about a matter that you were working on?

6 A Right. So we'd been investigating the
7 CDO market at this point for almost two years.
8 Yeah, almost two years. And quite frankly,
9 personally, I was very happy that there had been
10 no press coverage of those investigations because
11 that makes it easier for us to do our job.

12 Q And why does it make it more difficult
13 to do your job if there's press coverage?

14 A Well, it certainly doesn't help. It
15 doesn't assist us generally. And I don't know.
16 I'd just have to say over the years my personal
17 preference is to just do my job and avoid press of
18 any type.

19 Q And then the next document is an e-mail
20 exchange between (b)(6),(b)(7)(C) and you and a
21 variety of other folks dated 12-24-2009, 8:37
22 a.m., Exhibit 16.

23 (Exhibit No. 16 was marked for
24 identification.)

25 And I guess this is attaching the

1 article. Does this refresh your recollection?

2 This is the article you were talking about?

3 A Is this Louise Story's article on
4 Christmas Eve?

5 [REDACTED]: That's what I remember,
6 the 23rd.

7 A Yeah, okay, so I remember. I don't
8 remember the e-mail but I remember the article.

9 BY MR. KOTZ:

10 Q And who's [REDACTED]

11 A You know, I don't know.

12 Q He says in this e-mail, "I wonder how
13 they got the story?" Was there any concern at any
14 point in time that anybody with the SEC had leaked
15 information or given information to the New York
16 Times that formed some or all of this story?

17 A Not in my mind, no. We'd been quietly
18 investigating the CDO market for two years --

19 Q Is there any -- I'm sorry --

20 A I mean, to my view and I didn't see
21 anything in the article that suggested to me a
22 leak at the SEC.

23 Q And then he says, "I wonder how they got
24 the story?" Did you ever make any effort to
25 inquire how the information had gotten out to the

1 **press?**

2 A Well, we're really not allowed to under
3 the Cox era of press contact guidance, but quite
4 frankly it didn't matter to me.

5 Q What does that mean, you're not allowed
6 to under the Cox era?

7 A There are all these procedural hurdles
8 you have to go through if you want to talk to
9 reporters, which quite frankly is fine with me.

10 Q Was there a concern that some of the
11 folks that you've interviewed in the ABACUS
12 Goldman Sachs investigation may have provided the
13 information to the New York Times?

14 A I didn't think about anything like that.

15 Q Was there anything in the New York Times
16 story that you learned? That was helpful?

17 A Well, we'd been looking at most of these
18 CDOs on some level, I mean in the context of our
19 generic CDO investigations. We'd swept the
20 street. We were looking at all this stuff.

21 Q So does that mean there wasn't anything
22 in the New York Times article that you learned or
23 was helpful?

24 (b)(6),(b)(7)(C) : Do you want to take time
25 to read through it?

1 A I sort of don't understand the question.
2 I mean, we'd been investigating the synthetic CDO
3 market for the better part of two years. There
4 wasn't much in there I didn't know.

5 BY MR. KOTZ:

6 Q Let me show you the next document.

7 We're going to mark it as Exhibit 17. An e-mail
8 between you and Steve Cohen, 1-4-2010, 7:16 p.m.

9 (Exhibit No. 17 was marked for
10 identification.)

11 So the bottom of the e-mail -- actually
12 if you look at the second page -- is the e-mail we
13 looked at before where [REDACTED] explains that
14 "the matter had been withdrawn from the December
15 17 closed-meeting agenda in order to take the
16 testimony of [REDACTED]" And then you reply
17 on January 4 saying, "We will be resending this
18 recommendation up to the Commission on Friday,
19 January 8." Then there's a little back and forth
20 about the dates. Do you remember when [REDACTED]
21 testimony was taken?

22 A No. I think around this period though,
23 but that's a matter of record.

24 Q And so what I guess -- it seems to
25 indicate from the e-mail -- and I want to just get

1 your recollection -- is that the decision was made
2 to withdraw the matter from the calendar for the
3 specific purpose of taking the testimony. And it
4 looks like you took the testimony, and then as
5 soon as you took the testimony, you want to put it
6 back on the calendar. Is that consistent?

7 A I mean my recollection was that the case
8 that we Wellsed in the summer and fall of 2009 was
9 the right case to bring. I just kept throwing
10 that thing up on the calendar trying to get it out
11 the door. My view is the case had been ready for
12 months.

13 Q And you say in this e-mail on January 4,
14 2010, at the bottom of the page at 4:15 p.m.,
15 "This is a high profile Enforcement case that has
16 recently became -- that recently became -- time
17 sensitive." What did you mean that it recently
18 became time sensitive?

19 A You know, I really don't remember. Hold
20 on, let me think. I don't remember. I mean,
21 again, my recollection was the case that we
22 essentially finished investigating in the spring
23 of '09, that we Wellsed in the summer and fall of
24 '09, was the right case to bring, and quite
25 frankly that was the case. We brought it six

1 months later, but in the meantime we had to go
2 through everything that you see represented in
3 this e-mail traffic.

4 Q But you state in this e-mail at least
5 recently became time sensitive. Was there
6 something that happened around the January
7 timeframe that made the case more time sensitive?

8 A I really don't remember. Okay, I'm not
9 supposed to speculate. It might -- I may have had
10 some concerns that the New York Times article --
11 let me think about that.

12 (b)(6),(b)(7)(C): Well, the Front Office
13 here is asking you something. Read the entire
14 e-mail. Does it have anything to do with it
15 becoming time sensitive?

16 A I mean I can tell you from my
17 perspective, I thought the case had been ready for
18 about six months at this point, and I was just
19 trying to get the thing out the door.

20 BY MR. KOTZ:

21 Q But the fact that there recently was a
22 New York Times article about it, would that
23 increase the urgency? Now the information's
24 starting to get out already. This case has been
25 sitting. Let's do it already. Is that you think

1 **what you were referring to?**

2 A I don't remember. I mean what's equally
3 possible is I'm just saying it's time sensitive
4 because I'm ready -- I want -- I'm like -- I mean
5 I thought the case had been done for several
6 months, and I'm ready -- I'm trying to get it
7 filed. That's my frame of mind.

8 Q **But you think it may have had to do with**
9 **the New York Times article since that's --**

10 A That would be -- I don't know.

11 [REDACTED]: Only if you know, don't
12 speculate.

13 A It was the Holidays. I don't know. I
14 don't remember.

15 [REDACTED]: Do you have knowledge of
16 that?

17 A What I have a very clear recollection
18 throughout this period is the case that we had
19 wrapped up in the fall of '09 was the right case
20 to bring, and I was trying to bring that case.
21 And that's the case we wound up bringing in April
22 and nothing changed.

23 BY MR. KOTZ:

24 Q **And in the next e-mail you say, "Steve**
25 **agreed that it made sense to file against Goldman**

1 and Tourre and then amend if the evidence supports
2 charging equal." So this is another thread that
3 we see in the e-mails, and let me just set it up
4 for you and see what you can remember. That there
5 was a disagreement about which approach to take:
6 One would be put the entire case together, all
7 possible aspects, and then bring it to the
8 Commission. The other being bring what you have
9 against the Commission and if you want to follow
10 up and do more work, you could do that and then
11 amend it. Do you remember that disagreement?

12 A I don't. Oh, wait a moment, you know,
13 all right. I do have some recollection of -- you
14 know, I do think I formed a view at one point
15 during this period, that it made sense to consider
16 just moving ahead with the case we had -- which
17 again I thought had been ready for months -- and
18 then -- yeah, okay, now I am remembering it -- and
19 then if people upon further study concluded,
20 contrary to my view, the evidence supported
21 charging (b)(6),(b)(7)(C) then we could charge (b)(6),(b)(7)(C) and amend
22 the complaint. That, you know, that was -- I do
23 remember thinking that. I can't remember where
24 that went because ultimately the decision was not
25 to charge (b)(6),(b)(7)(C)

1 Q We'll chase some more e-mails and maybe
2 we'll be able to figure out what happened with
3 that theory. But let me go on to the next
4 document which is an e-mail from (b)(6),(b)(7)(C) to
5 you dated 1-6-2010, 8:32 p.m., which we're going
6 to mark as Exhibit 18.

7 (Exhibit No. 18 was marked for
8 identification.)

9 And who is (b)(6),(b)(7)(C)

10 A (b)(6),(b)(7)(C)

11 Q And what was his connection with the
12 Goldman case?

13 A None really. He was -- he had -- he was
14 sniffing around Goldman for some different issues.

15 Q So you weren't collaborating with him
16 about the Goldman case?

17 A No, no, no.

18 Q And the e-mail exchange here in the
19 middle of the page, (b)(6),(b)(7)(C) sends an e-mail to
20 you Wednesday, January 6. "I talked to Rich
21 Klapper today. He's going to be in D.C. the week
22 of January 25 to appear before a Senate
23 subcommittee that is looking into similar issues."
24 Who's Rich Klapper?

25 A He's the -- he's a partner at Sullivan &

1 Cromwell and who was, I think, Goldman's principle
2 outside attorney during the ABACUS investigation.

3 Q And then you respond to Adam, "Do you
4 have any additional intel on the Senate
5 subcommittee?" [REDACTED] Do you remember this issue
6 with the Senate subcommittee?

7 A We knew that the Senate Permanent
8 Subcommittee on Investigations was investigating
9 the CDO market and were looking at many of the --
10 appeared to be looking at many of the same issues
11 that we were looking at, in particular had focused
12 more or less the same timeframe we'd focused on,
13 sort of '06, early '07 timeframe. We'd obtained
14 copies of their subpoenas from somewhere and had
15 really only asked the firms that we knew they'd
16 subpoenaed to basically give us a me-to document
17 production so we had some sense of where they were
18 headed. But I, you know -- but that's -- and so
19 we knew that they were looking at some similar
20 issues and that was my interest there. But we
21 were never too clear, at least in this time
22 period, on exactly what they were looking at or
23 what their concerns were so it looks like I'm
24 asking [REDACTED] if he has any idea what they're up to.

25 Q Let me show you another couple of

1 documents on the subject and that may help. The
2 next e-mail is from Robert Khuzami, 1-15-2010,
3 10:51 a.m., to you, Lorin Reisner, and Cheryl
4 Scarborough. We're going to mark it as Exhibit 19.

5 (Exhibit No. 19 was marked for
6 identification.)

7 And you sent an e-mail actually to
8 Khuzami, Reisner, and Scarborough saying, "According
9 to outside counsel, Sullivan & Cromwell, Goldman
10 has provided copies to the Senate of all documents
11 produced to the SEC pursuant to a me-to request.
12 Today we learned that Goldman is considering
13 providing copies of our investigative
14 transcripts." And then Khuzami responds, "I
15 thought about this after our meeting last night
16 and the inquiry may be one additional reason to
17 proceed with the case and Wells (b)(6),(b)(7)(C) on parallel
18 tracks, assuming that is the result we reach with
19 (b)(6),(b)(7)(C)." Now, do you remember that? That at this
20 point in time at least, Robert Khuzami was taking
21 the position that you would go with the parallel
22 tracks that you referenced earlier and that one of
23 the reasons related to this Permanent Subcommittee
24 on Investigations inquiry?

25 A No. I mean, look, again, my

1 recollection was I was trying to file the case
2 against Goldman and Fabrice Tourre. And from my
3 perspective, discussions about whether or not to
4 charge [REDACTED] and related ones -- and similar ones
5 -- about Paulson were -- although, you know, these
6 were important charging decisions and needed to be
7 thought about and considered -- to me we were
8 never going to get there with [REDACTED] and I was ready
9 -- my frame of mind was let's file the case we
10 have because that's all the case we're going to
11 have. And I wound up being right about that.

12 Q But do you remember that others had the
13 concern about this Permanent Subcommittee on
14 Investigations? There was some talk of a hearing
15 and that they wanted to make sure to at least get
16 the case in chief against Goldman and Tourre out
17 before the hearing.

18 A No, I mean, my interest was just in
19 filing the case that we had as soon as we could.

20 Q So do you know what Robert Khuzami's
21 referring to when he says, "The inquiry may be one
22 additional reason to proceed with the case and
23 Wells [REDACTED] on parallel tracks?"

24 A You'd have to talk to Rob about that.

25 Q Let me show you the next document and

1 we'll mark it as Exhibit 20. An e-mail exchange
2 between you and (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C)
3 1-15-2010, 5:38 p.m.

4 (Exhibit No. 20 was marked for
5 identification.)

6 This is an e-mail exchange about this
7 Permanent Subcommittee on Investigations. It
8 seems there's a fair bit of e-mail traffic about
9 this issue. What was the concern about the
10 Permanent Subcommittee going forward?

11 A My concern? I was curious as to what
12 they were doing. Again, all I believe we knew at
13 the time was they were looking at the CDO market
14 with a focus on the same time period we were
15 looking at. And I think I may have also known
16 there were hearings coming up, and I was just
17 trying to figure out what they were up to.

18 Q Would there be a concern if the
19 Permanent Subcommittee did a hearing on a matter
20 and you were involved in an investigation of the
21 same matter?

22 A No, I was just curious as to what they
23 were up to. I just wanted to know.

24 Q But in terms of your investigation per
25 se, what the Permanent Subcommittee on

1 Investigations did wouldn't have adversely
2 impacted your investigation?

3 A Look, I mean, they were looking at --
4 apparently looking at some of the same issues we
5 were on the CDO market and I wanted to know more.
6 It's that simple.

7 Q But would it have an adverse effect
8 potentially on your investigation if they had a
9 hearing or what actions they were taking?

10 A Well, they did have a hearing which had
11 really no impact on our investigation, so I guess
12 that's my answer.

13 Q So you didn't think at the time that you
14 were concerned that a hearing by the Permanent
15 Subcommittee on Investigations would have an
16 impact on your investigation?

17 A In my view our investigation had
18 concluded in really the summer of '09. We were
19 done.

20 Q So if you're done, it wouldn't have an
21 impact? Is that right?

22 A Not with the investigation. In my view
23 we were done.

24 BY (b)(6),(b)(7)(C)

25 Q And so when you wrote back in I think it

1 was Exhibit 17 in that January 4 e-mail that the
2 ABACUS matter had recently become time sensitive,
3 is it possible that the Permanent Subcommittee on
4 Investigations had any relation to time
5 sensitivity?

6 A I doubt it.

7 BY MR. KOTZ:

8 Q Now let me show you another document,
9 and we'll mark it as Exhibit 21. It's an e-mail
10 exchange between Robert Khuzami, Lorin Reisner,
11 and George Canellos, 1-7-10, 12:43 p.m.

12 (Exhibit No. 21 was marked for
13 identification.)

14 And this is about a conversation you had
15 with [REDACTED]

16 A I don't know who [REDACTED] is.

17 Q [REDACTED] from the U.S. Attorney's Office
18 maybe?

19 A Yeah, I think so.

20 Q [REDACTED]

21 A Yeah.

22 Q So do you remember what this was about?
23 What was the interest on the part of [REDACTED]

24 A Yeah, my memory of this meeting was -- I
25 think I was in New York on some other matter. I

1 forget what. And the U.S. Attorney's Office for
2 the Southern District of New York had known about
3 both our ABACUS investigation and our generic --
4 what I call the generic -- CDO investigation. And
5 they wanted a briefing. We gave them one.

6 Q And was there any further work with the
7 U.S. Attorney's Office on the ABACUS case?

8 A No.

9 Q Let me show you the next document.

10 A Hold on -- not until after we filed.

11 Q We'll mark this as Exhibit 22, an e-mail
12 exchange between you and Steve Cohen, 1-15-2010,
13 11:25 a.m.

14 (Exhibit No. 22 was marked for
15 identification.)

16 So in this e-mail exchange I guess you
17 forwarded to Steve Cohen the e-mail you had
18 previously sent to Khuzami, Reisner, and Scarborough
19 about Goldman providing copies to the Senate. And
20 Stephen Cohen replied, "We really need to bring
21 this case on the 28th." Why did we really need to
22 bring the case on the 28th?

23 A I don't know.

24 Q Well, when you got this e-mail, did you
25 understand what he was talking about?

1 A No, but I can tell you that, you know,
2 my view was this case should have been filed, it
3 could have been filed, in December. I think we
4 had already pulled it from the calendar once. My
5 view was the case had been ready for a while. If
6 he's saying file on the 28th, I'm like great,
7 let's file on the 28th.

8 Q But do you recall that the particular
9 need to bring the case was related to -- as you
10 can see in the e-mail below -- the information
11 you were providing about the Senate?

12 A Not at all. In my view the case had
13 been ready for months. I mean if you're trying to
14 suggest in your questioning that the timing of the
15 case in my view related to the Senate inquiry,
16 it's ridiculous. My view was the case had been
17 ready for a while. We'd had substantial delays in
18 getting it out the door because of some disputes
19 with [REDACTED] and the Trial Unit. And so my
20 whole frame of mind as far as this case went is
21 let's get it out the door. And that had been my
22 frame of mind for -- January, February -- about
23 two or three months.

24 Q But what I'm suggesting is that perhaps
25 in Stephen Cohen's e-mail on Friday, January 15,

1 2010, 11:24 a.m., in response to you forwarding
2 him information about the Senate, when he says,
3 "We really need to bring this case on the 28th,"
4 he is saying that because of the Senate Permanent
5 Subcommittee hearing.

6 A I had been trying to file the case since
7 back in December. If he wants to file it January
8 28, I'm like great, let's file it January 28th.
9 Let's just file it. That's my frame of mind.
10 That's my frame of mind. As far as what Mr. Cohen
11 meant here, you just talk to him about it.

12 Q You said it was ridiculous to suggest
13 that the timing of the case was related to the
14 Permanent Subcommittee on Investigations. But is
15 it ridiculous to suggest that Stephen Cohen in
16 this e-mail is saying, "We really need to bring
17 this case on the 28th," because of the timing of
18 Senate Permanent Subcommittee?

19 A Talk to Steve about that. My view was
20 the case had been ready for a while. It should
21 have been brought back in December.

22 Q But do you recall that in your efforts
23 to move the case forward, you were helped by the
24 fact that there was this Senate Permanent
25 Subcommittee and that was a reason that others

1 potentially may have had to bring the case out
2 earlier?

3 A No.

4 Q Do you remember getting this e-mail from
5 Steve Cohen saying, "We really need to bring this
6 case on the 28th?"

7 A No.

8 Q Let me show you the next e-mail.

9 [REDACTED]: It's been an hour and a
10 half. Let me just ask if the witness needs a
11 break. I don't.

12 A I don't.

13 MR. KOTZ: When you need a break, just
14 let me know. We'll stop. I think we're doing
15 pretty well moving through it.

16 [REDACTED]: Do you have a ballpark as
17 to how much longer it might go?

18 MR. KOTZ: I don't know. Maybe an hour?
19 It's hard -- it's kind of hard to tell. We're
20 actually moving pretty quick. He answers quickly
21 so that helps some. We'll do our best to get it
22 as quickly as we can.

23 BY MR. KOTZ:

24 Q So the next e-mail is dated 1-15-2010,
25 11:54 a.m., from Stephen Cohen to you, and we're

1 going to mark it as Exhibit 23.

2 (Exhibit No. 23 was marked for
3 identification.)

4 And this is following on that same
5 exchange. Stephen Cohen asks you, "Do we know who
6 in Senate asked for documents? What" -- think it
7 refers to Committee -- he said, "I believe this
8 one. See attached. We are seeking to confirm."
9 Then you say, "The answer is yes, the Senate
10 Permanent Subcommittee on Investigations. You
11 should also know that [REDACTED]
12 [REDACTED] on Xmas Eve in response to the NYT article.
13 See doc request attached." And then Stephen Cohen
14 responds, "Thanks. Feel free to share with ENF
15 Enforcement folks that the very soft intelligence
16 our folks are getting is that PSI does not intend
17 to do a hearing, but rather an investigation and
18 PSI is probably the most conscientious committee
19 about safeguarding nonpublic information. That
20 being said, we should still operate as if our
21 stuff may get out to the public before we want it
22 to." Do you know what Steve is referring to here?

23 A He's talking about the PSI
24 investigation.

25 Q And what was the concern about the PSI

1 **investigation?**

2 A I didn't have any concerns. Maybe, I
3 mean, do we know -- oh, right, so they were
4 receiving copies -- I see, okay, so all right, so,
5 right, all right, according to these e-mails,
6 Goldman had been giving the PSI copies of all the
7 documents they'd been producing to us. Okay? So
8 I guess I -- based upon that, I had reason to
9 believe that the PSI had a lot of the same
10 documents that we had. So I knew that. And other
11 than that, I certainly continued to have an
12 interest in bringing the case.

13 **Q Do you remember anything about this**

14 (b)(6),(b)(7)(C)

15 A Yes.

16 **Q What do you remember about that?**

17 A We met with them. It must have been in
18 early January. I came down to D.C. and had opened
19 up an investigation in response to the New York
20 Times article.

21 **Q And did that investigation relate to**
22 **what you were doing?**

23 A It overlapped, sure, because it
24 overlapped with our -- well, yes and no, I mean it
25 overlapped with our generic CDO investigation, not

1 so much ABACUS which was done.

2 Q Do you remember that in fact that it
3 seems as though initially there was the feeling
4 that the PSI was going to do a hearing and then
5 further information revealed that it wasn't going
6 to do a hearing?

7 A What I remembered is that it was always
8 a mystery what they were up to. Obviously, I knew
9 they had -- or had reason to believe they had --
10 some of the same documents we had and quite
11 frankly until I saw the hearings on TV or shortly
12 before then, I had no idea what they were up to.

13 Q It's clear that Stephen Cohen at least
14 was interested in what was going on with the PSI
15 Committee, right?

16 A Talk to Steve.

17 Q That was never conveyed to you?

18 A I was -- I had some level of curiosity
19 but didn't really -- I didn't really on -- quite
20 honestly, I didn't really care.

21 Q But was that ever conveyed to you that
22 others cared more about the PSI?

23 A Nope.

24 Q Even through all these e-mails back and
25 forth to Steve Cohen about intel? You never got

1 the impression that Steve Cohen was interested
2 about what the PSI was doing, when they were doing
3 it?

4 A My interest was in filing the case. It
5 was always a little, kind of mysterious what the
6 PSI was up to. I didn't really care. I didn't
7 care about really -- I mean, I don't want to be
8 dismissive. They have an important mandate and
9 actually the hearings wound up being pretty
10 interesting, but at this time I didn't care.

11 [REDACTED]: He's asking about whether
12 Cohen had an interest. I mean, Cohen is referring
13 to it in his e-mail. I guess in addition to what
14 Cohen states in his e-mail concerning his
15 interest, if any, in the PSI, do you have any
16 additional information that you can supply?

17 A No. I mean I don't even know what their
18 mandate is now that I'm thinking about it.

19 BY MR. KOTZ:

20 Q So what we're trying to understand is
21 why was there such -- all this interest in it?

22 A There was very little interest on my
23 part about what the PSI was up to, however, I did
24 watch some of the hearings. That wound up being
25 --

1 Q And you don't know what the reason that
2 others seemed to be interested in the PSI?

3 A No.

4 Q Did you ever hear that perhaps the
5 interest related to the fact that if the PSI had a
6 hearing before the case was brought, then some of
7 the information about the case or the fact of a
8 case would get out into the press before the SEC
9 had an opportunity to bring their case, thereby
10 stealing some thunder from the SEC when they
11 announced their case?

12 A And the question's what?

13 Q Did you ever hear or learn that we were
14 trying to figure out what the potential issue was
15 with the PSI hearing? And so I'm going to suggest
16 a possible reason why Steve Cohen or the
17 Chairman's Office or others within the SEC, unlike
18 you, would be interested in what the PSI was
19 doing. And that reason is that if the PSI would
20 come out with the fact that they were looking --
21 that there were issues related to Goldman, that
22 that would steal some of the press attention or
23 the thunder so to speak from the SEC when they
24 finally announced that they brought a case.

25 A And the question there is whether or not

1 I had conversations with people?

2 Q Were you aware of that thought process?

3 A No.

4 Q Let me show you the next document.

5 We'll mark it as Exhibit 24, 1-22-2010 e-mail,

6 6:36 p.m., between you and Kenneth Lench.

7 (Exhibit No. 24 was marked for
8 identification.)

9 This e-mail has discussion about the
10 timing of the action, assuming there was
11 authorization Thursday, 1- 28, you say, "Unless
12 people have different view, our preference is to
13 file our complaint the morning of Friday, 1-29."
14 Ken Lench responds, "I can't recall now but wasn't
15 there a reason we couldn't wait until Monday?"
16 And you respond, "Not really except my view that
17 we are on a 24/7 news cycle. Think of all the
18 attention Gretchen's NYT's piece on synthetic CDOs
19 garnished and it ran on Xmas Eve. You and I need
20 to talk Monday about the press release." And let
21 me show you the next document as well, marked as
22 Exhibit 25. It's an e-mail exchange between you
23 and Cheryl Scarborough, 1-22-2010, 6:09 p.m.

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

1 And in this one there's a similar
2 discussion. Cheryl actually responds to the
3 e-mail about -- your e-mail about -- when to file
4 it and she says, "I would prefer not to file on a
5 Monday -- on a Friday -- I suggest Monday, Feb.
6 1." And you say to her, "I realize that's the
7 approach we have taken in the past. My sense is
8 that we're really on a 24/7 news cycle nowadays.
9 In a similar e-mail, look at how much attention
10 Gretchen's NYT's article got and it ran Xmas Eve."
11 And Cheryl says, "I disagree." When you said,
12 "... the approach we've taken in the past," what
13 were you referring to?

14 A Okay. So I would say that over the
15 years in Enforcement, there's been a preference
16 not to file actions on Fridays because the
17 consensus view is that no one reads the newspapers
18 on Saturday. Right? My view is, as expressed
19 here, it doesn't matter. We're on a 24/7 news
20 cycle and Friday's like any other day.

21 Q And I guess Cheryl Scarborough disagreed?

22 A Yep.

23 Q So at this point in time you were really
24 poised to file this document in January? I mean
25 you were even discussing the day that it would be

1 **filed. Right?**

2 A I assume from this we're on the
3 calendar, but, you know, but I figure you got an
4 e-mail that establishes that.

5 Q And so further on in this exchange,
6 there's an e- mail from Steve Cohen to you dated
7 1-25-2010, 7:51 a.m., which we're going to mark as
8 Exhibit 26.

9 (Exhibit No. 26 was marked for
10 identification.)

11 I guess you sent an e-mail where you
12 made this point about the 24/7 news feed, and you
13 also made a point about "a more specific desire to
14 file in advance of the annual conference of the
15 American Securitization Forum which kicks off next
16 Monday." What was that all about?

17 A Oh, okay. So I was scheduled to speak
18 at the American Securitization Forum on a panel
19 about the Structured and New Products Unit which
20 had just been created, and, you know, quite
21 frankly I had very little to talk about. And so
22 I'm throwing in here my two cents that were we to
23 file the ABACUS case in advance of that, that
24 would give me something to -- well, I think it was
25 -- it would give me something to talk about. I

1 would view that as being just a minor thought. It
2 would be a personal "benny" to me to have
3 something to talk about because I didn't really
4 have much to talk about.

5 Q I assume you found other things to talk
6 about because it wasn't filed yet? And then Cohen
7 says, "I'll poll folks and let you know our
8 thoughts." And then -- I mean I don't have to put
9 into evidence but you respond, "Works for me. You
10 might want to check with Lorin." Do you remember
11 what the final determination was as to that issue?

12 A Well, we didn't file the case until
13 April, so --

14 Q Right, but do you remember if there was
15 a determination made at that time when you thought
16 you were filing the case on whether to file it on
17 Friday or Monday?

18 A I don't, I don't. I do know that -- I
19 do have the recollection that my bosses did not
20 share my view of the press. But I forget. I
21 mean, again, we didn't file the case until April
22 so it was mooted somehow.

23 Q Let me show you the next document,
24 Exhibit 27, dated 1-26-2010, 11:38 a.m., from [REDACTED]
25 [REDACTED] to you, copy to [REDACTED]

1 (Exhibit No. 27 was marked for
2 identification.)

3 And so (b)(6),(b)(7)(C) sends an e-mail to you
4 on 1-26- 2010, 11:38 a.m., saying, "Thanks. I
5 hear the Chairman wants to file Thursday so you'll
6 need to have someone standing by at the courthouse
7 I guess." Do you remember why the Chairman
8 particularly wanted to file Thursday?

9 A No.

10 Q Do you think it might have been having
11 to do with this issue of the press cycle, that the
12 determination was made Thursday would be better
13 than Friday?

14 A I don't know.

15 Q Do you remember anything about the
16 Chairman or the Chairman's Office particular
17 interest in when the case would be filed at this
18 stage in the January timeframe?

19 A No.

20 Q Next document we'll mark as Exhibit 28.
21 An e- mail exchange between you and (b)(6),(b)(7)(C)
22 1-26-2010, 8:22 a.m.

23 (Exhibit No. 28 was marked for
24 identification.)

25 This e-mail exchange talks about a

1 meeting with David B. -- I assume that's David
2 Becker -- and Rich Levine from the Office of
3 General Counsel. Do you remember what that
4 meeting was about?

5 A ABACUS?

6 Q Yeah, but anything in particular?

7 A All I remember about it was we had met
8 with Rich Levine a couple of times in connection
9 with really the decision not to charge Paulson.
10 And then David Becker was our new General Counsel
11 and I guess he was getting up to speed with the
12 case and we had a meeting. That's my
13 recollection.

14 Q Did this have anything to do with why
15 the case was then pulled again from the calendar?

16 A Not to my knowledge. We just talked to
17 David about the case, you know, the substance of
18 it, not the timing.

19 Q Let me show you the next document dated
20 1-27- 2010, 2:21 p.m., an e-mail exchange between
21 you and [REDACTED] We're going to mark it
22 as Exhibit 29.

23 (Exhibit No. 29 was marked for
24 identification.)

25 Who's [REDACTED] by the way?

1 A She's in another division. I'm blanking
2 on which one, maybe [REDACTED]? Maybe
3 IN? I can't remember.

4 Q And so in this e-mail exchange at the
5 bottom, [REDACTED] sends an e-mail Wednesday,
6 January 27, 2010, 12:21 p.m. "Please note that
7 the above captioned matter has been pulled from
8 the January 28 closed-meeting agenda at staff's
9 request and will be recalendared at a later date."
10 [REDACTED] asks you, "Why was this pulled?"
11 And you answer, "We're going to decide whether or
12 not to charge [REDACTED]
13 [REDACTED] and then bring the case
14 all at once." So what do you remember about that,
15 refreshed by this e-mail? Why was it pulled the
16 second time?

17 A You know, the e-mail traffic is not
18 wholly consistent with my recollection. Okay?
19 Which was that it was -- that the recommendation
20 was pulled in December to revisit the decision not
21 to charge Paulson, and then pulled a second time
22 in January to revisit the decision not to charge
23 [REDACTED] So that's like my standalone recollection.

24 Q Well, what do you remember about the
25 second time?

1 A Just what's in his e-mail. Well, no,
2 the second time was definitely (b)(6),(b)(7)(C) We were --
3 that issue -- (b)(6),(b)(7)(C) was still agitating. He
4 still thought there was sufficient evidence to
5 charge (b)(6),(b)(7)(C) I didn't. And, you know, let's just
6 say the debate continued.

7 Q But do you remember this -- the issue --
8 the kind of debate we discussed earlier which was
9 the two approaches. One approach would be to
10 bring the case that you had now and look at (b)(6),(b)(7)(C)
11 and decide whether you wanted to amend it. And
12 the other approach was you were just going to
13 bring it all at the same time no matter what. It
14 seems like that latter approach won the day. Do
15 you remember anything about that because under the
16 first approach, you could have still gone forward
17 with (b)(6),(b)(7)(C) and yet brought the case. Right?

18 (b)(6),(b)(7)(C) : Gone forward with
19 Goldman.

20 A Yeah, I do remember that there was
21 discussion amongst the group about whether or not
22 to bring the case against Goldman and Tourre, and
23 then while we considered -- while we continued to
24 consider whether or not to charge (b)(6),(b)(7)(C) And I
25 remember that the decision ultimately was to make

1 all the charging decisions and bring the case,
2 which is what we did, but --

3 Q Do you remember why?

4 A I don't -- ah, I don't know, actually
5 maybe about e-mailing it. But as I sit here, I
6 don't. I mean, I can tell you my personal view
7 was just to -- I knew we were never going to
8 charge (b)(6),(b)(7)(C) so let's just bring what we've got.

9 Q Now, would there be an adverse impact if
10 you were to bring a case against (b)(6),(b)(7)(C) having
11 already brought and made public the case against
12 Goldman and Tourre?

13 A I mean my view was it was extremely
14 unlikely we would ever charge (b)(6),(b)(7)(C) because the
15 evidence did not support charging (b)(6),(b)(7)(C)

16 Q Right, but I'm saying, as a general
17 matter, if there was a scenario where you might
18 charge an additional defendant, would it be
19 disadvantageous to bring the case forward of the
20 other defendants earlier, and would that -- could
21 that -- potentially impact the effort to go after
22 another defendant?

23 A I can't answer that question as a
24 hypothetical. I mean, I really can't.

25 Q Well, if you're working on a case and

1 you bring an action against a company and another
2 individual and that information gets out there,
3 would that be beneficial to another individual
4 like (b)(6),(b)(7) in order to defend or have information
5 that would be helpful in a defense or would it not
6 make a difference?

7 A I don't know. I mean every case is
8 different, that would be my answer.

9 Q Well, what about in this case?

10 A In this case my view was the evidence
11 did not support charging (b)(6),(b)(7) We would be -- it
12 would be highly unlikely that we would ever charge
13 (b)(6),(b)(7) so let's proceed with the case we had months
14 prior to this.

15 Q So is it fair to say that that
16 consideration about (b)(6),(b)(7) might know or learn from
17 the filing of the case against Goldman and Tourre
18 was not significant to you because you didn't
19 think there was any way you could get to a point
20 where you could charge (b)(6),(b)(7)

21 A To me personally, since I felt confident
22 that once people examined the record, that
23 reasonable minds would come to the right place
24 here, which is what happened, that we weren't
25 going to charge (b)(6),(b)(7) So I guess the sort of

1 things you're trying to get at in your questions
2 were irrelevant to me because it was just so
3 unlikely we were going to ever charge (b)(6),(b)(7)(C) It
4 was just something we had to work through. But I
5 always felt like the decision quite frankly to a
6 large extent that I made in the fall of '09 was
7 the right one, which was to charge Mr. Tourre who
8 admitted that he was principally responsible for
9 the transaction and the marketing materials and
10 not to charge (b)(6),(b)(7)(C) It was the right one back
11 then and it was the right one now and would be the
12 right one forevermore.

13 Q So why did they, in some sense,
14 potentially waste -- I mean, it's not a waste
15 obviously because it's an investigation -- but why
16 did they continue to pull the case back with more
17 efforts to potentially bring a case against (b)(6),(b)(7)(C)
18 given the evidence? Do you know?

19 A Well, I know that ultimately what
20 happened was the Front Office personally reviewed
21 the evidence --

22 (b)(6),(b)(7)(C) What do you mean, "the
23 Front Office?" You probably ought to give a name
24 if you can.

25 A Ultimately, I know -- I mean --

1 ultimately at the end of the day there was a
2 meeting in Khuzami's office. And it was clear to
3 me during that meeting that both Rob Khuzami and
4 Lorin Reisner had spent quality time with the
5 record and there was discussion about whether or
6 not to charge (b)(6),(b)(7)(C) This was I think in March of
7 2010. And I think the next day Rob sent an e-mail
8 out saying he was a "no" on (b)(6),(b)(7)(C) which is, you
9 know, where I knew we were going to come out.

10 BY MR. KOTZ:

11 Q But why did they allow so much time and
12 effort to be spent on (b)(6),(b)(7)(C)

13 A So you want me to speculate as to what
14 was in my bosses' minds?

15 Q Yeah.

16 A They wanted to get it right.

17 Q But why didn't they realize that they
18 had already gotten it right?

19 A You can talk to them about that.

20 Q And so you never, throughout this
21 process? I mean, it must have been somewhat
22 frustrating since you're about to get it
23 calendared, you're talking about filing it, and
24 then it's pulled back. You realized that it was a
25 somewhat fruitless exercise. Did you ever think,

1 **why is this -- why are they doing this?**

2 A I would say this as to that that, you
3 know, prior to this case I knew neither Mr.
4 Khuzami nor Lorin Reisner. I got to know them at
5 least as attorneys through this case, and I have
6 been and am hugely impressed by their abilities as
7 managers and as lawyers, and I was glad to have
8 them contributing thought and effort to this
9 matter. So I did not begrudge their serious,
10 thoughtful efforts in this matter. I was on one
11 level glad to have them. I was a little
12 frustrated with (b)(6),(b)(7)(C) but Lorin and Rob were
13 doing their job which was making sure we got it
14 right.

15 Q And maybe based on what (b)(6),(b)(7)(C) was
16 saying, the more prudent move was to keep looking
17 at it because they wouldn't necessarily know that
18 much about (b)(6),(b)(7)(C) and so they might assume
19 that there was more to what he was saying than
20 there was?

21 A My impression was -- at that meeting in
22 March -- given the detailed nature of the
23 questions that both Rob and Lorin were asking
24 about the record relating to (b)(6),(b)(7)(C) that they
25 had spent some quality time with that record. I

1 was actually, quite frankly, impressed. They
2 clearly wanted to get it right, and I believe did
3 get it right.

4 Q Do you think that (b)(6),(b)(7)(C) did a
5 disservice in the investigation by continuing to
6 press this issue?

7 A He caused substantial delay in the
8 filing of the case in my opinion, about six
9 months.

10 Q Between the time that it was pulled the
11 second time in January until the time that it was
12 filed, what investigative steps do you remember
13 taking place? There was a Wells of (b)(6),(b)(7)(C) right?

14 A Yeah. We Wellsed (b)(6),(b)(7)(C) We received a
15 Wells submission. We had a Wells meeting. That
16 much I do remember.

17 Q Do you remember if anything else
18 occurred during that time period?

19 A Relating to ABACUS, I don't. I do know
20 that we were continuing to investigate a number of
21 other CDOs, including a number of other CDOs that
22 were structured and marketed by Goldman Sachs in
23 late '06, early '07. In my mind, you know, we
24 needed to get this one out the door and continue
25 work on the other ones.

1 Q And in the Wells process with [REDACTED] did
2 you learn anything that you didn't already know or
3 assume was the case?

4 A I remember his Wells submission was very
5 strong. It was well represented. New facts? I
6 don't remember any new facts coming to light
7 during that period, but it's possible.

8 Q But there were no facts that came to
9 light during that period that changed your overall
10 opinion of whether to charge [REDACTED]

11 A That's right, yeah.

12 Q The next document is dated 2-5-2010. An
13 e-mail from you to [REDACTED]
14 and [REDACTED] marked as Exhibit 30.

15 (Exhibit No. 30 was marked for
16 identification.)

17 You say in this, the top e-mail, "Ken
18 and I had an interesting conversation with a
19 couple of Bloomberg reporters yesterday. They are
20 all over this issue which is worrisome. Not sure
21 what if anything we can do about it." Why was it
22 worrisome that the Bloomberg reporters might have
23 information?

24 A What I remember is we met. Ken and I
25 had sort of a meet and greet with two Bloomberg

1 reporters, just coffee at Union Station because we
2 were the new leadership team of the Structured and
3 New Products Unit. You know, they asked us what
4 our plans were for the Unit, and we went through
5 it in general terms. And then they asked some
6 questions that I did not respond to that suggested
7 to me that they had information relating to --
8 trying to remember now -- oh, yeah, I think it's
9 [REDACTED] -- okay, yeah. I think what was
10 happening around this time was -- my recollection
11 is that the press was starting to get onto what
12 I'll call the [REDACTED] story. [REDACTED] was a
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED] And although they
17 didn't name the name, [REDACTED] it seemed pretty
18 clear to me and the way I inferred some of the
19 comments and questions I got from this reporter,
20 was that they were onto that, onto the [REDACTED]
21 situation. And ultimately there ended up being a
22 big piece in ProPublica [REDACTED] So that was
23 gurgling up. I mean I had been, again, very
24 personally pleased with the fact that there had
25 been -- aside from the Christmas Eve article --

1 very little or no, really no, mainstream financial
2 press on the stuff we'd been investigating which I
3 -- was good as far as I'm concerned. And so I
4 didn't like to hear that these reporters were kind
5 of sniffing around some of this stuff we'd been
6 sniffing around.

7 Q Do you remember which Bloomberg
8 reporters you met with?

9 A One was named Josh.

10 Q Jesse Westbrook, does that name sound
11 familiar?

12 A (No audible response.)

13 Q There's another e-mail. I don't know
14 that I need to show it to you, but you say, "I
15 continue to be slightly unsettled by the questions
16 we got yesterday from the Bloomberg reporters
17 targeted clearly at the ABACUS-type CDOs under
18 investigation. Not sure what if anything we can
19 or should do about it, but I don't like it at
20 all." Is that the same?

21 A And who's that to?

22 Q Ken Lench.

23 A Oh, I guess, yeah. I guess I -- I mean,
24 again, I had been pleased that for the better part
25 of two years, the press had apparently been either

1 uninterested or oblivious to some of the things
2 we'd been looking at in the CDO space. And that
3 was -- that seemed to be changing during this time
4 period, after the New York Times article and these
5 inquiries from the Bloomberg reporters. And I
6 personally, again, prefer not to have press
7 attention on my investigations.

8 **Q There's this e-mail exchange between you**
9 **and Stephen Cohen where he asks the status of**
10 **Goldman's CDO in 2-19-2010. I mean I could show**
11 **it to you, but it's just him asking, "What is the**
12 **status?" And you say, "Can you call?" Do you**
13 **remember communicating with Steve Cohen during**
14 **this period about the Goldman case?**

15 **A No.**

16 **Q Did you generally keep the Chairman's**
17 **Office updated about where you were with the**
18 **Goldman case?**

19 **A Right. So, again, Steve is a friend and**
20 **a professional colleague. He litigated his first**
21 **case out of my group. I like him. He had shown**
22 **some interest in the case. I mean, just so you**
23 **know, like when I'm talking to Steve, I'm talking**
24 **to Steve. In my view not the Chairman's Office,**
25 **just like I would talk to someone down the hall**

1 about a case I'm working on. That's not me
2 reporting to the Chairman's Office. That's me
3 talking to Steve, my friend.

4 Q And when he e-mails you, "What is the
5 status of Goldman's CDO?" do you think that's just
6 on a friendly basis?

7 A I do.

8 Q Do you remember at some point in time
9 that Commissioner Paradese had some questions and
10 there was a chart pulled together for him?

11 A Yes.

12 Q What was that issue about, just
13 generally?

14 A He wanted a chart that laid out the
15 misrepresentations in the case. [REDACTED] put
16 one together for him.

17 Q Let me show you this document. We'll
18 mark it as Exhibit 31. An e-mail exchange between
19 [REDACTED], you, [REDACTED]
20 and [REDACTED] 2-25- 2010, 12:57 p.m.

21 (Exhibit No. 31 was marked for
22 identification.)

23 [REDACTED] says in the top e-mail, "We pulled
24 together the chart, but it's not complete yet."
25 Then he says, "Given the change in timing, I

1 temporarily moved to different projects." Do you
2 know what he was referring to with the change in
3 timing? Was there a change in timing in this
4 case?

5 A Well, those are two questions. I do not
6 know what (b)(6),(b)(7)(C) referring to -- was it (b)(6),(b)(7)(C)
7 or (b)(6),(b)(7)(C)

8 Q (b)(6),(b)(7)(C)

9 A (b)(6),(b)(7)(C) I don't recall or know what
10 he's referring to, but I'd been trying to bring
11 this case for months and -- so in that sense,
12 there were changes in timing in the case.

13 Q Well, how was that a change if you'd
14 been trying to bring it for months?

15 A How is what a change?

16 Q What?

17 A How is what a change?

18 Q This is dated February 25, 2010. It
19 says, "Given the change in timing..." I mean,
20 you've described that you'd been basically having
21 the same timing for months, wanting to bring the
22 case as soon as you could, so what was the change
23 in timing?

24 A I don't know.

25 Q Do you remember at any point in

1 connection with the, I guess, post -- the period
2 of time after it was pulled back the second time,
3 that there was some change in timing?

4 A No. What I remember from the chart is I
5 guess when we had this thing on the calendar in
6 late January, Paradese asked for a chart and we're
7 now getting around to doing it. Maybe I -- I
8 don't remember. The chart seemed kind of silly to
9 me since we essentially were just alleging one
10 misrepresentation. That ACA selected the
11 portfolio which appeared in a number of different
12 places. I guess what the chart wound up showing
13 was the different places in the offering material
14 where that stuff was located. And hopefully it
15 was helpful to him, but it wasn't like there were
16 ten different affirmative misrepresentations.
17 There was one. So I, you know, (b)(6),(b)(7)
(C) did the
18 chart. That was great. I hope it was helpful.

19 Q But you don't remember anything about a
20 change in timing at that time period in the case?

21 A No.

22 Q Let me show you the next document.

23 We're going to mark it as Exhibit 32. An e-mail
24 from (b)(6),(b)(7)(C) to you and Ken Lench, 2-25-2010,
25 2:05 p.m.

1 (Exhibit No. 32 was marked for
2 identification.)

3 And in this e-mail exchange, [REDACTED]
4 refers to the latest from an expert, somebody
5 named [REDACTED] Do you remember what [REDACTED]
6 was providing?

7 A We retained [REDACTED] back in [REDACTED] to
8 educate us on the CDO markets. I met with him
9 back [REDACTED]. He's a very smart academic, very
10 little real-world experience. I'm not sure I ever
11 met with him again or discussed anything with him
12 again. I do have a vague recollection that [REDACTED]
13 [REDACTED] was meeting and discussing something with
14 [REDACTED] but I don't know what.

15 Q And then [REDACTED] in this e-mail says,
16 "Given the time constraints, I think we should
17 proceed at this amount with the payment taken from
18 the current contract." Do you know what time
19 constraints there were at that time?

20 A I don't know what time constraints [REDACTED]
21 [REDACTED] referring to.

22 Q Do you know whether there were time
23 constraints in connection with the ABACUS
24 investigation?

25 A My view was that the case had been ready

1 to file for months, and I was doing what I could
2 to get the case out the door.

3 Q Right, but that wasn't [REDACTED]
4 view, right?

5 A Have to talk to [REDACTED] about that.

6 Q But other than your own view about
7 getting the case out as quickly as possible, do
8 you have any idea what time constraints could have
9 been on others like [REDACTED] at this stage?

10 A What I remember about [REDACTED] is he
11 wanted to charge Paulson and there were
12 substantial delays in filing the case as we worked
13 through those issues. And then he wanted to
14 charge [REDACTED] and there were additional delays in
15 filing the case as a result of working through
16 those issues.

17 Q And at any point of time did you
18 understand that there was a feeling expressed
19 there'd been a lot of delays, there's a timing at
20 which this has to go out? That might be what he's
21 referring to in time constraints.

22 A Talk to [REDACTED]

23 Q At any point did you get an
24 understanding from anyone that the case had
25 dragged on and there was some interest in moving

1 the case forward? That there was some kind of
2 time --

3 A That was my view.

4 Q Right, but I mean other than your view
5 conveyed from anybody else?

6 A Not that I recall.

7 Q Did anybody from the Front Office, the
8 Chairman's Office, ask why hasn't this case been
9 brought already? What is the holdup?

10 A Well, we've seen some e-mails where
11 those questions were asked.

12 Q Do you remember anything else about
13 that? Any frustration being expressed by anybody
14 which I'm sure you shared, but that --

15 A There were substantial delays in filing
16 the case because we had to revisit two charging
17 decisions. One was whether or not to charge
18 Paulson, and the other was whether or not to
19 charge [REDACTED] [REDACTED] was of the view that both
20 of those -- that entity and that individual --
21 should be charged. I was of the opposite view.
22 It was a long and painful process resolving those
23 issues. Took about six months so in my opinion,
24 [REDACTED] delayed the filing of this case about
25 six months, added nothing.

1 Q And was it ever expressed to you by
2 others frustration in the delays?

3 A I was probably the most frustrated.

4 Q But were there others frustrated? Other
5 people either in the Front Office of Enforcement
6 or the Chairman's Office that you remember?

7 A No.

8 Q Were there other folks on your team that
9 were frustrated?

10 A With [REDACTED], yes.

11 Q And also with the delays in the case?

12 A Yes.

13 Q But those were people at lower levels
14 than you?

15 A I would say the consensus among the team
16 was that [REDACTED] was wasting everybody's time --
17 5-0.

18 Q The next e-mail is an e-mail exchange
19 between Ken Lench and [REDACTED] dated
20 3-4-2010, 4:37 p.m. We're going to mark it as
21 Exhibit 33.

22 (Exhibit No. 33 was marked for
23 identification.)

24 And [REDACTED] sent you an e-mail on
25 Thursday, March 4, 2010, about her being detailed

1 over to the Senate Permanent Subcommittee on
2 Investigations. Do you remember any concern about
3 the fact that [REDACTED] was going to the Senate
4 Permanent Subcommittee on Investigations and might
5 have information about the Goldman case?

6 A I knew she was detailed to the Hill. I
7 didn't know what she was doing over there. I
8 mean, she should have been recused from any matter
9 that she worked on, but I don't -- I just remember
10 that she was over there. And here she's asking me
11 for a CDO textbook or something.

12 Q Right.

13 A I didn't -- I can't remember if I gave
14 her one.

15 Q But you don't remember any concern that
16 she's going to examine the role of Structured
17 Products? You're working on an investigation and
18 there might be concern that information was
19 shared?

20 A Me personally, I would say, you know,
21 [REDACTED] is a professional. And to the extent that
22 she would -- her professional obligations require
23 that she keep certain information confidential,
24 she would do so.

25 Q Did she know about the ABACUS case?

1 A Not to my knowledge.

2 Q She might have just known from
3 generally, but you didn't have a conversation with
4 her about it?

5 A I never had a conversation with her
6 about it.

7 Q Let me show you the next document, dated
8 3-5- 2010, 10:41 a.m., between you and [REDACTED]

9 [REDACTED] Exhibit 34.

10 (Exhibit No. 34 was marked for
11 identification.)

12 In the bottom of the e-mail page,
13 there's an e- mail from you to Lorin Reisner,
14 Friday, March 5, 2010, where you say, "Lorin, I'm
15 a little uncertain as to the next steps on
16 ABACUS." Do you remember what you meant by that?

17 A Let me read the e-mail, please?

18 Q Sure.

19 A Okay.

20 Q So what do you remember about that?

21 A I guess this is around the time that Ken
22 Lench and I were gearing up to do kind of like a
23 road show for the Structured and New Products
24 Unit, which we had recently been [REDACTED]

25 [REDACTED] All the Unit leadership was traveling the

1 country, trying to basically gin up interest in
2 the Unit because you couldn't force anyone to
3 join. So we had an incredibly busy schedule
4 mapped up, but -- so here I was about -- I was
5 really -- we were going to spend -- and I think
6 Ken actually ultimately did -- spend a couple of
7 weeks on the road meeting with all of the regional
8 offices and talking about his vision for the Unit.
9 And my memory -- and I think I -- and then I was
10 like -- thought that that was important for me to
11 do, but at the same time, ABACUS was just sitting
12 there and (b)(6),(b)(7) for all I knew was still
(C)
13 agitating. And so before I went on the road, I
14 was trying to get from Lorin -- you know, I really
15 wanted -- honestly, if there was going to be
16 important decisions made on the ABACUS case, I was
17 going to explore with Ken the possibility of not
18 going on the road or at least participating in
19 some -- I think that's what happened actually --
20 some only portion of the road show and staying
21 back, hanging back, and kind of actually, quite
22 frankly, dealing with (b)(6),(b)(7) you know.
(C)

23 Q So you just wanted to get some --

24 A Where are we? Yeah. What's going on?

25 Q Let's move to the next one. We'll mark

1 this as Exhibit 35. E-mail exchange between you,

2 (b)(6),(b)(7)(C)

3 (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) 3-8-2010,

4 5:08 p.m.

5 (Exhibit No. 35 was marked for
6 identification.)

7 Who is (b)(6),(b)(7)(C)

8 A Yeah. I think she works with Paula

9 Dubberly and we'd been meeting with them --

10 Q Corporation Finance?

11 A Yeah. They are rewriting Regulation AB,
12 or proposed Regulation AB, and we were working
13 with them.

14 Q So she sends an e-mail to (b)(6),(b)(7)(C) and

15 (b)(6),(b)(7)(C) "Do you have any estimated timeframe or

16 dates for when the Commission might take action on

17 the Goldman case?" (b)(6),(b)(7)(C) says, "I'm not sure of

18 timing." He copies you and you say, "We won't be

19 filing until at least another three to four

20 weeks." Do you know what the basis for that was?

21 And that was March, I guess, March 8? What did

22 you need three to four weeks for?

23 A I think (b)(6),(b)(7)(C) was still agitating about

24 (b)(6),(b)(7)(C) and we had to continue to deal with that.

25 Q We'll move to the next one, marked as

1 Exhibit 36, e-mail exchange between you and (b)(6),(b)(7)(C)
2 (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) 3-15-2010, 3:33 p.m.

3 (Exhibit No. 36 was marked for
4 identification.)

5 This refers to this dog and pony? Was
6 that Marathon dog and pony? Was that about the
7 ABACUS case or was that something else?

8 A Let me see. I mean, a dog-and-pony show
9 is just a generic reference to when usually
10 outside counsel come in and present on some issue.
11 Okay, so that's my understanding of the phrase
12 "dog and pony." Is there another question?

13 Q Do you remember -- there's another
14 e-mail that says you and (b)(6),(b)(7)(C) "are on the way to
15 (b)(6),(b)(7)(C) for a Goldman dog and pony on generic subprime
16 issues." Maybe that's what it's referring to. Do
17 you remember what that was about? With (b)(6),(b)(7)(C)

18 A Is that --

19 Q I'm sorry, there's another e-mail. I
20 can put into evidence and show it to you. Exhibit
21 37, an e-mail exchange between Robert Khuzami,
22 you, (b)(6),(b)(7)(C) and Ken Lench, Tuesday, March
23 16, 2010, 10:04 a.m.

24 (Exhibit No. 37 was marked for
25 identification.)

1 And Robert Khuzami responds, "Don't let
2 them slow us down. Promise nothing."

3 A And your question is?

4 Q What was this about? What were you
5 going to (b)(6),(b)(7)(C) for?

6 A Well, those are two questions. Well,
7 the collateral list issue related to our generic
8 CDO investigation, and we had been seeking what we
9 refer to our collateral list relating to other
10 Goldman CDOs for quite a while. And Khuzami
11 actually got involved and during the (b)(6),(b)(7)(C) Wells
12 meeting, essentially read them the riot act and
13 said, "You need to produce this material." So
14 here's Khuzami following up and asking, you know,
15 "Have they produced the collateral list yet?"
16 This is not related to ABACUS at all. The dog and
17 pony at (b)(6),(b)(7)(C) did not relate to ABACUS at all. And
18 the way I interpret Khuzami's comments doesn't
19 relate -- this has nothing to do with ABACUS.

20 Q And in the previous e-mail, back to that
21 for a second, you say, "Not perfect. That is the
22 day of the special closed Commission meeting we
23 have our eye on for ABACUS 2007-AC1." That
24 relates to ABACUS, right?

25 A Yes.

1 Q What is a special closed Commission
2 meeting?

3 A My understanding was that, given travel
4 schedules of certain Commissioners, there was
5 going to be a two- or three-month period of time
6 where all five were not in town on a Thursday when
7 we usually have our meetings. And so the
8 Secretary's office had scheduled a "special closed
9 Commission meeting" on this Wednesday, April 14.
10 And we were shooting to get ABACUS on for that
11 meeting so that there'd be all five Commissioners
12 there.

13 Q Did you need all five Commissioners in
14 order to have a vote on going forward with the
15 case?

16 A My understanding is that for routine
17 matters, as long as you have a quorum, that's
18 fine. But for national priority-type cases, it's
19 preferable to have a full five Commissioners, four
20 Commissioners and Chairman. It's not required by
21 law, but it's my understanding that that's the
22 practice, currently the practice. To give
23 everyone a chance to participate.

24 Q Do you want to keep going? Do you want
25 to take a break?

1 A No, I'm fine.

2 Q This next document we're going to mark
3 Exhibit 38, an e-mail dated 3-22-2010, 7:36 p.m.,
4 from Ken Lench to you and Lorin Reisner.

5 (Exhibit No. 38 was marked for
6 identification.)

7 There's an exchange here from you to
8 Lorin Reisner and Ken Lench, Monday, March 22,
9 2010, 7:29 p.m., talking about a Hill staffer
10 who's "clearly developed some sort of interest in
11 the factual record relating to Goldman's ABACUS
12 series of synthetic CDOs. He's asked to interview
13 IKB employees informally. IKB's counsel indicated
14 that his client has elected to cooperate in some
15 form or the other." And you say, "My inclination
16 continues to be -- not to be -- to not reach out
17 to the Hill staffer at least until we file our
18 complaint." Do you remember what this was about?

19 A Yes.

20 Q So who was the Hill staffer?

21 A I don't, you know, I don't remember. I
22 mean, we never -- I don't remember. We never, I
23 mean, my recollection is we -- oh, there it is,

24 [REDACTED] Sorry, I take it back. [REDACTED]

25 [REDACTED]

1 Q So why was your inclination -- you say
2 that a couple of times here. The bottom e-mail
3 also you say, "My inclination is not [underlined]
4 to reach out to the Hill staffer, [REDACTED]
5 Why did you have that inclination?

6 A I mean, again, I really did not have a
7 clear view or understanding as to what the PSI was
8 up to, what their mandate was, what they were
9 looking at. And my instincts were just to stay
10 away from them.

11 Q Well, why not reach out and then you
12 could find out more what their mandate is and what
13 they were up to? Why did you have the inclination
14 not to do that?

15 A You ask them questions. They ask you
16 questions. My inclination was they've got their
17 job to do. We've got our job to do.

18 Q So you didn't want to provide
19 information to them about your investigation? Was
20 that part of the concern?

21 A What they were doing was their business.
22 What we were doing was our business.

23 Q And in the end, did you or anyone reach
24 out to this Hill staffer?

25 A We did have a meeting with the PSI

1 shortly before their hearings. That I do
2 remember.

3 **Q After the case was filed?**

4 A That I don't remember actually. Oh,
5 yes, it was after the case was filed.

6 **Q Was there any particular concern about**
7 **speaking to the Hill staffer prior to the case**
8 **being filed versus after the case being filed?**

9 A Again, my view was we had a job to do.
10 They had a job to do. I did not see any upside to
11 speaking with them, so I chose not to.

12 **Q But did it make a difference whether it**
13 **was before the case was filed or after the case**
14 **was filed?**

15 A Did what make a difference?

16 **Q Did the lack of upside or the**
17 **deliberation about whether to speak to the**
18 **staffer?**

19 A You know, I really didn't know what they
20 were doing. I didn't understand -- I mean, to
21 this -- I guess even to this day, I'm really not
22 too sure what their mandate is. And not knowing
23 any of that, my inclination was just to steer
24 clear of them. I didn't need them for anything.
25 We had been finished with our investigation for

1 months at this point.

2 Q And so would there be a different
3 perspective after you filed the case in terms of
4 meeting with them?

5 A A different perspective as to what?

6 Q Well, you said you gave reasons why it
7 didn't make any sense to meet with them. But then
8 after the case was filed, you did meet with them.
9 So I'm trying to understand if there is some kind
10 of different perspective on whether meeting with
11 them makes sense after the case is filed.

12 A After the case was filed, I was told to
13 attend a meeting at PSI and I did.

14 Q So from your perspective, it didn't
15 matter whether it was before or after. Your
16 inclination was not to meet with them generally.
17 And it didn't make a difference whether it was
18 before or after the case was brought.

19 A I had some curiosity as to what they
20 were up to, otherwise I didn't care.

21 Q Would there be less of a risk to meet
22 with them after the case was filed than before the
23 case was filed?

24 A I didn't think about that.

25 Q What did you learn when you did finally

1 meet with them? Anything?

2 A Yeah, I learned a little bit. Actually
3 not a super a lot amount about what they'd been
4 looking at. They were clearly -- they'd clearly
5 become knowledgeable about the CDO market, in
6 particular the synthetic CDO market. They'd
7 clearly taken a hard look at some CDOs, some of
8 the same CDO structuring and marketing practices
9 we'd been investigating. They were nice guys.
10 They were smart. So professionally, it was a
11 pleasant experience to meet with them.

12 Q Let me show you the next document. It's
13 an e-mail exchange between you and Lorin Reisner,
14 Ken Lench, and Cheryl Scarborough, 4-7-2010, 10:40
15 a.m., marked as Exhibit 39.

16 (Exhibit No. 39 was marked for
17 identification.)

18 So you sent an e-mail in response, or I
19 guess you're sending an e-mail to three
20 individuals after [REDACTED] sends an e-mail
21 to you and [REDACTED] stating that, "The
22 Senate's Permanent Subcommittee on Investigations
23 is holding a hearing on Goldman's role in the
24 financial crisis on April 27." And you say,
25 "Thoughts/comments. Keep in mind that we're

1 shooting to file our litigated action against
2 Goldman and Tourre related to ABACUS on or about
3 April 14." Do you remember this exchange at all?

4 A Remember what about it?

5 Q Well, you ask for thoughts/comments from
6 Lorin Reisner, Ken Lench, and Cheryl Scarborough. Do
7 you remember if they had any thoughts or comments?

8 A No, I don't. I remember being a little
9 concerned that (b)(6),(b)(7)(C) would -- was thinking about
10 disclosing information relating to ABACUS to the
11 PSI. That I do remember, and I was concerned
12 about that, but --

13 Q Did you respond to her to tell her not
14 to? Because she asks, I guess, or she says, "I
15 would like to disclose ABACUS to PSI and get any
16 transcripts of testimony."

17 A I don't remember talking to (b)(6),(b)(7)(C) I
18 mean, I think what I've done here is, since I had
19 some concern over what (b)(6),(b)(7)(C) was proposing to do
20 -- i.e., disclose ABACUS to PSI -- I mean, she
21 shouldn't, I mean, in my view, she ought not to do
22 that just because that's confidential and that
23 would be -- whatever she learned about ABACUS
24 would have been learned as an attorney for the
25 SEC. She should not be disclosing that to any

1 third party was my concern. So, that was a little
2 -- that was my concern and I'm raising it up the
3 flagpole. These are my bosses. I don't know how
4 it got resolved.

5 Q Now what do you remember about when it
6 eventually was filed? It eventually was filed in
7 mid-April. We can go through the e-mails, but
8 first just what were your general recollections
9 about the process that occurred that led to the
10 eventual filing on -- I guess it was Friday, April
11 16?

12 A The case was approved April 14 at the
13 closed Commission meeting. I remember then
14 working that night, probably the next night, on
15 the complaint. I was meeting Lorin Reisner and
16 (b)(6),(b)(7)(C) We worked late nights that week
17 finalizing the complaint. Once the complaint got
18 basically finished, then I was tasked with
19 drafting talking points for a press conference,
20 which I did I think Thursday. Circulated them
21 late Thursday, and then there were edits made to
22 the talking points Thursday night and Friday and
23 filed Friday. There was a press conference.
24 Broad strokes. That's it.

25 Q And we discussed earlier when they were

1 talking about filing it in January this debate
2 between whether you should file something on
3 Friday or not because of the press issue, and you
4 expressed the view about the 24 hour news cycle
5 and that was not the view of others. But in the
6 end it was filed on Friday. Do you remember any
7 discussion about that topic later on in the April
8 timeframe?

9 A No. I do remember there was a lot of
10 work and the complaint wasn't ready. I remember
11 we weren't -- the complaint -- I do not believe
12 the complaint was ready for filing on Thursday,
13 which meant we weren't filing Thursday. And I
14 just suppose I kicked it to Friday.

15 Q You don't remember any discussion about
16 potentially kicking it to Monday?

17 A There may have been. I don't remember.
18 I mean, to tell you my view was let's file Friday
19 -- 24/7 news cycle -- it doesn't matter.

20 Q But it did get some coverage, so maybe
21 you were vindicated on that. Let's go through
22 some of these just so we can make sure you have
23 all the information in front of you. We'll mark
24 as Exhibit 40 an e-mail exchange between you and

25 (b)(6),(b)(7)(C) 4-13-2010, 11:03 p.m.

1 (Exhibit No. 40 was marked for
2 identification.)

3 So Lorin Reisner was providing comments
4 it looks like to the report on Tuesday.

5 A You mean the complaint?

6 Q I'm sorry, yes, to the complaint. And
7 you say, "Let's discuss filing mechanics
8 tomorrow." So that would be discussing it on I
9 guess Wednesday. I just want to put these in
10 front of you so you have them so you can -- they
11 can help you refresh your recollection and know
12 that I have specific questions on them. Okay?
13 So, the next document we're going to mark as
14 Exhibit 41, from [REDACTED] to [REDACTED]
15 [REDACTED] and you, 4-13-2010, 9:21 -- I'm sorry,
16 9:12 p.m.

17 (Exhibit No. 41 was marked for
18 identification.)

19 And in this e-mail there's an e-mail
20 from [REDACTED] -- who is [REDACTED]

21 A He's in the Trial Unit, and he was
22 assigned to the case relatively late in the game.

23 Q He says, "Just curious, did we ever hear
24 back whether we intend to file tomorrow after the
25 meeting or Thursday morning?" And [REDACTED]

1 says, "No word either way today. I think staff's
2 preference, (b)(6),(b)(7)(C) and me is still Thursday
3 morning, but we'll let you know if we are
4 instructed otherwise." Do you remember why there
5 was that preference from you and two others to
6 file on Thursday?

7 A Well, we'd been approved or we were
8 expecting to be approved on Wednesday. But,
9 again, my recollection was that we continued to
10 work on the complaint into late Wednesday night
11 and into Thursday and so couldn't file on
12 Thursday. So we filed Friday.

13 Q So was there any other reason that you
14 remember other than continuing to work on the
15 complaint?

16 A I had the talking points to work on,
17 too, which I don't think I got to until Thursday.

18 Q Do you remember any issue relating to
19 Quadrangle?

20 A No, it's not ringing a bell. Who were
21 they?

22 BY (b)(6),(b)(7)(C)

23 Q Are you familiar with the SEC bringing a
24 complaint against Quadrangle in coordination with
25 the New York Attorney General the same week as the

1 **ABACUS, the Goldman complaint?**

2 A The name Quadrangle's not ringing a bell
3 and --

4 BY MR. KOTZ:

5 Q Do you remember anything about another
6 complaint being filed around the same time? A
7 concern about them being filed together, and so
8 that may have been a reason why it was pushed off?

9 A No. During this time period I was
10 working late in the night, finalizing the
11 complaint, and then working on the talking points
12 and getting the thing filed.

13 Q And so were you not directly involved in
14 the decisions about when exactly to file?

15 A When -- I mean, my recollection was we
16 weren't ready to file on Thursday because we were
17 working on the complaint. I hadn't -- I don't
18 think I'd be done with the talking points until
19 Thursday. Maybe I'd started them. I don't think
20 I finished them until late Thursday. So, I don't
21 know. I guess in my view we filed when we were
22 ready to file, which was Friday morning.

23 Q Let me show you another document, marked
24 as Exhibit 42, an e-mail exchange between you and

25 (b)(6),(b)(7)(C), 4-14-2010, 2:19 p.m.

1 (Exhibit No. 42 was marked for
2 identification.)

3 And this is 4-14 so this would be
4 Wednesday, [REDACTED] the plan is to e-mail you a
5 complaint cover sheet and summons late tonight or
6 early tomorrow morning with the expectation you
7 would sign on my behalf and then file the action
8 as soon as the Clerk's Office opens. Any problems
9 with that?" And below you sent on Tuesday, April
10 13, "A revised complaint attaching Lorin's
11 thoughtful comments and [REDACTED] careful fact
12 check." So at least according to this e-mail, it
13 seems as though it was done and ready to go to be
14 filed on Thursday. Or even to send up to [REDACTED]
15 [REDACTED] in New York late Wednesday.

16 A Right, so, amongst the things that I was
17 engaged in during this time period was continuing
18 to revise the complaint, which we were still doing
19 at this period of time. I had to get the talking
20 point done, which I don't think I'd started at
21 this point. And then arrange to file the
22 complaint, and for that the plan since we had --
23 since [REDACTED] happened to be in New York --
24 basically he was trying -- he was participating --
25 well, he was trying a criminal case up there at

1 the courthouse and he's very reliable. So I
2 thought that we would just have (b)(6),(b)(7)
(C) file the
3 case. So I was working with (b)(6),(b)(7)
(C) up in New York
4 on the filing. I was down in New York working
5 with Lorin -- in D.C. -- working with Lorin and
6 (b)(6),(b)(7)
(C) on the complaint. And I was working -- all
7 that didn't come together until Friday morning.

8 Q Let me show you this e-mail. This is an
9 e-mail dated 4-14-2010, 10:11 p.m., from you to
10 Ken Lench. We'll mark it as Exhibit 43.

11 (Exhibit No. 43 was marked for
12 identification.)

13 So in this e-mail exchange, (b)(6),(b)(7)(C)
14 (b)(6),(b)(7)(C) sends an e-mail Wednesday, April 14,
15 "Please find attached a new draft complaint
16 incorporating Lorin's most recent comments and
17 (b)(6),(b)(7)(C) and my nit edits." And then he says, "As an
18 FYI I understand the current plan is to file the
19 complaint on Friday morning." Ken Lench asks you,
20 "How did we land on Friday?" You say, "No idea."

21 A And so we filed Friday.

22 Q Right, but how --

23 A That's what happened.

24 Q Did you ever find out how you ended up
25 landing on Friday?

1 A From my point of view, that's when we
2 were ready to file. That's when it all congealed,
3 when it all came together, when the complaint got
4 finalized, when the materials for the press
5 conference got done, and that's when we did it.

6 Q Let me show you the next e-mail, Exhibit
7 44, from you to Ken Lench and (b)(6),(b)(7)(C)
8 4-14-2010, 11:06 p.m.

9 (Exhibit No. 44 was marked for
10 identification.)

11 Ken Lench asks, "Whose idea was it to
12 file Friday? Thanks, Ken." You say, "Front
13 Office, just don't know their thinking." So
14 doesn't it look like that it was actually a Front
15 Office decision to file it on Friday rather than
16 when the --

17 A That's what's suggested here. I mean,
18 again, and I'm sure the e-mail traffic will bear
19 it out, I believe that Lorin and I and (b)(6),(b)(7)(C) worked
20 on the complaint through Thursday. I think we
21 were working on it Thursday night. I'm pretty
22 sure. So we weren't ready as far as I was
23 concerned. If the complaint's not done, you can't
24 file a case.

25 Q But it seems here that it was the Front

1 Office made a decision.

2 A Lorin is part of the Front Office. And
3 he was at this point -- I mean the last couple of
4 rounds of edits on the complaint were Lorin's
5 edits.

6 Q So you think what this refers to is they
7 still were tinkering or editing the complaint?
8 You say, "Front Office --

9 A I think every night that week I stayed
10 until 10:00 or so working with Lorin on the
11 complaint. That process I'm pretty sure continued
12 through Thursday night, but the e-mail traffic
13 will bear that out I assume.

14 Q But how come you didn't know what they
15 were thinking about when the complaint was going
16 to be filed if they were continuing to edit it?
17 Wouldn't you know what they were thinking, that
18 they were still editing it?

19 A Right. So the process was, "Lorin,
20 here's a draft of the complaint." "Okay, guys.
21 Hey, come on down, I've got some comments." And
22 we'd go over the comments and make sure that we
23 were cool with them, that we understood them, we
24 didn't have any objections, that they were
25 factually accurate, and then (b)(6),(b)(7)(C) or I would go

1 back to our desks and revise the complaint and
2 send it around again. I think that was the
3 process every night that week.

4 Q So do you know why you would say, "Just
5 don't know their thinking"?

6 (b)(6),(b)(7)(C): When was that? That was
7 Wednesday night. You didn't know the thinking?

8 MR. KOTZ: Yeah.

9 (b)(6),(b)(7)(C): Do you understand this
10 timeframe?

11 A Yeah. I assume it's because we working
12 on the complaint. If you want me to speculate,
13 that's what I'll guess.

14 BY MR. KOTZ:

15 Q Why would you not have known the
16 thinking if you were all working on it in tandem
17 to edit the complaint?

18 (b)(6),(b)(7)(C): That's on Wednesday
19 night. That's when you say you don't know the
20 thinking?

21 A Look, man, I'm working late nights.
22 It's basically, from my perspective, we're trying
23 to get the complaint straight. By straight, you
24 know, I mean as accurate as we can, as clear as we
25 can, and that I think because of Lorin's schedule

1 that was happening at night mostly.

2 BY MR. KOTZ:

3 Q So is it possible that you didn't
4 realize that they were continuing to edit it until
5 they came back to you and gave you edits? Is that
6 how -- I mean, I'm just trying to understand how
7 it could be if you were working with them in the
8 editing process, that you wouldn't know what they
9 were thinking -- if you working with them in the
10 editing process, you would know that that's why
11 it's going to be filed on Friday because there was
12 continuing to be editings.

13 A Right. I knew that Lorin had an
14 interest in getting the complaint right, and I was
15 working with him on that as was (b)(6),(b)(7)(C) And
16 I thought it wound up actually, quite frankly,
17 every time Lorin touched that document, it got
18 stronger. So I was happy to have him involved.

19 Q So you don't remember why you wouldn't
20 have known what their thinking was on the timing
21 of the complaint on Wednesday night?

22 A I don't recall.

23 Q So this is an e-mail from Thursday,
24 4-15-2010, 6:33 p.m., from you to (b)(6),(b)(7)(C),
25 marked as Exhibit 45.

1 (Exhibit No. 45 was marked for
2 identification.)

3 Yeah, and so this does show that Lorin
4 made comments on Thursday, April 15.

5 A Yeah, that's my recollection.

6 Q And you say to (b)(6),(b)(7)(C) on April
7 15, 2010, 6:27 p.m., "But you need to shoot to
8 file this bad boy at 9:30 a.m. sharp. I know this
9 sounds crazy, but it's true." And then he says,
10 "9:30 or 8:30?" And then you say, "9:30." Why
11 was it so important to file it at 9:30?

12 A I don't remember. It might have -- I
13 mean, let me see --

14 Q Does it have something to do with the
15 press conference?

16 A Well, I do know that there was a press
17 conference. We were gearing up to do a press
18 conference and so what I remember is that -- and
19 that the complaint had to be filed sufficiently in
20 advance of the press conference is what I
21 remember. So I -- so this is probably -- relates
22 to --

23 Q Why did it have to be filed sufficiently
24 in advance of the press conference?

25 A My understanding is there's a process of

1 distributing materials. You have to alert the
2 press that you're going to have a conference and
3 then -- so they're there. I don't know, but -- I
4 mean, that's not, that's not what I do.

5 Q Do you remember that then there was an
6 issue, a hiccup, problem?

7 A Oh, I remember this issue here. You
8 see, the problem was [REDACTED] was trying a case.
9 [REDACTED] needed to be in court at 9:30. That's why
10 I'm apologizing. So, in other words, it's hard
11 for him to be two places at once.

12 Q And do you remember an issue also that
13 came up with [REDACTED] signing it and it being
14 rejected?

15 A Yeah, there was a filing snafu. And
16 then Calamari signed it, and we got it filed on
17 Friday.

18 Q So this document shows that, mark it as
19 Exhibit 46. An e-mail between you, Lorin Reisner,
20 Andrew Calamari, 4-16-2010, 9:50 a.m.

21 (Exhibit No. 46 was marked for
22 identification.)

23 So initially it was thought that [REDACTED]
24 [REDACTED] signature would be sufficient, but then
25 the court rejected it? Is that what happened?

1 A I remember there was a filing snafu
2 relating to the way the complaint was originally
3 signed. I forgot exactly what that issue was.
4 [REDACTED] called us and said there's trouble in
5 paradise. And then I went down to Lorin's office
6 and he called around the New York office.
7 Calamari was there. Calamari signed.

8 Q And did it end up getting filed by 9:30
9 or did it get filed later?

10 A I forgot.

11 Q Was there any concern about the timing
12 of the filing?

13 A I just, I mean, not to me. I was just,
14 I mean -- I wanted -- my view was okay look, there
15 was some issue with the signature, let's get that
16 fixed. And we did.

17 Q In this e-mail dated 4-16-2010 from John
18 Nester to a variety of people including you which
19 we're going to mark as Exhibit 47.

20 (Exhibit No. 47 was marked for
21 identification.)

22 I guess you're reporting back, "All, we
23 had a hiccup filing the complaint. We now expect
24 to file sometime between 10:00 and 10:30."

25 A Oh, well there we go.

1 Q And why did you e-mail so many people?

2 I mean you have people from different offices.

3 A Well, I think I'm just doing a Reply

4 All, right?

5 Q Oh, okay.

6 A It's just that easy, simple.

7 Q And that was a reply to a timeline that

8 Myron Marlin prepared it looks like?

9 A Yes.

10 Q Do you know why there was such a

11 specific timeline that was prepared?

12 A Nope. Talk to Myron I guess. Is that

13 who drafted this? Yeah. Talk to Myron.

14 Q Do you understand anything else about

15 why the need was to file the complaint at a

16 particular time? I mean, if you look at the

17 timeline, there's a variety of things reflected.

18 They're all very timed out. Other than just

19 generally that you said you understood that it

20 needed to be filed before the press conference,

21 were you aware of any other considerations in the

22 specific timing on that day?

23 A No.

24 Q Let me go back to a document dated

25 4-16-2010 -- I'm sorry, no, that's not it -- I'm

1 sorry, 4-14-2010, e- mail exchange between Myron
2 Marlin, Steve Cohen, [REDACTED], and Didem,
3 4-14-2010, 6:08 p.m., Exhibit 48.

4 (Exhibit No. 48 was marked for
5 identification.)

6 At the bottom of e-mail exchange there's
7 an e- mail from Scott Friestad saying, "I wanted
8 to let you know that there's at least one reporter
9 who knows this recommendation is on the calendar
10 today. It's not clear to me how they found out,
11 but I wanted you to be aware of that fact in case
12 there's going to be any delay in filing the case
13 after it's authorized." Were you aware because --
14 oh, yeah, I guess you were e-mailed on this. Do
15 you have any idea how this reporter knew that the
16 recommendation was on the calendar?

17 A No.

18 Q Were you aware of anybody providing
19 information to a reporter about when the Goldman
20 recommendation was on the Commission calendar?

21 A No.

22 BY [REDACTED]

23 Q Why did you forward that to [REDACTED]

24 [REDACTED]

25 A He's in the -- [REDACTED]

1 for Enforcement and so whatever we put out in
2 connection with the complaint he would be involved
3 in, you know, the press release and maybe also
4 preparing materials for the press conference. So
5 I sent it to him. Oh, also, it involves the press
6 so I think they thought it was something he should
7 know about.

8 BY MR. KOTZ:

9 Q Are you and were you aware of the
10 financial regulatory reform legislation that was
11 advancing through Congress and just recently
12 passed?

13 A Just what I read in the newspapers.

14 Q Has anybody at the SEC ever mentioned
15 this legislation in connection with the Goldman
16 Sachs ABACUS investigation?

17 A No.

18 Q Has anybody at the SEC ever mentioned
19 this legislation in connection with the filing of
20 an action against Goldman Sachs?

21 A No.

22 Q Do you have any reason to believe that
23 the SEC's action against Goldman Sachs or the
24 timing of that action was to advance financial
25 regulatory reform legislation?

1 A What's the question?

2 Q Do you have any reason to believe that
3 the SEC's action against Goldman Sachs or the
4 timing of that action was to advance financial
5 regulatory reform legislation?

6 A Oh, right. My view is we brought a case
7 based upon the facts and the evidence and the
8 merits of that case. I had tried to get the case
9 filed in December of '09 or earlier, quite
10 frankly. We had a six month delay to work
11 through, revisit some charging decisions.
12 Throughout that process, financial regulation did
13 not, quite honestly, once occupy one second of
14 thought in my mind or did I have any conversations
15 with anybody on that subject in relation to the
16 filing of the ABACUS case. And your suggestion to
17 the contrary is a little ridiculous, quite
18 frankly.

19 Q What was the question?

20 (b)(6),(b)(7)(C): It was a question, not a
21 suggestion.

22 A Okay.

23 BY MR. KOTZ:

24 Q And there are going to be a series of
25 additional questions, so bear with me. Are you

1 aware of any information indicating that the SEC
2 coordinated its action against Goldman Sachs with
3 the Executive Office of the President, the White
4 House, or any of its employees?

5 A No.

6 Q Are you aware of any information
7 indicating that anyone at the SEC shared any
8 information concerning its Goldman Sachs
9 investigation with the Executive Office of the
10 President, the White House, or any of its
11 employees prior to the complaint being filed?

12 A No.

13 Q Are you aware of any information
14 indicating that the SEC coordinated its action
15 against Goldman Sachs with any members of Congress
16 or any Congressional employees?

17 A No.

18 Q Are you aware of any information
19 indicating that anyone at the SEC shared any
20 information concerning its Goldman Sachs
21 investigation with any members of Congress or any
22 Congressional employees prior to the complaint
23 being filed?

24 A No.

25 Q Are you aware of any information

1 indicating that the SEC coordinated its action
2 against Goldman Sachs with the Democratic National
3 Committee, the Democratic Senate Campaign
4 Committee, the Democratic Congressional Campaign
5 Committee, or any of their employees?

6 A No.

7 Q Are you aware of any information
8 indicating that anyone at the SEC shared any
9 information concerning its Goldman Sachs
10 investigation with the Democratic National
11 Committee, the Democratic Senate Campaign
12 Committee, the Democratic Congressional Campaign
13 Committee, or any of its employees prior to the
14 complaint being filed?

15 A No.

16 Q Are you aware of any information
17 indicating that anyone at the SEC shared any
18 information concerning its Goldman Sachs
19 investigation with the news media or any
20 journalist prior to the complaint being filed?

21 A No.

22 (b)(6),(b)(7)(C): Scott Friestad that we saw earlier.

23 THE WITNESS: Well, if the ethic question was, "Am
24 I aware of anyone from the SEC sharing information
25 with basically the press," that's not the way I

1 interpret the e-mail from Friestad.

2 BY MR. KOTZ:

3 Q How would the reporter know that the
4 recommendation is on the calendar without hearing
5 it from somebody at the SEC?

6 A Well, I don't know what's going on
7 there, but I don't have any independent
8 information on that.

9 Q Do you know if anyone at the SEC
10 informed Goldman Sachs in April that the
11 Commission had approved the staff's recommendation
12 to file an action against it?

13 A I did.

14 Q You did?

15 A Yeah.

16 Q When was that?

17 A Around the time we filed, on the morning
18 of Friday, April 16.

19 Q How long before filing did you make
20 that?

21 A It was around the time we filed, and
22 quite frankly, there was a lot going on that
23 morning so I can't recall as I sit here whether or
24 not it was a little before or a little after.

25 (b)(6),(b)(7)(C): But you're saying the

1 same day. The same day that it was filed?

2 A It was Friday morning, yeah.

3 BY MR. KOTZ:

4 Q Wait, so you don't know whether you
5 informed them before or after the complaint was
6 filed?

7 A Pretty sure it was before. What I do
8 remember is it was around the time we filed.

9 (b)(6),(b)(7)(C) : But on the day?

10 A On the day, yeah. There was that filing
11 snafu, but in the midst of all that, I called Rich
12 Klapper at Sullivan & Cromwell, left a message
13 with his secretary.

14 BY MR. KOTZ:

15 Q And what did you say in the message that
16 you left with his secretary?

17 A That we had brought charges against
18 Goldman Sachs, Fabrice Tourre, and declined to
19 charge (b)(6),(b)(7)(C)

20 Q Was there any conversation about letting
21 Goldman Sachs know earlier, prior to, either just
22 immediately before you filed or after you filed
23 that the Commission had approved the
24 recommendation to file an action?

25 A No.

1 Q In your experience in other cases where
2 there are situations where the SEC informed an
3 entity that the Commission had approved a
4 recommendation to bring a case in advance more
5 than just that same morning?

6 A What's your question?

7 Q We've been given testimony that it was
8 general practice for the SEC, that when the
9 Commission approved a recommendation to go forward
10 that the Commission would notify the entity more
11 in advance than just that morning about the case,
12 potentially to give them an opportunity to settle
13 it. Did that ever happen with any of your other
14 cases?

15 A My practice has always been to -- in an
16 unsettled case, okay, which, like this one and
17 we'd had no settlement negotiations -- to notify
18 counsel around the time we file the case. And
19 I've been doing it for 12 years.

20 Q So when you say around the time you
21 filed the case, meaning that morning or the same
22 day that you filed the case?

23 A Usually that morning. That's always
24 been my practice. No one's ever complained. A
25 settled case, a little different. A settled case

1 I generally -- it's a little different. But a
2 litigated case, you get the Wells process,
3 Commission approves, you file, you call counsel
4 around the time you file. That's always been my
5 practice.

6 Q And so what is the practice for the
7 settled case?

8 A Sometimes with a settled case, because
9 there's more communication quite frankly with
10 counsel, it's just natural that there's more of a
11 heads-up given. It just happens naturally.

12 Q And now you said there were no
13 settlement negotiations with Goldman?

14 A Zero.

15 Q Prior to the complaint being filed?
16 Prior to the action being filed?

17 A That's right.

18 Q And was there any internal discussion
19 among the team about broaching settlement with
20 Goldman prior to the case being filed?

21 A Internally amongst the staff I know we
22 had a view as to what we'd take in settlement, but
23 given the way the Wells process went, it was clear
24 that Goldman had no interest in settling the case.

25 Q Why do you say that? What do you mean

1 by the way the Wells process went?

2 A Basically in the meetings we had, and I
3 guess there were a handful of them, they had their
4 view, we had ours. We agreed to disagree and then
5 we filed our case.

6 Q So at no point in time prior to the
7 complaint being filed did Goldman ever express any
8 interest in discussing settlement?

9 A Not in my presence.

10 Q Did you ever get any feedback from the
11 Commissioners or Commissioners' staff prior to the
12 complaint being filed about the possibility of
13 settlement of this case?

14 A Not to my recollection, but -- not to my
15 recollection.

16 Q How soon after the complaint was filed
17 did settlement discussions begin?

18 A So far as I was aware?

19 Q Yeah.

20 A Maybe about a month.

21 Q And who initiated those discussions?

22 A I don't know.

23 Q But do you know if it was the SEC or
24 Goldman?

25 A I don't know.

1 Q You were not involved in that at that
2 point?

3 A My sense is Goldman went through a
4 period of denial I'll call it. They came out
5 publicly and stated that our allegations were
6 unfounded in law and fact. Just based upon market
7 intelligence and the like, my own view is they had
8 some pretty hard conversations with their
9 customers, in which ultimately I think they
10 probably had to admit that this was not their
11 finest hour. Once they'd done that, I think they
12 sent their lawyers in to settle the case.

13 Q Were you involved in that stage of the
14 case?

15 A I attended a couple of settlement
16 meetings, but at that point, you know, Rob Khuzami
17 and Lorin Reisner were really -- they really
18 negotiated the settlement.

19 Q Do you know when a settlement in
20 principle was reached between Goldman and the SEC?

21 A Yeah, I mean, it was down to the wire.
22 In other words, let's see, we announced our
23 settlement on -- was it Thursday of this -- of
24 last week?

25 Q Right.

1 A And although I was not directly
2 involved, my understanding is that the Goldman
3 Board did not approve the settlement until very
4 shortly before the Thursday when we announced it.

5 Q Do you know how the penalty amount was
6 arrived at for the Goldman settlement?

7 A Negotiation.

8 Q Do you know how the SEC arrived at the
9 number that they used to negotiate?

10 A Talk to Rob and Lorin.

11 Q You don't know. Do you know if they
12 looked at any past precedent or anything?

13 A It was a negotiated amount. Rob and
14 Lorin negotiated it. Talk to them.

15 Q So you don't know?

16 A No.

17 Q Did anyone within the team that you're
18 aware of express any concerns about the amount of
19 the penalty or criticism of the penalty?

20 A No.

21 Q Did anyone that you heard express the
22 view that the Commission shouldn't settle with
23 Goldman?

24 A You mean anyone on the team?

25 Q Yes or the Front Office or whatever.

1 A On the terms that were agreed upon? On
2 those we thought -- I'll tell you this, the team
3 thought that the term that Rob -- the settlement
4 that Rob and Lorin and Ken Lench negotiated was a
5 good settlement for Enforcement.

6 Q Was there anybody who thought they just
7 shouldn't settle at all with Goldman?

8 A On those terms, everyone was supportive
9 of the settlement.

10 Q Did anyone express concern there was no
11 injunction in the settlement from violating 10B?

12 A Anyone in the world?

13 Q Like on the Enforcement Team.

14 A Not to my recollection. I think
15 everyone viewed the package as being a strong one
16 and it included the 17A-1 charge which is nearly
17 identical to 10B, so who cares?

18 Q Do you know how the approval process of
19 the Goldman settlement offer went through the
20 Commission? Were you involved in that?

21 A You mean what the vote was?

22 Q No, but I'm looking at timing, when the
23 action memo was circulated, how that worked.

24 A The only timing issues there related to
25 -- that I recall -- related -- or the significant

1 one that I recall -- related to a Goldman earnings
2 release that was scheduled for Tuesday of next
3 week. And Goldman was of the view that they would
4 have to maybe disclose the settlement in the
5 context of that earnings release. And so there
6 was some effort to get the thing before the
7 Commission before that, and that's what we did.

8 Q Were you aware that the Commission
9 announced a settlement of the Goldman case on the
10 same day that the financial regulatory legislation
11 was approved?

12 A Yeah. I know there was something going
13 on with the legislation around then from the
14 press, but quite honestly I couldn't tell you on
15 what level it was approved. Was it Senate or Hill
16 or a conference or did the President sign it that
17 day? I literally don't know. I don't really
18 care, I mean, really.

19 Q But was there any discussion about
20 whether the SEC should announce the settlement on
21 the same day that this -- that there was this
22 action in the financial regulatory reform case?

23 A Not that I participated in.

24 Q Are you aware of any information
25 indicating that the financial regulatory reform

1 legislation was a factor in the Commission's
2 acceptance of the settlement offer of Goldman
3 Sachs?

4 A No.

5 Q Were you aware that there was an article
6 in the Wall Street Journal and then an article in
7 the New York Times about the Commission vote
8 approving the settlement of the Goldman case?

9 A Yes.

10 Q Are you aware of any information
11 indicating how the news media found out about the
12 3-2 vote?

13 A No.

14 (b)(6),(b)(7)(C) : That would be worth
15 investigating.

16 BY MR. KOTZ:

17 Q Did anybody express concern about that?

18 A Well, I -- both times the vote leaked, I
19 was concerned. I think it's -- assuming it's some
20 member of the Commission staff who leaked it,
21 that's gross misconduct and should be sanctioned.
22 That's my personal view.

23 Q I'm with you on that. Do you know if
24 the SEC informed the New York Stock Exchange that
25 it intended to file a complaint against Goldman

1 **Sachs prior to filing the complaint on April 16?**

2 A My understanding is that we neglected to
3 do that when we filed our complaint, and then when
4 we announced the settlement I think we did give
5 them a heads-up. I think in hindsight we probably
6 should have given them a heads-up first time
7 around.

8 Q **How come?**

9 A Well, this is with the benefit of
10 hindsight. I will say that nobody on the staff
11 level predicted the impact the filing of the
12 ABACUS complaint would have on the market or the
13 sort of what turned out to be intense scrutiny of
14 the complaint. It was a shock I think to us all;
15 however, with the benefit of hindsight, okay,
16 given the market move that the filing of the
17 complaint triggered, even though we couldn't
18 expect at the time, maybe in hindsight if we'd
19 thought that it would have had the impact that it
20 had, I think we would have given the New York
21 Stock Exchange a heads-up, which is in fact what
22 we did. It's my understanding it's what we did
23 before announcing our settlement.

24 Q **Do you know if there's any consideration**
25 **to not file a complaint against a publicly traded**

1 **company during the trading hours because of the**
2 **potential effect on the stock?**

3 A You know, I had never thought of it
4 before. I think probably because I'd never
5 encountered a situation where an Enforcement
6 action had this sort of impact or really any
7 impact on the market for publicly traded
8 companies. So it's not something I had personally
9 given any thought to in the past, but I will in
10 the future.

11 Q **And did you have an understanding that**
12 **the third Friday of each month has a significance**
13 **for the expiration of options?**

14 A Somebody told me that after we filed the
15 case that I had not given -- that thought was not
16 in my mind pre-filing.

17 BY (b)(6),(b)(7)(C) :

18 Q **What's your basis for understanding that**
19 **the SEC did give the New York Stock Exchange a**
20 **heads-up at the settlement?**

21 A We had a series of meetings leading up,
22 you know, in conjunction with the settlement and
23 there was discussion of who should be notified
24 when, of what, and the New York Stock Exchange was
25 on that list. I mean, I had my own list of people

1 to call, you know, so. And I think it's the right
2 thing to do. In this case it was the right thing
3 to do.

4 Q Who else needed to be informed ahead of
5 time?

6 A Ahead of time? I mean, my list was
7 people to call after. I called the Investors
8 Council, IKB, and RBS's counsel I know.

9 Q Was there anyone else that needed --
10 that I guess the SEC staff planned to call ahead
11 of time, apart from the New York Stock Exchange?

12 A Maybe, but I don't remember. But I
13 didn't, personally, call anyone until after. And
14 then it was just -- actually I just called counsel
15 for IKB and counsel for RBS, telling them we're
16 getting them some money.

17 MR. KOTZ: We're going to take off the
18 record for a minute and just see if we have
19 anything else.

20 (A brief recess was taken.)

21 MR. KOTZ: Let's go back on the record.
22 I wanted to ask you about another document. This
23 is an SEC Administrative Regulation, July 31,
24 2005, Exhibit 49.

25 (Exhibit No. 49 was marked for

1 identification.)

2 BY MR. KOTZ:

3 Q And I wanted to just ask you if you are
4 aware of a particular provision in it. So I'm
5 going to show it to you, Exhibit 49, page 6 of 12,
6 Notification of Defendants. If you look -- it's
7 at the bottom -- the one I'm particularly -- I
8 mean, you can read the whole thing. Whenever you
9 are ready, if you want to look at page 6 of 12 on
10 the bottom, but feel free to take your time.

11 A Okay.

12 Q So were you aware of this provision,
13 whether this specific provision in this regulation
14 or just generally, that "Every effort should be
15 made to avoid the possibility that defendants in
16 an SEC Enforcement action first learn of the
17 action when they read about it in the newspapers
18 or when they are called by a reporter for comment
19 about the SEC's complaint. The division,
20 regional, or district office primarily responsible
21 for the filing of the particular complaint shall
22 take all necessary steps to see that the
23 defendants and/or their counsel are given timely
24 advice concerning the action."

25 A I mean, I've never seen this -- well,

1 I'll say I've never read this press relation
2 policy and procedures document so I'm looking at
3 it for the first time. The policy or whatever you
4 want to call it that's laid out here or the
5 practice has been my practice for years.

6 Q And that's when you say essentially you
7 call them almost simultaneous with the filing of
8 the complaint?

9 A Around the time, generally a little
10 before, but around the time we file the complaint,
11 yeah. So, yeah, this has been my practice for
12 years.

13 Q Just going back to the settled action
14 for a second. I just want to clarify a couple of
15 matters. Was there some kind of special session
16 that was used to have the Commission approve the
17 settled action against Goldman?

18 A We were on Executive -- what I think
19 they call -- Executive Session, which -- that was
20 my first time I'd participated in one of those.

21 Q And do you know why the Executive
22 Session was used?

23 A I don't, but my understanding is that --
24 well, I think I might -- I mean, my understanding
25 is because of the leaks in this case, in

1 particular the leak of the vote relating to the
2 closed Commission meeting on April 14, more and
3 more Enforcement recommendations are going
4 Executive Session. I don't think it's working
5 because my suspicion is the leaks aren't coming
6 from the Enforcement staff so they're excluding
7 the wrong people.

8 Q Was there any particular concern that
9 information had been leaked already and so,
10 therefore, it was important to have the settlement
11 finalized as quickly as possible in this case?

12 A Not from my perspective.

13 Q Not to your knowledge?

14 A No, not to my knowledge.

15 Q Was the Goldman settlement approved
16 particularly fast in your experience in terms of
17 putting the session together, having the session
18 go forward? Was it uniquely quick?

19 A I'm not sure what I mean -- I mean, the
20 negotiation -- I will say this, that the
21 settlement was negotiated in a matter of just a
22 month or two which is pretty good for an
23 Enforcement action. Sometimes this can take
24 years. So that didn't bother me.

25 Q And then from the time that the

1 negotiation was completed and the settlement was
2 reached, was it a very, very short time between
3 then and when the Commission approved it and it
4 was announced, or was it more than normal time to
5 take?

6 A It was a couple of weeks. I was
7 actually [REDACTED] for one of those weeks. But
8 when I got back -- I think before I left, I
9 drafted the settlement memo before I went [REDACTED]
10 [REDACTED] -- when I got back, there'd been some
11 revisions to it and revisions continued. We threw
12 it up on the calendar. We got approved.

13 Q Did you get the sense that there was any
14 particular urgency of moving the process along for
15 the Commission to approve the settlement as
16 quickly as possible?

17 A Well, there was the Goldman earnings
18 release.

19 Q And so that Goldman earnings release was
20 the following Tuesday, so I guess tomorrow --
21 today.

22 A That's my recollection. I think they're
23 announcing earnings today, and under the
24 accounting rules they would have had -- I think --
25 they would have had to take a reserve for -- in

1 the amount of \$550 million and announce that.
2 That's my understanding. And so we got -- so
3 there was some effort there at the end to get the
4 thing announced prior to Goldman's earnings
5 announcement.

6 Q Was there any discussion about whether
7 to announce it on Thursday or Friday or whatever
8 day that you're aware of?

9 A No. Not much, if any.

10 Q What do you mean not much, if any?

11 A I don't remember any. I mean, I think I
12 continue to be right about the 24/7 news cycle.

13 Q Hard to argue with that one. Is there
14 anything else that we haven't covered or is there
15 anything you'd like to add or --

16 A Just one thing. I mean, as to the
17 timing of the case, e-mails are what they are, my
18 view is the case was ready to be filed late '09.
19 I tried to get it filed late '09. There was about
20 a six month delay that in my view was attributable
21 in principle part to dealing with a very difficult
22 personality in the Trial Unit. And then
23 revisiting maybe in a serious way some important
24 charging decisions which was done by Lorin and
25 Rob. And ultimately, I think we came out in the

1 right place and arguably the settlement is some
2 evidence of that.

3 Q Anything else?

4 A Nope.

5 Q We're done. I would just ask one thing
6 from you before we go off the record, and this is
7 very important. In order to preserve the
8 integrity of our investigation, I would ask that
9 you not discuss the content of your testimony
10 today with anyone.

11 A I understand.

12 Q Thank you and we're off the record.

13 (Whereupon, at 4:05 p.m., the examination was
14 concluded.)

15 * * * * *

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REPORTER'S CERTIFICATE

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I, (b)(6),(b)(7)(C) reporter, hereby certify that the foregoing transcript of 156 pages is a complete, true and accurate transcript of the testimony indicated, held on July 20, 2010, at 1:05 p.m. in the matter of: OIG-534.

I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared under my direction.

Date:

7/27/10

(b)(6),(b)(7)(C)

Official Reporter:

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

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In the Matter of: OIG-534
Witness: Number 16
File Number: OIG-534
Date: Tuesday, July 20, 2010
Location: Washington, D.C.

This is to certify that I, (b)(6),(b)(7)(C) (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

(b)(6),(b)(7)(C)

7/27/10

(Proofreader's Name)

(Date)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. OIG-534
OIG-534)

 **COPY**

WITNESS: Number 32

PAGES: 1 through 63

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

DATE: Wednesday, August 4, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 2:30 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

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C O N T E N T S

1			
2			
3	WITNESS		EXAMINATION
4	Didem Nisanci		5
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	Notice of Rights	7
8	2	Confidentiality and Non-Disclosure	
9		Agreement	8
10	3	E-mail Exchange	13
11	4	January 12, 2010, E-mail,	
12		Nisanci and Schapiro	15
13	5	January 25, 2010, E-mail,	
14		[REDACTED] to Nisanci, Gillan and Marlin	16
15	6	January 27, 2010, E-mail,	
16		[REDACTED] to [REDACTED]	18
17	7	February 22, 2010, E-mail,	
18		[REDACTED] to Schapiro	20
19	8	March 8, 2010, E-mail,	
20		[REDACTED] to Khuzami	22
21	9	April 11, 2010, E-mail,	
22		[REDACTED] to [REDACTED]	28
23	10	March 21, 2010, E-mail,	
24		Nisanci and Marlin	33
25			

1	EXHIBITS:	DESCRIPTION	IDENTIFIED
2	11	April 14, 2010, E-mail,	
3		 and Nisanci	33
4	12	April 15, 2010, E-mail, from 	37
5	13	April 16, 2010, E-mail,	
6		Marlin to Schapiro	38
7	14	April 16, 2010, E-mail, from Nester	40
8	15	April 13, 2010, E-mail,	
9		Nisanci to Schapiro	51
10	16	April 16, 2010, E-mail,	
11		Marlin and Nester	52
12			
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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 2:30 p.m. on
3 August 4, 2010, at the United States Securities and Exchange
4 Commission.

5 I'm going to swear you in.

6 Would you raise your right hand?

7 Whereupon,

8 DIDEM NISANCI

9 was called as a witness and, having been first duly sworn,
10 was examined and testified as follows:

11 EXAMINATION

12 BY MR. KOTZ:

13 Q Could you state and spell your full name
14 for the record, please?

15 A Didem A. Nisanci, D-i-d-e-m,
16 N-i-s-a-n-c-i.

17 Q Ms. Nisanci, my name is David Kotz, I'm
18 the Inspector General of the United States
19 Securities and Exchange Commission. I have with
20 me (b)(6),(b)(7)(C) from the Office of Inspector
21 General.

22 MR. KOTZ: And, counsel, would you like
23 to identify yourself?

24 (b)(6),(b)(7)(C): Yes, my name is (b)(6),(b)(7)(C)

25 (b)(6),(b)(7)(C), I'm the witness' counsel.

1 BY MR. KOTZ:

2 Q This is an investigation by the Office
3 of Inspector General, Case Number OIG-534. I'm
4 going to ask you certain questions and you'll be
5 providing answers under oath. The court reporter
6 will record and later transcribe everything that
7 is said. Please, therefore, provide verbal
8 answers to the questions, as a nod of the head or
9 a non- verbal response won't be picked up by the
10 court reporter.

11 Also, so the record will be clear,
12 please let me finish my question before you
13 provide your response and I'll try to let you
14 finish your response before I ask the next
15 question. In addition, it is important you
16 understand the questions and give accurate
17 answers. If there's anything you don't understand
18 or anything you do not know or are not sure about,
19 please let me know, otherwise I will assume that
20 you heard and understood the question. Do you
21 understand those instructions?

22 A I do.

23 Q All right. Let me give you the perjury
24 warning. As you can see, your responses and
25 statements given today are provided after you've

1 sworn an oath and will be taken down verbatim by
2 the court reporter. This is an official U.S.
3 government law enforcement investigation. The
4 claims asserted in this case are serious ones. It
5 is very important you tell me everything you know
6 about the matter at hand and are completely
7 forthcoming and truthful with me.

8 I'm formerly advising you that your
9 testimony today is -- the laws of perjury.
10 Providing false or misleading testimony under oath
11 is a serious offense. If the evidence shows the
12 testimony you've given is false, we may refer it
13 as appropriate. Do you understand those
14 instructions?

15 A I do.

16 Q All right. Why don't we first get into
17 evidence two documents, one we're going to mark as
18 Exhibit 1, which is United States Securities and
19 Exchange Commission, Office of Inspector General
20 Warning, Notice of Rights. And if you could just
21 attest that this is your signature on Exhibit 1?

22 A It is my signature.

23 (Exhibit No. 1 was marked for
24 identification.)

25 BY MR. KOTZ:

1 Q And then Exhibit 2 is a Confidentiality
2 and Non- Disclosure Agreement that your counsel
3 signed.

4 MR. KOTZ: And if you could just attest,
5 sir, that this is your signature on Exhibit 2.

6 (b)(6),(b)(7)(C) : It is.

7 (Exhibit No. 2 was marked for
8 identification.)

9 BY MR. KOTZ:

10 Q All right. Why don't we start with a
11 little bit of background? Could you describe for
12 me your education, beginning with college?

13 A (b)(6),(b)(7)(C)
14 Q
15 A
16 Q
17 A
18 Q

19 (b)(6),(b)(7)(C)

20 A (b)(6),(b)(7)(C)

21 Q Okay. (b)(6),(b)(7)(C)

22 (b)(6),(b)(7)(C)

23 A (b)(6),(b)(7)(C)

24 (b)(6),(b)(7)(C)

25 Q (b)(6),(b)(7)(C)

1	A	(b)(6),(b)(7)(C)
2	Q	
3	A	
4		(b)(6),(b)(7)(C)
5	Q	(b)(6),(b)(7)(C)
6		(b)(6),(b)(7)(C)
7	A	(b)(6),(b)(7)(C)
8		(b)(6),(b)(7)(C)
9	Q	(b)(6),(b)(7)(C)
10	A	
11	Q	
12	A	
13		(b)(6),(b)(7)(C)
14	Q	(b)(6),(b)(7)(C)
15	A	
16	Q	
17	A	
18	Q	
19	A	
20		(b)(6),(b)(7)(C)
21	Q	(b)(6),(b)(7)(C)
22	A	
23	Q	
24	A	
25	Q	

1 (b)(6),(b)(7)(C)

2 A (b)(6),(b)(7)(C)

3 (b)(6),(b)(7)(C)

4 Q (b)(6),(b)(7)(C)
5 A

6 (b)(6),(b)(7)(C)
7

8 Q (b)(6),(b)(7)(C)
9 A
10 Q
11 A
12 Q
13 A
14 Q

15 (b)(6),(b)(7)(C)

16 A (b)(6),(b)(7)(C)
17 Q
18 A

19 (b)(6),(b)(7)(C)

20 Q (b)(6),(b)(7)(C)
21 A

22 (b)(6),(b)(7)(C)
23
24
25

1

Q Okay.

(b)(6),(b)(7)(C)

2

(b)(6),(b)(7)(C)

3

A

(b)(6),(b)(7)(C)

4

(b)(6),(b)(7)(C)

5

Q

(b)(6),(b)(7)(C)

6

A

7

(b)(6),(b)(7)(C)

8

9

10

Q And when did you join the SEC?

11

A I joined the SEC last year at the end of March.

12

13

Q What is your position at the SEC?

14

A Chief of Staff.

15

Q What are your duties generally?

16

A Making the trains run on time, advising the chairman on various issues, editing testimony, or, you know, basic day in and day out operations, administrative duties.

17

18

19

20

Q Given your background in legislative affairs, do you have a lot of duties relating to congressional relations?

21

22

23

A I don't.

24

Q You don't?

25

A I don't.

1 Q Okay. And that's because there's a
2 separate office of Legislative Affairs at the SEC?

3 A There is.

4 Q Who do you report to?

5 A The chairman.

6 Q All right. Did there come a time where
7 you became aware of the existence of an
8 investigation by the SEC into the sale of
9 collateralized debt obligations by Goldman Sachs
10 which was known as the Abacus investigation?

11 A Yes.

12 Q When was that, when did you think you
13 first heard about this investigation?

14 A I guess towards the end of last year.

15 Q Okay. What was the context in which you
16 first heard about it?

17 A The context of when I first heard about
18 it, it had to be probably in a conversation in
19 which one of my colleagues brought it up who's
20 responsible for the enforcement portfolio.

21 Q Okay. Did you understand this
22 investigation to be a priority investigation for
23 the SEC?

24 A It was one of the many investigations it
25 was doing.

1 Q But did you understand that it had a
2 particular significance or not particularly?

3 A Not particularly.

4 Q Were you aware that the matter was
5 placed on the Commission calendar in December of
6 2009 and then taken off the calendar and placed
7 again on the calendar on January and taken off?

8 A Yes.

9 Q Were you aware at the time or you found
10 out later?

11 A Well, I -- going back to my e-mails, I
12 remembered that it was supposed to be scheduled in
13 January and it wasn't.

14 Q Okay. Well, let me show you some
15 documents so you have, you know, as much as you
16 can in front of you. They're marked as Exhibit 3,
17 an e-mail exchange between (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C)
18 (b)(6),(b)(7)(C) 12-9, 2009, 6:04 p.m.

19 (Exhibit No. 3 was marked for
20 identification.)

21 BY MR. KOTZ:

22 Q So at the bottom of the page, this is
23 the first time, in December of 2009, and it
24 indicates in an e-mail from (b)(6),(b)(7)(C) that the
25 above captioned matter has been withdrawn from the

1 **December 17th closed meeting agenda by the staff.**

2 **Would you have gotten this e-mail? There's a**
3 **whole list of people, but I don't see your name on**
4 **it.**

5 A I get a lot of e-mails from all sorts of
6 people --

7 Q **Okay.**

8 A -- because I'm the Chief of Staff. It's
9 possible I got this e-mail, but I don't recall
10 getting it, but it's possible.

11 Q **And would you have paid particular**
12 **attention to an e-mail like this relating to a**
13 **case that was put on or taken off the calendar?**

14 A Yes, I -- I think if I had gotten it, I
15 would have noticed it, but again, I get so many
16 e-mails every day, but I don't recall this one.

17 Q **Okay. Do you know why in December of**
18 **2009, which was the first time that the matter was**
19 **put on the calendar and then taken off?**

20 A I don't; I mean those are pretty much --
21 they're -- they're directly decided from the
22 Enforcement Division when matters come for
23 consideration and I don't really get the
24 information of why they're withdrawn necessarily
25 or put on the calendar, those decisions are done

1 by the Enforcement Division.

2 Q And you don't remember specifically
3 inquiring about this?

4 A I don't.

5 Q All right. Let me show you the next
6 document, we're going to mark it as Exhibit 4.
7 It's an e-mail between you and Mary Schapiro, 1-12,
8 2010, 9:22 p.m. It looks like you're sending an
9 article that was dated December 24, 2009.

10 A Uh-huh.

11 Q To the chairman with a copy.

12 (Exhibit No. 4 was marked for
13 identification.)

14 BY MR. KOTZ:

15 Q Do you remember seeing this article?

16 A Yes.

17 Q Do you remember why you sent it to the
18 chairman or what was significant about it, if
19 anything?

20 (b)(6),(b)(7)(C): Do you want to take a
21 minute to look at it?

22 THE WITNESS: Yeah, I do actually. I
23 mean I guess it could be one of many reasons, one,
24 when I get interest, you know, when I read
25 interesting articles, I pass them on to the

1 chairman or relevant staff, but also because it
2 might have triggered something in my head of an,
3 you know, ongoing case that we had.

4 BY MR. KOTZ:

5 Q Do you remember anything about concern
6 within the SEC that the article related to matters
7 that the SEC was investigating, and maybe there
8 was a possible leak, do you remember any of that?

9 A I don't.

10 Q So you don't remember anything specific
11 about this article?

12 A I don't.

13 Q All right. Let me show you the next
14 document. This is an e-mail from Stephen Cohen to
15 you, Kayla Gillan and Myron Marlin dated Sunday,
16 January 25, 2010, 9:56 a.m., which we're going to
17 mark as Exhibit 5.

18 A Yes.

19 (Exhibit No. 5 was marked for
20 identification.)

21 BY MR. KOTZ:

22 Q So this e-mail -- Stephen Cohen says,
23 you asked to kept apprised of cases that were
24 significant; do you know if that was you who asked
25 that, because there's three people that he sent it

1 to?

2 A I don't remember.

3 Q Were you generally kept apprised of
4 enforcement cases that were significant?

5 A Not regularly.

6 Q Do you remember why there was a specific
7 request made here or why Stephen Cohen
8 particularly apprised you of this case?

9 A It might have been because it was --
10 it's one of the first CDO cases that the
11 structured unit -- structured product unit was
12 bringing up, but I don't -- I don't really recall.

13 Q Okay. Because it says in this e-mail,
14 on Thursday's calendar is the Goldman CDO case,
15 the action memo is attached; do you remember if
16 you reviewed the action memo?

17 A I did not.

18 Q Okay. Do you remember then learning
19 that while, at this point, Stephen Cohen is saying
20 that the cases on Thursday's calendar, in the end,
21 it was withdrawn from the calendar?

22 A Right; I'm sorry, what did you say?

23 Q Do you remember that it was then
24 withdrawn from the calendar? So he's keeping you
25 apprised of cases --

1 A Yes.

2 Q -- he says on Thursday's calendar it's
3 this case --

4 A Yes.

5 Q -- but then it was withdrawn?

6 A Yes, I do remember that.

7 Q All right. Let me show you a document
8 regarding that. So this is -- we'll mark it
9 Exhibit 6. It's an e-mail from (b)(6),(b)(7)(C) to
10 (b)(6),(b)(7)(C), 1-27, 2010, 2:21 p.m. So this is the
11 e-mail that (b)(6),(b)(7)(C) sent the second time
12 saying, please note that the above captioned
13 matter has been pulled from the January 28th
14 closed meeting?

15 (Exhibit No. 6 was marked for
16 identification.)

17 (b)(6),(b)(7)(C): Sorry, what's the question?

18 BY MR. KOTZ:

19 Q Do you remember learning why this
20 Goldman CDO case was pulled from the calendar?

21 A I think I knew that there needed to be
22 more work done on the case, so it wasn't ready for
23 consideration.

24 Q Okay. Do you know why it was put on the
25 calendar in the first place if there was more work

1 that needed to be done?

2 A I don't.

3 Q Were you concerned that it was not
4 ready? I mean was it a case that you were hoping
5 would be ready?

6 A These are all decisions that are done by
7 Enforcement Division, so it -- so, no, I would not
8 say that I was concerned.

9 Q Why did you want to be kept apprised of
10 cases that were significant?

11 A Well, I was Chief of Staff for the
12 entire agency, I probably should know what is
13 going on and if there are big things that I need
14 to pay attention to. So, you know, at a, you
15 know, very general level, it's good for me and
16 important for me to be aware of significant issues
17 that may come up.

18 Q So is it fair to say that you wanted to
19 be aware of the status of the case that was going
20 forward, it was not going forward, but you
21 wouldn't get into the weeds of what's happening in
22 the particular case?

23 A That's probably true.

24 Q All right. Let me show you the next
25 document, we're going to mark it was Exhibit 7.

1 It's an e-mail from (b)(6),(b)(7)(C) to Mary Schapiro
2 with a copy to you and two others dated 2-22,
3 2010, 4:39 p.m. It looks like in this e-mail
4 there was a request made by the CEO of Goldman
5 Sachs to visit with Chairman Schapiro; do you
6 remember that?

7 A I do.

8 (Exhibit No. 7 was marked for
9 identification.)

10 BY MR. KOTZ:

11 Q What do you remember about this?

12 A I remember that the request came in, and
13 we considered whether we should -- whether we
14 should have the chairman meet with the chairman of
15 the Goldman Sachs or not.

16 Q What did you decide?

17 A We decided against it.

18 Q How come?

19 A Because the case was so under --
20 investigation was continuing and we thought it was
21 probably better for the chairman not to meet with
22 involved parties when the timing was uncertain.

23 Q Did you know if the purpose of the
24 meeting was related to the investigation or --

25 A No, we did not know. We -- they were

1 coming for a more general meeting, kind of a
2 courtesy in nature to talk about various policy
3 issues. Enforcement related matters don't usually
4 come up in these meetings.

5 Q Okay. But even though you wouldn't
6 necessarily talk about the case, the decision was
7 made not to have the meeting at all?

8 A Yes.

9 Q And Mary Schapiro did not meet with --

10 A She did not.

11 Q No one else from the SEC did?

12 (b)(6),(b)(7)(C): At this time?

13 MR. KOTZ: At this time.

14 BY MR. KOTZ:

15 Q I mean you didn't say, okay, you can't
16 meet with the chairman, but why don't you meet
17 with so and so?

18 A No, I did not say that.

19 Q So to your knowledge, with respect to
20 this request for a meeting, Mr. Blank didn't meet
21 with another person at the SEC?

22 A I assume he wanted to meet with the
23 chairman. I'm not privy to other peoples'
24 calendars and their meetings.

25 Q Okay.

1 A But I know that the chairman did not.

2 Q Okay. And you're not aware of anyone
3 else who met with him at that time?

4 A I -- I would not know, I don't know.

5 [REDACTED]: What reason did you, or, to
6 your knowledge, whoever gave -- what reason was
7 given for a decline to meet with --

8 THE WITNESS: I think we said the
9 schedule was busy at this time, we could not
10 accommodate the meeting, so -- and I think that's
11 our standard.

12 BY MR. KOTZ:

13 Q So there was no indication given to Mr.
14 Blank that it was because of the investigation?

15 A Absolutely not.

16 Q All right. Let me go on to the next
17 document. I'm going to move to Exhibit 8, which
18 is an e-mail from [REDACTED] to Robert Khuzami
19 with a copy to you and Stephen Cohen, 3-8, 2010,
20 4:47 p.m.

21 (Exhibit No. 8 was marked for
22 identification.)

23 BY MR. KOTZ:

24 Q So do you recall this briefing?

25 A I don't.

1 Q Do you know if you sat in on it?

2 A Sorry, the weeks are just blurring into
3 each other. This specific one, it's possible I
4 did.

5 Q Do you recall generally any briefings
6 that the chairman got from the Enforcement
7 Division on the Goldman case?

8 (b)(6),(b)(7)(C): That she was present for or
9 that she knows about?

10 MR. KOTZ: Either one.

11 BY MR. KOTZ:

12 Q I mean was it a regular occurrence that
13 she was getting briefings on the Goldman case or
14 was this kind of a one time thing?

15 A She was not getting regular briefings on
16 the Goldman case.

17 Q Okay.

18 A You know, there -- there could be
19 briefings she might be getting from her
20 enforcement counsel.

21 Q Okay.

22 A Which could, you know, happen
23 informally, but --

24 Q Right, but you wouldn't necessarily be
25 involved?

1 A I wouldn't necessarily be there.

2 Q Okay. Do you remember any briefings
3 that you were in of the Goldman matter?

4 A Yes.

5 Q When was that?

6 A I remember one that was closer to the
7 settlement.

8 Q After the case was brought?

9 A After the case was brought. And it's
10 possible that I was in a briefing before that,
11 too.

12 Q Okay. Do you remember in any briefing
13 that you attended regarding the Goldman matter,
14 whether there was discussion of the timing of when
15 either the action would be filed or when the
16 settlement would be finalized?

17 A Repeat that again.

18 Q Do you remember if there was any
19 discussion about timing in these briefings, the
20 timing of when the action would be filed or if it
21 was related to settlement, the timing of when they
22 thought the settlement would be finalized?

23 A I think it was very clear that the
24 timing of the action or the settlement would be
25 done whenever enforcement was, you know, complete

1 with their end of the workload.

2 Q Do you remember any discussions about
3 wanting to move it up, to speed it up, where are
4 we on the Goldman case already, when are we going
5 to get it out and that kind of thing?

6 A Repeat the question again.

7 Q So, you know, in some of the e-mails that
8 we've received and/or some testimony, there was
9 some indication that, you know, the Goldman case
10 was going on for a long time, the investigation
11 kind of dragged out a bit, and there were some
12 questions about, you know, when are we going to
13 have -- when are we going to bring a case already.
14 It was put on the calendar, then taken off to do
15 more work, put on the calendar again, taken off to
16 do more work, it was kind of a limited amount of
17 work that they needed to do, and we got some
18 impression that there were some folks who were
19 kind of saying to the Enforcement Division or the
20 Enforcement lawyers, you know, where are we on
21 this, you know, when are we going to finally have
22 a case.

23 A Yeah, I think that happens with, you
24 know, a lot of things.

25 Q Right; but do you remember that

1 **specifically with Goldman?**

2 A Specifically with Goldman, I mean I
3 think there are e-mails that -- that refer to
4 congressional -- congressional investigations and
5 some questions about when the timing -- not the
6 timing, but when the case was going to be ready or
7 filed.

8 Q **Okay.**

9 A But outside of that, I don't think there
10 were any timing efforts to move the case along in
11 any of the discussions.

12 Q **All right. With respect to**
13 **congressional investigations, do you remember that**
14 **the Permanent Subcommittee on Investigations was**
15 **also looking into Goldman at the same time the SEC**
16 **was investigating Goldman?**

17 A Yes.

18 Q **And do you remember concerns about the**
19 **fact that PSI might have a hearing on Goldman?**

20 A Yes.

21 Q **Okay. What do you remember about that?**

22 A That, you know, obviously, a lot of work
23 goes into all of these enforcement cases, and you
24 want to make sure that the -- that the case comes
25 and the Commission is able to present its case and

1 file its case before too much of the evidence and
2 information is leaked out to put the case in any
3 sort of danger, so I think there were some
4 underlying concerns.

5 Q And do you remember that there was some
6 talk initially, Rob Khuzami got some information
7 that perhaps the Permanent Subcommittee on
8 Investigations was going to hold a hearing early,
9 like in the January time frame, and then, in the
10 end, they determined that that wasn't going to
11 happen; do you remember that?

12 A Conversations, I don't recall; reviewing
13 my e-mails, I -- I saw the e-mails, so I just
14 remember the -- I just, you know, recall that from
15 the e-mails I reviewed.

16 Q So what do you recall from the e-mails
17 you reviewed?

18 A Just what you said, basically that PSI
19 is looking at also the same similar issue, and,
20 you know, their timing, questions about the
21 congressional action timing.

22 Q All right. And let me show you another
23 document. There was another issue that arose
24 later on. This is a 4- 11, 2010 e-mail from [REDACTED]
25 [REDACTED] to [REDACTED] with a copy to you, 6:47

1 p.m., we're going to mark it Exhibit 9.

2 (Exhibit No. 9 was marked for
3 identification.)

4 BY MR. KOTZ:

5 Q And so this was an issue that also came
6 up regarding PSI's request to have [REDACTED]
7 testify at the hearing?

8 A Uh-huh.

9 Q Do you remember that?

10 A I do.

11 Q Okay. And do you remember what the
12 concern was about [REDACTED] testifying at the
13 hearing?

14 A I think just he's -- there's an ongoing
15 enforcement case happening, he's not in
16 enforcement, and just not, you know, having any
17 testimony that might put the -- the case in
18 jeopardy.

19 Q Okay.

20 A I think it would, you know, go to the
21 same things, same reasons why, you know, no
22 Commission employee would be -- should talk about
23 enforcement cases.

24 Q Were you aware of whether [REDACTED]
25 [REDACTED] was actually working on the Goldman

1 investigation?

2 A He was not working on the Goldman
3 investigation.

4 Q Okay. So there was a concern even
5 though he wasn't working on the Goldman
6 investigation, just testifying about Goldman and
7 being from the SEC?

8 A Sure.

9 Q So it wasn't that he would give
10 information about the investigation, it was just
11 that he was going to be talking from the SEC about
12 a matter that the SEC was also investigating?

13 A Sure.

14 Q And at the time, in this situation, PSI
15 is looking to have someone testify at an April
16 27th hearing; did you have an understanding at
17 this time period that it was likely that the SEC's
18 case would be brought prior to the hearing, or do
19 you remember?

20 A Sorry, repeat the question again.

21 Q So there was a previous situation in
22 January, where there were concerns about the PSI
23 doing a hearing, you know, well before the SEC was
24 ready to bring its case. In April, I guess it's
25 my understanding from talking to others that at

1 this point in time, PSI was looking to have a
2 hearing on April 27th, it was pretty well
3 understood that that would likely be after the SEC
4 brought its case, and that the issue here related
5 to [REDACTED] rather than concerns about the PSI
6 having a hearing prior to the SEC bringing its
7 case; is that consistent with your recollection?

8 A I'm sorry, could you please repeat your
9 question again?

10 Q Sure; during this time frame --

11 A Yes, April 11th.

12 Q Right, there was concern -- PSI was
13 going to have a hearing on April 27th --

14 A Right.

15 Q -- and there were these questions about
16 whether [REDACTED] should testify. Is it your
17 recollection that at that time, the SEC understood
18 that it was planning to bring its action -- that
19 its action was ready to go? This is April 11th,
20 the action was brought on the 16th. Was there an
21 understanding to your mind that the SEC was going
22 to bring the action before the 27th, that that
23 wasn't the issue, the issue was more just whether
24 --

25 A I -- I believe by that time frame, April

1 11th, the closed Commission notification would
2 have already gone out to notify that the case was
3 coming up that week.

4 Q Okay.

5 A However, with that said, as you know --
6 as you noted yourself, the case had moved several
7 times before.

8 Q Right.

9 A So --

10 Q But I mean there would be a concern
11 about (b)(6),(b)(7)(C) testifying even if the PSI
12 hearing occurred after the SEC brought its action?

13 A Sure.

14 Q Okay. And do you recall that this was
15 unlike the situation that occurred in the
16 January/February time frame, where the concern was
17 more that the PSI would hold its hearing before
18 the SEC would bring its case?

19 A I think -- I think it's similar in some
20 ways. You still don't -- you want to -- even
21 after the case is filed, you want to make sure
22 that the SEC witnesses are staying within the four
23 corners of the complaint.

24 Q Right.

25 A And that the case is not, you know,

1 moving and playing out before a congressional
2 committee, but rather has a fair chance in the
3 legal context.

4 Q Okay. So it's fair to say there were
5 two concerns with PSI, one is that the PSI hearing
6 would occur a significant time period before the
7 SEC was ready with its complaint, and the second
8 issue being, a particular individual from the SEC
9 testifying at the PSI hearing whenever it occurred
10 because of the fact that the SEC was on record
11 with a complaint and you were concerned about, you
12 know, possible conflicts?

13 A Yes.

14 Q All right. Let me show you the next
15 document we're going to mark as Exhibit 10. It's
16 an e-mail exchange between you and Myron Marlin,
17 3-21, 2010, 8:54 a.m., a little bit earlier in
18 time. Myron Marlin says to you, did you see the
19 op ed, and you say, we should definitely pre-brief
20 her on ABS; do you know what that referred
21 to?

22 A I don't remember the op ed that the
23 e-mail refers to. I think ABS is referring to our
24 asset backed securities rulemaking.

25 (Exhibit No. 10 was marked for

1 identification.)

2 BY MR. KOTZ:

3 Q Okay. So this didn't have anything to
4 do with the Goldman case?

5 A No.

6 Q All right. Let me show you the next
7 document, we're going to mark it as Exhibit 11.
8 It's an e-mail exchange between Myron Marlin,
9 Steve Cohen, [REDACTED] and you, 4-14, 2010,
10 6:04 p.m.

11 A 6:04 p.m.?

12 Q 6:08 p.m.

13 (Exhibit No. 11 was marked for
14 identification.)

15 BY MR. KOTZ:

16 Q It started with an e-mail from Scott
17 Friestad saying, I wanted to let you know that
18 there's at least one reporter who knows this
19 recommendation is on the calendar today, it's not
20 clear to me how they found out, but I wanted to be
21 aware of the fact in case there's going to be any
22 delay in filing the case after it's authorized.
23 Do you recall this? It looks like it was
24 forwarded to you?

25 A I don't recall this e-mail.

1 Q Do you recall generally that there was
2 concern that a reporter was aware that the Goldman
3 recommendation was on the calendar?

4 A Repeat it again.

5 Q Were you aware -- do you remember being
6 aware that there was a reporter that had somehow
7 found out that the Goldman recommendation was on
8 the calendar? I mean you don't remember this
9 specific e-mail, but you remember ---

10 A I don't remember this specific e-mail.
11 And I guess -- I -- I don't remember.

12 Q All right. When did you first learn
13 that the Goldman case was about to be -- was ready
14 to be filed, do you remember? It was filed on a
15 Friday.

16 A Right.

17 Q Do you remember -- on the Friday, the
18 16th of April. Do you remember when you learned
19 that that was going to happen?

20 A On Friday, the 16th?

21 Q Yeah; I'm just telling you to give you
22 context. So Wednesday, the 14th, the Commission
23 had approved it.

24 A Right.

25 Q And it was filed on Friday.

1 A Right.

2 Q So that's just to refresh your
3 recollection. So when do you think, during that
4 week, you became aware that the Goldman case was
5 going to be filed?

6 A There were a lot of things going on that
7 week, and I was aware that we were going to have
8 several, you know, cases in the closed Commission,
9 one of which was going to be Goldman.

10 Q But do you remember when during the
11 week? Did you learn after the Commission approved
12 it or before?

13 A I knew before.

14 Q Did you have an understanding of what
15 day exactly the Goldman case would be filed?

16 A My understanding was after the closed
17 Commission meeting, that Enforcement was still
18 putting finishing touches on the case, so it was
19 fluid as to when it was going to be filed.

20 Q Okay. How did you learn that?

21 A I assumed from my colleagues in my
22 office.

23 Q Okay. It wouldn't have been from
24 Enforcement directly, you don't think? Would it
25 have been maybe like from Steve Cohen?

1 A Steve Cohen.

2 Q But probably not from Rob Khuzami or
3 Lorin Reisner?

4 A It's possible from -- directly from
5 them, too, or someone else in Enforcement, through
6 Steve Cohen, or Myron Marlin.

7 Q Okay. Did you participate in any
8 decisions during that week on when to file?

9 A I did not.

10 Q Okay.

11 A I did not.

12 Q Okay. Now, were you aware that there
13 was another case, a Quadrangle case with the New
14 York AG's office?

15 A I was.

16 Q And did you learn that there were any
17 considerations given on when to file Quadrangle
18 and when to file Goldman?

19 A The one thing I remember from the
20 Quadrangle case is that it was -- it was linked up
21 with the New York AG's actions on Quadrangle, as
22 well. So I believe our announcement was tied to
23 also the action that the New York AG was also
24 bringing on Quadrangle.

25 Q Okay. Do you remember any discussions

1 about whether it made sense to announce both cases
2 on the same day or whether it would be preferable
3 to announce them on different days?

4 A I was not a part of that conversation, I
5 don't recall.

6 Q All right. Let me show you the next
7 document.

8 A Sure.

9 Q And this we're going to mark as Exhibit
10 12. This is an e-mail from [REDACTED] to a whole
11 variety of people, you're cc'ed on it, dated 4-15,
12 2010, 6:38 p.m. It references a conference call
13 at 6:00 p.m., Thursday, 6:00 p.m., the night --
14 evening before the Goldman case was filed.

15 A Uh-huh.

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

18 BY MR. KOTZ:

19 Q Do you know if you participated in the
20 conference call?

21 A I did not participate in the conference
22 call.

23 Q Did you participate in drafting or
24 reviewing any of these talking points that are
25 discussed here?

1 (b)(6),(b)(7)(C): Sorry, which talking
2 points?

3 MR. KOTZ: Goldman talking points, it
4 says attached are revised Goldman Abacus talking
5 points, they're not consistent with the final
6 version of the complaint. It looks like it was
7 drafted by (b)(6),(b)(7)(C) or Myron Marlin.

8 BY MR. KOTZ:

9 Q But did you review them or revise them;
10 do you remember?

11 A I don't believe I did.

12 Q All right. Let me show you the next
13 document, we're going to mark it as Exhibit 13, an
14 e-mail from Myron Marlin to Mary Schapiro, 4-16,
15 2010, 1:10 a.m., with copies to you.

16 A Yes.

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

19 BY MR. KOTZ:

20 Q I understand Mr. Marlin -- it's not all
21 together surprising that there be an e-mail from
22 Mr. Marlin in the middle of the night?

23 A He's a night owl.

24 Q Okay. So you were sent this, I guess an
25 update on Friday's activity?

1 A Uh-huh.

2 Q And then there's a timeline if you look
3 on page two of three.

4 A Uh-huh.

5 Q Did you participate at all in
6 determining the timeline?

7 A I did not.

8 Q And --

9 A You have to understand, too,
10 contextually, my -- that entire week I was very
11 much focused on the [REDACTED] on the [REDACTED]

12 [REDACTED]

13 Q Okay.

14 A So I was much more in the weeds on the
15 [REDACTED] report than I was on the
16 preparations for these issues.

17 Q All right. So is it fair to say you
18 were aware that there was a whole bunch of things
19 the SEC was getting out that week, but you weren't
20 intimately involved in the logistics and when they
21 would happen?

22 A Yes.

23 Q Okay. And you don't know why things
24 were filed or announced on what days?

25 A I think I -- I go through the -- I would

1 say that it was the principal of -- they're filed
2 when they're ready.

3 Q Okay. Were you aware that on Friday,
4 April 16th, when the Goldman case was filed, there
5 was a glitch in the filing and it wasn't filed for
6 a couple of hours?

7 A Yes, I did not remember that until I
8 reviewed my e-mails.

9 Q What do you remember about that,
10 anything specific?

11 A I don't remember anything specific about
12 it other than what I read in the e-mail from [REDACTED]

13 [REDACTED]

14 Q All right. Let me show you that e-mail.
15 We're going to mark this as Exhibit 14. It's an
16 e-mail from John Nester to a whole variety of
17 folks, 4-16, 2010, 10:49 a.m.

18 (Exhibit No. 14 was marked for
19 identification.)

20 BY MR. KOTZ:

21 Q You can see, I think there's a reference
22 from [REDACTED], we had a hiccup in filing the
23 complaint; is that what you're referring to?

24 A Yes, that is what I'm referring to.

25 Q So you were notified about this, among

1 many other people, but you weren't directly
2 involved in making decisions?

3 A No, I was not.

4 Q Okay. Do you know why the decision was
5 made to issue the Stanford Office of Inspector
6 General Report on Friday; were you involved in
7 that at all?

8 A I was not involved in that.

9 Q And do you know anything about the
10 decision to file the Goldman case in the morning
11 and then the IG report in the afternoon; do you
12 know anything about that decision?

13 A I -- I don't know about the decision,
14 no.

15 Q All right. You were aware of the
16 financial regulatory reform legislation, I assume?

17 A Yes.

18 Q And did you spend significant time
19 working on matters related to that?

20 A At times, yes.

21 Q Did you have any communications with
22 members of Congress or staff members of Congress
23 about the financial regulatory reform?

24 A I did.

25 Q And there was some testimony that you

1 actually also had a conversation with someone at
2 the White House about financial regulatory reform;
3 is that true?

4 A At the White House?

5 Q Yes, about self-funding, tried to see if
6 the White House would support the SEC's efforts on
7 self-funding.

8 A What was the time frame?

9 Q I don't know if we got a time frame, it
10 was just from somebody saying that they thought
11 you had some communications with the White House
12 about the self-funding.

13 A The one time I had a conversation on
14 self-funding was when the chairman wrote a letter
15 to Congress on self-funding, so the timing was
16 around then.

17 Q Do you know when that was, was that
18 after the Goldman case was filed?

19 A It was -- I would have to look at the
20 letter, but it probably was in May or so.

21 Q Okay. May of 2010?

22 A Yes.

23 Q Okay. And that's the only conversation
24 you recall at the White House?

25 A On self-funding?

1 Q Yes.

2 A Yes.

3 Q What about any conversation you had at
4 the White House about financial regulatory reform?

5 A At the White House, there's -- there was
6 -- there's not much communication from my hand
7 with the White House on regulatory reform.

8 Q At any conversation you had with anyone
9 at the White House, do you ever remember the
10 subject of the Goldman investigation by the SEC
11 coming up?

12 A No, no such conversations took place.
13 Just going back to clarify on the self-funding
14 conversation, it was more of a -- I believe I left
15 a voice mail, may or may not have spoken to
16 individuals at the NAC to give them a heads up
17 that the chairman did send a letter to Congress on
18 self- funding for the agency.

19 Q All right. In any communications you
20 had with congressional officials, members of
21 Congress or staff of members of Congress did the
22 subject of the SEC's investigation of Goldman ever
23 come up prior to the SEC filing its complaint?

24 A No.

25 Q Did the SEC believe generally that the

1 financial regulatory reform was a good thing for
2 the SEC?

3 A Certain parts of it.

4 Q Overall, though, would you say --

5 (b)(6),(b)(7)(C): Certain parts of the bill
6 or certain parts of the agency?

7 THE WITNESS: Certain parts of the bill.

8 BY MR. KOTZ:

9 Q Would you say overall, was there the
10 feeling of the SEC or of the chairman's office
11 that there was more good than bad in the financial
12 regulatory reform?

13 A Yes.

14 Q Were there any points throughout the
15 process -- is it fair to say that through the
16 process of financial regulatory reform, there were
17 kind of ebbs and flows, situations where it looked
18 more likely it was going to pass, situations where
19 it looked less likely; is that accurate, would you
20 say?

21 A That is accurate, absolutely.

22 Q Was there any point in time when there
23 was an ebb say, where it looked less likely it was
24 going to pass, where there were any communications
25 internal within the SEC that, if the SEC would

1 **bring a big case, it would help move this along?**

2 A No such conversations occurred.

3 Q Now, there is a theory that when the SEC
4 **filed its Goldman case, that that provided**
5 **momentum to the financial regulatory reform.**
6 **Forgetting about the intentions for a second, do**
7 **you think that that's true, that, in fact, the**
8 **SEC's filing of the Goldman case provided momentum**
9 **for the financial regulatory reforms passage?**

10 A I don't.

11 Q How come?

12 A I guess I look at the enforcement case
13 from a completely very parochial way, it was just
14 one of many cases the SEC was pursuing throughout
15 the year that related to financial crisis, and
16 somehow this captured the imagination. I don't
17 think anyone at the agency, including myself, ever
18 thought it would grab the kind of attention that
19 it did.

20 Q So you were surprised at the amount of
21 **press attention about the Goldman case?**

22 A Yes.

23 Q All right. I'm going to ask you a
24 **series of questions now. Do you have any reason**
25 **to believe that the SEC's action against Goldman**

1 Sachs or the timing of that action was related to
2 or specifically to advance financial regulatory
3 reform?

4 A It was not.

5 Q Are you aware of any information
6 indicating that the SEC's action against Goldman
7 Sachs or the timing of the action was related to
8 or was specifically to advance financial
9 regulatory reform?

10 A I am not aware of any.

11 Q Are you aware of any information
12 indicating the SEC coordinated its action against
13 Goldman Sachs with the Executive Office of the
14 President, the White House or any of its
15 employees?

16 A I am not aware.

17 Q Are you aware of any information
18 indicating that the SEC shared any information
19 concerning its Goldman Sachs investigation with
20 the Executive Office of the President, the White
21 House or any of its employees prior to the
22 complaint being filed?

23 A I'm not aware.

24 Q Are you aware of any information
25 indicating the SEC coordination its action against

1 Goldman Sachs with any members of Congress or any
2 congressional employees?

3 A I am not aware.

4 Q Are you aware of any information
5 indicating that anyone at the SEC shared any
6 information concerning its Goldman Sachs
7 investigation with any members of Congress or any
8 congressional employees prior to the complaint
9 being filed?

10 A I'm not aware of any.

11 Q Are you aware of any information
12 indicating the SEC coordinated its action against
13 Goldman Sachs with the Democratic National
14 Committee, the Democratic Senate Campaign
15 Committee, the Democratic Congressional Campaign
16 Committee or any of their employees?

17 A I'm not aware.

18 Q Are you aware of any information
19 indicating that anyone at the SEC shared any
20 information concerning its Goldman Sachs
21 investigation with the Democratic National
22 Committee, the Democratic Senate Campaign
23 Committee, the Democratic Congressional Campaign
24 Committee or any of their employees prior to the
25 complaint being filed?

1 A I'm not aware.

2 Q Okay. And just to be clear, are you
3 familiar with the letter that Congressman Issa sent
4 to Mary Schapiro on April 20th, alleging improper
5 collaboration between the Commission and Congress
6 or the White House regarding financial regulatory
7 reform?

8 A I am.

9 Q And you're aware that your name is
10 specifically stated in this letter?

11 A Unfortunately, yes.

12 Q Do you know why? Do you have any reason
13 -- do you know why?

14 A I have no reason why other than I'm the
15 Chief of Staff.

16 Q All right. So let me just -- given that
17 your name is in the letter, I'm just going to ask
18 you very specifically --

19 A Sure.

20 Q -- whether you communicated regarding
21 the SEC's action against Goldman with any employee
22 of the Executive Office of the President, any
23 employee of the Democratic National Committee or
24 Organizing for America, any employee of the
25 Democratic Senate Campaign Committee, any employee

1 of the Democratic Congressional Campaign
2 Committee, or any member of the Senate or House of
3 Representatives or any employee of the Senate or
4 House of Representatives? The question is, did
5 you ever communicate with any of these folks
6 regarding the SEC's action against Goldman prior
7 to the SEC's suit being filed?

8 A I did not.

9 Q And are you aware of any information --
10 if the SEC shared any information concerning its
11 Goldman Sachs investigation with the U.S.
12 Department of Treasury, the Federal Reserve or any
13 of their employees prior to the complaint being
14 filed?

15 A I'm not aware.

16 Q All right. Let me ask you another
17 question before I get to this. You were aware
18 that after the SEC approved the enforcement's
19 recommendation to go forward with the Goldman
20 lawsuit, the non-public information about the vote
21 of the Commission was leaked to the press?

22 A Yes.

23 Q Are you aware of who might have leaked
24 that information?

25 A I'm not aware of who would have leaked

1 the information.

2 Q Do you know if there were any efforts
3 undertaken to try to figure out who leaked the
4 information?

5 A I believe once Congressman Issa's letter
6 was sent to the chairman and he asked -- directly
7 to investigate, I don't think there were any
8 actions that were taken, because no one would want
9 to interfere with an ongoing investigation.

10 Q But we weren't asked specifically to
11 investigate the leak, we were asked to investigate
12 alleged collaboration. But I mean generally
13 leaks, you know, I assume it's a concern to you
14 and to the chairman's office --

15 A Sure.

16 Q -- that this leak occurred?

17 A But -- but, you know, the leaks could
18 come from a variety of sources.

19 Q Right.

20 A You know, you can also -- there are many
21 lawyers, many parties that are often engaged in
22 these investigations, and one cannot assume that
23 it would be an employee of the agency, especially,
24 you know, it could be someone else from the
25 outside that's party to the suit, as well.

1 Q But if it was a Commission vote in a
2 Commission meeting, then that would have to come
3 from inside the agency, wouldn't it?

4 A Yes.

5 Q All right. Let me show you this
6 document. We're going to mark it as Exhibit 15.
7 This is an e-mail from you to Mary Schapiro dated
8 4-13, 2010, 1:26 p.m.

9 (Exhibit No. 15 was marked for
10 identification.)

11 BY MR. KOTZ:

12 Q This is about a leak, although I think
13 it's a different leak. I guess I wanted to see
14 what you recall about this. What was the leak
15 here?

16 A I -- I assumed that the leak was coming
17 from -- this was -- this was a self-funding press
18 conference that Chairman Schapiro was doing with
19 Senator Schumer, and Bloomberg contacted Senator
20 Schumer's office and his staff was saying that we
21 have a leak somewhere in relation to Bloomberg's
22 request. I -- I assumed that, because Bloomberg
23 -- Jessie Westbrook has a relationship with
24 Chairman -- former Chairman Arthur Leavitt,
25 potentially I thought that it was probably

1 Chairman Leavitt who was also participating in the
2 self-funding press conference was probably the
3 source.

4 Q I see, okay. It wouldn't have been
5 anybody within the SEC?

6 A No.

7 Q All right. Let me show you the next
8 document we're going to mark as Exhibit 16. This
9 is an e-mail exchange between Myron Marlin and
10 John Nester, 4-16, 2010, at 3:55 p.m.

11 A Okay.

12 (Exhibit No. 16 was marked for
13 identification.)

14 BY MR. KOTZ:

15 Q All right. Do you remember this issue,
16 concern expressed by the CO of the New York Stock
17 Exchange with respect to the SEC not giving the
18 New York Stock Exchange notice when it filed the
19 Goldman case?

20 A Upon reviewing this e-mail, yes, I do.

21 Q What do you remember about it other than
22 what's said in the e-mail?

23 A From what's -- besides what was said in
24 the e-mail?

25 Q Yeah, I mean do you have any other

1 **independent recollection?**

2 A You know, the one -- I think this was a
3 result, obviously, of SEC filing the case and the
4 Goldman stock declining throughout the day, and so
5 the issue I believe was, you know, whether there
6 should be a different policy on when cases be
7 filed.

8 Q **And was there a different policy made?**

9 A I don't -- I don't recall. I think --
10 again, I think we file our cases when they're
11 ready.

12 Q **But are you aware that when the SEC**
13 **announced the settlement with Goldman, it was**
14 **announced after trading hours?**

15 A Yes, that's right, yes.

16 Q **And was that done to ensure that the --**
17 **what happened in the case of the filing of the**
18 **Goldman action didn't reoccur?**

19 A I think there was some attention paid to
20 that, but also the closed Commission meeting was
21 held that day to approve the settlement, I think
22 concluded around 3:00 or so. So I think, just
23 getting I think everything ready, but also with
24 that in mind probably.

25 Q **Do you remember that there was an**

1 announcement sent out to establish a press
2 conference that was before the trading day closed,
3 but the actual announcement --

4 A Was after.

5 Q -- of the settlement was after; does
6 that ring a bell with you?

7 A Yes.

8 Q And at least partially that was done as
9 to not have an impact on the stock?

10 A I can't tell you with certainty.

11 Q Okay. Do you know if -- were you aware
12 that, with respect to the SEC, settlement with
13 Goldman, the SEC did inform the New York Stock
14 Exchange in advance that it was going to happen?

15 A I was not aware of that.

16 Q Were you aware of the concerns that were
17 expressed that the SEC didn't inform Goldman Sachs
18 in April that the Commission has approved the
19 staff's recommendation to file an action against
20 it, sort of giving it a heads up that they were
21 about to file, were you aware of that issue?

22 A Through news reports.

23 Q But you don't know anything from your
24 time at the SEC about that? You don't know if
25 that's true or not?

1 A Only through news reports.

2 Q When did you become aware that the SEC
3 was engaging in settlement discussions with
4 Goldman?

5 A I believe pretty soon after we filed our
6 case.

7 Q Do you know if there were any settlement
8 discussions with Goldman prior to the SEC filing
9 its case?

10 A I'm not aware of any.

11 Q And when did you become aware that the
12 SEC was ready to have the settlement approved and
13 announce it?

14 A The settlement was approved Wednesday
15 evening.

16 Q Right, it was announced on Thursday.

17 A On Thursday, right. So Wednesday
18 evening it was I think signed off on by the
19 parties.

20 Q Did you know in advance of that or you
21 found out when it was signed off on?

22 A I had an idea that we were very close.

23 Q Okay. Were you aware that there were
24 news reports that came out a day or two before the
25 actual Commission approval that gave the

1 **indication that the SEC was about to settle with**
2 **Goldman?**

3 A It's possible.

4 Q Do you remember any concern about the
5 **fact that information about the SEC settlement was**
6 **getting leaked out and that the SEC wanted to make**
7 **sure to announce the settlement before the leak**
8 **came?**

9 A Yes, I mean we want to ensure that these
10 **announcements are done without leaks.**

11 Q All right. Do you know why specifically
12 **the SEC announced the settlement with Goldman, I**
13 **guess really filed the settlement with Goldman on**
14 **that Thursday?**

15 A The parties came to an agreement on
16 **Wednesday evening, a closed Commission meeting, to**
17 **place that afternoon, and the Commission voted on**
18 **it that afternoon, so --**

19 Q Now, were you aware during that week
20 **that it was looking like there would be a vote on**
21 **that Thursday by the Senate of the financial**
22 **regulatory reform legislation?**

23 A It was looking more like it was going to
24 **happen that week, but to tell you the truth, the**
25 **other part of it was that the bill was supposed to**

1 be completed by 4th of July recess. There were
2 many slipping deadlines that were happening.
3 Senator Byrd passing away was one of the reasons
4 why the bill got moved off. So this bill was
5 supposed to be signed off on before 4th of July
6 recess, so it just kept dragging.

7 Q But at some point did you become aware
8 that it looked like the SEC was going to announce
9 and file the settlement with Goldman on the same
10 day that the Senate was going to vote and pass the
11 financial regulatory reform legislation?

12 A I think that became very clear on
13 Thursday, and, you know, Senate floor is center
14 floor.

15 Q So you were specifically named in a
16 complaint issued by Congressman Issa alleging that
17 there was some improper effect or coordination by
18 the SEC that effected the financial regulatory
19 reform legislation. Were you concerned that now
20 that the SEC had a settlement, it was going to
21 come out on the same day that the financial
22 regulatory reform legislation was being finally
23 passed by the Senate?

24 A It's -- it's an unfortunate coincidence,
25 but --

1 Q Was there any discussion of moving the
2 announcement of the SEC settlement with Goldman to
3 Friday? I mean it was only -- it had only been a
4 few hours because the Commission approved it in
5 the afternoon.

6 A There was a brief discussion with Myron
7 Marlin, I believe [REDACTED] a couple of other
8 people, but at that point, the information, you
9 know, was starting to -- to leak out anyway, so I
10 think the better -- the better -- it would have
11 been just better for us to just announce it and
12 not worry about the consequences of perception
13 from external parties.

14 Q All right.

15 BY [REDACTED]:

16 Q And you had mentioned, and correct me if
17 I'm having this wrong, that you had attended a
18 chairman's briefing on the Goldman matter after
19 the filing, but before the settlement?

20 A Yes.

21 Q And when was that, roughly?

22 A I would have to look at my calendar, to
23 tell you the truth. I just have way too many
24 meetings and briefings -- but it was probably a
25 couple of weeks before the settlement.

1 Q And what was discussed that you can
2 recall in that meeting?

3 A The settlement amount and the charges
4 and that enforcement, you know, is continuing the
5 settlement conversations.

6 Q And at that point, had there been any
7 calendar date discussed in there?

8 A No.

9 BY MR. KOTZ:

10 Q Do you know if the calendar date for the
11 approval of the Goldman settlement was just a
12 regularly scheduled date or was that a special
13 session that was put together to approve the
14 Goldman case?

15 A I believe it was a regular Commission
16 calendar meeting.

17 Q Are you aware of any particular matters
18 going on that would have led to trying to move
19 forward the date for the approval of the
20 settlement of the Goldman case as quickly as
21 possible?

22 A Repeat that again.

23 Q Are you aware if there were any concerns
24 about trying to get the Goldman settlement
25 approved as quickly as possible, was there

1 **anything going on that would effect that? We**
2 **heard about Goldman having earnings announcements.**

3 A Right, Goldman had indicated to -- to
4 our lead negotiators that they wanted to have a
5 settlement before their earnings call the
6 following Tuesday morning, I believe.

7 Q **Okay.**

8 A So that was one of the things that
9 Goldman really wanted to kind of put it behind
10 them and be able to mention it, because the amount
11 was material enough that they would have had to
12 disclose it in their analyst -- analyst call.

13 Q **Okay. Anything else similar to that**
14 **that you recall?**

15 A No.

16 MR. KOTZ: Why don't we take a minute
17 and see if we have anything else? Why don't we go
18 off the record?

19 (A brief recess was taken.)

20 MR. KOTZ: Okay. We're back on the
21 record. We don't have any further questions. The
22 one thing I would ask is, in order to preserve the
23 integrity of our investigation, that you not
24 discuss the content of your testimony with anyone,
25 you can discuss it with counsel, but otherwise,

1 all right.

2 THE WITNESS: Okay.

3 MR. KOTZ: All right, we're off the
4 record.

5 (Whereupon, at 3:38 p.m., the examination was
6 concluded.)

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REPORTER'S CERTIFICATE

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I, (b)(6),(b)(7)(C), reporter, hereby certify that the foregoing transcript of 61 pages is a complete, true and accurate transcript of the testimony indicated, held on August 4, 2010, at 2:30 p.m. in the matter of: OIG-534.

I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared under my direction.

Date:

8/11/10

Official Reporter:

(b)(6),(b)(7)(C)

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

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In the Matter of: OIG-534
Witness: Number 32
File Number: OIG-534
Date: Wednesday, August 4, 2010
Location: Washington, D.C.

This is to certify that I, (b)(6),(b)(7)(C) (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

(b)(6),(b)(7)(C)

(Proofreader's Name)

8/11/10
(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

 **COPY**

In the Matter of:)
) File No. OIG-534
OIG-534)

WITNESS: Number 17

PAGES: 1 through 54

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

DATE: Monday, July 26, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 10:00 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

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5 (b)(6),(b)(7)(C)

6 Office of Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10

11 On behalf of the Witness:

12 JOAN McKOWN, Pro Se

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C O N T E N T S

1			
2			
3	WITNESS		EXAMINATION
4	Joan McKown		8
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	December 4, 2009, E-mail,	
8		Scarborough to McKown	13
9	2	December 8, 2009, E-mail,	
10		McKown to [REDACTED]	14
11	3	December 8, 2009, E-mail,	
12		McKown to Scarborough	14
13	4	April 16, 2010, E-mail,	
14		Nester to Staff	20
15	5	April 19, 2010, E-mail,	
16		Friestad to McKown	22
17	6	April 18, 2010, E-mail,	
18		Friestad to McKown	27
19	7	SEC Press Relations, Policies, and	
20		Procedures	31
21	8	May 19, 2010, E-mail String	36
22	9	July 13, 2010, E-mail String	46
23			
24			
25			

PROCEEDINGS

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MR. KOTZ: We are on the record at 10:00 a.m. on July 26, 2010, at the United States Securities and Exchange Commission.

I'm going to swear you in.
Would you raise your right hand?

Whereupon,

JOAN MCKOWN

was called as a witness and, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. KOTZ:

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

A Joan, J-o-a-n; Elizabeth, E-l-i-z-a-b-e-t-h; McKown, M-c-K-o-w-n.

Q Ms. McKown, my name is David Kotz. I'm the Inspector General of the United States Securities and Exchange Commission. I have with me my colleague from the Office of Inspector General, (b)(6),(b)(7)(C) This is an investigation by the Office of Inspector General, Case Number OIG-534. I'm going to ask you certain questions, you'll be providing answers under oath. The court reporter will record and later transcribe

1 everything that is said. Please, therefore,
2 provide verbal answers to the questions as a nod
3 of the head or other nonverbal response won't be
4 picked up by the court reporter. Also, so the
5 record will be clear, please let me finish my
6 question before you provide your response.

7 In addition, it's important you
8 understand the questions and give accurate
9 answers. If there is anything you don't
10 understand or anything you do not know or are not
11 sure about, please let me know. Otherwise, I will
12 assume that you heard and understood the question.

13 Do you understand those instructions?

14 A Yes.

15 Q Okay. I'll give you the perjury
16 warning. As you can see, your response to
17 statements given today are provided after you've
18 sworn an oath will be taken down verbatim by the
19 court reporter. This is an official U.S.
20 government law enforcement investigation. The
21 claims asserted in this case are serious ones. It
22 is very important you tell me everything you know
23 about the matter at hand and are completely
24 forthcoming and truthful with me.

25 I am formally advising you that your

1 testimony today is subject to the laws of perjury.
2 Providing false or misleading testimony under oath
3 is a very serious offense. If the evidence shows
4 the testimony you have given is false, we may
5 refer it as appropriate.

6 Do you understand those instructions?

7 A Yes.

8 Q Great. Thank you. All right, let's
9 just start with a little background and then we'll
10 get into just a few e-mails, there aren't too many
11 of them.

12 Could you describe your education
13 beginning with college?

14 A (b)(6),(b)(7)(C)

15 (b)(6),(b)(7)(C)

16

17

18 Q (b)(6),(b)(7)(C)

19 (b)(6),(b)(7)(C)

20 A (b)(6),(b)(7)(C)

21 (b)(6),(b)(7)(C)

22 Q (b)(6),(b)(7)(C)

23 A (b)(6),(b)(7)(C)

24 (b)(6),(b)(7)(C)

25 Q (b)(6),(b)(7)(C)

1 A (b)(6),(b)(7)(C)

2 Q (b)(6),(b)(7)(C)

3 A (b)(6),(b)(7)(C)

4 (b)(6),(b)(7)(C)

5 Q (b)(6),(b)(7)(C)

6 A

7 Q

8 (b)(6),(b)(7)(C)

9 A (b)(6),
(b)(7)(C)

10 Q (b)(6),(b)(7)(C)

11 A After that then I came to the Securities

12 and Exchange Commission.

13 Q What was your first position with the

14 SEC?

15 A I was a staff attorney in the General

16 Counsel's Office.

17 Q How long did you serve in that position?

18 A About a year.

19 Q What were your duties in that position?

20 A To review enforcement actions and

21 comment on them for the commission.

22 Q What did you do after that year?

23 A Then I went to start at enforcement and

24 I started out as a staff attorney.

25 Q How long did you serve as a staff

1 attorney in enforcement?

2 A About a year.

3 Q A year. And what were your duties
4 there?

5 A I worked in what was then called the
6 Branch of Regional Office Assistance and I worked
7 with the regional offices and helped them --
8 reviewed their action memos and presented them to
9 the commission and worked on general matters for
10 the chief counsel in division.

11 Q And so now we're about 1988, right?

12 A Right.

13 Q And so what was your next position after
14 staff attorney in enforcement?

15 A I was a branch chief.

16 Q Also in the Enforcement Division?

17 A Yes.

18 Q How long did you serve as a branch
19 chief?

20 A A little over a year.

21 Q What were your duties as a branch chief?

22 A Well, I supervised staff attorneys that
23 were doing the work that I had previously done.

24 Q And what was your position after that?

25 A I was an assistant director.

1 Q That was beginning in about 1989?

2 A Yes. I mean, I became chief counsel in
3 1993, so, I mean, I joined the Division of
4 Enforcement in '87 and I eventually became chief
5 counsel in '93.

6 Q And so from 1989 to 1993 approximately
7 you were an assistant director?

8 A Yes.

9 Q What were your duties as assistant
10 director?

11 A Well, I coordinated the work of the
12 review of all the regional office matters, worked
13 with my colleagues in the home office as well, and
14 was supervising at a higher level than as the
15 branch chief.

16 Q And in 1993 you became the chief
17 counsel, a position you still serve in?

18 A Right.

19 Q What are your duties as the chief
20 counsel?

21 A I'm the chief legal officer for the
22 Division of Enforcement and I work on all policy
23 matters presented to the division and now the
24 Office of Chief Counsel, the former group I used
25 to work in, really doesn't exist anymore, now we

1 review all enforcement matters including those
2 from the home office.

3 Q So, in your experience at the SEC, and
4 particularly your experience as chief counsel,
5 you've seen, I assume, a lot of action memos and
6 reviewed a lot of enforcement cases?

7 A Yes.

8 Q Who is your current supervisor?

9 A Well, Rob Khuzami, the division
10 director, and Lorin Reisner, the deputy.

11 Q Did there come a time where you became
12 aware of the existence of an investigation by the
13 SEC into the sale of collateralized debt
14 obligations by Goldman Sachs?

15 A Yes.

16 Q When was that? Were you involved in it
17 at all from the beginning or did you become aware
18 of it in the beginning?

19 A Well, there were general discussions in
20 the division on the topic so I'm not really sure
21 when I first became aware of that exact
22 investigation.

23 Q But was it some time in 2008 or 2009?

24 A I don't really recall the exact date but
25 certainly by 2009.

1 Q And that was the investigation referred
2 to as ABACUS?

3 A Yes.

4 Q And do you understand this
5 investigation, the ABACUS investigation, was
6 considered a National Priority Investigation for
7 the SEC?

8 A Yes.

9 Q What does that mean, National Priority
10 Investigation?

11 A Well, Rob has established parameters for
12 that. I'm not sure I could recite all those exact
13 parameters, but they're matters that are
14 significant to the Division of Enforcement and
15 ones that were supposed to be focused on and
16 moving along.

17 Q How many investigations are in that
18 National Priority Investigation list,
19 approximately?

20 A I do actually review it. I believe it's
21 about 60-some odd cases.

22 Q But this ABACUS investigation actually
23 started prior to Rob Khuzami, right? Under Linda
24 Thomsen?

25 A Yes. Yes.

1 Q Was there a national -- some kind of
2 priority list that Linda Thomsen had as well?

3 A No.

4 Q But there was some kind of priority case
5 sheet or something? What was it called?

6 (b)(6),(b)(7)(C): I don't know if it had a
7 formal name.

8 BY MR. KOTZ:

9 Q We had a lot of testimony about it, but
10 there's this sheet --

11 A I mean, it wasn't as formalized as --
12 she -- well, there were -- there was the top 10
13 and the top 3. Supervisors were supposed to
14 submit items that were considered top
15 investigations. I didn't really review that list.

16 Q And then there was something -- do you
17 remember some kind of subprime case list? Do you
18 remember that?

19 A I'm sure that Cheryl Scarborough or people
20 that worked for her kept such a list.

21 Q But you weren't familiar with it?

22 A I may have been sent it, I don't really
23 remember spending much time with it.

24 Q Did you ever have a conversation with
25 anyone in the Chairman's office about the ABACUS

1 **matter?**

2 A Well, David, I'm not sure I remember
3 specific conversations on that case, but that
4 doesn't mean it didn't happen.

5 Q So, you were generally familiar with
6 this ABACUS matter as you were generally familiar
7 with a lot of difference cases?

8 A Right.

9 Q But you didn't work specifically on this
10 ABACUS matter?

11 A I mean, I talked with people closer in
12 time to when it was presented to the commission.
13 I talked with -- you know, there were various
14 issues that we were working through and so I
15 talked with people, but during the course -- it
16 was more the -- what we were going to recommend
17 than what we were investigating.

18 MR. KOTZ: All right, let me show you an
19 e-mail. We'll mark it as Exhibit 1, it's dated
20 12/4/09, 9:58 p.m., and it's an e-mail exchanged
21 between you and Cheryl Scarborough.

22 (Exhibit No. 1 was marked for
23 identification.)

24 THE WITNESS: Okay.

25 BY MR. KOTZ:

1 Q Do you recall that initially the ABACUS
2 case was put on the closed commission calendar for
3 December of 2009?

4 A I recall it being on. Until I saw this,
5 I wouldn't have remembered the date.

6 Q And then the matter was pulled from the
7 calendar. Do you remember that?

8 A Yes.

9 MR. KOTZ: Let me show you another
10 document also just to make sure you have all the
11 documents in front of you. So, this we'll mark as
12 Exhibit 2, and this is from you to (b)(6),(b)(7)(C)
13 and (b)(6),(b)(7)(C) 12/8/09, 8:53 a.m.

14 (Exhibit No. 2 was marked for
15 identification.)

16 MR. KOTZ: And then the next one we're
17 going to mark as Exhibit 3, from you to Cheryl
18 Scarborough, 12/8/09, 10:58 a.m. Just so you can
19 have them.

20 (Exhibit No. 3 was marked for
21 identification.)

22 BY MR. KOTZ:

23 Q So, what do you remember about why the
24 ABACUS case was taken off the calendar in
25 mid-December?

1 A There was disagreement about whether to
2 sue Paulson.

3 Q Who was that disagreement between?

4 A Some members of the trial unit and the
5 investigative staff.

6 Q Was there also an issue relating to
7 taking the testimony of [REDACTED] do you
8 remember?

9 A I know that was part of it.

10 Q And so I guess what I don't understand
11 is --

12 A I guess I should say, David, there was
13 disagreements regarding who should be sued.

14 Q Okay.

15 A In terms of individuals.

16 Q But those were internal disagreements
17 within the enforcement group that was handling the
18 case, whether on the investigative side or on the
19 trial side. Is that your understanding?

20 A That's what I'm aware of.

21 Q And see, what I guess I'm trying to
22 understand is, if you had internal disagreements,
23 why wouldn't you resolve those disagreements
24 before you put it on the calendar? And not put it
25 on the calendar and then take it off? When you

1 put something on the calendar and take it off, one
2 would wonder whether the issues came from the
3 Commission, otherwise wouldn't you resolve that
4 first?

5 A Well, you'd have to ask the people who
6 calendared it why they calendared it before they
7 resolved that. I thought that it had been
8 resolved and I think that my -- based on what I
9 know, the Investigative Staff believe strongly in
10 their position and they're the ones who calendar
11 the item.

12 Q I see.

13 A And so --

14 Q So, if the trial unit folks had issues,
15 it could conceivably happen that it would be
16 calendared by the investigative folks and the
17 trial unit folks would state their position and
18 the decision would be to take it off the calendar.

19 A That's right, and, I mean, that's
20 happened before.

21 Q So, to your knowledge, there was no
22 feedback from the commissioners or the chairman or
23 the chairman's office that caused it to be taken
24 off the calendar?

25 A I'm not aware of any.

1 Q Did you have an understanding at that
2 time whether there were certain specific actions
3 that had to be taken after it was removed from the
4 calendar before it would be put back on the
5 calendar?

6 A Well, I know there were discussions that
7 took place involving the trial unit and the
8 investigative staff to work through the
9 disagreements and as part of working through that
10 disagreement was going to be to take some other
11 testimony and look at some of the other evidence.

12 Q And did you understand that then the
13 ABACUS/Goldman Sachs case was put on the closed
14 commission calendar in January?

15 A I seem to recall that there were
16 subsequent efforts to put it on and work through
17 the disagreements.

18 Q And do you have an understanding of why
19 it was pulled the second time?

20 A I thought it was the continuing issues
21 involving the trial unit and the investigative
22 staff.

23 Q And you don't have any idea why that
24 wouldn't have been resolved before it was put on
25 the calendar the second time?

1 A Well, I know there were strong
2 disagreements and like I said before, the
3 investigative staff believed that the case was
4 correctly being recommended.

5 Q Did you learn of any information that
6 would lead you to believe that anyone in the
7 chairman's office or any of the commissioners or
8 their representatives stated something or made
9 some point which caused the matter to be taken off
10 the calendar the second time in January?

11 A Not that I'm aware of.

12 Q So, your understanding, it was simply an
13 internal, within Enforcement, disagreement?

14 A All the disagreement that I was told
15 about was amongst the staff in Enforcement.

16 Q Were you aware that at the time the
17 Goldman/ABACUS case was being investigated and
18 reviewed, the Senate Permanent Subcommittee on
19 Investigations was doing an inquiry into Goldman?

20 A I believe I was generally aware of that.

21 Q Were you aware of concern within the
22 Enforcement Division about Permanent Subcommittee
23 Investigations possibly conducting a hearing on
24 Goldman prior to the ABACUS complaint being filed?

25 A I was aware that concern involving a

1 number of entities in the Permanent Subcommittee
2 on Investigations and the FCIC. I was aware of
3 the general issue.

4 Q And what was the general issue?

5 A Well, that obviously we like our
6 investigations to be nonpublic, that's the
7 Commission's rule, and that becomes harder if
8 there's public hearings on these matters.

9 Q And do you remember specifically that at
10 one point in time it seemed as though the Senate
11 Permanent Subcommittee on Investigations was going
12 to do a hearing earlier, perhaps in the January
13 timeframe, and then the Enforcement Staff found
14 out that it was being pushed off to later. Do you
15 remember that at all?

16 A I don't remember the exact time
17 involving Goldman. There was a lot going on
18 during that time period with PSI, FCIC, there were
19 a lot of issues and so frankly, all that kind of
20 merges together.

21 Q But do you remember generally, at least
22 with respect to PSI, that at one point the
23 enforcement folks thought there was going to be a
24 hearing and then they found out that the hearing
25 was going to be delayed?

1 A That sounds familiar, but I don't have a
2 specific recollection about it.

3 Q All right, and then you're aware that
4 the Goldman/ABACUS case was finally filed in April
5 of 2010, right?

6 A Yes.

7 MR. KOTZ: Okay. I'm going to show you
8 this document. Mark it as Exhibit 4. It's an
9 e-mail from John Nester to a whole slew of people
10 including you, 4/16/10, 10:49 a.m.

11 (Exhibit No. 4 was marked for
12 identification.)

13 BY MR. KOTZ:

14 Q Now, did you have an understanding of
15 why the Goldman Sachs/ABACUS case was filed on
16 Friday, April 16th?

17 A No. The chairman was testifying the
18 next week on Tuesday and so I know there was a
19 real effort to have anything that was newsworthy
20 come out as far in advance of that as possible.

21 Q Did you --

22 A Because the people that she was
23 testifying before didn't want to have last minute
24 news coming out.

25 Q So, there was an effort to try to get

1 the Goldman case filed as much before that Tuesday
2 as possible?

3 A I'm not -- I mean, I'm not familiar with
4 the actually -- the considerations on the Goldman
5 case filing itself but I know that anything around
6 that time period there was an effort to get it out
7 as early as possible.

8 Q Did you know that generally,
9 historically within the commission, cases that the
10 Enforcement Division thought would get a lot of
11 press attention were not filed on Fridays?

12 A There used to be a view that things that
13 were newsworthy you didn't file on a Friday.
14 However, on some other unrelated matter I was told
15 by our press people that the news cycle is
16 different now and that there's news all the time,
17 so that historically was accurate but I don't
18 believe that the OPA has that view anymore.

19 Q That's the Office of Public Affairs?

20 A Yes.

21 Q Do you remember any conversations about
22 whether it was advisable to file the Goldman case
23 on Friday given that historically that might not
24 have been a good day for news?

25 A No, I think that I really wasn't

1 familiar -- aware of the fact that we were doing
2 -- filing this on the Friday until I received
3 these e-mails.

4 Q And do you know why -- why did you
5 receive -- why were you on this list for this?
6 There's a timeline.

7 A I was on it because of the Stanford
8 part.

9 Q How come?

10 A Because I was working on that report.

11 Q What were you doing with that report?

12 A There were -- I recall there were three
13 things I was doing, one was I was working on the
14 redactions, secondly, I was reviewing the
15 recommendations for enforcement, and third, I
16 suppose I was working on talking points for the
17 chairman.

18 Q So, for the portion of this timeline
19 that really related to you was more the Stanford
20 part than the Goldman?

21 A Yes.

22 MR. KOTZ: I see. Okay, let me show you
23 the next document. We'll mark this as Exhibit 5.

24 (Exhibit No. 5 was marked for
25 identification.)

1 BY MR. KOTZ:

2 Q It's an e-mail exchange between you and
3 Scott Friestad, 4/19/10, 6:40 p.m. So, do you
4 know what Scott, in this e-mail, was referring to
5 when he said, "This is just going to add fuel to
6 the fire, speculation that this was politically
7 motivated"?

8 A I'm sorry, let me just read this.

9 Q Sure.

10 A I'm sorry, could you tell me what your
11 question --

12 Q Sure, sure. Do you know what he means
13 when he says, "Wow, this is amazing. I can't
14 understand why somebody would do this. It's just
15 going to add fuel to the fire, speculation that
16 this was politically motivated?"

17 A Why he said that?

18 Q Yeah, what did he mean by that? What
19 fuel to what fire?

20 A I think the 3-2 vote. He's -- the way I
21 interpreted the e-mail was that he couldn't
22 understand why someone would have leaked this and
23 the 3-2 vote was going to be seen as politically
24 motivated.

25 Q Was a concern among a variety of folks

1 in the Enforcement Division that this information
2 was leaked?

3 A Well, yes.

4 Q How come?

5 A Well, I mean, for several reasons.
6 Number one, the Commission meeting is the most
7 confidential conversation to take place and
8 secondly, to the extent -- and I think that the
9 Commission is your client. If you're an attorney
10 I think it's a complete violation of the
11 attorney-client privilege. So, at many levels I
12 think it's the worse possible behavior.

13 Q Did anyone speculate as to where the
14 leak could have come from?

15 A Well, sure.

16 Q Where was that?

17 A Where -- where --

18 Q Where did people speculate the leak
19 would have come from?

20 A Well, it was speculation. I mean, people
21 didn't -- I mean, to my knowledge, no one knows.
22 I'm hoping you guys are trying to figure that out.

23 Q Among other things.

24 A Yeah.

25 Q Do you know if anyone in the Enforcement

1 Division would have had a reason to leak this
2 information?

3 A Well, I'd be very disappointed if
4 someone in the Enforcement Division leaked it. I
5 think in light of the subsequent leak that took
6 place on the later Goldman vote where none of the
7 Enforcement Staff was really there other than the
8 people working on the case, the speculation is it
9 wasn't the Enforcement Staff on this prior one,
10 but obviously we didn't have that information at
11 this time.

12 Q Right. When you first learned of, I
13 guess, the article and the leak, did the people
14 you spoke to within the Enforcement Division
15 express surprise about it?

16 A Yes.

17 Q Did anyone that you talked to seem to
18 not express surprise like they thought maybe it
19 was coming?

20 A No.

21 Q No, so there was nothing that gave you
22 any indication of who it might be?

23 A No.

24 Q And Scott Friestad says another thing,
25 "I'm hearing the chairman's office is denying

1 there was any connection between the decision to
2 file the case on Friday and the decision to
3 release the Stanford IG report in the same day.
4 They had better be careful because they may get
5 asked for e-mails, et cetera, from Congress or
6 pursuant to a FOIA request."

7 Do you know what he means by that, by they better
8 be careful because they may get asked for e-mails?

9 A I don't really know. I'm certain -- I
10 mean, there was a lot of talk about the fact that
11 the two were filed at the same time.

12 Q Did you ever have a further conversation
13 with Scott Friestad about this matter?

14 A I'm sure I did, although a lot of our
15 conversation related to the leak regarding the
16 commission meeting.

17 Q Do you know if Scott Friestad believes
18 there was a connection between the decision to
19 file the case on Friday and the decision to
20 release the Stanford IG report on the same day?

21 A If he had talked -- I believe that he
22 and I spoke about it and I told him that in my
23 view it was because of the chairman's testimony
24 the following week and I would have told him that
25 we were trying to get the Stanford Report out,

1 actually, on Wednesday, that Friday was our latest
2 date we were going to get it out.

3 Q So, you don't know in further
4 conversations what you were talking to him about
5 with e-mails from Congress or they better be
6 careful? You don't know what he was referring to
7 specifically?

8 A I didn't know that they -- he had a
9 specific concern about any specific e-mails.

10 MR. KOTZ: All right, let me show you
11 another document. I'm going to mark this as
12 Exhibit 6.

13 (Exhibit No. 6 was marked for
14 identification.)

15 BY MR. KOTZ:

16 Q It's dated 4/18/10, an e-mail exchange
17 between you and Scott Friestad again.

18 A Yes.

19 Q So, I guess you can start from the
20 second page, there's an e-mail from Kara Scannel
21 from the Wall Street Journal to John Nester. She
22 talks about how it was her understanding that
23 there was no notice to Goldman that the staff was
24 moving forward to recommend a lawsuit. "Former
25 SEC folks say it's highly unusual that the bank

1 wouldn't be given notice it was being charged with
2 fraud and a last chance attempt to negotiate a
3 settlement."

4 She references an enforcement manual and then John
5 Nester says to Rob Khuzami and a few others, "How say we?"
6 How say we?

7 And then Khuzami says, "Do you know what the
8 enforcement manual says about telling persons they will be
9 charged?"

10 You say, "Rob, we were out and I just got this. I
11 assume you have long given a response."

12 A Right.

13 Q Right. And then you say to Scott, "Did
14 you know [REDACTED] hadn't spoken to GS since
15 September?" And Scott says, "No, that's
16 inconceivable." So, is it true that traditionally
17 an entity like Goldman Sachs, maybe like a
18 publicly traded company or a large company, would
19 be given notice after the Commission had approved
20 a recommendation to go ahead with a case?

21 A I'm sorry, could you say that again? I
22 was reading the e-mail.

23 Q Sure. Is it true that historically in
24 the SEC, in your experience, an entity like
25 Goldman Sachs, say, a publicly traded company or a

1 large company, would be given notice by the SEC
2 after the Commission had approved a recommendation
3 to go forward with a case before the case was
4 filed?

5 A Yeah, you know, it's interesting, is of
6 course typically the matter is settled --

7 Q Right.

8 A -- so, it's in a very different posture.
9 My understanding after this e-mail exchange was I
10 heard that there had been a later meeting with
11 Goldman. Goldman had taken a very defensive
12 posture, which is their right, and in light of
13 that people didn't think that there was -- future
14 meetings were going to bear any fruit, so --

15 Q Okay, but I mean historically, not in
16 the settled case, but historically in a
17 non-settled case, would the Commission have given
18 a company, like Goldman Sachs, a head's up, after
19 Commission approved the recommendation to go
20 forward?

21 A Often they would have, but again, you're
22 talking a very small set of cases where they
23 wouldn't have been settled at this point.

24 Q And one of the reasons that that was
25 done was to give the entity one last chance to

1 settle, in other words, to say to them, look, the
2 Commission has now approved the recommendation to
3 go forward, this is your last chance?

4 A Yes, although let me just say that from
5 what their last meeting with Goldman had been, I
6 think they anticipated there wouldn't be any
7 settlement and all Goldman would have done was
8 gone out and pre-announced the filing of the case,
9 so there's a lot that goes into that
10 consideration.

11 Q So, this last meeting, how close to the
12 actual filing of the case did it take place?

13 A My recollection is it was fairly close
14 but I don't remember exactly how close it was.

15 Q Well, let me show you the actual
16 Enforcement Manual provision --

17 A And I would point out that --

18 Q Sure.

19 A -- as I said in my e-mail, that in my
20 view that the Goldman folks certainly knew how to
21 ask for the meeting and would have received it.
22 So --

23 Q All right, let me show you this, we're
24 going to mark as Exhibit 7 --

25 A And I do want to point out that in my

1 view, as I expressed at the time, they had misread
2 the manual.

3 Q Well, that's why I'm going to show you
4 the manual so you can explain it.

5 All right, well, what did it say in the Enforcement
6 Manual that was misread?

7 A Well, what they were looking at at the -- they were
8 talking about a post-Wells process that -- and that wasn't
9 what this was. The post-Wells process is not a meeting after
10 Commission approval. They're talking about something
11 completely different after they've received the Wells Notice.
12 The meeting they're pointing to is one that comes after you
13 receive the Wells Notice and before -- typically before
14 you submit the Wells Submission.

15 MR. KOTZ: I see. All right, but let me
16 show you another regulation, SEC Administrative
17 Regulations, which we're going to mark as Exhibit 7.

18 (Exhibit No. 7 was marked for
19 identification.)

20 BY MR. KOTZ:

21 Q And if you could look at the SEC
22 Administrative Regulations, if you could turn to
23 page 6 of 12, under 15C, Notification of
24 Defendants. It says --

25 A I'm sorry -- oh, C.

1 Q -- "Every effort should be made to avoid
2 the possibility that defendants in an SEC
3 enforcement action first learn of the action when
4 they read about it in the newspapers or when they
5 are called by a reporter for comment about the
6 SEC's complaint. The division, regional or
7 district office primarily responsible with filing
8 a particular complaint shall take all necessary
9 steps to see that the defendants and/or their
10 counsel are given timely advice concerning the
11 action."

12 Were you aware of this provision?

13 A Generally.

14 Q And so what is your understanding or interpretation
15 of this provision? What does it call for? This is not
16 referring to the Wells process, is it?

17 A Right. This is press relations and so
18 it's -- it's related to that, to releases and how
19 we do that, and it says, "Every effort should be
20 made," but it doesn't require it. Again, I think
21 the staff was influenced by the last meeting that
22 they had with Goldman, that's my understanding.

23 Q All right. And then back in Exhibit 6,
24 you say, "Did you know (b)(6),(b)(7)(C) hadn't spoken to GS
25 since September?" And Scott says, "No, that's

1 **inconceivable."**

2 **What was that referring to?**

3 A We weren't aware at that point about the
4 meeting that I've been talking about, the last
5 meeting with Goldman, and so as it turns out, the
6 last meeting wasn't in September and if that had
7 been the last meeting, I think we would have been
8 surprised, that's why he's saying, no, that's
9 inconceivable.

10 Q **And why would you have been surprised?**

11 A That would be a long time to go without
12 talking to them and then filing the case.

13 Q **And were you aware that subsequent to**
14 **the filing of the case, settlement discussions did**
15 **begin with Goldman?**

16 A Yes.

17 Q **Do you know how soon after the case was**
18 **filed that settlement discussions began?**

19 A I don't know the exact timing.

20 Q **Do you know if it was relatively shortly**
21 **like within a month or two or was it immediately?**

22 A I really don't know.

23 Q **Okay. Going back to Exhibit 6 you said,**
24 **"Normally we do give counsel a head's up that we**
25 **are filing because we usually want to settle."**

1 What did you mean by that?

2 A Well, usually we give them a head's up
3 in any matter because we want to see, like you
4 were talking about if there's -- you have a sense
5 often that counsel is waiting to see if the
6 Commission will approve the matter, but in this
7 case the staff didn't have that sense.

8 Q So, was this a case where the
9 Enforcement staff was not inclined to settle with
10 Goldman Sachs, do you think, at this stage?

11 A I think the staff was always interested
12 in settling. It's my understanding that the staff
13 was very influenced by the last meeting with
14 Goldman.

15 Q And so in that last meeting with
16 Goldman, Goldman gave the impression it wasn't
17 interested in settling?

18 A Yes.

19 Q Did you ever receive a response from Rob
20 Khuzami about this?

21 A I don't believe I did.

22 Q You said, "Rob, we were out and I just
23 got this. I assume you have long since given a
24 response."

25 Do you know if a response was given?

1 A I have no idea.

2 Q Do you know if generally when the SEC
3 files a complaint against a publicly traded
4 company that they give the New York Stock Exchange
5 a head's up before they file the complaint?

6 A I'm not familiar with that. If that's a
7 policy, I'm a little surprised.

8 Q Do you know what the significance of the
9 third Friday of each month has to do with
10 expiration of options?

11 A No.

12 Q Were you aware of any conversations with
13 anyone about the impact on the market that the
14 filing of the Goldman case had?

15 A The only conversations I had was that
16 people were surprised of the -- that it would have
17 an impact.

18 Q But did you ever hear anyone talk about
19 the fact that perhaps in hindsight they might have
20 considered that before or perhaps not filed that
21 particular Friday of the month?

22 A I never heard that discussion. All I
23 heard was that people were -- because, you know,
24 obviously I've seen a number of significant cases
25 being filed and other than a case where you come

1 out and say something is a complete fraud, yeah,
2 and obviously then people might react. I can't
3 remember a case where there was a market impact
4 like this.

5 MR. KOTZ: I'm going to show you another
6 document. Mark it as Exhibit 8, an e-mail
7 exchange between you and Michelle Layne,
8 Wednesday, May 19, 2010, at 2:31 p.m.

9 (Exhibit No. 8 was marked for
10 identification.)

11 BY MR. KOTZ:

12 Q And this is an exchange between you and
13 Michelle Layne about a Journal article and
14 Michelle Layne, I guess, forwards the Journal
15 article to you and you respond, "This is shocking
16 and sad."

17 She responds, "Yes, I really
18 could not believe it."

19 What were you referring to?

20 A Can I just take a look at this for a
21 second?

22 Q Sure. Sure.

23 A I'm certain I know what this is, but --
24 oh, yes. I was -- said it was shocking and sad
25 that someone had leaked the details of the

1 Commission meeting.

2 Q So, this is a second leak, is that
3 right? Or is this the same leak as the one
4 before? I guess it's more details.

5 A I believe it is. It's a blow-by-blow of
6 the Commission meeting.

7 Q And do you know if, around the time that
8 the SEC was finalizing the negotiations with
9 Goldman in connection with the settlement, whether
10 there were concerns at that point about further
11 leaks given the leak that occurred with respect to
12 the Commission meetings surrounding the bringing
13 of an action against Goldman?

14 A I'm not sure I understand the question.

15 Q Was there a particular concern among
16 Enforcement Staff as the SEC was negotiating the
17 final elements of the settlement with Goldman that
18 information relating to the settlement would leak
19 just as information that related to the bringing
20 of the action leaked?

21 A Well, after this press article,
22 certainly with the first one on the vote and
23 especially after this article, there was a general
24 concern around any sensitive information that
25 people were leaking information and certainly on

1 the Goldman case itself the information was very
2 tightly held although it was being more tightly
3 held on just about any case of significance.

4 Q Do you know if concerns about leaks
5 affected the approval process to try to speed it
6 up so that there would be less time for a leak?

7 A No, what I was more aware of is that
8 more things were being done in Executive Session
9 at Commission meetings and the Chairman was
10 reading a statement at the beginning of meetings
11 so that people remembered their obligations to
12 keep the information confidential.

13 Q Were you involved at all in the approval
14 process of the Goldman settlement?

15 A Yes.

16 Q And so do you recall when the settlement
17 was finally agreed to and how quickly after that
18 it was put forward for Commission vote?

19 A My recollection, it was very quickly
20 after the settlement was reached.

21 Q Do you remember why it was done so
22 quickly?

23 A I thought that Goldman wanted it done
24 for some particular timing reason and the
25 Commission wanted it done as well.

1 Q Did you remember at that time hearing
2 concerns in the press about the Goldman settlement
3 happening before it was officially announced?

4 A I believe that there was some leakage
5 but I don't have a specific recollection of it.

6 Q Do you recollect concerns that there was
7 some leakage at that time?

8 A Sure.

9 Q And do you recollect that the SEC wanted
10 to make sure that the facts of the settlement did
11 not go out until they announced it?

12 A Well, until the Commission approved it?

13 Q Right.

14 A Right.

15 Q And until the SEC announced it, right?

16 A Yes.

17 Q I mean, isn't it to the benefit of the
18 SEC for the SEC to be the first entity that
19 announces a settlement?

20 A Yes.

21 Q What are those benefits?

22 A Well, the benefits are that you can --
23 you can control the message that comes out with
24 the case. If a case is -- or settlement is,
25 pre-announced, basically through a leak of some

1 sort, either from defense counsel or some other
2 source, the press is not as interested in the
3 story because it's not as newsworthy, and so you
4 can't control how the message of the case is
5 portrayed.

6 Q Did you hear any particular concern
7 about the fact that the message of the Goldman
8 case would be spun in some way to show that
9 Goldman got a good deal in some kind of leak
10 before the SEC came forward with officially
11 announcing the case?

12 A Well, typically if defense counsel gets
13 the story out, they obviously try to minimize the
14 impact of the case so there's always that general
15 concern.

16 Q Right. But do you remember that being a
17 specific concern in connection with the Goldman
18 settlement?

19 A I remember people thinking about all the
20 potential questions that could be raised regarding
21 the settlement and obviously whether Goldman got a
22 good deal would be one of them.

23 Q Right, but do you remember a particular
24 concern about Goldman leaking information about
25 the settlement in which they spun the story to

1 **make it look like they got a good deal?**

2 A I don't recall any conversations about
3 that. They might have taken place but I don't
4 recollect that I was part of those.

5 Q And so the concern with respect to the
6 settlement, was it more that the Goldman side
7 would leak it as opposed to what happened
8 initially, that 3-2 decision, that couldn't have
9 been Goldman, obviously, they wouldn't know --

10 A Right.

11 Q So was that a concern as well with
12 respect to the second settlement, I guess not only
13 that a similar leak might come out of the
14 Executive Session Commission meeting, but also
15 that Goldman might leak it?

16 A I don't recall that. I just recall a
17 concern about leaks in general. I don't recall
18 anything that specific.

19 Q And was there an Executive Session used
20 for the Goldman settlement?

21 A Yes.

22 Q Was it like a specially called Executive
23 Session or a regularly scheduled one?

24 A David, I recall it was -- just followed
25 the Commission meeting, but maybe it was a special

1 one.

2 Q Were you aware of the negotiations over
3 the penalty amount?

4 A People came and talked with me, not so
5 much about the amount but there were certain
6 potential ways the penalty could be structured,
7 and so I talked with the Goldman folks on that --
8 not -- and when I say Goldman, I mean, the SEC
9 employees working on the investigation.

10 Q Was there concern expressed about
11 whether the 10(B) claim would be dropped as part
12 of the settlement?

13 A That's not what I was talking with
14 people about.

15 Q What were you talking with people about?

16 A About how the language -- some of the
17 standard language that's used in settlements and
18 whether that would be included or if it would be
19 amended.

20 Q And so what was the resolution of that?

21 A That we would use the standard language.

22 Q What was that, like injunctive relief,
23 things like that?

24 A No, it's regarding how the penalty is
25 characterized.

1 Q So, what do you mean? How is the
2 penalty characterized?

3 A Well, there is -- there were discussions
4 regarding -- there's certain standard language
5 that was put in place after Sarbanes-Oxley so that
6 regardless of whether a penalty was paid as a Fair
7 Fund, it was still -- retained its nature as a
8 penalty. In other words, if it's being paid
9 through a Fair Fund, it might look more like
10 disgorgement, and so there's certain language that
11 is used to make certain and clear that regardless
12 of whether penalty money is paid through a Fair
13 Fund, it retains its penalty characteristics in
14 terms of indemnification and all of that.

15 Q And that is what happened at the end
16 here?

17 A We used the standard language.

18 Q Do you remember if there was any
19 discussion about kind of using past precedent as a
20 basis for determining a penalty amount and whether
21 the number that was used here was particularly
22 high given that the fraud, the 10(B) fraud claim,
23 was dropped?

24 A The penalty amount wasn't dependent on
25 the 10(B) charge being included or not. The

1 penalty amount could be teed off of the 17(A). It
2 wasn't as dependent -- it was not dependent on
3 that.

4 Q Okay. And so when you would try to
5 figure out a penalty amount based on a 17(A) claim
6 or a 10(B) claim, for that matter, how would you
7 go about -- would you look at past cases to see as
8 kind of a guideline?

9 A I use the statute as the starting point
10 and you're in District Court, it makes a
11 difference. Again, that would be going back to
12 the statute. You would look at prior cases. You
13 would look at a number of factors -- what the
14 disgorgement amount was, and that sort of thing.

15 Q And do you know if any particular prior
16 cases were looked at that helped in arriving at
17 the settlement amount in the Goldman case?

18 A I don't know about that.

19 Q Do you know what generally the prior
20 case, the settlement amounts were in similar prior
21 cases to the Goldman case?

22 A I'm generally familiar to the penalty
23 amounts.

24 Q What would the range be?

25 A Well, see, what was interesting about

1 this case is people talk about it being a public
2 company but we really viewed this as a regulated
3 entity case and so there's -- we weren't comparing
4 it to the tables that we normally keep because the
5 issue -- or penalty case, the public company
6 cases, those are more significant, so we really
7 don't have as many tables. I know that the team
8 working on the Goldman case did compile a list of
9 some prior penalty amounts and that sort of thing
10 for regulated entities, but we didn't have that
11 information as readily available.

12 Q Do you know what the range of the
13 penalty amounts were that the team compiled?

14 A I saw the chart at some point but I
15 don't -- I was generally familiar with all the
16 cases on the chart, but --

17 Q But, I mean, was it similar to the
18 amount that the Goldman had or --

19 A There were some that were fairly high
20 from a dollar standpoint. This was obviously very
21 high.

22 Q Was this one considerably higher from
23 all the other ones on that list?

24 A I believe it was, David.

25 MR. KOTZ: Let me show you another

1 document and mark it as Exhibit 9, e-mail exchange
2 between you and Scott Friestad, Thursday, July 13,
3 2010, 8:57 a.m.

4 (Exhibit No. 9 was marked for
5 identification.)

6 THE WITNESS: Right, I called him up
7 afterwards later that day because I realized this
8 amount was wrong.

9 BY MR. KOTZ:

10 Q Okay, so you had thought that that was
11 the number at the time, but it turned out to be
12 wrong, different?

13 A No, I actually -- I was told the correct
14 amount and I just misremembered it when I sent the
15 e-mail to him.

16 Q Do you recall being surprised when you
17 did find out the actual amount?

18 A Well, no, because I had been told it.

19 Q But when you were first told it --

20 A Oh, when I was first told it?

21 Q -- were you surprised that the number
22 was so high?

23 A No. Not really. I knew that it was
24 obviously a case being taken very seriously.

25 Q And you didn't have any misgivings about

1 the process that was used to arrive at the number?

2 A No.

3 Q All right. Were you aware generally of
4 the financial regulatory reform legislation that
5 has been advancing through Congress and was
6 recently signed by the President?

7 A Yes.

8 Q Has anybody at the SEC ever mentioned
9 that legislation in connection with the Goldman
10 Sachs investigation or in connection with the
11 filing of an action against Goldman Sachs?

12 A No.

13 Q Do you have any reason to believe that
14 the SEC's action against Goldman Sachs or the
15 timing of that action was related to or to advance
16 financial regulatory reform legislation?

17 A No, I don't, and I know for a fact that
18 we've been working on the legislation, we've been
19 working on the Goldman case, and both were moving,
20 as far as I could tell, on separate tracks.

21 Q Were you aware that the Goldman
22 settlement was announced the same day that the
23 financial regulatory legislation was formally
24 approved by the Senate?

25 A Right.

1 Q Do you know if that was a coincidence or
2 if there was any reason behind that?

3 A I believe they were coincidences.

4 Q Are you aware of any information
5 indicating the SEC coordinated its action against
6 Goldman Sachs with the Executive Office of the
7 President, the White House, or any of its
8 employees?

9 A I have absolutely no knowledge of that.

10 Q Are you aware of any information
11 indicating that anyone at the SEC shared any
12 information concerning its Goldman Sachs
13 investigation with the Executive Office of the
14 President, the White House, or any of its
15 employees prior to the complaint being filed?

16 A I have absolutely no knowledge of that.

17 Q Are you aware of any information
18 indicating the SEC coordinated its action against
19 Goldman Sachs with any members of Congress or any
20 congressional employees?

21 A No.

22 Q Are you aware of any information
23 indicating that anyone at the SEC shared any
24 information concerning its Goldman Sachs
25 investigation with any members of Congress or any

1 congressional employees prior to the complaint
2 being filed?

3 A No.

4 Q Are you aware of any information
5 indicating the SEC coordinated its action against
6 Goldman Sachs with the Democratic National
7 Committee, the Democratic State Senate Campaign
8 Committee, the Democratic Congressional Campaign
9 Committee, or any of their employees?

10 A I am not aware of anything like that.

11 Q Are you aware of any information
12 indicating that anyone with the SEC shared any
13 information concerning its Goldman Sachs
14 investigation with the Democratic National
15 Committee, the Democratic Senate Campaign
16 Committee, the Democratic Congressional Campaign
17 Committee or any of their employees prior to the
18 complaint being filed?

19 A No.

20 Q Are you aware of any information
21 indicating that anyone at the SEC shared any
22 information concerning the Goldman Sachs
23 investigation or the settlement with the news
24 media or any journalists prior to the complaint
25 being filed?

1 A No.

2 Q What about prior to the settlement being
3 announced?

4 A No. In fact, as far as I was aware,
5 they were very careful about any conversations
6 with the press during the window when we knew the
7 settlement would probably be coming out.

8 Q But then in the end the 3-2 vote on the
9 settlement also came out in the press, didn't it?

10 A It did. It was extremely disappointing.

11 Q Do you know if there was any effort
12 within the Commission with respect to the fact
13 that there seems to be a relatively large number
14 of leaks?

15 A Well, virtually anything of any interest
16 or significance whatsoever is now being done in
17 Executive Session to limit the number of people
18 that are aware of what is said at the meetings and
19 there is much more limited discussion of what was
20 discussed at Commission meetings and the chairman
21 reads off a statement at the beginning of every
22 meeting.

23 Q Of course, limiting the people who
24 either are at the Executive Session or know what
25 happened at the Executive Session does not seem to

1 **be affecting the leaks, right?**

2 A Well, it doesn't.

3 Q I mean, if it's not the Enforcement
4 Division folks that are leaking, then limiting the
5 number of Enforcement folks to have the
6 information doesn't really do anything, does it?

7 A Well, it's limiting the number of people
8 in general, it's not just the Enforcement Staff
9 that attends, it's obviously the General Counsel's
10 office and Corp Fin and all the divisions. So --

11 Q Who sits in in the Executive Session?

12 A The staff who did the investigation and
13 any person that reviewed the item and so it would
14 be very -- in other words, only the particular
15 person in the other division that reviewed the
16 item.

17 Q And what about the rest of the folks not
18 from Enforcement? Who sits in on those Executive
19 Session meetings?

20 A Well, that's what I meant, like, say
21 you're someone in Corp Fin and you reviewed the
22 memo, then you could sit in for that item.

23 Q But there's also the chairman and the
24 Commissioners.

25 A Yes, and their counsel.

1 Q Who is with the chairman, from the
2 chairman's office in those Executive Sessions?

3 A It's generally Steve Cohen and [REDACTED]
4 [REDACTED] and there is some other staff but those are
5 the two people that are usually always there.

6 (A brief recess was taken.)

7 MR. KOTZ: All right, back on the
8 record. We don't have any further questions. The
9 one thing I would ask in order to preserve the
10 integrity of our investigation, that you not
11 discuss the content of your testimony with anyone.

12 THE WITNESS: Sure.

13 MR. KOTZ: And with that, we're off the
14 record.

15 (Whereupon, at 10:59 a.m., the examination was
16 concluded.)

17 * * * * *

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REPORTER'S CERTIFICATE

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I, (b)(6),(b)(7)(C), reporter, hereby certify that the foregoing transcript of 52 pages is a complete, true and accurate transcript of the testimony indicated, held on July 26, 2010, at 10:00 a.m. in the matter of: OIG-534.

I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared under my direction.

Date:

8/2/10

Official Reporter:

(b)(6),(b)(7)(C)

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

In the Matter of: OIG-534
Witness: Number 17
File Number: OIG-534
Date: Monday, July 26, 2010
Location: Washington, D.C.

This is to certify that I, (b)(6),(b)(7)(C) (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

(b)(6),(b)(7)(C)

(Proofreader's Name)

8/2/10

(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. OIG-534
OIG-534)

WITNESS: Number 18

ORIGINAL

PAGES: 1 through 94

PLACE: Securities and Exchange Commission
100 F Street, N.E., Room 2465
Washington, D.C.

DATE: Thursday, August 19, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 9:29 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, ESQ., Inspector General

5 (b)(6),(b)(7)(C)

6 Securities and Exchange Commission

7 100 F Street, N.E.

8 Washington, D.C. 20549

9

10 On behalf of the Witness:

11 KENNETH LENCH, pro se

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C O N T E N T S

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WITNESS

EXAMINATION

4

Kenneth Lench

4

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6

EXHIBITS:

DESCRIPTION

IDENTIFIED

7

1

E-mail, Lench and [REDACTED]

16

8

2

E-mail, Lench and [REDACTED]

20

9

3

E-mail, Scarboro and [REDACTED]

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E-mail, [REDACTED] to Lench

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E-mail, Lench and [REDACTED]

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E-mail, Lench, [REDACTED] Reisner

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E-mail, Lench, [REDACTED] Reisner

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E-mail, [REDACTED] Reisner, McKown

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E-mail, [REDACTED] and [REDACTED]

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E-mail, [REDACTED] [REDACTED] Lench

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E-mail, [REDACTED] [REDACTED] Lench

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12

E-mail, [REDACTED] and Lench

42

19

13

E-mail, Marlin, Cohen, [REDACTED]

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E-mail, Reisner, [REDACTED] Marlin

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E-mail, Reisner, [REDACTED] Khuzami

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22

16

E-mail: [REDACTED] to Lench

49

23

17

E-mail, Cohen and Marlin

51

24

18

SEC Admin and PR Reg and Policies

61

25

19

E-mail, Reisner and Khuzami

66

1	EXHIBITS:	DESCRIPTION	IDENTIFIED
2	20	E-mail, Reisner to [REDACTED] and [REDACTED]	77
3	21	E-mail, Cohen to Marlin	80
4	22	E-mail Exchange	81
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1 PROCEEDINGS

2 MR. KOTZ: We are on the record at 9:29 a.m. on
3 August 19, 2010 at the United States Securities and Exchange
4 Commission.

5 I am going to swear you in.

6 Would you please raise your right hand?

7 Whereupon,

8 KENNETH LENCH

9 was called as a witness and, having been first duly sworn,
10 was examined and testified as follows:

11 EXAMINATION

12 BY MR. KOTZ:

13 Q Could you state and spell your full name for the
14 record, please?

15 A Kenneth, K-e-n-n-e-t-h, R. Lench, L-e-n-c-h.

16 Q Okay, Mr. Lench, my name is David Kotz. I'm the
17 Inspector General of the United States Securities and
18 Exchange Commission. I have with me my colleague from the
19 office of Inspector General, (b)(6),(b)(7)(C) This is an
20 investigation by the office of Inspector General, case number
21 OIG-534.

22 I am going to ask you certain questions, and you
23 will be providing answers under oath. The court reporter
24 will record and later transcribe everything that is said.
25 Please, therefore, provide verbal answers to the questions,

1 as a nod of the head or another non-verbal response won't be
2 picked up by the court reporter.

3 Also, so the record will be clear, please let me
4 finish my question before you provide your response. In
5 addition, it is important that you understand the questions
6 and give accurate answers. If there is anything you don't
7 understand, or anything you do not know or are not sure
8 about, please let me know. Otherwise, I will assume that you
9 heard and understood the question.

10 Do you understand those instructions?

11 A Yes.

12 Q Great. As you can see, your response to the
13 statements given today are provided. After you have sworn an
14 oath, they will be taken down verbatim by the court reporter.

15 This is an official U.S. Government law enforcement
16 investigation. The claims asserted in this case are serious
17 ones. It is very important that you tell me everything you
18 know about the matter at hand, and are completely forthcoming
19 and truthful with me. I am formally advising you that your
20 testimony today is subject to the laws of perjury. Providing
21 false or misleading testimony under oath is a serious
22 offense. If the evidence shows the testimony you have given
23 is false, we may refer it as appropriate.

24 Do you understand those instructions?

25 A Yes.

1 Q Good. All right. Let's start with some
2 background. Could you describe for me your education,
3 beginning with college?

4 A (b)(6),(b)(7)(C)

5 (b)(6),(b)(7)(C)
6

7 Q (b)(6),(b)(7)(C)

8 A (b)(6),(b)(7)(C)

9 (b)(6),(b)(7)(C)
10

11 Q (b)(6),(b)(7)(C)
12 A
13 Q
14 A
15 Q
16 A
17 Q

18 A I came to this -- SEC.

19 Q Okay. So that was in 1990, 1991?

20 A It was -- I started here April 23, 1990.

21 Q All right. What was your first position with the
22 SEC?

23 A Staff attorney in the Division of Enforcement.

24 Q How long did you serve in that position?

25 A Until I was promoted to a branch chief, I believe,

1 at the beginning -- towards the beginning of 1995.

2 Q What were your duties as staff attorney?

3 A To investigate potential securities fraud, and then
4 write up the results of that investigation and present them
5 to the Commission.

6 Q How long did you serve as a branch chief?

7 A Until 1999. And I don't remember the month.

8 Q Oh, that's all right. How many individuals did you
9 have under you when you were a branch chief?

10 A I think there was a range over time, but I think at
11 certain times I had as many as six and as few as four.

12 Q And what were your duties, as a branch chief?

13 A To supervise the staff attorneys conducting
14 investigations.

15 Q Okay. And then, what did you do in 1999?

16 A I transferred to the division of corporation
17 finance.

18 Q What position did you have at that point in
19 corporation finance?

20 A A line attorney in the operations group, reviewing
21 periodic filings, as well as transactional filings --
22 offering types of documents that companies made.

23 Q How long did you do that for?

24 A Approximately a year-and-a-half.

25 Q What did you do after that?

1 A I came back to the Division of Enforcement, working
2 in the office of the chief counsel as an assistant chief
3 counsel.

4 Q How long did you serve as assistant chief counsel?

5 A Until 2004, when I was -- applied for and was
6 selected as an assistant director.

7 Q What were your duties as assistant chief counsel in
8 the office of chief counsel?

9 A I -- there were a variety of tasks. The primary
10 one was to review action memoranda submitted by the regions,
11 and helping the regions with respect to their recommendations
12 that were going to the Commission. So it was largely at the
13 back end of the investigations.

14 But I was also available to be consulted with on a
15 more regular basis by the regional office staff, with respect
16 to policies, practices, procedures of the division, as well
17 as the Commission. We in the chief counsel's office attended
18 every Commission meeting, so we got to learn what issues were
19 important to the commissioners, and could convey that
20 information in a helpful way, hopefully, to regional office
21 staff.

22 Q All right. And so, in 2004 you became an assistant
23 director back in enforcement?

24 A Yes. And the chief counsel's office, just to be
25 clear, that was in the Division of Enforcement --

1 Q As well.

2 A -- as well.

3 Q Right, okay.

4 A And, yes, an assistant director back on the
5 investigative side.

6 Q Right.

7 A Yes.

8 Q How long did you serve in that role?

9 A Until January of 2010, this year.

10 Q What were your duties in the 2004 to 2010 period,
11 as an assistant director in enforcement?

12 A To supervise investigations. I had three branch
13 chiefs -- one of them was called a deputy assistant director,
14 but essentially serving the function of a branch chief, so --
15 to supervise investigations.

16 Q What position did you get in January of 2010?

17 A I became the chief of the newly created structured
18 and new products unit in the Division of Enforcement.

19 Q All right. And what are your duties in that
20 position?

21 A That is, again, to some extent supervising
22 investigations within the particular area that the unit is
23 responsible for. It has personnel conducting investigations
24 in various regional offices. So I have a significant home
25 office staff, but I also have attorneys -- line attorneys as

1 well as ADs -- in 7 of the 11 regional offices.

2 And, in addition to the investigative part of the
3 job, I think it's just to be smart, keep current on issues
4 relating to structured and new products, as well.

5 Q And that's your current position?

6 A Yes.

7 Q Who do you currently report to?

8 A I see them as -- together as both Rob Khuzami, as
9 well as Lorin Reisner. I don't know if -- on the
10 organizational chart, you know, who will sign my evaluation,
11 but one of those two.

12 Q Okay. All right. Did there come a time when you
13 became aware of the existence of an investigation by the SEC
14 into the sale of collateralized debt obligations by Goldman
15 Sachs known as the ABACUS investigation?

16 A Yes.

17 Q Okay. When did you first learn of that
18 investigation, to your recollection?

19 A To my recollection, January of 2010.

20 Q And why would that investigation be something you
21 would learn about in your new role as chief of the structured
22 and new products unit?

23 A Because that investigation was going to be an
24 investigation that became a unit investigation. We --

25 [redacted] became my [redacted]. He was overseeing the

1 ABACUS investigation, and -- as well as personnel who
2 reported to him. And they -- it just became a unit case when
3 the unit was formed.

4 Q Was it one of the more significant cases within the
5 structured and new products unit?

6 A I will say yes, but at the beginning, not having
7 any staff, it was, yes, one of the few, because there was
8 this ramp-up period. I became chief and [REDACTED] became
9 [REDACTED] in January. We -- it took a couple of months to
10 get the assistant directors selected, and even time after
11 that for the staff to become part of the unit.

12 So, for some significant period, a few-month
13 period, the unit didn't have a lot of cases, as we were
14 ramping up, doing recruiting type of activities. So I will
15 say yes, but it's not as if we had, you know, 50
16 investigations at the beginning.

17 Q Did you understand that the ABACUS investigation
18 was considered a national priority investigation at the SEC?

19 A At -- certainly at some point I did, probably early
20 on.

21 Q All right. So, you became aware of it in January
22 2010. Was that at the beginning of January?

23 A I feel like it would have probably been more like
24 mid-January. I don't recall exactly when. There was some
25 period of time when I knew I was getting the position, and I

1 feel like it was earlier in January. And I probably would
2 have had a conversation with (b)(6),(b)(7)(C) and I know he had
3 done -- had conducted a sweep of Wall Street on CDOs,
4 including -- and that's where the Goldman case sort of came
5 out of.

6 Q Right.

7 A And I think he would have briefed me, generally,
8 about some of the inventory. I just don't recall exactly
9 when in January.

10 Q Okay. And so, now that this ABACUS case was going
11 to be a unit case in your new unit, what was your role, with
12 respect to the investigation?

13 A It -- because I was the chief of the unit, I
14 certainly was going to have a role. On the other hand, a lot
15 had happened already on the investigation. And at the
16 beginning, after I became unit chief, Cheryl Scarboro, who
17 had been the associate director over that investigation --
18 but she was a unit chief of another unit -- she continued to
19 come to meetings. But there were a number of meetings where
20 a lot of people, all of whom knew more about the matter than
21 I did, attended.

22 So, I would say I was trying to learn the
23 investigation. I knew it was an important investigation.
24 But at the beginning, at least, I would say there was this
25 period of time where I would more attend meetings. I wasn't

1 talking a lot at the meetings, as I was trying to learn.

2 Q And then, as time wore on toward the period when
3 the case was filed, were you more involved at that point?

4 A I would say over time I became more involved. And
5 then, you know, even after the case was filed and the
6 ultimate settlement, even more so. So, there was this
7 ramping up.

8 Q All right. And so, in January of 2010, were you
9 aware that this ABACUS case had been previously put on the
10 closed Commission calendar in December and then taken off the
11 calendar?

12 A I think I did know that, yes.

13 Q And did you -- what did you understand the reason
14 that the matter was put on and then taken off the calendar in
15 December?

16 A I -- what I remember is that [REDACTED] who was
17 the [REDACTED] had wanted to potentially name an
18 additional individual, and wanted further investigation to
19 occur, and further analysis as to whether that person was
20 appropriate to include in the recommendation.

21 Q Okay. And that was [REDACTED]

22 A Yes, [REDACTED]

23 Q Okay. And --

24 A There may have been one other individual, as well,
25 that was part of that. But [REDACTED] is the one I remember being

1 told.

2 Q So, did you generally understand that the ABACUS
3 case was taken off the calendar to take [REDACTED] testimony?

4 A I don't know if I know --

5 Q Okay.

6 A -- what additional steps -- and just to put it into
7 context, my understanding was that this may have been a
8 lingering issue for months. And it was a mainly -- at that
9 point was getting this secondhand through [REDACTED], [REDACTED]

10 [REDACTED]

11 Q Okay.

12 A -- about what had happened in the months leading up
13 to when I became the chief of the unit.

14 Q But again, to your recollection, did you understand
15 that the decision to take the ABACUS case off the closed
16 Commission calendar in December was made by the enforcement
17 team, rather than based on feedback from the commissioners or
18 the chairman? Or did you just -- you don't remember if you
19 knew --

20 A I --

21 Q -- one way or the other?

22 A My general sense of it was that it was an
23 enforcement desire.

24 Q Okay.

25 A To do that.

1 Q Okay. All right. Well, let me show you the first
2 document. And the first document I guess we have of you with
3 respect to this matter is January 15th. So maybe that was
4 kind of --

5 A Okay.

6 Q -- around the time that you became somewhat
7 involved.

8 So, we're going to mark as SEC Exhibit No. 1 --
9 this is an e-mail exchange between you and (b)(6),(b)(7)(C) The
10 top e-mail, 1/15/2010 12:17 p.m.

11 (Exhibit No. 1 was marked for
12 identification.)

13 MR. KOTZ: And so, it looks like on this e-mail
14 stream it was just forwarded to you. So you may not be that
15 familiar with it. But --

16 (The witness examined the document.)

17 THE WITNESS: Oh, I see. Okay, I am right. I
18 was --

19 MR. KOTZ: Yes, yes.

20 THE WITNESS: I'm not on any of these --

21 MR. KOTZ: You don't actually say anything. But
22 you --

23 THE WITNESS: And I --

24 MR. KOTZ: But it looks like something was
25 forwarded to you.

1 THE WITNESS: It -- yes.

2 MR. KOTZ: Perhaps the whole string.

3 THE WITNESS: It looks like maybe they wanted me to
4 participate in a meeting.

5 BY MR. KOTZ:

6 Q Oh, okay. All right. Do you remember anything
7 about concern that Goldman was providing copies to the
8 Senate -- I believe it Subcommittee on Investigations --
9 documents produced to the SEC? Do you remember that issue at
10 all? It sort of percolated at the very beginning, when you
11 became involved.

12 A Could I take a minute to read --

13 Q Please.

14 A -- read this e-mail?

15 MR. KOTZ: Please, please.

16 (The witness examined the document.)

17 THE WITNESS: I'm sorry, could you repeat the
18 question?

19 BY MR. KOTZ:

20 Q Do you remember some concern expressed that the
21 Senate permanent subcommittee on investigations was also
22 looking into Goldman, and Goldman was producing documents at
23 that time?

24 A It -- I don't -- I know that generally, yes.

25 Q Do you remember any communications about that?

1 Robert Khuzami says in the e-mail here on Friday, January 15,
2 2010 10:52 a.m., "I thought about this after our meeting last
3 night, and the inquiry may be one additional reason to
4 proceed with the case and Wells [REDACTED] on parallel tracks,
5 assuming that is the result we reach with [REDACTED]

6 Do you remember anything about communications with
7 respect to that subject?

8 A I don't remember particularly anything, no. As I
9 sit here, maybe I will -- as we go along, I will --

10 Q All right. Do you remember, generally, that the
11 case was put on the calendar in December, then taken off.
12 [REDACTED] testimony was taken. And then, the case was sort of
13 primed -- I'm sorry.

14 A I'm sorry. Is it -- it wasn't the case that the --
15 you know, I know you said that the case was put on in
16 December, maybe I even testified that it was. I'm unclear
17 whether it was put on a January calendar --

18 Q Yes, yes.

19 A -- or a December one.

20 Q Both.

21 A Okay.

22 Q Both. I mean, if you want, we can give you a
23 little bit of the background, based on the information we
24 have. That might help with context.

25 What we understand occurred --

1 A Okay.

2 Q -- is it was placed initially on the calendar on
3 December 17th, that it was taken off the calendar
4 specifically to take [REDACTED] testimony. [REDACTED]
5 [REDACTED] testimony was taken in early January, and then it was
6 immediately placed back on the calendar.

7 There was some discussion about when it should be
8 put on the calendar, and eventually it was put on the
9 calendar on January 28th. Then it was taken off the calendar
10 on January 28th and not filed until April. So, just to give
11 you kind of the context --

12 A Thank you.

13 Q So, sometimes folks have been confused about which
14 time we're talking about when we saying "taking off the
15 calendar." So, it looks like before you ever got in the case
16 it was put on the calendar and then taken off. And then,
17 very shortly after you became even tangentially involved in
18 the case, it was put on the calendar again and taken off
19 again.

20 A Okay, thank you.

21 Q But it looks to us -- well, let me actually show
22 you the next document. Let me show you the next document,
23 and that's SEC Exhibit No. 2. This is an e-mail exchange
24 between you and [REDACTED] The first e-mail, from [REDACTED] to
25 you, dated 1/22/2010 6:36 p.m., we're going to mark as SEC

1 Exhibit No. 2.

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

4 (The witness examined the document.)

5 BY MR. KOTZ:

6 Q Okay?

7 A Okay.

8 Q And so, do you recall that in this time frame there
9 is this e-mail from [REDACTED] to Lorin Reisner, [REDACTED]
10 and Cheryl Scarboro, Friday, January 22nd, where the
11 expectation -- or I guess the hope -- would be that the
12 Commission would authorize the action on the 28th, and that
13 it would be filed shortly thereafter?

14 And it looks like, according to this e-mail from
15 [REDACTED] that you and he had a conversation about the
16 timing of the action, "assuming we get authorized Thursday,
17 1/28. Unless people have a different view, our preference is
18 to file the complaint the morning of Friday, 1/29."

19 Do you remember, generally first, that the
20 assumption -- at least in this time frame -- was shortly
21 after the case was approved it would be filed?

22 A With the e-mail chain refreshing my recollection,
23 yes.

24 Q Okay. And do you remember this preference to file
25 the complain the morning of Friday, 1/29?

1 A I -- as I look at the e-mail chain, I think there
2 must have been some kind of discussion about when the precise
3 timing would be.

4 I know my own practice, historically, is not to
5 file cases on Fridays, if possible, but I might be a
6 dinosaur, with the -- you know, where I come from, where you
7 don't want to, because most of the news -- you figure
8 Saturday newspapers are not going to be as widely read. And
9 that -- I can't actually, as I'm -- let me read this one more
10 time --

11 Q Sure.

12 A -- because now my message here saying I can't
13 recall now, but wasn't there a reason we couldn't wait until
14 Monday --

15 Q It says, "Not really."

16 A But (b)(6),(b)(7) in the prior e-mail to me saying, "Unless
17 people have a different view, our preference is to file our
18 complaint the morning of Friday, 1/29," so he is saying file
19 it 1/29, and I am -- I don't exactly understand why I'm
20 asking that question.

21 Q Well, maybe it's further -- you know, to the extent
22 there would be a debate whether to file it Friday or Monday,
23 if there was some other factor involved, some other reason
24 you couldn't wait until Monday, then the decision would be
25 easy.

1 A Oh, right.

2 Q Because you thought maybe that was the case, and it
3 looks like he's saying no, it was just a question of whether,
4 given the new 24/7 news cycle, the kind of traditional view
5 on Friday is irrelevant.

6 A That could be the case.

7 MR. KOTZ: All right, all right. Let's move on to
8 the next document. This is dated 1/27/2010 12:25 p.m. It
9 starts with an e-mail from Cheryl Scarboro to [REDACTED]
10 We're going to mark it as SEC Exhibit No. 3.

11 (Exhibit No. 3 was marked for
12 identification.)

13 (The witness examined the document.)

14 THE WITNESS: I see it.

15 BY MR. KOTZ:

16 Q Okay. And so, some of the testimony we got on this
17 with respect to the January decision to pull the matter from
18 the calendar was that some of the commissioners expressed
19 some hesitation, particularly about an issue that I guess was
20 going on at the time. There was sort of a debate internally,
21 whether to bring the entire case at one time, or file at this
22 point in January and then continue to see whether there was a
23 case against [REDACTED] and then potentially bring the case
24 against [REDACTED] at a later date.

25 And from what we hear, there were some

1 commissioners who felt that the whole case should be brought
2 at the same time, and there was some discussion, and because
3 of that the matter was pulled from the calendar.

4 Does that coincide with your recollection? What do
5 you recollect about that?

6 A When I -- I recollect that there was some of that.
7 There was also -- and I don't know exactly how it factors
8 into the decision to pull the matter from the calendar. But
9 I believe that there were some additional steps as to the
10 ABACUS victims --

11 Q Right.

12 A -- that Rob and Lorin wanted the team to nail down.

13 And, keep in mind, this was at a very early point
14 for me, where I didn't know the case that well, and I knew
15 (b)(6),(b)(7)(C) and people like (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) were much
16 close to this. And I think that was a factor, I recall. So
17 maybe this (b)(6),(b)(7)(C) issue, as well as this getting additional
18 hard evidence locking the victims in, that this was a
19 material matter to them.

20 Q Okay. And so, you remember -- in addition to that
21 specific issue, you remember also hearing some feedback from
22 commissioners on this (b)(6),(b)(7)(C) issue?

23 A I don't remember that. I thought this was more
24 enforcement's --

25 Q Okay.

1 A -- issue. But I well may not have been privy to
2 discussions that other people in the division were having
3 with the commissioners.

4 Q Do you --

5 A I --

6 Q Okay. Do you remember anything about the question
7 of whether to file the case now against Goldman and maybe --
8 and then continue to investigate on (b)(6),(b)(7) or whether the
9 appropriate approach would be to do them all together?

10 A I think there were discussions. And part of that
11 is -- I'm saying that because I can see the e-mail chain you
12 had shown me --

13 Q Right.

14 A -- indicating that that was certainly percolating,
15 and that was -- yes. I -- that was an issue that was being
16 discussed.

17 Q Did you have an opinion on that? Are there pros
18 and cons to either bringing the cases separately or together?

19 A I think I have done it both ways at times, and
20 it's -- so it's sort of a case-by-case decision. So I don't
21 know if, in this case, I sort of formed a strong opinion.

22 And again, I hate to keep going back to it, but I
23 just -- I still had my existing caseload --

24 Q Sure.

25 A -- I had just been appointed to be the head of this

1 unit, and I was figuring out plans. And I don't feel like at
2 that point I maybe was the best person to be making that kind
3 of decision.

4 MR. KOTZ: Okay, great. Let's move on to the next
5 document. This is an e-mail from [REDACTED] to you, February
6 5, 2010, 12:45 p.m., and we're going to mark this as SEC
7 Exhibit No. 4.

8 (Exhibit No. 4 was marked for
9 identification.)

10 (The witness examined the document.)

11 THE WITNESS: I see that.

12 BY MR. KOTZ:

13 Q Do you recall this concern about reporters starting
14 to learn certain information?

15 A I generally remember the -- yes, that there were --
16 there seemed to be some information out there, generally at
17 least, about some of our -- these kind of CDO investigations.

18 Q And what was the concern with the fact that this
19 information was out there?

20 A Well, you never want the -- we conduct our
21 investigations on a non-public basis, and you don't want
22 information about your investigations out in the public, just
23 a generalized concern.

24 Q Why wouldn't you want your information out in the
25 public?

1 A Because you hadn't yet -- a fairness type of a
2 concern. We do our investigations the way we do them
3 because, until we file a case and the Commission approves it
4 and then we file it, we can't say anybody has done anything
5 wrong. And reporting about somebody potentially doing
6 something wrong, maybe they did and maybe they didn't.

7 And then, of course, the other concern -- which
8 could be out there also -- is you most effectively can
9 investigate when there is less information out there about
10 what we're doing.

11 MR. KOTZ: Okay. All right, let me move on to the
12 next document, which we're going to mark as SEC Exhibit No.
13 5. It's an e-mail exchange that starts with an e-mail from
14 you to [REDACTED] 3/4/2010, 4:37 p.m.

15 (Exhibit No. 5 was marked for
16 identification.)

17 (The witness examined the document.)

18 THE WITNESS: Okay, I see that.

19 BY MR. KOTZ:

20 Q All right. Do you recall that [REDACTED] was
21 detailed over to the Senate Permanent Subcommittee on
22 Investigations?

23 A Yes.

24 Q Okay. And did you have a conversation with her
25 about structured products?

1 A I don't recall, but I'm -- in looking at this
2 e-mail, I think I at least would have gotten to her.

3 And I don't know whether I'm the one who pulled it
4 together -- I had obtained some reading materials when I
5 became unit chief, because I wasn't necessarily super well
6 versed in all aspects of the unit I was going to be handling.
7 And so I had asked various people for some reading materials.
8 And so I had some of those.

9 And it looks like -- and for some reason I feel
10 like -- potentially I asked one of the people in my AD group
11 to get the materials to her.

12 Q Okay.

13 A But beyond that, I don't remember talking to her
14 about -- you know, more generally, about the market for
15 structured products.

16 Q Okay. So you don't think you talked to her at all,
17 in the end, about this matter?

18 A A --

19 Q It was just a matter of providing materials?

20 A I don't remember talking to her about the Goldman
21 ABACUS matter. That I -- I wouldn't swear. I don't recall
22 having had that kind of conversation with her when she was
23 going over there.

24 Q Okay. So, do you recall any conversation with

25 [REDACTED]

1 A Regarding --

2 Q Well, she, I guess, was trying to get up to speed
3 on some of these issues, because she was going over to the
4 Senate Permanent Subcommittee on Investigations, and they
5 were examining structured products, and so she seemed like
6 she wanted to learn about that. I guess she was trying to
7 get some information.

8 A Yes, I --

9 Q You say, "Just left you a message. I will be back
10 in the office tomorrow."

11 A The "Just left you a message," I think the message
12 was about the fact that I had gathered various articles and
13 interesting materials on the CDO markets and helpful kinds of
14 reading materials. I think that is what I was -- had left a
15 message, and what I got back to her regarding.

16 Q Okay. In those materials, was there any reference
17 to the Goldman ABACUS case?

18 A I would be very surprised if there was, because
19 these -- some of these were just very basic articles about
20 how CDOs work, how the waterfall works, the different levels,
21 the different ratings, that kind of thing, more generally
22 about the CDO world, rather than about particular
23 investigations.

24 Q Do you think you would have discussed an ongoing
25 investigation with [REDACTED]

1 A Would I? I don't remember, but would I have felt
2 comfortable?

3 Q Right.

4 A I probably would have, while she was still wearing
5 her -- she was still in the building, still wearing her SEC
6 hat at that time. I don't think --

7 Q Right.

8 A -- major red flags would have gone off for me.

9 Q But after she -- even -- she was detailed to the
10 Senate Permanent Subcommittee on Investigations, even though
11 she was still officially an SEC employee. At that point
12 would you not have been comfortable discussing the Goldman
13 ABACUS case or another ongoing case with her?

14 A I think I would have felt reasonably comfortable
15 that she is bound by the same kind of confidentiality
16 obligations as SEC staff is. I don't know, when she's
17 wearing the PSI hat, what those obligations are, but my sense
18 is that they are sort of working in the same direction as we
19 are.

20 MR. KOTZ: Okay. All right, let's move on to the
21 next document we're going to mark as SEC Exhibit No. 6. It's
22 an e-mail exchange, starts with an e-mail from you to [REDACTED]
23 [REDACTED] and Lorin Reisner, 3/22/2010, 7:36 p.m.

24 (Exhibit No. 6 was marked for
25 identification.)

1 (The witness examined the document.)

2 THE WITNESS: Yes, I see that.

3 MR. KOTZ: All right. And let me actually show you
4 the next document that goes with it we're going to mark as
5 SEC Exhibit No. 7, which is an e-mail exchange that starts
6 with an e-mail from [REDACTED] to Lorin Reisner and you,
7 3/22/2010, 7:38 p.m.

8 (Exhibit No. 7 was marked for
9 identification.)

10 BY MR. KOTZ:

11 Q And as you can see, this is sort of a further
12 e-mail communication where it looks like the question that
13 you asked initially is answered.

14 A Okay, I see that.

15 Q Okay. Do you remember this issue, where there was
16 a discussion about whether to reach out to this Hill staffer
17 who was asking about the ABACUS transaction?

18 A I generally do remember this, yes.

19 Q What do you remember about it?

20 A That we had heard from -- and I'm piecing some of
21 this together because I'm looking at the e-mails here -- that
22 we had learned that there was some interest from the Hill in
23 something that seemed right on point to what we were
24 investigating.

25 And I don't know when this was relative to

1 calendaring our item, but I do know April 14th was a date we
2 were sort of targeting to have the Commission consider it
3 from well before we even got the memo up. I know it's [REDACTED]
4 [REDACTED] and so I just remember April 14th.

5 So, I guess there had been delays in getting this
6 thing over the finish line, and any time you bring in a third
7 party it can potentially muck up what you're doing. We just,
8 I think, wanted to get this thing before the Commission and
9 get it considered.

10 Q You say, "I'm tending to agree with your
11 inclination not to reach out to them." Why did you think
12 that you shouldn't reach out to them?

13 A I think for the reason I mentioned, that it could
14 -- we were going to be having the Commission consider our
15 recommendation in mid-April. We seemed to be on track to do
16 that. And once you involve another party, you never know how
17 that might impact your ability to actually go forward with
18 your recommendation on the time frame that you were
19 considering.

20 Q Let me --

21 A That's generally what I think --

22 Q Okay.

23 A -- was at least some of my thinking.

24 MR. KOTZ: All right. Let me show you the next
25 document, also on the same subject, we're going to mark as

1 SEC Exhibit No. 8. It's an e-mail exchange that starts with
2 an e-mail from [REDACTED] to Lorin Reisner with a copy
3 to Joan McKown and you, 4/7/2010, 2:04 p.m.

4 (Exhibit No. 8 was marked for
5 identification.)

6 THE WITNESS: I'm just looking at the -- a second
7 page of this. Is this -- it's in different type face, but is
8 this sort of a continuation?

9 [REDACTED]: Yes, I believe -- yes, despite that,
10 this is all the same --

11 THE WITNESS: This is all the same --

12 MR. KOTZ: Yes.

13 THE WITNESS: -- chain? Okay.

14 (The witness examined the document.)

15 THE WITNESS: Yes.

16 BY MR. KOTZ:

17 Q Okay. And so, in [REDACTED] e-mail at the
18 top of the page on 4/7/2010, 2:04 p.m., she says, "Still on
19 the table is the question of whether and/or how much
20 information about pending enforcement investigations should
21 be disclosed to PSI to aid them in their inquiry." She says,
22 "I recommend this should be decided as early as possible so
23 that enforcement has the opportunity to carefully consider.
24 Discuss with GC in the chairman's office any potential
25 ramifications of a particular approach."

1 Do you know how that was decided?

2 A I don't know in particular, other than I believe --
3 because I was part of certain briefings with PSI at some
4 point, where we gave them -- we provided information
5 regarding our investigation.

6 Q Was that before or after the SEC filed its case
7 against Goldman?

8 A I'm going to -- I could probably look at my
9 calendar, but I think it would have been after, would be my
10 sense.

11 Q So you don't recall the SEC providing any
12 information to PSI about the Goldman investigation before the
13 case was filed?

14 A I -- as I sit here, I don't recall whether we
15 provided any. When you say, "any," I just don't know if
16 there were any conversations. I think that that briefing,
17 more fulsome kind of briefing, was after -- I think.

18 Q Okay. All right. And it says here that you and
19 [REDACTED] had spoken with [REDACTED] regarding "our
20 options in responding to the PSI." Do you remember that
21 meeting or conversation?

22 A I was actually going to ask you who [REDACTED]
23 was.

24 Q In the general counsel's office. [REDACTED]

25 [REDACTED] David Becker.

1 A I feel like it was a telephone conversation where I
2 was in (b)(6),(b)(7)(C) office, because I think what happened --
3 (b)(6),(b)(7)(C) is down the hallway from me, I know (b)(6),(b)(7)(C) from
4 my chief counsel days, and I had gone to, in some way,
5 consult with her regarding communicating information with
6 PSI. And somehow, maybe we had talked a bit and then had
7 called up somebody in GC.

8 And since I don't know (b)(6),(b)(7)(C) I'm feeling
9 like that maybe was somebody (b)(6),(b)(7)(C) knew had been dealing
10 with this issue in various contexts, not just the ABACUS one.

11 Q Okay. References in this e-mail that (b)(6),(b)(7)(C)
12 sends -- "was confident that we would not disclose anything
13 regarding the investigation without first receiving a formal
14 request from the PSI, then having some time to evaluate the
15 best approach."

16 Do you know if you ever got a formal request from
17 the PSI?

18 A I don't know whether that ever came in.

19 Q And the first e-mail from (b)(6),(b)(7)(C)
20 referenced the fact that there was a hearing going to be held
21 on April 27th. But by this point, was it pretty clear that
22 the SEC would file its case before that, so there wasn't
23 concern, at least in that respect?

24 A This is April 7th. We -- yes, just knowing the
25 timing, the meeting was April 14th -- yes, it was clear

1 whatever the timing was going to be on filing, it would be
2 before then, assuming the Commission approved.

3 MR. KOTZ: Right, right. All right, let's move
4 forward. I'll show you the next e-mail string, which starts
5 with an e-mail from [REDACTED] to [REDACTED] 4/13/2010,
6 11:03 p.m. We're going to mark as SEC Exhibit No. 9.

7 (Exhibit No. 9 was marked for
8 identification.)

9 (The witness examined the document.)

10 THE WITNESS: Okay, I see that.

11 BY MR. KOTZ:

12 Q All right. And so, is it your recollection that
13 April 14th was set some time before as the date that the
14 Commission would look at and vote on the Goldman case?

15 A I feel like that was -- that April 14th date was
16 targeted by us several weeks before, and I think it had to do
17 with the schedule of the commissioners.

18 Q Right, okay. And so, then, as you've seen the
19 e-mail exchange at the bottom of the page from [REDACTED] on
20 Thursday, April 8, 2010, 6:47 p.m., the discussion is,
21 "Assuming Commission approval, we would like to FedEx the
22 signed original complaint to [REDACTED] in New York City
23 that evening, for filing either the afternoon of Wednesday,
24 April 14th or Monday of (sic) Thursday, April 15th."

25 And then, you could see at the top of the page the

1 e-mail from [REDACTED] to [REDACTED] 4/13/2010 at 11:03
2 p.m. saying, "FYI, let's discuss filing mechanics tomorrow."

3 So, do you recall that, at least initially, the
4 intention was to file the complaint either Wednesday, after
5 the Commission approved, or the morning of Thursday, April
6 15th?

7 A I generally remember -- I can't say I remember
8 about the Wednesday afternoon, because that was the date we
9 were going to be getting authority -- it seems like it would
10 be rather tight to get all this done up in New York City. I
11 do remember the 13th as being in play for filing, yes.

12 Q The 14th? Wait, Wednesday is the 14th -- the 15th?

13 A The 15th. What -- I'm not sure what I --

14 Q You said the 13th. So you recall Thursday, April
15 15th, being the day targeted for filing?

16 A As one of the potential days. And, you know, it is
17 something -- would be generally my practice, which -- would,
18 you know, it would be filing on -- if you get approval on a
19 Wednesday, generally you try to get it done quickly, and that
20 would be Thursday.

21 MR. KOTZ: Okay, all right. Let me show you the
22 next two documents which sort of go together. We're going to
23 mark the first one as SEC Exhibit No. 10. It starts with an
24 e-mail from [REDACTED] to you, 4/14/2010, 10:11 p.m., and
25 then another e-mail from [REDACTED] to you and [REDACTED]

1 4/14/2010, 11:06 p.m., which we're going to mark as SEC
2 Exhibit No. 11.

3 (SEC Exhibit Nos. 10 and 11
4 were marked for identification.)

5 MR. KOTZ: Okay, so there -- the first several
6 e-mails are the same, and then there is small differences on
7 the top.

8 THE WITNESS: So this first one was --

9 MR. KOTZ: The same one as before, right.

10 THE WITNESS: The same -- okay.

11 MR. KOTZ: Right.

12 THE WITNESS: The same as before.

13 MR. KOTZ: So this is -- yes, it's continuing along
14 in the chain.

15 (The witness examined the document.)

16 THE WITNESS: Okay. So, I ask (b)(6),(b)(7)(C) "How did we
17 land on Friday?"

18 MR. KOTZ: Right.

19 THE WITNESS: He responds that -- this is the night
20 of -- we got authority -- he says, "No idea."

21 BY MR. KOTZ:

22 Q And then you ask -- this time you ask (b)(6),(b)(7)(C) and

23 (b)(6),(b)(7)(C) But you're really asking (b)(6),(b)(7)(C) I guess, "Whose idea
24 was it to file Friday? Thanks, Ken." And the answer is,
25 "Front office. Just don't know their thinking."

1 A I see that, yes.

2 Q So, do you recall that, while initially the thought
3 would be to file the Goldman case on Thursday, the day after
4 the Commission approved it, then the decision was changed to
5 file it on Friday?

6 A Generally I remember some of these discussions, I
7 just don't know whether a final decision as to when we were
8 going to be filing had been made. I think we were talking
9 about it, and I know my preference, as I had mentioned
10 earlier, is generally not to file on Friday. So, if you get
11 authority on Wednesday, assuming you can get all the
12 mechanics done, it's been my practice to file Thursday.

13 However, there were other senior people, senior to
14 me, involved in this. And, ultimately, the date that we file
15 isn't going to be my final decision. This is the kind of
16 case -- I do -- have done more routine cases over the years,
17 where probably, I'm sure, senior people aren't as involved in
18 the timing. It's just generally acknowledged you get it done
19 when you can, and timing isn't as critical.

20 But here, it looks like I was under the -- at least
21 wanted to, or thought we might be filing this on Thursday,
22 and then I -- it came to my attention that it was going to be
23 on Friday, and I was just trying to find out how that had
24 been -- how that decision had been made.

25 Q And so, [REDACTED] responds, "Front office." Who

1 was --

2 A I think it's -- oh, yes, you're right.

3 Q Well, he responds in both e-mails, actually.

4 A Oh, I see. Okay. I --

5 Q One time at 10:11 p.m. he says, "No idea." And
6 then at 11:06 p.m. he says, "Front office, just don't know
7 their thinking." They're not necessarily inconsistent.

8 A I got it. Yes.

9 Q And so, when he -- [REDACTED] -- refers to "front
10 office," who is he referring to?

11 A I would -- since I technically, since getting this
12 appointment, would be considered part of the front office
13 now, I think front office refers to senior officers. I would
14 think he is referring to Rob and/or Lorin.

15 Q Okay. And did you understand what the thinking was
16 of the front office, why that decision was made?

17 A Not at the time of these e-mails.

18 Q Did you learn that later on?

19 A Well, I don't know if I, you know, have all of the
20 basis for their thinking, but I know there were a series of
21 things happening on that Friday, and it was going to be
22 incorporated within these other events. I think he was going
23 to be at Tulane, and there was going to be an Inspector
24 General's report coming out that day, too.

25 Q And --

1 A And I think it was tied in with that.

2 Q How was it tied in with that, do you know?

3 A I don't know exactly how it was tied in. I saw --
4 there was -- and we even joked about how there was sort of
5 this military precision to -- and I think there may even be
6 some e-mails, maybe you will get to those -- about when the
7 different filings were going to be made, and when Rob was
8 going to be on some kind of panel, or giving some kind of a
9 speech, and when the press calls were going to be.

10 And I think incorporated in that was the Stanford
11 IG report. And then there may even have been another case or
12 two that was being -- that was occurring that day.

13 Q Did you understand that there was an interest in
14 having the Goldman case go out the same day that the Stanford
15 report went out?

16 A I don't remember anyone telling me that, or saying
17 that to me, but I think that's reasonable to conclude, just
18 based on the timing.

19 Q Why would that be, do you know?

20 A It would be a surmise for me to answer that.

21 Q What would the surmise be?

22 A It -- could we go off the record?

23 MR. KOTZ: Sure.

24 (A brief recess was taken.)

25 BY MR. KOTZ:

1 Q Do you remember anything about a Quadrangle matter
2 also coming out around the same time that they filed on
3 Thursday?

4 A That may -- I know that there was at least another
5 matter or two that may be going public at around that time,
6 and that may have been the matter.

7 Q But you didn't participate in the decision to file
8 the Goldman case on Friday?

9 A That's correct.

10 Q And you didn't -- you weren't specifically told by
11 those who did make that decision why they made that decision?

12 A That's correct.

13 BY (b)(6),(b)(7)(C) :

14 Q And did you make any argument or argue any
15 suggestion that the case either, you know, be put out on
16 Thursday or pushed off until Monday, instead of doing it on
17 Friday, in light of learning that it was going to be
18 scheduled for Friday?

19 A I don't think I gave any feedback like that. There
20 had been a decision made to file Friday, and we were going to
21 get the case filed Friday.

22 MR. KOTZ: Okay. All right, let me show you the
23 next document we're going to mark as SEC Exhibit No. 12.

24 It's an e-mail exchange which starts with an e-mail from (b)(6),(b)(7)(C)
25 (b)(6),(b)(7)(C) to you, 4/15/2010, 8:12 a.m.

1 (Exhibit No. 12 was marked for
2 identification.)

3 MR. KOTZ: Again, it's the same beginning.

4 (The witness examined the document.)

5 THE WITNESS: I see this, yes.

6 BY MR. KOTZ:

7 Q Okay. Do you recall a conversation with (b)(6),(b)(7)
(C)

8 (b)(6),(b)(7)(C)

9 A I don't recall the conversation, but I see I must
10 have had one.

11 Q Well, you said, "We" -- (b)(6),(b)(7)
(C) are you concerned we
12 will lose press by filing Friday? Maybe that's the point,
13 given the litigation risk." What did you mean by that,
14 "that's the point, given the litigation risk?"

15 A What I meant was that this was a tough case that we
16 were going to be filing against Goldman, and clearly a
17 somewhat high-profile matter, although I didn't realize quite
18 how high profile it was going to be until afterwards.

19 And you don't want -- there is a risk when you go
20 out in a very public way, where everyone is paying attention
21 to a case you're filing. If you may ultimately lose that
22 case, then it's an extra bad thing. It's bad enough to lose
23 a case, but if it's a real high profile case, it could make
24 the Agency look ineffective, and it's not good for the
25 enforcement program.

1 So, to some extent -- I think what I'm getting at
2 is by -- if you could tamp down the press, that maybe wasn't
3 an entirely bad thing.

4 Q Do you understand, either based on your
5 conversation with [REDACTED] or otherwise, that that was part of
6 the consideration into the decision to file the case on
7 Friday?

8 A I don't -- other than me saying it here, I don't
9 think anyone ever said that to me. It's -- this looks like
10 I'm trying to figure out why we decided to file Friday
11 instead of Thursday, when probably my expectation would
12 have -- and the way I would have conducted things in the
13 past -- we would have filed. And so that was something I was
14 thinking was a possible explanation.

15 Q Do you remember [REDACTED] having any thoughts on
16 this issue? He says, "Please call me."

17 A Not on the litigation risk point. I think he
18 probably would have -- and I'm not remembering this
19 conversation, but it seems like he would have told me some of
20 what I came to learn, which is that we're filing in this very
21 regimented way on Friday with a particular schedule.

22 MR. KOTZ: All right, let me go back to this
23 document we're going to mark as SEC Exhibit No. 13, an e-mail
24 exchange that starts with an e-mail from Myron Marlin to
25 Stephen Cohen, [REDACTED] and Didem Niscanci at 4/14/2010,

1 6:08 p.m.

2 (Exhibit No. 13 was marked for
3 identification.)

4 MR. KOTZ: You are on the bottom e-mail.

5 (The witness examined the document.)

6 THE WITNESS: Yes.

7 BY MR. KOTZ:

8 Q Do you remember learning that a reporter knew that
9 the recommendation for the Goldman action was on the
10 calendar?

11 A I remember Scott Friestad telling me this.

12 Q Do you remember which reporter it was?

13 A I'm going to think it was Josh Balou from
14 Bloomberg.

15 Q Okay. Do you know if anything was done, as a
16 result? Was there any follow-up?

17 A No, I don't recall any follow-up with that.

18 Q Do you know what the purpose of Scott providing
19 this information -- just a heads up?

20 A Yes, I think it's -- probably if you went through
21 my e-mail there would be times when a reporter would have
22 called me with some piece of information, and you would just
23 want to let some other people know who -- you know, who may
24 be getting those kind of calls.

25 Q So that maybe, you know, the reporter might trick

1 the person into revealing something, or whatever?

2 A I suppose that could factor into it.

3 Q Did you get any calls from reporters?

4 A Before -- about this issue?

5 Q Right, before the case was filed against Goldman.

6 A That they knew would have been on -- I don't
7 remember getting such a call.

8 Q Are you aware of anyone who disclosed non-public
9 information about the Goldman case to any reporters?

10 A I do not.

11 MR. KOTZ: All right. All right, let me know you
12 the next document we're going to mark as SEC Exhibit No. 14,
13 an e-mail exchange that starts with an e-mail from Lorin
14 Reisner to [REDACTED] Myron Marlin, and you, 4/15/2010, 7:42
15 p.m.

16 (Exhibit No. 14 was marked for
17 identification.)

18 THE WITNESS: Should I read from the beginning of
19 this chain?

20 MR. KOTZ: I don't know that you need to. Maybe I
21 can ask the question first, and then you can decide if you
22 want to --

23 THE WITNESS: How about if I just take a minute,
24 just to --

25 MR. KOTZ: Sure.

1 THE WITNESS: -- familiarize -- okay. So it's
2 Thursday at 4:57.

3 (The witness examined the document.)

4 THE WITNESS: Okay, I've just generally
5 familiarized myself with this. So this last e-mail is at
6 7:42 on the 15th.

7 MR. KOTZ: Right.

8 THE WITNESS: Okay.

9 BY MR. KOTZ:

10 Q Do you remember a conference call, 6:00, the
11 evening before the filing -- I guess Thursday -- about the
12 logistics of the next day's activity?

13 A I definitely remember a meeting, and I feel like it
14 was in Rob's office -- Rob Khuzami's office -- at some point
15 about the logistics. I don't even know if Rob was there.
16 But I don't know if it was at 6:00, but there definitely was
17 one, and I know Myron Marlin was -- I feel like he was in
18 attendance, because he was the one who had -- was very
19 regimented on the scheduling.

20 Q Who was leading the meeting? Who was instructing
21 what the logistics would be?

22 A I don't specifically remember, but I feel like
23 Myron played a significant part in sort of walking us through
24 what the sequence was going to be, and what the timing was
25 going to be.

1 Q Was there any indication by Myron or anyone else in
2 that meeting or on that conference call as to why things were
3 decided on particular days to be filed?

4 A No, I don't remember him saying why we were doing
5 it on that Friday.

6 Q Was there any discussion about what the
7 expectations were of press coverage for Goldman, or the
8 Stanford Report, or anything else?

9 A I don't remember him saying that.

10 Q Okay. Lorin Reisner, at the top of the page, sends
11 an e-mail to you, [REDACTED] and Myron Marlin, 7:42 p.m.,
12 where he says, "This does not work for a variety of reasons I
13 can discuss," and it refers to [REDACTED] e-mail, which he says,
14 "But I want to make sure Lorin is cool with that," and I
15 believe that refers to the Goldman talking points.

16 A Yes.

17 Q Do you remember what Lorin's concerns were with the
18 talking points?

19 A No, I don't. I -- if I saw his -- the revised
20 version I could probably surmise, but I feel like they were
21 substantive about -- and I know Lorin had done some good
22 edits, helpful edits, of the complaint. And I can't remember
23 if it was on that Wednesday or that Thursday before the
24 filing, but I know he, at a late point in the process, had
25 taken on a greater role.

1 And so, it may have been that the talking points
2 were more based on an earlier version of the complaint, when
3 [REDACTED] had been putting together the talking points, probably
4 based on the complaint as it had been drafted earlier.

5 And then, Lorin, I know, made a fair number of
6 edits to the complaint very late in the process. And so he
7 may have -- having seen what edits were being made to the
8 complaint, may have thought, "Oh, these talking points need
9 to be made more consistent with the way the complaint now
10 reads."

11 I am surmising a little bit, but that's what I
12 remember.

13 MR. KOTZ: Okay, okay. All right, let's go on to
14 the next document. SEC Exhibit No. 15 starts off with an
15 e-mail from Lorin Reisner to [REDACTED] and Robert Khuzami,
16 Friday, April 16, 2010, at 9:53 a.m.

17 (Exhibit No. 15 was marked for
18 identification.)

19 (The witness examined the document.)

20 THE WITNESS: Okay, I see that.

21 BY MR. KOTZ:

22 Q Do you recall that, notwithstanding Myron Marlin's
23 very regimented, almost minute-by-minute timing of all the
24 activities on Friday, that there was a hiccup in the filing
25 of the complaint, and it didn't get filed exactly the time

1 that it was intended to?

2 A Yes.

3 Q Okay. Do you recall the hiccup having to do with
4 the fact that (b)(6),(b)(7)(C) was filing it in New York, but
5 that they wouldn't let him sign his name?

6 A There was something with the signature.

7 Q Okay.

8 A I can't remember exactly what it was.

9 Q Do you know if the fact that the schedule was
10 altered, did that have any impact on whatever plans were on
11 that day?

12 A I think that there was enough fat built into the
13 schedule that we were able to get the proper complaint and
14 get it filed, such that the schedule generally still worked.

15 Q Were you surprised at how much press coverage there
16 was of the Goldman case on that Friday?

17 A Yes.

18 MR. KOTZ: All right, let me show you the next
19 document. SEC Exhibit No. 16 starts with an e-mail from (b)(6),
20 (b)(7)(C) to you, 4/16/2010, 12:50 p.m.

21 (Exhibit No. 16 was marked for
22 identification.)

23 (The witness examined the document.)

24 THE WITNESS: Okay, I see that.

25 BY MR. KOTZ:

1 Q Do you remember insider trading review related to
2 price volume movements in Goldman Sachs's stock related to
3 the filing?

4 A I do remember it got some attention, and I think
5 even early on maybe it was thought that potentially I could
6 be -- or I -- the unit, or somehow I would be involved in
7 looking at that.

8 And then I think, very early on, we concluded --
9 and I don't remember exactly who it was -- just concluded,
10 well, we were the people who had worked on the matter, so it
11 would be better handled by other people. And I feel like
12 (b)(6),(b)(7)(C) from the office of market intelligence -- and
13 he is on here -- took a role in this insider trading-type
14 review.

15 Q So your unit didn't open up any inquiries or
16 investigations regarding insider trading relating to the day
17 of the Goldman announcement of the filing?

18 A Correct.

19 Q Okay, but you don't know whether other offices
20 within the SEC did?

21 A I don't. I don't know -- I see there is a -- New
22 York Stock Exchange had some involvement. But I'm trying to
23 now remember if I ever learned beyond (b)(6),(b)(7)(C) who I
24 think had some involvement, whether there were -- I know he's
25 not an attorney -- whether there were any investigative

1 attorneys assigned to that.

2 And I -- actually, as I sit here now, I don't know
3 that.

4 Q Do you recall any allegations that SEC employees
5 may have tipped folks outside of the SEC about the filing of
6 the Goldman Sachs case?

7 A No, I don't remember those allegations.

8 MR. KOTZ: All right. I will show you the next
9 document we're going to mark as SEC Exhibit No. 17. It's an
10 e-mail exchange which starts with an e-mail from Stephen
11 Cohen to Myron Marlin, 4/18/2010, 3:38 p.m.

12 (Exhibit No. 17 was marked for
13 identification.)

14 (The witness examined the document.)

15 THE WITNESS: Okay, I see this, yes.

16 BY MR. KOTZ:

17 Q Okay. Do you recall having a conversation with
18 Kara Scannel?

19 A I think that she was -- yes. I don't remember all
20 the particulars, other than she was sort of in this hounding
21 kind of mode, trying to get information about this.

22 Q Well, what kind of information was she trying to
23 hound you for?

24 A To confirm -- to talk about -- things that she
25 knows I can't talk to her about, but about the Commission

1 meeting and the vote, which she seemed to -- I feel like when
2 she -- by the time she called me, she was saying that she had
3 information that it was a 3-2 vote, and was trying to get
4 some kind of confirmation regarding that, and I was not going
5 to give that to her.

6 Q Were you surprised that she knew it was a 3-2 vote?

7 A Yes.

8 Q Do you have any idea how she got that information?

9 A No idea.

10 Q Do you remember her also saying something about one
11 of the Republicans being unhappy because Goldman was not
12 given the chance to settle?

13 A I can't remember her saying those words to me, but
14 I know, in sending an e-mail to my bosses, as I did here, if
15 I wrote it here, she said it to me.

16 Q Do you know if that was true, that one of the
17 Republicans was unhappy because Goldman was not given the
18 chance to settle?

19 A I don't remember that being -- there were some of
20 the commissioners who were unhappy with the case. I don't
21 remember that being one of the issues.

22 Q But is it your understanding that, traditionally,
23 in the enforcement division, when the enforcement staff was
24 bringing a case against an entity, you know, there is the
25 Wells process, there could be potential settlement

1 negotiations, you know, in the ordinary course, but that it
2 was sort of traditionally the policy that after the
3 Commission had approved the decision to file an action, a
4 call would be made to the entity, or the entity's lawyer,
5 saying, "The Commission just approved it, we're going
6 forward, you have 48 hours, or X number of hours, to come up
7 with some resolution. But -- just to let you know."

8 A I think that is many people's practice. It
9 historically has been mine, as well.

10 Q What is the reason for that practice?

11 A It's -- well, let me think about it. I mean, one
12 of the reasons is it's a courtesy the other side -- well, I
13 guess in a litigated matter maybe it's different. I'm
14 thinking more -- in a settled matter, it's a courtesy.
15 They've submitted a settlement offer, they know that it's
16 being submitted to the Commission, it's the right thing to
17 do, to let them know, and to give them some sense as to the
18 timing.

19 In a litigated matter, the main reason why you
20 might want to do it is if you think that there can be a
21 settlement at the 11th hour.

22 Q And generally, is it your view that settlement is
23 sort of always preferred, in terms of resources? Obviously,
24 it has to be a settlement that's on good terms and favorable.
25 But, all other things being equal, it's better to settle than

1 to litigate?

2 A I think that is -- from a programmatic standpoint,
3 we need to enter into a certain number -- a significant
4 number of settlements, because you don't want to be
5 litigating everything, assuming that you can achieve the
6 deterrent's goals of the case.

7 Q Okay. So you agree, generally, with that statement
8 I made, that all other things being equal, assuming that
9 there is a good, favorable settlement terms, it's better to
10 settle in a particular case than to litigate? Just
11 generally?

12 A Generally, you always look for opportunities to
13 settle, yes.

14 Q Okay. And is it also the reason for this policy in
15 a litigated case that once the Commission has approved a case
16 going forward, it's at a much more serious level?

17 So, you know, you can always have a situation where
18 a company will try to argue that you don't bring the case at
19 all, and so they may always think, "Well, we're going to
20 convince them not to bring the case." And if you come back
21 to them and say, "The Commission has approved it," at that
22 point it's pretty clear you're going to bring the case. So
23 there is a value in that, do you think?

24 A One thing -- you did say something about -- you
25 referred to policy.

1 Q Practice.

2 A And --

3 Q Your practice.

4 A Yes --

5 Q I am asking about -- you know, why is it your
6 practice?

7 A I think that there are, and I have had matters
8 where the people you're considering bringing the case
9 against, the recommendation, they want to push every
10 available -- pursue every available avenue to get the case
11 totally not authorized. So they don't want to give any hint
12 that there is any weakness on their -- at that point.

13 But after the Commission authorizes the case, there
14 is sometimes an opportunity, even with somebody who has told
15 you no, that it could happen. And --

16 Q When you say, "it could happen," you mean settle?

17 A Yes.

18 Q Are you aware of whether there was a specific
19 decision in the Goldman ABACUS case not to give that kind of
20 heads-up that we talked about after the Commission approved
21 the recommendation to go forward?

22 A There -- I will say, generally, yes. There was --
23 although it's an issue that I discussed.

24 Q Okay. Tell me about the discussions.

25 A I think I was having discussions with (b)(6),(b)(7)(C)

1 about whether to give the company Goldman a heads up that we
2 were authorized, and that we were filing prior to filing the
3 action.

4 Q What was that -- what happened in that discussion?

5 A I feel like I was a proponent of giving that last
6 heads-up, because it had been my practice -- and I had had a
7 recent fairly high-profile case where something similar had
8 happened, where we thought we were most likely going to have
9 to litigate a significant portion of the case. And, after we
10 got authority from the Commission, we went back to the people
11 who we were authorized against, and we ended up with --
12 settling the entire case.

13 So, that was a recent experience I had, and I
14 thought here it was, again, extremely unlikely that there
15 would be any settlement, because there had been sort of no --
16 usually you get some kind of a telegraph of that, and I don't
17 remember anything like that happening from Goldman. But I do
18 think, after you get authority, and they know it's going to
19 be filed, that sometimes that can change a party's thinking.

20 Q And so what did [REDACTED] say?

21 A I think [REDACTED] was generally not in favor of a --
22 giving a heads-up here.

23 Q How come?

24 A I think that the general concern -- we had concerns
25 with leaks, was one. And the other was I think the concern

1 with some significant delay, because -- I think.

2 As -- I know I'm testifying under oath, and I want
3 to make sure I get this right, because I can't remember if he
4 said this. But when you give that last heads up, there is a
5 chance the other side, to buy time, will start to talk about
6 a potential settlement, and it may not end up going anywhere,
7 but still you could be weeks, if not longer down the road,
8 with your case still not filed.

9 And so, I think sort of this combination of leaks
10 and -- and I guess factored into what [REDACTED] and I were
11 discussing was the fact that there hadn't really been an
12 overture. The case I had referred to that I had worked on
13 while I was still an assistant director -- which was at the
14 very end of 2009 -- there were some, albeit small, signals
15 that, you know, give them another chance, if the Commission
16 approved it, and I don't think -- I don't remember anything
17 like that coming from Goldman here.

18 In fact, I think in that other case they had gone
19 out of their way to communicate something that made us --
20 without saying explicitly, "We want to talk settlement," but
21 saying something about having another conversation.

22 Q And so you had this conversation with [REDACTED] and
23 then what happened, do you know?

24 A We -- ultimately, I think [REDACTED] and I were of
25 different minds on the issue. I certainly didn't want to

1 give a significant lead time to Goldman, and I think we
2 discussed whether to give it to -- give a heads up to
3 Goldman's counsel late the day before we were going to file,
4 or even the morning of the filing. I think [REDACTED] was not in
5 favor of giving any kind of a heads up.

6 And at some point we did talk to Lorin Reisner
7 about this issue in a very -- I feel like it was a lot of
8 running around, a lot of moving parts, and -- but I wanted to
9 at least have Lorin think about the issue. And out of that,
10 I think the decision was made just to give it to them sort of
11 simultaneously with filing, give the heads up.

12 Q Did Lorin give any reason why that decision was
13 made?

14 A I don't remember him saying anything. I think
15 probably was considering the same factors that [REDACTED] and I had
16 discussed.

17 Q And so, when the instruction came down from Lorin
18 Reisner, was -- you say "simultaneous." Was it clear whether
19 [REDACTED] should make the call right before the SEC filed, or
20 right after the SEC filed?

21 A I feel like the decision was that we would make
22 the -- we would be filed at the point when we let Goldman
23 know. I don't want to say absolutely, because the
24 instructions maybe were a bit vague as to exactly when we
25 were going to notify counsel for Goldman of this. I know it

1 was going to be around the time.

2 But I -- my impression coming out of what we were
3 going to do was that we weren't going to be giving Goldman a
4 chance to put the brakes on filing. That was my impression
5 of what came out of our conversation with Lorin.

6 Q But if Goldman had been called, say, a minute
7 before the case was filed, Goldman still wouldn't be able to
8 stop the filing, but at least they would have heard about it
9 from the SEC, rather than from the press.

10 A Well, that's true. And so, that's what I'm a bit
11 vague on, exactly when we were going to be making the call.
12 I feel like, though, we were not going to be waiting for
13 Goldman to decide that this was going -- that they wanted to
14 pursue a settlement.

15 BY [REDACTED]:

16 Q You had mentioned in your discussion with [REDACTED]
17 [REDACTED] on this issue that one of the reasons that [REDACTED] gave
18 was concern regarding leaks. Could you explain what you
19 understood that concern to be?

20 A The -- we thought that Goldman is a pretty
21 sophisticated player. They have -- they're good at the
22 public relations game, and that they might -- they would not
23 be the first company to do this. If you know that something
24 is coming from the SEC, you can maybe take certain actions to
25 sort of -- to precondition the reporters about the case, and

1 maybe the coverage would not be as favorable, from the SEC's
2 standpoint.

3 Q And this may seem like an obvious question, but --
4 and why is that a concern, or of relevance to the SEC,
5 whether or not Goldman Sachs would have an opportunity to
6 sort of shape the story ahead of time?

7 A Here is Ken Lench speaking on, you know, my
8 feelings about these issues. We are a relatively small group
9 of attorneys conducting these investigations over a massive
10 market, and that we need, when we bring an enforcement
11 action, for there to be this general aura of deterrence
12 regarding our actions, because there is no way we're going to
13 identify all the violations occurring out there. And even if
14 we could have a lead into all of them, we wouldn't be able to
15 pursue every one of those investigations.

16 So, we have to make the ones that we do pursue and
17 then decide to file count. And I think that public message
18 is an important part of what the Commission does, and I think
19 that's why you see press releases with quotes from Rob
20 Khuzami, or sometimes the chairman, or others.

21 Q Just one other. You mentioned another recent case
22 you had been involved with a settlement after the Commission
23 had approved. What's the matter with that?

24 A That was a case against the accounting firm of
25 Ernst & Young, and there were six individual partners at E&Y.

1 We had a settlement in hand with the company, E&Y, much
2 earlier on. But it seemed like we were going to have to
3 litigate with some, if not all, of the individual partners.
4 And we ended up filing in December 2009 a fully settled
5 action, which encompassed E&Y, as well as all of the six
6 partners.

7 MR. KOTZ: All right, let me show you another
8 document we're going to mark as SEC Exhibit No. 18. This is
9 "SEC Administrative Regulations, Public Affairs Press
10 Relations Policies and Procedures," July 31, 2005."

11 (Exhibit No. 18 was marked for
12 identification.)

13 BY MR. KOTZ:

14 Q Have you ever -- are you familiar with this
15 document?

16 (The witness examined the document.)

17 THE WITNESS: I don't know if I'm familiar with
18 this particular document. But as I'm seeing some of the --
19 what's written in here, I think I am aware of some of the
20 substance of it. I don't know if I reviewed this particular
21 document.

22 BY MR. KOTZ:

23 Q Okay. If I could turn your attention to page 6 of
24 12, under 15 --

25 A Yes.

1 Q Under "Notification of Defendants," it says, "Every
2 effort should be made to avoid the possibility that
3 Defendants in an SEC enforcement action first learn of the
4 action when they read about it in the newspapers, or when
5 they are called by a reporter for comment about the SEC's
6 complaint. A division, regional, or district office
7 primarily responsible for the filing of a particular
8 complaint shall take all necessary steps to see the
9 Defendants and/or their counsel are given timely advice
10 concerning the action."

11 Now, separate and apart from the practice --

12 A Just -- I just want to -- you've read it, but I
13 just want to read it again.

14 Q Sure.

15 A Please.

16 (The witness examined the document.)

17 THE WITNESS: Okay.

18 BY MR. KOTZ:

19 Q So, separate and apart from the practice we
20 discussed about giving a defendant an opportunity to settle,
21 or letting them know that the Commission had approved a
22 recommendation to go forward with an action, are you aware
23 that there is a press policy that defendants should not learn
24 about an action when they read about it in the newspaper, and
25 that the office primarily responsible for filing the

1 complaint should take all necessary steps to see that they
2 are informed prior to the filing?

3 A It's a hard question for me to answer, only because
4 my practice has always been to do this. So, whether I
5 specifically knew about this paragraph we just read from, I
6 don't know if I did know that. But I think, in the way I've
7 always conducted my matters, that has not been an issue,
8 because of my practice.

9 And maybe my practice is in some way related to
10 what's written in here.

11 Q Do you know if this issue, the fact that there was
12 a policy in place, ever came up in the discussions about
13 the -- what to do with regard to notification to Goldman in
14 the Goldman case?

15 A I don't remember this particular issue coming up,
16 no.

17 Q And if, in fact, it was the case that the --

18 A Just to -- I just want to clarify. I don't
19 remember this particular paragraph being discussed, or this
20 press policy being discussed.

21 It could be in connection with talking to Lorin
22 Reisner, and the fact that we did not want them to be
23 completely caught off guard by a reporter, that that issue
24 was discussed, and that's why we were going to be giving them
25 sort of simultaneous-like notice.

1 Q Okay.

2 A Yes.

3 Q If, in fact, it was the case that the phone call
4 that was made to Goldman's counsel wasn't made until after
5 the SEC filed the action, and, in fact, Goldman did learn
6 about the ABACUS action from the press, do you think that
7 this provision would not have been complied with in that
8 scenario?

9 A I would want to potentially think about it more. I
10 just see "every effort should be made," and I guess there is
11 always the chance you don't get somebody on the very first
12 call.

13 This matter did take on, you know, just a huge
14 press significance that I personally did not anticipate. I
15 don't want to make that conclusion without thinking about
16 more.

17 Q Okay.

18 A But I understand why you're asking the question.

19 Q Okay. Now, did you participate in the Wells
20 meetings?

21 A I participate in -- generally, I try to. I don't
22 always, and I know, in this matter, there was at least one I
23 did not participate in.

24 Q Okay. Did you participate in the one involving
25 Goldman?

1 A No.

2 Q The company? No? That was in September, I
3 believe?

4 (b)(6),(b)(7)(C): Of 2009.

5 MR. KOTZ: Oh.

6 THE WITNESS: Yes.

7 BY MR. KOTZ:

8 Q So that was before you got involved. Did you
9 participate in the March meeting, where the Wells of (b)(6),(b)(7)(C) was
10 discussed?

11 A No.

12 Q Do you know if there were any discussions about
13 settlement between the SEC and Goldman's lawyers between the
14 Goldman Wells meeting and the filing of the action?

15 A I don't know of settlement discussions.

16 Q Now, you are aware that shortly after the SEC filed
17 its action against Goldman Sachs, Goldman Sachs came in and
18 began settlement discussions.

19 A Yes.

20 Q How shortly after was that?

21 A I think it was -- well, we filed the case on April
22 16th, and I think by early May there -- and I don't remember
23 the precise date, but within the first -- certainly in the
24 first half of May we had already had a face-to-face in
25 Washington, D.C. in the home office here with counsel for

1 Goldman.

2 Q And is it your recollection that the settlement
3 discussions were initiated by Goldman, not the SEC?

4 A Yes.

5 MR. KOTZ: Okay. All right, let me show you the
6 next document. We'll mark it as SEC Exhibit No. 19. It's an
7 e-mail exchange with an e-mail on the top from Lorin Reisner
8 to himself and Robert Khuzami, Monday, April 19, 2010, 1:23
9 p.m.

10 (Exhibit No. 19 was marked for
11 identification.)

12 (The witness examined the document.)

13 THE WITNESS: Okay, I see that.

14 BY MR. KOTZ:

15 Q All right. So the case is filed on Friday. The
16 following Monday, April 19, 2010 at 12:43 p.m., Robert
17 Khuzami sends an e-mail out to you and a variety of others
18 saying, "Settlement possibilities have been raised. Please
19 come prepared to think about terms." In that case he's
20 referring to a 6:00 meeting.

21 And then, Lorin Reisner responds on Monday, April
22 19, 2010 at 1:20 p.m. to Robert Khuzami with specific
23 settlement terms: Goldman Sachs consents to a section XVII
24 injunction; 10(b) claims are dismissed; without admitting or
25 denying, Goldman issues a statement that it was a mistake to

1 represent that the portfolio was selected; a very substantial
2 monetary penalty, with a \$500 million number being raised.

3 So, do you recall that literally days -- maybe a
4 day, the next business day after the complaint was filed,
5 there was already discussions of settlement with some pretty
6 specific terms, which actually turned out to be very close to
7 what was finally agreed?

8 A I hadn't remembered it was this soon after we
9 filed, but I can see the e-mail traffic, and I was on it, and
10 so I think I did know that.

11 Q And so, this practice that you and others have at
12 the SEC, traditionally, to give companies a heads-up after
13 the SEC -- the Commission approves the recommendation to go
14 forward with an action, do you think that generally counsel
15 for large companies who have done a lot of SEC matters are
16 aware that this practice exists?

17 A I think that there are certainly -- could you
18 repeat that question, because I'm not sure I -

19 Q Do you think that it's possible, or even likely,
20 that counsel for Goldman, from the firm of Sullivan and
21 Cromwell, who had done other previous SEC cases, would have
22 been aware that, generally, SEC lawyers will give a company a
23 heads-up after the Commission approves recommendation of an
24 action going forward, to give one last opportunity to settle?

25 A It's obviously speculative, because I never

1 discussed this with them, but I would think it's not
2 unreasonable that there are people who practice before us who
3 might be thinking that they're going to get such a call.

4 Q And so, do you think that it's also possible, or
5 even likely, that these lawyers will kind of wait for that
6 call to initiate the settlement discussions, because they're
7 always thinking in the back of their head maybe they just
8 won't file, particularly if, you know, a significant time
9 period went by before the Wells meeting, since the Wells
10 meeting?

11 A I think it's a -- again, Ken Lench speaking -- I
12 think doing it that way is a dangerous -

13 Q Right.

14 A -- game to play. Because, as I mentioned in the
15 Ernst & Young case, signals were coming our way that they
16 wanted to have another conversation. It's not unusual for
17 that to be communicated to us. I -- it's hard for me to --
18 if we were defense counsel, and I thought there was some hope
19 of settlement, I probably would let somebody at the SEC know.

20 But whether you want to completely play your cards
21 close to your vest and not give any inkling at all to the
22 staff, with the expectation that, "Hey, we will still have
23 our last clear chance before they file," I think it's not
24 unreasonable to think that way, but it is a dangerous game
25 because, you know, there is not always a lot of time.

1 And also, it's often the case that we get sort of
2 locked in to more of a position after the Commission has
3 authorized our action.

4 Q Right. But do you think in this case, in the case
5 of the Goldman ABACUS action, given that Goldman came in
6 almost immediately after the SEC filed its case with
7 settlement overtures, that by Monday, April 19th, were
8 already in the nature of specific terms, that perhaps
9 Goldman, in this case, would have made some of these same
10 settlement overtures, had that heads-up been given, and the
11 case could potentially have been settled before filing of an
12 action?

13 A I -- it's a hard question for me to answer. I can
14 see the timing as well as you, and it certainly raises the
15 possibility that something may have been done. But it --
16 well, I will leave it at that.

17 Q But it is clear that, as soon as Goldman became
18 aware that the SEC had filed its action, very shortly
19 thereafter, they came forward with settlement discussions.

20 A Yes, and the reason I'm hesitating about answering
21 that question is I know I didn't read -- because I had
22 conversations in advance about press coverage, didn't
23 anticipate this level of press coverage for this case. It
24 caught me by surprise.

25 I knew it would be press-worthy. No idea it would