

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

 ORIGINAL

WITNESS: Number 57
PAGES: 1 through 27
PLACE: Securities and Exchange Commission
 Office of the Inspector General
 100 F Street, N.E., Room 2264
 Washington, D.C. 20549
DATE: Thursday, May 28, 2009

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 a.m.

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1 APPEARANCES:

2 On behalf of the Securities and Exchange Commission:

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WITNESSES

EXAMINATION

Peter Uhlmann

4

EXHIBITS

EXHIBITS:

DESCRIPTION

IDENTIFIED

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Letter dated 1/6/09
from Peter Uhlmann
regarding search of SEC
correspondence files

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P R O C E E D I N G S

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MR. KOTZ: Okay, we are on the record at 10:00 a.m. on May 28, 2009 at the United States Securities and Exchange Commission, Office of Inspector General. I am going to swear you in now if that is all right. Could you please raise your right hand?

Whereupon,

PETER UHLMANN

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

EXAMINATION

BY MR. KOTZ:

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

A Peter Uhlmann, U-h-l-m-a-n-n.

Q Okay, my name is David Kotz. I am the inspector general of the United States Securities and Exchange Commission. This is an investigation by the Office of Inspector General, Case No. OIG-509.

I am going to ask you certain questions. You will provide answers under oath. The court reporter will record and later transcribe everything that is said. Therefore, please provide verbal answers to questions, a nod of the head or another non-verbal response will not be picked up by the court reporter.

1 Q Okay, tell me in what year did you begin working at
2 the SEC?

3 A I started work in August of 2005.

4 Q And what was your position?

5 A Senior advisor to the chairman. And about a year
6 later, I was officially promoted to chief of staff and served
7 in that capacity until early 2009.

8 Q What were job duties generally as senior advisor?

9 A In many respects, it was similar to the duties I am
10 now performing as chief of staff, being involved with the day
11 to day management and operations of the chairman's office.

12 Q Okay. And your direct supervisor at the time was
13 Chris Cox?

14 A Correct, in both the senior advisor position and as
15 chief of staff.

16 Q And then in early 2009, you moved into what
17 position?

18 A Senior advisor in the Office of the Executive
19 Director.

20 Q Who do you report to now?

21 A To Diego Ruis.

22 Q So that was in the beginning of 2009.

23 A Correct.

24 Q Okay. When did you first hear of either Bernard
25 Madoff or Bernard L. Madoff Investment Securities, LLC?

1 A My best recollection is it was at the time the --
2 in late or I guess in early December 2008, right around the
3 time of his arrest.

4 Q Okay.

5 A The time he was arrested.

6 Q So when you heard that Bernie Madoff had confessed
7 and had been arrested, did you recognize the name?

8 A I generally didn't know who he was or what sort of
9 history he had with various people at the agency but the name
10 was new to me.

11 Q Okay. So you weren't aware at any point in time
12 while you were serving as a senior advisor or chief of staff
13 of Bernie Madoff appearing on a SEC panel or at an event?

14 A No, it was one of the things I subsequently learned
15 that he had appeared but at no time was I directly aware of
16 it or the name didn't have any resonance to me up until his
17 arrest in December.

18 Q Okay, what about other members of the Madoff
19 family, have you ever met any other members of the Madoff
20 family?

21 A I have not met any Madoff members.

22 Q Were you aware of the Madoff family in general
23 beyond Bernie Madoff?

24 A No, not generally.

25 Q So you were not aware that Enforcement had received

1 any referral questioning the legitimacy of Madoff's returns?

2 A No, I didn't become aware until -- at the time the
3 Madoff matter broke and there was this subsequent disposition
4 of your inquiry, I asked our correspondence unit, which keeps
5 correspondence going back to 1992 --

6 Q Right.

7 A -- or 1994, to cull their records, review their
8 records to see what history of correspondence there had been,
9 either by any member of the Madoff family or anonymous
10 complaints and that sort of that thing. But other than those
11 contacts, which are described in the memo that I provided,
12 that is the essence of the contacts, at least as I am aware
13 of them.

14 Q Okay, and you hadn't heard of Harry Markopolos
15 prior to December 2008?

16 A No, I think it was -- my recollection, my best
17 recollection is that it was at the time in a Wall Street
18 Journal story that revealed who he was that I learned of
19 that.

20 Q And you weren't aware that Enforcement had
21 conducted or opened an investigation of Madoff?

22 A No, I wasn't. There was some period of time, I
23 think between the time of his arrest, my best recollection is
24 December 10th or 11th.

25 Q Right.

1 appropriate means to refer the letter.

2 Q Right.

3 A At least when I initially got this information
4 presented, one of the questions that I asked of Josephine
5 was, because the three anonymous complaints that came in are
6 essentially the same letter with slight addendums written on
7 to it, and two of the letters were referred to, I believe to
8 Enforcement and one was referred to the Office of Investor
9 Education. It seemed a little odd or unusual to me that two
10 were referred to one office and one was referred to another,
11 and that was something I had the occasion querying Personal Privacy
12 about, about why the inconsistency or basically can you
13 explain to me better the policy.

14 And what she had explained to me was that either
15 she or Personal Privacy will take a look at the letter. Most tips or
16 complaints either get referred to Enforcement or to Investor
17 Education and it is a bit of a judgment call as to which
18 office gets the initial referral. She said if there is
19 generally enough information in the incoming document that
20 looks like there would be enough for Enforcement to start an
21 investigation, they will generally refer it directly to
22 Enforcement first.

23 Q Okay.

24 A If it is generally a short or abbreviated complaint
25 that will require a little bit more leg work, she said

1 generally they refer those to Investor Education to do a
2 little bit more of the querying first and then make a
3 decision on referring to it Enforcement.

4 Q So even though it goes to Investor Education, it
5 might then be referred to Enforcement.

6 A That's correct.

7 Q Investor Education determines that it should go to
8 Enforcement.

9 A That's correct.

10 Q I think if you look at it actually two of them went
11 to Investor Education and one of them went to Enforcement.

12 A Oh, okay, I apologize. I knew they had gone to two
13 different offices, I didn't recall that the two was with
14 Enforcement or Investor Education.

15 Q Do you know if she does a NRSI search to see if
16 there is an ongoing Enforcement matter about this same
17 subject?

18 A I don't believe so.

19 Q And you say in this letter, I just want to kind of
20 confirm for the record, that none of these letters were seen
21 by the chairman or the chairman's staff or any of the
22 commissioners, is that right?

23 A Yes. Her system allows -- she keeps track of who
24 -- not only who was assigned copies of letters either for
25 review or further action but also who receives copies of

1 letters as well too. So there was no notation in her record
2 that it was referred to me or to anybody else in the
3 chairman's office staff. And, as I indicated before, I had
4 no recollection of receiving these. The number of tips I
5 think and complaints we get is fairly -- may be fairly
6 significant and so it wouldn't have been unusual for her just
7 to make a referral.

8 I think our standard procedure in these cases, it
9 was to make a referral based on what is in the cover of the
10 letter and unless there was a particular sensitivity or
11 something that was within the four corners of the letter that
12 it would present reason for additional review, it wouldn't
13 have been unusual for her to handle in that manner.

14 Q Okay, so just because it is addressed to Chris Cox,
15 it doesn't mean he actually ever saw it?

16 A No. Yes, in fact, I don't know that he sees the
17 majority of his correspondence.

18 Q There are so many --

19 A Yes.

20 Q If he were to see and read every single
21 correspondence.

22 A Well, we do -- we've always tried to have a careful
23 system to ensure that letters are promptly referred on
24 policies called for daily review of all letters from whatever
25 source, fax, telephone or email, and I think in each case the

1 letters were handled and processed the same day and assigned
2 to the -- another office, in this case Enforcement and
3 Investor Ed for appropriate additional review.

4 Q Okay, and so Chairman Cox wouldn't have to see
5 every single letter for actions to be taken obviously?

6 A No, no.

7 Q Okay. And then in addition, you mentioned that you
8 searched the correspondence tracking system between 1994 and
9 2005 and the reason you picked '94 was because I think that
10 is when the system begins.

11 A Yes, I basically asked her to conduct a search as
12 far back as the system would go, and she -- I believe '94
13 because that is the date the system -- well, I don't want to
14 speak -- my record shows the system -- the first paragraph of
15 my memo says the system has been in place in '92 and then
16 later on it says identifies 27 records between 1994 and 2005.

17 Q So does that indicate that there were no records
18 you think between '92 and '94 and 2005 to the present?

19 A That is what my understanding is of what I've
20 written down here.

21 Q Okay.

22 A Let me take a look at the spreadsheet. Yes, it
23 looks like the earliest communication was '94.

24 Q And there were no communications after February of
25 2005?

1 A Yes, I would -- based on my review here, I would
2 believe that is the case but that would be easy to --

3 Q We can verify when we talk to Personal Privacy.

4 A At least the search I've asked her to conduct was
5 basically any record, not to put any arbitrary start or end
6 dates on it, but basically search your universe of records.

7 Q Up until essentially January 2009?

8 A Yes, up until the time. So the time she conducted
9 the search, which was in -- right around the time just prior
10 to January 6, 2009.

11 Q In your time as senior advisor and chief of staff
12 at the agency, are you aware of any situations where Chairman
13 Cox or commissioners put pressure on Enforcement attorneys or
14 OC examiners to back off a particular investigation or
15 examination?

16 A I know the Commission obviously took a lot of
17 interest in matters that were presented.

18 Q Right, right, other than through the regular
19 process?

20 A Through the regular closed-meeting process, there
21 was a lot of interest in providing comment or direction.

22 Q Right.

23 A But, no, it would have been highly unusual. In
24 many cases, it could be very difficult for commissioners to
25 even learn about the existence or the progress of a

1 particular investigation prior to that stage.

2 Q So you think it is likely that if a matter, like
3 the Madoff investigation, never goes to the Formal Order
4 stage, the commissioners would not have necessarily been
5 aware there was an investigation ongoing?

6 A It would have been highly unusual I think for
7 commissioners to have learned about something that hadn't
8 been --

9 Q Right.

10 A That basically was closed down. I know the
11 Commission closes hundreds or more, if not thousands, of
12 cases a year and so -- and there is no formal or regular
13 reporting mechanism on which matters are closed. As a
14 routine matter, commissioners don't even, they don't see
15 closing memos.

16 Q Right.

17 A They have the ability after the fact if something
18 comes up in this case to get access to those closing memos or
19 get appropriate briefings, but as a matter of regular course,
20 it would be I would say extremely rare for commissioners to
21 even learn -- whether to learn of the existence but certainly
22 to learn the details of why a matter was not.

23 Q Okay. What about an OC examination, would it be
24 unusual for the commissioners and the chairman to be aware of
25 an OC examination as it was ongoing?

1 their staff. And so we routinely get correspondence from
2 Members of Congress that relates to some sort of concern or
3 information that a constituent of theirs wants to provide to
4 the agency.

5 Q Right.

6 A And I can't speak definitely, in some cases, it may
7 be that wholly unknown to the Member of Congress, their
8 constituent is maybe trying to advance their case --

9 Q Right.

10 A -- in some respect by using the Member to raise
11 concerns about an examination.

12 Q Right.

13 A In other cases, it may be there is a whistle blower
14 or somebody else that has important information to provide
15 and he is unwilling to do it directly and so can use a Member
16 of Congress to provide that information. It is hard to
17 speculate on some of the exact motives, but we do receive,
18 both through the chairman's office and other parts of the
19 agency, I know receive quite a bit of congressional
20 correspondence that passes that information on.

21 Q And you are not aware of any such congressional
22 correspondence relating to Madoff?

23 A I am not. And, in fact, that is I think one of
24 things that was produced by the search was to the best of our
25 ability to search the CTS system, we didn't find any records

1 of congressional correspondence relating to Madoff or
2 forwarding a complaint about Madoff or asking that care be
3 taken in the investigation in this, there was just no records
4 of any sort that we could find.

5 Q And if there had been such a communication, it
6 would have been in the system, right?

7 A Yes, for most congressional casework, and I think
8 Personal Privacy could probably elaborate a little bit, but my
9 understanding is that she adds key words and so if there is a
10 complaint about a particular enterprise or organization, she
11 will note that in the CTS system. So even if the
12 correspondent is a Member of Congress, if it relates to a
13 particular entity, that will be noted in the system such that
14 this would -- in fact, I think that is how we tracked the
15 three anonymous complaints is they were noted as relating to
16 Mr. Madoff and his firm.

17 Q Okay. Did you ever hear at any point in time that
18 Bernie Madoff was being concerned for either the chairman or
19 a commissioner with the SEC?

20 A No, I never heard of any report along those lines.

21 MR. KOTZ: That is all I have.

22 THE WITNESS: Okay.

23 MR. KOTZ: I would just ask to preserve the
24 integrity of the investigation that you not discuss the
25 testimony that you gave to anyone else.