

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

WITNESS: Number ~~6~~ 7

PAGES: 1 through 136

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PLACE: Securities and Exchange Commission

100 F Street, N.E.

Room 2740

Washington, DC

DATE: Monday, March 9, 2009

The above-entitled matter came on for hearing,

pursuant to notice, at 9:40 a.m.

APPEARANCES:

On behalf of the Securities and Exchange Commission:

H. DAVID KOTZ, ESQ., Investigator General

HEIDI STEIBER, ESQ., Assistant Investigator

CHRISTOPHER WILSON, ESQ., Assistant Investigator

DAVID WITHERSPOON, ESQ.

DAVID FIELDER, ESQ.

Office of the Inspector General

U.S. Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C. 20549

On behalf of the witness:

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1 PROCEEDINGS

2 MR. KOTZ: We are on the record at 9:40 a.m. on
3 March 9, 2009, at the United States Securities and Exchange
4 Commission, Office of Inspector General.

5 I am going to swear you in. Okay. Would you
6 please raise your right hand?

7 Whereupon,

8 JACQUELINE WOOD PERRELL

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

11 MR. KOTZ: Would you please state and spell your
12 full name for the record?

13 THE WITNESS: Jacqueline, J-a-c-q-u-e-l-i-n-e, Wood
14 Perrell, P-e-r-r-e-l-l.

15 MR. KOTZ: Okay. And for the time you were at the
16 SEC you were known as Jacqueline Wood?

17 THE WITNESS: Jacqueline Wood; Jacqueline Murray
18 Wood.

19 MR. KOTZ: Okay. My name is David Kotz. I am the
20 Inspector General of the United States Securities and
21 Exchange Commission. This is an investigation by the Office
22 of Inspector General, Case Number 509. I am going to ask you
23 certain questions. You are going to provide answers under
24 oath.

25 The court reporter will record and later transcribe

1 THE WITNESS: All right. Thank you.

2 BY MR. KOTZ:

3 Q Okay. So you were saying you graduated law school
4 in?

5 A December of 1998.

6 Q Okay. And then what did you do after graduating
7 law school?

8 A I continued employment as a lawyer with Miles &
9 Stockbridge.

10 Q Okay. As an associate?

11 A Yes.

12 Q Okay. How long did you do that for?

13 A Until I came to the SEC in 2003.

14 Q What kind of law did you practice at Miles &
15 Stockbridge?

16 A Business and commercial litigation, some white
17 collar, criminal defense work, and a little bit of the
18 securities.

19 Q Okay. What made you decide to come to the SEC?

20 A I did a little bit of securities at Miles &
21 Stockbridge, and the partner that I actually worked for
22 became the federal judge, so that type of work, elaborating.
23 So I decided to try to get more experience and come to the
24 SEC.

25 Q And then you started working with the SEC in

1 **that a yes?**

2 A Yes, yeah, sorry. I tell my clients not to do
3 that, but I do it.

4 Q **Right, okay. And what is the office of market
5 oversight? Are you familiar with that office?**

6 A Well, my understanding is that office is that we
7 were a group, that our group was a part of that office
8 oversight. I'm not really sure of the delineation. I know
9 that we dealt with mostly self-regulatory organizations, but
10 market oversight would be oversight of the exchanges,
11 probably.

12 Q **So the SRO groups were in market oversight. Was
13 that your understanding?**

14 A Yes, that's my understanding, and there are groups,
15 like there is SRO-1 and SRO-3 that does the same type of
16 work, and then there's SRO-2, which does a different type of
17 work, but I was never fully aware of because I was not in
18 that group.

19 Q **And when in 2003 did you start with the SEC?**

20 A September.

21 Q **And you were staff attorney when you started. Did
22 you change positions at all?**

23 A No.

24 Q **When did you leave the SEC?**

25 A January 16, 2006; no, January 13, 2006.

1 MR. KOTZ: This is from outside the SEC. I think
2 this may have been the tip that led to that initial exam. So
3 could you take a look at this document, Exhibit 2?

4 (The witness examined the document.)

5 BY MR. KOTZ:

6 **Q Okay. Do you recognize this document? Have you**
7 **ever seen this document before?**

8 A No.

9 **Q Do you remember any communications with Mavis Kelly**
10 **about matters related to Bernard Madoff?**

11 A No, I don't believe I had any discussions with me.
12 I don't recall any.

13 **Q Okay. You don't remember Mavis being the one who**
14 **was providing information to you as kind of leading up to the**
15 **exam we did?**

16 A Yeah, I believe she did provide information
17 documents, but I don't recall any conversations with her
18 about what she provided us. So she either provided them
19 directly to me or maybe she provided them to Mark and Mark
20 provided them to the team. But I don't recall having any
21 specific conversations with Mavis.

22 **Q Okay, who was on the team?**

23 A Mark Donahue, myself, maybe--

24 **Q Is that Genevieve Walker?**

25 A Yes, Gen Walker.

1 A I do not. I know that I was never told it was from
2 a tip, and I never picked up on that through any of my
3 interactions on this project.

4 Q Okay. What were you told? I mean, what were you
5 **guys looking at?**

6 A We were looking at his trading strategy and trying
7 to, based on what I can recall. We were looking at the way
8 that he trades. And I remember mostly about the black box
9 and how his automated trading, how that automated trading is
10 done, the strategies behind that. Whoever does those
11 algorithms or those mathematicians, how they're done, the
12 timing on the trading. I do recall, although I fully don't
13 understand the split strike conversion, we were just looking
14 at his trading.

15 Q Why were you looking at his trading? In other
16 words, what was the concern about his trading? Do you
17 **remember?**

18 A As a staff person I was not fully told that.

19 BY MS. STEIBER:

20 Q **What's the difference between a routine exam and a**
21 **cause exam?**

22 A Well, for a routine exam we may go in on like a
23 cyclical time, so we may go into the New York Stock Exchange
24 once every three years. For a cause exam we may get, I
25 guess, a tip or something may come into the office to the

1 higher ups, and asking to look into something, and then we
2 would do with an exam based on that, which is something more
3 specific as opposed to we're going in to just do a routine,
4 you know, we want to look at the last three to five years of
5 what you've been doing.

6 **Q And did you have an understanding if this was a**
7 **routine or a cause exam?**

8 A I did not. I did not have an understanding. Well,
9 I don't think it was a routine exam. I don't think I was
10 told that, but I wasn't as a staff person really told
11 specifically that it was a for cause exam either. The
12 project came in. I was staffed on it, and then I just hit
13 the ground running on that.

14 BY MR. KOTZ:

15 **Q So is it difficult though sometimes to figure out**
16 **what questions to ask or what work to do if you don't know**
17 **what precipitated the exam?**

18 A Well, I think, you know, I was taking a lot of
19 direction also from my branch chief, and what we were
20 supposed to look at. And, you know, I don't really recall it
21 being so many years ago. There were specific conversations
22 with Mark or anybody else about why we were doing this.

23 The in-depth is not what I was told. All I was
24 told is that we were looking at this trading to see if the
25 trading, if there were any concerns with the trading. But

1 what those concerns were from, a higher level perspective, I
2 don't know.

3 Q Okay. But it was clear there might have been some
4 concern that Madoff was engaging in some improper activity,
5 or you wouldn't have been looking at it.

6 A Well, I think you can assume that, because
7 certainly we wouldn't be looking at Madoff unless it was a
8 routine exam, which I don't. You know, the broker-dealer
9 group, which is a different group in there, specifically,
10 probably would have been the people that went in just on the
11 routine exams. So, yes. I think that there was maybe a
12 concern or something, but as far as to the specifics of those
13 concerns, I wasn't fully briefed on those.

14 Q Okay. Did you have an understanding at that point
15 there was a concern about front-running?

16 A For?

17 Q On the part of Madoff?

18 A I don't recall. It's possible. I mean we always
19 try to look for that type of activity.

20 Q But you don't recall specifically being told
21 you're going to be looking for front running?

22 A I don't recall as I sit here today. I mean unless
23 you have documents, I could refresh my recollection.

24 Q Okay. What about, do you recall any conversations
25 at any point in time while you were working on this exam

1 can't get?

2 A No. I don't think that's my understanding. I mean
3 the SEC, if it's books and records, that is required to be
4 capped by the broker-dealer. You know, that's why they have
5 FOIA. You know, the broker-dealers can ask for FOIA
6 protection to make sure that that information does not go
7 outside the Commission.

8 Q So notwithstanding that the information is
9 proprietary, but the SEC wanted to see it, they would be able
10 to see it?

11 A We always ask for proprietary information whenever
12 we did any exam and while we received it.

13 Q Okay. What about this idea the accounts were
14 typically in cash at month's end, every month. The accounts
15 were in cash. Do you remember that as an issue?

16 A I don't recall that.

17 Q Do you remember any discussion about the fact that
18 he could have been churning; Bernie Madoff?

19 A I think that played into the commissions issue that
20 we were looking into, but, beyond I have no recollection of
21 specifics.

22 Q What was the commissions issue?

23 A The churning, I mean, is he churning and creating
24 commissions.

25 Q Oh, okay. When I think of commission, I think of

1 engagement letter or reports, or any type of work papers?

2 A I know that I don't recall that I did, but that
3 doesn't mean that Gen Walker didn't or Mark. I don't know.
4 Sometimes, when the boxes come in from the broker-dealer they
5 get divided, so I may not always know what the others in the
6 group are looking at.

7 BY MR. KOTZ:

8 Q The time you were there, was there an investment
9 advisor group in OC as well?

10 A Yes.

11 Q What did they do?

12 A Well, they did the routine examinations for the
13 investment advisors, and then I assumed they also do similar
14 to what we would do. The four calls, theirs an investment
15 advisor tip that came through, a concern that they would do a
16 --

17 Q Okay. Was there any discussion in the Madoff exam
18 you participated in seeking some assistance from the
19 investment advisor group of OC?

20 A Not that I can recall.

21 Q Okay. Were you aware it talked about that the
22 original tip that came in involved issues related to hedge
23 funds?

24 A Not that I can recall.

25 Q And you don't know why market oversight was the

1 documents, and sometimes trading data can be very, you know,
2 you're looking at data, so it's not as if you're looking at
3 e-mails, which are prose and tell you more of a story and you
4 have more of an understanding. When you're looking at data
5 and you're trying to piece things together, it's a little
6 different.

7 Q So how many other matters you were working on
8 around when you were working on this one?

9 A I can't recall. The group keeps these
10 spreadsheets. All of the opening matters were all matters
11 and a list of each staff member, and they keep track of how
12 many projects you have. I recall many.

13 Q Many like more than five?

14 A Yes.

15 Q More than 10?

16 A Probably between five and 10.

17 Q Were you working on any market timing cases at that
18 time?

19 A Well, at the time, if my recollection of Madoff was
20 2004, then yes.

21 MR. KOTZ: Okay, why don't I show you some of the
22 more particular documents? We're going to mark this as
23 Exhibit 4. It's a planning memorandum from you to
24 Genevieve Walker, 12/16/2003, 3:25 p.m.

1 A No. She left sometime after I left.

2 Q What was your impression of her skills and
3 abilities?

4 A You know, Gen is a good lawyer. Sometimes, things
5 may not have been prepared as quickly as you'd like to speed
6 things along, but I mean when you're on a team sometimes you
7 pick up more work than others.

8 Q If you look in these documents that we just handed
9 you, the different drafts of the planning memos, if you look
10 on the last document under "Course of action."

11 A Okay.

12 Q "The staff intends to send a letter to NASD
13 requesting execution data from Madoff Securities for the time
14 period of January 1, 2001, through December 31, 2002. The
15 staff will review and analyze the execution data produced by
16 NASD to identify which trades or series of trades may have
17 been utilized to commit the alleged front-running
18 violations." Do you recall why that was put in?

19 A Because we wanted to see the data from a third-
20 party, an outside source.

21 Q Why would you do that?

22 A Just to make sure, compare it with what we received
23 from the actual firm.

24 Q Okay. Do you know if a letter was ever sent to
25 NASD requesting execution data?

1 to look at your data: So we may have bifurcated it and said,
2 you know, for now we want to look at your commissions.

3 We want to look at the identity of the hedge fund.
4 But these conversions are strategies; and, then, at that
5 point we'll look at that and then we will come back and ask
6 for trading data. So unless you can tell me that maybe a
7 follow-up letter hadn't been sent out, we're asking for
8 trading data, then you know my answer may be different.

9 **Q But even if you were requesting the trade data from**
10 **Madoff directly, then you would also go to a third party like**
11 **the NASD and request that data, in the normal course of**
12 **events.**

13 **A** Right. I don't know, you know. I don't know if
14 generally speaking we would get it from one or the other, or
15 sometimes we would get it from both. So I don't know. It
16 just depends on the project. I mean it's quite possible we
17 would get it from both, but I know there were times when we
18 just asked for trading data from the entity itself.

19 **MR. KOTZ:** All right, let me show you another
20 document. There are two documents that are e-mails from John
21 McCarthy to Lori Richards, 12/18/2003, and from Mark Donahue
22 to Matthew Daugherty, 12/19/2003. We're going to mark these
23 as Exhibit 7.

24 (SEC Exhibit 7 was marked for
25 identification.)

1 nor any other person or entity affiliated with Madoff
2 Securities manages or buys as hedge funds." Do you remember
3 if that statement raised any concerns?

4 A Not that I can recall.

5 Q So, do you think, I mean, the team generally
6 thought he was telling the truth, but he was saying Madoff
7 Securities was the manager that buys hedge funds?

8 A I don't know at the time. This was just one of
9 many statements in this letter. I mean we were really
10 focused on the data and looking at the data.

11 Q Okay. What about the statement, "Please know we
12 have no communications or disclosures from customers using
13 this strategy to investors, owners, or perspective investors
14 or owners." Do you know if that statement was ever vetted?
15 I mean, was there any effort made to determine whether the
16 statement was true?

17 A Not that I can recall.

18 (SEC Exhibit 10 was marked for
19 identification.)

20 MR. KOTZ: Okay, I'm going to show you some
21 handwritten notes dated 1/29/2004, marked as Exhibit 10.
22 It's a series of notes in different handwriting. So, Chris
23 wanted to get a sense of do you know whose handwriting they
24 were, if any of them were yours, etcetera.

25 (The witness examined the document.)

1 anybody who had provided information to get further
2 information as part of the work on this exam?

3 A Say that again?

4 Q You don't remember any point in time that folks on
5 your team went back to somebody to get more information after
6 you received documents from Madoff?

7 A I believe we went and did a second request to
8 Madoff, but in terms of other outside sources, besides
9 possibly NASD, I don't recall us going to any other sources
10 or any other information.

11 Q Okay. If you see in here there are references on
12 the first page: "Returns are too consistently high for this
13 strategy; not doing that strategy, because option trading is
14 not high. How does he trade the options? He doesn't
15 understand how he consistently makes money off this strategy.
16 Perhaps he doesn't really use the strategy.

17 The volume of options trading doesn't seem to be
18 enough to protect the size of the equity trading. Perhaps he
19 traded options differently." And does any of this ring any
20 bells in terms of some of the issues you were looking at
21 about the options, about the fact that perhaps he doesn't do
22 what he's saying he's doing?

23 A Well, I think that's the whole reason why we were
24 looking into his strategies, his trading strategies in
25 particular with this black box, which is the strategy that he

1 was using to trade with. And so I think what I recall in
2 addition to, you know, the front running issues that were
3 pointed out, is trying to figure out the trading strategy
4 that he uses and how he gets these returns from these
5 strategies.

6 **Q And what did you figure out about that?**

7 A All I recall is at some point we box things up and
8 we sent everything up to NYRO. And I don't recall any
9 specifics as to what we may or may not have found at that
10 point unless you can show me something. Because from my view
11 we were working on this and then I don't want to say
12 suddenly, but at some point in time it was sent to New York.
13 So we didn't finish our exam in D.C.

14 BY MS. STEIBER:

15 **Q How long does it usually take you to finish an exam**
16 **from tip to concluding memo, if there is a concluding memo?**

17 A It's so varied on the complexity of the exam. Are
18 you saying for cause?

19 **Q For cause, in your experience, how long does it**
20 **take for a cause exam to be completed?**

21 A I would just be guessing. I mean, months.

22 **Q Months?**

23 A Months, maybe; you know, several months.

24 **Q So several months, so anything over six months**
25 **would seem like a long time?**

1 A I don't recall. No. As I sit here today, I don't
2 recall that.

3 MR. KOTZ: Okay. Why don't we show you the next
4 document. This is an e-mail from you to Mark Donahue,
5 February 3, 2004, 2:20 p.m. We're going to mark it as
6 Exhibit 13, and it is an attachment of three pages, as well.
7 Will you take a look at this document?

8 (SEC Exhibit 13 was marked for
9 identification.)

10 MS. STEIBER: You might have to show her that.

11 MR. WILSON: Yeah, it got cut off.

12 BY MR. KOTZ:

13 Q Yeah. Okay. It does appear as if you drafted this,
14 or at least had a hand in drafting this?

15 A Yes, it appears so.

16 Q Okay. And you can see that you say in here on the
17 second page, "Commission revenues generated from these four
18 institutional clients account for the overwhelming majority
19 of commission revenues generated for the firm since 2001.
20 Obviously, this trading strategy has yielded made
21 unbelievable profits, which would explain why this strategy
22 is well-guarded by Madoff." What did you mean by that?

23 A Looking at the profit numbers they make up a
24 majority of his revenues.

25 Q What did you mean that it was "unbelievable

1 profits?"

2 A I don't recall what I mean by unbelievable.

3 Q But do you recall that there was a concern that
4 these profits were not believable? It seems as though you
5 say that here.

6 A I don't believe that the unbelievable, when I say
7 unbelievable, I mean imaginary, if that.

8 Q Okay. So what would you mean by unbelievable?

9 A Large profits.

10 Q Okay.

11 A High profits.

12 Q Okay, but I mean the mere fact of these large, high
13 profits, unbelievable profits, whichever words you want to
14 use, was that something that would be the matter the OC exam
15 would look into, how that could be?

16 A I believe that's probably what we were doing.

17 Q Okay. And then it says in there that the strategy
18 was "well-guarded" by Madoff. Do you know what you did to
19 look into this issue of Madoff's unbelievable profits?

20 A Well, I believe we did follow-up, according to the
21 February 3, 2004. We were doing follow-up questions which
22 are many, so that was our response. This was taken from the
23 first document production. This information was gathered
24 from the first document production, which yielded follow-up
25 questions.

1 BY MS. STEIBER:

2 Q At the time did it strike you as strange that he
3 was making a majority of his profits from this hidden,
4 unknown, hedge fund side, rather than from his well-known
5 market maker?

6 A I don't believe at that moment at that time that I
7 could make a decision at that time, which I think is why we
8 did follow-up questions.

9 Q But do you remember at the time, Swanson or Donahue
10 or anyone saying, wow, here is this unknown trading entity.
11 I shouldn't say trading entity. It's not an entity, but this
12 unknown side of Madoff's business that's making more profit
13 than his well-known market maker?

14 A No. I wasn't. No one -- the three of them -- had
15 not said anything to me to that affect.

16 MR. KOTZ: Okay.

17 MS. STEIBER: Is that 13 or is that part of 12?

18 MR. KOTZ: Okay, yeah. So the next document I'm
19 going to show you is a series of notes dated 2/4/04. We're
20 going to mark it as Exhibit 14.

21 (SEC Exhibit 14 was marked for
22 identification.)

23 (The witness examined the document.)

24 BY MR. KOTZ:

25 Q Okay. Are these your notes?

1 A Yes.

2 Q Okay. They are your notes. Great. And so there
3 was a conference call with Madoff on 2/4/2004?

4 A Apparently, yes.

5 Q Do you remember that at all?

6 A I remember a couple of calls with Madoff.

7 Q Which Madoff would that be? Bernie?

8 A Peter, I believe.

9 Q Could you kind of go through these notes? Start
10 from like "Because market conditions required . . ."

11 A "Because market conditions for model did not
12 present itself, therefore no trading activity."

13 Q What does that mean? Do you know?

14 A I can guess that may be there were periods where
15 there was no trading activity, and maybe we asked why. And
16 he said because there were no market conditions for the
17 model, so that the model did not generate any trading because
18 of the algorithms. There was no trading activity for that
19 time, because the opportunity didn't present itself.

20 Q Okay.

21 A Strategy doesn't operate all the time.

22 Q Okay.

23 A The same, number 2, "The same as a commission."

24 Oh, we must have been asking what commission equivalent

25 means. It means the same as a commission. "When a dealer

1 trades, charge a commission equivalent; compensation for
2 execution on dealer trades, no compensation charged on a
3 principal trade."

4 Number 3, "All identified." Six, "Black box model
5 that executes the strategy. The black box determines when
6 the strategy gets executed."

7 Q Do you remember if you asked him any questions
8 about what this black box model was?

9 A Specifically, I don't recall, but I'm pretty sure
10 we had discussions with him about the black box model.

11 MS. STEIBER: When you say with him, you mean
12 Bernie or Peter?

13 THE WITNESS: With Peter. I believe we dealt with
14 Peter on this matter.

15 MR. KOTZ: Okay, go on, 15.

16 THE WITNESS: "Madoff has" -- something -- "15
17 different black box systems." Oh, "Madoff has built 15
18 different black box systems over the years. On variable
19 percentage of correlate to the S&P 100, determined by the
20 client's risk parameters. 95% correlation has to be using
21 smallest list of securities. Took an index fund doing S&P
22 500, 100% correlation. Strategy using S&P 100.

23 If you want to achieve 95% correlation, must
24 determine which securities can be used to achieve the
25 strategy. Client tells you the percentage of correlation the

1 client wants. Specific conditions: All securities must be
2 resident in S&P 100 index must be greater. Will dictate
3 which stocks you have to" -- something -- "each security is
4 eligible. Has to be dollar wages.

5 Takes the security and runs it through a back test,
6 time test model, a historical database. Correlation is
7 continually monitored. If derivative is greater than five
8 percent, then the model triggers the cell order. No
9 discretion on the part of Madoff. Everything is determined
10 by the black box." So this was the discussion on the black
11 box.

12 BY MR. KOTZ:

13 Q So what does he mean, that no discretion on the
14 part of Madoff? Everything is determined by the black box?

15 A The black box has algorithms set that based on
16 certain criteria it will go ahead and trigger a cell order.

17 Q But the black box determines when to buy and sell.

18 A That's my understanding.

19 Q And was this an effort to try to ask him about
20 these unbelievable returns, do you think?

21 A I don't know, specifically, about the high returns.
22 But I know that this discussion seems to stem on how the
23 black box works. But we did ask them about the commission
24 equivalent also.

25 Q Did he seem to give you any real information about

1 how the black box works? It just kind of says it makes all
2 the decisions. We don't have anything to do with it.
3 There's this black box out there that is incredible?

4 A Well, he talks about the correlation and what
5 stocks are being used. I mean these notes here, although
6 they're just three pages, I don't think I was the only one
7 taking notes. But they talk about how each uses
8 correlations, these conditions. I mean, perhaps this was
9 just the first telephone call where we were getting a flavor
10 of the black box, and then at that point. I mean, it's not
11 unusual for us to have one call, which would then trigger
12 numerous other calls.

13 Q Do you remember there being numerous other calls?

14 A I remember we did have a couple, a few more, one or
15 two perhaps, around that time period.

16 Q Do you remember if Peter Madoff or Bernie Madoff
17 ever did explain how this black box was able to get these
18 returns?

19 A Based on this, unless you can show me something, I
20 don't recall anything beyond our notes, and possibly the
21 follow-up questions that we had that may relate to that.

22 Q Did you generally feel satisfied after you talked
23 to Peter Madoff that he had kind of answered your questions?
24 Or, how did that go?

25 A Well, I think what we normally do is once we get

1 BY MR. KOTZ:

2 Q Okay. Does this refresh any more of your
3 recollection about this particular issue about Madoff
4 disclaiming himself to be an investment advisor?

5 A It doesn't bring up any specific thoughts or
6 memories. I would think that at this point we may have
7 followed up with another document request asking for, and I
8 can't remember based on our first document request if we
9 asked for the names of all clients, which we must have,
10 because he's identified clients by years. But if she says
11 here we don't know their classifications and the exemption,
12 the 15-client exemption, I don't know. This doesn't refresh
13 anything.

14 Q But, looking at this, would you agree that this
15 would be something that should be followed-up on?

16 A I'm not aware that it wasn't followed-up on.

17 Q Well, I'm just asking you.

18 A It seemed like this was something that Gen was
19 running with.

20 Q But you would agree that it's something that should
21 have been followed up on, whether it was or was not?

22 A I believe that, sure, absolutely.

23 Q And in order to get really the expertise in this
24 area, wouldn't it make sense to go to the IA side if an issue
25 like this arose?

1 THE WITNESS: I don't know. I mean, it's with the
2 SEC internal. So that information it's my understanding is
3 something that you could get from, because she had an issue
4 with Mark and another branch chief, so.

5 MS. STEIBER: But you felt like she was comfortable
6 working with Donahue at this time, that she wasn't
7 frustrated? Like when she says, "beat a dead horse," it
8 sounds like she's a little frustrated.

9 THE WITNESS: Right. No. I didn't have that sense
10 as I said at this time while we were working on Madoff
11 together. I am aware that she had issues with Mark
12 subsequently thereafter. And so, you know, that's why I say
13 at this time I wasn't aware it was Madoff, because Madoff
14 came earlier when this complaint was lodged.

15 BY MR. KOTZ:

16 Q Do you have any sense of the general nature of her
17 issues?

18 A I don't. I just don't think she was very happy
19 working with Mark, but I mean specifically I can't recall.

20 Q Did you share any concerns about working for Mark?

21 A No. Not at all. Actually, Mark and I came from
22 Miles & Stockbridge. He was at the Rockville office. He had
23 a stellar reputation at the firm, and we just so happened to
24 meet up here again in OC. I love working with mark. He is
25 very personable and knowledgeable, and I would work with him

1 again today. But some people just don't get along, and I
2 think that was just one instance.

3 BY MS. STEIBER:

4 Q And are you still friends with Mark today?

5 A Yes.

6 Q Did you talk to him about your testimony?

7 A I actually saw him at the metro. I think it was
8 Thursday and he was going up and I was coming down. And I
9 hugged him and said hello. And I said I just wanted to let
10 you know I'm coming in on Monday to talk about Madoff. And
11 we had no substantive discussions besides me telling him that
12 I was coming in.

13 MR. KOTZ: All right. Why don't we take a few
14 minutes, okay?

15 THE WITNESS: Do you by any chance know how much
16 longer you'll need me? Because I have another production to
17 the SEC that I have to take care of today.

18 MR. KOTZ: Okay. Let's go off the record.

19 THE WITNESS: Can I actually just say one other
20 thing on the record?

21 MR. KOTZ: Sure. Sure.

22 THE WITNESS: When this complaint was lodged
23 against Mark Donahue and [REDACTED] former OCIE Branch Chief who is the branch
24 chief. There was some internal, I think. It was whatever
25 group outside group handles those types of complaints. Gen

1 what were the level of priorities of different projects.

2 Would you have viewed this Bernard Madoff one as a
3 particularly high priority or lesser priority than some of
4 the market timing or other projects?

5 A I don't think that I would set a level of priority
6 on that, because you're working on a matter depending on
7 documents that you received from the entity. Because if you
8 don't have documents from your document request, you aren't
9 doing as much as you would be once you received that. So
10 it's quite possible that Madoff exam was fit in whenever
11 there was down-time on some of the other projects, because
12 those projects also entailed very large volume document
13 productions. So I don't think that I prioritized any of my
14 projects at that time. It was basically what I had and what
15 was coming in. But, of course, if someone came to me and
16 said that this needs to be done first over this, then I
17 readjust the schedule.

18 Q Did anybody come to you and say do Madoff over
19 something else?

20 A Not that I can recall.

21 Q Were there other times where other projects were
22 given priority like that?

23 A Perhaps the market timing at that time, since it
24 was very quick. It came on very quickly. We had to get
25 documents very quickly.

1 Q Okay. When you first joined OC, did you have any
2 training? You know, about how to do an exam?

3 A It's really on-the-job training. I mean, that was
4 something that myself along with other individuals in the
5 group wanted to have more formalized training. We thought it
6 was very important to bring people on and do some type of
7 formal training, but it just didn't happen for some reason.
8 And your training was really on-the-job as well as talking to
9 those people who were already on the job and getting help
10 from them.

11 Q So you didn't have any training in, you know, how
12 to spot fraud or something like that?

13 A No. I don't. And I don't know if they have that
14 type of training at OC now. But no, I mean, it's a team.
15 It's very much a team environment where you are put on a team
16 with other more experienced people, so you learn from them
17 and you get direction from that as well.

18 Q Is it fair to say that Madoff's trading strategies
19 and operations are pretty complex?

20 A I would agree; it's complex.

21 Q So, I mean, you know, obviously, information has
22 been brought to light subsequent to this exam, different
23 situation involving Bernie Madoff. But is it fair to say
24 that at least in your situation, given the lack of
25 particularized training, that it would have been difficult

1 question that we would ask of any broker-dealer firm.

2 BY MS. STEIBER:

3 Q And did you find that Madoff was cooperative?

4 A I found that throughout this process, whenever we
5 requested documents, he seemed to always provide us with
6 those documents. And, again, this is a voluntary production,
7 so he's going to produce documents on a voluntary basis
8 pursuant to these questions.

9 Q And did you find it odd at all that he is the one
10 that responds to your document request rather than his
11 compliance officer or someone else at the firm?

12 A No, because, you know, I don't know the extent of
13 his involvement in the broker-dealer, but it appears that he
14 had as much information as their chief compliance officer,
15 which was Peter at this time. But it wouldn't strike me. It
16 didn't.

17 Q Did you recall ever receiving a response from a
18 document request from the CEO of a company?

19 A Not that I can think of off the top of my head.

20 BY MR. KOTZ:

21 Q The document we showed you before, it talked about
22 that book is of the examination was front-running. Right?
23 Do you remember that?

24 A Yes.

25 Q Now, were the questions that you asked in the

1 that Madoff was using?

2 A Not that I can recall.

3 Q Do you do any follow-up with these 16 institutions
4 you've got the names for?

5 A Not that I recall. I know I did not.

6 Q Would that have been normal to do the follow-up
7 with those institutions?

8 A I think it depends. You have to be really careful
9 when you contact other people you don't want to scare
10 clients. So I think that's an internal decision that's made
11 by the staff. So once you go outside to the clients of the
12 entity that you're examining, that could scare their clients,
13 and that could cause business issues. So I was not privy to
14 any -- not that I can recall -- discussions of whether we
15 were going to just call these clients, but I know that I did
16 not.

17 BY MS. STEIBER:

18 Q Okay. Can I ask you a question? You made a point
19 of saying that Madoff was voluntarily complying, but as a
20 broker-dealer doesn't he have to make his books and records
21 available to you?

22 A Right. What he was sending us our documents
23 pursuant to, if he were to say I'm not going to send you
24 something, we could go to enforcement and get the subpoena
25 for those documents. So that's what I mean in that sense. I

1 (SEC Exhibit 27 was marked for
2 identification.)

3 MR. KOTZ: Okay. Show you another document. These
4 are some notes. It says on the top "Madoff," and it says
5 3/18/04, two pages of notes, marked as Exhibit 27.

6 (The witness examined the document.)

7 THE WITNESS: These are my notes.

8 BY MR. KOTZ:

9 **Q So can we go on we these then?**

10 **A** Sure. These first couple are the same questions
11 that you saw on the previous e-mail that you just typed out.
12 Apparently, there was the conference call with Bernie on
13 March 18, 2004. The question, I guess, "Communications with
14 clients, funds allocate certain amount of money to trade.
15 Money amount goes into program. Investment manager/advisor
16 is the authorized agent of the client.

17 Calls Madoff regarding amount of money to invest.
18 Account statement sent to the fund itself. Only
19 communication because based on strategy directive Madoff
20 follows the criteria and enters into the box. No profit/loss
21 calculated by Madoff; settlement date on account statements,
22 prices, average price stock trades, average price at the end
23 of the day. DVP: commissions A/P equals 50." Oh, that must
24 be like a trade at 50, the commission billed to the client
25 would be 50.04, because the four cents would be the

1 commission equivalent. When he's in/out, and then something
2 S&P index.

3 Q Okay. So looking over the notes, does that refresh
4 your recollection anything further than the words on the page
5 in terms of what was discussed in these meetings?

6 A No. Not as to this conversation, no. It just
7 appeared that he was answering some questions, follow-up
8 questions.

9 Q When you would have a conversation with Madoff you
10 would get off the phone with him. Was it a sense that the
11 questions seem to have been answered, or was it the sense
12 that the more answers he gives the more questions there are.

13 A A combination of both; I mean he answered some
14 questions and then some questions he answered which could
15 spawn at the end of the call with a discussion with everyone
16 further questions and need for clarification. So it's really
17 a combination of both.

18 Q Did you get the impression he was being forthright
19 with you?

20 A I did. I mean I don't recall ever getting off of a
21 phone call and feeling like there was feeling uneasy.

22 Q Did anybody else express ever getting off the phone
23 call and feeling uneasy?

24 A Not to me. No. Not to me.

25 (SEC Exhibit 28 was marked for

1 Q Do you remember in general the conclusion of any of
2 the members of the team that in fact he was front-running?

3 A No. I don't. It's five years ago. I really don't
4 recall. This is just one of many exams that I was working
5 on, and I wasn't lead on this, so it's another thing where I
6 was leading other exams, so I recall more of that since I was
7 the lead examiner attorney.

8 Q Okay. I'll show you another document from
9 Genevievette to Mark with a copy to Mark and to you dated
10 March 25, 2004, 3:10 p.m. Mark this Exhibit 31.

11 (SEC Exhibit 31 was marked for
12 identification.)

13 (The witness examined the document.)

14 BY MR. KOTZ:

15 Q Do you remember anything about this for a
16 conclusion they do appear to be in sync?

17 A No.

18 Q But I mean it is fair to say a substantial amount
19 of work was done. It looks like there was quite a bit of
20 analysis by Genevievette and probably others in the Madoff
21 exam.

22 A She appears to and it's quite possible that she was
23 lead of this because of all this analysis. She did a portion
24 and there seems to be a portion that she was running with,
25 but this was not something that I recall analyzing.

1 Q So it's also about a year and a half after your
2 group started working on it?

3 A Yeah.

4 Q So I mean, you know, we were talking before about
5 how long these things take. There was a year and a half exam
6 that was conducted by your group about Madoff. Is that
7 right?

8 A Hm-hmm.

9 Q Yes?

10 A Yes.

11 Q Okay. From looking at our records, we noted, we
12 have been able to look at documents that seem to indicate
13 that from about December 2003, to April 2004, it was a
14 significant amount of work. And then we have a couple of e-
15 mails that refer to the fact that there should be a focus on
16 mutual fund cases. Between that time period and a year later
17 we don't have a lot of records of a lot of work done on
18 Madoff. Do you know why that would be?

19 A I don't.

20 Q Do you remember a big lull in the Madoff case where
21 it was being worked on for several months? Eric Swanson
22 says, "We're fairly suspicious," and then it seems like very
23 little happens for a year. And then NYRO works on it as
24 well?

25 A Yes, that's what happened.

1 Q So there was a long time period where the Madoff
2 case was like in limbo?

3 A That there was no activity on Madoff. For some
4 reason, no work was being done on this exam.

5 MS. STEIBER: Would you call it like a decision
6 from someone to put it on the back burner?

7 THE WITNESS: I don't know. I mean it could be
8 that with everything else that was going on in the office
9 that there was more activity on other types of projects. In
10 that case, there was not an affirmative pull it off the back
11 burner. It just happened that way because there were other
12 issues that were going on in that time.

13 I don't know. I don't recall hearing from Mark or
14 anyone else that this was purposely taken off and put on the
15 back burner. In my looking back now, it's exactly as you had
16 described it. There was a lot of activity, and then other
17 projects in the office may have taken precedent and then
18 Madoff there was just not a lot of activity at that time
19 then.

20 BY MR. KOTZ:

21 Q And so the amount of work you would do on the
22 Madoff case would be affected by your higher ups. Right?
23 How would you know that there wasn't supposed to be too much
24 activity?

25 A Sure, the branch chief; I would know that from my

1 Q Did you hear about the allegation regarding Eric
2 Swanson and Shana Madoff?

3 A Yeah.

4 Q What do you think about that?

5 A I don't think he was dating. I don't believe he
6 was dating Shana back then at that time. He was actually
7 engaged to another woman, I think. So that's why, you know,
8 I read this and I know what it looks like. But I think he
9 was dating and engaged to another woman at that time. So I
10 don't know.

11 Q But we've had some e-mails, Bernie Madoff seemed to
12 be a well known figure.

13 A Absolutely.

14 Q So do you think that that could have played a role
15 into the decision? Not necessarily to stop looking at it,
16 but to put it on the back burner, this guy's a well-known
17 guy, there's probably nothing there. Let's look at some
18 other matters?

19 A Perhaps. I don't have any recollection of anything
20 being told to me; nothing like, but it's Bernie Madoff, I
21 mean. Yeah, nothing like that, so I think that that is the
22 likelihood theory that, you know, I probably would conclude
23 as well that maybe that's what happened. But nothing has
24 been said to me to that affect.

25 Q So, I mean, you are aware I guess that NYRO did an

1 exam, then there was an enforcement exam?

2 A I was not aware of the enforcement exam.

3 Q Did you ever find out what happened with the NYRO
4 exam?

5 A No, I was leading a New York Stock Exchange Exam
6 and I was one of a few people in the office who had a lot of
7 the projects, so it wasn't something I followed up on myself.

8 Q And, you know, given you guys started looking at it
9 and it was kind of a lull, but then NYRO picked it up and
10 looked at it for quite a period of time, do you have any
11 explanation of how the SEC could have missed this?

12 A I don't. I have no theory.

13 Q In connection with how OC does things, some have
14 stated that there's sort of an approach when you do an exam
15 of, you know, a check list. You check off all the boxes and
16 you may not see kind of a forest for the trees, do you think
17 that that could possibly be what was going on? I mean how
18 could it be explained that there was substantial examination
19 of Madoff, yet, it seems everybody didn't.

20 A Well, I think one of the issues, and this is
21 something that I along with some colleague thought, you need
22 to provide meaningful training. And you also need to make
23 sure you have people in the office who have industry
24 experience who have been in the industry and can spot these
25 issues based on experience. And, certainly, I'm not saying

1 you have to fill the entire staff with experienced people,
2 because that's not just practical. They should be able to
3 teach people who are just coming in who don't have that kind
4 of experience.

5 But I think back in 2003 when I came, it was a very
6 young group and a group of people who wanted to be trained
7 more and probably there should have been better training.
8 And I think that for me, that was one of the issues that I
9 had with the group. I think that could be part of the
10 problem.

11 Q So you felt like you weren't adequately trained to
12 deal with all these complex matters?

13 A Well, I think that there could have been more
14 training. You know, when we went on site, when we were
15 trained by other attorney-examiners who had been there, so
16 certainly that is just as important. But when you start to
17 get really busy, those people are harder to go to because
18 their own plates full of their own work. So having more
19 formalized training would help that group.

20 Q So you felt in certain ways you had to kind of
21 research things by yourself to figure them out?

22 A Sure.

23 Q So, you know, it might have been better if you
24 either had some training on it or been able to go to somebody
25 and get that information, rather than trying to figure it out