

Exhibit 5

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

10 Cr. 228 (LTS)

DANIEL BONVENTRE,
JEROME O'HARA,
GEORGE PEREZ,
ANNETTE BONGIORNO,
JOANN CRUPI,

Defendants.

Jury Trial

New York, N.Y.
January 13, 2014
9:15 a.m.

Before:

HON. LAURA TAYLOR SWAIN

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
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RANDALL W. JACKSON
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trial

APPEARANCES

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(Trial resumed; jury not present)

THE COURT: Good morning. Please be seated.

(Case called)

Good morning, Mr. O'Hara, Ms. Bongiorno, Ms. Crupi, Mr. Perez and Mr. Bonventre. Good morning to the government team. May I have your appearances.

(Appearances noted)

I received just a couple of letters yesterday, and I'd first like to take up Mr. Krantz's letter, and before I hear from the government, I have a couple of questions for Mr. Krantz.

MR. KRANTZ: Sure.

THE COURT: So, Mr. Krantz, in the government's letter of December 14th, which was written in connection with an earlier iteration of this controversy, the government said, among other things, and I'm quoting from Page 3 of this letter which is document No. 574, that its earlier August 23rd and September 12th expert disclosures provided with respect to Miss Brady, that she is the director of information technology risk services in the consulting services group of EisnerAmper, LLP, where she, among other things, conducts external IT audits for clients in the financial services industry and assists financial services clients, including broker-dealers and investment advisors, to set up appropriate IT systems and controls.

1 Ms. Brady is an expert on the IT architecture
2 necessary to run a legitimate trading platform, including
3 connectivity to clearing houses and third-party services.
4 Ms. Brady will also testify, including through the use of a
5 risk control matrix, about the extent to which House 5 and
6 House 17 did and did not incorporate that architecture.

7 Then, going on: As explained in our August 23rd,
8 2013, letter, in addition to testifying about the IT
9 architecture necessary to run a legitimate trading platform,
10 including connectivity to clearing houses and third-party
11 services, Ms. Brady will also testify about the extent to which
12 House 5 and House 17 didn't incorporate that architecture with
13 specific emphasis on the House 17 lack of certain connectivity.

14 Ms. Brady's opinions are based on, among other things
15 and in addition to, her expertise and experience, a personal
16 review of Madoff Securities' computer system, and then there
17 were draft work papers. That letter also argued the relevance
18 of that information to a great extent.

19 We also had discussions on the record of the industry
20 norms proffered by the government on December 19th that was
21 very specific to what the government anticipated to put on
22 regarding industry norms, and the topic was discussed again on
23 the record on the afternoon of January 8th.

24 And in the course of that colloquy, and I'm looking
25 particularly at Pages 6697 and 6698, the government proffered,

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1 in essence, that the industry norms testimony in relation to
2 the Exhibit 5000-3 would be that if the trading was done
3 upstairs on the Madoff securities' trading floor, it would look
4 like one page of that exhibit, and if it were done in London
5 through the use of an external broker, the norm should have
6 looked like the other page of that exhibit.

7 So with all of that, given that the government has
8 made specific proffers as to her expertise, the basis of her
9 knowledge and the contours and some of the specifics of her
10 testimony, what is your basis for requesting a Daubert hearing?

11 MR. KRANTZ: Yes, your Honor, let me explain that.
12 No. 1, we don't contest her qualifications as an expert, to be
13 clear. We also don't seek a hearing as to anything concerning
14 her review of what the computer systems were at Madoff
15 Securities. Our issue is with her proposed testimony as to
16 industry norms for how it, quote, should have looked or words
17 to that effect.

18 And here is our position, your Honor. In candor with
19 the Court, we had previously argued this issue under a lens of
20 relevance as to industry norms and, frankly, at that moment, I
21 was not focused on the issue of 702 versus 401 in our
22 correspondence to the Court. And our prior argument to the
23 Court was based on a pure relevance argument, and your Honor
24 overruled our relevance argument and, of course, we respect
25 that.

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1 When I was working on my cross-examination, I realized
2 what I should have realized earlier, which is really that the
3 proper lens for the industry norm testimony is 702. And the
4 relevance standard is slightly different from 702 because 702
5 requires a finding that the expert opinion will actually be
6 helpful to the jury. And there is a gap between relevance and
7 an affirmative finding of helpfulness, meaning something could
8 be relevant but not sufficiently helpful to the jury under 702.

9 And so I realize that we had to make that argument on
10 behalf of our clients, that we need to argue to the Court that
11 testimony concerning industry norms does not pass the 702
12 helpfulness test, first of all, and second of all, to the
13 extent that this witness is going to say it should have been a
14 different way, other than knowing she has a lot of experience
15 in the industry, we do not know what her basis of saying it had
16 to be some other way is. In other words, what is that premised
17 on?

18 THE COURT: She's the head of an IT practice. She
19 does IT audits. We have books that say what IT audits are
20 supposed to encompass. There is plenty in the record talking
21 about connectivity, and so what's the mystery here?

22 MR. KRANTZ: Your Honor, respectfully, there's nothing
23 in the record that says that a trading system, even if this was
24 a trading system, needs to be electronically connected to
25 something else if it's not a self-clearing system. That is not

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1 in the record.

2 THE COURT: And presumably, that's what she's going to
3 bring, that synapse, to the table, and she's going to bring
4 that synapse to the table on the basis of the proffer of her
5 expertise and her experience with other firms, both structuring
6 and with IT audits.

7 MR. KRANTZ: Well, your Honor, I agree with you that's
8 what she's going to do. What we don't know is the basis of
9 that. In other words, is the basis that this is the only way
10 it's done in the industry, or is the basis something else?
11 I've seen it done that way once or twice.

12 Now, we can deal with that on cross. I do understand
13 that, but I do feel that there should be some -- under Daubert,
14 some threshold showing that her -- even if it's a proffer from
15 the government, that her knowledge on that subject is
16 sufficiently probative, meaning she has some basis for saying
17 this is the way it has to be in the industry, as opposed to
18 just I've been in the industry a long time and I think it
19 should be that way.

20 THE COURT: Well, it's proffered as an opinion as to
21 industry norms; so to be consistent with that proffer, I am
22 assuming, and perhaps the government will confirm, that her
23 testimony will be this is normally the way it is in this
24 industry, not that I saw it this way over here once and I
25 thought that was a really good idea. That's not the proffer of

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1 the opinion.

2 And to cue up a Daubert hearing -- yes, at the end of
3 the day the proponent of the testimony has to establish that
4 all of the 702 criteria are met, but the opponent of the
5 opinion has to do more than say, gee, I wish I knew a little
6 bit more specifically what's going to be said. And I'm not
7 hearing anything right now, frankly, other than, I wish I knew
8 this a little bit better.

9 MR. KRANTZ: I accept that, your Honor, and if I could
10 just say this, I would ask the Court to just make a specific
11 finding on the record that you find 702 is satisfied because I
12 do think we do need that for our record.

13 THE COURT: I find that the government's proffers are
14 sufficient to satisfy its baseline obligations under 702 and
15 that nothing has been raised so far that would require the
16 Court to make a more thorough inquiry at this juncture.

17 MR. KRANTZ: I appreciate that, your Honor, and I do
18 apologize for not raising 702 earlier. Frankly, if it had
19 occurred to me, I would have, but it just didn't occur to me.

20 THE COURT: Understood. There are a lot of faults in
21 the air here.

22 MR. KRANTZ: The last thing I want to say is simply
23 that I know we have little bit of a disagreement on this, but
24 part of the reason we've been struggling so much is we feel
25 very uncertain about the scope of the opinion. And I would ask

1 the Court to adhere to the scope that your Honor just laid out.
2 That's what we're understanding the industry norm opinion is
3 going to be, and we can deal with that.

4 I have some concern that there's something, in our
5 view, buried in all this material that we've been given that
6 goes beyond what your Honor just laid out. And if that occurs,
7 we will object to it as beyond the scope of what's been
8 disclosed to us. But that was the other reason why we keep
9 raising this issue, is we keep trying to get some clarity.
10 Maybe it's our fault, but we genuinely don't feel we have it.

11 So if that occurs, I just would ask the Court
12 permission to press that objection, but I understand your
13 Honor's ruling and we accept your Honor's ruling.

14 THE COURT: Thank you. Permission granted, but in aid
15 of that, Mr. Schwartz, is my capsulization of your proffer
16 accurate?

17 MR. SCHWARTZ: I think it is, your Honor, and I'll
18 just add your Honor recited oftentimes we've discussed this on
19 the record. Pursuant to your Honor's suggestion before the
20 break, I also had a lengthy conversation with Mr. Mehler,
21 Mr. Krantz and their colleagues, where I walked through exactly
22 what I expected Ms. Brady's testimony to be on this topic, and
23 there was an exchange of e-mails where that was -- the squib of
24 that was memorialized.

25 So I think the answers to a lot of these questions

1 have already been fleshed out. I expect Ms. Brady to testify
2 that with respect to the information technology setups of
3 broker-dealers, self-clearing investment advisors and
4 investment advisors that use an external broker, this is the
5 way it is typically done, this is why it's typically done that
6 way because it makes good sense. She may talk about examples
7 where she's seen it done that way.

8 With respect to especially the broker-dealer
9 self-clearing model, there are minimum things that need to be
10 present. A broker-dealer that clears trades needs to talk to a
11 clearing house, it needs to talk to an exchange. She'll talk
12 about that. That's all been disclosed and discussed with
13 counsel.

14 THE COURT: Thank you. Now, Mr. Riopelle, I thank you
15 that your letter said I didn't have to address your issue first
16 thing this morning, but in order for me to be able to address
17 your issue at the time, if you haven't worked it out already --

18 MR. RIOPELLE: We have not.

19 THE COURT: -- I need to know what the source of these
20 charts is. You gave me two charts that purport to --

21 MR. RIOPELLE: They're readily available almost any
22 website that publishes Dow Jones information. You can get them
23 at Yahoo Finance, you can get them at BigCharts.com. If you
24 want me to, when I get back to the office tonight, I'll go back
25 and find whatever website I got them from, but these charts are

1 available basically anywhere that publishes financial
2 information on the Internet.

3 THE COURT: Well, at a minimum, I need some very
4 specific attribution where you got it from, what the URL is,
5 what the date on which you downloaded it. Because, frankly, me
6 and my little friends at Excel could make papers that look just
7 like that with whatever numbers I want to put in them.

8 MR. RIOPELLE: Okay. Happy to do that, your Honor. I
9 don't think there's any dispute, by the way, between the
10 parties that these charts accurately reflect what the Dow Jones
11 industrial average was on the time stated on the charts. I
12 don't think that's what the dispute is.

13 THE COURT: And your thesis about a bull market
14 prevailing between certain points in time, at least viewed
15 through the lens of the annual opening and closing figures
16 chart --

17 MR. RIOPELLE: Yes.

18 THE COURT: -- doesn't seem, to me, intuitive. You
19 have, especially with the shorter bracket in time, you have,
20 down here in the middle, where you skip 2003, you go up to 2002
21 and pick up again in 2004. Why you dropped 2003 but include
22 certain other dates and include 2000 in your earlier bracket,
23 doesn't leap out at me.

24 And so, one, I'll need a little bit more clarity on
25 that; and, two, maybe this should have been the first question,

1 are you asking me, in taking judicial notice of charts, to
2 adopt your thesis that the year brackets that you've identified
3 are indicative of a prevailing bull market throughout that
4 period?

5 MR. RIOPELLE: No. All I want you to do, your Honor,
6 is either admit the charts or permit me to ask the Court to
7 take notice of what the annual close of the Dow Jones
8 industrial average was each year that I choose to ask the Court
9 to take notice of that while I cross-examine this witness.

10 The purpose of the chart that looks like two big
11 mountains, which I think probably is pretty clear which one I'm
12 referring to, is that it looks astonishingly similar to some of
13 the charts that the government is going to offer, the graphics
14 relating to Ms. Bongiorno's investment advisory account. And
15 the argument to the jury is that, at least some of the reason
16 why it goes up like that is that the market itself was going up
17 like that for a very extended period when she was contributing
18 and had money in her IA account. That's really the only point
19 I'm trying to make there. The big chart looks like two -- like
20 the Alps.

21 THE COURT: Yes, there's a graphic chart and there's a
22 strictly numerical chart.

23 MR. RIOPELLE: Exactly. The graphic chart, the idea
24 is that the lines on that chart look a lot like the lines on
25 Ms. Bongiorno's -- the charts as to Ms. Bongiorno's IA account

1 which the government has prepared. That's all we're trying to
2 do.

3 THE COURT: Thank you. Mr. Jackson?

4 MR. JACKSON: Your Honor, just to very briefly explain
5 our objection. One, I do agree with your Honor. I don't think
6 that Mr. Riopelle's argument is intuitive about the relevance
7 of this chart. The idea that the general rise in the market is
8 the explanation for the rise in Ms. Bongiorno's account is not
9 intuitive given the fact that there were no actual securities
10 trading in her account, but that's really a secondary matter.

11 The primary basis of our objection is that the
12 witness, who's going to be on the stand explaining the
13 information that they've summarized and put into the chart,
14 Mr. Riopelle is not going to be able to establish a sufficient
15 foundation to question them about the chart. That's my
16 anticipation. The witness is going to be talking about
17 information that they looked at, that they turned into a
18 summary chart.

19 And then Mr. Riopelle wants to take a chart that the
20 witness has no knowledge about, information about the Dow Jones
21 average and say, ah-hah, isn't this the actual Dow Jones
22 average during the time period this takes place in? And the
23 witness' answer, I would anticipate, I have no idea if that
24 chart is correct, I have no idea what the Dow Jones average was
25 and what the closing average was during this time period. And

1 so the real question is whether or not there is any foundation
2 that Mr. Riopelle can lay for appropriate questions to a
3 summary witness on cross-examination about this type of
4 document.

5 Now, if Mr. Riopelle wants to offer the document, even
6 though we agree with your Honor it's not intuitive, we think
7 that there is low, limited or no relevance to it. We've
8 already informed him if he wants to offer it in the defense
9 case, we won't object to it and he can make the appropriate
10 arguments. But it is a completely separate matter for him to
11 try to put a chart that the witness had no involvement in
12 creating, has no knowledge of and is outside the scope, is
13 really asking for -- it's sort of an expert cross on the nature
14 of the stock market when really all the witness is doing is
15 explaining how a chart was made which summarizes what was
16 contained in Ms. Bongiorno's account.

17 THE COURT: Or, alternatively, it seems to me it's a
18 publication of an exhibit that would be admitted in evidence
19 through a witness who doesn't have connection of it in aid of
20 putting together an argument for the jury. So it doesn't
21 necessarily require expertise, but to introduce it in the
22 context of this witness, is talking about something else.

23 MR. JACKSON: Yes, your Honor.

24 MR. RIOPELLE: Well, the question Mr. Jackson says I
25 might ask are indeed among the questions I might ask, and

1 getting the answer from the witness that he's never heard of
2 the Dow Jones industrial average and doesn't know what that is
3 and doesn't have any idea whether this chart looks anything
4 like that, those are all fine answers for me, your Honor.

5 THE COURT: Because what you want to do is make an
6 argument for the jury based on your chart; so why should I let
7 you do it with their witness?

8 MR. RIOPELLE: Well, if I ask you to take judicial
9 notice of what the Dow Jones industrial closing price was
10 during the years while I'm cross-examining this witness, I
11 think that's perfectly appropriate. I think it is certainly
12 appropriate to demonstrate with a witness who is preparing a
13 chart, what's not on that chart and what might have influenced
14 the numbers on that chart and what does he know about those.
15 And if he knows nothing, that's something worth the jury
16 knowing.

17 That's all, in my experience, perfectly fair game for
18 calling into question the government's argument as to the
19 chart, which is going to be, wow, her account went up like
20 that; she must be a criminal. I should be able to rebut that.
21 I will offer these charts in my defense case. I thank the
22 government for agreeing to allow me to admit them during the
23 defense case, but the rule as to what the Court can take
24 judicial notice of states that the Court can take judicial
25 notice at any time, that it must take judicial notice of facts

1 which are readily available, like the Dow Jones industrial
2 average. And Courts, I think I've cited a good six or eight
3 perhaps ten of them, have done that sua sponte in many cases.

4 THE COURT: In aid of that aspect of it which I
5 haven't ruled on, but I think that's the less controversial
6 part of this controversy, I've asked you to come up with some
7 provenance and, you know, that it's not the Riopelle last-night
8 analysis of the stock market, and you're going to do that.

9 MR. RIOPELLE: You mean just where do the charts come
10 from?

11 THE COURT: Where did the charts come from, is this a
12 reliable source that's readily available and consistent against
13 platforms that I asked you that in aid of whatever concerns I
14 had about --

15 MR. RIOPELLE: Sure.

16 THE COURT: -- judicial notice. The issue that
17 Mr. Jackson seems to be raising here is the publication of that
18 particular information in the context of this particular
19 witness' testimony, and because it's 20 to 10:00, we'll
20 continue this tomorrow with a little bit more information, and
21 I'd ask you all to think about it a little bit more.

22 If the government's witness is simply saying I
23 computed the particular positions reported on Ms. Bongiorno's
24 statements and the prices as reported in the statements of
25 those things based on what was there, I'm not sure that I am

1 completely plugged into your rationale for arguing that this is
2 an appropriate context in which to publish the overall movement
3 of the market or a connection between those prices and an
4 overall market if the witness is saying I sat down with reports
5 and a calculator. But I may be wrong as to the scope and
6 nature of the witness' testimony and, who knows, I may be wiser
7 and more perceptive tomorrow. I always hope that I will be.
8 So we can talk about that some more tomorrow.

9 MR. RIOPELLE: Thank you, your Honor.

10 THE COURT: All right. So --

11 MR. JACKSON: Thank you, your Honor.

12 THE COURT: -- just briefly, we're continuing with the
13 redirect of Mr. DiPascali today; is that correct?

14 MR. ZACH: Yes.

15 THE COURT: And to the extent we finish Mr. DiPascali
16 today, or whenever we finish, probably the next witness will be
17 Mr. Fong?

18 MR. SCHWARTZ: If it's today. If it's tomorrow, we
19 may have a different discussion.

20 THE COURT: Okay. That's fine. And we end at 3:00
21 today after the normal lunch break, and I don't think I had
22 anything else on my initial agenda besides, I hope you all had
23 a good weekend. Ms. Ng, can you check on the jury, please.

24 MR. ZACH: Your Honor, do you want us to bring the
25 witness in?

1 THE COURT: She'll see if the jury's all ready, and if
2 they are, I'll give you the two-minute warning and ask that you
3 bring the witness in. Otherwise, I'll just give you a
4 five-minute warning.

5 THE DEPUTY CLERK: Judge, they're all ready.

6 THE COURT: Okay. This is a two-minute warning.
7 Please bring in Mr. DiPascali.

8 THE DEPUTY CLERK: All rise.

9 (Recess)

10 THE COURT: Good morning, Mr. DiPascali.

11 THE WITNESS: Good morning, your Honor.

12 THE COURT: Good morning. I think everybody's here,
13 yes?

14 MR. ZACH: I'm sorry, your Honor. We're just looking
15 for an exhibit.

16 THE COURT: All right. All rise.

17 (Jury enters)

18 Good morning, members of the jury. Welcome back.
19 Please take your seats. Please be seated, everyone, and thank
20 you all for your patience while the lawyers and I sorted out
21 some issues for this morning. We're now ready to continue with
22 the redirect of Mr. DiPascali. Mr. Zach.

23 MR. ZACH: Thank you, your Honor.

24 FRANK DIPASCALI,

25 called as a witness by the Government,

1 having been previously duly sworn, testified as follows:

2 REDIRECT EXAMINATION (Resumed)

3 BY MR. ZACH:

4 Q. Mr. DiPascali, during cross-examination, Mr. Riopelle asked
5 you a number of questions about your mother's IA account; do
6 you remember those?

7 A. I do.

8 Q. And just remind us, what type of account did your mother
9 have with Madoff Securities?

10 A. She had a long position account.

11 Q. And when did she open that account?

12 A. 1991.

13 Q. And how did she open that account?

14 A. With the proceeds of my dad's life insurance policy.

15 Q. There was real money put in the account?

16 A. Yes, sir.

17 Q. And that account remained open all the way through the
18 collapse of Madoff Securities, right?

19 A. It did.

20 Q. And was that a significant amount of money for your mom in
21 that account?

22 A. Yes.

23 Q. And during those questions by Mr. Riopelle, you were asked
24 a bit about how that account was closed out in the last days at
25 Madoff Securities; do you recall that?

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Mipascal1 - redirect

1 A. I do.

2 Q. Now, Ms. Baskin, can we bring up Government

3 Exhibit 105-C157 at Page 2. This is fine, actually. And you

4 were asked a bit about this check; do you recall that?

5 A. I do.

6 Q. And can we blow up the top check, Ms. Baskin, please.

7 Now, I have the original here, but this is the check,
8 as you can see, that was ripped out. The signature was ripped
9 out; do you recall that?

10 A. Yes.

11 Q. And this check is in the amount of how much?

12 A. \$220,112.79.

13 Q. Okay. Now, there was questioning about who had created
14 this check; do you recall that?

15 A. I do.

16 Q. And it was ultimately -- this was the check that was
17 prepared by Ms. Bongiorno, correct?

18 A. I think it was.

19 Q. Now, let me show you a couple of -- When were these checks
20 generated?

21 A. In the -- a day or two before the firm collapsed.

22 Q. And who were these checks being cut for, generally?

23 A. Employees and relatives of employees.

24 Q. Okay. Now, I want to show you what's in evidence as

25 Government Exhibit 105-C141, and can we go to Page 2, please.

1 So these were some of those checks that were being cut in these
2 last days, right?

3 A. Correct.

4 Q. Because look at the date on the top right; do you see that.

5 A. Yes.

6 Q. And what is the date?

7 A. 12-11-08.

8 Q. And who was this check cut to?

9 A. Annette Bongiorno.

10 Q. And she was the one that helped prepare the check for your
11 mom as well, right?

12 A. That is correct.

13 Q. And what is the amount of the check?

14 A. \$7,209,696.55.

15 Q. And let's go to the next page. Who is this check to?

16 A. Rudy Bongiorno.

17 Q. How was Mr. Rudy Bongiorno connected to Annette Bongiorno?

18 A. It's her husband.

19 Q. And when is this check dated?

20 A. Also December 11th, '08.

21 Q. And what's the amount of this check?

22 A. \$25,834,545.49.

23 Q. Now, can we go to the next page. And when is this dated?

24 A. Also 12-11.

25 Q. And who are -- who is this being paid to?

1 A. Rudy and Annette Bongiorno.

2 Q. And what's the amount here?

3 A. \$24,781,842.36.

4 Q. So these checks that we've looked at, and the checks to
5 your mom and others, were all checks that were being produce in
6 the very final days of Madoff Securities, right?

7 A. That is correct.

8 Q. You can take that down, Ms. Baskin. Now, on
9 cross-examination, Mr. Riopelle showed you your mom's account
10 statement and let's bring that up. It was -- the exhibit
11 number is AB101-57. Can we turn that and can we blow that up,
12 please.

13 Now, this was the statement that was shown to you on
14 cross-examination, and it's -- can you sort of -- Well, first,
15 whose account is this for?

16 A. It's my mom, Josephine.

17 Q. It's a little hard to read, but when is it dated?

18 A. I think it says November 30th, '08.

19 Q. So this is the month-end statement for November of 2008?

20 A. Correct.

21 Q. And the checks that we looked at were made in or around
22 mid-December, right?

23 A. December 11th.

24 Q. And do the values in the accounts vary a bit in terms of
25 value based on -- well, strike that. Were any of the

1 securities in these accounts real?

2 A. No.

3 Q. They're all fake, right?

4 A. Correct.

5 Q. But the purported value of them would be determined by
6 looking at real market prices, right?

7 A. Correct.

8 Q. So over time, do the values change over the course of the
9 month, the purported value of these accounts?

10 A. Yes.

11 Q. Now, can you tell us a bit -- can you sort of summarize
12 what this says about what's in your mom's account?

13 A. There's a small group of positions in common stock, and
14 then there's a large position in Fidelity money market.

15 Q. And how much, in terms of stock value, is in this account?

16 A. About \$115,000.

17 Q. Looking down at the bottom, do you see there's a \$414,000?

18 A. Yes, sir.

19 Q. What is that value?

20 A. It's the total market value of the positions that are above
21 it.

22 Q. Okay. And is there also a debit balance on this?

23 A. \$208,000.

24 Q. So if you take out the -- debit means it's money owed,
25 right?

1 A. That's correct.

2 Q. So if you take out the market positions -- well, strike
3 that.

4 If you subtract the debit balance from the market
5 positions, roughly what's the value of the account?

6 A. \$206,000.

7 Q. Now, you were being questioned by Mr. Riopelle, and he
8 asked you, well, did you just forget to take out the debit
9 balance when the new check was cut; do you recall those
10 questions?

11 A. I do.

12 Q. Because that check we just looked at was ripped, right?

13 A. It was.

14 Q. And instead, there was another check that was reissued,
15 which was Government Exhibit 900-33, which, Ms. Baskin, can you
16 please bring that up and go to Page 31. This was the signed
17 check that was reissued, right?

18 A. That's correct.

19 Q. And how much is it for?

20 A. \$390,000.

21 Q. And Mr. Riopelle asked you, well, did you just forget to
22 take that debit when you reissued this check and gave your mom
23 an extra 200 grand; do you recall those questions?

24 A. I do.

25 Q. Now, I'd like to show you something that you didn't see.

1 Let's show to the judge, the lawyers and the witness what's
2 been marked for identification as Government Exhibit 101-57I.
3 Can we blow that up.

4 MR. ZACH: The address has been redacted, your Honor,
5 except for the New Jersey.

6 Q. Do you recognize what this is, sir?

7 A. I do.

8 Q. What is it?

9 A. It's my mom's account, the 40 side of the account, which is
10 the -- a subsidiary account to the 30 side.

11 Q. Would this be an option account?

12 A. It would be.

13 Q. And do you remember in response you said, I don't forget
14 there might have been an option account for my mom?

15 A. I don't recall that response, but --

16 Q. But this is the option account for your mom?

17 A. That is correct.

18 MR. ZACH: The government offers 101-57I.

19 THE COURT: Any objection?

20 MR. RIOPELLE: No objection.

21 MR. ZACH: What's the value on this account --

22 THE COURT: Hold on. I have to admit the exhibit and
23 make sure there are no other --

24 MR. ZACH: Okay.

25 MR. BRESLIN: No objection.

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DiPascali - redirect

1 THE COURT: Government Exhibit 101-57I is admitted in
2 evidence.

3 (Plaintiff's Exhibit 101-57I received in evidence)

4 BY MR. ZACH:

5 Q. Mr. DiPascali, what's the value in this account?

6 A. 170,366.

7 Q. And would this be in addition to the value in the 30
8 account?

9 A. It would be.

10 Q. So if you add this account with the account that we just
11 looked at, what's the rough value?

12 A. I'm sorry, I don't recall the figures from the first
13 account.

14 Q. The prior was around \$206,000?

15 A. You 206, you said?

16 Q. And if you add 170 to 206, what do you get?

17 A. 376.

18 Q. And let's go back to -- and that's as of November 30th?

19 A. That is correct.

20 Q. Let's go back to Government Exhibit 900-33, Page 31, and
21 you see here what's the check for?

22 A. \$390,460.

23 Q. That's roughly equivalent to the sum total of the two
24 accounts, correct?

25 A. This figure, I believe, is the sum total of the two

1 accounts on the day the fictitious tickets were written to
2 generate that number.

3 Q. So on cross, you saw the one account, but now that you've
4 seen the second account, does this check make more sense to
5 you?

6 A. It's accurate now.

7 Q. We can take that down.

8 (Continued on next page)

1 Q. Now I want to switch to a different topic. You were asked
2 some questions by Mr. Riopelle about the difference between a
3 broker and a dealer. Do you recall those?

4 A. I'm sorry, I don't.

5 Q. Do you remember being asked whether a dealer can sell its
6 stock out of its inventory?

7 A. Again, I'm sorry, I don't remember the question.

8 Q. Do you know whether or not a dealer can sell stock out of
9 its inventory?

10 A. I believe they can.

11 Q. You were asked questions about a broker as well, do you
12 recall that?

13 A. Vaguely, yes.

14 Q. Mr. Riopelle asked you questions four weeks ago, right, or
15 three weeks ago, whatever it is?

16 A. Yes, about that.

17 Q. He asked you questions about charging commissions, do you
18 remember that?

19 A. I do now, yes.

20 Q. In the course of those questions, you said, well, I need to
21 look at something called a capacity code to understand some of
22 the questions you're asking. Do you remember that?

23 A. I do remember, yes.

24 Q. What is a capacity code?

25 A. It's a code that is present on a confirmation of trade

1 presented to a client that illustrates in what capacity the
2 transaction was being done. It could be done as agent, it
3 could be done as principal, the two primary capacities.

4 Q. What does it mean to be done as an agent?

5 A. It's when a broker-dealer acts on behalf of his client and
6 is a middleman where they go out into the marketplace and
7 purchase securities acting as the client's agent and in doing
8 so is eligible to collect a commission, very similar to what a
9 real estate agent does.

10 Q. If you were to collect a commission, you would be operating
11 as an agent, right?

12 A. Typically, if you act as agent, you charge a commission,
13 that's correct.

14 Q. Mr. Riopelle asked you a series of questions showing you
15 some trade confirmations that didn't have commissions but asked
16 you, since there were no commissions listed there, doesn't that
17 show that they must have been trading out of their inventory.
18 Do you recall those questions?

19 A. I do.

20 MR. ZACH: Your Honor, may I approach the witness?

21 THE COURT: Yes, you may.

22 Q. I want to show you one of the trade confirmations. Can we
23 call up Government Exhibit 105-B230.

24 THE COURT: Is this in evidence?

25 MR. ZACH: Yes, your Honor.

1 Q. Could we go to page 2, please. Do you recall looking at
2 confirmation slips like this?

3 A. I do.

4 Q. Can you tell us where the capacity code is on this.

5 A. Almost dead center in the top line of the information,
6 there is a series of boxes and then there is the word "codes."
7 Under that there are three types of codes. The first one is a
8 I believe transaction code. The second one is the one you're
9 talking about, capacity code. And the third one, I'm not even
10 sure what it means.

11 Q. I would like to show you the original of this. Does it
12 tell you what those numbers mean on the back?

13 A. It does.

14 Q. What does the number 1 mean?

15 A. Agent.

16 Q. What does that mean with respect to this transaction?

17 A. It means that the broker-dealer acted as the customer's
18 agent in transacting this security for that customer.

19 Q. That would be acting as the middleman, like you just
20 described?

21 A. That's correct.

22 Q. To take a time-out here, this is a completely bogus trade,
23 right?

24 A. Absolutely.

25 Q. None of this is real, right?

1 A. That's correct.

2 Q. The question here is what is this being made to look like
3 on the statement, right?

4 A. Yes.

5 Q. The 1 would indicate that it is being traded as an agent,
6 that Madoff Securities is going out on the market and buying
7 it, right?

8 A. That is correct.

9 Q. How would that square with the questions you were being
10 asked about whether these trades were coming out of Madoff's
11 inventory?

12 A. If you acted as agent, it wasn't coming out of your
13 inventory.

14 Q. It couldn't be, right?

15 A. The capacity code is principal to come out of your
16 inventory. As agent, I believe it directs the reader to
17 understand that this transaction happened outside the broker-
18 dealer, in the marketplace with another broker-dealer, and the
19 broker-dealer that printed the ticket simply acted as the
20 middleman or the agent.

21 MR. ZACH: Your Honor, may I retrieve my document?

22 THE COURT: Yes.

23 Q. Can we go to page 17. This was another one of the trades
24 you were shown on cross-examination. You were asked questions
25 about this. In response I believe to some of these questions

1 you said, I need to understand the capacity code. What is the
2 capacity code here?

3 A. Again, it is agent.

4 Q. That is the number 1 up there, right?

5 A. Correct.

6 Q. This is a fake trade, right?

7 A. Oh, yes.

8 Q. The way it is being typed up, could this be coming from
9 Madoff's inventory?

10 A. I'm sorry. I didn't hear the rest of that question.

11 Q. The way it is being typed up, would this be a trade that
12 would be coming out of inventory?

13 A. No.

14 Q. We can take that down. Did Madoff Securities on the 18th
15 floor make a market in options?

16 A. No.

17 Q. Could any options trades be coming out of inventory from
18 upstairs?

19 A. Possibly as principal. But the reality was the trading
20 room upstairs had insignificant options inventory.

21 Q. Nothing like 20 percent of the market?

22 A. Nothing like 20 contracts much less 20 percent.

23 Q. It was a very, very small bit?

24 A. It was insignificant.

25 Q. How about treasuries?

1 A. What about them?

2 Q. Did they make a market in treasuries?

3 A. No.

4 Q. Could you be buying treasuries out of the inventory
5 upstairs, or did they have inventory -- strike that question.
6 Did they have inventory to be placing into the account of
7 treasuries upstairs that was equivalent to the amount that was
8 on the statements?

9 A. No.

10 Q. I would like to switch topics once again, very briefly. I
11 would like to show you what is in evidence as O'Hara Exhibit 9.
12 Can we activate the ELMO. We talked a bit, Mr. DiPascali, on
13 Thursday about the meeting between Mr. O'Hara and Mr. Perez,
14 yourself, and Bernie Madoff. Do you recall that?

15 A. Yes.

16 Q. After that meeting in the IA business, did you continue to
17 need DTC type information?

18 A. I did.

19 Q. On cross-examination by Mr. Mehler, he showed you this
20 document, right? Do you recall that?

21 A. I recall seeing the document. I don't exactly remember
22 when.

23 Q. This document says "API bal," do you see that?

24 A. I do.

25 Q. What is your understanding what "API bal" stands for?

1 A. It's the computer data file that came from the Depository
2 Trust Company, I believe daily, into our computer network, and
3 it illustrated by the depository what positions Madoff had at
4 that location.

5 Q. Who explained to you what an API bal report was?

6 A. Jerry O'Hara.

7 Q. Were you ultimately provided with API bal reports?

8 A. Yes.

9 Q. Who did you ask to help get you started getting those API
10 bal reports?

11 A. Jerry.

12 Q. Who did Mr. O'Hara arrange to provide those reports to you?

13 A. Haresh.

14 Q. So when it says from Haresh, what was your understanding of
15 how was it Haresh came to be providing you these reports?

16 A. I believe he was told by Jerry to make sure that I had them
17 daily, because that was my request to Jerry. Then Haresh put
18 them on some sort of a common server or common file, so when I
19 opened up an icon on my computer in the morning, I found a file
20 inside another file, and the second file contained the daily
21 DTC or the API bal reports.

22 Q. Thanks. We will take this down. You testified you worked
23 at Madoff Securities for almost 30 years, do you recall that?

24 A. 33 years.

25 Q. You have talked about a number of people that you had

1 friendships with or that you spoke to regularly while you were
2 there. I want to ask you first about a guy named David Kugel.

3 A. OK.

4 Q. You spoke to David Kugel from time to time while you were
5 there, right?

6 A. Certainly.

7 Q. When was the last time you spoke to David Kugel?

8 A. Sometime in December of '08.

9 Q. During the time period of the Madoff Securities explosion?

10 A. I don't recall speaking to him in those last day or two,
11 but --

12 Q. Not since December of 2008?

13 A. Correct.

14 Q. You testified a bit about an accountant that worked for
15 Madoff Securities named David Friehling, do you recall that?

16 A. Yes.

17 Q. When was the last time you spoke to David Friehling?

18 A. Probably sometime in 2008, but I can't put a date on it.

19 Q. You testified a lot about someone named Enrica Cotellessa-
20 Pitz, do you remember that?

21 A. Yes.

22 Q. When was the last time you had a conversation with Ms.
23 Cotellessa-Pitz?

24 A. Sometime in December of '08.

25 Q. Did you have any contact with those people from December of

1 '08 until your testimony here today?

2 A. No.

3 Q. How about an individual named Craig Kugel, who was he?

4 A. David Kugel's son.

5 MR. BRESLIN: Your Honor, objection.

6 THE COURT: Would you please consult.

7 (Counsel conferred.)

8 Q. Mr. DiPascali, have you talked to Craig Kugel since the
9 time that Madoff Securities collapsed in December 2008?

10 A. No, I haven't.

11 Q. From time to time during your cross-examination you were
12 shown and asked to read various documents and asked if they
13 refreshed your recollection. Do you recall that?

14 A. That's correct.

15 Q. Did you write those documents?

16 A. I did not.

17 Q. Had you ever seen those documents before?

18 A. I have not.

19 Q. Were you ever shown those documents to sort of sign off on
20 before you testified here today?

21 A. No, I did not.

22 Q. Now I would like to switch topics. I think you were asked
23 by every defense counsel about the level of education that all
24 of the defendants have. Do you recall that?

25 A. I do.

1 Q. What I want to ask you is how far did you go in school?

2 A. High school.

3 Q. How soon after graduating from high school did you start at
4 Madoff Securities?

5 A. A year.

6 Q. How old were you when you started at Madoff Securities?

7 A. 18.

8 Q. Did you have a college business degree?

9 A. I did not.

10 Q. Did you have an accounting degree?

11 A. I did not.

12 Q. Did you have a law degree?

13 A. I certainly did not.

14 Q. Did you still realize you were committing fraud at Madoff
15 Securities?

16 A. Yes.

17 MR. KRANTZ: Objection, your Honor.

18 THE COURT: Do you want to consult?

19 (Counsel conferred.)

20 Q. You started at Madoff Securities when you were 19?

21 A. Yes.

22 Q. You testified over the years Bernie Madoff lied to you in
23 various ways about the business at Madoff Securities, do you
24 recall that testimony?

25 A. Yes.

1 Q. The first thing I want to ask you is, in your early days at
2 Madoff Securities, as you progressed through A&B, did Bernie
3 Madoff ever take you into his office, shut the door, turn the
4 lights down, and say, we're committing a fraud here?

5 A. No, sir.

6 Q. Despite that never happening and despite being lied to on
7 various topics over the years, did you nonetheless, sir, figure
8 out or understand that you were committing a fraud at Madoff
9 Securities?

10 A. Yes.

11 Q. You testified about lying to the SEC in a deposition, do
12 you recall that?

13 A. I do.

14 Q. As you prepared for that, did you guys use the words "let's
15 lie to them"?

16 A. No.

17 Q. What sorts of words were you using as you prepared with
18 Bernie Madoff?

19 A. Typically, he would discuss what we need to show or what we
20 need to say, this is what I'd like you to show, this is the
21 direction I'd like you to take them, this is how I want this to
22 appear, things like that. I didn't walk into his office and
23 find a chalkboard that said "lies" and then an illustration of
24 lies.

25 Q. Nonetheless, did you realize that you were going in to lie

1 and deceive the SEC?

2 A. Yes.

3 Q. Was that abundantly clear to you?

4 A. Yes.

5 Q. We have talked a lot about the fact that none of the
6 trading in the IA business was real, do you recall that?

7 A. Yes.

8 Q. All of the trades were fake in the IA business?

9 A. Yes.

10 Q. Did you walk around and say, hey, let's put through this
11 fake trade, when you were in the office?

12 A. I don't recall ever hearing the word "fake" in the office.

13 Q. Did you still understand that all the trades were fake?

14 A. Yes.

15 Q. Mr. Breslin asked you questions about those topics, do you
16 recall that?

17 A. I'm not pinpointing a particular question in my mind. I'm
18 sorry.

19 Q. Mr. Breslin asked you a series of questions about the lies
20 that were told at Madoff Securities?

21 A. Yes.

22 Q. Do you remember that?

23 A. Yes.

24 Q. I want to talk a moment about Ms. Crupi. You previously
25 testified on both direct and on cross about that first audit

1 with that guy Eric Swanson. Do you recall that?

2 A. Yes.

3 Q. I think Mr. Frisch showed us a picture of Mr. Swanson on
4 Thursday. Do you remember that?

5 A. I do.

6 Q. When you learned of that audit by the SEC, do you recall
7 testifying that you had conversations with Ms. Crupi, Mr.
8 Bonventre, Ms. Cotellessa-Pitz, and Bernie Madoff and how you
9 were going to respond to that?

10 MR. BRESLIN: Objection.

11 THE COURT: Please consult.

12 (Counsel conferred.)

13 MR. BRESLIN: May we speak to you for a minute, your
14 Honor?

15 THE COURT: Yes. Please wait quietly here. Thank
16 you.

17 (Continued on next page)

1 (In the robing room).

2 MR. BRESLIN: Your Honor, to hopefully streamline this
3 process to some degree, I think Mr. Zach and I have a
4 fundamental disagreement on the proper scope of this redirect.
5 There was no questioning by me of this witness about the
6 conversations that happened on the Swanson audit and all the
7 rest of that. That was not simply part of my cross-
8 examination.

9 Mr. Zach seems to take the position that, well, in a
10 general way you attacked Mr. DiPascali's credibility and you
11 said that he was a liar and you said that he lied to everybody,
12 so therefore I basically have more or less carte blanche to go
13 through my direct again in something like the greatest hits
14 version. I don't think that's right.

15 I think proper redirect is limited to the specific
16 topics and the specific things that were raised on cross-
17 examination. I don't think it is right to say let's talk about
18 Ms. Crupi and then start examining the witness on a
19 conversation that was simply not part of my cross.

20 MR. ZACH: That is not my position on what redirect
21 is. Let me state what the relevance of this is. On cross Mr.
22 Breslin had a line of questioning in which he brought out that
23 Ms. Crupi was lied to and told that the trades were real, that
24 they are coming out of inventory, that they were happening in
25 Europe, that there were all of these lies told to her to sort

1 of indicate that the trading was real and that the suggestion,
2 through questions he asked about other people that worked on
3 the 17th floor, was that none of these people understood the
4 trading to be fake. On redirect I'm permitted to show examples
5 where it was clear from her conduct that she didn't believe
6 those lies and that she understood that the trading was fake.
7 I think that is appropriate redirect.

8 MR. BRESLIN: He is allowed to show instances of
9 conduct, I suppose. He is certainly not allowed to ask the
10 witness, and we have gone through it 500 times, what Ms. Crupi
11 knew or didn't understand or didn't seem to know. I suppose we
12 will have to wait to see what the individual instances of
13 conduct he wishes to elicit are, but at some point you cannot
14 say, well, you called my witness a liar, so therefore I'm
15 allowed to rehabilitate him by reliving the entire direct
16 examination.

17 THE COURT: It seems there is absolute agreement on
18 that.

19 MR. ZACH: Yes.

20 THE COURT: The proffer is that this is responsive to
21 questioning that focused on one particular communication to put
22 it in the context of other communications about similar issues,
23 yes?

24 MR. ZACH: Yes. I can even flesh it out a little bit
25 more so I am clear. What it is going to show is instances of

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BirPascal - redirect

her conduct demonstrating that she understood that the trading was fake. For example, in this SEC 1 audit she goes on the Internet and looks up banks. They had been telling people before this that all the stock was at the DTC. When Swanson comes look, they show these RVD-PVD statements and do the swivel back and forth, she shows she doesn't buy the lie that it was happening in inventory.

THE COURT: Obviously, you are not in your questions going to say she didn't believe it, she didn't intend to do that?

MR. ZACH: Of course not.

THE COURT: Just the facts. And you will argue it later.

MR. ZACH: Yes.

MR. BRESLIN: Fine. What the conduct means we will wait three weeks, hopefully, give or take.

MR. ZACH: Which, by the way, is what I have to show, the conduct.

MR. BRESLIN: You have shown the conduct already. But fine, I understand.

MR. KRANTZ: To avoid coming back here, there is a lot of leading going on, and I would ask Mr. Zach to avoid the leading.

MR. ZACH: I do lead to try and bring his attention to something. I think all of these questions have been open after

1 I get him to a topic. I don't think I have been leading once
2 I'm there.

3 MR. BRESLIN: "These trades are all fake," unquote, is
4 not directing his attention to something.

5 MR. KRANTZ: I don't have a specific objection. I
6 just wanted to perhaps save time.

7 MR. BRESLIN: I have a specific objection.

8 THE COURT: "These trades are all fake" I'll allow.
9 My greatest concern is the summing-up-of-the-argument leading
10 question after the witness has testified to bits and pieces
11 over five questions. Save the summing up for your summation.

12 MR. ZACH: Yes, your Honor. Thank you.

13 (Continued on next page)
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(In open court)

BY MR. ZACH:

Q. Mr. DiPascali, before the side bar I was directing your attention to that first Swanson SEC audit. Do you remember testifying about that, on both cross and on direct?

A. Yes.

Q. Prior to the SEC Swanson audit, where had Madoff Securities been telling its IA customers that their securities were being custodied?

A. At DTC.

Q. Whose account at DTC?

A. Madoff's account for the benefit of customer.

Q. When Swanson came and started looking into Madoff Securities, what concerns did Bernie Madoff raise to you and Ms. Crupi and Mr. Bonventre and Ms. Cotellessa-Pitz?

MR. BRESLIN: Objection, your Honor.

MR. FRISCH: Objection.

THE COURT: Sustained. Please reformulate or consult.

MR. ZACH: Let me see if I can reformulate it.

Q. Who was involved in the discussions leading up to the SEC investigation?

A. Enrica, Dan, myself, Bernie, Jodi, Eric Lipkin. That's all that's coming to mind.

Q. In those conversations, what concern did Mr. Madoff raise about the SEC audit and the custody of the IA assets?

1 MR. FRISCH: Objection. May I consult with Mr. Zach,
2 your Honor?

3 THE COURT: Please consult.

4 (Counsel conferred.)

5 MR. FRISCH: Thank you, your Honor.

6 MR. ZACH: Could you please read back the question.

7 (Question read)

8 A. He had very early on in his own assessment of what his
9 response should be. He had elected to not present a scenario
10 of what they call a cash account, where a broker would be
11 holding cash and holding securities for the benefit of a
12 customer.

13 He had very early on determined that it was in his
14 best interests to provide a different set of statements than
15 what was typically going out to the customers that would be
16 called an RVP-DVP statement, receive versus payment/deliver
17 versus payment. Those types of statements, if read by someone
18 who understood the industry, the reader would conclude that
19 Madoff was not holding securities and not holding cash.

20 MR. BRESLIN: Objection, your Honor. Motion to
21 strike.

22 THE COURT: Please consult.

23 MR. ZACH: Let me ask one follow-up question.

24 Q. Was that described to you by Mr. Madoff, that process?

25 A. Yes.

1 MR. BRESLIN: I renew the motion with regard to his
2 testimony as to the what the reader would think with regard to
3 this document.

4 THE COURT: The motion is granted to the extent that
5 the jury is to disregard the remark as to what a reader would
6 garner from the document.

7 MR. ZACH: May I proceed, your Honor?

8 THE COURT: Yes, you may.

9 Q. What was the purpose of articulating the account statements
10 as RVP-DVP in terms of what it would show as compared to what
11 had previously been on the Madoff statements?

12 A. What Bernie articulated?

13 Q. Yes, what Bernie articulated. Just what he articulated to
14 you.

15 A. He made it crystal clear that he could not afford to
16 present to the SEC a cash type statement which would say in no
17 uncertain terms that he was holding securities, because he
18 feared the custody issue. He went on to explain that the way
19 around that would be to show an RVP-DVP format which would
20 indicate that we were not holding securities and we were not
21 holding cash.

22 Q. Prior to this, in speaking to customers, what had the IA
23 business been telling customers about where their securities
24 were custodied?

25 A. When asked, we would tell them custodied at DTC. In fact,

1 by presenting a cash statement to the customer, you were saying
2 you custodied those securities, those are your positions.

3 There was no subsidiary statement that says the positions above
4 are being custodied here. It was we were a member of DTC, we
5 were a self-clearing broker, and we were telling clients here
6 are your positions.

7 Q. This new RVP-DVP scenario, how is that different in terms
8 of custody?

9 A. It didn't show positions. It indicated on the activity
10 side that anything we bought for you, Mr. Customer, was
11 delivered to your custodial bank, which didn't exist.

12 Q. So Madoff, under that RVP-DVP scenario, did not have
13 custody of the assets?

14 A. By giving the Securities and Exchange Commission an RVP-DVP
15 statement, he was in fact telling them he did not have custody.

16 Q. Let's look at Government Exhibit 600-10. I think it is a
17 big one, Ms. Baskin, so we might have to do the PDF. Page 67.

18 While that is coming up, how was it that the names for
19 the banks on these new RVP-DVP statements were generated?

20 A. Bernie gave us some, some were already present, and the
21 rest were made up from thin air.

22 Q. What was Ms. Crupi's role in this?

23 A. Suggestions of what to make up from thin air.

24 Q. Page 67. So we are clear, looking at the screen, do you
25 recall seeing this earlier?

1 A. I do.

2 Q. Is this an RVP-DVP statement or is this the statements that
3 had previously been going out to customers?

4 A. This is the RVP-DVP statement that went to Eric Swanson.

5 Q. This was made just for the SEC?

6 A. It was.

7 Q. The bank is named what here?

8 A. HSBC Lichtenstein.

9 Q. Can we put this in split screen and pull up -- no? OK.

10 Can we highlight the title block, please, Ms. Baskin.

11 Is that the changed title block for this SEC process?

12 A. Yes, it was.

13 Q. Bringing up 101-57H, blowing that up, can you tell us what
14 we are looking at here.

15 A. The correct title block name and address of the account.

16 Q. What is different?

17 Highlight the title block, Ms. Baskin.

18 What is different between this title block that we are
19 looking at right here and the title block that we just looked
20 at?

21 A. The true title block does not indicate that Kesagami has
22 any custodial bank. All of that mumbo-jumbo about HSBC was put
23 there. That is the main difference.

24 Q. You can take that down.

25 A. There is also, by the way, no address on the other one, and

1 that was done for a reason.

2 Q. Why was that done?

3 A. So that the SEC would have a harder time tracking down who
4 these customers were.

5 Q. In generating those new false statements to go to the SEC
6 and Mr. Swanson, how did Ms. Crupi help do that?

7 A. When Bernie was fishing for names to beard these accounts,
8 she was on Google because he thought it was advisable for us to
9 use banks that were domiciled in the same country at least or
10 had some connection to the account that he was trying to assign
11 a custodial bank to. For instance, for Kesagami, which is a
12 company located in Hong Kong, it was advisable to use HSBC,
13 which is Hong Kong Shanghai Bank.

14 Q. Did Ms. Crupi work with you in the subsequent audits that
15 you have been questioned about both on direct and cross-
16 examination?

17 A. Yes.

18 Q. When KPMG came for the first time, how was the trading
19 changed from what you had told the SEC?

20 A. When KPMG came the first time, Bernie elected to change all
21 our historical blotters so that the information would reflect
22 that we were actually doing the transactions in the trading
23 room, whereas previously the blotters that were prepared in
24 preparation for an SEC audit, the blotters indicated that the
25 trades were being done overseas. That was the primary

1 difference.

2 Q. Were all the records changed to effectuate that for the
3 KPMG audit?

4 A. For a select group of accounts, yes.

5 Q. Ms. Crupi participated in that?

6 A. Yes.

7 Q. The computer programmers also helped out with that, right?

8 A. Yes.

9 Q. Then the SEC came again, didn't they?

10 A. They did.

11 Q. Didn't it have to be changed? How did it change from KPMG
12 1, the "it" being the books and records that were to be
13 presented to the auditors, how did that change from KPMG 1 that
14 first time to when the SEC came shortly thereafter?

15 A. The books and records were re-altered again for another
16 specific set of clients, some of which were the same clients
17 that were on the first two select client lists. The scenario
18 went back to presenting a trading pattern or trade history that
19 would indicate that the trades were happening in Europe.

20 Q. These are inconsistent with one another, these two
21 different scenarios between the KPMG and SEC, is that fair?

22 A. You literally had the same customer doing the same trade in
23 version 1 in Switzerland and in version 2 St. Louis.

24 Q. That is an example, Switzerland and St. Louis?

25 A. It's an illustration, yes.

1 Q. Ms. Crupi assisted with that second audit, didn't she?

2 A. Yes.

3 Q. Did the computer programmers also help with that?

4 A. Yes.

5 Q. KPMG came back again in 2007, right? Or 2008, excuse me.

6 A. April of '08.

7 Q. Were the records once again completely changed?

8 A. Yes.

9 Q. Did Ms. Crupi assist with that KPMG audit as well?

10 A. Yes.

11 Q. When you were changing those records back and forth, did
12 you use the word "fake"?

13 A. No.

14 Q. Did you use the word "false"?

15 A. No.

16 Q. Was it obvious to you that these records were all fake?

17 MR. KRANTZ: Objection.

18 THE COURT: You can consult if you wish.

19 (Counsel conferred.)

20 MR. ZACH: We resolved it.

21 THE COURT: Thank you.

22 Q. Did you know that all those records were fake?

23 A. Sure.

24 Q. Did you know that you were committing a crime?

25 A. Yes.

1 Q. When discussing blotters, who was primarily responsible for
2 creating the blotters on the 17th floor at Madoff Securities?

3 A. The system itself created the core architecture of our
4 trade blotters. There were many, many, many iterations of
5 those same documents: Changes, randomness, lots of volume,
6 little volume. Up until the time when Jerry and George decided
7 they were no longer going to participate in that, George Perez
8 was responsible primarily for blotters.

9 After that time it was made available to me through
10 the special month-end advisory reports, and I was given the
11 facility then to take some of that core data and manipulate it
12 and create another set of blotters going forward after they
13 decided they weren't going to put their stamp on it.

14 Q. For the blotters that contained random entries, did Ms.
15 Crupi play any role in looking at the randomness?

16 A. Yes.

17 Q. Would you describe what role she played.

18 A. We spent an awful lot of time checking to make sure that
19 some of the theories that we were presenting to the computer
20 programmers were actually being done the way they needed to be
21 done. They would give us test output results: This is what I
22 think you guys are talking about or this is what I think Bernie
23 wants, or what-have-you. Then we would spend time blocking out
24 these blotters to make sure that the proper amount of
25 randomness or whatever alteration we were doing to the blotters

1 was actually occurring in the print job.

2 Q. What were you hoping to see so that you knew that it was
3 right?

4 A. If you gave Jerry and George instructions that you wanted
5 to see a random amount of, let's say, counterparties per
6 transaction, somewhere between 15 and 20 -- and that's for
7 illustrative purposes, I don't remember doing that exactly --
8 they would change programs so that they would go to some
9 facility within the computer and randomly pick a number that
10 would then seek out, let's say, 15 or 16 different counter-
11 parties for a trade.

12 They would run that program and produce a set of
13 blotters that should for each trade have at least 15 and as
14 many as 25 counterparties. Let's say that's the scenario.
15 Then print a hundred pages of that or 50 pages of that. We
16 would check and literally count and see, make sure that there
17 is -- most of the times they were right.

18 Sometimes something went wrong and we were getting the
19 same counterparty on every trade or we were only getting three
20 counterparties and not 15. Then we would bring that to their
21 attention, and they would change or tweak their program.
22 Usually it was some little switch somewhere in their code that
23 I don't understand.

24 Then the second set of output results would be, OK, we
25 got it right now, there are 15 different counterparties for

1 this trade or there are 19 different counterparties, because we
2 wanted to be within the 15 to 25 band, let's say.

3 So we were checking randomness. The same thing
4 occurred with times. The same thing occurred with maybe even
5 transaction numbers. There was lots of different things that
6 were purposely randomized to create a huge set of voluminous
7 records, as if all of these hundreds and hundreds and thousands
8 of trades were actually happening.

9 Q. In that answer, the "we" that was checking things, who was
10 the "we"?

11 A. Myself and Jodi.

12 Q. Now I would like to talk briefly about what you had
13 testified about relating to shtupping. Do you recall the word
14 "shtupping"?

15 A. I do.

16 Q. Describe in terms of Madoff Securities what the process of
17 shtupping was.

18 A. The word "shtup" as it pertains to Madoff means putting P&L
19 into a particular account. From time to time for many
20 different reasons it was required that P&L, profits, sometimes
21 losses, would appear in a particular account. The process we
22 used I called shtupping.

23 Most of the time it was done as we got very close to
24 the year end, because it was at the year end that you had a
25 good handle on where that particular account actually stood for

1 the year, and then you could make these adjustments to their
2 P&L by entering transactions into the account that would change
3 the P&L that they currently have to some other number.

4 Q. That other number was trying to get at what?

5 A. Excuse me?

6 Q. Was there a target rate for these accounts that were
7 schtupped?

8 A. Part of the reasons we used that process was to attain the
9 target rate. If accounts, for whatever reason, did not attain
10 the median rate, yes. And there were other reasons at the
11 present time.

12 Q. From time to time did Ms. Crupi ask you to actually put
13 loss in her account?

14 A. Yes.

15 MR. BRESLIN: Objection. May I confer?

16 THE COURT: Please consult.

17 (Counsel conferred.)

18 MR. BRESLIN: We resolved it, your Honor.

19 THE COURT: Thank you.

20 MR. ZACH: Was there an answer to the last question?

21 THE REPORTER: Yes, there was.

22 MR. ZACH: Could I bring up Government Exhibit
23 105-C51. And could we go to page 42, please.

24 Q. You can keep the highlighting. That's the one I want to
25 look at. I want to focus on that lower footnote. What's

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1 written on that? Well, whose handwriting is on there?

2 A. It's Jodi's, and there is one figure on there that's mine.

3 Q. Which piece is yours?

4 A. The \$15,000 number in the lower left-hand side.

5 Q. Do you recall what this relates to?

6 A. It was a sticky pad that was left on my desk advising me to
7 put through a \$5,000 loss into Jodi's option account, which
8 then was subsequently changed to 15,000.

9 Q. Who asked you to put this loss into Ms. Crupi's account?

10 A. She did.

11 MR. BRESLIN: Objection; your Honor.

12 THE COURT: Consult.

13 (Counsel conferred.)

14 MR. ZACH: Could you read back my last question.

15 (Record read)

16 Q. Mr. DiPascali, did you in fact put through a loss in Ms.
17 Crupi's account?

18 A. I believe I did.

19 Q. Let's bring up Government Exhibit 101-124. Can we blow
20 that up, please, Ms. Baskin.

21 Do you see whose account this is?

22 A. I do.

23 Q. Whose account is it?

24 A. Jodi's.

25 Q. What month did this take place?

1 A. December.

2 Q. Can we go to, I believe, the next page. I'm sorry. Can we
3 go back, Ms. Baskin, to the first page, and can we blow it up
4 again. Let's go to page 3, I'm advised by Ms. Baskin. Can we
5 blow that up.

6 Are we still looking at Ms. Crupi's account?

7 A. Yes.

8 Q. What is the date of this?

9 A. December.

10 Q. Of what year?

11 A. '02.

12 Q. Generally, this time of year, December, how does that
13 relate to the shuffling process as you have described it?

14 A. Most of the shuffling occurred in December.

15 Q. Could you describe for us what the trading activity in Ms.
16 Crupi's account shows that we are looking at right here.

17 A. There is a sale that occurred on 12/3 settlement of some
18 S&P index options for \$5.40. Two weeks later, eleven days
19 later, two weeks later, there is a purchase of that same option
20 for \$14.50. The purchase was for 24,000 some-odd dollars, the
21 sale was \$9,000, therefore the loss was 15,504.

22 Q. Who put this in Mr. Crupi's account?

23 A. I did.

24 Q. On whose instruction?

25 A. Hers.

1 Q. What effect did this have on the balance in Ms. Crupi's
2 account?

3 A. Her balance was reduced by 15,504.

4 Q. None of this trading was real, right?

5 A. No.

6 Q. This was now a loss that is being put into her account?

7 A. That's correct.

8 Q. You can take that down. Were there other occasions when
9 Ms. Crupi asked you for a loss, to put a loss in her account?

10 A. Yes.

11 Q. I want to show you one more document, 105-C166, page --
12 next page. You can take that down.

13 I would also like to ask you about something called
14 Primex. Do you remember testifying about Primex?

15 A. Yes.

16 Q. Do you recall testifying about what ultimately happened to
17 some of the hardware and software that was being used with
18 Primex?

19 A. Some of the servers, certainly at least one of them, was
20 put on the 17th floor in an equipment closet at the far end of
21 the hallway next to the cage. There was a series of software
22 alterations to some of the Primex code, specifically some of
23 the screens that showed execution of trades and entering
24 orders.

25 Some of that Primex software was altered so that the

1 investment advisory department would have the ability to
2 display, to someone that was inquiring, what our execution
3 platform looked like, an execution platform that obviously did
4 not exist.

5 They kind of borrowed some software from a platform
6 that at one time did exist and copied certain things and put it
7 out there on a server kind of like as a safety valve in case
8 someone walked in the door and said, we would like to see how
9 you do your executions. We were able to then fire up some
10 screens and communicate through the server and illustrate
11 orders being entered and orders being executed on the trading
12 platform that was driving the investment advisory business.

13 Q. Was any of that real trading?

14 A. No.

15 Q. Did you have to rehearse and practice how to make that work
16 on the computer?

17 A. Yes.

18 Q. Who did you do those rehearsals with?

19 A. Jodi.

20 Q. You testified on both direct and cross about a conversation
21 with Bernard Madoff when he told you that he didn't have the
22 funds to carry off the fraud anymore, do you recall that?

23 A. Yes.

24 Q. After you had that conversation with Bernard Madoff, who
25 did you tell about that very conversation?

1 A. Jodi.

2 Q. After you told Ms. Crupi about that conversation, did she
3 continue to show up at work?

4 A. Yes.

5 Q. Did Madoff Securities continue to take in customer money?

6 A. Yes.

7 (Continued on next page)

1 Q. Very briefly, I want to bring up 105-C103. Let's go to
2 Page 6. Could you remind us what these documents show?

3 A. It's called Jodi's pad and it, in essence, is a
4 reconciliation of all monies in and all monies out for a period
5 at or around December 4th.

6 Q. And for what account does this relate to?

7 A. This is the Chase checking account, the customer account.

8 Q. And whose handwriting is on here?

9 A. It's Jodi's.

10 Q. And what does it show in terms of money coming in or out of
11 the account?

12 A. On that date, it was \$10,549,000 net wires in, and then
13 there's a whole illustration of wires that are going to -- that
14 went out that day and that are going to go out in the future.

15 Q. Now, and is that customer money coming in and customer
16 money going out?

17 A. It is.

18 Q. And what is the date?

19 A. December 4th.

20 Q. Of what year?

21 A. '08.

22 Q. Is this approximately the day after Mr. Madoff had that
23 conversation with you?

24 A. Yes.

25 Q. And how soon after you had the conversation -- and did you

1 tell Ms. Crupi about that conversation shortly after you had it
2 with Mr. Madoff?

3 A. Yes.

4 Q. Let's go to Page 5. Same type of document?

5 A. Exactly the same.

6 Q. What's the date here?

7 A. 12-5-08.

8 Q. What does this show in terms of customer money coming in
9 and going out?

10 A. It shows a net of 5,288,000 wires going in.

11 Q. Let's go to Page 4. What's the date here?

12 A. 12-8.

13 Q. 2008?

14 A. Yes, sir.

15 Q. And what does this show in terms of customer money going
16 coming and going out?

17 A. It's shows a withdrawal of 30,387,000 and wires out.

18 Q. Can we go to the next page, Ms. Baskin. What date here?

19 A. 12-9-08.

20 Q. Same thing?

21 A. With the exception to the amount of money, yes, same type
22 of document.

23 Q. Customer money come in; customer money going out?

24 A. Yes, sir.

25 Q. All of this after Bernie Madoff said he doesn't have enough

1 money to keep the fraud going?

2 A. That's correct.

3 Q. And after you told that to Ms. Crupi?

4 A. Yes, sir.

5 Q. Now, I'd like to move on. We can take that down. I'd like
6 to move on to a different topic, which relates to the
7 cross-examination by Mr. Frisch on last Thursday. Now, do you
8 recall that during Mr. Frisch's cross-examination, he showed
9 you and asked you questions about a series of accounts that
10 were held in the IA business? Do you recall that?

11 A. I do.

12 Q. In fact, he went through a bunch of documents that related
13 to accounts that were largely held by charities, right?

14 A. I believe that's right.

15 Q. Some of those charities belonged to Mr. Elie Wiesel?

16 A. Yes, sir.

17 Q. And then there was the Police Athletic League; do you
18 remember that?

19 A. Yes.

20 Q. And there were a large number of charitable organizations;
21 do you remember those?

22 A. Yes.

23 Q. Now, the IA business took money in from charitable
24 organizations, didn't they?

25 A. Yes.

1 Q. And that money was placed into accounts where there was
2 actually no trading, right?

3 A. Correct.

4 Q. Now, Mr. Frisch asked you about those accounts and the
5 letters you wrote on the accounts. I want to ask you about the
6 money that they paid in. Okay?

7 A. Okay.

8 Q. When these charitable organizations would send in money to
9 the IA business, what bank account did that go into?

10 A. 703, the Chase account.

11 Q. So when Elie Wiesel and his foundation sent in money, where
12 would that cash be deposited?

13 A. In the Chase 703 account.

14 Q. And who was it that reconciled the Chase 703 account?

15 A. On a daily basis, Jodi, and eventually Dan.

16 Q. And that's where the money, the customer money, would come
17 into or go out of, correct?

18 A. That is correct.

19 Q. Now, did you have conversations over the years working on
20 ways to take money out of that 703 account and put it upstairs
21 in the BONY account?

22 A. Yes.

23 Q. Now, what was the BONY account used for?

24 A. It was the operating account of the broker-dealer business.

25 Q. And what were some of the ways that money would be taken

1 from that 703 account and put upstairs in that BONY account
2 over the years?

3 A. The one I'm most familiar with is the, what I'll call a
4 triangle, back and forth between Chase, BONY and London
5 Barclays.

6 Q. Can we call up Government Exhibit 2000-1, and go to Page
7 135, please. What are we looking at here?

8 A. It's a chart that simplistically illustrates what I just
9 said. It's a chart that shows that money would go from Madoff
10 London to the business when we told Madoff London they had just
11 bought a treasury bill. And then when we subsequently told
12 Madoff London they sold that bill, we would send the proceeds
13 of that fraudulent sale from the 703 account back to London.

14 So, in effect, what was happening is money was going
15 into the business and money was going out of the 703 and London
16 was the mechanism that that occurred -- that allowed that to
17 occur.

18 Q. Now, previously you said, you testified about there being a
19 rule at Madoff Securities about the business account and the
20 BONY account on the 18th floor and the 703 account on the 17th
21 floor; do you recall that?

22 A. I do.

23 Q. And what was that rule?

24 A. The two checks should not talk to each other, as it was
25 referred to with that phrase.

1 Q. And who would say that rule out loud at the office?

2 A. Guys in the cage, Bernie.

3 Q. Now, does this have the effect of moving money out of the
4 703 account and putting it in that BONY account upstairs?

5 A. It does.

6 Q. And was any of the trading behind it real?

7 A. No.

8 Q. Who was involved in the process of coming up with this?

9 A. It was Bernie's idea and there was some modifications to it
10 afterwards.

11 Q. And who carried out this movement of money at the office?

12 A. I would send the trading ticket to London, they would send
13 funds to BONY pursuant to my instructions on the ticket, and
14 then on the flip side, when I sent the ticket to London, I
15 would give instructions to Jodi to send money out of the 703
16 account back to London.

17 Q. And as these ways of moving money were made, was
18 Mr. Bonventre involved in the conversations?

19 A. I'm sorry, I'm blanking out.

20 Q. Well, let me show you Government Exhibit -- well, we can
21 move on. Now, over the years, were there -- were there
22 different ways -- before this, were there different ways of
23 moving money upstairs from the 703 account to the BONY account?

24 A. Excuse me, Mr. Zach. I'm not feeling all that well right
25 now. If, your Honor, could I take a break?

1 THE COURT: Let's take our 15-minute morning break
2 now.

3 THE WITNESS: Thank you.

4 THE COURT: Ladies and gentlemen, keep your thoughts
5 to yourselves. All rise. Ms. Courtney, would you please
6 escort the jury to the jury room.

7 (Jury exits)

8 Mr. DiPascali, do you need water to carry with you?

9 THE WITNESS: No, I'm fine. Thank you.

10 THE COURT: All right. You may step down. Thank you.

11 (Witness temporarily excused)

12 THE COURT: So you'll let us know when we come back
13 together whether there's anything we need to know. And how
14 much --

15 MR. ZACH: I'm almost done. I have maybe five, ten
16 minutes.

17 THE COURT: All right. See you all in 15 minutes.

18 MR. ZACH: Thanks, Judge.

19 (Recess)

20 THE COURT: Good morning again, everyone.
21 Mr. DiPascali, are you all right to continue?

22 THE WITNESS: I'm fine. Thank you, your Honor. Much
23 better.

24 THE COURT: So is everybody here? Ms. Courtney, would
25 you bring the jury in, please. You can all relax until the

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1 jury are ready to come in. The jury aren't quite ready yet; so
2 we'll let you know when they are ready. All rise.

3 (Jury enters)

4 Good morning again, members of the jury. Please take
5 your seats. Please be seated, everyone. Mr. Zach.

6 MR. ZACH: Thank you, your Honor.

7 BY MR. ZACH:

8 Q. Are you feeling better now, Mr. DiPascali?

9 A. I am. Thank you.

10 Q. I'd like to show you what's in evidence as Government
11 Exhibit 4000-E45, and I'd like to go to the next page. Can we
12 turn that left. Do you know what this document is,
13 Mr. DiPascali?

14 A. I do.

15 Q. What is it?

16 A. It's a illustration of theoretical commissions earned in
17 the option account of the special clients that were in effect
18 for January of '04.

19 Q. And what was the purpose of constructing those theoretical
20 commissions?

21 A. So that the back office on the broker-dealer side could
22 book trading P and L into the business equal business equal to
23 what the special accounts theoretically would have been charged
24 on the fictitious trading.

25 Q. And for what reason was that done?

1 A. So if the broker-dealer ever had an inquiry where someone
2 was looking into the books and records of the broker-dealer,
3 there would be the appearance that commission income was earned
4 by the broker-dealer, which would back up the fictitious
5 trading scenario of the investment advisory business.

6 Q. Okay. And do you recognize any of your handwriting on this
7 document?

8 A. In the upper left-hand corner says the name Dan, that's my
9 handwriting.

10 Q. Why did you write "Dan" there?

11 A. I was probably forwarding this report upstairs to Dan.

12 Q. I'd like to now show you what's in evidence as Government
13 Exhibit 115-4. Do you recognize this document?

14 A. I do.

15 Q. First of all, what is it?

16 A. It's a fax cover sheet with some information. The fax is
17 going to Chris Dale in our London office.

18 Q. Okay. And who's signature is at the bottom?

19 A. Mine.

20 Q. And, you know, you don't have to read it out loud but just
21 review what you've written.

22 A. I'm sorry?

23 Q. You don't have to read it out loud, but read to yourself
24 the text of what's written.

25 A. Okay.

1 Q. What does this document relate to?

2 A. It's the cover sheet. I probably attached the
3 confirmations of trade which are referenced here, that I was
4 sending to Chris Dale. Looks to be what -- by this, without
5 seeing the tickets themselves, I probably supplied him with buy
6 tickets to their account because I'm asking him to wire money
7 to two different settlement locations. Along with that is a
8 copy of a MSIL, Madoff London's, account statement that,
9 through Danny, I was asked to supply to Chris.

10 Q. Okay. And who is the Danny that's referred to here?

11 A. Dan Bonventre.

12 Q. Now, can we go to the next page of this. What is this
13 that's attached to it?

14 A. The Madoff London account statement for September '05.

15 Q. And what kind of securities are listed here?

16 A. Treasuries.

17 Q. And were those real treasuries?

18 A. No.

19 Q. And how did those treasuries play into the movement of
20 money from the 703 account to the BONY account?

21 MR. FRISCH: Objection.

22 THE COURT: Please consult.

23 (Counsel conferring)

24 MR. FRISCH: Your Honor, I think we need to see your
25 Honor in the robing room.

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1 THE COURT: Just wait quietly for a few moments.

2 Thank you.

3 (Continued on next page)

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1 (In robing room)

2 MR. FRISCH: So my objection is beyond the scope and
3 I've had that -- I've been kind of sitting on my hands thinking
4 that a lot of this is beyond the scope, but I didn't want to
5 jump the gun. What I brought out with that list of investors
6 is that Mr. DiPascali signed or caused to sign letters directly
7 to these people that misrepresented the fact that there were
8 real trades made in their accounts.

9 I didn't go into commission equivalents. I didn't go
10 into the 703 account. I didn't go into any of this, and I
11 think what Mr. Zach is doing is a very creative way to try and
12 tie Mr. Bonventre into the fact that some pretty sympathetic
13 investors were defrauded. And that may be fair for summation,
14 but I think what he's doing now is really stretching it as far
15 afield from what's appropriate on redirect examination.

16 It's so remote and it's so tenuous, in light of what I
17 did, the very narrow thing that I did with respect to
18 Mr. DiPascali lying directly to these very sympathetic
19 investors by signing or causing to sign these investors, that
20 what he's doing now is beyond the scope. And, of course, this
21 follows what happened before the break, where Mr. DiPascali
22 drew a blank when asked to tie Mr. Bonventre into this, and
23 then we had to take a break because he wasn't feeling well. So
24 my objection is beyond the scope.

25 MR. ZACH: Your Honor.

1 THE COURT: Mr. Zach?

2 MR. ZACH: On Thursday, Mr. Frisch went over at
3 length, and I think went over two times, a list of very
4 sympathetic victims. He brought up things such as they
5 represented interests of former Holocaust survivors.

6 THE COURT: I remember that.

7 MR. ZACH: He brought out all these accounts that we
8 hadn't talked about, and then the only key of the fraud for
9 those was, well, Mr. DiPascali signed these letters and
10 defrauded them. I'm just showing the rest of the fraud that
11 was committed on those accounts, telling the full story for
12 them.

13 The government didn't say one word about those
14 accounts on its direct, and we haven't brought up those types
15 of victims, actually, to this point. He went there, and I'm
16 entitled, I think, to bring out the full scope of the fraud
17 against them. This document just shows how the money that
18 those very sympathetic victims brought in, went from the 703
19 account upstairs and then how it was used. That's the full
20 story.

21 THE COURT: Well, Mr. Frisch wasn't proving the fraud
22 with that line of questioning. Mr. Frisch was attacking
23 Mr. DiPascali's credibility, and so the scope objection is
24 sustained.

25 MR. ZACH: To?

1 THE COURT: To the connecting all the steps of the
2 entire fraud as against those victims to defendants here.

3 MR. ZACH: I was going to finish up -- I'm actually
4 almost done with my redirect, your Honor. I was going to
5 finish it up by discussing the amount of money that was moved
6 from the 703 account upstairs.

7 THE COURT: What do you have to tie that to, other
8 than the credibility attack on Mr. DiPascali?

9 MR. ZACH: Well, a couple of things. One, I think all
10 the defendants sort of challenged the fact that they didn't
11 know the trading was going on, that they were tricked into the
12 trading being real. One of the ways -- I think one of the
13 primary ways that we can show that the trading -- people didn't
14 actually believe that the trading was real was that these
15 monies that should have been invested in securities were just
16 being, willy-nilly, pulled out and put upstairs in the BONY
17 account through a series of ruses. Because if they believed
18 the trading was real, that money would have gone to buy
19 securities, and it just wasn't. That's one of our primary
20 points in this trial.

21 THE COURT: And you did that at some length on direct.
22 What do you have to tie it to for propriety on redirect?

23 MR. ZACH: I mean, I think, one, that its challenge is
24 going back to sort of rehabilitate sort of the lines of attack
25 that have been made on -- you know, on that story through

1 Mr. DiPascali. And, two, again, I really do feel that by
2 introducing these super-sympathetic victims, they may bring
3 with them -- it's not his credibility. He admitted that he
4 lied to everyone. But by bringing in -- he didn't just attack
5 the credibility, he brought out who these people were and it
6 makes it inflammatory.

7 And I think, by not showing that this was something
8 that the entire firm was doing in a very limited way, the
9 government is going to be prejudiced with that. Mr. Schwartz
10 is bringing out a reiteration of what I said. This is another
11 way of showing that -- you say it yourself. You say it better
12 than I do.

13 MR. SCHWARTZ: I think we were back here earlier this
14 morning about the scope of Mr. Zach's questioning responsive to
15 defense arguments or defense questioning of Mr. DiPascali about
16 his own lies to the defendants. And your Honor held it was
17 appropriate for Mr. Zach to explore a little bit conduct of the
18 defendants and things that they did and were undisputedly aware
19 of that put in context the lies and whether they really
20 believed the lies.

21 And here, the transactions in the 703 account or from
22 the 703 account to the BONY account, then out of the BONY
23 account, speak to the facts that will allow us to argue in
24 summations that these defendants all saw through the lies, to
25 the extent that Mr. DiPascali continued to lie to them.

1 THE COURT: Those facts are already in the record, and
2 any prejudice to the government from disallowing this on
3 redirect is not unfair prejudice. So the motion for
4 reconsideration of my prior ruling is denied.

5 MR. JACKSON: Thank you, your Honor.

6 THE COURT: Thank you.

7 (Continued on next page)
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(In open court)

THE COURT: You may continue.

MR. ZACH: Thank you, your Honor.

BY MR. ZACH:

Q. Now, Mr. DiPascali, Mr. Frisch went over with you all of those letters which related to charitable organizations; do you recall that?

A. I do.

Q. And as you sit here today, you understand, sir, that many small investors were hurt by the Madoff Securities fraud; do you recall that?

A. I do.

Q. You know that?

A. Yes, sir.

Q. It wasn't just people like Mr. Picower and Mr. Levy that were defrauded, was it?

A. No.

Q. It was normal, run-of-the-mill folks that had their money stolen by this fraud; isn't that fair?

A. Yes.

Q. And who were the people that helped you carry out that fraud?

MR. BRESLIN: Objection.

MR. FRISCH: Objection.

THE COURT: Sustained.

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1 Q. Now, over the course of you -- your involvement at Madoff
2 Securities and that fraud, you worked with other people, didn't
3 you?

4 A. Yes.

5 Q. And you did that day in and day out, right?

6 A. Yes.

7 Q. And the people that you worked with all filled different
8 roles, didn't they?

9 MR. KRANTZ: Objection.

10 THE COURT: Sustained.

11 Q. And you understood that billions of dollars were lost as a
12 result of this fraud, didn't you?

13 A. Yes.

14 MR. ZACH: One moment, your Honor.

15 THE COURT: Yes.

16 MR. ZACH: Thank you, your Honor.

17 THE COURT: Thank you, Mr. Zach. And, Mr. Krantz, do
18 we need a pause?

19 MR. KRANTZ: No, your Honor.

20 THE COURT: All right. Thank you.

21 MR. KRANTZ: Good morning again, members of the jury.

22 RECROSS EXAMINATION

23 BY MR. KRANTZ:

24 Q. Good morning, Mr. DiPascali.

25 A. Hello, again.

1 Q. You probably recall, but I represent George Perez. My name
2 is Larry Krantz, and I'm going to have to impose on a little
3 more of your time this morning to ask some follow-up questions
4 from Mr. Zach's questioning of you, okay?

5 A. Sure.

6 Q. First of all, did you meet with the government between
7 Thursday and today?

8 A. No.

9 Q. Did you speak with them between Thursday and today, other
10 than logistics of coming here?

11 A. No.

12 Q. I want to address some questions to Mr. Zach's areas. You
13 may recall -- by the way, we've not spoken since I last
14 questioned you on the witness stand, correct?

15 A. No, sir.

16 Q. Mr. Zach very early on in his redirect examination talked
17 about your status as Mr. Madoff's right-hand man; do you recall
18 that?

19 A. I do.

20 Q. And then he talked about your career at Madoff and
21 contrasted that with the various defendants; do you recall
22 that?

23 A. Yes.

24 Q. And just so the jury is clear, it is true that you were
25 Mr. Madoff's right-hand man in terms of the running of the

1 investment advisory business; is that correct? It's a yes or
2 no.

3 A. I was one of the key participants in that running of that
4 business, yes.

5 Q. And you were one of the key participants for over 20 years,
6 true?

7 A. Yes.

8 Q. And, in fact, isn't it correct that you helped Mr. Madoff
9 actually design the so-called split-strike conversion strategy?
10 True?

11 A. Yes.

12 Q. And you knew when you were designing that strategy that it
13 was a fake strategy, true?

14 A. No.

15 Q. You knew that the split-strike conversion strategy was
16 going to be used to create a scenario for fake trading; isn't
17 that correct?

18 A. No.

19 Q. At some point, did you come to realize that the
20 split-strike conversion strategy that you devised with
21 Mr. Madoff was being used to facilitate a fraud?

22 A. Yes.

23 Q. Are you telling this jury that there was some period of
24 time that you believed that the split-strike conversion
25 strategy was being legitimately implemented in the investment

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Bipascal - recross

1 advisory business with real trades?

2 A. Yes.

3 Q. What time period was that, please?

4 A. Very early in my career.

5 Q. Early, the mid-1970s?

6 A. The split-strike conversion strategy didn't occur, exist in
7 the early '70s.

8 Q. Well, I used the mid '70s because that's when you started
9 at Madoff Securities, true?

10 A. That is correct.

11 Q. And you've previously testified to this jury that you knew
12 as of the late '70s that the trading in the IA business was
13 fictitious, correct?

14 A. I have come to know that, yes, sir.

15 Q. Well, when you say you've come to know that, I'm talking
16 about your own mind; do you understand that?

17 A. Yes.

18 Q. So when you say you've come to know it, you've come to know
19 that you knew back then that the trading was fictitious; is
20 that your testimony?

21 A. My understanding of what the trading was back then is
22 actually very different than what it was. It was fake. I did
23 not --

24 Q. Did you know -- my question is, did you know in the late
25 '70s, in your own mind, that the trades were not real; yes or

1 no?

2 A. No.

3 Q. Did I mishear you or did you not say a few minutes ago that
4 you did know in the late '70s that the trades were fake? Did
5 you not just say that?

6 A. What I think I said was is that I came to learn that the
7 trades were fake. In the late '70s, I thought he was
8 transacting that business as principal out of his inventory.

9 Q. You believed in the late '70s that he was purchasing the
10 shares as principal and then allocating them to clients; is
11 that what you believed?

12 A. That's not what I said, no.

13 Q. Mr. DiPascali, isn't it correct that you have testified in
14 front of this jury on cross-examination by me that you knew as
15 early as the late '70s that the trades were not real? Do you
16 recall giving that testimony here to this jury?

17 A. I do.

18 Q. Was that testimony true?

19 A. Yes.

20 Q. Therefore, is it now your testimony that you did know as
21 early as the late '70s that the trades were not real, correct?
22 It's a yes or no.

23 A. Please repeat the question, sir.

24 MR. KRANTZ: Would the court reporter mind reading it
25 back, please.

(Record read)

A. Again, no, I did not know that in the early -- in the late '70s.

Q. So when you answered my question, which was -- withdrawn. When you told the jury on my first cross-examination that you knew the trades were not real by the late '70s, that testimony was incorrect; is that right?

A. It is not incorrect. We're mincing words here. It is absolutely not correct, and given the opportunity to explain exactly what I am saying and testifying to, I can make it crystal clear, but you are not giving me that opportunity; so I don't know how to answer your question.

Q. So Mr. Zach --

THE COURT: Just one moment. Only one person speaks at a time.

Q. Mr. Zach will have every opportunity to examine you again and ask you any question he wants to to explain. Do you understand that?

A. I do.

Q. So I just want to close up the topic by asking very clearly, did you know by the late '70s that the trades in the IA business were not real; yes or no?

A. No.

Q. Do you have any recollection of previously testifying to the contrary of your last answer in this courtroom, yes or no?

1 A. It was never my intention to be -- to testify to anything
2 other than what I just said, and if it was interpreted that
3 way, I can't help you.

4 Q. So you don't have any recollection of testifying to the
5 contrary as far as you understood it, correct?

6 A. That's correct.

7 Q. Now, going back to the split-strike conversion strategy,
8 when was that strategy born?

9 A. Which version of it, sir?

10 Q. The first, whatever that was. Just give me a time frame,
11 please.

12 A. The early '80s.

13 Q. Did you participate in the creation of the strategy at that
14 time?

15 A. I did not.

16 Q. When was the first time that you participated in the
17 creation or changing of the split-strike conversion strategy?

18 MR. ZACH: Objection, scope.

19 THE COURT: You can consult.

20 (Counsel conferring)

21 MR. ZACH: We've resolved it, your Honor.

22 THE COURT: Thank you.

23 BY MR. KRANTZ:

24 Q. When was the first time that you were involved in the
25 creation of the split-strike conversion strategy?

1 A. When index options were used to hedge a basket as opposed
2 to individual options hedging an individual stock. I'm trying
3 to wrestle with the time frame of that, but that's what my
4 input was.

5 Q. Give me your best approximation of that time frame, please?

6 A. The late '80s.

7 Q. At that time, did you know that the split-strike conversion
8 strategy was going to be implemented to commit a fraud?

9 A. I'm not exactly placing the year that that strategy was
10 implemented; so if -- approximately, could be a two-year
11 window, yes, but I'm not -- again, my point of reference is
12 fuzzy as to the time frame that that strategy went into effect.

13 Q. The Avellino and Bienes situation arose in approximately
14 1992, correct?

15 A. It did.

16 Q. Can we agree that at least by that time, you were well
17 aware that the split-strike conversion strategy was a fake
18 strategy?

19 A. That is correct.

20 Q. And from that point on, at least, you knowingly
21 participated in that fake strategy, correct?

22 A. That is correct.

23 Q. Now, am I correct that neither Mr. Perez nor Mr. O'Hara had
24 anything to do with the devising of the split-strike conversion
25 strategy? True? It's a yes or no.

1 A. That is correct.

2 Q. And you indicated that in all the time you were at Madoff
3 Securities, you never used a word like "fake" in your
4 conversations at the company, true?

5 A. That's true.

6 Q. You never used words like "false" or "fraudulent" in your
7 conversations at Madoff Securities, correct?

8 A. Correct.

9 (Continued on next page)

1 Q. In all of your days and days of testimony, am I correct you
2 have never claimed that you told Mr. Perez or Mr. O'Hara that
3 the trades were fake, is that correct, that you have never made
4 that claim?

5 A. That is correct.

6 Q. That is because that is in fact true, you never did tell
7 them that, correct?

8 A. Yes, that is correct.

9 Q. Isn't it correct that the reason you never used words like
10 "fake" was because you did not want people to know that the
11 trades were fake, correct?

12 A. I can't sit here and ever say I made that conscious
13 decision not to use that word because of that reason. I don't
14 know how to answer that.

15 Q. Would you agree, sir, that you wanted as few people as
16 possible to know about the fraud that was being committed at
17 Madoff Securities, isn't that true?

18 A. That is true.

19 Q. Because if people knew, that was a danger to you, correct?

20 A. That is true.

21 Q. That is why, and we did discuss this a little bit on my
22 cross, that is why you lied to people about the strategy, true?

23 A. That is true.

24 Q. That's why you lied to Mr. Perez and Mr. O'Hara about the
25 strategy, true?

1 A. That is true.

2 Q. That's why you lied to the auditors about the strategy,
3 because you didn't want them to know the truth, true?

4 A. Correct.

5 Q. That's why you lied to the customers about the strategy,
6 because you didn't want them to know the truth, correct?

7 A. That is correct as well.

8 Q. Would you agree with me that neither Mr. Perez nor Mr.
9 O'Hara, to your knowledge, ever met with a customer of Madoff
10 Securities, true?

11 MR. ZACH: I object to the scope.

12 THE COURT: Would you like to consult?

13 (Counsel conferred.)

14 Q. I'll pose a different question. Am I correct, Mr.
15 DiPascali, that the reason you committed perjury before the SEC
16 was to cover up the fraud?

17 A. That's correct.

18 Q. The reason you assisted Mr. Madoff in his commission of
19 perjury before the SEC was to cover up the fraud, true?

20 A. That is correct.

21 Q. Among the lies that you told to people on a regular basis
22 to cover up the fraud were that Mr. Madoff was trading as
23 principal and allocating the shares from his inventory, isn't
24 that true?

25 A. In substance, yes. You're a little rough on the

1 technicalities of it, but yes.

2 Q. Mr. Zach showed you a trading ticket that I believe had a
3 code 1. Do you recall that?

4 A. I do.

5 Q. That was an agency trade, is that right?

6 A. That's correct.

7 Q. In fact, all of the equities purchases, the stock
8 purchases, were coded as code 2, isn't that true, in the IA
9 business?

10 A. That's not true.

11 Q. Were there 30 versus 40 accounts?

12 A. Excuse me, sir?

13 Q. Was there something called a 30 versus a 40 account?

14 A. Yes.

15 Q. Which was the equities account?

16 A. 30.

17 Q. Isn't it a fact that the general policy in the 30 accounts
18 was to code the trading tickets as 2?

19 A. Initially, yes, and then subsequently, no.

20 Q. When you say initially yes, was that true for many, many
21 years?

22 A. That's correct.

23 Q. When did it change?

24 A. Prior to him becoming an investment adviser in '06. I
25 believe it was '06.

1 Q. Prior to registering as an investment adviser in '06, let's
2 take the period 1992 to 2006, was it the practice to code the
3 equity accounts with code 2?

4 A. It was.

5 Q. What did code 2 stand for?

6 A. Principal.

7 Q. The indication on the trading tickets was that the equities
8 were being purchased in a principal rather than an agency
9 capacity, true?

10 A. That is correct.

11 Q. Mr. Zach asked you if you personally wrote the computer
12 programs for the IA business, and you of course said you did
13 not. Do you recall that question on redirect?

14 A. I hope that wasn't today. I don't recall it.

15 Q. Do you recall generally testifying that you were not the
16 one who writes the programs for Madoff Securities?

17 A. I would testify to that, yes.

18 Q. You don't have that capacity, correct?

19 A. That's correct.

20 Q. In fact, many of those programs were written by computer
21 programmers, true?

22 A. Yes.

23 Q. That is the job of a computer programmer, to write
24 programs, do you agree?

25 A. Yes.

1 Q. That was the job of Mr. Perez and Mr. O'Hara for some 16 or
2 17 years before the demise of Madoff Securities, true?

3 A. Yes.

4 Q. Do you agree with me that the basic architecture of the
5 House 17 system was designed by Liz Weintraub?

6 MR. ZACH: Objection. Scope.

7 THE COURT: Sustained unless you want to reformulate
8 or consult.

9 MR. KRANTZ: Consult.

10 (Counsel conferred.)

11 Q. I'll rephrase it. Do you agree, Mr. DiPascali, that when
12 Mr. Perez and Mr. O'Hara joined Madoff Securities, Liz
13 Weintraub was the head of the computer department?

14 A. I would agree to that, yes.

15 Q. Do you agree that the basic architecture of the House 17
16 system was in place when Mr. Perez and Mr. O'Hara arrived at
17 Madoff Securities?

18 MR. ZACH: Objection. Scope.

19 THE COURT: Overruled.

20 Q. You can answer.

21 A. It is my understanding that the basic architecture was
22 indeed in place, yes.

23 Q. Do you agree that that basic architect provided for the
24 manual inputting of trades into the House 17 system?

25 MR. ZACH: Objection. Scope.

1 THE COURT: Sustained. Unless you want to move on to
2 something else, you two can talk.

3 MR. KRANTZ: I'll move on, your Honor.

4 THE COURT: Thank you.

5 Q. Over the years at Madoff Securities, you enlisted the help
6 of Mr. Perez and Mr. O'Hara for various programming functions,
7 true?

8 A. Yes.

9 Q. Mr. Zach asked you about a number of programming activities
10 they engaged in, on his redirect examination. Do you remember
11 generally him asking you about computer programs that Mr.
12 O'Hara and Mr. Perez participated in?

13 A. I don't.

14 Q. Do you recall testifying about, for example, the Swanson
15 audit on redirect examination?

16 A. Yes.

17 Q. The records that were created during the Swanson audit, do
18 you recall being asked about that by Mr. Zach?

19 A. Yes.

20 Q. It is correct that Mr. O'Hara and Mr. Perez worked on the
21 programs to create those records, correct?

22 A. Correct.

23 Q. As I believe you have already testified, isn't it correct
24 that you lied to them about why those programs were needed?

25 Yes or no.

1 A. Yes.

2 Q. You gave them cover stories as to why those programs were
3 needed, correct?

4 A. Yes.

5 Q. Designed to fool them, correct?

6 A. Yes.

7 Q. You did that so that you could get the work done that you
8 needed without them learning about the fraud, true? That was
9 your purpose, isn't that right?

10 A. Yes.

11 Q. You told them during the Swanson audit that the accounts
12 for which information was being provided were the only ones
13 that the auditors had asked about, true?

14 A. In substance, yes.

15 Q. You gave them a bogus explanation for why randomization was
16 perfectly fine for the programs being written for that audit,
17 true?

18 A. That is true.

19 Q. You did all that because your purpose was that they not
20 learn about the fraud, true? It's a yes or no.

21 A. Yes.

22 Q. Am I correct, Mr. DiPascali, that based on your many, many
23 years at Madoff Securities, you became pretty good at fooling
24 people, true?

25 MR. ZACH: Objection.

1 THE COURT: You can consult.

2 Q. You can consider yourself --

3 THE COURT: You are going to rephrase?

4 MR. KRANTZ: Sorry, your Honor, yes.

5 Q. Did you consider yourself pretty good at fooling people?

6 A. At times, yes.

7 Q. Do you agree you had a lot of practice at it?

8 MR. ZACH: Objection to the scope, your Honor.

9 THE COURT: I will allow this and --

10 MR. KRANTZ: I'll move on.

11 THE COURT: Yes.

12 Q. You can answer that one.

13 A. There were many opportunities to, yes.

14 Q. At any point after the Swanson audit up to the demise of
15 Madoff Securities, did you ever go back and tell Mr. Perez and
16 Mr. O'Hara that you had lied to them when you gave them these
17 cover stories during the Swanson audit? Did you tell them
18 that? Yes or no.

19 A. No.

20 Q. Isn't it a fact that among the cover stories you gave to
21 them was the fact that the shares were being purchased in bulk
22 by Mr. Madoff?

23 A. Yes.

24 Q. And that he then allocated those shares internally to his
25 clients, correct?

1 A. That is correct.

2 Q. Did you tell them that since it was an internal allocation
3 of Mr. Madoff's shares, he had rights or privileges beyond the
4 normal broker in how those shares were accounted for?

5 A. I don't ever recall using the rights and privileges.

6 Q. In substance.

7 MR. ZACH: Objection to form, "in substance."

8 THE COURT: Put it in a whole sentence again, please.

9 Q. Did you tell them in substance that because he was buying
10 the shares in bulk and then allocating them internally, he had
11 greater rights than your normal broker, or words to that
12 effect?

13 A. No.

14 Q. Do you recall that you never said that, or you just don't
15 recall one way or the other?

16 A. I'm certain I never said that.

17 Q. Those words?

18 A. Yes, sir.

19 Q. Do you recall being interviewed by the government --

20 MR. ZACH: Objection.

21 MR. KRANTZ: I'll rephrase.

22 THE COURT: Thank you.

23 Q. Isn't it a fact that you previously told the government
24 that because the trades were coming out of Mr. Madoff's --
25 excuse me. Let me restate that. Isn't it a fact that you

1 previously told the government that you told Mr. Perez and Mr.
2 O'Hara that because the trades were coming out of Mr. Madoff's
3 own inventory that was kept overseas, he was able to allocate
4 these trades to customers after the fact and do other things
5 with the accounts a broker acting as agent would not be able to
6 do? Do you recall telling that to the government?

7 A. I do.

8 Q. Was that accurate?

9 A. It is.

10 Q. With that terminology, you accept the premise?

11 MR. ZACH: Objection to form.

12 MR. KRANTZ: I am just trying to reconcile the no
13 versus the yes.

14 A. The first question asked whether he had certain flexibility
15 because he was trading in bulk, which has nothing to do with
16 the flexibility. The fact of the matter is he had certain
17 flexibility because he was trading as principal. That is the
18 reconciliation to your question.

19 Q. So you accept that --

20 A. I do.

21 Q. -- you told that because he was trading in principal from
22 his vast inventory overseas, that he had greater rights than
23 your typical broker?

24 A. Which has nothing to do with bulk, which was your question.

25 Q. I'm glad we stand corrected. Now you agree with my last

premise, correct?

A. I do.

Q. Isn't it a fact that you said that, what we just described to Mr. Perez and O'Hara, at a dinner after the 2006 audit was completed? Do you recall that?

A. I don't.

Q. Do you recall previously telling the government -- excuse me. Isn't it a fact that you previously told the government that the statement I just referred to you occurred at a dinner at a Greek restaurant in the summer of 2006, after the certain hedge fund trading practices audit was finished?

MR. ZACH: Objection.

THE COURT: Would you like to consult?

MR. ZACH: May we consult.

(Counsel conferred.)

MR. KRANTZ: Your Honor, I'm afraid we need a ruling.

THE COURT: Please stay here quietly.

(Continued on next page)

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1 (In the robing room).

2 MR. ZACH: Judge, very briefly, my objection is scope.
3 This is an event that we didn't talk about at all on redirect.
4 I didn't object when he went into detail about Mr. O'Hara and
5 Mr. Perez's role in the SEC 1 audit even though we didn't do
6 that on redirect, because I touched on that topic. But this
7 topic wasn't touched at all on my redirect. He has what he
8 wants in the record. At some point we have to start narrowing
9 those issues. So it is a scope objection because it was not
10 raised whatsoever on redirect.

11 MR. KRANTZ: Your Honor, Mr. Zach reopened the whole
12 question of the defendants' knowing participation during the
13 audits in fraudulent programs and records. He went into a
14 number of things on his redirect that had not been gone into on
15 cross-examination.

16 When I questioned him on that, for example, you asked
17 about the diamonds conversation, which had not been gone into
18 on cross-examination, Mr. Zach's position to me was that
19 through the cross we had opened up the entire question of
20 guilty knowledge and that therefore he had the right to bring
21 in new information about guilty knowledge, not new information
22 but anything from the direct on guilty knowledge.

23 This is a conversation that we have already got on the
24 record existed, and I am now simply trying to place a time
25 frame on it. Since Mr. Zach's redirect was quite lengthy, and

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1 I was sitting listening to it, suggested to the jury that these
2 defendants knowingly participated in bogus audits, I have the
3 right to rebut the suggestion that they knowingly participated.

4 THE COURT: The conversation in the restaurant is
5 already in the record and the timing is in the record?

6 MR. KRANTZ: His timing is not in the record, Judge,
7 not for this.

8 MR. ZACH: So you know, there are two dinners. It is
9 easy to get confused. This isn't the toast dinner. This is a
10 completely different dinner.

11 MR. KRANTZ: That's why the timing is important to me.

12 MR. ZACH: Which shows you how outside the scope it
13 is, because I didn't go into it at all on direct. Now he is
14 bringing up an extraneous event and trying to put a time on it.

15 MR. KRANTZ: It is not an extraneous event. It is an
16 event that rebuts the suggestion created on redirect.

17 THE COURT: I will permit the question as to the
18 timing on this, but the questions on redirect as to the
19 preparations for the first SEC audit do not open up the door to
20 revisitation and repackaging of every fact concerning every
21 misrepresentation to your clients that is already in the
22 record.

23 MR. KRANTZ: Agreed, Judge.

24 THE COURT: Thank you.

25 MR. BRESLIN: May I quickly raise one thing. Is it

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1 your Honor's intention to permit reredirect, as Mr. Krantz
2 alluded to?

3 MR. KRANTZ: I didn't allude to that.

4 MR. BRESLIN: Because I would object.

5 THE COURT: As you all know, I have permitted
6 reredirect if the government wants to open the door yet again.
7 It is my hope that we will be able to finish with this witness
8 today and that we have another round only if it is determined
9 by the government that there is something so extraordinarily
10 crucial that reredirect is appropriate, and then I will hear
11 any arguments about the scope of that and any necessary, if
12 need be, cross. But I hope we don't have to go there.

13 MR. KRANTZ: Your Honor, just so the record is clear.
14 I didn't mean to say reredirect. If I did say that, I
15 misspoke.

16 THE COURT: Thank you.

17 MR. SCHWARTZ: If other counsel could let us know if
18 they have similar length of recross as Mr. Krantz, we could
19 maybe led Mr. Fong go back to work.

20 MR. BRESLIN: Less than Mr. Krantz.

21 THE COURT: How much more does Mr. Krantz have?

22 MR. KRANTZ: Probably half an hour.

23 MR. SCHWARTZ: We only have an hour this afternoon
24 today.

25 THE COURT: I guess Mr. Fong can go back.

Eldrbon4

Dipascali - recross

1 MR. JACKSON: He will appreciate that.

2 THE COURT: Thank you Mr. Kong for his availability.

3 MR. RIOPELLE: I have a half hour.

4 MR. BRESLIN: Is that going to change the order for
5 tomorrow?

6 MR. SCHWARTZ: It might. If it does, I will let you
7 know.

8 MR. KRANTZ: If it does, will that switch to Brady or
9 someone else?

10 MR. SCHWARTZ: It will probably switch to Auerbach.

11 (Continued on next page)

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(In open court)

BY MR. KRANTZ:

Q. Mr. DiPascali, I am going to re-pose my last question, which is, isn't it a fact that you previously told the government that the conversation we just described about trading from inventory overseas occurred at a dinner at a restaurant in 2006, after the end of the certain hedge funds practices audit, is that correct?

A. I don't remember it that way, no.

Q. I am going to go through this process quickly. I am going to show you something. Read it to yourself.

MR. KRANTZ: If I may approach, your Honor?

THE COURT: Yes.

MR. KRANTZ: May I remain there while he reads it?

THE COURT: Yes.

Q. Mr. DiPascali, does that refresh your memory that you previously told the government that the time frame for that conversation was in 2006, after the certain hedge fund practices audit had concluded?

A. It does not.

Q. Mr. Zach also asked you about the first KPMG audit in 2005. Do you recall that?

A. Yes.

Q. You spoke directly to the KPMG auditors during that audit, correct?

1 A. I did.

2 Q. To your knowledge, Mr. Perez and Mr. O'Hara never spoke to
3 any of the auditors, true?

4 A. To my knowledge, they did not.

5 Q. During the 2005 KPMG audit, you lied to KPMG as well, true?

6 A. I did.

7 Q. Isn't it a fact that you told them that the shares were
8 purchased in bulk?

9 MR. ZACH: Objection to scope.

10 THE COURT: You can consult or I'll rule now, or you
11 can move on.

12 MR. KRANTZ: I guess I'll consult for one minute.

13 (Counsel conferred.)

14 MR. KRANTZ: I'll move on, your Honor, to avoid the
15 issue.

16 THE COURT: Thank you.

17 MR. KRANTZ: Perhaps if I may address this at the
18 break?

19 THE COURT: Fine.

20 MR. KRANTZ: Thank you.

21 Q. I want to turn to the topic of the toast that you testified
22 occurred at some dinner including Mr. Perez and Mr. O'Hara. Do
23 you recall testifying about a toast?

24 A. I do.

25 Q. You indicated in your testimony that that toast was made

Eldrbon4

Dipascali - recross

1 during the 2005 KPMG audit, true?

2 A. Yes.

3 Q. On your direct testimony you stated that the toast was made
4 by Mr. O'Hara. Do you recall that?

5 A. I do.

6 Q. You didn't say at that time that there was any uncertainty
7 in your mind about that, correct?

8 MR. ZACH: Judge, can I consult?

9 THE COURT: Yes.

10 (Counsel conferred.)

11 MR. KRANTZ: Your Honor, we are consulting the record
12 on something, if I could have a minute.

13 (Pause)

14 MR. KRANTZ: Thank you, your Honor. I am going to
15 re-pose the question.

16 Q. Do you recall that on your direct examination you said as
17 to the toast that you think it was made by Jerry O'Hara?

18 A. I do recall that, yes.

19 Q. That was a question that you had spoken about with the
20 government prior to your testifying that day, true?

21 A. It's a topic we discussed many times. I don't recall -- we
22 talked about that event more than a few times.

23 Q. I'm sorry. Could you repeat the last answer.

24 A. We spoke about the event of the toast at the Park Café on
25 more than a few occasions.

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Dipascali - recross

1 Q. You understood that you were going to be asked that
2 question in all likelihood on your direct examination, true?

3 A. It was likely to me that it would come up, yes.

4 Q. You understood that accuracy in your testimony in this
5 courtroom is quite important, true?

6 A. I do.

7 Q. After giving the answer you think it was Jerry, you were
8 cross-examined by Mr. Mehler on that subject. Do you remember
9 that?

10 A. I do.

11 Q. Mr. Mehler asked you if in fact you had previously told the
12 government that the toast was supposedly given by Mr. Perez.
13 Do you recall those questions?

14 A. I do.

15 Q. He showed you some documents to try to refresh your
16 recollection, correct?

17 A. He did.

18 Q. Isn't it a fact that you realized at that point that your
19 testimony or your statements on this subject were inconsistent,
20 meaning what you had told this jury was inconsistent with what
21 you had previously told the government?

22 A. When I read the notes that were handed to me, my initial
23 reaction was that I was actually unsure at that point because
24 the day I said during my direct that I thought it was Jerry
25 O'Hara, that was true, and when I read the notes I realized

Eldrbon4

DiPascali - recross

1 that I had told the government many, many months earlier that
2 it was George Perez. So my gut didn't look at the word
3 "inconsistency."

4 Q. Would you agree with me --

5 A. I was more confused, sir, at that point.

6 Q. Would you agree with me, Mr. DiPascali, that in fact what
7 you testified to here, that you think it's Mr. O'Hara, was
8 inconsistent with what you had previously told the government,
9 namely, that it was Mr. Perez? Do you agree that those two
10 statements are inconsistent?

11 A. No, I won't, because I said I think it was Mr. O'Hara. I
12 don't believe I ever said I was absolutely positive it was Mr.
13 O'Hara.

14 Q. Would you agree that if you think it's Mr. O'Hara, that is
15 not suggesting that it is Mr. Perez, true?

16 A. That is not suggesting it's Mr. Perez, true.

17 Q. Would you agree with me that the statement "I think it's
18 Mr. O'Hara" is inconsistent with the statement "it was Mr.
19 Perez"?

20 MR. ZACH: Objection.

21 THE COURT: Sustained.

22 Q. On redirect examination you were asked about that topic
23 again. Do you recall that?

24 A. I do.

25 Q. Mr. Zach asked you who made the toast, correct?

Eldrbon4

Dipascali - recross

1 A. He did.

2 Q. On that occasion you said, I'm not sure. Do you remember
3 that?

4 A. I do.

5 Q. Isn't it correct that the reason you said you're not sure
6 is because you were trying to fix the inconsistency? Yes or
7 no.

8 A. It's not a yes-or-no answer. The reason I said I was
9 unsure is because I was unsure at that point.

10 Q. Were you concerned about the inconsistency? Yes or no.

11 A. No.

12 Q. By the way, the toast that you testified about, you
13 indicated this took place in a fancy restaurant, correct?

14 A. It did.

15 Q. There were other patrons in the restaurant, true?

16 A. There were.

17 Q. It was not a private setting, true?

18 A. We were at a table of four. There were other tables of
19 four around us.

20 Q. There were people at those tables, right?

21 A. Yes.

22 Q. Isn't it a fact that you previously told the government
23 that at one of those tables was former mayor David Dinkins?

24 MR. ZACH: Objection. Scope.

25 THE COURT: Sustained.

Eldrbon4

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DiPascali - recross

1 MR. KRANTZ: Mr. Zach did go into the toast.

2 THE COURT: He went into the toast, I sustained the
3 objection to this question.

4 Q. Now I want to ask you a few questions about the incident
5 you testified to where you say documents were being thrown
6 around like a medicine ball. Do you recall that Mr. Zach asked
7 you about that on redirect?

8 A. Yes.

9 Q. By the way, just to clarify any confusion, a medicine ball
10 is a big, heavy ball that is used in a gym, true?

11 A. I wouldn't characterize it as big and extend my hands four
12 feet, sir. They could be this big.

13 THE COURT: Reflecting that on the "this big" Mr.
14 DiPascali had his hands about 10 inches or a foot apart, would
15 that be correct?

16 THE WITNESS: A medicine ball is typically the size of
17 a basketball, your Honor.

18 Q. It's a heavy ball, true?

19 A. It is.

20 Q. You indicated that that episode took place also during the
21 2005 KPMG audit, is that your testimony?

22 A. It is.

23 Q. And that you were talking to an auditor named David Yim
24 from KPMG, correct?

25 A. That is correct.

Eldrbon4

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DIPASCALL - recross

1 Q. And that he asked you for what you called a SIAC report,
2 correct?

3 A. Yes.

4 Q. And that you made a phonecall down and spoke to, according
5 to you, Jerry O'Hara, true?

6 A. True.

7 Q. Isn't it true that when you first told the government about
8 that episode, you said that in that phonecall you told Mr.
9 O'Hara to get the documents from storage?

10 MR. ZACH: Objection. May I consult, your Honor?

11 THE COURT: Yes.

12 (Counsel conferred.)

13 MR. KRANTZ: Your Honor, I think we have a scope
14 disagreement.

15 THE COURT: Please excuse us.

16 (Continued on next page)

Eldrbon4

Dipascali - recross

(In the robing room).

MR. ZACH: Your Honor, very quickly, my objection to this is on redirect there were no questions about the telephone call that Mr. O'Hara had down to the 17th floor. What I understand Mr. Krantz to be doing is trying to impeach testimony from the direct on a phonecall with the prior inconsistent statement. That statement that he is trying to impeach wasn't brought up at all on redirect. He is basically taking something from the direct and trying to impeach it.

THE COURT: My recollection of the discussion on redirect was the feasibility of tossing the stack of paper and how big the stack of paper was, not what prompted the request for the stack of paper.

MR. KRANTZ: I think that was Mr. Breslin's cross.

MR. BRESLIN: That was on cross, your Honor.

THE COURT: There was cross that is how can you throw all this computer paper without making a mess. Then I thought there was a redirect where he said if you throw it a foot, it's OK, if you throw it across the room, it's not feasible. That is my recollection.

MR. ZACH: I think that is my recollection as I sit here. What I can say with certainty is there was nothing on redirect about the telephone call from the 18th floor down to Mr. O'Hara. My real concern here is he is trying to impeach that prior testimony which only came out on direct with a

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Dipascali - recross

different statement, and it had nothing to do with the
redirect. So I really do think it is a scope issue.

MR. KRANTZ: Your Honor, my recollection on redirect
is that Mr. Zach highlighted this incident of the medicine
ball, the papers, the tossing them around. He said, Mr. Krantz
asked you if certain people deserved better than that. Then he
said, didn't KPMG deserve better than being lied to and didn't
KPMG deserve better than having their records scrunched up or
something along those lines. That, in my opinion, opens up
that event to cross-examination.

THE COURT: The objection is sustained. For what it
is worth, high school recollections, I think the huge thing is
called a cage ball and the smaller thing is a medicine ball.

(Continued on next page)

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DiPascali - recross

(In open court)

BY MR. KRANTZ:

Q. Mr. DiPascali, on redirect examination Mr. Zach asked you about an alleged statement that you claim was made by Mr. O'Hara, something to the effect of being paid in diamonds. Do you recall being asked about that?

A. I do.

Q. Isn't it a fact that the first time you ever told the government your claim that that statement occurred was three years after your cooperation began?

A. I have no point of reference on that.

Q. You don't know one way or the other?

A. That's correct.

Q. On redirect examination Mr. Zach asked you about the meeting with Mr. Madoff, Mr. O'Hara, Mr. Perez and yourself. Do you recall that?

A. Yes.

Q. That meeting, I think we have placed it in time roughly as September 2006, is that right?

A. That is correct.

Q. That's the meeting where they indicated they were uncomfortable with the special programs, correct? Isn't that your prior testimony?

A. The special programs were mentioned as what they were uncomfortable about, yes.

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DIPascal - recross

Q. Isn't it correct that at that meeting, as you have indicated, they were told they didn't have to work on them if they were uncomfortable with them? True?

A. That is true.

Q. They were told that they weren't going to be fired, true?

A. I believe that to be true as well.

Q. They had indicated during the meeting that they loved their job, true?

A. Yes.

Q. And that they were fine moving forward to work on the ordinary parts of their computer programming responsibilities, correct?

A. That was my understanding, yes.

Q. Mr. Zach asked you about the period between that meeting and the demise of Madoff Securities in 2008. Do you recall being asked some questions about what transpired during that call it a roughly two-year period?

A. Yes.

Q. To be clear, things did change in terms of what Mr. Perez and O'Hara worked on post-September 2006, correct?

A. Things did change, yes.

Q. They did continued to work on their ordinary functions of maintaining the House 05 and House 17 computer systems, true?

A. True.

Q. They continued supervising the printers that existed, true?

Eldrbon4

Dipascali - recross

1 A. True.

2 Q. Isn't it correct that from September 2006 forward they did
3 not work -- withdrawn. From 2006 forward isn't it correct that
4 you did not ask them to work on another audit, true?

5 A. I need you to define what, quote, work on another audit
6 entails. They worked for me, and I indeed went through another
7 audit in I believe April of 2008.

8 Q. Isn't it a fact that for that audit you had a problem
9 because Mr. Perez and O'Hara had indicated they were
10 uncomfortable with the special programs and were told they
11 didn't have to work on them anymore? Didn't that create a
12 problem for you?

13 A. Not specifically.

14 Q. Didn't you previously tell the government that the 2008
15 audit was a big problem for you because Mr. Perez and Mr.
16 O'Hara had already revolted?

17 A. Probably, yes.

18 Q. Isn't it a fact that for that audit you had to get other
19 Madoff employees to assist you in creating the documents that
20 you needed for the audit?

21 A. That is true.

22 Q. The reason you had to get the other employees was because
23 of what had transpired in September 2006 with Mr. Perez and Mr.
24 O'Hara, true?

25 A. No.

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DiPascali - recross

THE COURT: One minute, Mr. Krantz.

Q. Isn't it a fact that you enlisted at that time Mr. Terrence Chen to assist you because Mr. O'Hara and Mr. Perez -- withdrawn. One question at a time. Isn't it correct that you enlisted the assistance of Mr. Terrence Chen to help with that audit?

A. From 2006 forward Terrence Chen was doing work in assisting me. I did not specifically for that audit have to change anything I had previously been doing with Terrence Chen.

Q. Last question. Isn't it a fact that you started utilizing the services of Mr. Chen after the 2006 meeting between Mr. Perez, Mr. O'Hara, Mr. Madoff, and you?

A. That is correct.

MR. KRANTZ: Good time to break, your Honor.

THE COURT: Members of the jury, thank you for your attentive work with us this morning. We will begin our lunch break in a moment. We will resume at 2 o'clock. As I previously said, we will adjourn today at 3 o'clock. Continue to keep your minds open for the evidence, your minds closed to outside information, and your thoughts to yourselves.

All rise. Ms. Ng, will you escort the jury out. Mr. DiPascali, you are on cross-examination so you are not to speak about your testimony.

THE WITNESS: I understand, your Honor.

(Continued on next page)

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Dipascali - recross

1 THE COURT: Mr. Krantz, you had said you wanted to
2 follow up on something at the break.

3 MR. KRANTZ: I think it was on the question of the
4 scope regarding the toast.

5 THE COURT: And we ended up addressing that in the
6 back?

7 MR. KRANTZ: To tell you the truth, I can't remember.
8 So let me collect my thoughts over lunch, and come back. I
9 don't remember when I asked to hold that thought. Maybe it
10 was -- Hang on one second.

11 (Pause)

12 I'm not recalling, your Honor; so I withdraw any
13 applications that I made.

14 THE COURT: Thank you. That works for me. So have a
15 good lunch, everyone. We'll see you at 2:00.

16 (Luncheon recess)

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DiPascali - recross

A F T E R N O O N S E S S I O N

2:05 P.M.

(Jury not present)

THE COURT: I understand that Mr. Krantz has an issue. Is it going to be lengthy?

MR. KRANTZ: It's not lengthy, but it should not be in the presence of the witness.

THE COURT: So we'll ask Mr. DiPascali to leave the room, and Ms. Prater to walk down. Thank you.

MR. KRANTZ: Very briefly, your Honor. I certainly understand that your Honor wants to perhaps close the curtain on this witness, who's been on it seems like forever, but I just wanted to revisit the issue of that medicine ball, refrigerator incident. Over the lunch break I looked at the transcript, and two things. The government did go into both the supposed crumpling of the paper and the putting the paper in the refrigerator during that incident. Mr. Breslin also cross-examined on that issue for several pages in the transcript and that was after I went.

What I was seeking to do, which I don't think anyone would understand but me, is the following. You may recall that it was a little odd because Mr. DiPascali told that version of what happened and then a week later on direct came back and said it really didn't make any sense that they did this because the auditors knew that it was a printed program; so why would

1 you bother putting it in a refrigerator, why would you bother
2 throwing it around, and the whole thing made no sense. He came
3 back a week later and said that.

4 What I wanted to bring out is simply that, in
5 Mr. DiPascoli's first and second explanation of that story to
6 the government, he says that in the phone call with Mr. O'Hara,
7 he told Mr. O'Hara to get it from storage. Not print it, but
8 get it from storage; so the story made sense that if it was
9 from storage, just from internal logic point of view, you might
10 put it in a refrigerator or crumple it.

11 And my point is simply that when he then testified on
12 direct, in my view, because it's not so, he messed up the facts
13 of his own story. And on direct he said, I told them to print
14 it. So then a week later he had to backtrack and say it made
15 no sense. That's what I was planning to elicit, which has not
16 been touched on, and given the fact that Mr. Zach did use this
17 incidents as, you know, one of the sort of greatest hits of
18 guilt of my client, it's not a long area, and I would ask your
19 Honor to let me do it. I could limit it to less than five
20 minutes.

21 THE COURT: The request is denied. Both of the items
22 of testimony were in direct, we're now in recross -- and in
23 direct, as opposed to indirect, all one word. We're now in
24 recross and you certainly have a foundation for marshaling that
25 argument on your closing.

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DiPascali - recross

MR. KRANTZ: Respectfully, your Honor, we don't have the foundation that he told the story a different way. I respect your ruling, but I don't know how I can make the argument because there's nothing in the record.

THE COURT: You just said one week he said one thing and another week he said another thing.

MR. KRANTZ: No, your Honor. The inconsistency was in the 3500 material, which he's never been questioned on. On direct he said print the document. That's the inconsistency, print versus go to storage, and then a week later he said it made no sense, just so we're clear. The earlier version, get it from storage, is not in the record and that's my problem.

THE COURT: Once again, it's a problem that you had at cross and an opportunity missed, foregone, whatever.

MR. KRANTZ: Understood. Thank you, your Honor.

THE COURT: Yes, please get Mr. DiPascali.
Ms. Prater, please come back, and, Ms. Ng, please get the jury.

THE DEPUTY CLERK: They need a second.

THE COURT: Okay. They need a minute or two to come out; so if anybody thinks they'll be desperate within the next hour or actually 50 minutes, consider this a 90-second warning.

(Pause)

All rise.

(Jury enters)

Good afternoon, members of the jury. Please take your

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DiPascali - recross

1 seats. Please be seated, everyone. Mr. Krantz, you can set
2 yourself up.

3 MR. KRANTZ: May I proceed, your Honor?

4 THE COURT: You may.

5 MR. KRANTZ: Good afternoon, members of the jury.

6 RECROSS-EXAMINATION RESUMED

7 BY MR. KRANTZ:

8 Q. Good afternoon, Mr. DiPascali.

9 A. Hello again.

10 Q. I just have a few more questions of you. On redirect
11 examination, Mr. Zach was asking generally about the time
12 period between September '06 and December 2008 and whether you
13 continued to have dinners with Mr. O'Hara and Mr. Perez during
14 that period. Do you recall generally being asked questions on
15 that topic?

16 A. Yes.

17 Q. And I believe you indicated that you continued to have
18 dinners with them at times, as much as three times per week
19 during that period; was that your testimony?

20 A. It is.

21 Q. Now, this is during the period that I believe you've
22 previously indicated Mr. Madoff had tasked you with keeping an
23 eye on Mr. Perez and Mr. O'Hara, true?

24 A. It is.

25 Q. He had tasked you with taking their temperature during that

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DIPASCALL - recross

1 period, true?

2 A. That is true.

3 Q. And that was at least one of the reasons for your having
4 dinners with them, true?

5 A. No.

6 Q. Well, were you doing what Mr. Madoff asked you to do; yes
7 or no?

8 A. No.

9 Q. You ignored that directive from Mr. Madoff; is that your
10 testimony?

11 A. My testimony is that the purpose of the dinners was not to
12 take their temperature; it was to simply go out to dinner.

13 Q. Isn't it a fact that you previously told the government
14 that you were charged, meaning instructed, I suppose, by
15 Mr. Madoff to take Perez and O'Hara's temperature? Did you
16 previously tell that to the government?

17 A. I did.

18 Q. Did you previously tell the government that the dinners
19 with Perez and O'Hara became significant because during the
20 dinners, you found out how Perez and O'Hara were feeling and
21 what they were thinking? Did you say that to the government?

22 A. I don't recall that.

23 Q. Isn't it a fact that you said to the government that Perez
24 and O'Hara were told to take a car service home after the
25 dinners so they could drink alcohol with the meal? Didn't you

1 say that to the government?

2 A. I don't recall that as well.

3 Q. Didn't you also say to the government that often after
4 several drinks, you would start asking questions about how
5 Perez and O'Hara felt? Didn't you say that to the government?

6 A. Again, I don't recall that.

7 Q. Didn't you also say to the government that when Perez and
8 O'Hara withdrew from handling the special projects, the dinners
9 tapered off? Didn't you say that?

10 A. Probably, yes.

11 Q. And was that true when you said that to the government?

12 A. Yes.

13 Q. And didn't you also say to the government that you were
14 still able to talk Perez and O'Hara into the occasional dinner?
15 Didn't you make that statement?

16 A. I don't recall that.

17 Q. And just to be clear, when we talk about when Perez and
18 O'Hara withdrew from handling the special projects, that's a
19 reference to the September '06 meeting with Mr. Madoff or that
20 rough time period, true?

21 A. Yes, it is.

22 Q. Isn't it correct that you also, in 2007, took Mr. O'Hara
23 and Mr. Perez on a fishing trip?

24 A. It is true.

25 Q. And was Kevin Fong a participant in that?

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DIPASCALL - recross

1 A. I believe he was.

2 MR. ZACH: Objection, scope of that.

3 THE COURT: Please consult.

4 (Counsel conferring)

5 MR. ZACH: We got it, your Honor.

6 THE COURT: Thank you.

7 MR. KRANTZ: If I could ask the court reporter to read
8 back the last question, please.

9 (Record read)

10 BY MR. KRANTZ:

11 Q. During that fishing trip, did you take Mr. O'Hara and
12 Mr. Perez's temperature, as Mr. Madoff had asked you to do; yes
13 or no?

14 A. No.

15 Q. And my one last topic is Mr. Frisch asked you about when
16 e-mail was eliminated on the 17th floor; do you recall that
17 general subject?

18 MR. ZACH: Objection, scope.

19 THE COURT: Sustained.

20 MR. KRANTZ: May I be heard on that, your Honor?

21 THE COURT: If you'll excuse us for a minute. We'll
22 be right back.

23 (Continued on next page)

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DIPASCAI - recross

(In robing room)

THE COURT: Okay. We can start.

MR. KRANTZ: I apologize, your Honor. This was my last question. It's just to establish that Mr. Frisch had asked -- I thought Mr. Zach had inquired as well, but I am not sure in that regard; so I don't want to misstate it. Just that Mr. Bonventre was permitted to keep his e-mail account and, to my understanding, as a conceptual issue, that if another defense lawyer after I went goes into a new area that potentially is an area I'm interested in, that I'm allowed some leeway to follow up with a defense lawyer's cross. Is that not your understanding? All I was going to ask is if Mr. Perez and Mr. O'Hara were able to keep e-mails addresses, that's all I was going to ask.

THE COURT: This is the first I've ever encountered that principle and --

MR. KRANTZ: Maybe I'm off base.

THE COURT: Seems to me that that could get us into forever rounds of cross on a multi-defendant case; so the objection is sustained.

MR. KRANTZ: Thank you.

MR. ZACH: Thank you.

(Continued on next page)

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DiPascali - recross

1 (In open court)

2 THE COURT: Mr. Krantz.

3 MR. KRANTZ: Your Honor, Mr. DiPascali, I have no
4 further questions. Thank you.

5 THE COURT: Thank you. Mr. Riopelle?

6 MR. RIOPELLE: Yes, your Honor. Thank you.

7 RECROSS EXAMINATION

8 BY MR. RIOPELLE:

9 Q. Good afternoon, Mr. DiPascali.

10 A. Hello again.

11 Q. Good to see you again. Mr. DiPascali, I'm going to talk
12 fast because I think we're all anxious to get this over with.

13 THE COURT: But not so fast that the reporter has a
14 problem.

15 MR. RIOPELLE: And she can throw --

16 THE COURT: And loud enough so that the jury can hear
17 you.

18 MR. RIOPELLE: Okay. I'm going to try loud and fast
19 we'll see how we do.

20 BY MR. RIOPELLE:

21 Q. Mr. DiPascali, you were asked some questions by Mr. Zach
22 about your mother's IA accounts at the Madoff Securities firm;
23 do you recollect that?

24 A. I do.

25 Q. And I believe it was pointed out that she had both what is

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1 called a long positions account and an options account; is that
2 correct?

3 A. It is.

4 Q. And the long positions account is the one that my client
5 apparently closed at the end; is that correct?

6 A. Yes.

7 Q. And it appeared, if I understood your testimony correctly,
8 that she did not account for or did not take into account the
9 options account that you described; is that correct?

10 A. The numbers seem to indicate that, yes.

11 Q. And, Mr. DiPascali, I think you've testified earlier today
12 that your mother opened her long positions account way back in
13 the early '90s; is that correct?

14 A. That's correct.

15 MR. RIOPELLE: I'd like to put on the ELMO for
16 Mr. DiPascali and the lawyers only, a document, and I'm going
17 to mark it AB19, which I think is my next number.

18 Q. Now, Mr. DiPascali, are you able to see that?

19 A. Yes.

20 Q. And is this a copy of a record at Madoff Securities that
21 relates to your mother's long securities account?

22 A. It appears to be the customer ledger for April of 1991.

23 Q. And is that about the time that your mother opened the
24 account?

25 A. It is probably the exact time she opened the account.

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Dipascali - recross

1 Q. And we can tell that because it says at the top, no balance
2 forward, correct?

3 A. And more importantly, the first capital addition is coded
4 as a journal, which would indicate to me that was the first
5 deposit made to the account.

6 Q. Okay. So by looking at this statement, you can tell us
7 that this is the deposit and this is the statement or the --
8 what was it again? I'm stuck on statement.

9 A. It's a customer ledger. In essence, a statement.

10 Q. The customer ledger that relates to your mother's opening
11 of this account, correct?

12 A. That is correct.

13 MR. RIOPELLE: Your Honor, I offer Defendant's
14 Exhibit AB19.

15 MR. ZACH: No objection.

16 THE COURT: Defendant's AB19 is admitted in evidence
17 and may be displayed.

18 (Defendant's Exhibit AB19 received in evidence)

19 Q. And looking at this document, we can see that your mother
20 opened her long positions account with a check of \$100,000; is
21 that correct?

22 A. Yes, sir.

23 Q. And there came a time later in her history with the Madoff
24 Securities firm in which she began to make withdrawals from
25 this account, correct?

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1 A. That is correct.

2 Q. And she withdrew anywhere from 6,500 to \$10,000 every month
3 or so, correct?

4 A. No, I don't believe that's correct.

5 Q. Did she withdraw more than \$100,000 over the time that she
6 held this account?

7 A. She did.

8 Q. Now, in addition to this account, as you've told us, there
9 was also an options account, correct?

10 A. Yes, sir.

11 Q. And that was opened later; am I right?

12 A. Yes, sir.

13 Q. And do you recall the transaction by which that account was
14 opened?

15 A. It was probably a trade, not a capital addition.

16 Q. Okay. And let me just shuffle through my documents to see
17 if I can find that one. Mr. DiPascali, I'm going to show you a
18 page from Government's Exhibit 101-57, and let me blow that up
19 so we can see it.

20 THE COURT: Do you know what page that is?

21 MR. RIOPELLE: I have it written down, your Honor, if
22 you let me flip through my notes because I'm going in a little
23 different order than I had intended to. I'll be able to tell
24 you that in a moment.

25 THE COURT: All right.

1 MR. RIOPELLE: This is Page 7075 from the part of
2 Government's Exhibit 101-57 that relates to the accounts in
3 July 31st of 2002. The way that exhibit's -- just so the
4 record is clear, that exhibit goes by month. In other words,
5 there are sort of monthly statements for every account at the
6 Madoff Securities firm for the group of statements that are
7 gathered in a single PDF included in what is Government's
8 Exhibit 101-57. That PDF that relates to July 31st, 2002.
9 This is Page 7075.

10 THE COURT: Thank you.

11 MR. RIOPELLE: I think that's clear.

12 THE COURT: I believe so. Thank you.

13 MR. RIOPELLE: Let's see if I can get that focused a
14 little better so we don't go -- Ms. Baskin, what do I need to
15 do to make it so we can read that? Thank you, Ms. Baskin. You
16 know, I have extra copies. May I just show the witness a
17 physical copy?

18 THE COURT: I think that would make most sense.

19 MR. RIOPELLE: So we don't take too much time.

20 THE COURT: Yes.

21 BY MR. RIOPELLE:

22 Q. Mr. DiPascali, I apologize for being a technological boob.
23 Here's the page. Am I correct that this statement relates to
24 your mother's options account, the one you testified about
25 earlier?

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A. Yes.

Q. And, again, I apologize for the small print. And am I correct that this statement indicates that at the time of the transaction to which this statement refers, there is no balance carried forward in the account; is that right?

A. That is correct.

Q. And this statement relates to July of 2002; is that right?

A. It does.

Q. And so this statement, does it not, indicates the trade that you referred to by which your mother's options account was opened; is that right?

A. That's correct.

Q. Okay. And that is a trade in July of 2002, right?

A. It is.

Q. And can you tell me what security that trade is in?

A. It's in a Standard & Poor's 100 index option, specifically the 490 put.

Q. And just to orient the jury a little bit, a buy or a sell of that particular option is a bet on the general trend of the market; is that correct?

A. It could be.

Q. And if the market is going down precipitously or rapidly, owning a put option is a good thing to have, correct?

MR. ZACH: Objection, scope.

THE COURT: Sustained.

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1 Q. Isn't it a fact that your mother made almost \$700,000 by
2 virtue of this trade?

3 A. That is true.

4 Q. And this trade is one of those backdated fake trades that
5 we've discussed many times, correct?

6 A. Yes, sir.

7 Q. So effectively, you put \$700,000 into your mother's options
8 account with this fake trade, correct?

9 A. That is correct.

10 Q. And some of this money was then transferred to your
11 account, wasn't it?

12 A. It might have been, yes.

13 Q. Okay. Let me show you another page.

14 MR. ZACH: Your Honor, I have a general scope
15 question. May I consult?

16 THE COURT: Yes.

17 (Counsel conferring)

18 MR. RIOPELLE: I'm sorry, your Honor, I think we'll
19 need your help.

20 THE COURT: If you'll all excuse us for a moment.

21 (Continued on next page)

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(In robing room)

MR. ZACH: Can I go?

THE COURT: Yes.

MR. ZACH: Your Honor, briefly, my scope objection is this. On cross-examination, Mr. Riopelle questioned the witness about his mother's IA account in that he showed the two checks that were made at the end, one was for a lesser amount, one was for a greater amount. The lesser amount had been ripped. He pointed out that Ms. Bongiorno had ripped that out, and then he asked whether or not on those statements, looking at those statements, whether or not Mr. DiPascali, I think the word was, quote, forgot to take out the debit from her 30 account.

On redirect, I showed the 40 account, saying it wasn't that they were taking something out of the 30 account, it's just that it accounted for the 40 account, sort of clearing up that. And he didn't show him the 40 account, clearing that up. What I understand this whole line of questioning to be is going all the way back in time to his mom's account and showing all the transactions coming in and out, and I think that's beyond the scope.

All I did on redirect was clear up the ambiguity of his questioning. I think if he wanted to do this on cross, he could have gone through his mom's account in detail. Now is not the time to do that.

1 MR. RIOPELLE: Well, I'm certainly not going to do
2 every transaction in his mother's account, your Honor. What we
3 have established thus far is that the mother's options account
4 received no deposit in order to be opened. He basically just
5 stole \$700,000 from the Madoff firm to open that account; so
6 that's the start. What I want to show now is that that money,
7 as well as other money, went from mother's options account to
8 Mr. DiPascali's account, the Dorothy-Jo account which he
9 controlled.

10 He controlled all these accounts. They were, in
11 effect, all Mr. DiPascali's accounts, and one thing that the
12 witness did not tell us when I was cross-examining him and
13 which I did not know at that time when I asked him what was the
14 status of his account, the Dorothy-Jo account, he told us it
15 had a negative cash balance. He did not tell us how much.
16 That account had a negative cash balance of \$5 million.

17 I simply want to end on that with this topic and say,
18 you know, having shown that these accounts are all basically
19 one big account, you do the trades in all of them, your account
20 was overdrawn by 5 million, but you still felt your mother
21 should get 390,000? That's where I'm going with this. He
22 controls all the accounts.

23 THE COURT: This is all very interesting, but it is
24 beyond the scope of the redirect and so the scope objection is
25 sustained. The redirect went to the amount and source of the

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disbursement to Mr. DiPascali's mother at December 2008 and did not open the door to a full history of the options account or its relationship to disbursements to Mr. DiPascali, or lack thereof.

MR. RIOPELLE: Thank you, your Honor.

(Continued on next page)

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(In open court)

THE COURT: All right. Please continue.

MR. RIOPELLE: Your Honor, may I be permitted to publish to the jury the page of Ms. DiPascali's options account about which the witness has just been testifying?

THE COURT: Yes.

BY MR. RIOPELLE:

Q. Now, Mr. DiPascali, this options account is the account that you testified earlier today that my client failed to take into consideration when she closed your mother's long positions account; is that correct?

A. The numbers did appear to indicate that, yes.

Q. And those numbers, the numbers that appear in your mother's options account, amounted to about \$170,000, correct?

A. I don't remember the exact number. I thought it was 202, but it could have been 170.

Q. In any event, I can show you a piece of paper, if you want, to get the number exact.

A. If it's important to you, I'll take a look at it.

Q. It's in the range of 170 to 200,000, something like that?

A. Yes, sir.

Q. In any event, that number in your mother's account was the result of this fictitious trade, correct?

A. It could have been. I'm not certain.

Q. Well, and it's true that every trade in your mother's

options account after 2002 was a fictitious trade, right?

A. That is correct.

Q. So whatever money was in there at the end was fake, the result of fictitious trading, correct?

A. That's correct, in the options account.

Q. In the options account. Now, you also gave some testimony earlier today about the capacity box on confirmations; do you remember that testimony?

A. I do.

Q. I'm now going to show you what I will mark Defendant's Exhibit AB20A, 20B and 20C.

MR. RIOPELLE: I'm just going to -- it will be quicker, I think, just to go back and forth if I may, your Honor?

THE COURT: That's fine.

A. Okay.

Q. Thank you. If I could have those back for just a moment. Thank you, sir.

A. Yes, sir.

Q. I apologize for not making more copies. Sir, am I correct that these are three confirmations in the account of Annette Argese?

A. Yes, they are.

MR. RIOPELLE: Your Honor, I offer defendant's Exhibits AB20A through AB20C.

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MR. ZACH: No objection.

THE COURT: Defendant's AB20A, 20B and 20C are admitted in evidence.

MR. RIOPELLE: Thank you, your Honor.

(Defendant's Exhibits AB20A, 20B and 20C received in evidence)

BY MR. RIOPELLE:

Q. I'm going to put 20A on the ELMO here, that much I can do. That is 20A, and we can see that this is one of those three confirms, correct?

A. It is.

Q. And it's for a purported trade date of October 21st, 1980; is that correct?

A. It is.

Q. And that's back in the early days when these documents were actually typed out, correct?

A. It appears that way, yes.

Q. And, indeed, this one appears to be typed out, correct?

A. That's correct.

Q. And this is even back in the days when my client's fingers were doing some of the typing, correct?

A. Maybe.

Q. We don't know for sure because there were many people typing confirms at that point, correct?

A. I wouldn't call it many. There were probably two.

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Q. But we certainly can't know now whether she typed this one;
is that right?

A. I can't.

Q. Right. This one is marked capacity code two, correct?

A. It is.

Q. And that is the code that you described means that Madoff
Securities is acting as a dealer, correct?

A. What it describes is that the capacity that the
broker-dealer is acting as is as principal.

Q. I stand corrected. As principal?

A. Correct.

Q. In other words, delivering the securities out of the
broker-dealer's own account; is that correct?

A. I'm, quite frankly, not certain how it pertains to
delivery. What this is saying is that the transaction was done
as principal, which typically means the opposite side of this
trade was the dealer's inventory.

Q. In other words, Madoff owned the securities that were sold
to Ms. Bongiorno in this transaction, correct?

A. In substance, yes, but technically, he didn't have to own
it. He could have shorted it to the customer; so it's
semantics again, but, yes.

Q. Okay. And I think we had your testimony earlier that the
trades in the IA business were typically marked in this way
until about 2006; is that right?

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1 A. Thinking about it further since the question was first
2 asked, stock transactions were typically labeled as principal
3 from as far back as I can remember until Bernie registered as
4 an investment advisor. Actually, he changed the methodology
5 prior to registering because during the original inquiry of
6 certain hedge fund trading practices by the SEC, recognizing
7 that they may force him to register if he loses the battle of
8 discretion, he forced us to change our capacity code from
9 principal to agent so that if they did force him to register as
10 an investment advisor, they couldn't pin him on operating
11 outside the rule prior to his registration. It was a very --
12 again, another, you know, the way his devious mind worked.

13 Q. And that happened --

14 A. However, to finish the answer, option transactions, I
15 believe forever, were transacted as agent in the capacity code
16 because we were not a dealer in options. So the capacity code
17 on options, I believe, was always agent, and the commission on
18 the ticket was illustrated because we acted as agent, it was
19 charged a commission.

20 Whereas on the stock side, because we acted as
21 principal back in the day, it was a dealer markup.

22 Q. And am I correct that for most of the period, at least at
23 Madoff Securities, the stock transactions were marked as
24 principal as we see in connection with this confirm?

25 A. Until the mid-2000s, yes.

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1 Q. And with the caveat that you've just given us, is thinking
2 about it harder, you believe it's your recollection now that
3 Mr. Madoff asked or required that these tickets, even for stock
4 transactions, be marked as agency transactions for some period
5 shortly before 2006 when he became concerned about being
6 required to register as an investment advisor; is that correct?

7 A. That is exactly correct.

8 Q. Right. And so for at least something like 20 years, every
9 stock transaction was marked as principal, correct?

10 A. To my knowledge, yes.

11 Q. Now, you gave -- and I'll take that down, if I may.

12 A. Can I just elaborate on my answer that I just gave you?

13 Q. Sure.

14 A. Every stock transaction that was fictitious was marked as
15 principal prior to the mid-2000s. However, stock transactions
16 that were executed in the trading room for Madoff investment
17 advisory clients that really occurred were marked as agent.

18 Q. Understood. So just to tie that off, every transaction in
19 the IA business in stock, from the early days until sometime in
20 the mid-2000s, was marked principal as you recollect it?

21 A. No, that's not what I said. Norman Levy was an IA
22 customer. Norman Levy had many IA accounts. The trades that
23 were posted that were fictitious were marked as principal, but
24 when Norman Levy called Andy Madoff or Bernie Madoff or
25 sometimes myself and asked us to go in the marketplace and

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1 purchase securities for him, we would do that, transacting a
2 real stock transaction with a real counterparty for real money.

3 And we would then send the confirmation to Mr. Levy's
4 office that he bought X, Y or Z at two, three or four as agent,
5 and we put a commission on the ticket.

6 Q. And that did happen from time to time?

7 A. It did happen from time to time with Mr. Levy, and they're
8 not coming to me off the top of my head, but with a very small
9 array of other clients.

10 Q. And then is it correct to say that the vast majority of
11 tickets written for stock trades in the IA business for the
12 first 20 years or so were marked as principal --

13 A. Yes, sir.

14 Q. -- according to your testimony?

15 A. Yes, sir.

16 Q. Now, you also were asked some questions by Mr. Zach about a
17 series of individuals whom you have not seen or had any
18 conversation with since December of '08 when you left Madoff
19 Securities for the last time. Do you remember being asked a
20 few questions like that?

21 A. Yes, sir.

22 Q. Just focusing on those last couple of days, you learned
23 that the regulators had begun to focus on the 703 account,
24 correct?

25 A. Are you talking about the last couple of days of the Madoff

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1 firm?

2 Q. Yes.

3 A. Like December 10th and 11 and like that?

4 Q. 11th and 12th.

5 A. 11th and 12th, yes, that's correct.

6 Q. And I think you also testified a few minutes ago that you
7 didn't use the words "fake" during your career at Madoff,
8 correct?

9 A. I don't recall doing that, that's right.

10 Q. And you were well aware, weren't you, that the rule at the
11 firm was that you're not to discuss your jobs amongst each
12 other, correct?

13 A. I was never -- I don't believe I was ever given such a
14 directive, no.

15 Q. In any event, you did not use the word fake with anyone
16 prior to your departure from the Madoff firm?

17 A. Not that I can recall.

18 Q. But as you left the firm, you recognized that the firm was
19 imploding, correct?

20 A. Certainly.

21 Q. And that the regulators would get to the bottom of things
22 at some point, correct?

23 A. Yes, sir.

24 Q. And you have not seen my client or spoken to her since you
25 left the firm in December of '08; is that correct?

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1 A. That is correct.

2 Q. Isn't it a fact that your last words to her as you left the
3 firm --

4 MR. ZACH: Objection, scope.

5 THE COURT: You can consult or I'll rule.

6 MR. RIOPELLE: I got two cases or two questions.

7 THE COURT: Well, the objection is sustained.

8 Q. Isn't it a fact, sir, that you tried to reassure my client
9 on your way out the door?

10 MR. ZACH: Objection, scope.

11 THE COURT: Sustained.

12 MR. RIOPELLE: I have no further questions, your
13 Honor.

14 THE COURT: Thank you. Mr. Mehler?

15 MR. MEHLER: Good afternoon, members of the jury.

16 RECROSS EXAMINATION

17 BY MR. MEHLER:

18 Q. Good afternoon, Mr. DiPascali.

19 A. Hello.

20 Q. In light of Mr. Krantz's cross, I have just a few questions
21 on recross, just a few questions for you.

22 Mr. Zach began his redirect by talking about your
23 start date at Madoff Securities; do you remember those
24 questions?

25 A. Vaguely, yes.

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Q. Well, he was talking about seniority, who had seniority at the Madoff firm --

A. Yes, sir.

Q. -- correct?

A. Yes, sir.

Q. And you did, in fact, start in 1975, correct?

A. Correct.

Q. And I believe you testified on direct that Jerry and George started in 1990 and 1991, true?

A. I think those were the dates, yes.

Q. And so you would agree with me that by the time they started, you had 15 years of seniority over them, correct, sir?

A. I had been working for the firm for 15 years longer than them, yes.

Q. Fair enough. Today, Mr. Zach showed you what is in evidence as O'Hara Exhibit 9. I'm putting it on the ELMO. And do you recall his questions about that exhibit?

A. Not specifically, but --

Q. Would you like me to show it to you again, would that help?

A. The exhibit?

Q. Yes.

A. It's on the scene.

Q. But maybe I have Mr. Riopelle's luck and you can't read it.

A. I can read it.

Q. And you see that the questions that he directed you to

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concerned the so-called APIBAL report; do you remember those questions?

A. I remember he asked me questions about APIBAL. I don't remember the exact questions.

Q. Okay. Well, do you remember him eliciting from you that my client, Jerry O'Hara, helped you get started, I think were his words, with receiving the APIBAL file from Haresh Hemrajani, correct?

A. Yes, sir.

Q. And Haresh Hemrajani was another AS/400 programmer that worked at Madoff Securities, true?

A. As far as I could tell, yes.

Q. Okay. And so he worked on the same AS/400 that Jerry and George worked on, correct?

A. No, he did not.

Q. Same computers? Well, Jerry and George -- Let me rephrase that. Jerry and George worked on both the AS/400 House 05 server and the AS/400 House 17, correct?

MR. ZACH: Scope objection.

THE COURT: You can answer that question, but please get to your point.

MR. MEHLER: Sure.

A. I think you asked if Jerry and George worked on both House 05 and House 17 AS/400s?

Q. Correct.

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1 A. The answer is yes.

2 Q. Haresh worked mainly on the House 05 one, correct?

3 A. That was my understanding, yes.

4 Q. And so in order to get -- is it not true that in order to
5 get that APIBAL file, you don't need to go to Jerry O'Hara?

6 Isn't that true, yes or no?

7 MR. ZACH: Objection to the form, vague or "need."

8 MR. MEHLER: I'll withdraw it and rephrase it.

9 THE COURT: Thank you.

10 Q. Isn't it true, Mr. DiPascali, that if you want the APIBAL
11 file, you can go to Haresh and say, give me the APIBAL file?

12 Isn't that so?

13 A. If I knew the name of it, yes. I had no idea what file was
14 used to construct the DTC report.

15 THE COURT: We have about four minutes until the end
16 of the day.

17 MR. MEHLER: Okay.

18 Q. And isn't it true that you told the government in 2009 that
19 if Haresh could provide the DTC info, you, working with Haresh,
20 could recreate the report? Do you recall telling the
21 government that?

22 MR. ZACH: Objection. Can I consult?

23 THE COURT: Yes.

24 (Counsel conferring)

25 THE COURT: Please go to the corner, gentlemen. Thank

1 you.

2 (Counsel conferring)

3 MR. MEHLER: We solved it, your Honor.

4 THE COURT: Thank you.

5 Q. Isn't it a fact, Mr. DiPascali, that when you told the
6 government that you worked with Haresh after 2006 to get the
7 APIBAL report, you never mentioned any involvement of Jerry
8 O'Hara? Isn't that true, sir?

9 A. I never recall telling the government that I ever worked
10 with Haresh on anything.

11 Q. My question was, isn't it true that when you discussed
12 getting the APIBAL file after -- after the meeting with Madoff
13 when Jerry and George weren't working on the special work
14 anymore, that you never mentioned to the government any
15 involvement of Jerry O'Hara in getting the APIBAL file from
16 Haresh?

17 MR. ZACH: Objection.

18 THE COURT: You can reformulate.

19 MR. MEHLER: Okay.

20 Q. Isn't it true that when you first told the government about
21 your work in getting the APIBAL file after the meeting with
22 Madoff in 2006, between you, Madoff, Jerry and George, you
23 never mentioned any involvement by Jerry O'Hara in
24 accomplishing that? True?

25 A. I don't recall exactly what was discussed when I spoke to

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1 the government about Haresh giving me the APIBAL file.

2 Q. Isn't it true, sir, that Jerry O'Hara had no involvement
 3 whatsoever in special programs after the meeting with Bernie
 4 Madoff? Isn't that true, sir?

5 A. Short of writing the architecture that let me do it, that
 6 would be true.

7 THE COURT: It's 3:00, Mr. Mehler.

8 MR. MEHLER: Okay. I'm out of time. We'll have to
 9 finish tomorrow. Thank you.

10 THE COURT: This concludes our presentation of
 11 evidence for today. We will resume tomorrow morning. Members
 12 of the jury, I'll give you your end-of-the-day instructions.
 13 Do not speak or communicate in any way in person,
 14 telephonically or electronically with anyone else about the
 15 case, or anything or anyone having anything to do with it.
 16 Keep your own thoughts to yourselves. Do not discuss the case
 17 with each other.

18 Do not read or listen to any media coverage or
 19 anything anyone writes or says outside of the courtroom about
 20 the case or anything or anyone having anything to do with it.
 21 If anyone is speaking about these things in your presence,
 22 politely move away, and if anyone tries to speak to you, tell
 23 them politely that the judge has instructed you that you must
 24 not discuss the case or anything or anyone having anything to
 25 do with it.

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1 Do not do any research or investigation on your own.
2 Leave your notes in the jury room, in the envelopes provided,
3 and leave your access cards with Ms. Ng and sign for them if
4 you haven't done so already. Please be ready in the jury room
5 tomorrow morning at 9:15. Thank you for your work with us
6 today. Safe home, safe return. All rise.

7 Ms. Ng, would you kindly escort the jury out.

8 (Jury exits)

9 Mr. DiPascali, you may step down, and the instruction
10 I gave you continues to apply.

11 THE WITNESS: I understand. Have a good evening.

12 THE COURT: Thank you. We'll see you tomorrow.
13 Tomorrow morning at 9:00?

14 MR. KRANTZ: Thank you, your Honor.

15 THE COURT: We'll see you then. Have a good evening.
16 We're adjourned.

17 (Adjourned to January 14, 2014, at 9:00 a.m.)
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Recross By Mr. Mehler7062

PLAINTIFF EXHIBITS

Exhibit No.	Received
101-57I6944

DEFENDANT EXHIBITS

Exhibit No.	Received
AB20A, 20B and 20C7056
AB197046