

Exhibit 4

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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.
December 10, 2013
9:12 a.m.

Before:

HON. LAURA TAYLOR SWAIN

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
MATTHEW L. SCHWARTZ
RANDALL W. JACKSON
JOHN T. ZACH
Assistant United States Attorneys

GORDON MEHLER
SARAH LUM
Attorneys for Defendant O'Hara

LARRY H. KRANTZ
KIMBERLY A. YUHAS
Attorneys for Defendant Perez

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APPEARANCES

ANDREW J. FRISCH

GARY VILLANUEVA

AMANDA BASSEN

Attorney for Defendant Bonventre

ROLAND G. RIOPELLE

Attorneys for Defendant Bongiorno

ERIC R. BRESLIN

MELISSA S. GELLER

Attorneys for Defendant Crupi

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(Trial resumed; jury not present)

THE COURT: Good morning. Please be seated. Good morning, Ms. Crupi, Mr. Perez, Mr. O'Hara, Ms. Bongiorno and Mr. Bonventre.

(Appearances noted)

I received yesterday Mr. Frisch's letter on the exhibits issue. Will I have a letter from the Perez/O'Hara contingent?

MR. MEHLER: Yes, you will. My office manager, Ben, will be filing it this morning subject to all concerns; so you should have that today.

THE COURT: Thank you. And so perhaps tomorrow, Mr. Schwartz, you'll let me know when I can expect something from the government?

MR. SCHWARTZ: Absolutely.

THE COURT: Thank you. And on the exhibit procedures, have the defendants had a chance to confer and formulate any positions I need to know about?

MR. KRANTZ: Your Honor, I confess we forgot to confer; so we'll do that today. And we can do it right now if the jury is not here or --

THE COURT: I saw one came in; so you can do it later today and let me know --

MR. KRANTZ: During the lunch break.

THE COURT: -- tomorrow morning, but if you have to

1 tomorrow morning, I'll have to completely reconceptualize and
2 start from the drawing board.

3 MR. KRANTZ: That's what I'm going to tell you from
4 someone else.

5 THE COURT: Fair enough. If I hear an order for
6 Kevlar going out... Okay. Is there anything else that we need
7 to talk about together? Mr. Zach?

8 MR. ZACH: Your Honor, very briefly. Mr. Breslin had
9 raised an objection yesterday and we conferred, and we said
10 that we would speak over the night and we've reached an
11 agreement on it. We've agreed that a sentence of
12 Mr. DiPascali's testimony can be stricken.

13 I'll read into the record now what that sentence would
14 be. It's on transcript Page 5130, beginning at Line 9, and
15 it's the sentence that begins "She's referencing it BLM special
16 because," and it goes on to Line 10 and 11. So that sentence
17 there can be stricken.

18 THE COURT: So ordered.

19 MR. BRESLIN: Thank you, your Honor.

20 THE COURT: Thank you. All right. Ms. Courtney,
21 would you check on the jury. And good morning to the family
22 members. And I understand that a call has been put in about
23 the heat; so soon it will be cold, and then later it will be
24 hot. So you know we try for variety since we can't achieve
25 consistency.

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1 THE LAW CLERK: They're all here.

2 THE COURT: Okay. Are we all ready to proceed? Okay.
3 We have to get Mr. DiPascali. Is he in the vicinity?

4 MR. ZACH: Give me one moment. I believe he is.

5 (Pause)

6 Your Honor, he's on his way up; so we need maybe one
7 minute.

8 THE COURT: All right. So let's just wait a minute or
9 two.

10 (Pause)

11 Good morning, Mr. DiPascali.

12 THE WITNESS: Morning.

13 THE COURT: All rise.

14 (Jury enters)

15 THE COURT: Good morning, ladies and gentlemen of the
16 jury. Please take your seats. Please be seated, everyone.
17 Mr. Zach.

18 MR. ZACH: Thank you, your Honor.

19 FRANK DIPASCALI,

20 called as a witness by the Government,

21 having been previously duly sworn, testified as follows:

22 DIRECT EXAMINATION (Resumed)

23 BY MR. ZACH:

24 Q. Mr. DiPascali, yesterday you were testifying about an SEC
25 investigation out of New York in which the SEC was looking into

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DiPascari - direct

1 the investment advisory business; do you recall that?

2 A. I do.

3 Q. And yesterday you testified about a series of forms that
4 were whited out and were used to make it look like Mr. Madoff
5 had no discretion in trading his clients' securities; do you
6 recall that?

7 A. Yes, I do.

8 Q. And you also testified yesterday about having discussions
9 with an attorney, Mr. Becker, about whether or not Madoff
10 Securities needed to register as an investment advisor with the
11 SEC; do you recall that?

12 A. Yes.

13 Q. What types of conversations did you have with Mr. Becker
14 relating to filing paperwork that would make -- would register
15 Madoff Securities as an investment advisor?

16 A. Bernie had explained to me that Mr. Becker needed to get a
17 complete understanding of how the mechanism of the trading
18 strategy was executed. So my role was to explain in very
19 graphic detail this trading model called MA206, and if
20 Mr. Becker could get an understanding of the trading model and
21 how these orders were generated in this model.

22 And at every step of the way I was careful to
23 illustrate the fact that the Madoff firm did not make a lot of
24 decisions during that process, if any, the model itself and the
25 progression of how we are saying these trades happened would

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1 paint a clear picture to Mr. Becker. And Bernie explained to
2 me that he assumed if Becker had a very clear understanding,
3 then he would legally conclude that we didn't have discretion
4 and could be -- would be willing to visit the New York regional
5 office and sit down with the staff there and explain our firm's
6 position as our attorney and the problem would go away. So
7 that's what I did.

8 Q. Now, you didn't tell Mr. Becker that there was -- all the
9 trading was fake in the investment advisory business, did you?

10 A. No.

11 Q. Now, did there come a time that Madoff Securities actually
12 did register as an investment advisor?

13 A. Yes.

14 Q. And did they have to file paperwork as part of that?

15 A. Yes.

16 Q. Did you review that paperwork that was -- Did you see that
17 paperwork that was being filed?

18 A. Yes.

19 Q. I'd like to show the witness, the Court and defense counsel
20 what's been marked for identification as Government
21 Exhibit 600-67. And, Mr. DiPascali, do you recognize this
22 document?

23 A. I do.

24 Q. What is it?

25 A. It's form ADV it's the form necessary to register as an

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1 investment advisor with the SEC.

2 Q. And I'd like to now show that same group Government
3 Exhibit 600-68. Do you recognize what this document is?

4 A. Yes.

5 Q. What is it?

6 A. It's a series of questions relating to the same form.

7 MR. ZACH: The government offers both Government
8 Exhibit 600-67 and 600-68.

9 THE COURT: Is there any objection?

10 MR. BRESLIN: No objection.

11 MR. RIOPELLE: No objection.

12 MR. FRISCH: No objection.

13 MR. KRANTZ: No objection.

14 MR. MEHLER: No objection.

15 THE COURT: Government Exhibits 600-67 and 600-68 are
16 received in evidence and they may be displayed.

17 (Government's Exhibits 600-67 and 600-68 received in
18 evidence)

19 MR. ZACH: Thank you, your Honor.

20 BY MR. ZACH:

21 Q. Can we display Government Exhibit 600-67. Just generally,
22 what is this form?

23 A. It's a form ADV.

24 Q. And what is the purpose of this form?

25 A. My understanding is that, according to the Investment

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1 Advisor's Act of 1940, if you conduct your business a certain
2 way, according to regulation, you need to register with the SEC
3 that you are indeed doing that. It's a disclosure form
4 declaring that this is the business I'm in, this is the scope
5 of this business, and at that point, you are registered as an
6 advisor and need to abide by the rules that an investment
7 advisor would have to abide by.

8 Q. And can we go to the next page, Miss Baskin. Now, all of
9 this paperwork was -- all of the information that was supplied
10 in this form was sent to the SEC, right?

11 A. I believe it was.

12 Q. Can we go to the next page. Now, as part of this form, did
13 you disclose -- did Madoff Securities disclose the entire scope
14 of the investment advisory business?

15 A. No.

16 Q. We can take it down, Miss Baskin. What did they disclose?

17 A. They disclosed that they were acting as advisor for a very
18 small subset of the overall client list.

19 Q. And how was this subset selected?

20 A. By Bernie.

21 Q. Were these similar to the special -- the list of special
22 clients that had been -- we've been talking about over the last
23 few days?

24 A. Very similar.

25 Q. Okay. Now, did you have any concerns once this form ADV

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1 was filed?

2 A. Yes.

3 Q. What were some of the concerns you had?

4 A. It would subject us to another set of scrutiny.

5 Q. What type of scrutiny were you concerned about?

6 A. I wasn't even sure. I made the assumption that if you are
7 a registered broker-dealer, you will subject yourself to the
8 investigations that the SEC or the NASD, subsequently FINRA,
9 could impose upon a broker-dealer. And I assume that if you
10 were now registered as an investment advisor, there would be a
11 second or an enhanced set of scrutiny because of that fact,
12 because of the advisory capacity.

13 Q. Now, Mr. DiPascali, as part of this SEC investigation, did
14 there come a time that you learned that the SEC wanted to take
15 your testimony?

16 A. Yes.

17 Q. How did you learn that?

18 A. Bernie came down with a letter, I believe, from Simona Suh,
19 the staff attorney at the SEC regional office.

20 Q. And what did he say to you?

21 A. They want you to testify.

22 Q. How did you react to that?

23 A. I wasn't happy.

24 Q. What was your understanding of what you had to testify
25 about?

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Bifascall - direct

1 A. They wanted a clear explanation from myself as to how the
2 system operated. In effect, I would be testifying to the same
3 stuff I had subsequently explained to Mr. Becker, how the
4 trades were handled.

5 Q. Did you take steps to prepare for that testimony?

6 A. Yes.

7 Q. Who did you speak to about what you were going to say to
8 the SEC?

9 A. Spoke to Bernie at length. He prepped me for the
10 testimony. I had conversations with Jodi about what was coming
11 down the pike, and then I testified.

12 Q. What sorts of things did Mr. Madoff say to you in
13 connection with this SEC testimony and what he wanted you to
14 say?

15 A. He didn't want this thing to go beyond me and possibly him.
16 So he wanted me to place, at every opportunity I could during
17 my testimony, him in a position. So they asked me certain
18 questions about who was responsible for this at the firm and
19 who was responsible for that at the firm and so on and so
20 forth, and I answered Bernie Madoff. And that was to place the
21 burden on him and not open a situation up where, you know, a
22 parade of employees are then subsequently questioned.

23 Q. Now, you'd previously described this trading system. I
24 think you referred to it as MA206, or something like that; do
25 you recall that?

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1 A. Yes.

2 Q. Was that to be a component of your testimony?

3 A. I believe it was the main component.

4 Q. And remind the jury again what this trading platform
5 purported to be?

6 A. It was a made-up name given to an imaginary platform.

7 Q. And was there extensive sort of documentation produced on
8 the 17th floor for this?

9 A. Oh, yeah.

10 Q. And did that documentation reflect in any way the
11 procedures that the 17th floor actually engaged in in doing its
12 fake trading?

13 A. Very little, if any.

14 Q. And as you produced that, was Ms. Crupi right next to you?

15 A. In the room.

16 Q. Now, was this -- did there come a time that you actually
17 went to the SEC to give testimony?

18 A. Yes.

19 Q. Where did you go?

20 A. Down in the World Trade Center complex, Financial Center.

21 Q. And before you went, did you tell Ms. Crupi about the
22 strategies that you and Mr. Madoff had come up with in dealing
23 with this testimony?

24 A. We had some conversation about it, yes.

25 Q. And when you went to the SEC, where in the building did you

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1 go? Was it a conference room, an office? Set the stage.

2 A. There was a series of security checks, and I wound up in a
3 reception area. I don't remember what floor of the SEC
4 regional office. I met a fellow that was sitting there also
5 waiting in that reception area, who initially I didn't
6 recognize. And he started conversation by saying, You don't
7 remember who I am, do you? And I looked at his face, and I
8 still didn't remember who he was.

9 He happened to be Peter Lamone, the fellow that was in
10 the office for a number of weeks on the 18th floor -- 19th
11 floor doing the SEC audit. I didn't realize at the time that
12 he was there for me, and then I got introduced to Simona Suh
13 and Meaghan Cheung, two staff attorneys. I believe Ms. Cheung
14 introduced herself as like the more senior person, and we
15 paraded into a conference room. And much to my surprise, Peter
16 Lamone was walking right behind me; so it was Peter Lamone,
17 Meaghan Cheung, Simona Suh and then at the head of the table on
18 my right was a court reporter, and I sat on the opposite side
19 of the conference room facing those two attorneys and one SEC
20 guy.

21 Q. And when you referenced Peter Lamone, is that one of the
22 individuals whose briefcase Bernie Madoff had looked through?

23 A. Yes.

24 Q. Now, when you sat down, did you -- did you swear that you
25 were going to tell the truth when the deposition began?

1 A. I did.

2 Q. And when they started asking questions, did you tell the
3 truth or did you lie?

4 A. I lied.

5 Q. How much did you lie?

6 A. The entire episode was a fabrication.

7 Q. Why were you lying?

8 A. Because none of the trades that I was taking about in this
9 trading model ever occurred. In fact, the trading model itself
10 didn't exist, and they were asking me very pointed questions
11 about the trading model. Certain questions they asked me I
12 didn't lie about, like, where were you born, but the majority
13 of the questions went to the trading model and how that
14 business was conducted, and all of it was made up.

15 Q. Now, I'd like to show for the witness and the Court and
16 defense counsel what has been marked as 3501-33. Can we
17 just -- Mr. DiPascali, would you just read the title page for
18 this. And, Ms. Baskin, can you scroll through a few pages. Do
19 you recognize what this is, Mr. DiPascali?

20 A. Yes.

21 Q. What is it?

22 A. Looks to be the transcript of my testimony.

23 MR. ZACH: Your Honor, the government offers 3501-33.

24 THE COURT: Any objection?

25 MR. KRANTZ: No objection, your Honor. I just need to

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1 ask Mr. Zach a question.

2 THE COURT: Certainly.

3 (Counsel conferring)

4 MR. ZACH: Your Honor, we move in 3501-33 and any
5 attendant exhibits that were referenced in the testimony.

6 THE COURT: So the transcript and any exhibits that
7 were referenced in the testimony?

8 MR. ZACH: Yes.

9 THE COURT: Is there any objection to that tender of
10 that transcript and any exhibits referenced therein?

11 MR. KRANTZ: No objection.

12 MR. MEHLER: No objection.

13 MR. BRESLIN: No objection.

14 MR. RIOPELLE: No objection.

15 MR. FRISCH: No objection.

16 THE COURT: Government Exhibit 3501-33, consisting of
17 the transcript and referenced exhibits are admitted into
18 evidence.

19 MR. ZACH: Thank you, your Honor.

20 (Government's Exhibit 3501-33 received in evidence)

21 BY MR. ZACH:

22 Q. Now, let's turn to Page 28 of this. Now, you see,
23 Mr. DiPascali, that around -- do you see the number 27 and
24 there's a number 2, Line 2 below that, and there's a question:
25 "Is that a name -- is that a name we could refer to it as?"

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1 And you answer: "MA206." Do you see that?

2 A. I do.

3 Q. What is MA206?

4 A. A fantasy trading platform.

5 Q. So, and then after you answer MA206, you don't have to read
6 through it all, but you see the next question: "This Eureka
7 idea who came up with it?" And, Ms. Baskin, can we just sort
8 of go to the next page. Just scan that, Mr. DiPascali.

9 A. I'm not sure what you want me to read here.

10 Q. Well, you're describing MA-206, right?

11 A. I am.

12 Q. And do you see how you go on and testify about what you're
13 calling MA206? Do you see that? Is anything that you're
14 saying here true?

15 A. No.

16 Q. So in the --

17 THE COURT: You're referring to the text on Pages 27
18 and 28 of the transcript?

19 MR. ZACH: Yes. Yes, your Honor.

20 Q. We don't need to read through this, but did you explain
21 this fake trading system to the SEC?

22 A. I did.

23 Q. And when you did it, did you know that you were lying to
24 them?

25 A. Yes.

1 Q. Now, because there was no actual trading system, was there?

2 A. No, there wasn't.

3 Q. Now, I'd like to go back to Page 10 of the PDF, and you see
4 at the top or at Line 22, you say: This is probably the summer
5 of 1975 I started with the firm, oddly enough, on 9-11-75?

6 A. Yes.

7 Q. That's -- You're telling them when you started at the firm;
8 is that right?

9 A. That's correct.

10 Q. And then they ask a question about Mr. Madoff's secretary,
11 Annette Argese; do you see that?

12 A. I do.

13 MR. RIOPELLE: Objection. The government doesn't use
14 the name Annette Argese. Read the question.

15 MR. ZACH: I'm sorry.

16 Q. There's a question that says: "Let's go back to the name
17 of Mr. Madoff's secretary," and the answer is -- your answer
18 is: "Annette Argese." Do you see that?

19 A. Yes.

20 Q. And then do you see you say she is no longer with the firm?

21 A. Yes.

22 Q. Was she with the firm at this time?

23 A. Yes.

24 Q. Is that a lie?

25 A. Yes.

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1 Q. And then you say: She may be with the firm on a part-time
2 basis. Do you see that?

3 A. Yes.

4 Q. Did you have it -- Was there any question in your mind
5 whether or not she was still with the firm?

6 A. She was with the firm.

7 Q. And by the way, what role did Ms. Bongiorno play at Madoff
8 Securities? What role did she have at Madoff Securities?

9 A. She was in charge of a segment of Bernie's customer
10 accounts.

11 Q. Was she the secretary at Madoff Securities?

12 A. No.

13 Q. Now, let's turn to Page 67 of the PDF, if we can, and I'd
14 like, Ms. Baskin, if you can, can you highlight Line 21, starts
15 "but" and the next three lines under that. Yes. And can you
16 blow that up, please.

17 And here you say: "But you're not in the market all
18 the time, you're only in the market to pick up this volatility
19 that you are anticipating occurring." Do you see that?

20 A. I do.

21 Q. Does that refer to the purported split-strike trading
22 strategy?

23 A. It does.

24 Q. And was there any actual real trading going on in the
25 split-strike trading strategy?

1 A. None at all.

2 Q. And when you're telling them that you're going in the
3 market all the time, is that a lie?

4 A. Yes.

5 Q. Isn't it a fact, Mr. DiPascali, that this entire transcript
6 is filled with lies?

7 A. It is filled with lies.

8 Q. I'd like to draw your attention to Page 110 of this
9 deposition transcript, and can you blow up the bottom Q and A
10 starting with Line 23 and going all the way to the bottom,
11 Ms. Baskin. Here, the SEC attorney says: "I want to switch
12 gears and talk about the customers in the institutional
13 business. What kind of customers does this business have? Who
14 are they?" The answer is: "Who are they? I guess there is
15 about 20, the largest of which would be Fairfield."

16 Is that true?

17 A. No.

18 Q. How many customers did Madoff Securities actually have?

19 A. Around 4,000.

20 Q. And why is it that you're saying they only have 20?

21 A. I needed to be consistent with what Bernie was explaining
22 to the world when he disclosed other documents to the SEC.

23 Q. Now, heading back to PDF Page 104, Ms. Baskin, can we blow
24 up Line 21 through Line 23. In responses to a question, you
25 say: "I don't know who the senior person would be that would

1 be the back office guru." Do you see that?

2 A. I do.

3 Q. Is that true?

4 A. No.

5 Q. Did you know who the back office guru was?

6 A. Yes.

7 Q. Who was it?

8 A. Dan Bonventre.

9 Q. Now, why are you lying about that?

10 A. Because I was told to put everything on Bernie.

11 Q. And why were you lying about whether or not Ms. Bongiorno
12 worked at the firm?

13 A. For the same reason.

14 Q. Now, I'd like to turn to -- this is the last one -- to
15 Page 129, and can we blow up Line 22, going down to Line 1.

16 Now, the question you're asked by the SEC is: "To
17 your knowledge, are there any aspects of the business that give
18 you concern that maybe something improper is going on?"

19 Do you see that?

20 A. I do.

21 Q. And you answer: "No, no. The guy is the straightest
22 shooter in the world." Do you see that?

23 A. I do.

24 Q. Who's the "guy" that you're referring to?

25 A. Bernie.

1 Q. Was Bernie Madoff the straightest shooter in the world?

2 A. Certainly not.

3 Q. Was that a lie?

4 A. Absolutely.

5 Q. All right. We can take that down. Now, Mr. DiPascali,
6 after you walked out of that deposition, where did you go?

7 A. Back to the office.

8 Q. And who did you meet with back at the office?

9 A. Bernie.

10 Q. What did you talk about?

11 A. We had a debriefing.

12 Q. And what was the debriefing about?

13 A. He wanted to know every word that it was -- that I could
14 remember that was said during this testimony, both their
15 questions and my answers.

16 Q. And in this deposition transcript -- one second. And how
17 long did that debriefing go on for?

18 A. A couple hours.

19 Q. Did you speak to Ms. Crupi about what had gone on in the
20 deposition?

21 A. Yes.

22 Q. What did you tell her?

23 A. Basically the flavor of what they asked and what my
24 responses were and that it, in my opinion, went well.

25 Q. And what did you mean by it went well?

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1 A. I literally said I thought they bought it.

2 Q. And what is it that they -- Who is the "they" in the "they
3 bought it"?

4 A. The SEC New York regional office attorneys.

5 Q. And what did they buy?

6 A. The BS I told them.

7 Q. Now, in addition to your testifying to the SEC, did anyone
8 else from Madoff Securities testify in connection with this
9 investigation?

10 A. Bernie Madoff did.

11 Q. Did Mr. Madoff discuss with you what he was going to say in
12 his testimony?

13 A. Not in graphic detail. In general terms.

14 Q. Do you know whether or not he actually testified?

15 A. I believe he did.

16 Q. Okay. And after you testified and after Mr. Madoff
17 testified, what eventually happened to this inquiry by the SEC?

18 A. I don't remember if there was any follow-up correspondence
19 that requested additional documents. There were a number of
20 requests and a number of responses. I don't remember the
21 chronology of before or after the testimony.

22 But within a relatively short period of time, Bernie
23 stopped discussing this with me, and specifically about this
24 investigation. And we had a brief conversation once about, I
25 don't know whether they're done with this or not. You'll

1 probably never know because that's something they typically
2 don't do, and that was that.

3 Q. Now, prior to going to your deposition, did you tell
4 Mr. Perez and Mr. O'Hara that you were being deposed by the
5 SEC?

6 A. Yes.

7 Q. Okay. And after you came back from your deposition, did
8 you tell them that you had gone to the SEC and given testimony?

9 A. Yes.

10 Q. And as part of that conversation -- and was this testimony
11 in connection with that same SEC investigation for which they
12 had worked on making the internal false documents for Madoff
13 Securities?

14 A. It was.

15 Q. Now, I'd like to step back for a moment and go back to the
16 first SEC investigation, the one from Washington.

17 A. Mmm, hmm.

18 Q. The one we were just talking about was the third SEC
19 investigation that you dealt with in the short period of time,
20 correct?

21 A. That's correct.

22 Q. Let's go back to the one from Washington, D.C. When did
23 that occur?

24 A. Very early 1994.

25 Q. And what year?

1 A. I'm sorry, 2004.

2 Q. And after that was over, do you recall whether or not you
3 provided compensation to Mr. Perez and to Mr. O'Hara?

4 A. I do.

5 Q. Okay. Do you recall how you provided that compensation?

6 A. I paid them 100,000 or roughly thereabouts each.

7 Q. Did you tell them why you were paying them roughly \$100,000
8 each?

9 A. Because they had been doing a good job for us.

10 Q. A good job in connection with what?

11 MR. KRANTZ: Objection.

12 MR. MEHLER: Objection.

13 THE COURT: Please consult.

14 (Counsel conferring)

15 MR. MEHLER: Resolved.

16 Q. Well, let me show you -- What work had they been doing for
17 you in the year 2004?

18 A. Supporting the AS/400 and its day-to-day problems that
19 would arise and writing special programs to address particular
20 issues that came up, one of which was the audit of Washington
21 SEC office.

22 Q. And why did you pay them this \$100,000?

23 A. Because they had done a great job up to that point.

24 Q. Let me show you -- well, let me --

25 MR. ZACH: At this point, the government would move

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1 into evidence Government Exhibits 101-114 and 101-12.

2 MR. BRESLIN: No objection.

3 MR. RIOPELLE: No objection.

4 MR. FRISCH: No objection.

5 MR. KRANTZ: No objection.

6 MR. MEHLER: No objection.

7 THE COURT: Government Exhibits 101-114 and 101-12 are
8 admitted in evidence.

9 MR. ZACH: Thank you, your Honor.

10 (Government's Exhibits 101-114 and 101-12 received in
11 evidence)

12 Q. And let's start with Government Exhibit 101-12. Can we
13 blow up the text of this and redact personal information. What
14 type of document --

15 THE COURT: Redact the address as well.

16 MR. ZACH: Oh, sure.

17 Q. What type of document is this?

18 A. It's a printout of a customer statement.

19 Q. For whose account?

20 A. Jerome and Bernadette O'Hara.

21 Q. And who processed or who caused the transactions
22 purportedly to happen on this document to enter the account?

23 A. I did.

24 Q. Explain what this document shows?

25 A. The in-coming balance on the document is zero and that, in

1 conjunction with other information, one could determine that
2 it's the first statement of account for this new account
3 October '04 for that Jerome and Bernadette O'Hara. The first
4 order of business in the account is a journal credit of
5 \$116,950 and it's referenced transferred from 10001880, and
6 that is the entry that establishes the first capital addition
7 to the account. It's in the form of a journal credit.

8 And then, with that money, a position in treasuries
9 was bought, a ticket for treasuries was written, and another
10 ticket for Fidelity was entered, which then ate up the entire
11 balance so that when you see the new balance figure, it is
12 again zero. And then the residual positions in this account at
13 the end of that period would, therefore, be the Fidelity
14 position you previously bought of 17,284 and \$100,000 piece of
15 treasuries with a maturity of December 16th of '04.

16 So the account was funded with the transfer. A
17 treasury and a Fidelity instrument were purchased. It, at that
18 point, had no more cash and had a treasury and a Fidelity
19 instrument in position.

20 Q. And what did that have the net effect of doing?

21 A. It increased the assets of Jerome and Bernadette O'Hara by
22 \$117,053.

23 Q. Now, did this account exist before this transfer was made?

24 A. I don't think it did, no.

25 Q. And what is a journal credit?

1 A. It's the first credit to an account. It's as a -- it is --
2 it as an almost interchangeable word with capital addition.
3 It's an addition of capital to the account, but when you code
4 it as a journal credit or a JC, it signifies that it could be
5 the first capital addition to the account. Typically when I
6 see something like that, I can recognize that this account
7 started with that transfer.

8 Q. And can we highlight "trans from" and then the numbers,
9 Ms. Baskin. Thank you. The transfer from the account ending
10 in 80; do you see that?

11 A. I do.

12 Q. What account is that that's ending in the 80?

13 A. It's a related account of Jerome and Bernadette O'Hara.
14 When we open an account for a client, the first six characters
15 is truly the account number. The last two characters are the
16 account type. So this is the 80 type of account 018 and 018 is
17 Jerry and Bernadette's account.

18 Q. Now, did that account exist -- now, this is a separate
19 account from the account that we're looking at, the 1830
20 account, right?

21 A. Correct. It's an entirely different account type. The one
22 we're looking at is an account type 30. This journal came from
23 account type 80.

24 Q. Did that 80 account actually exist?

25 A. 80 account codes hadn't been used for a very long time

1 except for very specific purposes. This was one of them.

2 Q. Now, when was this money placed in Mr. O'Hara's account?

3 A. October 1st, 2004.

4 Q. Let's take that down and let's look at Government
5 Exhibit 101-114. Can we blow that up, please, and before we
6 do, redact that information. Now, do you recognize what we're
7 looking at here, Mr. DiPascali?

8 A. Yes. It's a printout of an account statement.

9 Q. Whose account is this for?

10 A. George and Jeanette Perez.

11 Q. And when is this dated?

12 A. Period ending October 31st, '04.

13 Q. Is that the same period that we just looked at for
14 Mr. O'Hara's account?

15 A. It is.

16 Q. Now, again, you see it starts with no balance forward?

17 A. Correct.

18 Q. And below that is another journal entry?

19 A. Correct.

20 Q. Can we highlight the trans in the journal entry,
21 Ms. Baskin. Where is -- where is this journal entry coming
22 from?

23 A. This was set up identically to the other one. There's a
24 transfer from P011180. The 80 is the account type of the
25 George and Jeanette Perez account. And the money is moving

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DiPascali - direct

1 into this account that we're looking at, which is P11130.

2 Q. Now, did this 30 account exist before this was opened?

3 A. I don't believe it did.

4 Q. And that 80 account where the money is being transferred
5 from, did that exist?

6 A. No.

7 Q. And for both of these accounts is any of the securities
8 trading real?

9 A. No.

10 Q. It's just they now have a credit in account?

11 A. Correct.

12 Q. Now, you can take that down. Now, Mr. DiPascali, last week
13 you mentioned that in the initial discussions with respect to
14 this first SEC investigation out of Washington, that you were
15 trying to fool the computer guys; do you remember that?

16 A. I do.

17 Q. And were you referring to Mr. O'Hara and Mr. Perez as the
18 computer guys?

19 A. I was.

20 Q. Now, Mr. DiPascali, were you trying to fool the computer
21 guys the entire time you worked with them on the false
22 documents?

23 MR. KRANTZ: Objection.

24 MR. MEHLER: Objection.

25 THE COURT: Please consult.

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MrPascal - direct

1 (Counsel conferring)

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

3 THE COURT: All right. Please wait quietly. We'll

4 return shortly.

5 (Continued on next page)

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1 (In the robing room.)

2 MR. KRANTZ: Sorry, your Honor, to take us into the
3 robing room again, but this is, obviously, a very important
4 subject in terms of our defense. The problem that I have with
5 Mr. Zach's question is that, to my way of thinking, what this
6 jury is entitled to hear from the government is what was said
7 to Mr. Perez and Mr. O'Hara at any relevant point in the case,
8 what was shown to them, what they did, and the jury will have
9 to determine if they had guilty knowledge or not.

10 The government by asking, did you fool them for the
11 whole time, is now inviting the witness to say, no, I stopped
12 fooling them at some point in time because I, the witness, came
13 to a mental view that I no longer had to fool them, or
14 something along those lines.

15 THE COURT: Well, first of all, I believe the question
16 was were you trying to --

17 MR. ZACH: Yes.

18 THE COURT: -- fool them. So the question went to
19 Mr. DiPascali's intention, the extent of it.

20 MR. ZACH: Yes, exactly. That's the exact question I
21 asked.

22 MR. KRANTZ: His intention, respectfully, is not
23 relevant to their knowledge. What's relevant to their
24 knowledge is what they were told, what they were shown, what
25 they did. The witness' intention is not relevant and is highly

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1 prejudicial because it is inherently an opinion on the
2 defendant's state of mind and the necessity of lying to them,
3 which is precisely what he cannot do.

4 So, in my opinion, it may not be this exact question,
5 but I know we're going there; so we may as well get it all out
6 here. In my opinion, the government should be -- hew very
7 close here what was said to them rather than what the witness'
8 thinking was as to what he did or didn't have to do based on
9 his opinion of what they might have figured out or not.

10 MR. MEHLER: And it's going to be just two or three
11 questions before we hear from Mr. DiPascali, I didn't have to
12 fool them anymore because they knew.

13 MR. KRANTZ: Which is in the 3500 material.

14 MR. MEHLER: Exactly.

15 MR. ZACH: A couple of responses. First,
16 Mr. DiPascali's intention is directly relevant to the
17 conspiracy count. He was very clear that he tried to deceive
18 them. Right? So when I asked him, you know, were you -- let
19 me get the exact, because I actually wrote the question very
20 carefully. Were you trying to deceive them? It's directly
21 relevant to whether the conspiracy sort of coheres.

22 Now, what he's going to say, what I expect him to say,
23 is, yes, I absolutely was trying to deceive them in the
24 beginning, but over time, I no longer tried to do that anymore
25 because I would look ridiculous because we had to keep going

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DiPascali - direct

1 back and forth. It goes directly to his intention. That
2 intention is directly relevant to the conspiracy charge.

3 So they want to keep the part where his intention says
4 I'm deceiving them, but they don't want the part where his
5 intention is saying I'm joining with them in a conspiracy, and
6 that goes directly to the heart of the case.

7 THE COURT: Briefly.

8 MR. MEHLER: Yes. If the Court has any doubt about
9 the problem that the government has here, recall when this
10 first was raised and Mr. Zach's question was very illuminating.
11 The question was, did you tell them the whole truth, rather
12 than, did you lie to them, did you mislead them.

13 The evidence will show that it took years for
14 DiPascali to finally admit to the government that, yes, I did
15 fool them. That's certainly not in the early 3500, and the
16 idea that they will now be able to cure that by having
17 DiPascali opine on their intent to get out of this hole that
18 might have resulted in them not being indicted at all, is to
19 not be overstated in terms of its importance.

20 THE COURT: All right. The objection is overruled.
21 DiPascali can testify as to what he was seeking to do.
22 However, at no time can you illicit testimony as to DiPascali's
23 perception of O'Hara and Perez's understanding or intent. And
24 so I was trying to fool them, then I was trying to fool them, I
25 was trying to fool them. At some point, did you stop trying to

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1 fool them. Yes. You cannot say why and elicit the answer, oh,
2 because they knew.

3 MR. ZACH: Yes, Judge. I wasn't intending to do that.
4 I have -- the question I asked was, you know, were you trying
5 to fool them the entire time you worked with them on false
6 documents? And he's going to say, no. And then I'm going to
7 say, how did your interactions that you had with them, things
8 that you said to them, change over time?

9 MR. KRANTZ: Your Honor, if I may. The problem with
10 the proffer, and consistent with your Honor's ruling which I
11 accept, is the portion, I no longer tried to deceive them, is
12 consistent with your Honor's ruling, but when Mr. Zach then
13 says, because it would have been silly of me, given that they
14 were doing this and that I would have looked foolish, that's an
15 indirect opinion about their state of mind, and that's where
16 the line should be drawn.

17 In other words, he can say, given your Honor's ruling,
18 I stopped trying to fool them, but he can't explain the inner
19 workings of his mind as to why he did that because that's
20 speculating as to their state of mind.

21 MR. ZACH: No, it's not. That's not accurate. This
22 is about a conspiracy between Mr. DiPascali and Mr. Perez and
23 Mr. O'Hara. Mr. DiPascali said, I tried to deceive them in the
24 beginning. He -- over time, he stopped trying to deceive them.
25 He didn't do -- the reason he stopped trying to deceive them is

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1 because he realized, given the requests he was making to them,
2 that he felt that he could no longer colorably lie to them
3 without looking ridiculous. That's why he stopped, which it
4 goes to the heart of why he had to sort of bring them in and be
5 more straightforward to them. It goes to the heart of why they
6 came closer and closer into the circle of the conspiracy.

7 MR. JACKSON: And, your Honor, we understand the
8 Court's ruling. Mr. Zach will cut Mr. DiPascali's answer off
9 to the extent that it at all crossed over into what you're
10 talking about, your Honor, which is, of course, he can't opine
11 on, one, the state of mind of Mr. O'Hara and Mr. Perez, but
12 that doesn't -- but we can elicit this without him -- without
13 him going into that, and he's going to go into his own state of
14 mind and cut the witness off if he goes there.

15 MR. BRESLIN: Your Honor?

16 MR. KRANTZ: That is opining on it.

17 MR. BRESLIN: This will inevitably come up. Then the
18 next question that the government proffers where the witness
19 will then characterize the interactions that take place after
20 he stops trying. I think that, again, jumps afoul of your
21 Honor's ruling because now he's characterizing their
22 interactions and again indirectly opining as to the state of
23 mind of either O'Hara, Perez or, I assume, Crupi once we get
24 there.

25 THE COURT: Give me an example of what you are

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DiPascali - direct

1 anticipating in terms of a characterization.

2 MR. BRESLIN: I don't know. I don't know what he will
3 say, but in my view, any characterization or description by the
4 witness as to how the interactions then changed -- interactions
5 presupposes an exchange, you know. An exchange between two
6 people, that is what an interaction is, and if that is the
7 case, if he is going to characterize the interactions between
8 either Perez and O'Hara and the government or Crupi and the
9 government, he is talking about their state of mind.

10 THE COURT: DiPascali can talk about his own state of
11 mind but not about his perceptions of other people's state of
12 mind. That is a very fine and delicate line, and that does go
13 to the heart of the issues that the government has to prove and
14 the issues that the defense intends to focus on.

15 It's in the nature of the charges. It's in the nature
16 of what happened. That's why we're all here, and so we do have
17 to police the line. And he is a difficult witness and so, you
18 know, for the avoidance of doubt, I authorize the government to
19 stay stop, the minute it looks like he's going to, I did it
20 because I knew they understood or anything like that.

21 But if the government believes that this witness can
22 truthfully say and would truthfully say, you know, I stopped
23 offering the back stories because I believed it wasn't
24 necessary, I believed it wasn't necessary, they can elicit
25 that. But when you're talking about interactions going on, I'm

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DiPascali - direct

1 expecting that it will be on the order of, I told them to do X,
2 I told them to do Y; not, you know, I didn't tell them all this
3 other stuff because.

4 MR. ZACH: Your Honor, may I suggest, just going
5 back -- I fully understand the ruling. I think the safest way
6 to ask that question to get that answer and to sort of curb
7 their concerns is to, in fact, say why did you, you,
8 Mr. DiPascali, stop lying to them? Because I think that will
9 trigger from him -- I expect him to say, I couldn't do it
10 anymore. I would look ridiculous because things were changing
11 so much. That's from his perspective. I think that's the best
12 way to do it. I think that's likely to get the answer that
13 will most be in accord with the Court's ruling; so that's the
14 question that I ask I be permitted to ask.

15 (Continued on next page)

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BirPascal1 - direct

1 THE COURT: I hear you that his belief that he would
2 look ridiculous is obviously implicitly informed by some
3 perception of how he was being seen. Again, that's the world.
4 That's the situation in a conspiracy. There are many arguments
5 to be made. There is much cross-examination to be had or not
6 depending on what you want to leave for argument later. It is
7 legitimate questioning, but it does have to be that careful.

8 MR. KRANTZ: Your Honor, I'm not revisiting any
9 issues, but I wonder if leading might not be the best way to
10 deal with this, which we would not object to in this situation.

11 MR. JACKSON: We are going to police it. If that is
12 necessary, that would be appropriate.

13 MR. MEHLER: Sadly, I don't think it is over. But we
14 understand the Court's ruling.

15 THE COURT: You have the Court's ruling. We are all
16 getting to know each other very well, and it is delightful.

17 Before we go back out, Mr. Riopelle, I understand
18 where you are coming from.

19 MR. RIOPELLE: I should not have made a speaking
20 objection. I understand, your Honor.

21 THE COURT: Thank you.

22 MR. RIOPELLE: Sorry about that.

23 MR. ZACH: I don't want to be back here. So I'm going
24 to ask to have my --

25 MR. JACKSON: Let's go.

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DiPascali - direct

1 (In open court)

2 MR. ZACH: Could you read back my last question,
3 please.

4 (Question read)

5 A. No.

6 Q. Mr. DiPascali, why were you no long trying to fool them
7 with respect to false documents.

8 A. I didn't believe I had the ability to do it any longer.
9 There came a time where I could not come up with a viable
10 explanation as to why we were doing certain things, so I just
11 didn't try to explain it away in the form of a lie.

12 Q. Over time were you friends with Mr. Perez and Mr. O'Hara?

13 A. Yes.

14 Q. What sorts of things did you do to interact in a social
15 manner?

16 A. We went out to dinner quite often, to restaurants that the
17 three of us had -- well, that the two of them had scoped out,
18 because they were very much into trying some of the nicer
19 places in midtown Manhattan. We would go fishing on my boat.
20 We were friends. Outside of one or two guys I knew from bridge
21 water, New Jersey, where my home was, they were my best
22 friends.

23 Q. In the office did you spend time having social type
24 conversations down on the 17th floor?

25 A. All the time.

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BIPascal - direct

1 Q. Where would those conversations occur?

2 A. Usually in their office. There was two desks. There was a
3 chair in front of Jerry's desk. I would sit on the chair and
4 would talk for hours.

5 Q. Aside from Mr. O'Hara and Mr. Perez, were there other
6 programmers at Madoff Securities that worked on the AS/400?

7 A. Yes.

8 Q. Who were those programmers?

9 A. There was basically one other guy that worked on the 400.
10 His name was Haresh.

11 Q. Did you ever have conversations with Mr. O'Hara and Mr.
12 Perez about Haresh?

13 A. I did.

14 Q. What did you tell Mr. Perez and Mr. O'Hara about Haresh?

15 A. That under no circumstances was he to touch my work.

16 Q. When you say your work, what were you referring to?

17 A. The computer system, the AS/400 system, that was
18 facilitating the investment advisory business.

19 Q. Up to this point in time with the third SEC audit, who had
20 done all of the programming on false documents that had been
21 produced?

22 A. Jerry and George.

23 Q. As part of that programming, you previously testified that
24 numerous versions of trading blotters were created. Do you
25 recall that?

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Bifascall - direct

1 A. Yes.

2 Q. What components of those trading blotters had randomized
3 information placed in them, generally?

4 A. Most of them: The time of day that the trade occurred, who
5 it occurred with, the share quantity of the counterparty
6 transactions, the price of the counterparty transactions.
7 Those were the primary changes. There might have been in some
8 versions something else, but I don't recall at this point.

9 Q. Was the randomization inspected by the folks on the 17th
10 floor to see that it was sufficiently random?

11 A. Yes.

12 Q. Who participated in examining whether or not the
13 information that was coming out on these false documents was
14 sufficiently random?

15 A. Myself, Jodi, occasionally Eric Lipkin.

16 Q. How was it that these documents would be reviewed to make
17 sure that they were sufficiently random?

18 A. The boys and I would discuss a concept that we wanted or I
19 wanted because Bernie wanted to put in play. For instance, the
20 time of day on the blotters, it was this, now it's going to
21 become that. There were certain ways, and I don't understand
22 all the ways they did it, where they would ask me a series of
23 questions of, all right, what do you want it to look like?
24 Well, I want it to begin at 8:00 a.m. and I want it to end at
25 3 p.m. I would give them these parameters.

1 Then we would toss around how we were going to
2 accomplish or how they were going to accomplish getting the
3 randomness of numbers between those two points. Then one or
4 both of them would say, all right, we understand, give us a
5 half a day. I would go about my business and they would get
6 into whatever they did.

7 Then I would get a sample out, a stack, a hundred
8 pages, 50 pages, 10 pages. They would give to it me and say
9 this is what I think you want. I would sift through it or Jodi
10 would sift through it with me, and we would occasionally spot
11 something went cuckoo. My parameters are 8:00 to 2:00, let's
12 say, and I have a trade here at 6:47, how did that happen. We
13 would both go inside and discuss it.

14 Sometimes they had already caught that error
15 themselves: We know, we know, we know, we fixed it. Or we
16 would talk it through. We would then adjust or they would
17 adjust whatever minor coding detail was out of sync that
18 produced the error.

19 So it was this back and forth ebb and flow of this is
20 what I want, OK, see if this is what you want. Sometimes it
21 was, most of the time it was, and sometimes it wasn't. In
22 order to determine that, you needed to check thoroughly each
23 line item of what was coming out on the sample to make sure
24 that every line item in the hundred-page sample they gave you
25 was consistently within the parameter that you had dictated.

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DiPascali - direct

1 Q. Did this process go on? Was this an ongoing process that
2 you were describing?

3 A. It went on forever.

4 Q. Was there growing sophistication on how this randomization
5 took place?

6 A. There was growing sophistication. There was a contraction
7 to make it more simple. There was a growing sophistication,
8 once again. Bernie kept changing his mind on what he wanted.
9 It was driving all of us nuts.

10 Q. Now I want to go back --

11 MR. BRESLIN: Objection, your Honor. I move to strike
12 the last answer.

13 THE COURT: Would you consult.

14 (Counsel conferred.)

15 MR. BRESLIN: Resolved, your Honor.

16 THE COURT: Thank you.

17 Q. Mr. DiPascali, I want to jump quickly back. Now we are
18 jumping forward in time to that final SEC audit when Mr. Madoff
19 eventually registers as an investment adviser. Do you recall
20 that?

21 A. Yes.

22 Q. As part of that process, did Mr. Madoff discuss which
23 company clients and client names were going to go on that
24 special list?

25 A. Yes.

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Bipascal - direct

1 Q. Where did he have those discussions?

2 A. There were many discussions. There's only one in
3 particular that I remember right now.

4 Q. Which one do you remember?

5 A. A very final discussion in the 19th floor conference room.

6 Q. Do you remember at some point the client Bridgewater
7 Associates came up?

8 A. Yes.

9 Q. Do you recall at some point that a company called P.D.
10 Robco came up?

11 A. Yes.

12 Q. Do you remember where those came up?

13 A. It came up in one of the discussions about determining who
14 his special list of clients was going to be.

15 Q. What did he say about some of those names?

16 A. He had picked those names initially way back in the day.

17 Because they were nonevent type filler, if you will, clients,
18 because he couldn't just put Fairfield, Tremont, and Kingate.

19 So he sprinkled this special list with a relatively

20 insignificant group of accounts that sounded very formal but

21 didn't really have a lot of money in them. If someone sees the

22 term "Bridgewater Associates," it could be a newspaper vendor

23 on the corner, it could be a company as big as IBM, you really

24 can't tell by the name. That's the reason he picked them.

25 Q. Who participated in that general process of picking these

1 special accounts to be listed?

2 A. Most of the time he picked them. There were some
3 recommendations, and they most of the time occurred in my
4 office.

5 Q. Who would be present in your office when these discussions
6 were happening?

7 A. My entire staff and Jodi.

8 Q. Mr. DiPascali, I'd like to turn to a slightly different
9 topic. Are you familiar with the term ACATS?

10 A. Yes.

11 Q. Can you describe what ACATS is.

12 A. It's a system developed by the clearing organization to
13 electronically allow two brokers to transfer a customer account
14 from point A to point B. It stands literally for automated
15 customer account transfer, ACAT.

16 Q. How did you come to learn about ACATS?

17 A. Through Bernie.

18 Q. Once you learned about it, did you gain an understanding
19 that it presented a problem for the investment advisory
20 business?

21 A. Bernie explained to me that Danny had presented it to him.

22 Q. What did Bernie say about what Danny had presented to him?

23 A. That there was this new system out there from the
24 clearinghouse -- a clearinghouse that we were a member of, so
25 we needed to play by their rules -- that automated the process

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Bipascal - direct

1 of transferring securities out of a brokerage house into
2 another.

3 If a client went to, let's say, Smith Barney and
4 opened a brokerage account and requested that all the
5 securities at Madoff be transferred into that account, that
6 process used to be done by telephone and delivery of securities
7 and such. Now it can be done computer-to-computer through the
8 clearinghouse.

9 More importantly, and what was problematic, was that
10 it not only could be done, it had to be done that way. There
11 was an electronic audit trail if you failed to do what they
12 told you to do in a very short time frame. What they did was
13 you got a notice on a Monday morning that you have just
14 received an ACATS notice instructing you, with a group of
15 details, about an account that you have and where part or all
16 of that account securities position should be transferred to.

17 You needed to log on to the system and, first off,
18 acknowledge that you have received that notice. Then you
19 needed to respond to that notice with some sort of a -- there
20 was a drop-down window with a series of responses. Then you
21 needed to act on it.

22 Our understanding was that the clearinghouse was
23 keeping a record of how long it took you to react to it and
24 that the NASD was going to use that information and cite you
25 for violation if it took longer than it should have. I think

1 it was like a three-day window where you had to complete the
2 transaction. If you exceeded that three-day window, then there
3 would be a little black mark on your little NASD folder, and
4 the next time they came in to review you, they would cite you
5 for an infraction of this rule.

6 Q. What was your understanding of why this was a problem for
7 the IA business?

8 A. We didn't have the securities. Now we were being forced
9 from some third party, the clearinghouse, to potentially
10 transfer out customer securities to another location. There
11 are no securities, so that could present a problem.

12 Q. On the IA side of the business, customers were led to
13 believe that they had securities in their accounts, is that
14 fair?

15 A. That is correct.

16 Q. If an ACATS request came from one of their customers that
17 they wanted to move those securities to some different firm,
18 were there any securities to actually transfer?

19 A. No.

20 Q. Did you have discussions with Mr. Bonventre about how to
21 deal with this?

22 A. Yes.

23 Q. What were those discussions?

24 A. We would respond back that the account had no securities.
25 Then I would contact the broker that initiated the ACATS

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1 request and further explain that the reason they don't have any
2 securities is that, coincidentally, I just sold them yesterday,
3 and all of that work will settle tomorrow, and if you give me
4 wire instructions, I'll wire you cash.

5 Most brokers, if not all, that I dealt with were very
6 agreeable to those terms, because instead of now receiving in
7 an array of securities that they didn't know what to do with,
8 they were going to get cash into their new customer's account,
9 which then they could start out with a fresh slate for that
10 customer.

11 Q. Would that cash be the equivalent of the securities that
12 were in their account previously?

13 A. We would quickly write up some sale tickets for whatever
14 was in the client's account at the time, right from the display
15 screen of what the client's inventory was, and we would quickly
16 process those trades through the system and get the results
17 out, which would be what the final credit balance was. Then we
18 would give the wire room that information to wire to the
19 location that the broker on the phone had given me. We would
20 clean up the ACATS request that way. It typically happened
21 within 48 hours.

22 Q. Do you recall having a dinner with Mr. O'Hara and Mr. Perez
23 at a Greek restaurant?

24 A. Yes.

25 Q. Do you recall when this dinner happened?

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1 A. There were a couple of them, a couple of Greek restaurants.

2 Q. Do you recall a dinner when you had dinner with Mr. O'Hara,
3 Mr. Perez, and afterward on the way home one of them raised a
4 question with you?

5 A. Yes.

6 Q. When did that happen?

7 A. '06.

8 Q. At the dinner who was present?

9 A. George, Jerry, myself, and some other party that I can't
10 picture in my mind.

11 Q. Were you guys eating and drinking at dinner?

12 A. Yes.

13 Q. How much drinking was going on?

14 A. By myself, not a lot. I'm not a drinker.

15 Q. How about Mr. Perez and Mr. O'Hara?

16 A. A considerable amount.

17 Q. After dinner did you guys walk back to the office?

18 A. Yes.

19 Q. Who was it that was walking back to the office?

20 A. This other person that I can't visualize and I were walking
21 side by side, and George and Jerry were walking behind us maybe
22 by six or eight feet. So it was two by two, two by two.

23 Q. As you were walking back, did one of them say something?

24 A. Yes.

25 Q. Who said something?

1 A. I believe it was Jerry.

2 Q. What did he say?

3 A. Something to the effect of, could this whole thing be a
4 fraud?

5 Q. What did you respond?

6 A. I blew him off as, what, are you ridiculous?

7 Q. Why did you blow him off?

8 A. I didn't want to address that question.

9 Q. Did there come a time after this certain hedge fund trading
10 practices investigation, that last SEC investigation, that you
11 had discussions -- let me ask you a different question. All of
12 these audits that you have been testifying about, were any of
13 Ms. Bongiorno's clients listed as one of those special clients?

14 A. Not the primary set of special clients where there would be
15 trades. There was one occasion that Bernie picked a group of
16 Annette's clients to act as option counterparties. I wouldn't
17 define them as Bernie's special clients, though. But there
18 were in the soup of documents references made I believe for one
19 occasion to a group of Annette's accounts: Mr. Levy's account,
20 Mr. Picower's account, Mr. Shapiro's account, and others. But
21 not in the true definition if one were to define Bernie's
22 special as the client list that kept changing, no.

23 Q. This purported split strike strategy that was being
24 implemented at Madoff Securities, was that something that was
25 used by the clients that Ms. Bongiorno was managing?

1 A. No.

2 Q. How was the trading on her end of the business done, the
3 fake trading on her end of the business done?

4 A. Typically in the long position format, in which the client
5 would simply have an array of long equity positions and
6 treasuries.

7 Q. In these inquiries from the SEC and from KPMG, were they
8 looking at that long type of trading or were they looking at
9 the split strike type of trading?

10 A. They were purely looking at the split strike trading.

11 Q. How involved was Ms. Bongiorno in these audits by the SEC
12 and by KPMG?

13 A. Not at all.

14 Q. After the form ADD was filed and that SEC -- strike that.
15 After the third SEC audit started to wind down, did you have
16 conversations with Mr. Perez and Mr. O'Hara about the audits
17 that had recently gone on?

18 A. Yes.

19 Q. When did those start to occur?

20 A. Mid '06.

21 Q. Did you have one conversation or did you have multiple
22 conversations with them?

23 A. Multiple.

24 Q. What issue did they raise?

25 A. They were very, very concerned about the work they had been

1 doing to date.

2 Q. What did they say to you?

3 A. They explained that they were uncomfortable continuing to
4 do this work for Bernie, that they didn't want to give the
5 impression in any which way that they were unhappy working for
6 the firm, because they loved working for the firm, but this
7 monkey business of changing and inserting numbers into records
8 is something they were very, very uncomfortable with.

9 MR. MEHLER: Objection, your Honor. Move to strike.

10 THE COURT: Have a discussion about his nomenclature.

11 (Counsel conferred.)

12 MR. MEHLER: It's resolved.

13 THE COURT: Thank you.

14 Q. Mr. DiPascali, where did this initial conversation take
15 place?

16 A. In their office.

17 Q. How did you respond to them?

18 A. "I don't know what to tell you. I can't force you to do
19 something you don't want to do."

20 Q. After that initial conversation, was there a follow-up
21 conversation?

22 A. There were a series of lighter conversations. It got to a
23 point where they decided to have a meeting with Bernie or asked
24 me if -- it was kind of like can we set that up.

25 Q. In the conversations that followed, what did they say to

you?

A. That followed the meeting with Bernie or the conversations that followed?

Q. No, that followed that initial conversation leading up to a conversation with Mr. Madoff.

A. They just expressed to me that they were not comfortable doing this type of work and that the episode of certain hedge fund trading practices was kind of like the straw that broke the camel's back. It was one of these like when is this going to end type of -- every time we turn around, we've got another regulator, another -- the term they used a lot was another hand grenade thrown at us, I'm tired of landing on hand grenades here, this is crazy.

Q. In that conversation did they ask to speak to Mr. Madoff?

A. They did.

Q. What did you say in response to that?

A. I'll set it up.

Q. Did there come a time that they set up a meeting with Mr. Madoff to discuss this?

A. Yes.

Q. Do you recall when this occurred?

A. In that 2006 time frame. It could have been late '05, could have been middle '06. Right now I'm not thinking clearly about the date of that meeting.

Q. When the meeting occurred, where did it take place?

1 A. In Bernie's office.

2 Q. What floor was Bernie's office on?

3 A. 19.

4 Q. Did it happen in the day or at night?

5 A. It happened, I believe, after hours, after the trading day.

6 Q. Who was present for this meeting?

7 A. Bernie, myself, Jerry, and George.

8 Q. Did you meet with Mr. Madoff before this meeting?

9 A. I went upstairs and I said, the boys want to talk to you.

10 About what? They are a little bit uncomfortable about what we
11 do. He said, are they thinking it's going to be OK? I said, I
12 don't know, they want to sit down and talk to you. Let's see
13 what they have to say, he said, have them come up after the
14 close, or something like that, the close being the close of the
15 market.

16 Q. When this meeting occurred in Mr. Madoff's office with you,
17 Mr. O'Hara, Mr. Perez, and Mr. Madoff, what did Mr. Perez and
18 Mr. O'Hara say to Mr. Madoff?

19 A. They expressed that they were not comfortable continuing to
20 do this work. It got to a point where they were kind of
21 offering him an ultimatum about --

22 MR. KRANTZ: Objection, your Honor. Can we just get
23 what was said.

24 THE COURT: Let's stick to what was said.

25 Q. What did they say to Mr. Madoff?

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1 A. They suggested they close this side of the business, which
2 would make them more comfortable working for the firm. They
3 kept reiterating they were very happy to work for, they loved
4 it there, they loved the whole operation, except this segment
5 of the business they expressed was problematic to them and they
6 refused or were indicating that they were no longer comfortable
7 working on the computer programming of that side of the
8 business.

9 Q. What did you understand them to mean by "that side of the
10 business"?

11 A. The investment advisory business.

12 Q. How did Mr. Madoff react to them saying that he should
13 close that side of the business?

14 A. Initially, he was very cordial in listening to the various
15 topics that were coming up. He was not agreeing with them, not
16 disagreeing with them, kind of just listening. Then at one
17 point he kicked back and he became very belligerent. He
18 literally said, you're not going to tell me how to run my damn
19 business, what the hell do you guys know, I've been in this
20 business for 40 frigging years.

21 He went off on a Bernie Madoff rant about who he is in
22 this industry and how they are so off base of what they think
23 is going to on around here, that they have no clue how the
24 world operates, these two dopey computer programmers, and no
25 one's going to tell me to close a division of my business.

1 That was basically what he told them.

2 Q. How did they react to that?

3 A. They sat there and took it and then said, we understand
4 what you're saying, our position has not changed.

5 Q. With that, did the meeting end?

6 A. Yes.

7 Q. After the meeting did you have a discussion with Mr.
8 Madoff?

9 A. Yes.

10 Q. What did he say to you?

11 A. Is this going to be a really big problem? I don't know.
12 I'm going to have to talk to these guys. Well, when you talk
13 to them, offer them anything you want. What do you mean offer
14 them? You please deal with this, they are your guys, you know
15 how to deal with these guys. Just deal with it, I can't deal
16 with this, but do whatever you think is necessary so we don't
17 have a problem with these two guys.

18 So I went down and had meetings with them.

19 Q. Let's talk about the first meeting you had with them. What
20 did you say to them when you went down after these
21 conversations with Mr. Madoff?

22 A. Bernie had already given them the indication that they
23 hadn't lost their jobs by this confrontation. He said that
24 very clearly. I don't want you to leave, I'm happy with you.
25 I reiterated that to them. I think they expressed that it made

1 them feel better.

2 These guys thought they were walking in -- they told
3 me they thought they were walking into the office and they were
4 going to get fired on the spot. That didn't happen. They got
5 it off their chest, their concerns, and they still had a job.
6 So we were talking further.

7 I told them point-blank, look, Bernie said whatever
8 you guys want to do, we'll take care of, so pick a number.

9 Q. Did they pick a number at that moment?

10 A. No.

11 Q. What did they ask to do?

12 A. They got to think about this. They got to think about what
13 had just transpired in the meeting with Bernie and in the
14 meeting with me.

15 Q. Did there come a time after you told them that Bernie would
16 give them whatever they wanted that they came back to you and
17 discussed any requests they might have?

18 A. Yes.

19 Q. About how long after that initial conversation where the
20 offer was made that they could have whatever they wanted did
21 this next conversation occur?

22 A. Within a couple of weeks.

23 Q. Do you recall where this conversation took place?

24 A. In their office.

25 Q. Who was present for the conversation?

1 A. Jerry, George, and myself.

2 Q. Mr. DiPascali, what did they say to you about what they
3 wanted?

4 A. They expressed that they were in a bit of a pickle.

5 Q. Did they describe to you what that pickle was?

6 A. Yes.

7 Q. Describe what they said the pickle was.

8 A. They said that they know and I know that they could pretty
9 much ask for anything they want. That was the ground rules
10 that set up that meeting to begin with, so that was reiterated.
11 But that could be problematic to us. I don't want to have a
12 situation where my salary and my bonuses jump off the page
13 somewhere down the road and I get in a lot of trouble.

14 Q. Who was saying that they didn't want their salaries to
15 increase so much that they jumped off the page?

16 A. Both of them.

17 Q. Since the salary would jump off the page, were there any
18 requests for payment of a different kind?

19 A. At one point they were talking about or we were talking
20 about various ways of paying people. Can't pay cash, it's just
21 not in the culture of the firm, if you will, if that sounds
22 logical. It was suggested that I wish there was some way that
23 you guys can compensate us. The word "diamonds" came up, maybe
24 we could work something out with like diamonds.

25 Q. Who brought up diamonds?

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1 A. Jerry.

2 Q. How did you react to paying them with diamonds?

3 A. I kind of flew off the handle. Like, what are you, crazy?
4 Where the hell am I going to get a bag of diamonds to hand over
5 to you guys? So I blew it off.

6 Q. As the conversation progressed, what sort of resolution was
7 reached in terms of compensation?

8 A. They were going to come back to me with a set of numbers.
9 It appeared to me that they were feeling me out --

10 MR. KRANTZ: Objection.

11 Q. Just what they said to you.

12 A. They were going to continue to talk amongst themselves and
13 come back to me with hard numbers.

14 Q. Did there come a time that they came back to you with hard
15 numbers?

16 A. Yes.

17 Q. What were the numbers that they provided?

18 A. Increases to salary. It might have been a bonus too. They
19 literally wrote it on a piece of paper for me.

20 Q. How much was the increase, if you recall?

21 A. A fairly substantial percentage increase, and in my world
22 not an exorbitant dollar amount.

23 Q. Did you grant that?

24 A. I just took the piece of paper and dropped it on Eric's
25 desk and said, make that happen, please. He was the payroll

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1 manager.

2 Q. That's compensation.

3 A. Yes.

4 Q. In these conversations was there any discussion of the work
5 that they were going to do going forward?

6 A. Yes. They still had their jobs. They still needed to
7 maintain the AS/400. They were very, very, very willing to
8 continue to do that with certain ground rules, specifically
9 two. They did not want or they refused to change anything that
10 someone else had put into the system ever again and they will
11 not put anything into the system themselves. They will not
12 input data into the system and they will not change something
13 that someone else has put into the system.

14 Q. How did they articulate that to you in the conversations?
15 What words did they use?

16 A. They said they didn't want their fingerprints on this crap
17 any longer.

18 Q. What did you say in response?

19 A. I could work with that.

20 Q. After this conversation, were any steps taken with respect
21 to the programs that had been written to change all of the
22 false documents that they had produced previously?

23 A. They explained to me that they had spent some time I guess
24 in between these meetings we were having and have gone on to
25 the system and have deleted all the special programs. So

1 anything that was written special -- and special typically was
2 defined as for either a specific audit or the regular special
3 work that ran in the background all the time that created the
4 subset of books and records -- that was now unavailable to me
5 going forward, it had been deleted from the system.

6 Q. Did they tell you that they had done that?

7 A. Oh, yes.

8 Q. How did you react to that?

9 A. Quite frankly, I wasn't all that concerned.

10 Q. Why weren't you that concerned?

11 A. Because I recognized deleting something from the system is
12 a complete waste of time. Everything's been saved to time
13 about two bazillion times. If I really wanted to, I could hire
14 two more guys or one more guy and just get my tapes and reload
15 all their special programs and see you later. But I knew that
16 wasn't going to happen.

17 Q. Mr. DiPascali, in these conversations that you had after
18 the meeting with Mr. Madoff with Mr. O'Hara and Mr. Perez, was
19 the tone of them confrontational?

20 A. After that meeting?

21 Q. Yes.

22 A. The tone confrontational?

23 Q. After the meeting with Mr. Madoff, you, Mr. Perez, and Mr.
24 O'Hara, after that meeting, when you had discussions about how
25 to compensate Mr. Perez and Mr. O'Hara, what was the tone of

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1 those meetings?

2 A. Very social. They were friends of mine. I didn't want
3 them to leave. I wanted them to be able to operate within the
4 guidelines that they had dictated to Bernie forever.

5 Q. After this confrontation, did their work schedule or their
6 appearance at work change?

7 A. Somewhat.

8 Q. Describe how it changed.

9 A. Typically, they would always ask me if I needed them as
10 they walked out the door. They would tip their head into my
11 office: You don't need me for anything, right? No, go ahead,
12 have a good night. Or, occasionally, I would say yeah, do me a
13 favor, can you stick around for another minute, I got to check
14 with the boss about something, I may need you. But from that
15 point forward they would kind of like leave a little early,
16 just "good night," and walk right past us.

17 Q. And come in later?

18 A. Yes.

19 Q. Now I would like to show you what is in evidence as
20 Government Exhibit 105-D1. Can we blow that up. Do you
21 recognize what this document is?

22 A. Yes.

23 Q. Ms. Baskin, can we blow up the signature block, too.

24 What is it?

25 A. Customer request to liquidate their account and send the

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proceeds.

Q. Who signed the bottom?

A. Jerry.

Q. Whose it addressed to?

A. Myself.

Q. What is this letter asking you to do?

A. Process tickets through the account to close it.

Q. Is this the same account that we looked up that was opened in 2004 after that first SEC audit?

A. It is.

Q. This is the account that you put in money for Mr. O'Hara to reward him for the work that he had done for you?

A. Correct.

Q. Did they tell you that they wanted to close their account?

A. Yes.

Q. What did they say to you?

A. We had a brief meeting in their office one day where they mentioned to me that they were going to close their accounts. My response was, your money, your account, close it.

Q. Did they make any additional requests to you there?

A. They mentioned to me that they were planning on speaking to Kevin Fong, who also had an investment advisory account, and I wouldn't have a problem with that, would I? I said no.

Q. When you received this letter, did you close their account?

A. I did.

1 Q. Can you tell by this letter how much money was sent to Mr.
2 O'Hara?

3 A. 150,543.

4 Q. That's more than was initially put in the account, right?

5 A. That's correct.

6 Q. Why did it increase over time?

7 A. Because the account originally was funded I think we said
8 October of '04, so it had run for a year and a half at a rate
9 of return dictated by Bernie using the split strike strategy, I
10 believe. It had appreciated on paper from the lower 100s, I
11 think it was like 116, to 150 over that year-and-a-half period.
12 It was in March 2006 I received a letter. April 6, 2006, was
13 the settlement date of all the sale tickets that went through,
14 the value of which totaled 150,543.

15 Q. This money went to Mr. O'Hara?

16 A. Yes.

17 Q. Now let's look at Government Exhibit 105-E1. Can we blow
18 that up. Do you recognize the signature at the bottom of this
19 document?

20 A. I do.

21 Q. Whose signature is it?

22 A. George.

23 Q. Who is it addressed to?

24 A. Myself.

25 Q. What does this document say?

1 A. In essence, the same as the other one. It's closing the
2 account and cut a check for the balance.

3 Q. Again, does this relate to the same account that you opened
4 for them in 2004, after the first SEC audit?

5 A. I think it does.

6 Q. How much money went out to Mr. Perez?

7 A. 289,372.

8 Q. You can take that down. When is it dated?

9 A. The letter is dated April 4.

10 Q. Can we take that down, please. Now, as these events were
11 unfolding, were you speaking to Ms. Crupi?

12 A. Sure.

13 Q. What did you tell Ms. Crupi about what was going on with
14 these discussions with Mr. Perez and Mr. O'Hara around this
15 time?

16 A. Short of discussing the exact numbers of their
17 compensation -- I don't believe I did that -- I explained to
18 her exactly what was going on: That the two fellows had a
19 meeting with Bernie and they refused to do this work going
20 forward.

21 Q. How did she react?

22 A. What does that mean to us?

23 Q. As part of the conversation with Bernie Madoff after the
24 meeting with Mr. Madoff, Mr. Perez, Mr. O'Hara, and yourself,
25 did Mr. Madoff say anything with respect to Dan Bonventre?

1 A. He told me not to tell Danny that the boys had refused to
2 do this work.

3 Q. Did he tell you why he didn't want you to tell Dan
4 Bonventre?

5 A. I don't remember the exact words he said, but I knew
6 exactly what he meant when he said that.

7 Q. After Mr. Madoff told you that, did there come a time that
8 Mr. Perez and Mr. O'Hara came up in a conversation that you had
9 with Mr. Bonventre?

10 A. About them leaving?

11 Q. Yes.

12 A. This work, yes.

13 Q. Where did this conversation take place?

14 A. In Bernie's office.

15 Q. How soon after the conversation among Mr. Madoff, Mr.
16 O'Hara, Mr. Perez, and yourself did this meeting with Mr.
17 Bonventre take place?

18 A. Couple weeks.

19 Q. Who was in Mr. Madoff's office when this conversation took
20 place?

21 A. I was called in to a meeting by Bernie. I was on 17, he
22 was on 19. He picked up the phone and said, can you do me a
23 favor, come up to my office. So I walked into a meeting that
24 had already been in progress.

25 Q. Who was in the meeting?

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1 A. Bernie was at his desk. Dan Bonventre was sitting across
2 from his desk.

3 Q. Where did you go in the room?

4 A. I sat on the couch.

5 Q. When you sat on the couch, what did Mr. Madoff say?

6 A. That they were talking about Jerry and George leaving this
7 work, not leaving physically, but that Jerry and George would
8 no longer be doing this work for us.

9 Q. When they were talking about that work, what did you
10 understand them to mean?

11 A. The work that they had been doing for me in the IA business
12 and the occasional work they did for Danny on the House 05
13 business, not the normal processing of House 05's AS/400
14 settlements. Bernie was explaining this apparently to Dan.
15 And now I walked into the meeting, and he's filling me in as
16 to, hi, sit down, Danny and I were just talking about Jerry and
17 George not wanting to do this work anymore, was the way I
18 entered the meeting. So I sat down.

19 Q. Did you then participate in the conversation?

20 A. Not at all.

21 Q. Did you sit and listen?

22 A. Yes. I was really ticked off that I was in that meeting.

23 Q. What were Mr. Madoff and Mr. Bonventre discussing?

24 A. This event of Jerry and George refusing to do this work
25 going forward. Bernie was doing a lot of talking out loud as

1 to how this should not present a big problem. I had already
2 had some conversations with Bernie that said give me a couple
3 of days to figure out where I'm at and we'll see if we can do a
4 lot of this work on a different platform, and stuff like that.
5 I don't know what was occurring during, obviously, the meeting
6 before I entered, and I was so fumed when I entered that the
7 verbiage of that meeting was a little bit of a blur.

8 Q. Why were you fumed?

9 A. Because Bernie had told me don't discuss this with Dan.
10 Then I get called into a meeting, and what is he doing?
11 Discussing it with Dan. I don't know what Bernie told Dan as
12 to the real reason they are leaving. I have no idea how Bernie
13 set up his meeting with Dan and what the early conversation was
14 all about. I don't want to be part of that process.

15 So I was sitting quiet just listening to try to figure
16 out what did he say to him and to determine a point where I
17 could comfortably interject without saying something that
18 Bernie didn't want me to say, because he told me not to say
19 anything.

20 Q. As the meeting went on, did it become apparent to you what
21 Mr. Madoff had said to Mr. Bonventre?

22 A. Yes. That they pretty much -- that Bernie had not been
23 lying to him, that in effect they had this meeting, Jerry and
24 George were uncomfortable with the work we are asking them to
25 do, and they were no longer going to do this specific special

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1 work, that they erased the special programs from the computer,
2 and so on and so on.

3 MR. FRISCH: Your Honor, objection.

4 THE COURT: Please consult.

5 (Counsel conferred.)

6 MR. FRISCH: Your Honor, I think we need a ruling.

7 THE COURT: Please excuse us for a moment.

8 (Continued on next page)

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(In the robing room).

MR. FRISCH: I have what I am going to call a Krantz objection. This is a long-winded answer of Mr. DiPascali, who says he doesn't remember the verbiage and then something becomes apparent to him and we launch into a very lengthy answer about what became apparent to him without any understanding of what he heard, what Mr. Madoff said, what Mr. Bonventre said. For that reason I move to strike his answer.

MR. ZACH: Your Honor, after consultation, I offered to lay a foundation. I expect him to say there was a special exchange that happened that he is referring to. It hasn't come out as that. The next question is going to lead into that.

MR. FRISCH: Then I maintain my motion to strike and we can continue.

MR. ZACH: I think the answer is responsive. I think he is describing the conversation. I think there will be sufficient foundation for exactly what he is saying. It is unnecessary to strike it, because it is a responsive answer.

THE COURT: The motion to strike is denied subject to the filling in of the foundation.

(Continued on next page)

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1 (In open court)

2 THE COURT: Mr. Zach.

3 MR. ZACH: Thank you, your Honor.

4 BY MR. ZACH:

5 Q. Mr. DiPascali, in this conversation, did Mr. Bonventre say
6 something to you?

7 A. Yes.

8 Q. What did he say to you?

9 A. Bernie was going on and on at one point in the conversation
10 towards the end about, how the hell did these guys ever like
11 put two and two together, or something like that. And I
12 responded, yeah, I don't know how they would have done that.
13 And Danny turned to me and said: Because you told them.

14 Q. How did you react to that?

15 A. I was devastated.

16 Q. Now, did you tell anyone else about the comment that
17 Mr. Bonventre had made to you in that meeting?

18 A. In ranting about Danny, to Jodi later on.

19 Q. What did you tell Ms. Crupi about that conversation?

20 A. He made me feel like such a -- expletive.

21 Q. How did she react?

22 A. That I had discussed this in graphic detail with my boys
23 and basically had sold Bernie out.

24 Q. And how did Ms. Crupi react to the narrative that you
25 provided to her?

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1 A. I can't believe he said that.

2 Q. Now, Mr. DiPascali, after these events, did Mr. Perez and
3 Mr. O'Hara continue to do work in connection with the IA
4 business?

5 A. Sure.

6 Q. And how long did they continue to do work in connection
7 with the IA business?

8 A. Until December of 2008.

9 Q. Now, we'll get to that after the break, but after this
10 meeting between you, Mr. Bonventre and Mr. Madoff, were you
11 approached by Mr. Bonventre?

12 A. Yes.

13 Q. How soon after that meeting were you approached by
14 Mr. Bonventre?

15 A. I think it was quite some -- might have even been the same
16 night, but I'm not sure.

17 Q. What did he say to you when he approached you?

18 A. You and I ought to go out and have a drink.

19 Q. Prior to that, how often had you socialized with
20 Mr. Bonventre?

21 A. Other than company functions, never.

22 Q. Now, did you agree to go have a drink with Mr. Bonventre?

23 A. Can I correct my last answer?

24 Q. Yes.

25 A. I went to the Poconos with Dan Bonventre in the '70s or

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1 early '80s to visit Annette Bongiorno. Other than that, I
2 don't recall another social event.

3 Q. So other than the Poconos in the '70s, you didn't interact
4 with him on a social basis very much?

5 A. Correct.

6 Q. Now, where did you go have a drink with Mr. Bonventre?

7 A. Vong Restaurant, which is located in the lobby of our
8 building at 885.

9 Q. Where did you -- Where did you sit at the restaurant with
10 Mr. Bonventre?

11 A. At the bar.

12 Q. And when you sat at the bar, what did Mr. Bonventre say to
13 you?

14 A. Do you know if he has an exit strategy?

15 Q. What did you respond?

16 A. If he does, he hasn't explained it to me.

17 Q. What did Mr. Bonventre say in response to that?

18 A. He had explained what his exit strategy or what his
19 explanation was going to be.

20 Q. What explanation did Mr. Bonventre tell you he was going to
21 use?

22 A. That it was always explained to him that these trades were
23 happening in Europe and that he was always told to just mind
24 your own business, this has nothing to do with you, even though
25 you're the director of my operations; that all of this -- I was

1 always told that all of this was happening somewhere else, away
2 and apart from this New York operation.

3 Q. And how did you respond to that explanation that he was
4 offering?

5 A. I wish I had an explanation, is what I said. I don't have
6 any such explanation. I don't have any such strategy. So if
7 that works for you, that's a good thing. I don't have -- I
8 don't put any color on it from my perspective because I just
9 can't.

10 Q. What did you mean by that, that you didn't have that
11 explanation?

12 A. I can't turn around and say I didn't know any of this was
13 happening. I'm on the phone with clients all day long. I'm
14 interacting. I've testified to the SEC. I mean, I am knee
15 deep in this pile, and so I can't say I didn't know it was
16 going on.

17 Q. And when you said that that explanation wouldn't work for
18 you, who were you thinking you were going to have to do the
19 explaining to?

20 A. The authorities.

21 Q. How did he react to the fact that I don't even have a
22 plausible explanation?

23 A. There was hardly a reaction. You know, it's unfortunate,
24 but ...

25 Q. Now, did you tell Ms. Crupi about this conversation --

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1 A. Mmm, hmm.

2 Q. -- with Mr. Bonventre?

3 A. Yes.

4 Q. Did you explain to her exactly what had been said?

5 A. Probably verbatim.

6 Q. And how did Ms. Crupi react to your description of that
7 drink with Mr. Bonventre?

8 A. I honestly don't remember.

9 MR. ZACH: Now, your Honor, I'm actually about to move
10 on to a new topic.

11 THE COURT: So this would be a good time to take the
12 break. Ladies and gentlemen, we'll now begin our morning
13 break. Please be ready in the jury room at 11:25. Thank you
14 for your work so far and continue to keep your thoughts to
15 yourselves, please. All rise. Ms. Ng, would you please escort
16 the jury out.

17 (Jury exits)

18 Mr. DiPascali, you can step down.

19 THE WITNESS: Thank you, your Honor.

20 (Witness temporarily excused)

21 THE COURT: We'll reconvene at 11:25.

22 MR. FRISCH: I have --

23 THE COURT: Hang on just one moment.

24 MR. FRISCH: Just as a placeholder. To my hearing, I
25 don't believe that Mr. Zach ultimately laid a foundation for

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1 the answer that came before. What I would ask the Court, if
2 you permit me an opportunity, when the transcript comes
3 tonight, to enable me to look at it and revisit this issue and
4 a motion to strike, if necessary, tomorrow morning.

5 THE COURT: Very well.

6 MR. FRISCH: Thank you.

7 THE COURT: Thank you.

8 MR. ZACH: Thank you, your Honor.

9 MR. FRISCH: Thank you, your Honor.

10 (Recess)

11 THE COURT: Please be seated.

12 MR. BRESLIN: Your Honor, I will go --

13 THE COURT: Thank you. I appreciate that.

14 Ms. Ng, would you bring the jurors.

15 (Jury enters)

16 THE COURT: All rise. Good morning again, members of
17 the jury. Please take your seats. Please be seated, everyone.
18 Mr. Zach.

19 MR. ZACH: Thank you, your Honor.

20 BY MR. ZACH:

21 Q. Now, Mr. DiPascali, after the conversations that you had
22 with Mr. Perez and Mr. O'Hara about increasing their salary and
23 moving forward, did they continue to do work in the IA
24 business?

25 A. Yes.

1 Q. What are some of the things they continued to do work for
2 in the IA business, generally speaking?

3 A. They continued to maintain the AS/400 system that processed
4 the IA trades.

5 Q. And did they work on a program that allowed information to
6 be entered into the AS/400 in connection with the IA business?

7 A. Yes.

8 Q. And what was that program called?

9 A. Special advisory account programs.

10 Q. And after they took the increased salary, did they assist
11 in making it possible to use a program like Excel to interact
12 with the information that was on the AS/400?

13 MR. MEHLER: Objection, your Honor. May I consult?

14 THE COURT: Please consult.

15 (Counsel conferring)

16 MR. MEHLER: I think we've resolved it, your Honor.

17 THE COURT: Thank you.

18 Q. You can answer that question.

19 A. Yes.

20 Q. And who did that?

21 A. Jerry.

22 Q. Now, did blotters and other false documents continue to be
23 generated?

24 A. Yes.

25 Q. How were those documents printed out?

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1 A. On the high speed laser printer that was previously used to
2 do the DTC work, the printer that was right behind me in the
3 hallway.

4 Q. And who had overall responsibility for those printers?

5 A. Jerry and George.

6 Q. And did you continue to consult with them on false
7 documents that were being created and generated at Madoff
8 Securities?

9 MR. KRANTZ: Objection.

10 THE COURT: Do you want to consult?

11 MR. KRANTZ: Withdrawn.

12 THE COURT: Withdrawn? Thank you.

13 A. Yes.

14 Q. And now, this is all after they took the raise after the
15 meeting with Bernard Madoff; is that correct?

16 A. Correct.

17 Q. Okay. Let's start with the AS/400. All of the books and
18 records on the AS/400 for the IA business -- sorry. Strike
19 that. Where was the data for the books and records for the IA
20 business kept?

21 A. On the 400.

22 Q. Okay. Where were all the programs that created all the
23 false documents that we've been talking about kept?

24 A. On the 400.

25 Q. Okay. Whose responsibility was it to maintain the AS/400

1 in 2007 and 2008?

2 A. Jerry, George and Haresh.

3 Q. Did they -- Did you observe them working on the AS/400 in
4 2007 and 2008?

5 A. Certainly.

6 Q. What types of tasks did they have with the AS/400 in 2007
7 and 2008?

8 A. What type of tasks you ask?

9 Q. Yes, what sorts of work would they do in connection with
10 the AS/400 in 2007 and 2008?

11 A. The general maintenance of that system, communicating with
12 the operators as to procedures that were going to run,
13 maintaining the data lines and information flow into the 400
14 from the trading room, and dealing with day-to-day issues of
15 the processing of the AI business that would come up
16 periodically where they needed to address something.

17 Q. And the AS/400, what types of documents were generated off
18 the programs used by the AS/400 in the ordinary course of
19 business on the 17th floor?

20 A. Confirmations of trade, statements of account, and then the
21 support documents that would be bookkeeping documents which
22 were internal and certain analytical tools that were also
23 internal; things like the customer ledger and the portfolio
24 management report and other dividend programs, and the normal
25 array of many, many different procedures that are run in the

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1 course of the month that would facilitate the processing of
2 information inputted into the 400.

3 Q. And that paperwork that was generated, would that all go to
4 customers?

5 A. Yes.

6 Q. And was that all the false -- were those all the false
7 documents that had the fake trades on them?

8 A. Yes.

9 Q. Now, did you know how to use an AS/400?

10 A. No.

11 Q. Did Ms. Crupi know how to use an AS/400?

12 MR. BRESLIN: Objection.

13 THE COURT: Please consult or reformulate, whichever
14 you choose.

15 (Counsel conferring)

16 Q. You can answer the question.

17 A. I don't know.

18 Q. Okay. Now, in terms of setting aside all of those other
19 records that were being generated by the AS/400, did you still
20 need to make the trade blotters?

21 A. I needed to make a presentable set of trade blotters.

22 Q. And did you need to make a presentable stock record?

23 A. Yes.

24 Q. And those are two types of false documents that were made
25 at Madoff Securities, right?

1 A. Yes.

2 Q. Now, how did you go about trying to make a false stock
3 record?

4 A. I went into the boys and asked them to do it for me. I
5 explained that, once again, I needed a stock record for only a
6 specific group of accounts, the specials at the time, and that
7 shouldn't -- you know, it shouldn't be a problem, should it?
8 And they worked on it, and I got a stock record for a specific
9 group of accounts.

10 Q. Now, so you went and you asked them to make a stock record?

11 A. I asked them to identify in stock record format a special
12 group of accounts.

13 Q. And then they produced that stock record for you?

14 A. They did.

15 Q. Was it what you wanted?

16 A. No.

17 Q. What was wrong with it?

18 A. It was out of balance.

19 Q. Now, what do you mean it was out of balance?

20 A. A stock record, again, is a illustration of all your
21 customer holdings and the location. In a balanced stock
22 record, the sum of all of your holdings on this side would
23 equal the sum of the location. The document they gave me was
24 not equal.

25 Q. And was this stock record for those special accounts?

1 A. It was.

2 Q. And just stepping back, those were the special accounts
3 that had been used in the first SEC audit, the second SEC
4 audit, the KPMG London audit and the third SEC audit?

5 A. A similar set but not exactly the same names.

6 Q. And those were the special accounts whose information was
7 randomized and kept going back and forth between foreign and
8 domestic counterparties in times, among other things?

9 A. Yes.

10 Q. Now, after they produced this similar stock record that was
11 out of balance, what did you say to them?

12 A. What, are you guys trying to be cute? You gave me a stock
13 record that's out of balance. And they reiterated what their
14 rules were, which is, A, we will not change something in the
15 system; B, we will not put something in the system that is not
16 already there.

17 Q. And how had they articulated verbally what that rule was to
18 you before?

19 A. They had told me that they didn't want their fingerprints
20 on this stuff.

21 Q. So what did you say in response to that?

22 A. I illustrated how that's ridiculous, that what I'm simply
23 asking you to do is read the entire stock record, entirely, the
24 customer side and the location side. And when you do that, if
25 that document is in balance, which it was because it was

1 plugged to be that, all I'm asking you guys to do is take a
2 specific set of these customers and their positions and move
3 them here, and you would naturally then take the corresponding
4 position location and move it with it.

5 So when I got a print job, these customers would be
6 totaling 100,000 shares and the location of 100,000 shares only
7 would be displayed and it would be in balance. What they had
8 given me was 100,000 shares of customer stock and the location
9 of the entire customer base of a million shares. So it was a
10 useless document. And their response was, we need to talk
11 about this. Well, talk amongst yourselves. Let me know what
12 you're going to do, but that's what I'm asking you to do.

13 You're not changing anything. You're just bringing my customer
14 positions to this side and bringing the corresponding location
15 of those positions to the other side, and they should be equal.

16 Q. After they went and consulted with one another, what did
17 they come back and tell you?

18 A. I think I got what I wanted. I think I got an equal report
19 that was now in balance.

20 Q. And this was the report, just like all the ones that had
21 been made before, in terms of a stock record?

22 MR. KRANTZ: Your Honor, may I consult with Mr. Zach?

23 THE COURT: Yes.

24 (Counsel conferring)

25 MR. ZACH: We've got it, your Honor.

1 Q. In connection with the three SEC audits that had previously
2 happened, did Mr. Perez and Mr. O'Hara generate false stock
3 records?

4 A. Yes.

5 Q. And in connection with the KPMG London investigation, did
6 Mr. Perez and Mr. O'Hara create false stock records?

7 A. Yes.

8 Q. Now, after this meeting with Mr. Madoff, what type of
9 document did they make for you?

10 A. A stock record.

11 Q. Okay. Now, setting aside the stock records, did you also
12 have to work on making the continual generation of blotters?

13 A. Yes.

14 Q. And just give us briefly the difference between a stock
15 record and a blotter?

16 A. Stock record is a illustration of your customer holdings
17 and the location of those holdings. A trade blotter
18 illustrates each particular trade and the necessary data
19 associated with a specific trade.

20 Q. Now, did you have discussions with Mr. O'Hara and Mr. Perez
21 about how you could make trade blotters?

22 A. Well, my problem was that the trade blotters that were
23 running in the background were just blotters of our customer
24 input side, and once again, those were the very simplistic
25 blotters that just forced the clearing bank to be the other

1 side. They did not have counterparties. They were nowhere
2 near the format necessary for presentation to anyone.

3 Q. So you couldn't use them?

4 A. Correct.

5 Q. Now, how did you go about working on generating usable
6 versions of those blotters?

7 A. I decided to do it myself on Excel.

8 Q. And what is Excel?

9 A. It's a Microsoft-based data program of columns and rows and
10 the ability to do mathematics and other functions within
11 columns and rows.

12 Q. And who did you enlist to help you with doing that?

13 A. Jodi.

14 Q. Now, in working to create these blotters using Excel, did
15 you have discussions with Mr. Perez and Mr. O'Hara?

16 A. Yes.

17 Q. What sorts of discussions did you have with them?

18 A. I need the data. I need to go forward and continue to
19 create blotters. The only way I could do that is to have the
20 core trades get themselves onto Excel. So I presented a, I'm
21 going to do this going forward, I'm going to do this in Excel,
22 you've got the data in the AS/400, I need that data.

23 Q. So were you able to use Excel directly with the AS/400?

24 A. I had no idea how to do that.

25 Q. And how did -- who helped you make it so that you could use

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1 the information from the AS/400 in Excel?

2 A. Jerry.

3 Q. What did Mr. O'Hara do?

4 A. He instructed a lady by the name of Sally Batalion, who was
5 the keeper of a system called an optical scanner, which was a
6 server and a series of tapes in the server or in a jukebox next
7 to the server, and it was a data storage and retrieval system
8 that we had used for years.

9 Typically, the customer statements and certain reports
10 were stored on that system. I used it to simply not have to
11 send somebody to records to pull a paper copy of a statement
12 when a customer called and said they lost their statement. We
13 would just print it from that optical device and mail it to the
14 customer or they'd pick it up. So that optical device was
15 already receiving digital information directly from the 400.

16 It's also a PC, this server. It's a screen like this
17 with a keyboard and what looks to be a normal household PC. So
18 it was explained to me that if Sally could bring the reports
19 called blotters, the unacceptable version with the clearing
20 bank, the one that could not be displayed to anyone, that were
21 running in the background as a normal process, if Sally can
22 grab that information and put it on the optical scanner, it
23 will be real easy for you to take it from the optical scanner
24 and open the file in Excel. And then you'd have to play around
25 with some of the columns and get the organization of the

1 information correct, but the data will be correct and in a
2 workable format, and that's how we proceeded.

3 Q. And in doing that process, did you have discussions on how
4 to make that happen with Mr. O'Hara?

5 A. Yeah, he made it happen. He said he was going to speak to
6 Sally, and then Sally then contacted me. And in short order,
7 there were blotters on my optical scanner, and there were
8 blotters going forward every month on my optical scanner.

9 Q. And who helped you work on the Excel side of it in creating
10 these blotters?

11 A. Jodi.

12 Q. And now as you worked on making these blotters, did you go
13 through various drafts?

14 A. Oh, yeah.

15 Q. And when you had a draft, who would you show the draft to?

16 A. Jodi.

17 Q. Did you have discussions about those drafts with Mr. O'Hara
18 and Mr. Perez?

19 A. Yes.

20 Q. Okay. What sorts of discussions would you have with them?

21 A. How did you guys do the randomness when my blotters were
22 randomized?

23 THE COURT: If there's an objection, permission to
24 stand up to make it.

25 MR. KRANTZ: May I consult?

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1 THE COURT: Okay. Thank you.

2 (Counsel conferring)

3 THE COURT: Counsel, you do always need to stand up
4 when you want to object because it's hard for everybody to
5 perceive what's going on.

6 MR. KRANTZ: Thank you, your Honor. I will.

7 MR. ZACH: And, your Honor, can I have that last
8 question and answer read back.

9 THE COURT: Actually, there was a question and answer.
10 Would you, please, ma'am.

11 (Record read)

12 BY MR. ZACH:

13 Q. And what was their answer to you on how they were able to
14 do the randomness?

15 A. They used a random number generator.

16 Q. And were there discussions between you and Mr. O'Hara and
17 Mr. Perez about how random generators worked, generically?

18 A. Yeah, it's an add-on product that you can tag along to
19 other software products. In this particular instance, there
20 are add-on products that are offered in an Excel format so you
21 simply download them from the Internet, they're free, and you
22 tag it to your Excel software. And when you open up Excel, I
23 don't remember exactly where, but there's now an additional
24 icon somewhere on that screen that has a drop-down window where
25 you could highlight agree and then ask it to randomize the data

1 in that row.

2 Q. And did you have discussions with Mr. O'Hara and Mr. Perez
3 about that type of randomization product?

4 A. Sure.

5 Q. And this was all at the meeting with Mr. Madoff, correct?

6 A. Yes.

7 Q. Now, previously you stated, testified that there was
8 something called the special advisory program that Mr. Perez
9 and Mr. O'Hara generated?

10 A. Yes.

11 Q. Could you describe what that program was?

12 A. Once Bernie registered as an investment advisor and defined
13 the amount of accounts on the form ADV that we saw earlier and
14 defined the type of accounts those were, it pretty much locked
15 in stone going forward who his special people were going to be.

16 For the first time in my career, the special list was
17 now established and -- because we were reporting to the SEC
18 certain information, or would be required to, annually based on
19 that special list. So there needed to be, based on that
20 special list, a set of very specific books and records that
21 were only relating to those clients because those are the only
22 clients that now Bernie has formally disclosed to the SEC he
23 actually carries, and we called it the advisory accounts.

24 And what I attempted to do was to automate the
25 process, staying within the parameters given to me by Jerry and

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1 George of I will not change anything or put something into the
2 system that's not already there. But I still needed all of
3 these documents that, in effect, you would have to do that to
4 create. So a series of software programs that were remarkably
5 similar to the ones that had been previously been used were
6 modified so as to allow the operator of the system, the
7 keypunch girls, if you will, to physically make the changes.
8 And then we made that process part of the regular month-end
9 closing of our books and records.

10 So as the month progressed, you got to a point where
11 you were going to close the month and send out statements, and
12 during that statement production process, the -- or immediately
13 thereafter, the books and records of the AS/400's IA system
14 were created, and then a further process of creation for the
15 advisory -- the special advisory books and records were
16 created. That process needed -- it wasn't fully automated.
17 You needed to open up a screen when the system told you you're
18 now ready to do that and you needed to interact with the
19 machine.

20 At that point, the only interaction with the machine
21 was literally being conducted by the operators based on
22 information I had given them. They, in effect, took themselves
23 out of the loop.

24 Q. But who wrote that program that allowed the data to be
25 entered into the system?

1 A. They did.

2 Q. Now, I'd like to show you what is in evidence as Government
3 Exhibit 105-C129. Do you recognize what this is?

4 A. Yes.

5 Q. Okay. What is it?

6 A. Looks to me like some sort of a set of instructions on how
7 to operate a particular procedure in the system.

8 Q. Okay. And what is that procedure described as? Will you
9 read the top of it, please?

10 A. I'm not certain, but I think cash 1750 is the procedure
11 that would allow the operators to make those changes pursuant
12 to that special advisory work that was being done regularly at
13 month end.

14 Q. Were there similar programs that they worked on that did
15 this type of task?

16 A. Previously worked on?

17 Q. Yes.

18 A. Yes.

19 Q. Now, do you recognize the handwriting on this document?

20 A. I believe there are two sets of handwriting here.

21 Q. And what type of information is being conveyed on this
22 document?

23 A. How to go in and start the procedures necessary to run cash
24 1750, which is the set of procedures for that special advisory,
25 I think.

1 Q. Okay. Well, let's walk through those procedures. What are
2 the first three procedures listed?

3 A. Enter report date, end of month date -- EOM is end of
4 month -- need EOM, end of month, tape date working, need end of
5 month tape prior to report.

6 Q. And do you understand what those steps are?

7 A. Vaguely.

8 Q. Okay. And what generally do these steps mean?

9 A. You need to tell the system what day it is and you need to
10 have tapes available for the date or the period of time you're
11 working on, and you also need to have tapes available for the
12 prior period before that date.

13 Q. And what's being done with those tapes?

14 A. They're being loaded into the machine and this procedure is
15 going to automatically run if you follow the prompts on the
16 screen when you opened up this cash 1750. There are operator
17 prompts that will say load tape, and you load tape. And then
18 there will be a period of rest, if you will, for the operator
19 while the machine is doing something in the background, and
20 then it will give you another prompt. And it's a series of
21 these prompts, loading tapes prompts, maybe a keystroke, take a
22 yes, take a no, prompt and pauses, and then it will tell you
23 end of procedure or some terminology like that.

24 (Continued on next page)

1 Q. What was your understanding of what was on these tapes?

2 A. The settled trade data of the current month and the settled
3 trade data of the prior month and other information.

4 Q. That's information relating to the fake trades in the IA
5 business?

6 A. Exactly.

7 Q. Once those tapes are loaded, what does it indicate happens
8 next?

9 A. Blotters are generated.

10 Q. What types of blotters do you understand that to be
11 referring to?

12 A. I think those are the blotters that were sent over to the
13 optical scanner. I'm not certain by this document.

14 Q. Looking at the rest of the document, do you understand what
15 that's referring to?

16 A. Yes.

17 Q. What is it referring to?

18 A. Creation of a fictitious stock record.

19 Q. Can you describe what the steps at the bottom do to create
20 a fictitious stock record.

21 A. I believe the stock record is created automatically in the
22 background. But there are three different stock records, if
23 you will, as part of this advisory process. One is dealing
24 with options and only options, another is dealing with stock
25 and only stock or treasuries, and the third is dealing with the

1 money market instruments.

2 What these three steps are is allowing the computer to
3 generate the special stock record of special advisory accounts
4 and pick up the information that is on the customer side as
5 what the customer holds. It then brings with it the
6 information for the location. At that point it is in balance
7 but the location says clearing bank, so the operator needs to
8 go into the system and change name for accounts.

9 What that means by these notes is she's going to see
10 entries on this screen where there's a 40-000-40 account
11 number. It says "clearing bank," and she is going to write
12 over that and make it say "option clearing."

13 Then she is going to close that, reopen the stock
14 record for the securities for the stocks and the treasuries.
15 Once again the stock record is going to be displayed, and once
16 again it is going to default to the clearing bank location, and
17 she is going to write over the clearing bank location "DTC
18 seg."

19 Then, for the third one she is going to do the exact
20 same thing. She is going to get a listing of positions for
21 clients in Fidelity and she is going to see the word "clearing
22 bank" as the location, and she is going to overwrite on top of
23 the word "clearing bank" "Fidelity for the benefit of customer
24 X08-09-2622," which was Bernie's account at Fidelity.

25 That's how we addressed the fact that the boys would

1 not put something into the system that was not present already
2 or change something in this case that was in the system.

3 Q. Does this program allow you to go in and change information
4 on the system?

5 A. Certainly.

6 Q. How does it let you change information on the system?

7 A. You simply follow that procedure and key it in.

8 Q. A keypunch operator could key in the new information,
9 right?

10 A. A keypunch operator did key it in.

11 Q. Who wrote this program to make it possible to hard-enter
12 new information into the system?

13 A. They did.

14 Q. Who is "they"?

15 A. Jerry and George.

16 Q. So, the programmer is no longer doing it, it now has to be
17 hard-entered by someone?

18 A. Correct.

19 Q. What language did they use to articulate their concerns
20 about how they wanted to operate going forward?

21 A. They would not change something that was already in the
22 system, nor would they put something into the system themselves
23 for the first time.

24 Q. What words did they use to describe that?

25 A. Because they didn't want to --

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BirPascal1 - direct

1 MR. KRANTZ: Objection. May I consult?

2 THE COURT: Yes.

3 (Counsel conferred.)

4 MR. KRANTZ: Your Honor, we need a ruling.

5 THE COURT: We will be back shortly.

6 (Continued on next page)

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Bipascal - direct

(In the robing room).

THE COURT: Mr. Krantz.

MR. KRANTZ: Your Honor, may I ask the court reporter to read back the last question and answer and the last question.

(Record)

MR. KRANTZ: My objection, your Honor, is it is the exact same question. When he said what language did they use, he wasn't meaning English, he was meaning what words did they use.

THE COURT: Looking for the fingerprints comment.

MR. KRANTZ: Exactly. But that fingerprints comment was not elicited in the answer, that was not the response. He wants more, so he asks the same question. That is improper.

THE COURT: I am inclined to agree.

MR. ZACH: Your Honor, there are multiple instances where they reiterate their rules. I want to ask what language they used when they reiterate their rules. They have these meetings back and forth.

THE COURT: He has given you an answer. Are you making a proffer that in this specific context the word "fingerprints" was used again as opposed to it having been used at least once or twice in the past?

MR. ZACH: My understanding is that as they would describe this going forward, they had multiple conversations,

1 they would use the word "fingerprints" in those conversations
2 and they would issue the rules. I can't proffer to you
3 specifically conversation by conversation, but it happened more
4 than once is my understanding, and that was the language that
5 was used when they would talk about this issue itself.

6 THE COURT: You have gotten your answer to this
7 question. The objection to the question, essentially fishing
8 for a different iteration, is sustained.

9 (Continued on next page)

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DiPascali - direct

1 (In open court)

2 BY MR. ZACH:

3 Q. Mr. DiPascali, this program allowed information to be
4 changed on the stock record, is that right?

5 A. Yes.

6 Q. This program allowed information to be changed on stock
7 blotters as well, is that right?

8 A. No. It allowed it to be generated for only the special
9 people.

10 Q. This allowed that limited special set to be included in the
11 blotters going forward?

12 A. That's correct.

13 Q. This is that same special group; this is an iteration of
14 that same special group of clients that was used in the SEC
15 Washington investigation, the SEC New York investigation, the
16 KPMG London, and the third SEC investigation?

17 A. Most of the clients on this list were exactly the same.
18 There were some changes made.

19 Q. Again, who was it that wrote this program?

20 A. Jerry and George. I don't know which one physically wrote
21 the software.

22 Q. This was done after the meeting with Mr. Madoff?

23 A. Yes.

24 Q. Mr. DiPascali, when the blotters were generated, did they
25 from time to time have to be printed?

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Dipascali - direct

1 A. All the time.

2 Q. Did other documents have to be printed?

3 A. Yes.

4 Q. Where were the printers?

5 A. Some of the print jobs came off the regular line printer or
6 the AS/400 in the mailroom slash print room. The blotters and
7 other documents came off the high-speed laser printer that I
8 had outside my office in the hallway.

9 Q. What volume of documents are we talking about being printed
10 when this happens?

11 A. For the AS/400 documents, they were not voluminous. They
12 were the things like the stock record and other smaller
13 documents. When it came to the blotters, there were thousands
14 of pages of blotters.

15 Q. What printer did the blotters get printed off of?

16 A. They came off the high-speed laser printer.

17 Q. Who had responsibilities with overseeing and maintaining
18 the printers?

19 A. Jerry and George.

20 Q. Did they maintain that responsibility in 2007 and 2008?

21 A. Yes.

22 Q. I would like to go back, if we can, to what is in evidence
23 as Government Exhibit 105-D28. Do you remember testifying
24 about this document previously?

25 A. I do.

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Difascari - direct

1 Q. What is this document again?

2 A. It's a note from Annette to Jerry.

3 Q. Again, what was the note requesting?

4 A. That he take some entries out of the system relating to the
5 Charlie and Carolyn Weiner account.

6 Q. When had those transactions occurred? Strike that. Were
7 any of those transactions real?

8 A. No.

9 Q. When had they purportedly been done?

10 A. October of '06.

11 Q. And December of '06?

12 A. Yes, December and November of '06.

13 Q. When was this request faxed to Mr. O'Hara?

14 A. It says March 21st, '07.

15 Q. You can take that down. You said that as you worked on
16 Excel, Ms. Crupi assisted you?

17 A. That's correct.

18 Q. What did Ms. Crupi do to assist you in doing this work on
19 Excel?

20 A. Primarily, she acted as my sounding board. I would talk
21 out what I wanted to do out loud and go over the process in
22 very great detail with Jodi because I was somewhat unsure of
23 what I was doing myself. We took various tutorials from some
24 of the staff upstairs as to the functionality of Excel, and she
25 was included in those tutorials, took notes. After we were

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Dipascali - direct

1 taught how to do certain functions in Excel, the two of us
2 tried to implement those functions. Sometimes we got it right,
3 sometimes we got it wrong. It was a back-and-forth two-person
4 operation.

5 Q. How much time would you spend working with Ms. Crupi trying
6 to generate these false blotters and records?

7 A. Hours.

8 Q. Was this an ongoing process that occurred over the months
9 and years?

10 A. Yes.

11 Q. During the time period after the meeting with Mr. Madoff,
12 did you go on any trips with Mr. O'Hara and Mr. Perez?

13 A. Yes.

14 Q. What type of trip did you go on with them?

15 A. I took them fishing and to a tournament up in Hyannis on
16 the Cape in Massachusetts.

17 Q. When you say you took them fishing, what did you take them
18 fishing on?

19 A. My boat.

20 Q. Did you continue to be friends with Mr. O'Hara and Mr.
21 Perez during this time period?

22 A. Certainly.

23 Q. How long did that fishing trip last for?

24 A. I don't remember if we left on -- probably on a Thursday
25 through Sunday night. We flew to Hyannis on a private jet. My

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Dipascali - direct

captain took the boat from Monmouth Beach, New Jersey, to the Cape a couple of days earlier. He hired a mate. He stocked the boat. We literally just flew up there on a Thursday night and went out fishing Friday morning.

Q. Who paid for all that?

A. I did.

Q. Did you have meals with Mr. O'Hara and Mr. Perez on this trip?

A. Yes.

Q. Did you share drinks with them on this trip?

A. Yes.

Q. Did you have conversations with them on this trip?

A. Many.

Q. Did you have a good time?

A. Quite honestly, no. The weather was awful.

Q. Did you catch any fish?

A. No.

Q. In the same time period did you continue to have meals with them from time to time during the week?

A. Yes.

Q. What type of restaurants did you go out to?

A. Our favorite place was a place on 51st Street, Mediterranean type high-end New York City east side restaurant owned by a very famous restaurateur and who has subsequently become a pretty famous chef. We ate there two, three nights a

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Dipascali - direct

week sometimes.

Q. You and who?

A. Jerry, George, my brother-in-law, people in the office that we bumped into in the elevator. Hey, why don't you come out for dinner, and we would all go there.

Q. Were all of those meals friendly?

A. Very.

Q. In the time period after that meeting that you testified earlier about between Mr. Madoff, Mr. Perez, Mr. O'Hara, and yourself, did Mr. Madoff come down to the 17th floor from time to time?

A. Yes.

Q. What did you observe Mr. Madoff doing on the 17th floor after that meeting?

A. As it related to the boys?

Q. Yes.

A. He would come down to the floor to take their temperature. He would have called me sometimes: How are the boys making out, how are they doing, everything OK, any problems with these guys? No, boss, no problems with these guys. There was always that back-and-forth weekly.

Occasionally, he would come downstairs. You needed a card key to get in the door. You would hear it buzz, and Bernie would buzz through. He would be kind of calling out loud, hey, has anyone seen Annette, where is Annette, I need

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Dipascali - direct

1 Annette, where is Annette? Meanwhile, he was focused through
2 the glass window on Jerry and George with like laser vision.

3 Some of the time Annette was in Florida for the
4 winter, and it was obvious to everyone on that floor that
5 Bernie knew that. So it was clear that he was not on the
6 floor, or certainly clear to me and others, for the purpose of
7 looking for or needing Annette.

8 MR. BRESLIN: Objection, your Honor. I move to strike
9 again on the issue of others' state of mind.

10 THE COURT: The motion to strike the last portion of
11 the answer, referring to knowledge of the witness and others,
12 is granted. The jury should disregard that.

13 Q. Did you have an understanding that Ms. Bongiorno wasn't in
14 the office during that time period?

15 A. Yes.

16 Q. Did you observe Mr. Madoff asking where is Ms. Bongiorno?

17 A. Yes.

18 Q. In your mind, what did you conclude?

19 A. He wasn't down there looking for Annette, he knows
20 Annette's in Florida, he's down there to take their temperature
21 again.

22 Q. Did Mr. O'Hara and Mr. Perez have any conversations with
23 you about seeing Mr. Madoff down on the 17th floor doing that?

24 A. Yes.

25 Q. What did they say to you?

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Dipascali - direct

1 A. He doesn't have to do that, he's embarrassing himself.

2 Q. Who said that to you?

3 A. One of the two of them. I don't remember.

4 Q. What did you understand them to mean by that?

5 A. My understanding was that they perceived the same thing
6 that I did, that he knew Annette wasn't there, he used it as a
7 chip to get himself in the door and say where is Annette, but
8 the sole purpose of his visit to the 17th floor was to see what
9 the boys were doing.

10 Q. How often was he down there?

11 A. Bernie was down on the 17th floor, when he was in the
12 office, daily.

13 Q. What did you say in response to them saying he didn't need
14 to do that anymore, that he is embarrassing himself?

15 A. I'll take care of it.

16 Q. Did you go talk to Mr. Madoff?

17 A. I did.

18 Q. What did you say to Mr. Madoff?

19 A. You're embarrassing yourself, please stop doing that.

20 Q. How did he respond?

21 A. What? What are you talking about? This is Bernie. Enough
22 already. If I perceive them to be a problem to you, I will let
23 you know. Stop coming down here and putting your finger up
24 their blank.

25 Q. Around this time period, did there come a time that KPMG

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Dipascali - direct

1 London wanted to come back to Madoff Securities?

2 A. Yes.

3 Q. Do you remember approximately when that was?

4 A. The spring of 2008, I believe.

5 Q. How did you learn that KPMG London wanted to come back and
6 look at Madoff Securities?

7 A. After they left the last time, about a year after that,
8 Bernie had said to me that, you know these guys want to come
9 back every two years. They had been in in November of '05. In
10 November or so of '07 he casually mentioned that to me, that we
11 were at that 2-year anniversary since the last time and that I
12 should be prepared for them to contact him. Shortly
13 thereafter, I guess after the holidays or into the early
14 spring, I don't know exactly when, of '08 they did indeed
15 contact him.

16 Q. What did Mr. Madoff say to you after they contacted him?

17 A. Here we go again, this guy's coming in and we're going to
18 have to do basically the same thing we did the last time.

19 Q. This was in what year?

20 A. '08.

21 Q. Who did you enlist to help with them coming back in?

22 A. Eric and Jodi.

23 Q. What did you ask Ms. Crupi to do?

24 A. We were building the blotters.

25 Q. Using what program?

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Dipascali - direct

1 A. Excel.

2 Q. What sorts of things did Ms. Crupi do to assist?

3 A. In answer to your previous question, there were other
4 Madoff staff members that assisted me and provided certain
5 information and calculations that wound up in Excel. Once I
6 got that back, there was a whole series of things that had to
7 be done to get it in the format it needed to be so it could be
8 printed the way Bernie wanted it printed on the high-speed
9 laser printers.

10 Q. I would like to show you a document that's in evidence
11 which is Government Exhibit 4000-F3. Do you recognize this
12 document?

13 A. I do.

14 Q. What is it?

15 A. It's a list of brokers that House 05 did business with
16 around that period of time.

17 Q. Do you see there is some handwriting on this document? Do
18 you recognize any of it?

19 A. I do.

20 Q. Whose handwriting is it?

21 A. Mine.

22 Q. What did you write about what's underneath the X'd out
23 information?

24 A. It asks a question: "Can a NASDAQ security be done with
25 this broker profile," question mark. "'No' equals," and there

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DIPASCALL - direct

was a colored highlight line.

Q. Do you have an understanding of what that question means?

A. Yes.

Q. What did it mean?

A. I had gone to David Kugel, after clearing it with Bernie, that I could approach David and explain to him what I needed to do. What I needed to do was build blotters with a domestic scenario once again because KPMG is from London.

David gave me a printout, which is this exact piece of paper before I wrote on it, and I reviewed it. It was a few pages long, and it was the brokers that the firm was transacting real trades with in the trading room. I crossed a couple guys off that I knew Bernie would not want to be on my blotters; for instance, Cohmad Securities.

I realized that I don't recognize the names of most of these guys. These are not names that I knew to be -- these names are new to me vis-a-vis when I was on the trading desk 20 years earlier. So I didn't know what type of business these organizations conducted.

I have to build blotters, and the purpose of getting this list is to randomly assign names to the counterparties. If I don't know what the counterparty does for a living, I don't know which trade to assign him.

So I went back to David, and mistakenly I simplified the process a little bit too simple and I asked him that

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Dipascali - direct

1 question. I asked him to take a highlight pen and simply asked
2 the question, can a NASDAQ security be done with this broker?
3 I wanted him to highlight the brokers that a NASDAQ security
4 could be transacted with. At that point I thought that's all I
5 needed. I gave him the list.

6 Then David and I had some follow-up discussions. He
7 goes, you got to be careful with that. Technically, yes,
8 you've got a lot of guys on this list that can do NASDAQ
9 stocks, but they are Canadians, and we only do Canadian issues
10 with them. I'm like, oh, great.

11 So I crossed off the first question and I wrote him a
12 little note. I says, kill Canada guys that only do Canada
13 stocks -- in other words, cross those off this list -- and then
14 identify the balance by following three terms: Does this
15 broker conduct listed business, New York Stock Exchange listed;
16 or does this broker conduct NASDAQ business; or does this
17 broker do both?

18 If I had that formula identifying everyone left on the
19 list, I would be able to assign the proper transaction randomly
20 by simply segregating the randomization. I would first take
21 all my listed trades and assign them to the guy David said does
22 listed. I would then take all my NASDAQ trades and assign them
23 to the guys that do NASDAQ. On the listed list and on the
24 NASDAQ list would be the guys on both list that is did both.

25 It's getting very complicated. When you go to

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Dipascali - direct

1 randomly assign something to somewhere, you need to put it in
2 the right hole. This list provided me the information to
3 identify the proper counterparties.

4 Q. What picture were you trying to paint for KPMG London when
5 they came back doing this?

6 A. That we were transacting business by looking at those
7 blotters in the trading room with these brokers.

8 Q. Who did you work most directly with in trying to paint that
9 picture for this audit?

10 A. Jodi.

11 Q. You can take that down. Now, how much work was involved
12 for you and Ms. Crupi in preparing for this second KPMG audit?

13 A. Sometimes we worked during the day. We worked many
14 evenings on it.

15 Q. How many types of documents did you and Ms. Crupi work to
16 produce?

17 A. Certainly the blotters, and they were in two different
18 formats, just sorted differently and printed. But printing was
19 part of our problem. It took a long time to print these
20 things. There was always print job errors. Then we created a
21 stock record. We created a different version of the DTC
22 report. I don't remember how we created or if we created a
23 SIAC report. I think we did.

24 In effect, the same reports that had gone the auditors
25 the last time when they came up to review were now, or very

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Dipascali - direct

similar reports, some of which were identical and some of which were in a different format, but all the same topics were discussed the second time as were discussed the first time. Therefore, probably all the same reports were displayed.

Q. In connection with this second KPMG London audit, did you have a discussion with Mr. Madoff about using Madoff clients to be on the other side of some of HSBC's trades?

A. He instructed me -- he reminded me that that's the way it has to be.

Q. Who was KPMG coming in to do the audit on behalf of?

A. On behalf of HSBC.

Q. What was HSBC's role in this?

A. They were the bank for some of the foreign hedge funds.

Q. What year was this again?

A. '08.

Q. Did Mr. Madoff express to you that there were particular concerns that he thought the auditors may be looking at?

A. I don't recall any particular concern that was more important to him than any other concern.

Q. Are you familiar with the term "counterparty risk"?

A. Yes.

Q. What types of securities had counterparty risk?

A. Options.

Q. What is counterparty risk?

A. It's when you have an open contract with another party and

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1 that party could have the ability of laying down on their
2 commitment to you. That would be counterparty risk.

3 Q. That the person who you entered the transaction with
4 wouldn't be good for it at the end of the day?

5 A. Exactly.

6 Q. When the economy was in turmoil in 2008, was there an
7 increase or a decrease in counterparty risk?

8 A. Huge increase.

9 Q. Did you have discussions with Mr. Madoff about that?

10 A. Yes.

11 Q. What did he tell you?

12 A. That the industry is going through an evolution where
13 counterparty risk is typically the topic des jours with
14 regulators and auditors. They want to know that the positions
15 you have in place are safe and secure and not subject to the
16 counterparty risk. People were falling all over Wall Street
17 because other people lay down on their commitments.

18 Q. Was there a discussion about how to address that when KPMG
19 London came in in 2008?

20 A. Yes.

21 Q. What was that discussion? Well, who was involved in that
22 discussion?

23 A. Bernie and I.

24 Q. What did he say to you?

25 A. He could no longer take the chance that this auditor would

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DIPASCALL - direct

1 be comfortable with us declaring, as we did in the first audit,
2 that the opposite side of the these option trades are
3 institutional derivative desks all over the world. Back in
4 that day when that first audit occurred, if you dropped the
5 term "institutional derivative desks" of global financial
6 firms, it was impressive. In 2008 it was toxic. So he could
7 not use that term again.

8 He decided to internalize the option trades, literally
9 telling the regulator that the other side of Fairfield's trade
10 is another Madoff client, eliminating the introduction of any
11 counterparty risk, because he was going to further tell that
12 the Madoff client that was the opposite side of a Fairfield
13 trade had deposited treasury securities with him to hold as
14 performance assurance, as collateral, to back the commitment
15 that his other client made to Fairfield. In effect, it took
16 the whole concept of counterparty risk off the table. If the
17 auditor understood that set-up of how we were protecting
18 Fairfield, there would be no follow-up questions of
19 counterparty risk.

20 Q. To be clear, was there any real counterparty risk?

21 A. There were no contracts.

22 Q. None of this trading or options was real, right?

23 A. No.

24 Q. So in the real world there was no counterparty risk, right?

25 A. There were no counterparties, there was no counterparty

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Dipascali - direct

1 risk.

2 Q. Now Mr. Madoff wanted a paint a picture that the
3 counterparty risk was eliminated by having some of his own
4 clients taking the other sides of these trades, is that fair?

5 A. If you include the part that those same clients that are
6 taking the other side are also posting collateral.

7 Q. Did you convey this need to have this collateral to Ms.
8 Crupi?

9 A. Yes.

10 Q. What did you say to her?

11 A. I explained the entire concept as Bernie explained it to
12 me: That he no longer can use the derivative dealer BS as who
13 our counterparties are; that those dealers, some of which were
14 on our blotters the last time, were literally out of business;
15 so he was going to internalize it. He's going to use some of
16 Annette's clients and say on our stock record that if
17 Fairfield, Tremont, Kingate, and other accounts, HSBC this,
18 HSBC that, were long this options position, the opposite side
19 of those trades would be very large Annette clients: Carl
20 Shapiro and family, Norman Levy, Stanley Chais, Jeffrey
21 Picower. Bernie told me people who, if this auditor called,
22 would just simply hang up on them because he would have
23 instructed them to do so.

24 Q. Did you explain that to Ms. Crupi?

25 A. Yes.

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DiPascali - direct

1 Q. Ms. Crupi was helping you prepare these documents for KPMG
2 London coming back in?

3 A. Yes.

4 Q. Let's look at what is in evidence as Government Exhibit
5 105-C171. Can we go slowly through the three pages of this
6 document, Ms. Baskin.

7 Do you see those three pages, Mr. DiPascali?

8 A. I do.

9 Q. What are we looking at?

10 A. The first page is something that I probably printed to get
11 a handle on what the industry standard would be in order to
12 collateralize an option position. I don't know what manual I
13 took that from. It might have been from the Internet, it might
14 have been from Bear Stearns, it might have been from any number
15 of sources. The point of what I would be reading there would
16 be how to margin or collateralize an option. This is the
17 calculation. That box in the middle was the answer to my
18 question.

19 Q. Whose handwriting is on this page?

20 A. Mine.

21 Q. When you say collateralize, does that mean in essence to
22 back up or to offer some protection to your counterparty?

23 A. Exactly that.

24 Q. Now can we go to the second page of this document. What is
25 this that we are looking at?

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Dipascal - direct

1 A. It's a spreadsheet that I created that was going to be the
2 nuts and bolts of this exercise. It was going to do a lot of
3 the calculation for me and allow the process to progress
4 swiftly instead of from month to month to month and client to
5 client to client calculate all sorts of stuff, and then have to
6 then create another side to that.

7 This spreadsheet, which is an Excel-based spreadsheet,
8 is identifying certain treasury bills across the top column.
9 The top row is the CUSIP of treasury bills and options. The
10 second row are the symbols of options and then a string of
11 treasury bills.

12 Going on the far left column are a string of account
13 numbers. Those are the accounts that Bernie told us he wanted
14 to use to be the counterparties of the customer option
15 positions. What this is doing is it's allowing me to randomly
16 assign, once I know the total of my customer option positions,
17 a quantity to each of those counterparties. Then, once I've
18 randomly defined what each counterparty's position is, this is
19 calculating what its margin or collateral requirement would be.

20 Once I established that, this spreadsheet allows me to
21 randomly pick a group of treasuries that were going to
22 represent that collateral, and then the whole total number
23 would circle back to what I needed. It's fairly complicated,
24 but it did all the grind work necessary to accomplish what
25 Bernie wanted.

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Dipascali - direct

1 Q. Were any of the treasury bills that are reflected on this
2 real?

3 A. No.

4 Q. Would it be fair to say that this essentially divvies up
5 amongst the client accounts Mr. Madoff provided to you to
6 collateralize the other sides of the option trading, that this
7 document divvies up the treasuries going to each one of those
8 accounts?

9 A. It first divvies up what their theoretical option position
10 would be, and based on that it assigns an array of treasuries
11 that would collateralize it.

12 Q. Let's go to the next page. Can we blow up the relevant
13 part of this. What does this document show?

14 A. Those same account numbers that were in the far left column
15 going down in a grid with a series of checks.

16 Q. Have you ever seen this document before?

17 A. Briefly.

18 Q. Whose handwriting is on this document?

19 A. Jodi's.

20 Q. Looking at the checks, do you understand what those
21 reflect?

22 A. Not exactly, but in concept yes.

23 Q. What in concept does it reflect?

24 A. It's got something to do with how many times --

25 MR. BRESLIN: Objection.

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DiPascali - direct

1 THE COURT: Hold on. Please wait one moment and
2 counsel will confer.

3 (Counsel conferred.)

4 Q. Mr. DiPascali, do you recognize these account numbers as
5 being involved in this false collateralization process?

6 A. I do.

7 Q. Do you recognize the handwriting on the bottom of the
8 document?

9 A. I do.

10 Q. Do these account numbers relate to that chart that we
11 looked at back on page 2?

12 A. They do.

13 Q. Were you ultimately able to generate sufficient information
14 to present to KPMG London that these options were
15 collateralized?

16 A. Yes.

17 Q. What sort of documentation did you produce?

18 A. Treasury positions for these clients became resident on our
19 stock record, and option positions for these clients that were
20 the opposite side of the customer positions also became
21 resident on our stock record.

22 Q. How was this information input into the stock record?

23 A. An operator literally used some device and put it there.

24 Q. Was there a program that was generated to make that happen?
25 Was there a program in place that made that happen?

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Dipascal - direct

1 A. Yes.

2 Q. What was the program in place that made that happen?

3 A. It was part of those advisory programs.

4 Q. Those advisory programs let information like this be hard-
5 entered into the stock record, right?

6 A. Exactly.

7 Q. Who was it who made that program that let this information
8 be hard-entered into the stock record?

9 A. Jerry and George.

10 Q. We can take that document down. Now let me ask you this.
11 Was one of the concerns for the KPMG review that HSBC had other
12 involvement with Madoff Securities?

13 A. Yes.

14 Q. Who raised that concern?

15 A. Bernie.

16 Q. Could you articulate what that concern was.

17 A. He was concerned about HSBC having other accounts that we
18 controlled that the auditor may know about.

19 Q. What sort of discussions were had -- had you had similar
20 conversations like that in the first KPMG London audit?

21 A. Yes.

22 Q. Those concerns remained for the second KPMG London review,
23 right?

24 A. Yes.

25 Q. Who did you discuss those concerns with at Madoff

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Dipascali - direct

Securities?

A. Jodi.

Q. Did you articulate the concerns that Mr. Madoff had about HSBC having possible relationships with other aspects of his own business?

A. I don't recall having to specifically articulate it again.

Q. Now let me show you what is in evidence as Government Exhibit 4000-F2. Can we go to the next page, and the next page. Do you recognize that document?

A. I do.

Q. Can we go back to the first page. First let me ask you, what type of document is this?

A. It is in essence the next generation of a DTC report.

Q. Remind the jury again what a DTC report was.

A. It's a document that came from the Depository Trust Company, a hard document, a paper document, that illustrated by security the securities that were on deposit at DTC for either the broker or a customer and their location within DTC's organization of segregated or pledged.

Q. How was this document related to the prior DTC reports that we walked through a few days ago?

A. There came a time where DTC stopped printing that document and were only distributing that document to brokers digitally.

Q. Internally, as the KPMG audit of 2008 approached, were there discussions about the type of documentation that should

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DIPASCALL - direct

be on hand relating to DTC?

A. Yes.

Q. Who was involved in those discussions?

A. Bernie and Danny.

Q. Did you learn about those discussions?

A. Did I learn about them?

Q. Were you at those discussions?

A. I was present at the discussions.

Q. What was discussed about that documentation in those conversations?

A. Danny and I both had a very difficult time explaining to Bernie that the document that he used to use doesn't exist anymore. The fact that the boys weren't going to produce it anyway was more important to me. We didn't have access to it. Nor did the industry use it anymore. Bernie's concern, he expressed the concern as, well, what are you going to use in lieu of it, because they are going to want to see a third-party confirmation.

There were a series of extensive conversations with him to explain to him that the industry verifies its positions with the depository digitally these days, and if an auditor came in to Goldman and the next day went to Merrill and the next day went to Smith Barney and requested that information, the format it would be in would be different at every brokerage firm.

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1 The days of a published report issued by the
2 depository on their paper in their font are over. Every broker
3 gets this data, and naturally every broker prints this data, if
4 they choose to, on a different printer. So it is no longer a
5 concern that it had to look like the original.

6 Q. Who was saying this?

7 A. Danny and myself.

8 Q. Who were you guys saying this to?

9 A. Bernie.

10 Q. How did Mr. Madoff react to it?

11 A. He finally agreed. OK, let me see what you can do, show me
12 what it would look like, is what he said.

13 Q. Who did you go to talk to to get the document that would
14 look like that?

15 A. Jerry.

16 Q. What did you say to Mr. O'Hara?

17 A. I need to create a DTC report the way you guys used to do
18 when you used to do it, where did you get the data.

19 Q. What did he respond?

20 A. There is a file that comes into the firm every day. It's
21 called APIVAL. We get that data and we use it to compare
22 things upstairs. That's the file that comes in from the
23 depository, this digital file that was no longer being printed,
24 and that's what would be used melded with your stock record to
25 produce the data that would be on the DTC report for this

Q. That was explained to you by Mr. O'Hara?

Q. This is in 2008?

Q. Now, did he tell you how to get that?

Q. Did Haresh start getting that document for you?

Q. The documents you were getting, where was it coming from?

Q. Did you have discussions about how you could use this document for your own purposes?

Q. Who did you have the discussion with?

Q. What did you conclude how you could use it?

Q. Let's go to this page. Whose handwriting is on the first page of 4000-F2?

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Dipascal - direct

Q. Let's go to the next page. Do you see generally there is a bunch of data on here?

A. Yes.

Q. Generally, what does this data signify?

A. Some of it is the data that was resident in the digital file that Haresh had given me, and some of it is data that I simply put there as space and filler data.

Q. You see on the right it says -- what does it say?

A. It says "need to combine me and Dan."

Q. Who wrote that?

A. I did.

Q. What did you mean by "need to combine me and Dan"?

A. The process is very simple. DTC is going to give us a file of what they recognize to be at their location. We are going to take that file and we are going to add to it the positions that we say exist on the stock record. The positions that we say exist on the stock record have to be identified on this new file as being segregated. These positions theoretically belonged to customers.

What happened was Dan reminded me that we only have one segregation account at DTC and we have one free position account at DTC. Because Dan was housing Madoff London's securities in segregation at DTC, the accurate file that came from DTC reflected that.

If I was going to in the same security put a position

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Dipascali - direct

1 on a phony report, I had to be very aware of that situation. I
2 couldn't simply create a line item and put it there if there
3 was already a line item for that security in segregation. In
4 effect, I would have been creating two line items of a
5 segregated account on the report.

6 I was reminded by Dan make sure you don't make that
7 mistake, because occasionally I have positions in segregation
8 for Madoff London, so if you're going to bring in stock
9 segregated, you need to add them to mine, not create a new line
10 item.

11 Q. To be clear, this is supposed to be a report coming from
12 DTC, right?

13 A. Correct.

14 Q. It is supposed to contain what securities are at DTC,
15 right?

16 A. That is correct.

17 Q. You had discussed with Mr. Bonventre that you were going to
18 add to that yourself?

19 A. Yes.

20 Q. You weren't going to get anything from DTC, you were going
21 to put it there?

22 A. Yes.

23 Q. Did you make the mistake at a Mr. Bonventre warned you
24 about?

25 A. I forgot that he had told me about that when I ran the

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DiPascali - direct

first draft of this document.

Q. Do we see that mistake here?

A. Yes.

Q. Ms. Baskin, can we blow up the box part of this.

Can you explain, Mr. DiPascali, what mistake you made here.

A. Counting from the left one, two, three, four, fifth column, you will see that there are two entries from Microsoft: That 022 entry, then there is a middle one that doesn't pertain to this question, but the one underneath that. So there are literally two entries on this first draft fake report for segregation.

I was reminded by Danny that we only have one segregated account. Had I seen this and recognized it, I would not have simply put that top position on the report; I would have added it to the other 022 position.

If you go over to the third column now from your right -- exactly -- I put that top line share quantity into the system, 7,164,388 shares, because that was the total amount on my fictitious stock record for the special people. They needed to be put in segregation.

Skipping a line and looking at the one underneath it, Danny was already segregating 25,000 shares of stock legitimately for London. This first draft, when I reviewed it, I remembered what he said, because this Microsoft entry then

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D:\Pascall - direct

1 brought to the forefront what he had warned me was going to
2 happen. So it had to be redone.

3 Q. To the right of the third column to the right, do you see
4 that there is a number, 646?

5 A. I'm sorry. Second column, yes.

6 Q. What is 646?

7 A. Madoff's clearing number at the depository.

8 THE COURT: You have five minutes before we stop.

9 MR. ZACH: Thank you, your Honor.

10 Q. If this report were really coming from DTC, would these two
11 22-designated Microsoft entries be combined into one?

12 A. No, not at all.

13 Q. What would happen?

14 A. The report that came from DTC as it relates to this
15 Microsoft block, literally the second line and the third line,
16 that's what came from DTC. I tried to force the top line into
17 the soup, and I did it incorrectly.

18 Q. Are any of the securities on the top of the line real?

19 A. No.

20 Q. They are all fake?

21 A. Yes.

22 Q. What did you have to do to correct this so an auditor would
23 think this was a real document?

24 A. I instructed my clerk Eric that when he saw the situation,
25 because he was the one that inputted the data to Excel, to

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1 simply, and you will see my note on the first page, you need to
2 add me and Dan together. You can't create a new line item for
3 just me, is what that note meant.

4 Q. Who told you that you needed to be aware of that problem?

5 A. Danny.

6 Q. Can we back out of the document. Can we go to the third
7 page. Briefly, whose handwriting is on the right side?

8 A. Mine.

9 Q. What does that say?

10 A. "Combine me and Dan."

11 Q. Do you see there is a highlighted box again in the middle?

12 A. I do.

13 Q. Can we blow that up. Does this reflect the same problem
14 that we just looked at?

15 A. Identically, just a different security.

16 Q. Ms. Baskin, can we highlight the two 22 entries, and then
17 can we highlight the third column from the right.

18 Which one of those numbers on the right is the real
19 securities?

20 A. The 5,000 lot.

21 Q. Which one represents the fake securities?

22 A. The 5,418,298.

23 Q. Who warned you that this sort of mistake needed to be
24 corrected?

25 MR. FRISCH: Objection.

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1 THE COURT: Basis?

2 MR. FRISCH: May I consult?

3 THE COURT: Please.

4 (Counsel conferred.)

5 Q. What does your handwriting say on the right of this
6 document?

7 A. I think it said "combine me and Dan."

8 Q. When you went back to fix this, what did you have to do?

9 A. Literally exactly that. I had my clerk combine the
10 5,418,298 entry with the 5,000 entry so there would now only be
11 one segregated 022 entry for the sum of those two numbers.

12 Q. The purpose of doing that was to present what picture to
13 the auditor?

14 A. That we were holding customer securities in segregation at
15 the Depository Trust Company.

16 MR. ZACH: This is a good place to stop, your Honor.

17 THE COURT: Thank you. This concludes our
18 presentation of evidence for the morning. We will resume at 2
19 o'clock. Members of the jury, please continue to keep your
20 thoughts to yourselves and stay away from all outside
21 information. We hope that you will enjoy your lunch. Ms. Ng,
22 would you please escort the jury out. All rise. Mr.
23 DiPascali, you may step down. Thank you.

24 See you at 2 o'clock. Have a good lunch, everyone.

25 (Luncheon recess)

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

2:08 P.M.

THE COURT: Good afternoon. Please be seated.

Ms. Ng, would you bring the jury in.

(Jury enters)

Good afternoon, members of the jury. Please take your seats. Please be seated, everyone. Mr. Zach.

MR. ZACH: Thank you, your Honor. Ms. Baskin, can we bring up back up Government Exhibit 4000-F2.

BY MR. ZACH:

Q. Now, before we broke for lunch, Mr. DiPascali, we were talking about this document; do you recall that?

A. I do.

Q. And you testified that this is the new type of document that DTC would provide to Madoff Securities; do you recall that?

A. It's a print job. Some of the data in this print job came from DTC.

Q. Now, prior to having this type of document, were there other DTC paper documents that were utilized at Madoff Securities?

A. Yes.

Q. And did we go over some of those a couple of days ago?

A. We did.

Q. When did you first start working directly with Mr. O'Hara

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1 on the fabricated DTC reports that we looked at a few days ago?

2 A. In the early 2000s.

3 Q. And prior to you working directly with him, did you have an
4 understanding that he was working on those types of documents?

5 A. Yes.

6 Q. Where had you gained that understanding from?

7 A. Bernie had told me.

8 Q. What did Mr. Madoff tell you about that work?

9 A. That he had arranged for Danny to have the computer guys
10 make a DTC participant report.

11 Q. And back before you were working directly with him, did you
12 observe Mr. O'Hara dealing with those documents from time to
13 time?

14 A. Yes.

15 Q. We can take that down, Ms. Baskin. I'd also like to bring
16 up what we've previously looked at which is Government
17 Exhibit 105-C129. Do you remember looking at this document?

18 A. I do.

19 Q. And whose handwriting is on this document?

20 A. There are two.

21 Q. Okay. Who's -- Tell us the first person's handwriting you
22 can identify.

23 A. I think the primary document was written by Alethea, one of
24 my -- or our computer operators, and then there were certain
25 notes on the right side of the document and arrows, and that

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Bifascari - direct

1 belongs to Jodi.

2 Q. Can you point out which pieces of this are Ms. Crupi's
3 handwriting?

4 A. Literally illustrate them?

5 Q. Please read out --

6 A. Yes.

7 Q. Direct our attention to where it is.

8 A. Okay. As you come down the document, the third line says,
9 key: Cash 1750. To the right of that it says, calendar month
10 end always. That belongs to Jodi. The word "always" written
11 again with the arrow pointing to the word "date" belongs to
12 Jodi. The two dates in the far right column, underneath that,
13 January 31st, '08; 12-31-07, that's Jodi's handwriting.

14 Further on down there will be an arrow and it points
15 to a phrase called "line one only" that is underlined, that
16 also is Jodi's. And further on down, where it talks about the
17 4040 options clearing, there's an arrow pointing to that phrase
18 that says "Name and address reads," that's Jodi's.

19 Q. And this is all on Government Exhibit 105-C129?

20 A. Yes, it is.

21 Q. Take that down, Ms. Baskin. Now, I want to return to this
22 second KPMG London audit that's happening in 2008. Do you
23 recall testifying about that before the break?

24 A. Yes.

25 Q. I want to bring up now what's in evidence as Government

1 Exhibit 105-C108, and I'd like to turn to Page 7 of this
2 document, and can we make it a little bit bigger, or is that --
3 No. Can you tell me, Mr. DiPascali, whether you recognize this
4 document?

5 A. Yes.

6 Q. What is it that we're looking at?

7 A. It's kind of a worksheet. The original typewritten words
8 were part of another document, and the handwritten notations
9 are various values of those entities. There's some reference
10 also handwritten as to when the account started, and there's a
11 series of dates down the left-hand column.

12 Q. Whose handwriting appears on this document?

13 A. Most of the handwriting belongs to Jodi. The left-hand
14 column dates is mine.

15 Q. Okay. And what dates -- The dates that you wrote on the
16 left-hand column, why did you write those there?

17 A. I don't remember.

18 Q. And what is your understanding of what the meaning of this
19 document is?

20 A. The second HSBC audit needed to be -- the second HSBC audit
21 was looking at our mutual clients. KPMG was doing a study of
22 HSBC clients. A specific list of clients was given to Bernie,
23 and very much like the first KPMG audit, Bernie needed to
24 sprinkle a few other accounts on his special work that KPMG
25 might be aware of, and so he was putting us on that project.

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This document was prepared as part of that.

I think to answer the specific question of what's the total value of what we're dealing with, which is just that right-hand column literally says March 31st, '08 equity or account value, and those are the account values.

Q. Now, you see that there is the heading account number and a series of account numbers on the left side of the document. Do you see that?

A. I do.

Q. Are those Madoff Securities account numbers?

A. Yes.

Q. And are they associated in some way with HSBC, according to this document?

A. Yes.

Q. And was HSBC that had hired KPMG to come in and examine certain records kept by Madoff Securities?

A. Yes.

Q. And at this point in time, in 2008, had Madoff Securities disclosed that it had thousands of customers?

A. No.

Q. How many customers was Madoff Securities stating in its filings to the SEC of the number of customers that it had?

A. A couple of dozen.

Q. Okay. Now, so in determining what records to prepare for KPMG London coming in, how did this document play into working

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up the records that were required to show to KPMG London?

A. I believe this document was compiled at the tail end of that to keep track of what we showed them this time.

Q. And this has both your handwriting and Ms. Crupi's handwriting?

A. It does.

Q. Can we take that document down. Now, Mr. DiPascali, I'd like to show you what's in evidence as Government Exhibit 4000-F6, and I'd like to turn to Page 11. Do you recognize what this is?

A. Its' my personal diary or calendar.

Q. And for what month is this?

A. April of 2008.

Q. And do you see on this, anywhere on this month, an indication of the KPMG London audit?

A. I do.

Q. Okay. What do you see?

A. I see on April 7th I have the name David KPMG written in on my calendar.

Q. And what else do you see?

A. And from the 13th through the 19th there is reference to the actual audit.

Q. And can we put that document in -- well, can we blow up the middle two rows, please, Miss Baskin, and can we put that in split screen.

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Now, I'd like to show you what's in evidence as Government Exhibit 105-C153. And can we blow that up, please. And can we blow it up a little bit more. Now, do you recognize any of the handwriting on that document?

A. It's Jodi's.

Q. And what day and what kind of paper is this written on?

A. It's written on the standard issued Madoff desk calendar.

Q. And what date are we looking at?

A. April 14th, 2008.

Q. And what is written in the top left-hand corner?

A. HSBC.

Q. And can we highlight that, please, Ms. Baskin. And who was it that had hired KPMG to come in and audit Madoff Securities?

A. HSBC.

Q. Okay. So does your -- How does your calendar and Ms. Crupi's calendar compare?

A. The reference on April 7th on my calendar was a meeting that actually never occurred. It was originally scheduled for April 7th, and I was notified it's been put off a week. It actually began on April 14th, and that's the date referenced HSBC on the desk calendar as well.

Q. Now, can we pull out of Ms. Crupi's calendar page and go back to Mr. DiPascali's calendar, and can we blow up the 13th and the 14th. Now, on the Sunday before the 14th, you have some handwritten notes there; do you see that?

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1 A. I do.

2 Q. Whose handwriting is that?

3 A. Mine.

4 Q. What does that reflect?

5 A. It's a notation to myself of the confirmation numbers given
6 to me by the Hotel Benjamin when I paid a room reservation for
7 the evening of the 13th.

8 Q. Who did you make a room reservation for?

9 A. I made two rooms, one for me, one for Jodi.

10 Q. And what was the purpose of making those reservations?

11 A. To get a good night's sleep the night before I met with the
12 auditors. We might have been putting some finishing touches on
13 things on Sunday, or at least getting them in the proper order.
14 I don't recall, but typically we would, as I said earlier, go
15 into the city, spend the night in a hotel the night before one
16 of these events.

17 Q. Now, can we go to 105 -- well, we can take that down,
18 actually.

19 Now, who came on the 14th from KPMG London to do the
20 audit?

21 A. David Yim.

22 Q. Was this the same guy that had been there in 2006 when KPMG
23 had been there before?

24 A. Yes.

25 Q. And where was he placed?

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Dipascali - direct

1 A. I think he was put in the same -- put in the same
2 conference room, 18th floor conference room.

3 Q. And did he come alone, or did he have people with him?

4 A. Had people with him.

5 Q. And do you remember approximately for how long -- Well, how
6 many people, approximately, do you recall having with him?

7 A. There was at least one more gentleman. I don't remember
8 the -- I spoke earlier about the first audit where there was a
9 fellow sitting at a laptop where I thought his name was David,
10 but I had very little dealings with him. I don't think he was
11 there for the second one, but Mr. Yim had brought another
12 associate from London and/or, quite frankly, it could have been
13 from anywhere. I don't remember if he was from London.

14 And Mr. Yim, during the second audit, tipped out a
15 couple of times for a long duration and left me with the other
16 guy to go over numbers and stuff like that. He -- obviously,
17 he had some other business in New York that he needed to attend
18 to.

19 Q. So when you say he left Madoff Securities for a while and
20 left someone else there --

21 A. Yeah, I seem to recall that he would like set up what was
22 going to go on that day, and then he would leave for a little
23 while, a few hours, a little while, and the other fellow was
24 going over some of the documents and going over his adding
25 tapes and stuff like that.

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1 Q. And who sat with these auditors from KPMG London?

2 A. I did.

3 Q. And did you lie to them?

4 A. Sure.

5 Q. And what sorts of lies did you tell them?

6 A. Same lies I told them the first time with some variation
7 because of the documentation that we had.

8 Q. Did you show them fake documents?

9 A. Yes.

10 Q. Who had produced those fake documents?

11 A. I did.

12 Q. And when you -- how much of your day was spent talking to
13 these guys?

14 A. A good part of it.

15 Q. And did there come a time that they left?

16 A. Yes.

17 Q. And after they left, was there further communication with
18 them?

19 A. I don't remember if it was the second audit or the first
20 audit. However, I'm leaning towards the second audit. There
21 was a follow-up either letter or phone call that Bernie got
22 that had found some deficiencies in our system of controls, and
23 he wanted Bernie to address them.

24 One of the ones that I remember was that during the
25 audit, we were unable to produce a particular set of signature

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1 cards that were current for the HSBC accounts, and one of the
2 things the auditor was very particular about was that we were
3 relying on the appropriate authority to release money by wire
4 back to HSBC or anywhere, who were we taking our instructions
5 from and how do you verify that that person is authorized to
6 give you instruction.

7 So you would typically go to your signature cards, and
8 some sophisticated clients have a pecking order of authority.
9 So if a wire is \$5 million, one person needs to sign the
10 request, but if it's \$50 million, maybe three vice presidents
11 need to sign the request. And he wanted to see something like
12 that in our system of controls. We didn't have it. We told
13 him the person that was -- I told him the person that was
14 responsible for that was out, and I'd get back to you on that.

15 Then the audit progressed, and he left and we never
16 revisited that issue, and then it came up in a follow-up letter
17 to Bernie or a follow-up phone call.

18 Q. Now, when Bernie presented this to you, did he ask that
19 someone deal with it?

20 A. He asked Jodi to call HSBC and get signatures.

21 Q. And did you see -- Did you observe what Ms. Crupi did in
22 response to that?

23 A. She did exactly that.

24 Q. I'd like to show you again Government Exhibit 105-C153 and
25 go to Page 2 this time. And just, can we blow up the day here.

1 What date is shown on the stationery?

2 A. April 23rd, 2008.

3 Q. And do you recognize the handwriting on this calendar page?

4 A. It's Jodi's.

5 Q. Can you just read what Ms. Crupi wrote?

6 A. Call HSBC a.m.

7 Q. And, again, who was it that hired KPMG to come and do the
8 audit?

9 A. HSBC.

10 Q. And this is about how many days after the 14th?

11 A. Nine.

12 Q. Would this actually be in the week following the actual
13 presence of KPMG auditors at Madoff Securities?

14 A. It was the Wednesday after they left.

15 Q. We can take that down, Ms. Baskin. Now, did there come a
16 time after that that Mr. Madoff told you that this second KPMG
17 review had been concluded?

18 A. Yes.

19 Q. What did he say to you?

20 A. He had a pleasant conversation with the people at KPMG and
21 that we had supplied them with the signatures that they were
22 looking for, which was the bow on the package, if you will.
23 They came from HSBC in digital format on a DVD, and we sent it
24 to them.

25 Q. And did you tell Ms. Crupi that the review by KPMG London

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1 had been concluded?

2 A. I don't specifically remember telling her, but there would
3 be no reason not to.

4 Q. Now, stepping back for a second. You previously testified
5 that there was another programmer that worked on the AS/400s by
6 the name of Haresh?

7 A. Correct.

8 Q. Do you recall that?

9 A. Yes.

10 Q. Now, did Haresh, to your understanding, ever work on the
11 House 17 AS/400?

12 A. Not that I know of.

13 Q. Was there another AS/400 at Madoff Securities?

14 A. Yes.

15 Q. Where was that other AS/400 located?

16 A. In the computer room on the 17th floor.

17 Q. And what was your understanding of the AS/400 that Haresh
18 worked on?

19 A. It was processing the market making and proprietary back
20 office bookkeeping system.

21 Q. And that was the other AS/400?

22 A. Correct.

23 Q. Now, you testified before lunch that you continued to
24 socialize with Mr. Perez and Mr. O'Hara; do you recall that?

25 A. Sure.

1 Q. That you went on this fishing trip together?

2 A. Yup.

3 Q. Now, did Mr. Perez ever tell you that he had written a
4 letter to himself about his work at Madoff Securities?

5 A. Yes.

6 Q. What did he say to you?

7 A. That he had written a notation of these events.

8 Q. When did he tell you that?

9 A. I don't remember.

10 Q. What about -- Well, what did he say about it?

11 A. So part and parcel of the discussions that they were
12 telling me when they were telling me that they were very
13 uncomfortable about everything that was going on and they
14 didn't want to leave their jobs because they enjoyed working
15 for the firm and they had houses and mortgages and families and
16 so on, and so part and parcel of that.

17 Q. What about Mr. Perez?

18 A. I don't specifically remember having that conversation with
19 Jerry, but I think they were both in the room at the time.

20 Q. And how did you respond to Mr. O'Hara?

21 A. I shrugged it off. It was Mr. Perez.

22 Q. Now, I want to switch gears slightly, which is as part of
23 the SEC -- The first SEC audit, do you recall that?

24 A. Swanson's audit?

25 Q. Yes.

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1 A. Yes.

2 Q. Who was the SEC official who was basically overseeing that
3 audit?

4 A. The SEC official in charge of or who requested the
5 information was Eric Swanson.

6 Q. And after that audit terminated, did there come a time that
7 you heard something about Mr. Swanson in connection with the
8 Madoff family?

9 A. Yes.

10 Q. Who did you hear this news from?

11 A. Bernie.

12 Q. What did Bernie tell you about Mr. Swanson?

13 A. He announced that his niece was marrying the guy that we
14 sent all this information to. He had found out about it, he
15 explained, when they got engaged.

16 Q. And how did he express this to you?

17 A. Can you friggin' believe this, that my niece is marrying
18 this guy?

19 Q. Now, during the time of the first audit, did you have an
20 understanding -- did you have any knowledge that Mr. Swanson
21 and Mr. Madoff's niece were dating?

22 A. None whatsoever.

23 Q. Was that the first time that you learned about that?

24 A. Learned about what?

25 Q. Well, the first time that you heard Mr. Madoff say that

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1 they were going to get married, was that the first time you
2 learned that they had a relationship?

3 A. My understanding is it might have been the first time he
4 heard of it as well.

5 Q. Now, did he say that publicly?

6 A. Yeah.

7 Q. Where did he present to you that this relationship was
8 happening?

9 A. In my office. He came in the door. He said, you're not
10 going to believe this one.

11 Q. How did you react?

12 A. I was shocked. I was surprised. Hey, what a small world.

13 Q. Now, did they ultimately get married?

14 A. Yup.

15 Q. Were you invited to the wedding?

16 A. Nope.

17 Q. Do you know if anyone at Madoff Securities was invited to
18 the wedding?

19 A. No clue.

20 Q. Now, when you worked at Madoff Securities, were you granted
21 a company credit card?

22 A. Yes.

23 Q. And when did you get the company credit card?

24 A. 1985.

25 Q. And how did you go about getting it?

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A. I don't remember who I specifically spoke to. There were other people in the firm that had corporate cards. I actually don't remember who I spoke to to arrange for that.

Q. And how long did you maintain that credit card for?

A. Until December of 2008.

Q. Now, over those years, did you make charges of a personal nature on that credit card?

A. Sure.

Q. Can you describe for us some of the charges that you made that were of a personal nature?

A. Almost every meal I ate in a restaurant between 1985 and 2008 was charged on that card. Airline tickets were charged on the card for personal pleasure trips. All sorts of personal expenses that were consistent to the lifestyle that I was leading, which was going out to dinner a lot, traveling a lot, being with my kids a lot, you know, on a dime flying to Boston to take my daughter and her friends out to dinner when they were at college. So I stayed at the Hotel Commonwealth a lot. Things like that were all put on the corporate card.

Q. And when you made those charges, did you know that they were personal expenses?

A. Sure.

Q. Did you ever declare this as income on your taxes?

A. No, I didn't.

Q. Now, in the early years when you had this credit card, did

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1 you have to submit those bills to be reviewed?

2 A. I never submitted anything. They were reviewed, but I
3 didn't make any submissions.

4 Q. Did you have an understanding of who it was who reviewed
5 these credit cards?

6 A. Ruth Madoff.

7 Q. And what -- and from time to time would you hear from
8 Ms. Madoff about the charges that were on your card?

9 A. Yes.

10 Q. Did she ever chide you about one of the charges?

11 A. Yes.

12 Q. Do you recall which one?

13 A. I charged some stuff at Toys R Us.

14 Q. And what did she say about that charge?

15 A. She told me that that would jump off the page because
16 they're taking these expenses as straight business expenses,
17 back in the day when you could offset your income with
18 expenses. She suggested that for purchases like Toys R Us, I
19 get my own American Express card in my own name and pay my own
20 bill, that something like this looks too ridiculous.

21 Q. And did you continue to charge stuff at Toys R Us?

22 A. Yes.

23 Q. Now --

24 A. At Toys R Us?

25 Q. Yes.

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1 A. Probably not.

2 Q. But did you continue to make personal charges?

3 A. Yes.

4 Q. Now, did there come a time that someone else took over for
5 Ms. Madoff analyzing these charges on the American Express?

6 A. Yes.

7 Q. Who was that?

8 A. Accounts payable officer Dan Pennachio.

9 Q. And who was Dan Pennachio?

10 A. Dan Bonventre's nephew.

11 Q. And what was his role at the firm?

12 A. He paid the bills from the expense account.

13 Q. Now, do you recall when it was that he took over managing
14 the charges on the American Express card?

15 A. It was a number of years ago. I don't recall exactly when.

16 Q. And did he have people working for him that -- in the 1990s
17 and into the 2000s?

18 A. Occasionally.

19 Q. Who was it -- who were some of the folks who worked for
20 Mr. Pennachio?

21 A. Charlene White, in particular. He worked -- I don't know
22 the structure of who worked for who, but a woman by the name of
23 Amy Joel worked with him. I'm drawing blanks on potentially
24 some of the other people. There may not have been anymore.

25 Q. Now, when Mr. Pennachio was reviewing the statements, did

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1 he ever chide you for charges on the accounts?

2 A. No.

3 Q. And did you use, did your use of that credit card grow over
4 time?

5 A. Exponentially.

6 Q. Can you tell us some of the ways that it grew and some of
7 the charges you began to put on it?

8 A. More extravagant vacations. I was -- I owned a bigger
9 boat; so we traveled more often and to nicer places. I worked
10 late more often and ate dinner in the city a lot. So the
11 amount of charges and the type of charges all increased in
12 number and in value.

13 Q. Did you use the credit card to charge sports tickets?

14 A. Oh, yeah.

15 Q. What sorts of sporting tickets did you use it for?

16 A. I had six season tickets for the devils.

17 Q. And what are the devils?

18 A. It's a New Jersey-based professional hockey team.

19 Q. And how much did those seats cost on an annual basis,
20 approximately?

21 A. \$25,000.

22 Q. And did you use those seats for personal use or for
23 business use?

24 A. For my kids.

25 Q. And did you declare -- how many years did you have those

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seats?

A. They were at the Continental Arena when I got them; so it had to be for a couple of years there, four or five, and then they moved to the Pru Center, and I had them there for a year or two.

Q. Now, did you declare those as income on your income tax returns?

A. I did not.

Q. Now, did there ever come a time that you had discussions with Ms. Crupi about the corporate AmEx card?

A. Sure.

Q. Do you remember approximately when that happened?

A. No.

Q. Do you remember was it in the '90s?

A. I don't think it was back that far. It might have been in the early 2000s.

Q. And what conversation did you have with her about the American Express card?

A. One of the people I took out on my card very often was Jodi. One of the people that observed me using my card for a lot of personal expenses was Jodi. So we had a conversation about whether I thought it would be proper for her to ask for her own. And she, from time to time, had legitimate business expenses that could be put on that card, purchasing lunches for the staff and things of that nature. And I said, sure, go for

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1 it.

2 Q. And who was she meant to go talk to to try to get one of
3 those cards?

4 A. I don't know.

5 Q. Did you later learn that she got one?

6 A. Yes.

7 Q. How did you learn that she got one?

8 A. She told me.

9 Q. Now, what did she say about it?

10 A. Not a lot. I got my American Express card.

11 Q. Now, was it part of Ms. Crupi's job to entertain clients?

12 A. No.

13 Q. Did you ever observe Ms. Crupi entertaining clients?

14 A. No.

15 Q. Are you aware of Ms. Crupi ever having to travel on
16 business to Las Vegas?

17 A. No.

18 Q. Are you aware of Ms. Crupi ever throwing a Thanksgiving
19 party at Madoff Securities?

20 A. At the firm's location?

21 Q. Yes.

22 A. No.

23 Q. Now, did there come a time that you started construction on
24 a home in New Jersey?

25 A. Yes.

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Q. What part of New Jersey was that in?

A. Bridgewater, central Jersey, Somerset County.

Q. And who was this home for?

A. Myself, my family.

Q. Okay. When did you start working on that?

A. In 1999.

Q. And what are the ways -- What type of home was it going to be?

A. My dream home.

Q. And what sorts of work did you ultimately end up doing yourself on this home?

A. Ultimately?

Q. Yeah.

A. I was the general contractor on the job. I was also part-time laborer on the job. I had hired a builder to build the home for me, and then I was disgusted with his work product; so I fired him. And a friend of mine convinced me that this is not something that is so above you in ability. I'll work with you. You can general contract this job yourself. So I did.

I hired my own plumbers. I hired my own Sheetrockers. I hired my own painters and so on and so on and so on. And I filled in the gaps with these subcontractors with my own labor. I stained all the woodwork. I did all of that myself. Basically from early 2000 until the summer of '01, I built my

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house on site every day.

Q. And how many years did it take you to do that?

A. A year and a half.

Q. And while you were doing that, were you spending less time at work?

A. Substantially less time.

Q. If you had to sort of do the comparison of before you started working on the home to while you were working on the home, how much did your time at work change?

A. I typically left my house in Bridgewater to come to the office, or tried to, by 11:00 a.m. every day. So I started showing up at noon, 12:30, and I would work later in the day, but there were days when I anticipated leaving Bridgewater at 11:00, 11:30 but that never materialized. So would call and say, I'm not coming in at all. So I would phone it in. Communications were such that you could do something like that.

Q. Now, how much money went into this home?

A. Two, \$2.2 million.

Q. And where did that money come from, what different areas?

A. From my own internal cash flow of payroll and from Bernie.

Q. How much did Mr. Madoff give you for your home?

A. When I bought out the builder, I think he wired \$800,000 to the builder. Because the builder had owned the land and had a certain amount of expenses and was entitled to his profits up to that point; so we negotiated a number, and I think that

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1 number was about \$800,000 that Bernie funded. At which point,
2 I became the deeded owner of the land, and I inherited a
3 half-finished project that I completed subsequent to that with
4 another million-and-a-half dollars or so.

5 Q. And the money used to complete the home, was that from your
6 payroll?

7 A. Yeah, pretty much.

8 Q. Now, when you got that initial chunk of money from
9 Mr. Madoff, did you have discussions with him about it?

10 A. Brief, yes.

11 Q. What did you ask him?

12 A. I'm buying out my builder. Can you wire \$800,000 to my
13 builder's account.

14 Q. What was his response?

15 A. Yeah, just tell Jodi to make the wire.

16 Q. And did he do it?

17 A. Yup.

18 Q. Did you have to pay him back?

19 A. Nope.

20 Q. Did you understand that you didn't have to pay him back?

21 A. He said if anybody ever asked somewhere down the road, we
22 can always write it up as a loan, but he referenced that he
23 does this all the time with the boys; so don't worry about it.

24 Q. When you say boys, are you referring to his sons?

25 A. His sons.

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Q. Now, what did you understand him to mean, that we can just write it up as a loan if somebody asks down the line?

A. I knew that receiving \$800,000 from my employer, even though it went to pay one of my bills, I didn't get it directly, was income. And if that was ever something that I was -- needed to address, it could easily be -- been called something other than income. It could have been called a loan, and which there would be no tax consequence for me if he simply lent me money, as opposed to just simply giving me money. That's what was my understanding of what he meant by that.

Q. Now, did you tell Ms. Crupi over time that he had paid that part for your home?

A. Yes.

Q. Now, did there come a time that she had a discussion with you about her wanting to buy property?

A. Yes.

Q. Do you remember when that conversation occurred?

A. She had been renting property down at the shore and now was interested in purchasing; so it had to be a year or so before she purchased.

Q. And do you know when that purchase actually took place, what year approximately?

A. Yes. The purchase took place in 2008. I don't think it was consummated in 2008. I think the closing was put off until 2009.

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Q. Now, what did she say to you when she first brought up the idea of buying this home?

A. Do I think she can go to Bernie and ask him to structure that for her. My response was absolutely. Go for it.

Q. And what did she say when you said, go for it?

A. She went for it.

Q. And did she report back to you on what the results of that conversation were?

A. Yeah. She was going ahead to purchase the house.

Q. And who was going to give her the money to purchase the house?

A. I assume Bernie.

Q. Now, did you have discussions with her after that about sort of the process that she had gone through to buy the home?

A. She showed me pictures of it. It was lovely. It was on the shore. I think it was the same home she had rented the season before, but I'm not positive about that. Yeah.

Q. Now, when you say the season before, what do you mean by season?

A. She would rent the home for the summer season.

Q. Was this a beach house?

A. Yes.

Q. Now, were you aware of smaller loans being made to lower level employees from time to time at Madoff Securities?

A. All the time.

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1 Q. Who were some of the employees that would get sort of these
2 smaller loans?

3 A. Some of the workers in the cage, some of the P and S
4 clerks, clerical people.

5 Q. And what was your understanding of having observed that
6 what those loans were for?

7 A. Certain lower level or lesser paid employees occasionally
8 ran into cash flow problems, couldn't make a mortgage payment,
9 couldn't pay their kid's tuition or were in some sort of a cash
10 bind, and they typically went to their supervisor and asked for
11 help.

12 Q. And what was your understanding of whether Mr. Madoff
13 required those smaller loans to be paid off?

14 A. There were some of those smaller loans, indeed, paid off.

15 Q. By the folks that had been given the money?

16 A. Yes.

17 Q. Now, when you were more -- when you were newer in the
18 company, did you take out a loan at some point?

19 A. Yes.

20 Q. Okay. What was that loan for?

21 A. I ran up my personal American Express bill way back in the
22 day. This was, I was a teenager, and I didn't pay the bill.
23 And Peter Madoff got all twisty about it when Irwin Lipkin got
24 a notice from American Express that they were going to begin
25 some sort of a wage garnishment.

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Q. What does wage garnish mean?

A. They legally or -- have a right to a portion of your earnings every week because they get some legal document that allows them to do that, and then they just simply present it to your employer and they withhold part of your salary that goes to pay down this lien.

Q. And who did you talk to about getting that paid back?

A. Peter Madoff brought it to my attention because Irwin Lipkin, our payroll supervisor, had brought it to his attention. He sat me down, he said, you can't do stuff like this.

Q. And did you -- After you got that money, did you pay it back?

A. Yes.

Q. How did you pay it back?

A. Irwin withheld like \$30 a week for a couple of years out of my check.

Q. But when you were -- you got more senior and you got that money for your home, did you ever pay that back?

A. No.

Q. Now, Mr. DiPascali, how much money were you making when you first started at Madoff Securities?

A. I think I netted \$78 a week.

Q. That was back when you were a clerk working for Peter Madoff?

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A. Correct.

Q. And how did that change through the course of the '80s, if at all?

A. In the late '70s, early '80s I got a spot on the trading desk. The policy at the time for traders was that a trader got \$100,000 advance, if you will. And what that did was it gave the trader a weekly paycheck, but his compensation, or her compensation, was based on 25 percent of your trading profits.

So a trader would get \$100,000 and if they earned 400,000 for the firm, they were even. 25 percent of 400,000 is that hundred. And anything above that would be kind of like a bonus. If they didn't quite earn it, there was some negotiation that either forced them to earn it back or it was forgiven.

So, therefore, my first biggest raise was when I went from, I don't know where, to \$50,000 because I was sharing a trading account with Charlie Wiener and that was in the early '80s, and then from that \$50,000 point, my earnings gradually increased.

Q. Who was it at the beginning that determined what your salary was going to be?

A. Peter.

Q. And as time went by, who was it that was deciding what your salary was going to be?

A. I was.

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Q. Now, when you get into the 1990s and you start taking on a role in the investment advisory business, do you begin to make more money?

A. Yes.

Q. How much did your salary increase once you began doing work in the investment advisory business?

A. I don't remember the exact numbers, but it grew into the low hundreds from that 50 starting point.

Q. And how long would you estimate that it was in the low hundreds for?

A. A couple of years.

Q. Then did it start to increase more?

A. Yes.

Q. And when those couple of years that it was in the low hundreds, when approximately was that?

A. Probably up and through the late '90s.

Q. What happened as the 2000s began?

A. My salary exploded.

Q. Can you describe how it was that your salary exploded?

A. Well, I intended to fund the house out of cash flow; so I simply told Eric that I had given myself a raise. So from this point forward, start paying me X, and that X was substantially more than I was making the year prior.

Q. And did Mr. Madoff sign on to you making more money?

A. I mentioned it to him, and he said yeah, whatever.
(Continued on next page)

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Dipascali - direct

Q. What amounts of money were you making in the 2000s up through the demise of Madoff Securities in 2008?

A. Well in excess of a million dollars a year, some years 2. It was a million 4, a million 5, a million 7. There might have been a year there that it tipped in at 2.

Q. These amounts are salary in addition to the home that he purchased, right, the money for the home?

A. That's correct.

Q. At the same time were your charges on the credit card increasing?

A. Yes.

Q. You weren't declaring those charges on your income?

A. That is correct.

Q. In addition to the salary and the credit card, did you have any other sort of compensation, regular compensation, from Madoff Securities?

A. Over the course of six or seven years I bought four boats, if you want to call that regular. It was compensation.

Q. Setting aside the boats, did you have an account called the Dorothy-Jo?

A. Yes.

Q. What was the Dorothy-Jo account?

A. It was an LLC that I had set up and put my wife as the sole member. Then, when we purchased the third boat, we purchased it through the LLC so as to have the boat owned by the business

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Dipascali - direct

1 and the business owned by my wife. It was suggested to me for
2 a number of reasons. Primarily, I was fishing tournaments,
3 they were dangerous, I was taking on passengers, and I had an
4 enormous amount of liability. It was a way of shielding my
5 wife and myself from a potential liability caused by a boating
6 accident.

7 Q. What did you use the funds from that account to do?

8 A. Pay for the expenses of the boat.

9 Q. What are some of the expenses that you had to pay for?

10 A. Fuel, insurance. There's tons of expenses on a boat.

11 Q. Did you have someone employed to actually run your boat?

12 A. Two gentlemen at different times.

13 Q. How did you pay them?

14 A. Put them on the company's payroll.

15 Q. When you say the company, are you talking about Madoff
16 Securities' payroll?

17 A. Yes.

18 Q. So the Dorothy-Jo account was an IA account that was used
19 to pay expenses for the boat, right?

20 A. That's correct.

21 Q. Was the trading real in the Dorothy-Jo account?

22 A. No.

23 Q. Was it just like the other IA accounts that you testified
24 about over the last few days?

25 A. Yes.

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Dipascali - direct

Q. For these people that ran your boat, they were paid directly by Madoff Securities?

A. They were salaried employees of the company, yes.

Q. They didn't actually work for the company?

A. They worked for me on my boat.

Q. Who did you ask to set that up for you?

A. The mechanics of it were set up by Irwin Lipkin. The authority to do so was granted by Bernie.

Q. You said that you bought a series of boats over the years.

A. Yes.

Q. Who suggested to you the idea of buying a boat?

A. Bernie.

Q. What did he say?

A. I went to him in 1995 and suggested, or asked him his advice, that I was toying around with the idea of buying land in the Poconos and building a lake house. He told me that was the most ridiculous thing he has ever heard. Why do you need two headaches? What you should do is buy a boat. That's the way I raised my two kids, at a marina. That's a great way to grow up. Little kids become very mature when they take on the responsibilities of being part of your crew on your boat. They show more respect to their elders, and so on and so on and so on.

He went on and on for half an hour praising the positives of both ownership and comparing his early days of

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1 raising his family to the point in my life where I was. It
2 sounded good to me. I went home to Joann and said, we're
3 buying a boat.

4 Q. Did you buy a boat?

5 A. Yes.

6 Q. Who paid for that boat?

7 A. He did.

8 Q. What is the first boat that you bought?

9 A. A 25-foot Sea Ray cuddy cabin.

10 Q. When did you buy that?

11 A. The end of 1994, I think.

12 Q. Was this around the time that A&B was wrapping up?

13 A. It was after that.

14 Q. How much did that boat cost?

15 A. \$40,000.

16 Q. How long did you have that boat for?

17 A. Half a season.

18 Q. Did you switch boats?

19 A. Yes.

20 Q. Why?

21 A. I had kids, and the boat looked much bigger in the showroom
22 than it actually looked in the water. So we outgrew it the
23 minute we took possession of it.

24 Q. What kind of boat did you buy next?

25 A. A 35-foot Sport Fish.

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1 forth up and down the East Coast depending on the season, and I
2 chased it around fishing in various locations.

3 Q. How long did you keep that boat for?

4 A. Three and a half years.

5 Q. Then you bought your fourth boat?

6 A. Yes.

7 Q. What was that fourth boat?

8 A. A 50-foot Sport Fish.

9 Q. Who paid for that?

10 A. Bernie.

11 Q. How much did that boat cost?

12 A. 790,000.

13 Q. Did you declare that money on your taxes?

14 A. No.

15 Q. How long did you keep that boat for?

16 A. Three years.

17 Q. When did you get rid of it?

18 A. 2002.

19 Q. After 2002 did you get yet another boat?

20 A. I did.

21 Q. What kind of boat did you get then?

22 A. A 61-foot Sport Fisherman.

23 Q. They keep getting bigger, the boats.

24 A. Yes.

25 Q. Who paid for that 61-foot boat?

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1 A. Bernie.

2 Q. How much did that boat cost?

3 A. About 2.2 million.

4 Q. How long did you keep that boat for?

5 A. Until February of 2009, when the U.S. Marshals took it.

6 Q. What did you use that boat for?

7 A. Serious sport fishing and family entertainment.

8 Q. You previously testified that Mr. O'Hara and Mr. Perez went
9 fishing with you from time to time. Do you recall that?

10 A. Sure.

11 Q. Were these the boats that you were referring to that they
12 went on?

13 A. Yes.

14 Q. How much of your time were you spending on the boats over
15 the years?

16 A. There came a time when I stopped working on Fridays
17 entirely and I would spend Friday-Saturday-Sunday on the boat
18 between spring and fall here in New Jersey. When my kids were
19 a little bit younger, we used to pick up and leave to go to
20 Florida for the weekends, Thursday night through Sunday night,
21 and spent time on the boat in Jupiter. So a lot of time was
22 spent on the boat.

23 Q. When you were out in the boat, how would you keep in
24 contact with the office?

25 A. Bernie supplied me with a satellite phone in case I was

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offshore, but typically a cell phone.

Q. From time to time would you call into the office?

A. All the time.

Q. Who would you speak to when you called into the office?

A. My staff or Bernie.

Q. Did being out on the boat affect the work you were doing on the 17th floor?

A. I worked around it.

Q. What does it mean that you worked around it?

A. I was able to call it in.

Q. Call in the work and make sure that it happened?

A. We weren't relying on market conditions to do these trades. When I wanted to trade because Bernie was putting pressure on me to get in the market, I structured it at a distance. It ran, and then I went fishing again.

If he was in the market for too long and was getting antsy, my SAT phone would ring: You need to get out of the market. If I was in Ocean City, Maryland, or Savannah, Georgia, or somewhere fishing, I would call it in. Bits and pieces of what we needed to accomplish were tasked by other people, and the tickets got produced.

Q. None of the trading was actually happening, right?

A. That's correct.

Q. You didn't have a bank of trading machines on your boats to keep real-time data of what was going on, did you?

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1 A. No.

2 Q. Now, in addition to the boats, did Mr. Madoff pay for you
3 to have cars?

4 A. Some.

5 Q. When did he first buy you a car?

6 A. In the '80s.

7 Q. What kind of a car did he buy you?

8 A. Might have been a lease. I think the first one was a Saab
9 900.

10 Q. Over the years did he continue to give you money to buy
11 cars?

12 A. There was a time when the company actually had the lease
13 and they would give me the car. It was titled to a leasing
14 company, but the lease was paid by the Madoff firm. And there
15 was a time that the insurance was paid by the Madoff firm.

16 That transitioned to they had a level of discomfort
17 with various employees driving company cars insured by the
18 company, for liability reasons, so it was explained to me that
19 we will still lease it for you but you pick up the insurance.
20 So I insured the car and paid the bill, but they still paid the
21 lease. There was a series of those over the years.

22 Q. As you got into the 2000s, did he just outright buy you
23 some cars?

24 A. There were cars that I purchased with funds from
25 Dorothy-Jo, so yes.

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Dipascali - direct

Q. The funds from Dorothy-Jo, that's your IA account that you used to pay for the cars?

A. Yes.

Q. None of the trading was real in that IA account?

A. Correct.

Q. What types of cars did you buy then?

A. Mercedes. My wife had an Escalade at one point. In the latter part of 2008 I bought an Audi for my oldest son. I think they were funded that way.

Q. In addition to these cars, from time to time did you have the use of the -- were you able to use private jets?

A. Yes.

Q. What sorts of access to private jets did Madoff Securities have?

A. Madoff had timeshare structured deals with these like NetJets people, I don't know if it was NetJets in particular, that he used all the time to pick up and go to Florida on the weekends, and so on. Typically, small corporate jets, six people, that kind of stuff.

I was telling a story one day to Andy Madoff about the problems we had getting back from Nags Head, North Carolina, after a fishing trip. It was like one of these 13- or 14-hour drives. He was shocked that I don't use the private jet, because you could have flown home in 45 minutes from there. Just call up a jet. So we explored that possibility going

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1 forward. He gave me the name of his contact, and I bought a
2 share in a private -- I bought basically time on a private jet.
3 Q. Meaning you would get to use it to travel for so many hours
4 in a given time period?

5 A. It's a prepaid arrangement with a charter company that they
6 will service you any time you call them, within reason, and
7 deduct from the balance in your account.

8 Q. Did you fund that account with your own money or through
9 Madoff Securities?

10 A. I think I made two deposits to that. One of them might
11 have been funded directly from the company and the other one
12 might have been funded from the Dorothy-Jo account, which was
13 in essence the same thing.

14 Q. Getting all of these funds in, did you declare any of these
15 on your taxes?

16 A. No, I didn't.

17 Q. Did Mr. Madoff pay to send your kids to private school?

18 A. My kids didn't go to private school.

19 Q. Now I would like to transition to a different topic. Over
20 the years that you worked on the split strike strategy, the
21 fake trading that was going on, did you ever lose money for a
22 quarter?

23 A. For a quarter?

24 Q. Yes.

25 A. I don't believe so.

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Dipascali - direct

Q. Were returns on the accounts always on the positive on an annual basis?

A. Annually, yes.

Q. During those times would Mr. Madoff tell you what return you were supposed to be getting on these accounts?

A. He had his targets that he would illustrate to me, yes, and my job was to keep the majority of our accounts in that return range.

Q. What sorts of things would Mr. Mr. Madoff say to you?

A. I don't think it's important that we have to have a 16 percent return again this year, interest rates are low, the market is doing nothing, blah blah blah blah, why don't you start running your accounts at 13. Those type of conversations.

He would control every month where he wanted to be. There would always be a conversation between me and him during the month. I would sometimes call upstairs and say, where do you want to be, and he would address it. He would ask me my opinion; sometimes he didn't.

It was, where are we so far? You're up 7 percent for the year. OK. September? Yeah. You really ought to do something because I want to be up like 11 by the end of the year. So run the math. He was giving me my instructions of where I want to be in October, November, and December to go from 7 to 11.

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1 There were conversations where he said that it looked
2 completely ridiculous that the returns on these accounts were
3 in the positive area all the time. He wanted to purposely lose
4 money once or twice during the year. And we lost money.
5 Albeit we lost 3/100 of 1 percent, but it was technically in
6 the red. Then we made up for it the next month by having a
7 better month. So he would not show consistency in his returns
8 in the split strike and therefore not alert the hedge funds to
9 a potential fraud.

10 Q. That was your understanding?

11 A. He told me that. It wasn't my understanding.

12 Q. When you say the hedge funds, why did you have particular
13 concern over the hedge funds looking at that information?

14 A. They are professionals. They have to answer questions to
15 their clients. They are typically, as in the case with
16 Fairfield, organized by very smart attorneys. The guys that
17 are running the funds in the industry -- the guys who are
18 running the largest funds of funds that we were dealing with
19 were not even traders themselves.

20 They were typically people who knew money managers,
21 and they were lawyers that could set up the offering circulars
22 appropriately, offshore and other places, and raise money and
23 raise capital because they had contacts. Then they would place
24 that money with various managers. The ones I dealt with placed
25 that money with Bernie. Eventually, some of those people

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1 stopped placing their money anywhere but Bernie.

2 These people were nobody you could fool around with,
3 in plain English. Since they were placing all of their funds
4 or a good number of their funds with Bernie, and all they
5 really were doing was raising capital for Bernie, if you think
6 about it. They had nothing else to do once that was done,
7 because they weren't actually managing anything. So they had a
8 lot of free time to dig through the Madoff paperwork. And he
9 was aware of that.

10 These guys had nothing better to do than to scrutinize
11 what we do; therefore, we had better do it right, was his
12 philosophy.

13 Q. You had conversations with Mr. Madoff about that?

14 A. All the time.

15 Q. Did you have them in his office?

16 A. Mm-hm.

17 Q. Did you have in your work space down on 17?

18 A. Mm-hm.

19 Q. When some of those conversations on 17 occurred, would Ms.
20 Crupi be present?

21 A. Yes.

22 Q. During the years 2007 and 2008, did you continue to receive
23 customer phonecalls from the clients at Madoff Securities?

24 A. '07-'08?

25 Q. Yes.

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Dipascali - direct

1 A. Yes.

2 Q. Did you field some of those calls?

3 A. Sure.

4 Q. Did you observe Ms. Crupi fielding some of those calls?

5 A. Yes.

6 Q. The calls that you fielded, did the customers present
7 questions about the trading strategy?

8 A. Often.

9 Q. Did they ask questions about where the assets were
10 custodied?

11 A. Sometimes.

12 Q. In those calls that you received from customers in 2007 and
13 2008, did you ever tell the customers, hey, there's no trading
14 going on here?

15 A. No.

16 Q. Did you ever tell them, hey, there's no assets here, we
17 don't have custody of anything?

18 A. No.

19 Q. Did you ever hear Ms. Crupi say that there was no trading
20 actually going on when she was on the phone with customers?

21 A. No.

22 Q. Did you hear Ms. Crupi discussing the trading strategy to
23 customers who called in?

24 A. Sometimes.

25 Q. Did you continue to observe Ms. Bongiorno in the office

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917901212 - direct

A. No.

Q. Did you hear any discussions relating to the return that Stan Chais was making around this time period?

A. Jodi would gripe all the time that she didn't understand why Bernie wasn't lowering his rate of return.

Q. What did she say?

A. I don't understand why Bernie is not lowering this man's rate of return.

Q. Did she explain she wanted that?

A. She didn't need to.

Q. What do you mean by she didn't need to?

A. She knew that all my other accounts were earning 10, 12, 11 percent, sometimes 9. She was responsible for --

MR. BRESLIN: Objection.

THE COURT: Do you want a lay a foundation?

MR. ZACH: I do.

THE COURT: Overruled.

Q. Did you work with Ms. Crupi on the other split strike accounts that were being operated in the IA business?

A. We worked together on the split strike forward conversion using baskets. She was partially responsible for reviewing the performance of those accounts, which were earning 9, 10, 11 percent. Separately, she worked directly on the split strike individual equity transaction that is Mr. Chais was doing in Brighton, Popham, and Lambeth, which were earning in the low

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20 s.

Q. So she had direct access to what these two returns were being paid?

A. She had a database of 4300 accounts that were earning 10 and 11, and she had a database of 5 accounts that she was responsible for that were earning 22, yes.

Q. Were these complaints ever elevated to Mr. Madoff?

A. I don't know.

THE COURT: Mr. Zach, you have about four minutes to the break.

MR. ZACH: Your Honor, I am exactly at a transition point. If you want me to keep going, I can. Or we can take the break now.

THE COURT: We can start the break now. Ladies and gentlemen, the break will be slightly elongated this afternoon. So plan for a 20-minute break and be ready in the jury room at a little after 25 to 4:00, please.

Before we leave, I would ask again that everybody do everything in their power to be quiet and to keep control over any vocalizing or noises or anything other than coughing or sneezing and things that you can't keep control of, just so everyone can concentrate and nobody is distracted. I thank you for that and thank you for your hard work.

Ms. Ng, would you please escort the jury out. Please continue to keep your thoughts to yourselves. Mr. DiPascali,

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1 you can step down.

2 (Recess)

3 THE COURT: Mr. Zach.

4 MR. ZACH: Thank you, your Honor.

5 BY MR. ZACH:

6 Q. Mr. DiPascali, I now want to transition into the last
7 topics relating to Madoff Securities. Before we broke for the
8 break, you were describing the difference between investors
9 that were hedge funds as compared to the regular customers of
10 Madoff Securities. Do you recall that?

11 A. I do.

12 Q. I want to show you in evidence as 105-C173. Are you
13 familiar, sir, with the word "pro" as you see on the top?

14 A. I do.

15 Q. Are you familiar with the term "regs" that's over on the
16 right?

17 A. I am.

18 Q. Can you tell us what those words mean.

19 A. Because of how Bernie needed to deal with certain
20 classifications of customer, we simply drew a line under the
21 value or cutoff point of the value of an account. There was a
22 time where I believe people with over \$10 million in their
23 account were labeled pros and everybody else was a regular or a
24 reg. I think that might have gone to 20 million at one point.
25 It was a way for him to ease the burden of ticket preparation.

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1 One of the things that occurred was that a pro would
2 have a 50-stock basket hedged with two options. There were
3 about a hundred of those people, or 200 actually. Then, the
4 regs he could get away with only having a 35 or 37-stock
5 basket, and there were 4100 of those people.

6 In terms of the amount of tickets that went out the
7 door and had to be mailed and such, the regs per account had
8 substantially less ticket work than a pro. For mechanical
9 reasons it made sense to categorize.

10 The other reason is that he needed to focus more
11 attention on the details of a pro account because they were
12 indeed professionals, typically. Granted, there were some
13 individual investors who didn't know a stock from a stick but
14 had \$22 million and therefore were a pro. So be it. But most
15 of the pros were large European hedge funds.

16 Q. That difference in the documentation that was going out to
17 them was dependent upon whether they were a sophisticated hedge
18 fund or whether they were something that was smaller than that?

19 A. Yes.

20 Q. As I understand your testimony, for the pros there was more
21 documentation going out to them than was going out to the regs.

22 A. Not only more stocks in the basket, but because of the size
23 of the accounts he was concerned about going into the market in
24 one fell swoop for the pros and coming out of the market in one
25 fell swoop for the pros. It didn't look realistic.

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Dipascale - direct

1 There came a time where for the pro accounts we would
2 scale into the market and scale out of the market. What that
3 means is we would look at the value of their account when we
4 needed to get into the market and only set up 22, 23, 28
5 percent of their work and leave the rest in treasury bills,
6 then the next day go into the market for another 22 or 30
7 percent and leave the balance in treasury bills.

8 In effect, it took three or four days sometimes to
9 fully invest the pros' money. The smaller accounts, the regs,
10 which were under 20 million, could be put in the market all in
11 one shot on one day. The purpose of that was so that the
12 trading looked realistic. It would be highly irregular to be
13 able to invest in one fell swoop in this strategy, as the
14 strategy was being described to these hedge funds, \$6 billion
15 at a pop.

16 Fairfield knows that Kingate is also one of our
17 clients, and Kingate knows that Tremont is on of our clients.
18 We're going to assume they're talking to each other. If they
19 all talk about, wow, Madoff got in the market Wednesday, yeah,
20 I got fully invested, and me too, and me too, if they simply
21 ran the math, it was illogical. There was no way the
22 marketplace could handle a few billions dollars getting moved
23 into the market at one shot.

24 He pieced it in little segments so that he would not
25 exceed logic. That's why these people -- that's part of the

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Dipascali - direct

1 reason why you had pros and regs.

2 Q. Was that a term that was used on the 17th floor?

3 A. It was a very, very common term.

4 Q. Was it a term that you discussed with Ms. Crupi?

5 A. Yes.

6 Q. You can take that down. In the fall of 2008 what was your
7 understanding of what was happening to the economy?

8 A. It was going into the tank.

9 Q. What sorts of things did you understand were happening that
10 made it go into the tank? What does it mean to go into the
11 tank?

12 A. It means general economic conditions had taken a severe
13 down-turn.

14 Q. Did you observe this having an effect at Madoff Securities?

15 A. Yes.

16 Q. What sorts of things did you begin to observe as the
17 economy went into the tank at Madoff Securities?

18 A. Certain brokerage houses that had been around for a hundred
19 years were now declaring bankruptcy. A lot of the investors
20 that were invested in the hedge funds that Bernie managed had
21 money with some of these firms that were beginning to belly up.
22 There was a rush, a general rush, in the high net worth
23 individual investment arena of getting liquid.

24 People needed to get liquid. People that were
25 invested in the sophisticated real estate transactions were now

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Dipascali - direct

not as wealthy as they thought they were. They had other commitments, and they needed to raise liquidity. They needed to raise capital, needed to draw back funds from whatever location they had liquid funds.

Q. How did this manifest itself in the client accounts at Madoff Securities?

A. We got an enormous amount of redemption requests because we were considered to be something that was very liquid.

Q. Liquid means easy to get your money out?

A. Exactly.

Q. How did you become aware that there were all of these customer redemptions coming through?

A. Customer redemptions were faxed to the machine that was five feet off my left shoulder.

Q. Who were those faxes typically addressed to?

A. Me, Jodi, other people on my staff. Typically me.

Q. These are requests from customers saying I want some money out?

A. Yes.

Q. Around the same time as the money is being withdrawn from Madoff Securities, did you become aware of Mr. Madoff trying to bring in fresh money at the firm?

A. Yes.

Q. How did you become aware of his attempts to bring in fresh money at the firm?

1 A. He told me.

2 Q. What did he tell you that he was trying to do?

3 A. He had a bunch of things that were in his hopper that were
4 hopefully going to offset the redemptions that needed to go out
5 the door in the next upcoming days or weeks.

6 Q. Did he explain the specifics of what he was hoping to do?

7 A. He said that he had been working with Carl Shapiro, and
8 Carl Shapiro was going to send in some U.S. Treasury paper. He
9 said he had meetings structured with people that he normally
10 wouldn't want to have to approach but he was going to.

11 He also said that he had spent a great effort with
12 Jeffrey Tucker, who was opening up a new hedge fund, and that
13 that hedge fund was going to be able to raise a few
14 hundred million dollars very quickly. And other little
15 snippets of information like that that he was working on
16 separate and apart from me. It was his thing.

17 Q. After the discussions that you had with Mr. Madoff, would
18 you typically talk with Ms. Crupi about what you had spoken to
19 Mr. Madoff about?

20 A. Some of the discussions that Bernie illustrated to me were
21 in the room in front of Jodi.

22 Q. With respect to paper coming in from Mr. Shapiro, how did
23 you understand that was going to be used to bring in money?

24 A. They were going to do what they had once previously or
25 maybe many times previously did, which was have Carl Shapiro

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Dipascali - direct

1 send in treasury instruments to his Madoff account and they
2 were going to post it to his account and then also post it to
3 the firm's inventory. Once it's posted to the firm's
4 inventory, they were going to take a bank loan against it.

5 Q. In the past when those types of loans had been obtained
6 against customer securities, where was that money deposited.

7 A. The proceed of the loan?

8 Q. Yes.

9 A. Would somehow eventually wind up in the 703.

10 Q. That is the bank account for the investment advisory
11 business, right?

12 A. It is.

13 Q. In that 703 account, when customers would wire in money to
14 Madoff Securities for their account, where would it go?

15 A. It would go into the 703 account.

16 Q. When you had to pay customers out their money, where would
17 it be wired out from?

18 A. 99.9 percent of the time out of the 703 account.

19 Q. You said that Jeff Tucker was going to perhaps start a new
20 fund. Do you recall that?

21 A. I do.

22 Q. What did Mr. Madoff describe about how he was going to try
23 and get funds from Mr. Tucker?

24 A. He had talked to Tucker previously about a new product he
25 was about to unveil that had slightly more risk but greater

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Dipascoli - direct

1 returns than the Fairfield Century and the Greenwich Century
2 account that Mr. Tucker had had in place for years. Bernie
3 explained to me that the way that Fairfield wanted to structure
4 that type of new investment in a new arena would be within a
5 new fund. So they were having their legal people draw up the
6 necessary paperwork to kick-start a new hedge fund. I think
7 the name might have been Fairfield Emerald, but I'm not
8 positive.

9 Fairfield had also purchased a small European bank. I
10 don't remember the name. Something to do with Benedict.
11 Somehow that had some relationship to this what I think is
12 called Emerald. What Bernie asked me to do around this same
13 time was to present a set of facts to him that he could send
14 over to Jeff that was an illustration of this new strategy that
15 we were putting in place and how it performed over the last X
16 amount of months.

17 He had told Jeff that he had been running his own
18 money through this platform with this new strategy for a
19 certain period of time and he's now comfortable enough to offer
20 it as a product to a Jeffrey Tucker type hedge fund. He told
21 me he made it appear to Jeff like this was a one-time deal,
22 kind of you need to act now. And they did.

23 Q. Were you recruited in any way to participate in creating
24 this new strategy?

25 A. There was no new strategy.

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Dipascali - direct

1 Q. Mr. Madoff hadn't been trading in a new strategy?

2 A. I literally opened up an Excel spreadsheet and typed the
3 last 18 months' closing monthly dates, January, February,
4 March, April, May, June, down the left column, something like
5 that, and then asked Bernie what rates of return you want to
6 show in these months for this new strategy. I think I had
7 already taken from a sheet similar to what you showed me prior
8 what our existing strategy had done in those months.

9 He basically chose a slightly higher return in many of
10 the months compared to what the standard strategy was, in
11 effect presenting on paper what BS he had told Jeff: That he
12 has a strategy, it's new, it's been running for a year in our
13 shop or whatever, and it produces historically slightly higher
14 rates of return with a commensurate, obviously, slightly higher
15 risk, but the returns are better.

16 That document, that Excel spreadsheet that I handed
17 off to Bernie that I understand he subsequently sent to Jeff
18 Tucker was produced as he stood over my right shoulder in my
19 office.

20 Q. In your office down on 17?

21 A. Correct.

22 Q. Was Ms. Crupi in the area?

23 A. Everybody that was scheduled to be at work that day was. I
24 don't remember specifically.

25 Q. This was a new bogus strategy that was going to be offered

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DiPascali - direct

to one of Madoff's clients?

A. Yes.

Q. Mr. DiPascali, during this time period of late 2008, who was keeping track of the money in the 703 account?

A. Jodi Crupi.

Q. How often was she keeping track, did you observe her keeping track of the money in the 703 account?

A. Every day.

Q. Were you having discussions with her about what was going on in the 703 account?

A. Every day.

Q. What were those discussions about?

A. Do you know if he's giving me money? Which would be the question she would ask me if she wanted to know if Bernie had any notice from a client or other places that money was going to show up as a credit to her checkbook. He often gave her advance warning when funds were coming in. He would say something like, hey, I expect Fairfield to send in \$50 million, let me know when it hits.

The scheduled redemptions of money going out are starting to build up on her work and the credit side of the ledger, money in to the checkbook is not keeping pace with that. So her natural question to me is, do you know of any credits I'm going to see soon? The way she phrased that typically was, do you know of any money he's giving me?

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Dipascali - direct

1 Q. Were you aware of any money that was coming in?

2 A. I was aware of some potential money that was coming in.

3 Q. As time went by, what was happening in terms of redemption
4 in the 703 account as Thanksgiving approached?

5 A. On Thanksgiving morning he had a meeting with a European,
6 who obviously doesn't celebrate the holiday of Thanksgiving.

7 Bernie said -- I forget which firm it was, but he had a
8 breakfast or a luncheon meeting with a fellow from Europe that
9 was supposedly representing a large, I don't remember if it was
10 a family or a hedge fund, but a substantial potential new
11 investor. That meeting occurred on Thanksgiving morning or
12 lunch of 2008.

13 Q. Did you have an understanding of what Mr. Madoff was trying
14 to do in that meeting?

15 A. He was going to try to convince the man to open an account
16 with him.

17 Q. If he opened an account, what would be coming in?

18 A. Money.

19 Q. Did you tell Ms. Crupi about this meeting that he was
20 trying to have?

21 A. Bernie's announcement of the meeting on Thanksgiving was
22 made in public.

23 Q. At this time period, as we get around the Thanksgiving time
24 of 2008, how was Mr. Madoff acting?

25 A. Very erratically.

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DiPascali - direct

Q. Can you describe what you mean by that.

A. He would zone out for long periods of time. Most nights I ran upstairs before I ran out the door. In the latter part of '08 I would often find him staring out the window. Sometimes I wouldn't walk in his office, I would actually stand outside by Eleanor and literally observe him, count how long he has just been staring out into space before I walk in the door. Are you all right? He would like come out of it, yeah, yeah, I'm fine. That was atypical.

Q. Did you learn whether or not that meeting on Thanksgiving was successful?

A. I don't believe it was, but I'm not sure.

Q. Mr. DiPascali, after Thanksgiving did there come a time that Mr. Madoff told you that he no longer had the assets to keep the fraud going?

A. Yes.

Q. Prior to that conversation, how did you think Mr. Madoff had the assets to keep the fraud going?

MR. KRANTZ: Objection.

(Counsel conferred.)

MR. KRANTZ: No objection.

(Question read)

A. Over the 30 or so years I worked for him, he implied that he did in many, many, many different ways. My understanding of the assets that were going to back the liabilities, liabilities

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Dipascali - direct

1 defined as what he owed the customers if they wanted to close
2 their accounts all at the same time, let's say, was a series of
3 very astute investments that he had made over the last 40 years
4 in all sorts of arenas. He sometimes was very specific as what
5 he owned, and he sometimes dropped little nuggets of
6 information that would let my mind wander as to what he owned.

7 (Continued on next page)

DCAPBON7

Difascari - direct

Q. What are some of the things that he said that he owned?

A. He owned an equipment leasing company that leases airplanes. He owned a bank in France in conjunction with Albert Igoine. So over the years he had convinced me that there were enough assets to entirely cover the liabilities that he had created that were equal to what he owed the customers if they wanted to liquidate.

He even told me many times that, if I drop dead tomorrow, Frank, you see Ruth, she knows exactly what I have because I was concerned about that, many times. So, I mean, there were certain things that he told me he owned, that I found out later that he didn't. Okay. But by and large, there was this asset base, both domestically and overseas, that I thought could support the entire fraud.

I literally thought that we were doing the customers a favor of granting them these extraordinary returns because I thought the assets were there to back those liabilities, and I believed in Madoff, that he had somehow the power to make a rate of return greater than what he promised the customer. I understood the entire fraud to be something other than it was and -- yeah.

Q. Now, as he listed these assets that he said that he owned, did you ever doubt that he was telling you the truth?

A. On very, very few occasions, yes. Not on anything big. For instance, he used to refer to PJ Clarke's sometimes as "my

DCAPBON7

Difascari - direct

1 restaurant." He had the ability to walk in there and get
2 service when the place was crowded. I found out that he owned
3 a limited partnership interest. When PJ Clarke's became a
4 limited partnership-type company and they offered shares at a
5 private placement and he bought, I don't know, \$20,000 worth.
6 That's not owning the restaurant, but I thought it was just his
7 bravado because he was like that.

8 But I had no doubt that he had interest in French
9 banks. I had no doubt that he had massive real estate dealings
10 with Norman Levy, who was one of the pioneers of Manhattan real
11 estate development, or so I was told. So there were dozens and
12 dozens and dozens of examples over the years.

13 I mean, for instance, I used to sit on the couch in
14 his office all the time. He would be on the telephone, and he
15 knew I was there and he spoke openly to whoever he was talking
16 to, and I was just a fly on the wall. And I would pick up --
17 because he stored things on his couch in very neat piles. I
18 would pick up whatever was sitting next to me on the couch.
19 There would often be an enormous prospectus of private
20 placements in very complicated real estate deals all over the
21 world. There were equipment leasing contracts on that.

22 I know now that that was placed there for a specific
23 reason. Because I know now he had no goddamn money, and those
24 documents were always presented to me as things he was in. So
25 put two and two together. They were -- they were a prop to

1 convince me that he had the money, which caused me to act the
2 way I did.

3 Q. Now, Mr. DiPascali, when you did have those doubts for
4 assets here and there, what did you do with those doubts?

5 A. I internalized them, and I made them go away in my head.
6 This can't be a valid doubt.

7 Q. Now, did you ever have any doubt that the trading in the IA
8 business was completely fake?

9 A. I had no doubt that it was completely fake.

10 Q. Did you have ever have a doubt that you were committing a
11 crime by participating in that fake trading?

12 A. No doubt whatsoever that I was committing a crime for
13 30-odd years.

14 Q. Did you ever have a doubt that you were lying to customers
15 day in and day out about that business?

16 A. No doubt in my mind at all.

17 Q. Did you -- Now, when you had this meeting with Mr. Madoff,
18 where did it take place?

19 A. In his office.

20 Q. How did you come to be in that meeting?

21 A. He called me into his office. He had been staring out the
22 window all day. I was getting alerts from Eleanor, I believe,
23 or someone that he's not right.

24 Q. What did he say to you when you went into his office?

25 A. Close the door, and I closed the door and it was late in

1 the evening. It was winter; so it was dark early, but it was
2 into the evening. And he turned to me and he said -- crying,
3 he said, I'm at the end of my rope.

4 Q. And what did you say in response to that?

5 A. What do you mean? What do you mean, you're at the end of
6 your rope? He said, I have no more money. I'm like, what do
7 you mean you have no more money? He said, I don't have any
8 more goddamn money. Don't you get it? And I was like, how is
9 that possible? What are you talking about? We'll be able to
10 meet these redemptions.

11 And that's when he just said the whole goddamn thing
12 is a fraud. I don't have any money. Don't you understand what
13 I'm talking to you? Don't you get it? And then he switched
14 gears and he said, do you have money? I said, what do you
15 mean? I mean, Joann, does she have money? Does Joann have
16 money?

17 Q. Who's Joann?

18 A. My wife. Ruth's got some money. Ruth's got some money,
19 she's got 20 or \$30 million. Ruth will be okay. Don't worry
20 about Ruth. My concern right now, is is Joann going to be
21 okay? Are the kids going to be okay?

22 Q. Mr. DiPascali, you have to slow down for the court
23 reporter. When he asked you did Joann have money, what did you
24 understand him to mean by that?

25 A. Does Joann have any money because I'm not going to be

THE WITNESS: I'm sorry.

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THE COURT: -- you have to slow down and maybe be a little bit quieter when you speak.

THE WITNESS: Yes, ma'am.

A. He went on to illustrate that some of his real estate holdings, primarily his residences, were in Ruth's name. So that's good because it's Ruth's. And that some of the money that was in various accounts that added up to substantial dollars, 20, 30, I don't remember the exact number of millions of dollars, was in Ruth's name and it was Ruth's alone. So Ruth is going to be okay.

My damn brother is probably going to get disbarred, but hey, I'm not going to worry about that.

Q. Who was his brother?

A. Peter. Was one of his comments.

Q. And what was your emotional state at this point?

A. My knees were buckling.

Q. Now, did he discuss how he was going to go about winding this down?

A. Yes.

Q. What did he say to you?

A. He said, I've already made arrangements to meet with Ike Sorkin, or I'm about to make arrangements to meet with Ike Sorkin because one of the last things I want is to go out of this place in handcuffs in front of all the employees. I can't let that happen. I've got to do this on my terms.

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Q. And who was Ike Sorkin?

A. I recognized the name, and then it popped into my head immediately that he was the attorney that Bernie had hired for Frank and Mike, Frank Avellino and Mike Bienes much earlier, in 1992. And I knew Ike Sorkin because his mom had an account with us, and I knew he was a former SEC attorney and that had been in private practice with -- he was a securities lawyer, white collar crime lawyer.

Q. Now, did he, Mr. Madoff, present a timetable for how long this might take?

A. Yes.

Q. What was the timetable that he described?

A. It was predicated on the withdrawals that were going to go out of the 703 account. He explained to me that he had laid out on paper a time line of events. One of the first things that he needed to do was to sit with Ike, which I think was going to happen that coming Friday or he was going to attempt to have it happen that Friday. And once I sit with Ike, I'll have a better understanding of how the process works, and he's talking about the legal process of giving himself up.

He looked at Jodi's pad and saw huge redemptions that were scheduled to go out. A lot of redemptions that were on that pad he had instructed us to persuade the client to wait until we're out of the market. So there was a huge amount of dollars going out simply referenced, not with a date but when

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1 out of the market. And he was talking about, we don't need to
2 come out of the market because the accounts were fully invested
3 at that point. You'll just roll your options, which will keep
4 us in the market longer, which will buy us more time. So these
5 redemptions, I'm not even concerned with.

6 But there were some foreign hedge funds that had some
7 huge redemptions. And he was going to meet with Ike later on
8 that coming week, and then he was going to use the weekend to
9 talk to his brother and his wife and his kids. He had a whole
10 game plan laid out.

11 So that there was one wire, and I think it was
12 \$250 million, that was scheduled to go to, I believe, Optimal,
13 which is a European hedge fund. And he had figured out that,
14 we just simply won't make that wire, but we'll make every other
15 wire in between now and that point. And they'll call us when
16 they don't get the wire on the expected day, and we'll tell
17 them that we're still in the market. And then we'll tell them
18 that we're going to sell out their stock now, which will settle
19 in three days, so we'll make the wire then. And then we won't,
20 and that's going to cause the house of cards to collapse.

21 So he had this time line all illustrated. He had many
22 notes on his desk about this, dates and numbers and people and
23 names. And he had, appeared to me, obviously, thought this out
24 very carefully of how he was going to allow the firm to just
25 implode and give himself up in an orderly fashion, the

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objective of which was not to go out of the office in handcuffs.

Q. In front of the employees?

A. In front of the employees.

Q. Did he ask you if you had --

A. One of which was his son.

Q. Did he have -- Did he discuss with you any plan that you had?

A. He kept asking me if Joann is going to be okay. You got to understand, he was somewhat delirious. There was a lot of topics being popped in and out of his head and discussions happening that were not cohesive at all.

Q. Now, did you have a reaction to the plan that he articulated in terms of sending the wires out up to that default?

A. Yeah, I grabbed the pad from his hand and I looked at some of these names and I went crazy. And I reminded him that he's got 200 or so employees that are all going to be on the street as soon as this happens, some of which have their entire life savings with you. So they're not only going to be out of a job, they're going to be broke, and I'll be good goddamned before you send a wire to some foreign hedge fund, where I don't even know who the manager is, before you pay down these employees what you owe them because that's the order of business that I saw as the moral thing to do at that time.

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1 Q. How long did this meeting go on for?

2 A. Hours.

3 Q. And what -- approximately, what time was it that you left
4 his office?

5 A. I don't remember. It was late at night.

6 Q. And what was your mental state when you left?

7 A. Oh, I was crazed. I was crazed.

8 Q. Now, last question I'll ask you before the evening is. Who
9 did you talk to the next day about that conversation?

10 A. Jodi Crupi.

11 MR. ZACH: I'm at the point of stopping, your Honor.

12 THE COURT: Ladies and gentlemen, this concludes our
13 presentation of evidence for the day. We will resume tomorrow
14 morning. Members of the jury, please be ready in the jury room
15 at 9:15 tomorrow morning. I will give you your end-of-the-day
16 instructions.

17 You must continue to keep your minds open for the
18 evidence that is being presented here in court. You must
19 continue to keep your minds closed to all outside information,
20 including all news reporting and the opinions of others, and
21 you must separate yourself from people who may be discussing
22 the case or anything or anyone having anything to do with it.
23 You must continue to keep your thoughts to yourselves, and you
24 must not do any research or investigation on your own.

25 Thank you for your work with us today. Remember, you

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1 must leave your notes in the jury room in the envelopes
2 provided and leave your access cards with Ms. Ng and sign for
3 them if you have not do so already. Have a safe trip home and
4 a good evening. We'll look forward to seeing you in the
5 morning. All rise. Ms. Ng, would you escort the jury out.

6 (Jury exits)

7 Mr. DiPascali, you may step down. Thank you.

8 THE WITNESS: Thank you, your Honor. Have a nice
9 evening.

10 THE COURT: Thank you. You too.

11 (Witness temporarily excused)

12 THE COURT: Please be seated for a moment. Mr. Zach?

13 MR. ZACH: Oh, your Honor?

14 THE COURT: What should we anticipate in terms of
15 tomorrow's schedule?

16 MR. ZACH: I'm really close to the end. I probably
17 have an hour or two. I expect to finish well before lunch.
18 Oh, I think that's --

19 THE COURT: All right. And then we'll begin the
20 cross, and tomorrow's the 11th. On the 12th there will be at
21 least an hour that will need to be taken for the other witness;
22 is that correct?

23 MR. JACKSON: Yes, your Honor, probably less than an
24 hour, but on our side, it will be less than an hour. And based
25 on what I've heard from defense counsel, I don't anticipate

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lengthy cross, probably a short amount of time.

THE COURT: That's Mr. Crawley, correct?

MR. JACKSON: Yes, your Honor.

THE COURT: And is there an order of cross for Mr. Crawley?

MR. FRISCH: Mr. Crawley, I'm sorry, your Honor, not yet. We just haven't had a chance to talk about it, but we will, I promise.

THE COURT: All right. That's fine.

MR. RIOPELLE: Remember the default seating. If we forget, just make us go that way.

MR. FRISCH: I think we'll be okay.

THE COURT: In the worst case, I'll just wait for you all to stand up and volunteer.

MR. KRANTZ: I think you'll recognize us.

THE COURT: I think. Mr. Jackson?

MR. JACKSON: Your Honor, I just want to clarify one thing. During Mr. DiPascali's testimony, there was a point where there was -- when we admitted the SEC testimony, where Mr. Krantz raised an objection and Mr. Zach indicated that all contained any exhibits would also be included in terms of the SEC testimony. Just to be clear, our copy of the 3500 marked did not have the exhibits attached. So what we offered was the testimony itself.

Now, what I'm going to say is just that we won't raise

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any objections to any relevant exhibits that defense counsel intends to offer that are sub-exhibits of this, but we just wanted to make clear that what we have -- what we put in evidence was the testimony itself.

THE COURT: No, you did not. Mr. Zach very specifically said on the record that the offer was of the testimony and every exhibit referenced in that testimony, and that is what I explicitly admitted. So if you want to try to change the rules or something, be clear about that.

MR. SCHWARTZ: Absolutely, your Honor. I think Mr. Jackson's point was just that because they weren't physically attached to the exhibit, we need to make sure we're on the same page as to what those exhibits are so that we have a clear record.

MR. RIOPELLE: Can't you get them from the SEC?

MR. SCHWARTZ: Yes. It's not going to be a problem. I'm just saying that it wasn't on the government's document.

MR. JACKSON: I want to be clear. The reason I said we won't have any objection to the admission of the exhibits is we're not trying to avoid the exhibits coming in. We're just saying we haven't identified them yet; so there has to be clarity as to what exhibits Mr. Krantz is talking about before we question, just so we're all on the same page. That's all I'm saying.

MR. KRANTZ: It's a deposition transcript with

1 numbered exhibits. There's no ambiguity about what the
2 exhibits are. When Mr. Zach offered the document, I asked to
3 speak with him. I said it's important to me, if you are going
4 to offer it, put it in with the exhibits. He said, I have all
5 the exhibits, but I don't have them here with me. So I said,
6 no problem. Offer it with the exhibits, and you'll supplement
7 it with the exhibits. He said, no problem, and then he made
8 the reference to your Honor.

9 THE COURT: So just keep on the near term schedule,
10 concretizing the universe of deposition plus exhibits, and I
11 would ask that you put that on your Friday disclosure list; so
12 that by Friday, the defense knows what you believe to be the
13 universe of deposition plus exhibits. Is that acceptable to
14 everybody or no?

15 MR. SCHWARTZ: I think it's likely that Mr. Krantz
16 will want that tomorrow.

17 MR. KRANTZ: Yes.

18 THE COURT: Sorry.

19 MR. SCHWARTZ: Our point was simply this. We're going
20 to spend five minutes with Mr. Krantz to make sure that our
21 marked deposition exhibits are the same as his marked
22 deposition documents. So that in the morning, we can make a
23 proper record for the Court because the document number, the
24 3500 number that Mr. Zach admitted today didn't have anything
25 attached to it. That's simply our point, and we need to

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1 clarify physically what pieces of paper match up with what
2 Mr. Zach said. That's all.

3 MR. ZACH: We'll do that.

4 THE COURT: And, of course, by Friday, I meant today.
5 Everybody understood that.

6 MR. KRANTZ: I'm happy to examine what the government
7 has in exhibits. I'm not comparing it with some marked set
8 that I have, but I'll be happy to examine their exhibits and
9 make sure we're on the same page.

10 THE COURT: Okay. So just between, you know, the
11 several of you, make sure that there is an agreed and
12 accessible exhibit that has an embodiment of the exhibits to
13 the exhibit as well; so that we don't have confusion or fights
14 about that, and I appreciate you doing that.

15 MR. KRANTZ: Will do.

16 MR. RIOPELLE: Thank you, your Honor.

17 THE COURT: Anything further, Mr. Schwartz?

18 MR. SCHWARTZ: Totally separate.

19 MR. KRANTZ: I also want to say something totally
20 separate; so after Mr. Schwartz.

21 THE COURT: Okay. Just one second. I'm afraid I
22 misled Rose, the court reporter, when I said I didn't think she
23 would need to move down because we wouldn't be talking about
24 much. Would you be more comfortable moving down before we go
25 to the next topic?

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THE REPORTER: Please.

(Pause)

THE COURT: We're back on the record. Mr. Schwartz has just raised the question of projected length of cross-examination of Mr. DiPascali in order to facilitate witness planning for next week. Are any of the defendants in a position to comment at this point?

MR. KRANTZ: With the usual caveat that it depends so much on the answers, that it's very hard to predict these things, I would say my cross is a half a day, ballpark.

MR. FRISCH: With the same caveat, about half a day.

MR. MEHLER: I would say mine is roughly in the same area.

MR. RIOPELLE: A little longer than that.

MR. BRESLIN: A little longer than that, and then, your Honor, we have redirect, inevitable as it probably is, and recross. So I think that even under the most optimistic of circumstances, we're into the middle of next week.

THE COURT: Sounds that way.

MR. BRESLIN: So if the government were to come up with a slightly abbreviated roster of witnesses, even, you know, as the last day before the holiday, we would not shriek out in dismay if we finished a little bit early.

THE COURT: All right. So let's say, at this point, that we're asking the government to have prepared at least a

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1 day and a half worth of witnesses for next week, and disclose
2 that on the usual schedule.

3 MR. SCHWARTZ: Absolutely. That's very helpful.
4 Thank you very much.

5 THE COURT: Is that fair?

6 MR. KRANTZ: Sure.

7 MR. RIOPELLE: Thank you, your Honor.

8 THE COURT: All right. Thank you all. Oh, I'm sorry,
9 Mr. Krantz.

10 MR. KRANTZ: It's okay. I was just going to say we
11 did have a chance to caucus on the exhibit issue, and we're in
12 agreement with your Honor's suggestion. I think I just want to
13 restate it so that I make sure that what we discussed and
14 agreed to, we're all on the same page.

15 And what I understood was that the jurors would have
16 to ask for exhibits, and if they asked for an exhibit that was
17 15 pages or less, they would get hard copy. If they asked for
18 a longer exhibit than that, they would get whatever portions of
19 the exhibit were, I think, shown on the screen.

20 THE COURT: Well, there's an intermediate step. If
21 they ask for a longer exhibit than that, we'll send a request
22 back to them for further specificity, if possible. If they
23 then ask for what was shown on the screen and that set of
24 excerpts is short, we'll give them that.

25 MR. KRANTZ: I'm glad for that clarification. Thank

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1 you, your Honor, and that's fine. And was there any more to
2 it?

3 THE COURT: Everybody will have four copies ready to
4 go of any exhibit or set of excerpts for a longer exhibit that
5 is mentioned in closing, in that party's closings.

6 MR. KRANTZ: Yes, we did discuss that, and that's
7 fine.

8 THE COURT: And the expectation is that the government
9 has rollbacks, at least one rollback of everything that's not
10 truly voluminous, and for the truly voluminous exhibits, we
11 expect to display them electronically for the jury.

12 MR. KRANTZ: That's all satisfactory, your Honor.
13 Thank you.

14 MR. RIOPELLE: Thank you, Judge.

15 THE COURT: And there is some work to be done or
16 planned to be done on an exhibit list that will be more
17 accessible to the jury? The government is nodding yes.

18 MR. SCHWARTZ: Yes, your Honor. We're working on that
19 and will, of course, share it with defense before we share it
20 with you.

21 THE COURT: Of course. All right. Thank you all.

22 (Adjourned to December 11, 2013, at 9:00 a.m.)
23
24
25

INDEX OF EXAMINATION

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FRANK DIPASCALI
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GOVERNMENT EXHIBITS

| Exhibit No. | Received |
|------------------------------|----------|
| 600-67 and 600-68 | .5236 |
| 101-114 and 101-12 | .5253 |
| 3501-33 | .5243 |