

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. OIG-509

OIG-509)

WITNESS: Number 26

A rectangular stamp with the word "COPY" in a bold, sans-serif font. To the left of the word is a small square icon containing a stylized letter 'C'.

PAGES: 1 through 113

PLACE: Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C.

DATE: Thursday, April 23, 2009

The above-entitled matter came on for hearing, pursuant to notice, at 10:06 a.m.

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1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

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5 HEIDI STEIBER, ESQ.

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

2 MR. KOTZ: It is 10:06 a.m. on April 23, 2009 at
3 the United States Securities and Exchange Commission Office
4 of Inspector General. I am going to swear you in.

5 Whereupon,

6 MARK DONOHUE

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

9 EXAMINATION

10 BY MR. KOTZ:

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

13 A Mark Donohue, D-o-n-o-h-u-e.

14 MR. KOTZ: Mr. Donohue, my name is David Kotz. I
15 am the inspector general for the United States Securities and
16 Exchange Commission. I have my colleagues here with me,
17 Heidi Steiber and Chris Wilson. This is an investigation by
18 the Office of Inspector General, case number OIG-509.

19 I am going to ask you certain questions and you
20 will have to provide answer under oath. The court reporter
21 will record and later transcribe everything that is said.
22 Please provide verbal answers to the questions. A nod of the
23 head or other non-verbal responses will not be able to be
24 picked up by the court reporter. So the record will be
25 clear, let me finish my question before you provide your

1 response, and I will let you finish your response before I
2 ask the next question.

3 It is important that you understand the questions
4 and give accurate answers. If there is anything you do not
5 understand, or anything you do not know or are not sure
6 about, please let me know. Otherwise, I will assume that you
7 heard and understood the question.

8 Do you understand those instructions?

9 THE WITNESS: I do.

10 MR. KOTZ: As you can see, your responses and
11 statements given today are provided after you have sworn an
12 oath and will be taken down verbatim by the court reporter.
13 This is an official U.S. government law enforcement
14 investigation. The claims asserted in this case are serious
15 ones. It is very important that you tell me everything you
16 know about the matter at hand and are completely forthcoming
17 and truthful with me.

18 I am formally advising you that your testimony
19 today is subject to the laws of perjury. Providing false or
20 misleading testimony under oath is a very serious offense.
21 If the evidence shows the testimony you have given is false,
22 we may refer it as appropriate.

23 Do you understand those instructions?

24 THE WITNESS: I do.

25 BY MR. KOTZ:

1 Q I want to first put into the record that this is a
2 notice of rights. It says on the top United States
3 Securities and Exchange Commission Office of Inspector
4 General. Warning. Employee voluntarily to provide
5 information. Is it correct that you signed and dated this
6 document today?

7 A It is.

8 (SEC Exhibit No. 1 was marked for
9 identification.)

10 MR. KOTZ: Let's put this in as Exhibit 1. I am
11 going to start with some background questions.

12 THE WITNESS: Can I just get on the record a
13 request that I get a copy of the transcript and also if
14 possible if my name could be kept out of the public report.

15 MR. KOTZ: We will certainly give you a copy of the
16 transcript. In terms of your name in the public report, we
17 will give that consideration. That decision may not be made
18 entirely by us. We will provide a copy of the report in full
19 with everybody's names to the chairman. We will not release
20 the document to the public.

21 The agency may release it to the public or to
22 Congress. We will apprise them of concerns by you and others
23 about their names. Again, at the end of the day I will not
24 have the final say about what happens with respect to that.
25 From what I understand of the intentions of the agency, I

1 think the intention is to take out names.

2 BY MR. KOTZ:

3 Q Could you describe for me your education beginning
4 with college please?

5 A I went to Loyola College in Baltimore. I graduated
6 in 1991. I went to the University of Baltimore School of
7 Law. I graduated in 1995.

8 Q Did you work between college and law school?

9 A I did. I worked during law school at Arinc
10 Research. I took a year off between the two and worked at
11 Arinc Research. I continued at Arinc for the first two years
12 of law school.

13 Q How do you spell Arinc?

14 A A-r-i-n-c. It is in Annapolis.

15 Q What is Arinc Research?

16 A They do work for airlines. I think they are
17 actually owned by airlines. Sort of defense contracting kind
18 of things. Defense is the wrong word. Airline contracting
19 kind of things. I do not know if they had stuff with the FAA
20 or not.

21 Q What kind of things did you do for them?

22 A I worked on RFPs -- request for proposals. I
23 actually sat down and spent a bunch of time -- Quatro Pro,
24 which was a predecessor to Excel. I inputted man hours times
25 rate equals so on and so forth. That kind of stuff.

1 Q What was your degree from college in?

2 A It was in business marketing.

3 Q What was your first job after graduating from law
4 school?

5 A I clerked for Montgomery County Circuit Court.

6 Q What kind of things did you do there?

7 A Law clerk for a judge -- Judge Miller. I sat in
8 court, helped out the judge with anything that he wanted.

9 Q Any opinions?

10 A Opinions that he would write.

11 Q And securities-related or business-related issues
12 that came up there?

13 A It was a court of general jurisdiction, so we did
14 everything from criminal stuff to business stuff to whatever
15 needed a jury in Montgomery County. It was a state court.

16 Q So you clerked from 1991 to 1992?

17 A 1995.

18 Q 1995 to 1996?

19 A Yes.

20 Q What did you do after your clerkship?

21 A I went to work at a law firm -- Miles and
22 Stockridge.

23 Q In Baltimore?

24 A The firm is based in Baltimore. We had a Rockville
25 office. I worked out of the Rockville office.

1 Q You worked there as an associate?

2 A Yes.

3 Q How long did you work at Miles and Stockridge?

4 A Until I came to the commission.

5 Q Which was in?

6 A That would have been 2000.

7 Q So approximately four years?

8 A Yes.

9 BY MS. STEIBER:

10 Q Did you have other friends from Miles and
11 Stockridge that were at the commission? Did Alex Sadowsky
12 work there?

13 A Alex did not work at Miles.

14 Q What about Jackie Wood?

15 A Jackie Wood worked at Miles in the Baltimore
16 office. She came to the commission after I did.

17 BY MR. KOTZ:

18 Q Did you know her from your Miles days?

19 A I knew of her more than I knew her. I would say
20 hi. Our paths did not cross very often. She was a mentoree
21 of someone in their Rockville office who I was good friends
22 with.

23 Q What kind of work did you do for Miles and
24 Stockridge in those four-and-a-half years?

25 A Litigation was the major focus. With that focus we

1 worked on everything that came in the door. It was general
2 litigation including business stuff, corporate stuff. We did
3 not do securities trading kinds of things, but corporate
4 disagreements I would say. I was also the town attorney for
5 the town of Kensington. Working at Miles, they were one of
6 my clients. We did labor disputes. We did all kinds of
7 things. As an associate, I worked on whatever the partners
8 wanted me to work on.

9 Q In that time period prior coming to the SEC, did
10 you have any particular broker-dealer or investment advisor
11 experience?

12 A I had not worked on broker-dealer or investment
13 advisor work.

14 Q In around 2000, you began work at the SEC.

15 BY MR. WILSON:

16 Q What is the name of the mentor to Jackie Wood?

17 A Personal Privacy

18 BY MR. KOTZ:

19 Q You began working at the SEC in 2000, you said.

20 A That is correct.

21 Q What was your initial position?

22 A Staff attorney.

23 Q In what office?

24 A Office of Market Oversight. Same office I am
25 currently in.

1 Q What was the larger office?

2 A Office of Compliance Inspections and Examinations.

3 OCIE, as it is more commonly called.

4 Q And who was your initial supervisor as a staff
5 attorney in 2000?

6 A My branch chief changed a few times. Personal Privacy

7 Personal Privacy, I believe, was my first branch chief. I may have
8 reported to Tina Berry.

9 Q And the branch chief was your direct supervisor?

10 A That was my direct supervisor.

11 Q How long were you a staff attorney for?

12 A I do not remember exactly. A year or a
13 year-and-a-half. Something along those lines.

14 Q So you are thinking approximately sometime in 2001
15 you became a branch chief?

16 A It could have been 2002. I am sorry. I just do
17 not remember.

18 Q So either 2001 or early 2002?

19 A Most likely.

20 Q Who did you report to when you became a branch
21 chief?

22 A Eric Swanson.

23 Q How long did you report to Mr. Swanson?

24 A Until I became an assistant director.

25 Q When did you become an assistant director?

1 A Probably a year after I became a branch chief.

2 Q So sometime in 2002 or early 2003?

3 A I think I became an assistant director -- it was
4 during the exam that we are talking about. I think that
5 would have been February 2004. The initial part of 2004.
6 All the dates should go back to reflect that.

7 Q You think you became an assistant director in
8 February 2004 and you became a branch chief --

9 A Probably a year preceding that.

10 Q So either the beginning of 2003 or end of 2002?

11 A That is probably right.

12 Q What were your duties as a branch chief?

13 A To manage projects, staff.

14 Q What kind of projects?

15 A Anything that came in the office. Our office
16 focused on SROs, but we do broker-dealer work, investment
17 advisor work. We focus on trading issues. Anything that I
18 was directed to do or came in the door from our standpoint we
19 would work on. It was a wide variety of information.

20 Q Were you involved in examinations in that time
21 period?

22 A Yes. As opposed to inspections? We have a
23 terminology issue. Sometimes SRO inspections -- those are
24 what we call inspections. It is misused all the time
25 internally by us. Broker-dealer and investment advisors are

1 examinations. They are used interchangeably.

2 Q How many examinations or inspections would you say
3 you worked on as a staff attorney?

4 A I have no idea.

5 Q Was it 10? 100? 500?

6 A Ten. It certainly was not 100 or 500.

7 Q Somewhere in the range of ten?

8 A Probably.

9 Q And then as a branch chief how many would you say
10 you worked on?

11 A Some continued from when I was a staff attorney.
12 Probably more than that then. Ten, fifteen, twenty. I am
13 sorry. I just do not know.

14 Q When you became an assistant director who did you
15 then report to?

16 A John McCarthy.

17 Q So that was from February 2004 until what time
18 period?

19 A That I reported to John McCarthy?

20 Q Yes.

21 A Until he left. I think he left in 2006 or 2007.

22 Q Who did you report to after John McCarthy left?

23 A After John McCarthy left there were two assistant
24 directors at that time: myself and Tom Edit. We had no
25 associate director as our director was trying to find a

1 replacement. We both reported to Laurie Richards, our
2 director.

3 Q Is that your current title as well?

4 A Assistant director. And that associate director
5 position has been filled by Personal Privacy

6 Q When did you start reporting to Personal Privacy

7 A A year-and-a-half or two years ago, maybe. I
8 apologize for the dates. They are going to be a problem
9 throughout.

10 Q So just for some clarity, from February 2003 to
11 February 2004 you were branch chief reporting to Eric
12 Swanson. From February 2004 to sometime in 2006 or 2007 you
13 were an assistant director reporting to John McCarthy.

14 A Those dates sound about right. The reporting lines
15 are clear. I am certain about those.

16 Q When did you first hear of Bernard Madoff or Madoff
17 Securities?

18 BY MS. STEIBER:

19 Q Can I go back for a second? How did your duties
20 change from branch chief to assistant director?

21 A The simplest answer to that is I became in charge
22 of more staff and more projects.

23 BY MR. KOTZ:

24 Q Did it affect the level of involvement that you had
25 in examinations or inspections?

1 A Of course.

2 Q In what way?

3 A Because you could not be as involved as you had
4 many more inspections. You could not be as involved in each
5 of the details of each of the inspections or examinations.
6 Again, I use those interchangeably. As assistant director
7 with the branch chief reporting to you, they were the ones
8 who were mainly in charge of the inspection or examination.
9 Then typically, but not always, there was a lead staff person
10 in charge. As a manager, you certainly want to develop staff
11 and give them responsibilities.

12 BY MS. STEIBER:

13 Q So if you had a project that you were the branch
14 chief on, and then you became an assistant director on the
15 project but there was no new branch chief, would your role
16 have changed on the project then or would you still assume
17 all the branch chief duties when you were an assistant
18 director?

19 A The role in each project is whatever -- it changes
20 with each project. It is not necessarily consistent.
21 Without a branch chief you really more heavily as an
22 assistant director on staff to take more of a stronger role.
23 In each project you try to work with what you have. Each
24 staff is different and each branch chief is different.

25 Q Were you ever given a description of what your

1 duties were as far as branch chief and an assistant director
2 in OC? Was there a job description?

3 A Possibly. I do not recall.

4 BY MR. KOTZ:

5 Q When did you first hear of Bernard Madoff or Madoff
6 Securities?

7 A I have no idea when I first heard about Madoff,
8 either the firm or the individual. He is certainly somebody
9 in the securities industry so --

10 Q Do you think you knew about it before you ever
11 worked on an exam relating to Bernie Madoff?

12 A I was certainly aware of the existence of the firm
13 as a market maker.

14 Q Were you aware of Bernie Madoff's existence as
15 well?

16 A I imagine I was, but I do not have a clear
17 recollection of what I knew about him.

18 Q Have you ever met Bernie Madoff?

19 A I believe I have. If I have not met him -- and I
20 apologize for being unclear about this. I remember
21 distinctly seeing him in a conference somewhere. Either
22 somebody pointed it out to me that this is who it is or --

23 Q Do you remember when that was?

24 A I do not.

25 Q Prior to your exam?

1 A I actually do not remember if it was prior to the
2 exam or after the exam.

3 BY MS. STEIBER:

4 Q Have you met anybody else in Madoff's family?

5 A I have met Shana Madoff.

6 Q When?

7 A I met Shana at Eric Swanson's going-away party.

8 Q Was that the first time?

9 A I think so, but I am not certain.

10 Q Did you go to his wedding?

11 A I did not.

12 BY MR. KOTZ:

13 Q Have you seen Shana other than at Eric's going away
14 party?

15 A Yes, but I do not know when. It could have been at
16 an SEC Speaks. I have seen her more than once. A few times
17 and I do not remember each time.

18 Q What about other people in the Madoff family?
19 Peter Madoff?

20 A I do not believe I have met anybody else.

21 Q You said you were aware generally of Bernie Madoff
22 and Madoff Securities as a market maker. Were there any
23 whispers about his operations? At that time were you aware
24 of any concerns about his returns?

25 A Until the examinations started, I had no real

1 information about the firm I knew of that raised concerns.

2 Q When you generally were aware of Bernie Madoff,
3 what was his reputation? Was he considered an important
4 figure in the industry?

5 A I do not know that I had an impression of his
6 reputation that would distinguish that from anybody else in
7 the industry that has got a last name associated with a firm.

8 BY MR. WILSON:

9 Q Were you excited to maybe do the examination in
10 terms of Madoff Securities?

11 A Not particularly. I do not recall being excited
12 about it. Most things that we do -- we work on important
13 stuff. That is what we do every day. I do not know that any
14 one name would distinguish itself from any other name. At
15 least at the time, I do not remember being any more excited
16 about working on the Madoff examination as I would any of the
17 other examinations that we do.

18 BY MR. KOTZ:

19 Q What was the first OC matter involving Madoff that
20 you were aware of?

21 A At the actual time of the matter itself?

22 Q Yes.

23 A Do you mean am I aware of other OC matters that
24 have involved Madoff?

25 Q I am not talking about post-December 2008. I am

1 talking about at the time.

2 BY MS. STEIBER:

3 Q Before you worked on one, were you aware of other
4 Madoff matters?

5 A I do not think so. I do not think I worked on any
6 other Madoff matters other than the one that we are
7 discussing. I was generally aware of things in the office,
8 so I could have been aware of or even had conversations with
9 people about other ongoing exams. We did that often. I just
10 do not have a specific recollection.

11 BY MR. KOTZ:

12 Q Were you aware of that Triple-Q sweep that was
13 done?

14 A I am aware of it now. I have no recollection if I
15 was aware of it then. Again, I would say I was likely aware
16 of it because I was likely aware of things that were going on
17 in the office.

18 Q But you did become involved in a cause exam
19 involving Madoff, right?

20 A I did become involved.

21 Q When was that?

22 A In the December 2003, January 2004 time period.

23 Q What was your role on that examination?

24 A It began as the branch chief.

25 Q As a branch chief what was your role in terms of

1 the examination?

2 A To run the examination.

3 Q So you were responsible for giving assignments to
4 staff members?

5 A I was responsible for giving assignments to staff
6 members that reported to me on that project under the
7 direction of the assistant director.

8 Q Were you responsible for following up with staff
9 members to make sure that they did their work?

10 A I think that is a typical branch chief duty.

11 Q Is that yes?

12 A Yes.

13 Q What about determining the scope of the
14 examination? Would that be something that the branch chief
15 did?

16 A That would be something that the branch chief would
17 be involved in. I would say as a group on projects, we
18 worked in teams. That team would include staff, the branch
19 chief, assistant director, associate director. Depending on
20 any one project, people would have opinions, insight, and
21 guidance.

22 Q Let's talk about this particular project, the
23 Madoff cause exam that you said started in December 2003.
24 Who made that decision about what the scope of the exam would
25 be?

1 A I do not recall who made a decision. There were
2 discussions with myself, with Eric Swanson, with John
3 McCarthy about what it is we were doing.

4 Q So you were involved in that decision?

5 A Likely I had an opinion. I do not know if my
6 opinion carried the day. I would voice an opinion as to how
7 things should --

8 Q You would say the final decision as to what the
9 scope of the exam would not have been made by you? Would
10 that be your position?

11 A I do not know what a final decision would be in
12 that context. Generally we came to an agreement about how
13 things were done. If someone above me -- if my assistant
14 director or associate director disagreed with the any
15 decision or with the way an exam was going, we would go with
16 the way that the assistant director or associate director or
17 director wanted us to go. There is a chain of command we
18 would work with.

19 Q Do you remember the context of the 2004 cause exam
20 of Madoff and whether there was any disagreement about what
21 the focus should be?

22 A I do not remember disagreement.

23 Q Is it fair to say the determination of what the
24 scope of the exam would be was some kind of joint decision
25 that everyone agreed on involving you, Eric Swanson, and John

1 McCarthy?

2 A That is likely.

3 Q Who were the staff members that worked on that
4 exam?

5 A I believe it was Jackie Wood, Genevieve Walker.

6 I think Matt Daugherty had some involvement with it.

7 [REDACTED] got involved some time after it started. I think that
8 was it.

9 Q Who made the decision as to who would be the team
10 put together on that?

11 A I do not recall. I would not distinguish that
12 decision process from the focus decision process.

13 Q So it would be a joint decision?

14 A It would likely be a -- yes. It is possible I
15 could have gone to Eric or John or both of them and said, "I
16 would like to have these two staff members or these people
17 involved on it." It is possible that one of them said they
18 wanted these two involved on it. I do not know that there is
19 a clear decision tree.

20 BY MS. STEIBER:

21 Q Do you think that you and Eric and McCarthy chose
22 the staff members before determining the focus of the exam so
23 that you could say you wanted this particular expertise from
24 each person, or if it was more these people are available so
25 I am going to staff them on this project and then decide what

Former OCIE Attorney
Advisor

1 the focus was?

2 A I do not recall specifically how the staffing
3 decision worked on this one exam. Generally when we staff
4 examinations we look at all kinds of issues. Staff
5 expertise, availability. Those are key characteristics of
6 who gets staffed on any one exam.

7 Q I am not clear. Do you decide on the staffing
8 before you get the focus of your exam or do you have the
9 focus and then you get the staff? I am talking about in this
10 particular situation.

11 A I do not recall how that worked in this particular
12 situation. The focus of an examination is an evolving topic.
13 We try to go where the exam leads us. We try to have a plan
14 in the beginning.

15 Q So it is evolving. I am still not clear. Is there
16 any OC protocol of how you choose the staff members for your
17 team? Is it haphazard?

18 A It is not haphazard. I do not know that there is a
19 written protocol about how teams get selected. We work with
20 expertise. We work with resources. Staff availability. We
21 are interested in staff development. There are a number of
22 factors into who gets selected.

23 BY MR. KOTZ:

24 Q So you would not necessarily make a specific point
25 to have a focus and then find the staff after you determine

1 the focus? That would not be the particular protocol that
2 you would use?

3 A I would say when we start an examination and get a
4 project we generally have a pretty good idea of at least a
5 broad focus when we start. Narrowing and refining it into
6 something -- it is evolving. We have a good idea, or at
7 least some idea, of what we are trying accomplish as soon as
8 we get an exam -- we decide to go out on exams. That is
9 something we do not know exists. As soon as we know it
10 exists, this is something we are going to pursue, the focus
11 is already developing and then we bring in staff.

12 BY MS. STEIBER:

13 Q Do you recall why you chose Jen Walker and Jackie
14 Wood?

15 A I do not.

16 BY MR. KOTZ:

17 Q At some point you became an assistant director
18 while that Madoff cause exam was going on.

19 A That is correct.

20 Q So how did your role change in connection with this
21 particular exam?

22 A Not too dramatically, but for Eric Swanson's
23 involvement. When I became an assistant director it was a
24 new position. Eric and I talked about how that was going to
25 work. Eric had more experience than I did and was certainly

1 someone who I thought -- commonly sought counsel on all kinds
2 of issues. Procedurally I became the assistant director on
3 it and I would report directly to John McCarthy.

4 BY MS. STEIBER:

5 Q But you just said that you had a discussion with
6 Eric about how you becoming an assistant director would
7 change his role. What was that conversation and what was the
8 conclusion?

9 A The conversation was generally I became an
10 assistant director with Eric so how are we going to work out
11 who is working on what, when does the next project come in,
12 how does -- we did not have it was going to be a,b,c,d, or e.
13 It was an evolving issue. I certainly came to him
14 saying -- I wanted a very good relationship with Eric, of
15 course. I said I hope he did not mind if I kept talking to
16 him about issues. It is very collaborative, I think, the way
17 the whole office works.

18 BY MR. KOTZ:

19 Q Did Eric stay in the loop on the Madoff exam even
20 after you became assistant director?

21 A I believe he did. We both tried to stay in the
22 loop with as many exams as we could.

23 Q Did you have less hands-on involvement in the
24 Madoff cause exam after you became assistant director?

25 A I had more projects after I became assistant

1 BY MS. STEIBER:

2 Q I thought you said earlier you would have a lead.

3 A It varies depending on the examination.

4 BY MR. KOTZ:

5 Q When you assign staff members to a particular exam,
6 do you talk to them about what the background and purpose of
7 the exam would be?

8 A When I assign staff members to work on a project we
9 discuss the project. We discuss all elements of the project
10 that we are aware of.

11 Q Do you discuss what precipitated the project?

12 A Likely.

13 Q Did you discuss in this case with Jackie Wood and
14 Jen Walker why it is you started a cause exam of Bernard
15 Madoff?

16 A I do not recall any specific discussions. That
17 does not mean I did not discuss it, I just do not recall.

18 Q If you look at the third draft of this document it
19 says, "The staff recently received information from an
20 outside source alleging that Bernard L. Madoff, principal of
21 Bernard L. Madoff Investments LLC" --

22 A I am sorry. Where are you reading from?

23 Q Right there.

24 A Okay.

25 Q "The staff recently received information from an

1 outside source alleging that Bernard L. Madoff, principal of
2 Bernard L. Madoff Investments LLC, a leading market maker in
3 NASDAQ securities, has been committing front running
4 violations." What was the outside source?

5 A I believe we had a conversation with a gentleman.
6 I do not remember his name. I do not believe it was
7 Markolopos.

8 Q [REDACTED]?

9 A That is likely.

10 BY MS. STEIBER:

11 Q From [REDACTED]?

12 A Yes. I think that is right. I also think there
13 was a news article or other information that was relevant.

14 BY MR. KOTZ:

15 Q Do you know if that information that you got from
16 [REDACTED] was shared with Jackie Wood or Jen Walker?

17 A I do not recall any specific conversations. I do
18 not know.

19 BY MS. STEIBER:

20 Q Do you recall if the [REDACTED] complaint
21 came through possibly Mavis Kelly?

22 A I believe Mavis had talked to him prior.

23 (SEC Exhibit No. 3 was marked for
24 identification.)

25 BY MR. KOTZ:

1 Q Why don't we show you some documents. This is what
2 we are going to mark as Exhibit 3. This is actually an
3 e-mail that you started dated 12/17/03 at 10:44 a.m. See in
4 there it says, "Jen, Mavis Kelly told Eric she has a bunch of
5 stuff on Madoff." I wanted to show you that.

6 A Was this e-mail sent?

7 Q No.

8 A Just a draft?

9 Q Just a draft.

10 (SEC Exhibit No. 4 was marked for
11 identification.)

12 BY MR. KOTZ:

13 Q The next exhibit we are going to show you we are
14 going to mark as Exhibit 4. This is an e-mail from [REDACTED]
15 [REDACTED] to Mavis Kelly on Wednesday, May 21, 2003 at
16 5:47 p.m. with several attachments. You can see one of the
17 attachments is a news article.

18 Do you recall that this document and/or the
19 communications between Mavis Kelly and [REDACTED] was what
20 precipitated that 2004 exam?

21 A I do not know whether this precipitated the exam or
22 not.

23 BY MS. STEIBER:

24 Q You do not recall Mavis giving this to you?

25 A I recall Mavis giving this -- this occurred prior

1 to our group starting the Madoff examination. I do not know
2 whether this was the reason we started the examination. I
3 reviewed this information during the course of the
4 examination.

5 Q Did she give this to you directly and then you gave
6 it to Eric Swanson, or did she give it to Eric and --

7 A I do not recall how the transmittal of documents
8 went. I recall reviewing the documents. This document is
9 not unfamiliar to me.

10 Q When do you recall reviewing it? Right after she
11 received it? She testified that she believes she gave it to
12 you after receiving it.

13 A I just do not recall.

14 BY MR. KOTZ:

15 Q Are you aware of any other outside source that
16 could have been referred to in the planning memo in Exhibit
17 2, other than the [REDACTED] matter?

18 A I am not. I want to be clear. I am not saying
19 that this did not start it, I just do not remember. This
20 type of information would likely be something that would have
21 started it. It is quite possible that this is what started
22 it, but I do not recall specifically what piece of
23 information started it. It could have been multiple pieces
24 of information.

25 Q But you do not remember any other specific piece of

1 information that could have started it, other than what
2 [REDACTED] provided?

3 A I do not.

4 Q Let me ask you a couple of questions about
5 Exhibit 4, which is the memo from [REDACTED]. You
6 remember, though, at the time reviewing these documents?

7 A I remember reviewing this document. I do not
8 remember when I reviewed this document.

9 Q Do you remember having any communications with Eric
10 Swanson or John McCarthy about this document?

11 A I do not remember any specific communications. It
12 would be likely that I had.

13 Q Let me ask you a couple of questions about some of
14 the things in this document. If you can see, in the first
15 full paragraph it says, "The firm does not charge any
16 management or performance fees to these accounts, but rather
17 brokerage commissions. We estimate the amount of money
18 managed under this strategy by BMS" -- referring to Bernard
19 Madoff Securities -- "somewhere between USD 8- to
20 10 billion."

21 Does the fact that, according to this, Madoff does
22 not charge management or performance fees but rather
23 brokerage commissions raise any red flags with you?

24 A It is an interesting fact. It is a distinguishing
25 characteristic of an investment advisor versus a

1 broker-dealer. Broker-dealers would typically charge
2 commissions. Investment advisors would typically
3 charge -- hedge funds charge performance fees -- charge
4 asset-based compensation.

5 Q But given that he was doing 8- to \$10 billion,
6 would that be surprising that he would not charge management
7 or performance fees?

8 A I am sorry. It is hard for me to distinguish
9 between what I know now and what I knew then as far as what
10 would be surprising or not. I am having difficulty
11 distinguishing yes at that time when I looked at this. This
12 was something that was a red flag. At this point, given all
13 the information that has been out in the press, I see
14 everything as a red flag.

15 Q Setting apart from what you remembered at the time.
16 Just from your general knowledge having worked in OC, would
17 this be a red flag?

18 A The mere size of the --

19 Q The size combined with the fact that he did not
20 charge management or performance fees.

21 A I think that is an interesting element.

22 Q But not a red flag?

23 A I do not know what a red flag is. I am not trying
24 to be combative here. But, yes, it is something we would
25 look at.

1 Q Wouldn't there be a significant amount of money
2 left on the table if he was doing 8- to \$10 billion and was
3 not charging management or performance fees?

4 A If he was acting as a broker-dealer doing
5 transactions I think that would be typical. If he was acting
6 as an investment advisor then I think that would be atypical.

7 BY MR. WILSON:

8 Q Is it significant that these are discretionary
9 accounts in the way he would do his fee structure?

10 A Is it significant that they were discretionary
11 accounts from a broker-dealer?

12 Q Yes.

13 A I do not mean to downplay any of this. All of this
14 is different, therefore interesting. The structure that he
15 had set up was not normal, I would say.

16 BY MR. KOTZ:

17 Q Let me ask you about that next full paragraph. It
18 says, "According to BMS the options are traded with a number
19 of traders across on the CBOE."

20 Do you know what the CBOE is?

21 A Chicago Board of Options Exchange.

22 Q And you knew what that was at the time?

23 A I did.

24 Q "With an 8- to \$10 billion size you must see the
25 volume, but unfortunately you do not. We actually checked

1 with some of the largest brokers, UBS, Merrill, et cetera,
2 which told us they never traded with them OEX options. The
3 question is do they really implement the full strategy."

4 Let me ask you first: At the time did this seem to
5 be a concern what [REDACTED] was saying?

6 A I think the entire issue was a concern. Everything
7 about it was a concern. Certainly, we take tips and
8 information along these lines with -- try to put it in
9 context and try to understand whether the information
10 contained in the tip is accurate or not and follow up with
11 that and proceed.

12 To get back to the initial point. He is suggesting
13 do they implement the full strategy or not, or are they doing
14 something different than what the strategy is that he is
15 aware of.

16 BY MS. STEIBER:

17 Q He is suggesting he is not really trading the
18 options, isn't he? Or not trading them as he has represented
19 to his clients, correct? The question is do they really
20 implement the full strategy.

21 A The question is do they really implement the full
22 strategy can mean a lot of different things. It could mean
23 are they doing a strategy different than I, [REDACTED]
24 understand the strategy to be.

25 Q Let's back up then. Let's look at that paragraph.

1 It says, "According to BMS the options are traded with a
2 number of traders and crossed on the CBOE. With an 8- to
3 \$10 billion size you must see the volume" -- so you would see
4 the volume on CBOE -- "but unfortunately you do not. We
5 checked with some of the largest brokers, which told us they
6 never traded with them OEX options. The question is do they
7 really implement the full strategy."

8 So isn't he saying the question is are they really
9 trading these options, or at least trading them at the
10 size --

11 A I think that is a reasonable interpretation of what
12 he is saying.

13 BY MR. KOTZ:

14 Q Isn't he saying that Madoff might be lying about
15 his options trading?

16 A I do not think he goes that far. I think that is a
17 reasonable inference from it that he is concerned about what
18 he understands Madoff's representation is to be and what he
19 understands Madoff to be doing.

20 Q And was that a concern at the time when you guys
21 received this information from [REDACTED] and were
22 doing the cause exam that Madoff may not be trading these
23 options or may be lying about what his options trading were?

24 A Our focus of the examination was on front running.
25 That is what we believed was the most likely -- if there was

1 a problem there that was the most likely problem. I think we
2 took that focus from all the information we got.

3 Q What about this?

4 A I certainly wish I would have followed up on more
5 stuff after the fact.

6 Q What about this particular issue? Why was there no
7 focus on the point that [REDACTED] was making, which
8 is according to Bernard Madoff the options were traded with
9 an 8- to \$10 billion size you must see the volume but they
10 did not see the volume.

11 A I do not know why there was not more focus on that
12 issue.

13 BY MS. STEIBER:

14 Q You just said that you would have followed up on
15 more things. What specifically are you talking about?

16 A I wish I would have found out that this was a major
17 Ponzi scheme.

18 BY MR. KOTZ:

19 Q But are you also saying that you wish would have
20 focused the exam on the possibility of a Ponzi scheme?

21 A I wish I would have done everything I could have
22 done. I wish I would have found that this was a huge fraud.

23 Q Do you see now, in hindsight, it was a mistake to
24 focus the exam on front running and not on what [REDACTED] was
25 saying, which was that the options may not be traded and

1 certainly not in that size?

2 A I wish I would have focused on all this stuff.
3 Whether it was a mistake or not given the information that we
4 had, and this was information we did have including all the
5 other things we had too, I do not know that it was incorrect
6 or a mistake. Would I have made the same decision again? I
7 do not know that I would have. In hindsight knowing what has
8 gone on, I wish I had made a different decision.

9 Q Is it fair to say in the exam there was not
10 sufficient analysis or examination of this point that [REDACTED]
11 [REDACTED] is making about the options traded?

12 A In retrospect I believe that is fair to say. At
13 the time, with what we were working on and with what we knew,
14 I do not know that I would have made the same decision.

15 Q Isn't what you were working on what you knew? The
16 information that [REDACTED] provided.

17 A This is information that we had at the time.

18 Q So where is the information that is separate from
19 what [REDACTED] is saying? You got in a complaint.
20 The complaint is from [REDACTED]. In the complaint
21 from [REDACTED] he makes this point about options.
22 You say, well, based on the other information we had we
23 focused on front running. Where is that information?

24 A I am saying based on all the information that we
25 had, which included all the discussion we had about what is a

1 likely issue that is coming out. I think what we thought was
2 the likely issues here was front running. I do not mean to
3 disregard this, but I do not remember how we came to that
4 conclusion. I am not certain that this is all the
5 information we had. We did not base it solely on this tip
6 from [REDACTED]. I do not remember all the information that we
7 had.

8 Q Let me ask you this: In the examination that you
9 conducted of Madoff in 2004, did you take any measures to
10 verify whether or not Madoff was trading 8- to \$10 billion in
11 options on the CBOE?

12 A I do not believe we did.

13 Q Let me ask you a couple more questions about the
14 information in the [REDACTED] complaint. You see were
15 it says, "Accounts are typically in cash at month end."?

16 A Yes.

17 Q Is there any particular significance to that for
18 you as an OC examiner or person that works in OC? What is
19 the relevance of the fact that the accounts are typically in
20 cash at month end, if there is any?

21 Does that mean anything to you?

22 A It means that it is a fact that we put in the mix
23 of information.

24 Q Would you be suspicious because accounts are
25 typically in cash at month end?

1 A As opposed to being accounts being in securities?
2 It depends on the trading strategy that is going on.

3 BY MS. STEIBER:

4 Q Are there any regulatory requirements that you
5 would think of that he might be trying to avoid by going to
6 cash at month end?

7 A Not that I am aware of. There may be.

8 Q You are not familiar with 13-F requirements?

9 A Not off the top of my head.

10 BY MR. KOTZ:

11 Q Let me ask you about another point in here: It
12 says, "There are no third party brokers involved in the
13 process. The auditor of the firm is a related party to the
14 principal." At the time was that something that concerned
15 you or was a red flag?

16 A Again, the whole document concerns me. Every
17 element is something that is of interest. The whole document
18 is a red flag of a problem. He is asserting a problem.
19 Every piece of information in here is his support of the
20 problem.

21 Q What is the red flag associated with there are no
22 third party brokers involved in the process and the auditor
23 of the firm is a related party to the principal?

24 A Where are you exactly reading from?

25 Q You see where it says, "Since the accounts are at

1 BMS the investors,"?

2 A Okay. Thank you.

3 Q It says, "There are no third party brokers involved
4 in the process. The auditor of the firm is a related party
5 to the principal." Why would that be a red flag that the
6 auditor of the firm is a related party?

7 A His statement that the auditor of the firm is a
8 related party to the principal would indicate that there are
9 potential conflicts with the firm and the auditor.

10 Q In the course of the examination did you take any
11 measures to determine if that was true that the auditor of
12 the firm was a related party to the principal?

13 A I do not believe we did.

14 Q Any particular reason why not?

15 A I do not remember. I would say we make decisions
16 about what we are looking at, how we look at things, whether
17 to devote resources to things. It is a constantly evolving
18 process.

19 Q Did you take any action to determine who was the
20 auditor or look into the auditor of the firm?

21 A I, myself, do not remember doing anything at the
22 time. I do not remember looking at the auditor issue.

23 BY MS. STEIBER:

24 Q Did you tell anyone on your staff to look at that
25 auditor issue?

1 A I do not remember telling anybody else on the staff
2 to look at the issue.

3 BY MR. KOTZ:

4 Q The next part of this complaint says, "BMS never
5 had to face redemption. In fact, given the fact that the
6 different feeders are closed for new investments, there is
7 always replacement capital. One-fifth ratio according to
8 some people." At that time were you aware of the
9 characteristics of a Ponzi scheme?

10 A Generally aware of the characteristics of a Ponzi
11 scheme, yes.

12 BY MS. STEIBER:

13 Q What were those characteristics that you were
14 generally aware of?

15 A What is a Ponzi scheme?

16 Q Yes.

17 A Using somebody else's investment to pay off another
18 investor.

19 BY MR. KOTZ:

20 Q So when [REDACTED] says, "BMS never had to
21 face redemption. In fact, given the fact that the different
22 feeders are closed for new investment, there is always
23 replacement capital." Isn't he providing facts that support
24 the existence of a Ponzi scheme?

25 A I think to be clear about how I would read this

1 document. He is not providing facts. He is alleging certain
2 things that have happened. There are a variety of reasons
3 why people make allegations and you need to -- as part of the
4 government and SEC we read all of this kind of information
5 with the idea of trying to figure out what is true and what
6 is not. I would not say that this is a statement of facts.
7 This is this gentleman's allegations of what he believed
8 happened.

9 Q Let me rephrase the question then. When [REDACTED]
10 says, "BMS never had to face redemption. In fact, given the
11 fact that the different feeders are closed for new
12 investments, there is always replacement capital." Isn't he
13 providing allegations of a Ponzi scheme?

14 A I think he is providing allegations of what he is
15 alleging and that could be interpreted as a Ponzi scheme.

16 Q One of the attachments to the document is an
17 article. I think you mentioned earlier you thought there was
18 an article that was part of the reason for the cause exam.

19 Do you recognize this article?

20 A Yes.

21 Q Do you think this was the article you referred to
22 previously?

23 A Possibly. Is this all part of the same document?

24 Q It was an attachment, yes.

25 A These are all stapled together.

1 BY MS. STEIBER:

2 Q Let's go through this really quickly. You have
3 these two sheets before the article, which are performance
4 statistics for two of his largest feeder funds.

5 Do you recall reviewing this?

6 A Yes.

7 Q Does the name Fairfield Century ring any bells?

8 A Yes.

9 Q In the next attachment he has a 2001 MarHedge
10 article.

11 A Yes.

12 BY MR. KOTZ:

13 Q Do you remember looking at these documents at the
14 time?

15 A I do, yes.

16 MS. STEIBER: This is a clean version of reading
17 the article. It has been highlighted in the work papers.

18 BY MR. KOTZ:

19 Q A couple of things about this article. If you look
20 at the second page of the article all the way on the right
21 about middle of the way through see where it says,
22 "Skeptics,"?

23 A Yes.

24 Q It says, "Skeptics who express a mixture of
25 amazement, fascination, and curiosity about the program

1 wonder first about the relatively complete lack of volatility
2 and the reported monthly returns. Among other things, they
3 also marvel at the seemingly astonishingly ability to time
4 the market and move to cash in the underlying securities
5 before market conditions turn negative, and the related
6 ability to buy and sell stocks without noticeably affecting
7 the market."

8 It says, "In addition, experts ask why no one was
9 been able to duplicate similar returns using the strategy and
10 why other firms on Wall Street have not become aware of the
11 fund and its strategy and traded against it, as has happened
12 so often in other cases. Why is Madoff Securities willing to
13 earn commissions on the trades, but not set up a separate
14 asset management division to offer hedge funds directly to
15 investors and keep all the incentive fees for itself?"

16 Do you remember if this particular issue of the
17 lack of volatility in Madoff's monthly returns was something
18 that you considered in undertaking the cause exam?

19 A Everything in this was part of the consideration of
20 going forward with the examination itself.

21 Q Were there any particular actions that you took in
22 the cause exam to look into this issue of the lack of
23 volatility in Madoff's monthly returns?

24 A One of the things we tried to do was understand his
25 strategy. That was part of it -- trying to understand it.

1 Q What about this point of, "related ability to buy
2 and sell the underlying stocks without noticeably affecting
3 the market"? So if you had a 7- to \$12 billion hedge fund
4 buying and selling S&P 100 stocks would you expect the volume
5 to be noticed in the market?

6 A I think that is reasonable to state.

7 Q So was there any particular aspect of the exam that
8 looked into this issue of why, the allegation at least, the
9 volume would not be noticed in the market?

10 A I do not remember us looking at the market impact
11 of the trading strategy.

12 Q What about this point that other firms on Wall
13 Street were not able to duplicate similar returns using the
14 strategy?

15 Do you remember that as something that was thought
16 about?

17 A That, again, as with everything, is an element of
18 something we would review. I think generally every firm
19 makes the same allegation. They can do something different
20 that nobody else can do. That is relevant.

21 Q Wouldn't you say that a fair reading of this part
22 of the article at least implies that Madoff might not
23 actually be trading?

24 A I do not remember believing that or taking that
25 from the article at the time. To say it now, in hindsight,

1 with the facts that we have, I can read that into it.

2 Q Do you know if anyone ever contacted Michael
3 Ocrant, the author of this article, as part of the background
4 or examination to get more information?

5 A I do not remember contacting him.

6 Q Is there any prohibition in OC against contacting a
7 journalist?

8 A There is a policy about speaking to journalists. I
9 think the policy is focused on journalists calling for
10 information. I have never done the reverse -- called a
11 journalist for information.

12 Q What about the rest of the documents in here?
13 Momentum Asset Management Limited, Money Master Fund, October
14 2002.

15 Do you remember if that document was also reviewed
16 at the time?

17 A The whole e-mail and its attachments would have
18 been reviewed at the time.

19 Q There is another article, a Barron's article. Were
20 you aware of that article about Bernie Madoff?

21 A I thought there was more than one article.

22 BY MS. STEIBER:

23 Q So there was the MarHedge article by Michael Ocrant
24 and then that was soon followed by another article. I wanted
25 to see if you had also reviewed the Barron's article.

1 A It is possible.

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

4 BY MR. KOTZ:

5 Q We are going to show you that document. We will
6 mark it as Exhibit 5. This is an e-mail from John McCarthy
7 to Eric Swanson on December 11, 2003 at 1:53 p.m. Tell me if
8 this is something you recall looking at, at the time, in
9 connection with the Madoff exam.

10 A I do not know if I saw this or not. It would be
11 likely that I did.

12 Q The [REDACTED] complaint is dated May 21,
13 2003 and the planning memo is dated December 2003.

14 Do you have any idea why there was that lag between
15 May 2003 and December 2003?

16 A I do not have any idea. As I said, I do not
17 remember seeing this in May 2003. It does not mean that I
18 did not, I just do not remember seeing it.

19 Q Going back to the planning memo for a second. That
20 is Exhibit 2.

21 Do you see it says, "Course of action."?

22 A Yes. On the second page?

23 Q Yes. Why don't we look at the last draft of the
24 planning memo. There are three drafts. It is going to be
25 the last one. Course of action it says, "The staff intends

1 to send a letter to NASD requesting execution data for Madoff
2 Securities for the time period of January 1, 2001 through
3 December 31, 2003."

4 Do you know who made that decision to request
5 Madoff trading data from the NASD?

6 A I do not know if an individual made that decision
7 as opposed to the --

8 Q Would that be something that you would typically do
9 in a front running examination?

10 A I do not know what we would typically do in a front
11 running examination. We follow each examination --

12 Q Would that information be helpful in a front
13 running examination?

14 A The execution data would certainly be helpful.

15 Q Did the staff or anyone else send a letter to NASD
16 requesting execution data for Madoff Securities?

17 A I do not remember getting information from NASD.

18 Q Do you have any idea why that letter was never
19 sent?

20 A I do not, other than we got information from the
21 firm itself. I wish I would have gone to a bunch of
22 different sources to get information.

23 BY MS. STEIBER:

24 Q If you had gotten that trading data from NASD,
25 would you have been able to discover that there was no

1 trading?

2 A It depends on the data. The audit trail that NASD
3 holds -- their NASDAQ audit trail, which was NASDAQ's data,
4 would -- it depends on what is required to be transmitted to
5 them. If you are trading in NASDAQ securities, I think that
6 is what OATS captures. Not New York securities. I am not
7 clear exactly what exactly is in the OATS data that NASD
8 retains. They also retain several different types of audit
9 trail data sources. NASDAQ would retain trading data trades
10 on NASDAQ.

11 Q So if he is trading S&P 100 stock, or is claiming
12 to, and he went to the NASD --

13 A You could possibly get some of the information.
14 But if he was trading in New York stocks then you may need to
15 go to New York Stock Exchange. There are a variety of
16 sources to get audit trail information.

17 BY MR. KOTZ:

18 Q But if you went to the right stock exchange or
19 source you would have been able to uncover that he was not
20 trading?

21 A I think that we would have been able to uncover
22 that he was not trading there.

23 Q That he was not trading in the place that he said
24 he was trading.

25 A Right. If he said he was trading in NASDAQ and we

1 went to NASDAQ and said can you give me his trades and
2 because he was a broker-dealer -- if he was clearing -- audit
3 trails are a complicated issue. The audit trail that may go
4 to any one exchange can be retained by a clearing member
5 number as opposed to firm member number. The type of audit
6 trail that is maintained varies.

7 If Bernie Madoff said he was trading on NASDAQ in
8 these securities, I would expect that if I went to NASDAQ to
9 find his trades, because he is a broker-dealer -- I am not
10 certain whether or not he was a clearing -- it is --

11 Q You would expect that you would find those trades
12 and if you did not you would know that he was not trading as
13 he said he was?

14 A If he said he was trading on NASDAQ and I went to
15 NASDAQ and asked for all of Madoff's transactions and they
16 said they did not have any Madoff transactions, I would
17 consider that to be a problem and I would go back to the firm
18 and say we do not have these transactions and what is going
19 on. That does not mean that would likely be a problem.

20 Q But you would have caught him in that lie. If he
21 said he was trading in NASDAQ and you went to NASDAQ and
22 there were no trades you would have caught him in that lie.

23 A He could have said he was trading in NASDAQ through
24 an ECN and therefore all his trades are masked
25 because -- there are a lot of different potential excuses.

1 None of them should have been good enough.

2 We did not ask him, anyway, so it is all
3 hypothetical.

4 Q Under course of action on the next page of this
5 planning memo, it says, "The staff intends to send a letter
6 to those investment advisor firms that market Madoff-managed
7 hedge funds."

8 Do you know if that was ever done?

9 A I do not believe we ever did that.

10 Q Do you have any idea why not?

11 A No, other than the general decision -- resources
12 and -- I do not remember thinking that -- I am not sure who
13 drafted this document. I was likely involved in the drafting
14 of it, but I do not remember thinking about sending things
15 out. This could be -- as this is a draft document, it could
16 be a draft document prepared by one of the staff members.

17 I just do not know whether I looked at it or
18 not. Planning memos is something I would be involved with.

19 Q You are investigating a complaint that someone is
20 engaged in fraud. Do you think it is reasonable to rely
21 solely on the documents and records provided by the person
22 who is accused of fraud?

23 A I think it depends on the complaint. In this
24 instance, I wish I would have gone and checked many more
25 resources than we did.

1 (SEC Exhibit No. 6 was marked for
2 identification.)

3 BY MR. KOTZ:

4 Q I am going to show you a document. This is a
5 12/19/03 e-mail at 2:13 p.m. from you to Matt Daugherty. We
6 are going to mark this at Exhibit 6. There is a reference to
7 Laurie and John. "Talked with Madoff last night. I will
8 explain over that beer."

9 Do you know what that conversation was about?

10 A I do not. I actually do not have any recollection
11 of that at all. It appears to be a draft of mine.

12 MS. STEIBER: It was actually sent.

13 THE WITNESS: This was something that was actually
14 sent?

15 BY MR. KOTZ:

16 Q Do you recall any conversation between Laurie and
17 John talking to Madoff in connection with the exam?

18 A I do not, but I doubt I would have been a party to
19 that conversation. I likely would have been told about the
20 conversation.

21 Q But you do not recall being part of that
22 conversation?

23 A I actually do not. I wrote it down. I assumed it
24 happened. I do not recall it.

25 Q Would it be unusual for Laurie Richards to be

1 calling a registrant directly?

2 A I do not know if Laurie called the registrant or
3 the registrant called Laurie.

4 Q If Laurie had called, would that be unusual?

5 A I think it would be atypical. It depends on the --

6 BY MS STEIBER:

7 Q Atypical?

8 A Unusual, atypical. I think they are the same. I
9 think that is fair.

10 BY MR. KOTZ:

11 Q This thing is a bit of a curiosity to us. Did you
12 have involvement in the gathering of the documents that OC
13 produced to our office?

14 A I did. Right when it happened I gathered
15 everything I could find.

16 Q When this document, Exhibit 6, was produced to us,
17 it did not have the top, where it is you saying to Matt
18 Daugherty you needed a drink before you started writing that
19 thing. "I need a drink. Laurie and John talked with Madoff
20 last night. I will explain over that beer."

21 When we got the document separately from OIT, it
22 did have that. Do you have any idea why that would be?

23 A I do not. In fact, I do not remember this e-mail
24 at all. In preparing documents I pulled all of the -- I have
25 a Madoff folder. I pulled the Madoff folder documents. I

1 went through them. It does not appear to me that this was a
2 document that I had saved in that folder.

3 BY MS. STEIBER:

4 Q The bottom half was in the work papers that were
5 produced on disk, but just not the top half. You do not
6 know --

7 A Because I probably -- I do not know how I was
8 saving things at that time except for putting topical e-mails
9 into a topical folder. I believe I remember the e-mail from
10 Matt. I just do not remember the top e-mail.

11 Q How did you gather the documents for OC? You said
12 you kept a topical folder.

13 A I have a topical e-mail folder. I have a ton of
14 them. One of them says Madoff. During the course of the
15 exam I would have pulled over e-mails I thought I should save
16 or for whatever reason I thought to put in a folder. In the
17 course of compiling all the information for the -- related to
18 Madoff I believe I copied all my e-mails in that folder into
19 CD and produced them with all the documents I was able to
20 gather as well.

21 BY MR. KOTZ:

22 Q So there was nothing withheld? No portions of any
23 e-mails withheld?

24 A No.

25 (SEC Exhibit No. 7 was marked for

1 identification.)

2 BY MR. KOTZ:

3 Q I am going to show you several drafts of document
4 requests. We are going to mark this entire thing, which is
5 OC headquarters document request draft 1 through 7, and final
6 document request. We are going to mark them Exhibit 7.

7 Do you know who prepared these document requests?

8 A I do not have specific knowledge about whether it
9 was Jackie or Jen or me or anybody else on the team. I do
10 not know who did what. We worked together.

11 BY MS. STEIBER:

12 Q Did someone give you instructions on preparing the
13 document request?

14 A I do not recall. If somebody had, it would have
15 been Eric. There probably were potential discussions about
16 the kinds of things that we would be interested in. Document
17 requests typically are prepared by the staff and then
18 reviewed and edited.

19 BY MR. KOTZ:

20 Q If you look at tab 2. There is an e-mail from Jen
21 Walker to you dated 12/22/03 at 12:43 p.m.

22 A Yes.

23 Q "Jackie and I have spoken regarding the letter. I
24 have made a few changes and additions. In particular, I used
25 an inspection guide for hedge fund management examinations to

1 make a few additions, which may be a bit over inclusive for
2 our purposes."

3 Do you know, was it Jen Walker's idea to use the
4 inspection guide for hedge fund management?

5 A I do not remember whether it was or it was not.

6 Q Do you know why she would have used that?

7 A We try to pull from all kinds of sources to get
8 help to write document request letters -- find similar
9 things. Anything that is related, so that would be a good
10 resource.

11 Q Was it your understanding that Madoff was running a
12 hedge fund at the time?

13 A I do not think we knew what he was doing at the
14 time.

15 Q But there are a number of questions related to
16 hedge fund activity. Does that indicate that you were at
17 least aware of the possibility that Madoff was running a
18 hedge fund?

19 A I think we were open to the possibility of
20 anything. I think it was --

21 Q If you say anything, but particularly she is
22 checking the hedge fund inspection guide and there were a
23 number of questions that related to hedge funds. So isn't it
24 fair to say you were open to the possibility that Madoff was
25 running a hedge fund?

1 A We were open to the possibility that Madoff was
2 running a hedge fund.

3 Q If you look at tab 3. You can see on the second
4 page, question 2 --

5 A Second page of the request?

6 Q Yes. "Describe in detail the hedging model or
7 investment strategy identified as a split strike forward
8 conversion in a telephone" -- it says conversion, but I think
9 it means conversation -- "between Laurie Richards, John
10 McCarthy, and Bernie Madoff on December 19, 2003."

11 The next one, number 3, also refers to, "Identify
12 the 4 hedge funds discussed on the telephone conversation
13 between Laurie Richards, John McCarthy, and Bernie Madoff on
14 December 19, 2003." You can look later on in the drafts and
15 you can see that that reference to the telephone conversation
16 between Laurie Richards, John McCarthy, and Bernie Madoff on
17 December 19, 2003 was taken out.

18 A Okay.

19 Q Do you have any idea why that would have been taken
20 out?

21 A I do not have any specific recollection of it. In
22 drafting document requests we try to make them more generic
23 than specific, therefore that they can get more response. As
24 opposed to it is not something we discussed in that telephone
25 conversation so there I do not have to produce it.

1 BY MS. STEIBER:

2 Q It appears that there is something substantive
3 exchanged in that telephone conversation with Laurie and
4 Madoff.

5 A It does appear that way. This is helping me recall
6 what was going on.

7 BY MR. KOTZ:

8 Q There was another exchange that I wanted to ask you
9 about. On the fifth tab, the second page, which is the first
10 page of the letter. See where it says, "The time period of
11 January 1, 2001 to present provide the following: a monthly
12 profit and loss statements by security to be provided in an
13 Excel spreadsheet; monthly commission revenues segregated by
14 customer and security."?

15 BY MS. STEIBER:

16 Q Previously they were asking for daily data in the
17 drafts. Do you know why that was changed from daily to
18 monthly? You see that first draft where it says request for
19 daily and then by the fifth draft it is monthly.

20 A I do not recall the specifics. I would say that we
21 are always concerned about getting more information than we
22 can handle. My guess is that the separation between daily
23 and monthly would be let's see what we get with monthly and
24 what we can determine from that and determine if we want
25 daily. Otherwise, we may not be able to handle the daily

1 volume. That is my guess. I do not have a specific
2 recollection of why we changed this document.

3 Q Would you describe what you are looking for in this
4 first request is audit trail data?

5 A First request on tab 1. Audit trail data can mean
6 all kinds of things. I would say that daily P&L -- there is
7 not audit trail data we -- could typically be individual
8 trades.

9 Q So if you could look at the final version. You
10 said there was no audit trail request in the first version.
11 Is there any audit trail request in the last version?

12 A I said that typically. We will leave what I said
13 on the record. Did we request audit trail in this last
14 version; is that the question?

15 Q Right.

16 A This last version is what we actually sent. We did
17 not ask for detailed trade data, I would say, in this tab 8.
18 Individual trade data.

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

21 BY MR. KOTZ:

22 Q The next document we are going to show you is the
23 response from Bernie Madoff. It is dated January 16, 2004.
24 It is a letter from Bernie Madoff to Eric Swanson dated
25 January 16, 2004. We are going to mark this as Exhibit 8.

1 Do you remember receiving a response from Bernie
2 Madoff?

3 A I remember seeing this.

4 Q Do you remember if there was any concern at the
5 time about some of the responses that Mr. Madoff gave?

6 A I do not remember specifically. I would say we
7 seldom receive a response to an initial document request that
8 is sufficient. We are constantly working through document
9 productions and document requests.

10 Q A couple of things that Mr. Madoff says in his
11 letter. It is the second full paragraph. If you could see
12 the end of that paragraph, second sentence, it says, "Also,
13 please note that we have no communications or disclosures
14 from customers. It is in the strategy to investors. Owners
15 or prospective investors are owners." Was that something
16 that was or is a concern?

17 A I think it is. Again, everything is a concern.
18 This would be one of the things that would be a concern.

19 BY MS. STEIBER:

20 Q Everything in this letter is a concern or
21 everything in the world is a concern?

22 A Everything in the exam is -- every time somebody
23 responds to a document request we would review the document
24 request -- we get it back from them and work through issues.

25 BY MR. KOTZ:

1 Q You can ask the question to a registrant in an exam
2 and they can provide an answer that satisfies the question
3 that you had, or they can provide an answer that raises more
4 questions.

5 A This raised questions.

6 Q The next paragraph says, "Question 3 asked for the
7 identity of hedge funds managed or advised. Bernard Madoff
8 Securities, nor any person or entity affiliated with Madoff
9 Securities, manages or advises hedge funds." What about that
10 answer? Does that answer specifically raise a concern?

11 A It raises concerns. All of these answers raise
12 concerns. We are getting more information about what he is
13 telling us that he is doing.

14 Q Does it raise a concern in the respect that it is
15 inconsistent with the information you had received from
16 Personal Privacy and the articles, particularly that, "Madoff manages
17 more than \$6 billion for wealthy individuals. That is enough
18 to rank Madoff's operation among the world's top five largest
19 hedge funds."

20 The information you are getting is that he ranks
21 among the world's top five largest hedge funds. Then Madoff
22 says that he does not manage or advise hedge funds at all.

23 A Those two things are inconsistent. Madoff told us
24 that he did not manage or advise hedge funds. Those are his
25 words. In my recollection the word he is -- advising and

1 managing is where he is parsing.

2 Q Do you remember if there was something specific
3 done in the context of this cause exam that would look at
4 that inconsistency?

5 A Yes. His argument, as I recall, was that he was
6 the executing broker-dealer, not an advisor. That is how he
7 distinguished himself.

8 Q In the course of the exam did you do anything to
9 attest whether that was correct?

10 A We were concerned whether what he was doing was
11 advice under the investment advisor's act -- this is one of
12 the issues we --

13 BY MS. STEIBER:

14 Q So you talked to the hedge funds that he was
15 working with to see if they were advising or managing? You
16 said you investigated it. How do you investigate whether
17 someone is advising or managing a hedge fund if you do not
18 ask the hedge fund if they are advising or managing?

19 A Because whether somebody is an investment advisor
20 is a factual element and then a legal element to it. I think
21 we were concerned -- his argument was a potentially legal
22 argument. I am not advising. I am an executing
23 broker-dealer. I think we were concerned about that
24 argument.

25 Q So you did not test his explanation; you just took

1 it as truth and then looked at its legal ramifications?

2 A I think we tested his explanation. We were
3 concerned about whether or not he was actually advising. It
4 was his execution -- I think the terms are difficult. It
5 was, was his alleged execution brokerage strategy really
6 advice, or was it facilitating the customers' intentions. I
7 think he was trying to make that argument and we were --

8 Q But he is making that argument and you are taking
9 it as truth that he is only executing these executing these
10 trades for his customers.

11 A I think one of the questions we were trying to
12 follow up on was whether he was making the decisions that
13 constituted advice to his customers, or whether the
14 executions he was making were typical broker-dealer
15 executions. As it turns out there were no executions, so it
16 was not the best course of action to take to begin with.

17 We were concerned about whether or not he needed to
18 be registered as an investment advisor, whether he was
19 providing investment advice to his customers, or whether he
20 was appropriately only registered as a broker-dealer. I
21 think that was an issue that was.

22 BY MR. KOTZ:

23 Q What steps did you take other than looking at it
24 from a legal determination?

25 A We mostly looked at it from a legal determination.

1 I think that was the internal discussion: does this really
2 constitute advice or not, or can somebody, as a registered
3 broker-dealer, merely be registered as a broker-dealer by
4 providing information.

5 (SEC Exhibit No. 9 was marked for
6 identification.)

7 BY MR. KOTZ:

8 Q I want to show you the next document, which is a
9 January 29, 2004 e-mail. This is from Jen Walker to you and
10 Jackie Wood. It is dated January 29, 2004 at 9:17 a.m. We
11 will mark it as Exhibit 9.

12 A This is different than typical e-mails. Isn't
13 there normally a header? This is an e-mail that was sent?

14 Q Yes. See in there Ms. Walker says, "Since it has
15 always been my understanding that collar strategies are a
16 variation of this is a more protected type of position,
17 meaning protective of underlying profits on the stock."

18 Do you know what she was referring to in terms of
19 "collar strategies"?

20 A Collar strategies are generally implemented in
21 options environments. I think her general
22 statement -- collar strategies are limit up side, limit down
23 side.

24 BY MS. STEIBER:

25 Q You would not expect it to generate substantial

1 profits?

2 A I would agree with that. My understanding of a
3 collar strategy would be not generating substantial profits.

4 BY MR. KOTZ:

5 Q Do you recall whether there was any further work on
6 this question that Jen Walker raised?

7 A As to whether Madoff's strategy was a collar? I
8 think we had a lot of discussions about what his strategy
9 really was, what we thought it was. There were a lot of
10 discussions. I do not remember a specific discussion about
11 the use of collars or not. It likely would be.

12 (SEC Exhibit No. 10 was marked for
13 identification.)

14 BY MR. KOTZ:

15 Q I want to show you another document marked as
16 Exhibit 10. These are handwritten notes -- 
17 on January 29, 2004.

18 Do you recognize these notes?

19 A I believe these are my notes. At least the first
20 page looks like my notes.

21 Q Do you recall having a conversation on January 29,
22 2004 with ?

23 A I do. I would say, just to clarify, I do not
24 believe on the fourth page -- that does not look like my
25 handwriting.

1 BY MS. STEIBER:

2 Q Whose handwriting does it look like?

3 A I do not know.

4 Q Do you assume it is Jen Walker or --

5 A It could have been John McCarthy. It could have
6 been Eric. It could have been anybody. It could have been
7 Jen. The following pages looks like it is my handwriting.

8 BY MR. KOTZ:

9 Q Let's just go through this document, which is
10 Exhibit 10. What pages are your handwriting, just so it is
11 clear?

12 A It appears that the first page is my handwriting.
13 The second page appears to be my handwriting as does the
14 third page. The fourth page does not appear to be my
15 handwriting. The fifth page does appear to be my
16 handwriting, as does the final page.

17 BY MS. STEIBER:

18 Q Do you recall who was there during the conversation
19 with [REDACTED]?

20 A I do not recall.

21 BY MR. KOTZ:

22 Q We are going to look a little bit at your notes.
23 Call with [REDACTED], 1/29/04. It says, "Returns are
24 too consistently high for this strategy."

25 Do you recall this being an issue that was raised?

1 A I am not sure I understand what you mean. This
2 being an issue that was raised in the call?

3 Q Yes.

4 A I assume that my notes are reflective of what the
5 discussion was about. I imagine the returns being too
6 consistently high for the strategy was something that was
7 discussed in the call.

8 BY MS. STEIBER:

9 Q Isn't that similar to the concern that Jen had
10 raised in that prior e-mail? The collar strategy you would
11 not expect high returns.

12 A It is similar. Consistently high for the strategy
13 I think really is talking about instead of returning 7 or 8
14 percent he was returning 9 or 10 or 11 or 12. Not 20 percent
15 or something way too high for potentially a collar.
16 Consistent returns for the strategy is not necessarily
17 inconsistent with it. The type of too high -- the return
18 being too high -- it was just not as exaggerated.

19 Q So Jen is saying with the collar strategy you would
20 not expect very high returns and the [REDACTED] is taking it a
21 step further and saying his returns are too high for him to
22 be using the strategy he claims to be using.

23 A I think that was one of the concerns. The split
24 strike conversion strategy Madoff was alleging, his rate of
25 return was too high for that strategy. I am not sure that

1 split strike conversion strategy is necessarily the same
2 thing Jen is talking about here in the collar.

3 BY MR. KOTZ:

4 Q If you could look further in your notes. You have
5 here, "Not doing that strategy because option trading is not
6 as high. How does he trade the options? [REDACTED] does not
7 understand how he consistently makes money off of this
8 strategy. Perhaps he does not really use the strategy."
9 Then it says, "The volume of options traded does not seem to
10 be enough to protect the size of the equity trade." It is
11 clear that those were issues that were discussed in the phone
12 call.

13 A I am not certain what my line is here, but I am not
14 going to disagree with that. It appears that this is
15 discussed in the phone call.

16 Q Is it fair to say that based on these notes [REDACTED]
17 is raising questions about whether Madoff is actually doing
18 the options trading he claimed to be doing?

19 A I think it is fair to say that this gentleman was
20 concerned that Madoff was not doing the strategy that he
21 understood him to be using.

22 Q This question of options issues, was that looked
23 into?

24 A We looked into what Madoff was alleging he was
25 doing. We tried to get an understanding of his strategy. In

1 that sense, yes. The understanding included looking into how
2 he was trading options because that was part of his strategy.

3 BY MS. STEIBER:

4 Q He says the volume of options traded does not seem
5 to be enough to protect the size of the equity trading. Did
6 you look at the overall size of the options trading market to
7 see if he could actually even be doing the options trading he
8 was claiming to be doing?

9 A I do not think we looked at the market impact of
10 his trading.

11 Q Of either his --

12 A -- options trading or equities trading. I do not
13 believe we looked at the market impact of the trading.

14 Q Did you discuss these issues that he was raising
15 with Eric Swanson or John McCarthy?

16 A I do not know who was on this call. Likely the
17 discussion about what was said in this call was a discussion
18 with the group.

19 Q Did you think of expanding the exam past front
20 running once [REDACTED] raised these issues?

21 A I would say we always think of expanding almost
22 every exam we are working on. There is just the issue of
23 whether that is the best course of action given the resources
24 and priorities of the office.

25 Q Do you think you probably considered it and then

1 decided not to?

2 A That is my guess. I probably should not be
3 guessing.

4 Q But you know you did not expand it after this call?

5 A This was right in the beginning of the exam. We
6 took this into the context of what we were doing. We looked
7 at how he alleged he did his trading. Part of that was him
8 providing us with information regarding his options trading.

9 BY MR. KOTZ:

10 Q There was at the end no expansion of the exam
11 beyond front running; is that right?

12 A Front running was the focus. We tried to get a
13 handle on what he was doing. I think that was the first
14 effort and then whether or not he was front running his
15 market making customer orders.

16 BY MS. STEIBER:

17 Q Did you think about contacting OEA to see if they
18 had some options experts to help you deal with those issues?

19 A I do not remember whether that was something we
20 considered or not.

21 Q But you did not contact OEA?

22 A I do not remember contacting OEA. I do not think
23 we did.

24 Q Do you recall that [REDACTED] Personal Privacy [REDACTED] was
25 an options expert?

1 A I do not know that I was aware of his

Personal Privacy

2

3

(SEC Exhibit No. 11 was marked for

4

identification.)

5

BY MR. KOTZ:

6

Q The next document is an e-mail from Jackie Wood to

7

you on February 3, 2004 at 2:20 p.m. We are going to mark it

8

as Exhibit 11. It has an attached memorandum to you from Jen

9

Walker and Jackie Wood. If you could look at page 2 of the

10

document and page 2 of the memorandum, which is page 3 of the

11

exhibit.

12

Under the first chart it says, "The commission

13

revenues generated from these four institutional clients

14

account for the overwhelming majority of commission revenues

15

generated for the firm since 2001. Obviously this trading

16

strategy has yielded Madoff unbelievable profits, which would

17

explain why the strategy is well-guarded by Madoff."

18

Was it something that was of concern or a red flag

19

that Madoff was a well-known market maker, but that you found

20

that most of his profits came from commission revenues from

21

four clients and not from market making activities?

22

A I think that was a concern.

23

Q Do you remember being particularly concerned about

24

Madoff's strategy yielding him "unbelievable profits"?

25

A The size of his profits were of concern.

1 Q Was it your or the team's view at the time that
2 Madoff's profits were not believable?

3 A I do not think our thought was it was unbelievable.
4 Extraordinary. He was working on commissions. I would
5 interpret that to be extraordinary. It says what it says.

6 Q Then it says, "The profits from Madoff's market
7 making trades are nominal compared to the commissions
8 generated from those clients utilizing the split strike
9 forward conversion strategy."

10 Do you see that?

11 A Yes.

12 Q And then on the next page, page 3 of the
13 memorandum, there is a series of follow-up questions. Is it
14 fair to say that at this point in time there was significant
15 follow-up questions and significant concerns about what you
16 were finding in the examination?

17 A Yes. We had concerns about what was happening and
18 what he was doing.

19 (SEC Exhibit No. 12 was marked for
20 identification.)

21 BY MR. KOTZ:

22 Q I am going to show you the next document, which are
23 some additional notes. February 4, 2004 conference call with
24 Madoff. It is a series of notes and we are going to mark it
25 as Exhibit 12. Are these your notes?

1 A I do not believe these are my notes.

2 Q Take a look at all the pages to see.

3 BY MS. STEIBER:

4 Q Do you recognize the handwriting?

5 A I do not.

6 BY MR. KOTZ:

7 Q Do you recall a conference call with Madoff on
8 February 4, 2004?

9 A I do not have a recollection of it, but these
10 appear to be notes of such a call.

11 Q Do you know if you were on the call?

12 A I do not know, but it would be likely.

13 BY MS. STEIBER:

14 Q Did you take notes when you have a call with a
15 registrant?

16 A Sometimes I would take notes when I would have a
17 call with a registrant.

18 BY MR. KOTZ:

19 Q Do you know if you took notes on that call?

20 A I do not know if I did or not.

21 Q We have before February 3rd this memorandum we
22 showed you and then we have a February 4th conference call
23 with Bernie Madoff. On February 3rd there, was a very long
24 list of follow-up questions.

25 Do you recall whether Madoff had addressed these

1 questions in this call?

2 A I do not recall the substance of the call. I have
3 not read these notes. Given the timing, assuming the timing
4 is accurate of the dates here, I suspect that part of the
5 call was following up on some of the concerns that we had.

6 Q Do you know if the call was with Bernie Madoff or
7 Peter Madoff?

8 A I do not remember the call.

9 Q Do you remember generally if the communications you
10 had were with Bernie directly or with Peter?

11 A I think the communications were mostly with Bernie.

12 BY MS. STEIBER:

13 Q How many communications do you recall?

14 A I do not know.

15 Q More than three?

16 A Likely. I do not know.

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

19 BY MR. KOTZ:

20 Q We have another set of notes. We are going to mark
21 them as Exhibit 13. The first note says, "Can we read
22 CD-ROM?"

23 Do you know if these notes are your handwriting?

24 A The first page appears to be my handwriting. The
25 second, third, fourth, fifth, and sixth page appears to be my

1 handwriting. All these notes appear to be my handwriting.

2 BY MS. STEIBER:

3 Q So Exhibit 13 appears to be entirely your
4 handwriting?

5 A It does.

6 BY MR. KOTZ:

7 Q Look on the second page. There is a box on the top
8 that says Mavis. Underneath that it says, "Few stocks on a
9 few days with critical. Get OATS from NASD. Enact all
10 Madoff orders."

11 Do you recall wanting to get OATS from NASD?

12 A I do not have a specific recollection of this.
13 This would seem to be similar to the document you showed me
14 earlier. That was one of the questions whether we should get
15 that kind of information.

16 Q As we indicated earlier, you never did get the OATS
17 from NASD.

18 A I do not recall getting information from NASD.

19 BY MS. STEIBER:

20 Q Do you recall a conversation with Mavis?

21 A I do not. The only Mavis I know is Mavis Kelly.
22 These could be completely inconsistent with each other. I do
23 not know. I just have no recollection of it.

24 BY MR. KOTZ:

25 Q Look at the next page. It provides a list of

1 client options and equity purchases.

2 A It is a list of client options and equity
3 purchases. Okay. It is a bunch of numbers talking about
4 options. I am not sure what all the numbers mean having just
5 looked at this.

6 BY MS. STEIBER:

7 Q Does it seem to indicate that the caller has
8 executed before the equity positions purchased? Can you
9 tell?

10 A I cannot tell. I know I wrote this, but right now
11 it is confusing to me.

12 BY MR. KOTZ:

13 Q Why don't we look at the next page. It says,
14 "Questions. Next page."

15 BY MS. STEIBER:

16 Q Are these open questions that you had with someone
17 or your staff expressed concerns about these issues?

18 A I think these were issues that we were concerned
19 about.

20 (SEC Exhibit No. 14 was marked for
21 identification.)

22 BY MR. KOTZ:

23 Q I am going to show you another document. I will
24 mark it as Exhibit 14. This is an e-mail from Jen Walker to
25 you and Jackie Wood on February 4, 2004 at 2:04 p.m. This

1 resolution on the issue of whether he should register as an
2 investment advisor?

3 A I do not recall whether we did.

4 Q You do not recall your exam coming to any
5 conclusion on that issue?

6 A I do not recall that.

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

9 BY MR. KOTZ:

10 Q The next document is a compilation of document
11 requests. OCHQ supplemental Madoff document request drafts 1
12 through 10, and final document requests. It is a series of
13 documents with tabs of 1 to 10.

14 A These are all drafts of the second document
15 request? Is that is what is being presented to me?

16 Q Yes. If you look at tab 5, there is an e-mail from
17 Jen Walker to Jackie Wood, dated February 11, 2004 at
18 4:42 p.m. There is an attachment. It is an attached draft
19 February 2004 letter to Peter Madoff.

20 Does it appear in that draft that there was a
21 request for audit trail data?

22 A Yes. This is a typical trade-specific data
23 request.

24 Q Does that request include audit trail data
25 associated with the hedge fund accounts?

1 A I am not sure what it is specific to. It is
2 inclusive of providing all trading activity. It appears to
3 be all the activity of the firm. The question itself does
4 not appear to be specific to any one type of account.

5 BY MS. STEIBER:

6 Q If you go to the seventh draft does it appear that
7 you are sending this draft to Eric Swanson for review and
8 revision?

9 A It says, "Eric, please take a look at this when you
10 get a chance and we will send it out." Yes. It appears I am
11 sending it to Eric for review and revision.

12 Q Do you recall if he provided revisions?

13 A I do not.

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

16 MR. KOTZ: Let me show you Exhibit 16.

17 This is a two-page document. It says on it

18 February 2004 from Eric Swanson to Peter Madoff.

19 BY MS. STEIBER:

20 Q Do you recognize the handwriting on that draft?

21 A The first page handwriting appears to be mine.
22 There is handwriting on the second page that I do not
23 recognize. The bottom of the second page appears to be my
24 handwriting.

25 BY MR. KOTZ:

1 Q On the first page do you see where it says, "SEC
2 speaker."?

3 A Yes.

4 Q So you wrote that?

5 A That appears to be my handwriting.

6 Q Do you know why you wrote "SEC speaker"?

7 A I do not.

8 Q Did anyone mention to you at that time that Madoff
9 was an SEC speaker? Do you think you are referring to Bernie
10 Madoff?

11 A I could be "SEC speaks."

12 Q Do you know why you would write that?

13 A I do not.

14 Q Was there any consideration at the time while you
15 were conducting this exam that while you were doing an exam
16 of Bernie Madoff was involved as an SEC speaker?

17 A I do not recall him ever being involved as an SEC
18 speaker, nor at SEC Speaks. SEC Speaks, I think, is
19 exclusively SEC speakers. I would not say that this
20 necessarily references him. I do not know what it
21 references.

22 Q Was there at any point in time discussion while you
23 were doing the Madoff cause exam that the guy you were
24 looking at was a prominent guy, he was involved in industry
25 matters, had been sitting on panels with the SEC? Was that

1 ever raised?

2 A I do not recall it ever being raised. It does not
3 mean that it was not.

4 Q Was there any pressure placed on you to take a
5 different action or maybe not push as hard because of Bernie
6 Madoff appearing on these panels or him being respected in
7 the industry?

8 A No.

9 BY MS. STEIBER:

10 Q Let's go back to these notes. You crossed out the
11 audit trail data that we had discussed in the beginning and
12 say, "For next letter."

13 Do you know why you did that?

14 A No. I do not have any specific recollection. I
15 can tell you we are always hesitant to get audit trail data
16 because it can be tremendously voluminous and difficult to
17 deal with and is a huge resource issue for us. It takes a
18 ton of time.

19 Q So that kind of detailed trading data is voluminous
20 and time consuming and so you might have chosen not to ask
21 for it?

22 A I do not recall specifically, but this appears to
23 say to save it for the next letter.

24 Q So if you look at the last draft, has that request
25 for audit trail data been removed as per your corrections or

1 revisions?

2 A It appears that document request number 1 in
3 Exhibit 16 is no longer in this Exhibit 10.

4 Q So the last draft that we have does not appear that
5 there is a request for audit trail data.

6 A I am not familiar with the sequence of drafts.
7 Assuming what you say to be true, this question is not in
8 this document.

9 Q You say, "Save for next letter."
10 Do you know if any other letter was sent to Madoff?

11 A I do not know if there was a third letter.

12 BY MR. KOTZ:

13 Q Do you know who signed the final letter? The final
14 document request.

15 A Do we have the final document?

16 Q We have the last version.

17 A We do not have a signed document?

18 MR. KOTZ: We are going to go off the record for a
19 moment.

20 (A brief recess was taken.)

21 (SEC Exhibit No. 17 was marked for
22 identification.)

23 BY MR. KOTZ:

24 Q We are going to put another document into evidence
25 and mark it as Exhibit 17. It is a signed copy of a letter

1 from Eric Swanson to Peter Madoff dated February 18, 2004.
2 Looking at Exhibit 17, which is a signed copy of the final
3 document request sent to Peter Madoff by Eric Swanson, could
4 you just note for the record that the audit trail data
5 request in Exhibit 16 was not put in the final version of
6 Exhibit 17?

7 A Question 1 in 16 is different than 17. The
8 question 1 asked for detailed trade data.

9 Q And that question for detailed trade data is not
10 included in the final version, Exhibit 17?

11 A Yes.

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

14 BY MR. KOTZ:

15 Q Now we have the next response from Bernie Madoff.
16 It is marked as Exhibit 18. It is a March 1, 2004 letter
17 from Bernie Madoff to Eric Swanson. I assume you saw this at
18 the time.

19 A Yes.

20 Q So in this document Bernie Madoff says, "We are
21 providing copies of client account statements reflecting all
22 the transaction data related to the accounts of those clients
23 utilizing the split strike forward conversion strategy."
24 What Bernie Madoff is providing are customer confirmation
25 statements, not an audit trail. Is that right?

1 A Yes.

2 (SEC Exhibit No. 19 was marked for
3 identification.)

4 BY MR. KOTZ:

5 Q If you want to see copies of what was provided, we
6 will mark that as Exhibit 19, documents provided by Bernard
7 Madoff Investment Securities.

8 MS. STEIBER: Those are a sample of those customer
9 statements provided.

10 THE WITNESS: Nineteen was an attachment to
11 eighteen?

12 MS. STEIBER: This is a portion of the attachment.

13 BY MS. STEIBER:

14 Q Does that look familiar?

15 A That does look familiar.

16 BY MR. KOTZ:

17 Q Was what Bernie Madoff providing? Customer
18 confirmation statements, not an audit trail? Is that right?

19 A Is Exhibit 19 an audit trail?

20 Q Right.

21 A Exhibit 19 is customer account statements showing
22 dates, amount of securities bought, and prices. It does not
23 appear to show the individual transactions underlying the
24 information on the document.

25 Q Going back to Exhibit 18, Bernard Madoff says in

1 the last full paragraph, "There are no other communications
2 or correspondence between Madoff Securities and their clients
3 utilizing the split strike forward conversion. Madoff
4 Securities does not communicate or correspond with the
5 investors or owners of its clients."

6 Do you remember that being something that was a
7 concern when he wrote that in the letter?

8 A We were concerned about his communications.

9 Q So that is a yes?

10 A Yes.

11 BY MS. STEIBER:

12 Q Wasn't it odd he did not have any e-mail and he was
13 a high tech operation?

14 A What was going on was different than what I was
15 used to. It was all a concern. I do not mean to over
16 generalize, but it was a concern. We were trying to figure
17 out what was going on.

18 BY MR. KOTZ:

19 Q Is it fair to say you had never seen anyone operate
20 quite the way Bernie Madoff did before?

21 A I had not. I think that is right.

22 (SEC Exhibit No. 20 was marked for
23 identification.)

24 BY MR. KOTZ:

25 Q The next document is going to be marked as

1 Exhibit 20. This is an e-mail from Jen Walker to you, dated
2 March 10, 2004 at 6:32 p.m.

3 Do you recall Jen raising questions after the
4 response to the second document request?

5 A The sequence of events I am unclear about because I
6 do not have the dates in front of me. These are questions
7 that Jen has raised.

8 Q Do you see that the document response was March 1,
9 2004 and Jen's e-mail is March 10, 2004?

10 A Yes. So these are questions Jen has raised after
11 that letter.

12 BY MS. STEIBER:

13 Q Looking at the customer statement does that seem
14 fair --

15 A That seems fair. I do not know where her questions
16 came from, but the sequence appears to be --

17 BY MR. KOTZ:

18 Q Does that refresh your understanding that at this
19 point in time after Bernie Madoff submitted a response to the
20 second request for documents there were still outstanding
21 questions?

22 A There were.

23 (SEC Exhibit No. 21 was marked for
24 identification.)

25 BY MR. KOTZ:

1 Q I am going to show you the next document, which are
2 some notes. The date on it is March 18, 2004. It is two
3 pages. It says Madoff on the top of the first document. We
4 are going to mark this as Exhibit 21.

5 Do you recognize the handwriting?

6 A I do not. It is not my handwriting.

7 Q This seems to indicate on March 18, 2004 there was
8 a conference call with Bernard Madoff. Do you remember that
9 call?

10 A I do not have a specific recollection of that call.

11 Q Would you likely have been on that call?

12 A I would likely have been on that call.

13 (SEC Exhibit No. 22 was marked for
14 identification.)

15 BY MR. KOTZ:

16 Q Let's go on to the next document. This is a letter
17 from Bernard Madoff to you dated March 23, 2004. We are
18 going to mark this as Exhibit 22.

19 Do you recall receiving this letter from Bernie
20 Madoff?

21 A I recall seeing this.

22 BY MS. STEIBER:

23 Q Had you requested that those customer statements he
24 provided be sent to you in electronic format?

25 A I do not remember, but this appears to say that is

1 what happened.

2 Q It appears in this letter that there is no
3 additional data provided, correct? It is just the same
4 customer statements but in electronic format. It says, "Each
5 file contains the monthly statement data for 2003, which was
6 previously sent to you in print form."

7 A I have not connected the two. That statement makes
8 sense, but I cannot say that is exactly what it is. I just
9 do not have the knowledge. It is likely the case.

10 (SEC Exhibit No. 23 was marked for
11 identification.)

12 BY MR. KOTZ:

13 Q The next document is marked as Exhibit 23. That is
14 an e-mail from Jen Walker to you dated March 23, 2004 at
15 7:35 p.m.

16 Do you remember an issue that was raised by Jen or
17 otherwise discussed relating to differences between the large
18 fund Tremont and Sway, a smaller fund?

19 A I do not have a specific recollection of this
20 e-mail. It shows that I received it.

21 Q Do you have a recollection that Jen flagged some
22 issues about trade dates varying, particularly these
23 differences between the large fund and the smaller fund?

24 A I am afraid I do not have a recollection. I would
25 have read the e-mail.

1 Q Do you have a recollection that generally there
2 were still some questions that were outstanding during this
3 period of time?

4 A Yes.

5 (SEC Exhibit No. 24 was marked for
6 identification.)

7 MR. KOTZ: This next document is a document from
8 you.

9 MS. STEIBER: It is a draft that I do not think you
10 sent. It looks like you sent it to yourself.

11 BY MR. KOTZ:

12 Q This is dated March 24, 2004 at 2:52 p.m. That is
13 what we are going to mark as Exhibit 24. If you look on the
14 second page of this e-mail you are saying, "Although Madoff
15 executes the strategy, does that also mean he executes any
16 assignments that may occur? Would he consider these types of
17 transactions part of his strategy? I think we can assume in
18 some instances that an option trade can be assigned after the
19 position is transferred to the custodial bank account. The
20 trades in the fund accounts seem to reflect that all
21 executions are transferred to the custodial bank on
22 settlement date. What broker would handle that assignment?"

23 Do you remember these lingering questions that you
24 had at this point?

25 A I do not. I do not know that this was an e-mail.

1 that was sent. I just cannot tell from the heading. I would
2 say there were lingering questions.

3 Q You, yourself, had some lingering questions? Is
4 that fair?

5 A That is fair.

6 (SEC Exhibit No. 25 was marked for
7 identification.)

8 BY MR. KOTZ:

9 Q I am going to show you the next document. We are
10 going to mark this as Exhibit 25. It is dated March 31, 2004
11 from Jen Walker to you. I want to particularly ask you
12 about, in this e-mail string, an e-mail that you sent to
13 Jen Walker with a copy to Jackie Wood. Friday, March 26,
14 2004 at 4:57 p.m. you were saying, "Jinco trades differently,
15 at least in March, but it could be simply that the size of
16 the fund only requires one day instead of three to buy and
17 sell a position. Look to see if that situation is similar
18 for other funds."

19 Do you recall anything about this particular issue?
20 About Jinco trading differently.

21 A I do not.

22 (SEC Exhibit No. 26 was marked for
23 identification.)

24 BY MR. KOTZ:

25 Q I am going to show you another e-mail. We are

1 going to mark this as Exhibit 26. This is an April 6, 2004
2 e-mail from Jen Walker to Alex Sadowsky at 6:49 p.m. See in
3 there Jen Walker is asking Alex Sadowsky about a variety of
4 matters.

5 Alex Sadowsky replies, "Get the mutual fund work
6 completed first."

7 Jen Walker replies, "Thanks."

8 Do you remember there being a particular concern or
9 priority in the office about doing mutual fund work at that
10 time?

11 A There were two sets of exam sweeps. One was
12 broker-dealer revenue sharing that I believe finished around
13 the end of 2003. From that we started a sweep of mutual
14 funds. The reverse side of the broker-dealer revenue sharing
15 sweep, which was a sweep of 45 mutual funds. That was one of
16 the projects we were working on.

17 Q Who was Alex Sadowsky?

18 A Alex Sadowsky was at this time a branch chief.

19 Q Genevieve Walker did work for him?

20 A Yes. The structure in the office was people worked
21 for wherever the projects went. Administratively you
22 reported to a branch chief, but that did not mean you
23 exclusively worked on that branch chief's projects.

24 (SEC Exhibit No. 27 was marked for
25 identification.)

1 BY MR. KOTZ:

2 Q I am going to show you the next document. We are
3 going to mark it as Exhibit 27. This is an e-mail from you
4 to Jen Walker on April 7, 2007 at 9:29 a.m. In the e-mail
5 string Jen Walker sends an e-mail to you saying, "Hi Mark. I
6 know you have Former OCIE
Attorney Advisor working on the Madoff project with us
7 now. I am not sure what you want Jackie and I to do
8 considering Madoff. We are focused on the mutual fund
9 project as requested. Should we just focus on mutual funds
10 and return to Madoff when we are done?"

11 You respond, "Concentrate on mutual funds for the
12 time being."

13 Do you recall instructing Jen Walker to focus on
14 mutual funds as opposed to the Madoff matter?

15 A I do not recall this specific e-mail, but there
16 were competing priorities for projects. The mutual fund
17 project was one of those competing priorities. Reading this
18 e-mail, it appears I told Jen to focus on the mutual fund
19 project.

20 Q Did this mutual fund project have to do with market
21 timing issues?

22 A No. It was mutual fund revenue sharing.

23 BY MS. STEIBER:

24 Q Would it surprise you that if in the work papers
25 there is no evidence that any other work was ever done on the

1 Madoff project after that e-mail that we saw on 3/31?

2 A It would not surprise me because I put the
3 documents together. At this time it was refocusing
4 priorities.

5 Q So you do not know of any documents that we have
6 never seen from the work papers showing that a lot of work
7 took place after 3/31?

8 A I do not know the specific timing, but we -- I just
9 do not know of any other work done and what was happening on
10 Madoff. Certainly, as this e-mail would indicate, people
11 were concentrating on mutual funds.

12 BY MR. KOTZ:

13 Q So from the time period that you instructed Jen
14 Walker to focus on mutual funds you are not aware of any
15 further work being done on the Madoff examination?

16 A My recollection as helped by this e-mail is -- the
17 e-mail says, "I know you have Michael working on the Madoff
18 project with us now." I believe that is Former OCIE Attorney Advisor I
19 believe Mike was working on it, but I do not recall what he
20 was doing, how he was concentrating on it, or how much effort
21 he was putting into it.

22 Q Other than Former OCIE Attorney Advisor efforts, you are not aware of
23 any work having been done on the Madoff examination
24 subsequent to you informing Jen Walker to focus on mutual
25 funds?

1 A I am not. I do not have specific knowledge of
2 people working on it. It was one of their projects.

3 BY MR. WILSON:

4 Q Was Jackie Wood working on mutual fund projects?

5 A I believe she was.

6 (SEC Exhibit No. 28 was marked for
7 identification.)

8 BY MR. KOTZ:

9 Q This is another e-mail. We are going to mark it as
10 Exhibit 28. This is an e-mail from you to Eric Swanson on
11 March 16, 2005 at 2:34 p.m.

12 Swanson says to you in the e-mail, "What is the
13 status of Madoff hedge fund-thingy?"

14 You say, "Deady."

15 What did you mean by that?

16 A I think we did not know what to do next.

17 Q Are you referring to it being dead? Is that what
18 the reference is?

19 A I imagine what this means is there was not much
20 work being done on it right then.

21 Q You say, "Does it need to be revised?"

22 What is "it"?

23 A I do not know.

24 Q Did you maybe mean revived?

25 A Yes. That is the way I would take that. Do we

1 need to concentrate on Madoff.

2 Q You also say, "We never found any real problems."

3 Isn't it the case that there were a lot of open
4 questions?

5 A I think there were open questions and I do not
6 think we found problems. There were questions that needed to
7 be -- that we could focus more time on to get answers to. I
8 do not think at that point we had said there were violations.

9 Q Do you think you ever got to the point where you
10 made a determination whether there were any violations during
11 that exam?

12 A I do not think we made a determination that there
13 were violations.

14 Q So it was left with open questions?

15 A I believe it was.

16 Q Do you know whether the Madoff documents were,
17 around that point in time, put aside in boxes perhaps to be
18 sent to storage?

19 A I am not exactly sure where the Madoff documents
20 were at that time. I do not think we were preparing to send
21 Madoff documents into storage.

22 Q During that time period when Jen and Jackie Wood
23 were focusing on mutual fund matters, do you know whether the
24 Madoff documents were in boxes?

25 A They could have been in boxes from the beginning of

1 the examination. I would not take too much from the
2 reference to boxes as in boxed up to be sent away. People
3 keep boxes in their offices to store documents while the exam
4 is going on because sometimes that is the way documents are
5 being stored.

6 Q Do you remember trying to locate documents
7 involving Madoff to send to NYRO?

8 A I do.

9 Q Do you remember if it was easy to find the
10 documents?

11 A It was not.

12 Q So the fact that it was not easy to find the
13 documents, does that indicate it was not being worked on in
14 an active way?

15 A No. It was not easy to find the documents because
16 Jen Walker was not in the office at the time that the
17 documents were being looked for and she had information about
18 the documents.

19 (SEC Exhibit No. 29 was marked for
20 identification.)

21 BY MR. KOTZ:

22 Q We are going to mark this next document as
23 Exhibit 29. This is an e-mail from Jen Walker to Jackie
24 Davis, cc Donohue on June 2, 22005 at 9:40 a.m.

25 Jackie Davis, in the e-mail string, says, "Hello

1 Jen. Can you remember if the boxes marked Madoff were in the
2 hallway near your office or if not which hallway?"

3 Jen responds, "I remember seeing them but because I
4 thought to myself, hmmm, I never heard anything more about
5 that case it was going to storage."

6 A Where are you reading from?

7 Q You can read from the whole string if you want.
8 Let's go to the bottom of the string. You see Jackie Wood
9 e-mailing Jen Walker with a cc to you on Wednesday, June 1,
10 2005. "Hey Jen. Mark is looking for the Madoff junk. I
11 remember giving it to you so we could all have the Madoff
12 stuff in one central location."

13 You say in the next e-mail to Jackie Wood, "We need
14 to send this stuff to NYRO ASAP so get Denise to get you into
15 Jen's office today if possible." Is what you are referring
16 to is Jen was not there?

17 A That is right.

18 Q The next day, June 2nd, you see the e-mail exchange
19 between Jackie Davis and Jen Walker where Jackie says, "Hello
20 Jen. Can you remember if the boxes marked Madoff were in the
21 hallway near your office? If not, which hallway?" Then you
22 see the response from Jen, "I remember seeing them because I
23 thought to myself, hmmm, I never heard anything more about
24 that case it is going to storage."

25 Do you know if at the time that you were searching

1 for these documents to send to NYRO it was Jen Walker's
2 impression that the documents were going to storage and she
3 never heard what happened with that case?

4 A I do not know why Jen had the impression that the
5 documents were going to storage.

6 Q But you are not surprised that she would not
7 remember what happened with the case because it was dormant
8 for a significant period of time?

9 A I think that is fair.

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

12 MR. KOTZ:

13 Q The next document I am going to show you has been
14 marked as Exhibit 30. It is an e-mail from Eric Swanson to
15 John McCarthy on 2/28/06. From John Nee in the e-mail string
16 to Eric Swanson on Tuesday, February 28, 2006.

17 Before we get to this, do you remember
18 communications with NYRO about your exam?

19 A Yes.

20 Q What did you tell them exactly about your exam?

21 A I do not remember the specific communications
22 themselves. I remember we forwarded everything to NYRO.

23 Q Did you brief them on what you had found or not
24 found?

25 A I just do not remember. I do not remember verbal

1 communications.

2 BY MS. STEIBER:

3 Q There was no closing report in the work papers.
4 You never wrote a closing report, correct?

5 A Because, from my mind, our exam was not closed.

6 BY MR. KOTZ:

7 Q Because you never completed the work.

8 A Yes. We never completed the work.

9 Q Was it unusual for a matter to be left dormant for
10 such a long period of time? In this case one year.

11 A I think it is usual for staff to be refocused on
12 different priorities all the time. We had many things to do
13 and not enough resources to do them all. It would be unusual
14 for this exam to sit without a lot of action on it, as I
15 think it did for some time period.

16 Q So you do not remember whether you provided the
17 folks up in New York with the information about the
18 outstanding issues that you had with respect to your Madoff
19 exam when they decided to work on theirs?

20 A I do not remember what verbal communications there
21 were. I thought there was a letter. I imagine there was a
22 verbal communication as well, but I just do not know.

23 Q Did you ever follow up to find out what happened
24 with the New York examination?

25 A I did not.

1 Q Were you aware of this reference in Exhibit 30
2 where John Nee tells Eric Swanson, "We closed out the exam
3 after looking for and not finding any evidence of front
4 running. However, shortly thereafter our enforcement people
5 got an anonymous complaint alleging either Madoff is front
6 running or it is the biggest Ponzi scheme ever."

7 A I do not remember ever seeing this set of
8 documents.

9 Q Do you remember viewing the closing report that the
10 New York office did that is attached to this e-mail?

11 A I do. It was in December of this year.

12 Q But not prior to that?

13 A Not prior to that.

14 BY MS. STEIBER:

15 Q And Eric did not tell you that there was an
16 enforcement investigation into Madoff?

17 A He may have. I do not recall any conversations.

18 BY MR. KOTZ:

19 Q Do you recall hearing about Harry Markopolos prior
20 to December 2008?

21 A No.

22 Q So you do not think you were aware at any point in
23 time that this entity that you were looking at in examination
24 was then being looked at in an enforcement case?

25 A I do not recall being aware of that.

1 Q Clearly, no one contacted you from the enforcement
2 division to ask you about what work you did in the
3 examination of Madoff in connection with their enforcement
4 investigation.

5 A I do not recall that contact.

6 Q And no one in the New York office who were
7 examiners working on their investigation ever contacted you
8 after you handed over the documents to seek any information
9 about what you did?

10 A I do not remember whether there was a conversation
11 about the documents.

12 Q Do you remember if there were any substantive
13 conversations after the documents were handed over?

14 A I do not remember.

15 Q You do not remember it happening?

16 A I know there was communication with NYRO regarding
17 the examination. I do not remember the sequence of the
18 communication and quite frankly whether I was involved in the
19 communication other than the information in the documents.

20 Q I want to ask you about a couple other things and
21 give you an opportunity to hear and comment on statements
22 that were made. Genevieve Walker has made some statements
23 about her working relationship with you and statements about
24 different matters that she worked on that are critical of
25 you. I just wanted to give you an opportunity to address any

1 issues related to that.

2 A What were her statements?

3 Q I do not necessarily want to go into all the
4 specifics. There was a complaint filed, which I am sure you
5 are aware of.

6 A I am aware. I must admit, I do not know if I am
7 allowed to discuss it.

8 Q You are allowed to discuss it. You can discuss
9 anything with us. Do you have any comments specifically on
10 the complaint that she filed against you?

11 A She filed a complaint against the commission and I
12 was a witness to it.

13 Q That is correct.

14 A I thought the complaint had no merit. It was a
15 complaint alleging discrimination. There were two witnesses,
16 myself and former OCIE Branch Chief I believe it alleged sex
17 discrimination based on her being a woman and racial
18 discrimination based on her being African American. I was
19 utterly surprised when I heard about it. Certainly I never
20 felt that was something I would take into account or would
21 ever do.

22 Q What was your impression of Ms. Walker and her
23 abilities?

24 A I think she could have strong abilities. I think
25 they did not always come through.

1 Q Would you say she was stronger on the technical
2 side then on the work ethic side?

3 A I think that would be a fair characterization.

4 Q So the concerns you had with her in terms of her
5 work situation was in terms of effort, coming to work, and
6 that kind of thing?

7 A I was not her administrative branch chief. The
8 administrative side of things was not something I dealt with.
9 Her being at work more often helps with projects, of course,
10 but I was not one who was giving her reviews on that element
11 of her work ethic.

12 Q Do you know what finally happened with the EEO
13 complaint?

14 A I believe it was settled and she left. I do not
15 believe that was related.

16 BY MS. STEIBER:

17 Q Do you recall if the friction between you started
18 during the Madoff exam?

19 A No. I must say I was very surprised by the
20 complaint. I think she felt there were things going on and
21 friction that I did not see.

22 Q Do you know if she felt there was friction between
23 you two during the Madoff exam?

24 A I did not know about any of that. There was
25 friction about finding the boxes, so that was --

1 BY MS. STEIBER:

2 Q Had she filed that complaint against you prior to
3 the searching for the boxes?

4 A Again, it is a complaint against the agency. It is
5 a big distinction. I was not aware of it at that time.

6 BY MR. KOTZ:

7 Q Let me ask you about some specific statements made
8 regarding the Madoff exam. Ms. Walker stated that Eric
9 Swanson had appointed her lead of the Madoff project. Do you
10 recall that?

11 A I do not recall that. That could be true. I do
12 not remember whether there was a lead appointed, and if there
13 was whether it was her.

14 Q What about the statement that when you took over
15 the exam you put Jackie Wood as co-lead of the exam instead
16 of having Jen Walker just the lead?

17 A As I said, I do not recall whether there was a
18 lead, so to make co-leads I just do not know. These are
19 indications of her frustrations that I was not aware of.

20 Q You wanted Jackie Wood to be the lead and because
21 of that you made it difficult for her to perform her job.
22 What is your reaction to that?

23 A I do not understand how I made it difficult for Jen
24 to perform her job.

25 Q So is it your position that you do not believe you

1 made it difficult for Jen Walker to do her job?

2 A That is right.

3 Q What about the allegation that you would call
4 impromptu meetings when she was out or noticed she just left
5 to make her look bad?

6 A I heard that allegation during the course of her
7 complaint. I was surprised when I heard it. Impromptu
8 meetings occur all the time. You walk into someone's office.
9 That is a method of communication. I do not deny that
10 impromptu meetings occurred while Jen was not there, but
11 there was no intention to meet while Jen was not present.

12 Q I am going to go onto another topic now. Were you
13 aware at any point in time of Eric Swanson having
14 difficulties with John McCarthy? Any friction between the
15 two over some period of time?

16 A No.

17 Q Were you aware at any point in time that Eric
18 Swanson began a relationship with Shana Madoff?

19 A At some point in time I became aware.

20 Q What point in time was that? Was it during the
21 course of the Madoff examination?

22 A No, it was not.

23 Q Do you think it had any impact on the Madoff
24 examination?

25 A Eric's relationship with Shana?