

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

**ORIGINAL**

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

WITNESS: Witness #73

PAGES: 1 through 28

PLACE: Securities and Exchange Commission  
100 F Street, N.E., Room 6003  
Washington, D.C. 20549

DATE: Friday, July 31, 2009

The above-entitled matter came on for hearing,  
pursuant to notice, at 10:04 a.m.

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1 APPEARANCES:

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4 On behalf of the Securities and Exchange Commission:

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6 H. DAVID KOTZ, ESQ., Inspector General

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17 On behalf of the Witness:

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P R O C E E D I N G S

MR. KOTZ: We are on the record at 10:04 a.m. on July 31, 2009 at the United States Securities and Exchange Commission, Office of the Inspector General.

Whereupon,

Enforcement Senior Counsel

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

EXAMINATION (RESUMED)

BY MR. KOTZ:

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

Enforcement Senior Counsel

**Q Okay** Enforcement Senior Counsel, my name is David Kotz and I am the Inspector General of the United States Securities and Exchange Commission. I have with me my colleagues from the Office of Inspector General for the United States Securities and Exchange Commission, David Witherspoon and David Fielder and Kristina Katz and April Elliott. This is an investigation by the Office of Inspector General, case number OIG-509. I'm going to ask you certain questions and you will have to provide answers under oath.

A court reporter will record and later transcribe

1 allegations certainly. We would look at, you know, probably  
2 those would be the main things. I might be missing  
3 something.

4 **Q So let's assume that it alleges a securities**  
5 **violation, right? You determine there is some severity.**  
6 **What would you do with it then at that point?**

7 A I would forward it to the appropriate region and  
8 you figure out where is the violation based? Typically you  
9 want to look at where the violator, alleged violation is  
10 taking place as opposed to just looking at where the  
11 complainant is located. And we have regional contact people  
12 and we send it to those regions.

13 **Q So would you make a determination whether it should**  
14 **be sent for an investigation purpose or an examination**  
15 **purpose? Or you would just send it to the region?**

16 A We just send it to the region. If I think  
17 something is like something that would be interesting to the  
18 examinations group, I often cc the examinations group. Personal  
Privacy

19 Personal Privacy I knew John Walsh so I would cc John  
20 Walsh or if it's a broker-dealer I would cc Personal Privacy  
21 because I used to work with Personal Privacy. If it was an SRO  
22 and there was some kind of SRO component, I would cc maybe  
23 Personal Privacy or somebody like that.

24 **Q Let's say it alleged a violation of a securities**  
25 **law, and it seems to fit more into the investigative area**

1 than the examination area. What would you do at that point?

2 Who would you send it to?

3 A Well then I probably wouldn't cc OCIE. I would  
4 just send it to the region and we have regional contact  
5 people and we forward it to that person.

6 Q So who would be the New York person?

7 A Well it's been Jason Gettinger for a long time.

8 Q Okay, and then you assume that Jason Gettinger  
9 would then forward it along to whoever was appropriate in the  
10 New York office to handle it.

11 A Yes.

12 Q Now there are 20 that come to you. Are there times  
13 when you would talk to your colleagues about it or have your  
14 colleagues talk to them about the 20 they get, or how does it  
15 work?

16 A Yeah, and again I want to say approximately.

17 Q Approximately.

18 A Yes, certainly, there are definitely times when I  
19 would talk to -- We have a very collegial atmosphere and we  
20 would definitely speak to one another about a complaint.

21 Q And would there be times when you would go to your  
22 superiors and ask them what they think about a particular  
23 matter or complaint?

24 A Yes.

25 Q Would that be frequent do you think?

1 A That's what I do now.

2 Q But in 2005?

3 A That wasn't -- And it's not even required now.

4 Q So in 2005 if you got a complaint in for you to  
5 review and you determined it doesn't need to be forwarded,  
6 you would just delete it.

7 A That was the process, yes.

8 Q And that was the policy in place.

9 A That was the policy in place.

10 Q Now is there something called NRSI?

11 A Yes there is.

12 Q What is that?

13 A That is the internal database that is used in the  
14 enforcement division to determine whether anyone else is  
15 looking at, or has looked at or has an investigation of  
16 particular individuals and entities. And it also reflects  
17 filings that those entities have made to the SEC.

18 Q So in the ordinary course of your review of your  
19 approximately 20, would you do an NRSI search?

20 A Yes, yes. That's one of a number of searches I  
21 would do.

22 Q So let's say you received a complaint in 2005 and  
23 you did an NRSI search and in the NRSI search you came across  
24 that there was an ongoing investigation or a matter under  
25 inquiry involving that same individual. What would you do at

1 that point?

2 A You send it to the staff attorneys that are listed  
3 on the NRSI that are handling that investigation.

4 Q And wouldn't you do that kind of irrespective of  
5 how much detail was in the complaint or not?

6 A Oh, yes, certainly, certainly. That's one of the  
7 first steps you take.

8 Q So even if you hadn't made your determination about  
9 the severity of the issue or about how detailed it is, in any  
10 case, if you did an NRSI search and saw there was an  
11 investigation or matter of inquiry opened involving that same  
12 individual who was the subject of the complaint, you would  
13 automatically send the complaint to the staff attorney who  
14 was involved in the investigation that you identified from  
15 your NRSI search.

16 A Yes.

17 Q All right.

18 A That's step one. I mean that is really basic.

19 Q All right, let me show you some documents now if  
20 that's all right. Before I do that, do you recall receiving  
21 any tips, complaints or referrals regarding Bernard Madoff or  
22 any of Bernard Madoff's firms?

23 A No I do not, except that earlier this year when  
24 there was a search for complaints, one was forwarded to me  
25 and I see that one was in fact sent to me. But I don't

1 to potentially investigate. Because you have to look into  
2 something before you decide whether you are going to open an  
3 investigation on it. It takes a little while to look into it  
4 to figure out whether you would want to investigate it. So  
5 this is sort of the first step, hey maybe you are interested  
6 in looking at this.

7 **Q But in fact you didn't look at it or you certainly**  
8 **weren't involved in an investigation of this, right?**

9 A I was not involved in an investigation of this.  
10 And the fact that I don't even remember it makes me realize  
11 or makes me think that it was not even something that I did  
12 preliminary research on.

13 (Exhibit No. 3 marked for  
14 identification.)

15 **Q I'm going to show you another document. We will**  
16 **mark this as Exhibit No. 3. This is a listing of NRSO (sic)**  
17 **searches. It says on the top Israel, Freeman, NYRO, December**  
18 **11, 2008. And I would turn your attention to page 3 of**  
19 **Exhibit No. 3. Do you first concur, does this look like a**  
20 **listing of NRSI (sic) searches?**

21 A Yeah, it looks like you can see the names of  
22 people. Oh, okay.

23 **Q And so we've gone back and printed out a list of**  
24 **all individuals who did searches of Bernard Madoff or Madoff.**  
25 **And Exhibit No. 3 is that document. You can see that there**

1 is a reference both to Enforcement Staff Attorney on October 28, 2005  
2 and is it correct that there is also a reference to you  
3 having done an NRSI search on November 21, 2005?

4 A Yes.

5 Q So given that, and given that the date of the  
6 e-mail in Exhibit No. 2 is November 21, 2005, does it seem  
7 likely that you did an NRSI search as a result of receiving  
8 this information from Enforcement Staff Attorney?

9 A Yes.

10 Q And again, why would you have done an NRSI search?

11 A I would have done an NRSI search to see if there  
12 was a current investigation. I would have assumed probably  
13 that she already did that since she's sending it to me. But  
14 I probably wanted to double check and also maybe to see if it  
15 was a regulated entity.

16 Q So if in that NRSI -- I assume you don't remember  
17 the NRSI search.

18 A No, I don't.

19 Q If in that NRSI search you had seen an ongoing  
20 matter under inquiry investigation with a specific staff  
21 attorney's name listed relating to Bernard Madoff in the  
22 search you conducted on November 21, 2005, would you have  
23 referred this document to that staff attorney?

24 A I would have informed Enforcement Staff Attorney of that fact  
25 and advised her to do that.

1 Q That would be a standard procedure, if either you  
2 or Enforcement Staff Attorney did an NRSI search and found something,  
3 to refer it to the staff attorney listed under the  
4 investigation that you found in the NSRI search, right?

5 A Yes.

6 Q Do you know whether this complaint, from Nomen  
7 Nescio dated Saturday, October 1, 2005, at 10:10 a.m. to  
8 enforcement as shown in Exhibit No. 1, was ever referred out  
9 of the office of Internet enforcement?

10 A I do not know. We checked our records and at that  
11 time there was no policy to keep or save e-mails that we had  
12 sent. And I looked just to see if I had. I thought there  
13 was greater likelihood that Enforcement Staff Attorney had since it was in her  
14 batch and thus, she's responsible for figuring out disposing  
15 of them one way or the other. And I don't know what the  
16 results of her searches were.

17 Q So in your searches, is it fair to say that you  
18 looked back at the records and did not see any evidence that  
19 you had referred the complaint about Madoff that was sent on  
20 October 1, 2005 out to anyone?

21 A I didn't have any evidence to look yes or no  
22 because I didn't have records of what was sent at that time  
23 and I asked the enforcement tech support people to try and  
24 find records and do a search and they were unable to locate  
25 e-mails sent during that time. So they couldn't do a search

1 to find out if I had sent out something or not. So if I had,  
2 it still would not have been located.

3 Q And you don't know what Enforcement Staff Attorney found?

4 A I don't know the results of her search.

5 Q Do you recall at any point in time speaking with  
6 anyone else in the office of Internet enforcement about this  
7 complaint that came in Saturday, October 1, 2005 about  
8 Madoff?

9 A Not until December of 2008, but before then, no.

10 Q So you don't have any recollection of speaking with  
11 Office of Internet Enforcement  
Official about the complaint that came in in October of  
12 2005 about Madoff at that time?

13 A No, I have no recollection of whether such a  
14 conversation even took place.

15 Q Okay.

16 A I will say I looked back and 2005 was one of my,  
17 personally, my busiest years and I filed five different cases  
18 early. Well I didn't file them because we get trial  
19 attorneys, but it was probably one of my busiest  
20 investigative years. So it's pure speculation, but I might  
21 have been too busy to personally take on another case.

22 Q Well let me ask you this. If there was some  
23 consideration given by Enforcement Staff Attorney and you as to whether  
24 you should personally take on the case if you had time,  
25 wouldn't that indicate that there was some level of

1 Q And so looking at this today, looking at the  
2 complaint that Nomen Nescio sent on October 1, 2005 relating  
3 to Madoff, looking at it today would you determine, based on  
4 what you understand to be the factors that are appropriate in  
5 making a decision whether to refer it, that this matter  
6 should be referred somewhere?

7 A It's hard because hindsight is 20/20 and it's  
8 Bernie Madoff. So it's difficult, but can you repeat the  
9 question?

10 Q I'm asking you to look at the complaint today that  
11 Nomen Nescio sent in October of 2005. And assuming that you  
12 got this complaint in today and part of your job is to make a  
13 determination based on the language and the complaint of  
14 whether to refer the complaint to somebody or not, that  
15 looking at it today, what would your determination be?

16 A I mean I think today or at the time, it looks like  
17 something that should get forwarded on.

18 Q Could we go off the record for a second?

19 (A discussion was held off the record.)

20 MR. KOTZ: Okay, back on the record. I think we're  
21 basically done. Just generally, is there anything else about  
22 any examinations and investigations of Bernie Madoff or  
23 Madoff's firms that the agency conducted from the time you  
24 started at the SEC until the present that you're aware of  
25 that might be relevant to our investigation, apart from the