

1     happening, I wouldn't put it past them to go ahead  
2     and tell Madoff something is wrong, without any  
3     question. That's probably what I meant by that  
4     statement.

10:15:16 5         Q.     So having talked about some of the  
6     sentences in this letter, again, as we sit here  
7     today, is your recollection refreshed at all as to  
8     your writing this letter to Bette Anne?

9         A.     The thought processes and the things that  
10:15:36 10     I was thinking at that time align with some of the  
11     thoughts on there. Whether I explained them one  
12     hundred percent or not, I can't tell you. I didn't  
13     sit down and write a 15-page letter of everything  
14     that I meant. They were no more than summary  
10:15:52 15     statements.

16                 I do not write long things. I am not a  
17     writer by nature. This was just something I busted  
18     out at the time, once again, definitively to keep  
19     the children and anybody else away from coming in  
10:16:05 20     and calling Madoff and stopping the business.  
21     That's why this letter specifically was written,  
22     that letter alone.

23         Q.     And when you say children, you are  
24     referring to --

25         A.     Yes.

1 took place?

2 A. About an hour.

3 Q. Do you know whether or not in the books  
4 and records that they inspected that it reflected  
10:26:27 5 payments made to Avellino, Bienes, Father Kelly and  
6 others?

7 A. I have no idea.

8 Q. Did the books and records that were --  
9 that existed as of 2008 reflect those payments made  
10:26:41 10 to others?

11 A. They wouldn't have in the S&P P&S records.  
12 They would have been involved in the MD -- I forgot  
13 the name of my company -- MDS Associates. Those  
14 would have been made out of MDS, not in the S&P and  
10:26:56 15 P&S records.

16 Q. Do you know whether or not those records,  
17 records of this other entity, were made available  
18 for inspection?

19 A. I don't know. I have no idea. I don't  
10:27:05 20 think they would have. I don't know why I would  
21 have put my personal stuff, because I had my  
22 personal business and my personal stuff all was  
23 intertwined in MDS.

24 Q. But would the books and records of S&P and  
10:27:20 25 P&S reflect the management fee that was paid to you

1 and Mr. Powell?

2 A. They would have been on every single  
3 report that was ever issued out of our office. It  
4 was put on the statement how much our management  
10:27:36 5 fee was. If somebody got a statement, it had our  
6 management fee on there.

7 Q. And was the management fee calculated  
8 pursuant to the terms of the partnership agreement?

9 A. Correct.

10:27:49 10 MR. SAMUELS: Object to the form of the  
11 question.

12 BY MR. WOODFIELD:

13 Q. If you would turn to page 37.

14 A. Uh-huh.

10:28:10 15 Q. Let me just quote a portion of this  
16 response on page 37. "Defendants Avellino and  
17 Bienes were active in the management of the  
18 partnerships."

19 Is that an accurate statement?

10:28:28 20 A. That's a lie.

21 Q. In the next line down a portion of the  
22 statement, a portion of that response states,  
23 "Sullivan prevented general partners from assessing  
24 all of the books and records of the partnerships to  
10:28:43 25 conceal defendants' involvements in the

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT, IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO.: 12-034123 (07)

P & S ASSOCIATES, GENERAL  
PARTNERSHIP, a Florida limited  
Partnership, *et al*,

Plaintiffs,

v.

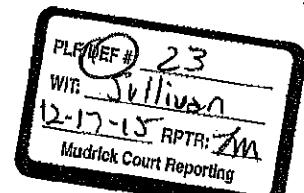
MICHAEL D. SULLIVAN, et al.,

Defendants.

**MICHAEL D. SULLIVAN MOTION FOR PROTECTIVE ORDER AND  
TO COMPEL PRODUCTION OF HIS SWORN STATEMENT**

COMES NOW THE MOVANT, MICHAEL D. SULLIVAN ("Movant"), by and through his attorney, and moves this Court for an order preventing or limiting the continued deposition of the Movant by the attorneys for the Plaintiff and to compel the Plaintiff to provide the Movant with a copy of his sworn statement and as grounds therefore, states as follows:

1. On December 1, 2015 the Movant duly appeared for his deposition without any party hereto serving the Movant with a subpoena ("Deposition"). In fact, Movant has fully and completely cooperated with the Plaintiff for years in delivering each and every document in his possession, provided Plaintiff with access to each and every email account, has allowed Plaintiff to copy his hard drives of his personal and business computers and cell phone and even providing access to Movant's internet providers. Finally, Movant has given over Seven (7) hours of sworn testimony on September 14, 2014 and in December,



2014 where he was questioned by Plaintiff's counsel and presented with every possible document in this case.

2. There are no possible remaining questions that Plaintiff can ask. In fact, the only reason Plaintiff wants to subject Movant to several more grueling hours of deposition and the reason Plaintiff has taken other actions in this case (see Motion to Enforce Settlement attached hereto) is to coerce Movant to change his stated position that Avellini and Bienes had no role in the management, operation or in any other capacity in Movant's ownership and operation of the P & S and S & P. In fact, Plaintiff has not produced a single document or provided any statements that contradict Movant's position, a position that has remained constant through not only the sworn statement but several and lengthy interviews.

3. Even after hours of interrogation and the vast intrusion into Movant's personal and professional life, Plaintiff has no credible evidence of its central assertion that Movant was a straw man for Avellini and Bienes.

4. All of the matters set forth above would be sufficient grounds to prevent Plaintiff from taking any further discovery but the actions of Plaintiff must be viewed through the actions and statements of Plaintiff in this matter where Plaintiff without any basis in fact claimed that Movant stole over \$10,000,000 and hid or destroyed records to prevent any person from discovering his crime. None of these accusations were based on any facts and Plaintiff has taken no action to advise the public that it wrongfully accused Movant.

5. Instead and in a continuing pattern of abuse of Movant, in contravention of the Settlement Agreement between Plaintiff and Movant, Plaintiff failed to advise this Court that the Final Judgment against Movant should not have been made public when it was originally made public or that Plaintiff refuses to comply with the Settlement Agreement.

6. Plaintiff has threatened Movant every step of the way, including threatening consequences if this Motion is filed and Movant has not varied in his recollection of facts that date back to the 90s.

7. Plaintiff has failed to provide Movant with a copy of his sworn statement notwithstanding written and oral requests. Upon request **without the required showing** a person not a party may obtain a copy of a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order to obtain a copy. The provisions of rule 1.380(a)(4) apply to the award of expenses incurred as a result of making the motion. Plaintiff refuses to provide Movant a copy of the sworn statement. Once Movant obtains a copy of the sworn statement Movant will provide this Court a copy for in camera inspection so that the court can determine whether there is a need for any further discovery. The Court will also be asked whether the sworn statement contains any confidential information or any "work product" and instead is just a sworn statement of the matters Movant has told multiple people well before any settlement agreement was ever executed.

8. In deciding whether a **protective order** is appropriate in a particular case, the court must balance the competing interests that would be served by granting discovery

or by denying it. Alterra Healthcare Corp. v. Estate of Shelley, 827 So.2d 936 (Fla. 2002), citing Rasmussen v. South Florida Blood Service, Inc., 500 So.2d 533 (Fla. 1987). The burden of proof for such a showing falls upon the movant. See Towers v. City of Longwood, 960 So.2d 845 (Fla. 5<sup>th</sup> DCA 2007).

9. As the Court will surely recognize, the time and formality of a deposition, although necessary, can be both stressful on the deponent and expensive for the parties. However, **multiple depositions** can give rise to undue stress on a deponent, and to an unnecessary expense which is contrary to the Court's goals of judicial economy. As stated above, Plaintiff has had the opportunity to examine the Movant in any and every possible manner. Movant, a party to this Action, is charged with his sworn statement and the sworn statement can be introduced into evidence as a statement of a party. Further, the Defendants will not object to the introduction of the sworn statement since it supports their claims in this action. It is only the Plaintiff that objects to making the sworn statement visible to this Court and the Defendants.

10. The Defendants started the Deposition and have already learned Movant's position that their clients had nothing to do with Movant's ownership and operation of P & S and S & P. The production of the sworn statement will limit any further discovery from Movant by any party. The sworn statement will confirm this and eliminate the need for any further questions. In Rothschild v. Gaspari, 287 So. 2d 341 (3d DCA 1974) the court held that in the case of an incomplete deposition which is certified by the officer as the sworn testimony of a party, the incomplete deposition may be used for the impeachment

of that party's testimony when it is filed in the court and no motion is made to suppress the deposition.

11. That sworn statement occurred 12 months ago and nothing has changed, certainly not enough to require another full day of deposition.

12. Any further deposition of Movant is, and can be, nothing more than a fishing expedition, and/or an exercise in harassment of Movant. It is wholly improper for Movant to sit again for deposition concerning matters about which he has already given lengthy, complete, and detailed answers.

13. Repeat depositions of a witness, and particularly a party, are rarely permissible because it constitutes an abuse of the discovery process. Good cause exists to prevent this continuation of Movant's examination, as no new material or evidence has been discovered or revealed which would warrant any further imposition and burden, no changes were made to his prior testimony and no rules of civil procedure allow for multiple depositions of the same deponent absent changes in testimony. Plaintiff's only purpose in deposing Movant essentially a third, fourth, fifth and maybe sixth time would be to annoy, oppress, unduly burden and cause further unnecessary expense to Movant and Defendants. "In deciding whether good cause has been shown, it is necessary to balance the competing interests that would be served by the granting or denying of discovery." *South Florida Blood Service, Inc. v. Rasmussen*, 467 So.2d 798 (Fla. 3<sup>rd</sup> DCA 1985).



WHEREFORE, MICHAEL D. SULLIVAN moves this Court for an **order** that the continued deposition set for December 17, 2015 not take place, or in the alternative, if the currently noticed deposition is allowed, that said deposition be limited in time and to only questions not asked in the sworn statement and requests this Court to order the delivery of Movant's sworn statement immediately.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above was filed with this Court's E-Filing System and all registered parties were selected for service this December 2, 2013.

/s/ Harry Winderman  
HARRY WINDERMAN, ESQ.  
Counsel for Defendant SULLIVAN  
One Boca Place, Suite 218A  
2255 Glades Road  
Boca Raton, FL 33431  
(561) 241-0332 Telephone  
(561) 241-5266 Facsimile  
FBN 0209562

## **PART III OF III**

Plaintiffs' Response to Defendants Frank  
Avellino and Michael Bienes' Amended  
Motion for Summary Judgment

***EXHIBIT 6***  
***MICHAEL SULLIVAN***  
***DEPOSITION EXCERPTS***  
***DATED: MARCH 8, 2016***

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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL  
CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 12-34123(07)

P&S ASSOCIATES, GENERAL  
PARTNERSHIP, a Florida limited  
partnership, et al.,

Plaintiffs,

vs.

STEVEN JACOB, et al.,

Defendants.

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DEPOSITION OF

MICHAEL SULLIVAN

VOLUME 1 of 1  
Pages 1 through 166

Tuesday, March 8th, 2016  
9:30 a.m. - 2:28 p.m.

BERGER SINGERMANN, LLP  
350 East Las Olas Boulevard  
Fort Lauderdale, Florida

Stenographically Reported By:  
Ashley C. Nehme, FPR  
Florida Professional Reporter

1 Q. Okay. Let's go to the one above that. So  
2 right above that we have dated April 4th, 2011.  
3 This is an email from you to Frank and Nancy  
4 Avellino. Do you see that?

5 A. Yes.

6 Q. Or a communication of some sort that's  
7 been logged.

8 A. Uh-huh.

9 Q. It says, "Peshkin v. Levy-Church, et al."  
10 Do you know what Peshkin v. Levy-Church, et al. is?

11 A. No.

12 Q. So you don't recall sending an email or a  
13 communication to Frank and Nancy Avellino concerning  
14 Peshkin v. Levy-Church, et al.?

15 A. No.

16 Q. Okay. Let's go down one now, August 25th,  
17 2015. And this is a communication -- Strike that.  
18 I don't need to ask you about that.

19 If we go down on - to November 8th, 2011,  
20 Michael Sullivan to Frank and Nancy Avellino. Email  
21 string P&S and S&P settlements, do you see that?

22 A. Yes.

23 Q. And do you know why you were sending  
24 communications to Frank and Nancy Avellino  
25 concerning P&S and S&P settlements?

1 A. No idea.

2 Q. Do you know what the content of that is?

3 A. No idea.

4 Q. And you understand that you and Frank  
5 Avellino are not represented by the same attorneys,  
6 correct?

7 A. Correct.

8 MR. WOODFIELD: Object to the form of the  
9 question.

10 BY MR. SAMUELS:

11 Q. And you understand that when you send  
12 emails to Frank and Nancy Avellino, it would not be  
13 a privileged communication; that is, one between you  
14 and counsel?

15 A. I am not aware of that.

16 Q. Okay. Let's go to the first page of this.  
17 On November 8th, 2011, there's a communication from  
18 you to Frank and Nancy Avellino concerning, "Second  
19 Circuit in litigation of customer status for  
20 retirement account investors." Do you see that?

21 A. Yes.

22 Q. And do you know why you were sending an  
23 email concerning that subject to Frank and Nancy  
24 Avellino in 2011?

25 A. No.

1 Q. And when you sent that email to Frank and  
2 Nancy Avellino, you didn't have any expectation that  
3 that would be covered by any sort of privileged  
4 communication, did you?

5 MR. WOODFIELD: Object to the form of the  
6 question.

7 A. I don't know what you're talking about.

8 BY MR. SAMUELS:

9 Q. Well, you understand I can't ask you  
10 questions in terms of what you discussed with you  
11 and your counsel here today, because that would be a  
12 privileged communication that I'm not entitled to  
13 know about, right?

14 You need to answer verbally.

15 A. Yes.

16 Q. So you understand there is an  
17 attorney-client communication there, right?

18 A. Yes.

19 Q. Are you aware also of an accountant-client  
20 privilege that exists, as well?

21 A. Yes.

22 Q. So my question to you is when you send  
23 emails to Frank and Nancy Avellino, you don't have  
24 any expectation that that communication would be  
25 somehow privileged, do you?

1 A. I don't have --

2 MR. WOODFIELD: Object to the form of the  
3 question.

4 A. I don't have any expectation.

5 BY MR. SAMUELS:

6 Q. Now, let's go to June 21st, 2011, email  
7 from you to Tom Avellino. Do you see that? Second  
8 to last on the first page.

9 A. Yes, I do.

10 Q. And Thomas Avellino is Frank's son?

11 A. Is that a question?

12 Q. I'm asking, yes.

13 A. Oh, yes.

14 Q. Again, about the same Peshkin versus  
15 Levy-Church, et cetera, appellant's brief. And my  
16 question to you is, when you send email to Tom  
17 Avellino, Frank's son, you didn't have any  
18 expectation that that would be privileged, did you?

19 A. I don't have any expectation about any of  
20 this.

21 Q. Okay. And here on --

22 A. Where are we now, sir?

23 Q. Back to the second page again.

24 A. Okay.

25 Q. Thank you.



1 April 5th, 2011 we have a communication  
2 from you to Frank and Nancy Avellino regarding  
3 S&P/P&S claims, do you see that?

4 A. Yes.

5 Q. And if you send a communication to Frank  
6 and Nancy Avellino concerning S&P and P&S claims,  
7 you didn't have any expectation of that being  
8 privileged at all, did you?

9 A. I have no expectations of anything.

10 Q. Okay. Now, you understand that -- Well,  
11 let me ask you something else here.

12 A. Are we done this?

13 Q. Yes, you can put that aside. I'm going to  
14 show you what's been marked as Exhibit 2. This  
15 document is deemed confidential.

16 MR. SAMUELS: You have that? Okay. This  
17 is exhibit B and it's Confidential Settlement  
18 Agreement. I ask Mr. Jacob not be given a copy  
19 of this document, because it's unredacted and  
20 it's supposed to be redacted. This document.

21 MR. WOODFIELD: The one I marked at the  
22 earlier depositions --

23 MR. SAMUELS: Yeah.

24 MR. WOODFIELD: -- you're referring to?

25 MR. SAMUELS: Correct.

1 MR. ZEICHMAN: No, this is attached --

2 MR. SAMUELS: No, this was attached to the  
3 summary judgment filings you just made, and  
4 it's called Confidential Settlement Agreement.  
5 It's Exhibit B to your filings.

6 MR. WOODFIELD: Then you're not talking  
7 the exhibits I previously introduced at  
8 Mr. Sullivan's deposition.

9 MR. SAMUELS: No, not at this time.

10 BY MR. SAMUELS:

11 Q. Let me show this to you, and I'm going to  
12 ask that this document be placed under seal because  
13 it's a Confidential Settlement Agreement. I don't  
14 mind --

15 MR. WINDERMAN: Do you want to mark it  
16 before?

17 MR. SAMUELS: Yes, mark it as Exhibit 2.

18 (The referred-to document was marked by  
19 the court reporter for identification as  
20 Plaintiff's Exhibit 2.)

21 BY MR. SAMUELS:

22 Q. I'm not going to ask you about the  
23 settlement amount, but if you look at Paragraph 3  
24 under judgment, do you see that?

25 A. I do.

1 Q. It has a dollar amount in there, correct?

2 A. Correct.

3 Q. And do you know how it is that  
4 Mr. Avellino or his counsel were able to obtain a  
5 Settlement Agreement in an unredacted form?

6 A. I have no idea.

7 MR. SAMUELS: Mr. Woodfield, perhaps you  
8 can explain, because this was filed by you.

9 MR. WOODFIELD: I can't at the moment.  
10 I'm not being deposed.

11 MR. SAMUELS: I understand you're not  
12 being deposed, but understand I'm making  
13 inquiry and I'll have to take it up with the  
14 court, which we intend to.

15 Okay. So that's going to be Exhibit No. 2  
16 under seal.

17 BY MR. SAMUELS:

18 Q. Mr. Sullivan, I know you've been asked  
19 about -- Strike that.

20 You understand that this case, in part, is  
21 premised upon the conservatory's efforts to obtain  
22 from Mr. Avellino and Mr. Bienes payments that were  
23 made to them or on their behalf in connection with  
24 individuals or entities who they referred into S&P  
25 and P&S? You understand that, right?

1           A.    I don't understand what everything is. I  
2    heard that, but whatever it is, you know, I just  
3    haven't followed it.

4           Q.    Well, going through documents at your  
5    earlier deposition pertaining to payments that were  
6    made to Mr. Avellino and Mr. Bienes or on their  
7    behalf --

8           A.    Right.

9           Q.    -- by Michael D. Sullivan & Associates.

10          A.    Right.

11          Q.    I want to talk about those payments.

12          A.    Yes, sir.

13          Q.    Also, I want to ask you generally in terms  
14    of S&P and P&S whether or not, we'll call them  
15    commissions for now, whether or not commissions were  
16    paid to other individuals or entities in connection  
17    with them referring clients into S&P or P&S?

18          A.    Okay.

19          Q.    They were, right?

20          A.    Oh, yes.

21          Q.    People did receive commissions?

22          A.    Yes.

23          Q.    Okay. Were any of those done under  
24    written agreement or were they all oral  
25    understandings?

1           A.    Oral.  I do not remember a written  
2 document.

3           Q.    Okay.  So let's focus now on the payments  
4 made to Mr. Avellino and Mr. Bienes or on their  
5 behalf.  Okay?

6           A.    Okay.

7           Q.    As to those payments that were made, are  
8 you aware of anyone else, or did you disclose to  
9 anyone else, the existence of those oral - of your  
10 oral agreement to pay Mr. Avellino and Mr. Bienes  
11 commissions for bringing people into the  
12 partnership?

13          A.    There's only one --

14               MR. WOODFIELD:  Form.  Timeframe.

15               MR. SAMUELS:  At all.

16               MR. WINDERMAN:  After the litigation?

17               MR. SAMUELS:  Unlimited in time.

18               MR. WINDERMAN:  Okay.

19          A.    The only person I remember directly was  
20 Patrick Kelly.

21          BY MR. SAMUELS:

22          Q.    Okay.  And what do you recall the  
23 conversations with Patrick Kelly?

24          A.    Patrick Kelly, at some point, wanted to  
25 know more about the investment.  We had an in length

1           Q.    And the commission payments made to them,  
2           were they paid by S&P or P&S, or were they made  
3           through Sullivan & Powell, Solution & Tax, or  
4           Michael D. Sullivan & Associates?

5           A.    I believe Michael D. Sullivan &  
6           Associates.

7           Q.    Were -- Did you ever discuss with Michael  
8           Bienes or Frank Avellino how you calculated the  
9           management fees you were receiving?

10          A.    Not that I remember.

11          Q.    Did they ever ask to see how you  
12          calculated the management fees?

13          A.    Not that I remember.

14          Q.    Okay. And did you ever disclose to them  
15          how you were calculating the management fees?

16          A.    Not that I remember.

17               MR. SAMUELS: Just bear with me for a  
18          minute.

19               Let's mark this as the next exhibit.

20               (The referred-to document was marked by  
21          the court reporter for identification as  
22          Plaintiff's Exhibit 3.)

23          BY MR. SAMUELS:

24          Q.    Can you identify what's been marked as  
25          Exhibit 3?

1 Q. That's what I'm referring to.

2 A. Oh, well, just tell me then. It's a lot  
3 easier if you just tell me. I didn't know where you  
4 were coming from.

5 Q. I get it. We'll get there. I'm trying,  
6 I'm trying.

7 Okay. So there's a point in time, now,  
8 those books and records went to not include the  
9 records of Michael D. Sullivan & Associates, your  
10 own company records, correct?

11 A. I do not remember what records went over  
12 to him.

13 Q. Okay.

14 A. There were a lot of boxes.

15 Q. Wouldn't you agree that what you do with  
16 Michael D. Sullivan & Associates money is nobody  
17 else's business but your own?

18 A. I would agree to that.

19 Q. Were the books of the partnership kept on  
20 a cash basis or on an accrual basis, do you know?

21 A. I believe they were on a cash basis.

22 Q. Let's go to Paragraph A .4 of the  
23 Partnership Agreement, please. Page 6.

24 This calls for the partners to hold a  
25 regular quarterly meetings on the third Tuesday of

1 Q. The first page.

2 A. Whatever it says.

3 Q. Well, you can look at it.

4 MR. WINDERMAN: Form.

5 BY MR. SAMUELS:

6 Q. That's what it looks like to me.

7 A. Well, then that's what it says.

8 MR. WINDERMAN: Form.

9 BY MR. SAMUELS:

10 Q. Now, this next page, if we look at it, do  
11 you see the \$300,000 debit?

12 A. Yes.

13 Q. And that \$3,000 --

14 MR. WOODFIELD: 300,000.

15 BY MR. SAMUELS:

16 Q. -- \$300,000 debit is a debit to your  
17 capital account?

18 A. That's what it appears.

19 Q. And why after the Ponzi scheme is exposed  
20 you're making \$300,000 debit to your capital  
21 account?

22 A. I'd have to look over the records to tell  
23 you.

24 Q. Was this money taken out of the capital  
25 accounts reflect actual money that you took out?



1 MR. SAMUELS: Okay. Lunch is here. Let's  
2 take a little break.

3 Hold on.

4 Couple more questions.

5 BY MR. SAMUELS:

6 Q. Why did you state that the business - that  
7 the gift was yours alone if Powell was your partner?

8 A. Frank did not know Greg very well. He  
9 only new Greg through me, and Frank and I knew each  
10 other from church so we had more of a connection.

11 MR. SAMUELS: All right. Let's take a  
12 break.

13 (A luncheon recess was taken, after which  
14 the following proceedings were held:)

15 BY MR. SAMUELS:

16 Q. Okay. So we've been discussing  
17 commissions that were paid to Mr. Avellino and  
18 Bienes.

19 A. Correct.

20 Q. Why weren't those commissions paid right  
21 out of S&P or P&S as opposed to Michael D.  
22 Sullivan & Associates?

23 A. I can't remember the reason. I wanted the  
24 money, I guess, to come to me and then pay them. I  
25 can't remember why. Once again, we set that up 20

1 A. I do.

2 Q. And in the first bullet point it says,  
3 "The BS group wants to see Frank Avellino and  
4 Michael Bienes." Do you see that?

5 A. I do.

6 Q. And here you're sending a letter to -- It  
7 says "Dear Partner." Did this go to all the  
8 partners at P&S and S&P?

9 A. I believe it did.

10 Q. And you're still a managing general  
11 partner, at this point?

12 A. I guess.

13 Q. And here you're saying, "It would be an  
14 incredible waste of your money," correct?

15 A. Uh-huh.

16 Q. And you believed it would be a big waste  
17 of money for S&P or P&S to bring a claim against  
18 Avellino or Bienes?

19 A. Correct.

20 Q. And you let all the partners know that?

21 A. That's what it says.

22 Q. Okay. In the fourth bullet point.

23 A. Yes.

24 Q. At the bottom, "Partnership funds were  
25 never paid to Avellino or Bienes or anyone else."

1 either Avellino or Bienes at the time of that  
2 conversation?

3 A. Not to my knowledge. I doubt she was.

4 Q. And the next to last bullet point.

5 A. Uh-huh.

6 Q. "No commissions were paid from partnership  
7 assets."

8 A. Correct.

9 Q. And then later on you indicate, "Yet, the  
10 managing general partner only charged legal,  
11 accounting, bank fees, and at times direct  
12 supplies." Do you see that?

13 A. Yes.

14 Q. Okay.

15 A. No indication anywhere in this letter that  
16 Avellino and Bienes were receiving commissions from  
17 bringing money in, correct?

18 MR. WINDERMAN: Objection.

19 BY MR. SAMUELS:

20 Q. From bringing people in, correct?

21 MR. WINDERMAN: Objection. Form.

22 BY MR. SAMUELS:

23 Q. Is that right?

24 A. I guess. If it's not in the letter, that  
25 means no.

1 Q. "My heart told me he was a scumbag from  
2 the beginning, but we followed the church leader."

3 A. Uh-huh.

4 Q. Do you know which church leader she's  
5 referring to?

6 A. You have to ask her, I don't know.

7 Q. "An expensive lesson in life. You have no  
8 idea how much you have hurt me and my family." Do  
9 you see that?

10 A. Yes.

11 Q. Did you ever discuss with her any  
12 possibility of bringing a claim against Avellino?

13 A. I don't remember.

14 Q. Do you recall discussing with Brett  
15 Stepleton the possibility - or anyone from the Stacy  
16 Festus Group, about possibly bringing a claim  
17 against Avellino and Bienes?

18 A. Yes.

19 MR. WINDERMAN: Form. Asked and answered.

20 BY MR. SAMUELS:

21 Q. Did you advise them you didn't believe  
22 there was any grounds to do so?

23 MR. WINDERMAN: Form. Asked and answered.

24 A. I don't remember what my discussion  
25 specifically was with them. We had that meeting

1 that I told you with Doug Stepleton. I wasn't  
2 planning on suing anybody.

3 Q. And you let them know that?

4 A. At that meeting, yes, I did.

5 Q. And did you let anyone else in the  
6 partnership know that you were not planning on suing  
7 anybody?

8 A. I don't remember. A lot of people called  
9 me. There were a lot of discussions. I don't  
10 remember what I called specific people.

11 Q. Do you recall anybody else amongst the  
12 partners interested in possibly bringing a claim  
13 against Avellino and Bienes?

14 A. There was a Festus Stacy group of people.

15 Q. Right.

16 A. There were different people in that group.  
17 What they shared I do not know. You'll have to ask  
18 them.

19 Q. But do you recall telling anyone other  
20 than - other than --

21 A. Festus Stacy.

22 Q. -- other than Festus Stacy that you would  
23 not be bringing a lawsuit against Avellino, Bienes,  
24 or anyone else?

25 MR. WINDERMAN: Form. Asked and answered.

FrankNano@aol.com  
To: maticarone@comcast.net  
Re: re Madoff

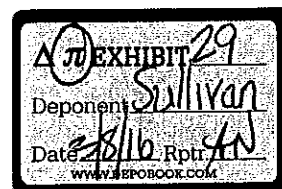
December 12, 2008 7:39 PM

Hi Matt,  
I received your phone message. Sorry I could not get back to you by phone. We have been on the telephone constantly from 7am this morning. We know, as may you already from Michael Sullivan, that the SEC is involved and the court has appointed a Receiver to seize all assets and that a big number of auditors have been going through the records as of last night (Thursday) and have been working throughout the night and will continue to do so to determine how much is in assets. If I hear anything new I will let you know.  
Frank

In a message dated 12/11/2008 5:50:01 P.M. Eastern Standard Time, maticarone@comcast.net writes:

Frank,  
How bad is this??—Matt

Make your life easier with all your friends, email, and favorite sites in one place. [Try it now.](#)



CARONE000084

**From:** Michael Sullivan <mike@sullivan4irsmatters.com>  
**Sent:** Monday, March 26, 2012 12:51 PM  
**To:** Frank & Nancy Avellino <franknanc@aol.com>  
**Subject:** Fwd: U.S. Supreme Court reply brief  
**Attach:** USSC 11-969 - Reply Brief.pdf, Untitled attachment 67476.htm

---

**Michael D. Sullivan**  
**3696 N. Federal Highway**  
**Suite 301**  
**Fort Lauderdale, Florida 33308**

**Landline (954) 492-0088**  
**Cell (954) 328-3501**  
**Fax (954) 938-0069**

**Email address**      [mike@sullivan4irsmatters.com](mailto:mike@sullivan4irsmatters.com)

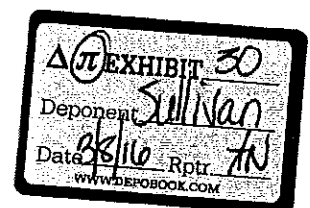
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Begin forwarded message:



DIDSullivan\_01\_00007378

**From:** "Chaitman, Helen Davis" <[HChaitman@becker-poliakoff.com](mailto:HChaitman@becker-poliakoff.com)>

**Date:** March 26, 2012 11:31:34 AM EDT

**To:** "Chaitman, Helen Davis" <[HChaitman@becker-poliakoff.com](mailto:HChaitman@becker-poliakoff.com)>

**Subject:** U.S. Supreme Court reply brief

Dear Friends:

Enclosed is the reply brief I filed this past week in the Supreme Court seeking review of the Second Circuit's decision.

Helen Davis Chaitman  
Attorney at Law  
Becker & Poliakoff, LLP  
45 Broadway  
8th Floor  
New York, NY 10006  
212.599.3322 Phone  
212.557.0295 Fax  
[HChaitman@becker-poliakoff.com](mailto:HChaitman@becker-poliakoff.com)



**From:** Michael Sullivan <mike@sullivan4irsmatters.com>  
**Sent:** Monday, March 26, 2012 12:44 PM  
**To:** Frank & Nancy Avellino <franknanc@aol.com>  
**Subject:** Pinon Grill - An American Gourmet Inspiration

---

<http://pinongrill.com/>

7:30PM

**Michael D. Sullivan**  
**3696 N. Federal Highway**  
**Suite 301**  
**Fort Lauderdale, Florida 33308**

**Landline (954) 492-0088**  
**Cell (954) 328-3501**  
**Fax (954) 938-0069**

**Email address**      **[mike@sullivan4irsmatters.com](mailto:mike@sullivan4irsmatters.com)**

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DIDSullivan\_01\_00007383

**From:** Michael Sullivan <mike@sullivan4irsmatters.com>  
**Sent:** Monday, March 26, 2012 12:49 PM  
**To:** Frank & Nancy Avellino <franknanc@aol.com>  
**Subject:** franb

---

[fsheehy@att.net](mailto:fsheehy@att.net)

**Michael D. Sullivan**  
**3696 N. Federal Highway**  
**Suite 301**  
**Fort Lauderdale, Florida 33308**

**Landline (954) 492-0088**  
**Cell (954) 328-3501**  
**Fax (954) 938-0069**

**Email address**      [mike@sullivan4irsmatters.com](mailto:mike@sullivan4irsmatters.com)

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**From:** Michael Sullivan <mike@sullivan4irsmatters.com>  
**Sent:** Monday, March 26, 2012 2:14 PM  
**To:** Frances Sheehy <FSheehy@att.net>  
**Subject:** Re: Avellino

---

u r da best!

Frank is going through hell re: Madoff

**I would send him to no one else.**

**Michael D. Sullivan  
3696 N. Federal Highway  
Suite 301  
Fort Lauderdale, Florida 33308**

**Landline (954) 492-0088  
Cell (954) 328-3501  
Fax (954) 938-0069**

**Email address [mike@sullivan4irsmatters.com](mailto:mike@sullivan4irsmatters.com)**

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On Mar 26, 2012, at 4:08 PM, Frances Sheehy wrote:

Thank you much. Will do. Fran

DIDSullivan\_01\_00007374

From: Michael Sullivan [mailto:mike@sullivan4irsmatters.com]

Sent: 03/26/2012 2:47 PM

To: Fran Sheehy

Subject: Avellino

Treat Frank well, tks

Blessings

Michael D. Sullivan  
3696 N. Federal Highway  
Suite 301  
Fort Lauderdale, Florida 33308

Landline (954) 492-0088

Cell (954) 328-3501

Fax (954) 938-0069

Email address [mike@sullivan4irsmatters.com](mailto:mike@sullivan4irsmatters.com)

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**From:** Michael Sullivan <mike@sullivan4irmsmatters.com>  
**Sent:** Tuesday, November 8, 2011 3:58 PM  
**To:** Frank & Nancy Avellino <franknanc@aol.com>  
**Subject:** Fwd: P&P/ S&P Settlements  
**Attach:** S & P Associates Settlement Agreement.DOC; Untitled attachment 56082.htm; P & S Associates Settlement Agreement.DOC; Untitled attachment 56085.htm

---

Michael D. Sullivan  
Port Royale Financial Center  
6550 North Federal Highway  
Suite 210  
Fort Lauderdale Florida 33308

Landline (954) 492-0088  
Cell (954) 328-3501  
Fax transmission (954) 938-0069

Email address [mike@sullivan4irmsmatters.com](mailto:mike@sullivan4irmsmatters.com)

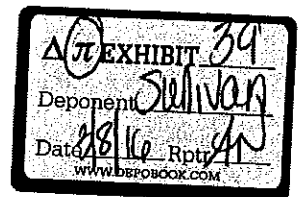
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Begin forwarded message:



**From:** "Chaitman, Helen Davis" <[HChaitman@becker-](mailto:HChaitman@becker-)

[poliakoff.com](http://poliakoff.com)>

**Date:** November 3, 2011 7:01:13 AM EDT

**To:** "Michael Sullivan" <[mike@sullivan4irsmatters.com](mailto:mike@sullivan4irsmatters.com)>

**Subject:** FW: P&P/ S&P Settlements

Look what Tom Wearsch has finally sent me. It provides that we pay the preference claims -- after Rakoff has held Picard has no right to recover preferences.

I have moved to withdraw all of my cases and put them before Rakoff. At this point, I don't see why we would enter into a settlement with Picard. Assuming Rakoff accepts your case, I am going to move to dismiss and for an order compelling the turnover of all the funds that have been frozen.

**Helen Davis Chaitman**  
Attorney at Law

Becker & Poliakoff, LLP  
45 Broadway  
8th Floor  
New York, NY 10006

212.599.3322 Phone  
212.557.0295 Fax  
[HChaitman@becker-poliakoff.com](mailto:HChaitman@becker-poliakoff.com)  
[www.becker-poliakoff.com](http://www.becker-poliakoff.com)  
[www.beckerny.com](http://www.beckerny.com)

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**IRS Circular 230 disclosure:**

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

---

From: Wearsch, Thomas [<mailto:TWearsch@bakerlaw.com>]  
Sent: Friday, October 28, 2011 2:20 PM  
To: Chaitman, Helen Davis  
Subject: P&P/ S&P Settlements

Helen,

Attached hereto are proposed settlement agreements for the P&S and S&P accounts/preferences. As discussed, there is a preference reservation.

Please review and get back to me.

DIDSullivan\_01\_00007755\_00002

Tom

---

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***EXHIBIT 7***  
***ORDER ON MOTIONS FOR***  
***SUMMARY JUDGMENT***

---



IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL CIRCUIT, IN AND  
FOR BROWARD COUNTY, FLORIDA

P&S Associates, General  
Partnership, et al.,

CASE NO.: 12-034121(07)

Plaintiffs,

Vs.

Janet A. Hooker Charitable  
Trust, et al.,

Defendants.

\_\_\_\_\_ /

**ORDER ON MOTIONS FOR SUMMARY JUDGMENT**

This action is before me on Motions for Summary Judgment filed by Defendants Abraham and Rita Newman, Gertrude Gordon, Ersica P. Gianna, Holy Ghost Western Province, Ettah, Ltd., Robert A. Uchin Revocable Trust, Holy Ghost Fathers, Compassion Fund, Holy Ghost Fathers HG-Mombasa, Holy Ghost Fathers HG-Ireland/Kenema, Catherine Smith, and the Molchan Defendants. I have considered the Motions and supportive memoranda, the authorities cited, and the arguments of counsel. For the reasons set forth below, the Motions are granted in part and denied in part.

This action is maintained by Philip J Von Kahle as the conservator of two partnerships who invested with Bernard L. Madoff Investment Securities LLC (Madoff). It is undisputed that Madoff ultimately proved to be a classic Ponzi operation. It is further

alleged that the former managing partner of the partnerships, Michael Sullivan, knew of the fraud and participated in it, concealed the scheme from the remaining partners and delayed turning over the partnership books and records. The fallout of this discovery has migrated to South Florida, spawning several disputes.

In this action, the Conservator attempts to wind down the affairs of the partnerships in a manner consistent with the agreements and statutes that govern the relationship between the partnership and the partners. There should be no net winners once it is determined that the winnings came from the investments of new money by persons who are net losers.

To accomplish this, seven causes of action are alleged in the Third Amended Complaint: Counts I and II are based on the obligations of partners to make capital contributions required upon wind down; Count III asserts a similar obligation in a Breach of Contract cause of action based upon the partnership agreements; Counts IV and V allege unjust enrichment and money had and received claims; Count VI seeks relief to avoid the fraudulent transfers pursuant to Fla. Stat. 726.105 (1)(A); and, Count VII alleges a breach of fiduciary duty.

Each of the moving Defendants say the causes of action are time barred, as no payments were received by them within the applicable limitations period. I agree that Counts IV and V are barred by the four year statute. Plaintiff argues that the last element of the cause of action consists of the demand for payment, which in this case is

November 12, 2012. That would mean that the statute could be extended indefinitely due to inaction by the Plaintiff. The time begins to run upon receipt of the payment under the facts of this case, as it undisputed that these defendants were innocent investors who were unaware of the fraud committed.

Material issues of fact remain in dispute with regard to the remaining causes of action that preclude entry of summary judgment at this time. The issues of significance fall into primarily two categories. The statutory and contractual obligation to make a capital contribution or to return an overpayment continues so long as a partner remains a partner. Certain of the moving Defendants acknowledge that they have not withdrawn as partners. Others assert that they have withdrawn, but they offer as proof a cashing out and the issuance of a zero balance K-1. Whether that constitutes withdrawal remains a triable issue.

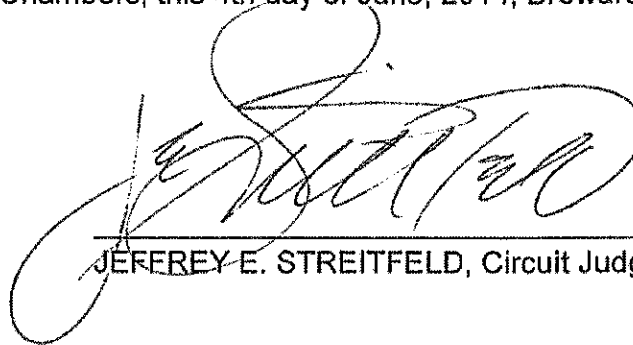
The fraudulent transfer claim presents a different set of issues. It is alleged that Michael Sullivan, as managing partner, participated in the fraud and actively concealed the evidence of the fraud. The time to bring this cause of action is extended to one year after the partnerships, as creditors/victims of the fraud, had the ability to determine the facts and bring the instant claims. Fla. Stat. Sec. 726.110. Sullivan's involvement and concealment remain disputed, as does the date of discovery.

For these reasons, the Motions are granted as to Counts IV and V, and denied as to the remaining counts.

To assist counsel in preparation for the June 16, 2014 Case Management Conference, I have doubts about the continued viability of the tort claims (negligence

and breach of fiduciary duty). Counsel may wish to reconsider the merits of these claims to focus on the remaining causes of action.

DONE AND ORDERED in Chambers, this 4th day of June, 2014, Broward County, Fort Lauderdale, Florida.



---

JEFFREY E. STREITFELD, Circuit Judge

Copies furnished:

Thomas M. Messana, Esq., who is directed to serve same upon all interested parties  
Leonard K. Samuels, Esq.

***EXHIBIT 8***  
***AGREED ORDER RESOLVING***  
***PLAINTIFFS' EMERGENCY MOTION FOR***  
***TEMPORARY INJUNCTION***

---

IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL  
CIRCUIT, IN AND FOR BROWARD  
COUNTY, FLORIDA

CASE NO. 12-24051 1071  
COMPLEX LITIGATION UNIT

MATTHEW CARONE, as Trustee for the Carone  
Marital Trust #2 UTD 1/26/00, Carone Gallery, Inc.  
Pension Trust, Carone Family Trust, Carone Marital  
Trust #1 UTD 1/26/00 and Matthew D. Carone  
Revocable Trust, JAMES JORDAN, as Trustee for  
the James A. Jordan Living Trust, ELAINE  
ZIPFER, an individual, and FESTUS AND HELEN  
STACY FOUNDATION, INC., a Florida  
corporation,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendant.

AGREED ORDER RESOLVING PLAINTIFFS'  
EMERGENCY MOTION FOR TEMPORARY INJUNCTION

THIS CAUSE came before the Court on Plaintiffs' Emergency Motion for Temporary Injunction, and this Court having been advised of an agreement between the parties and being otherwise duly advised in the premises, it is hereby ORDERED that:

1. This Order implements the agreement of the Parties and is entered on an agreed basis. Plaintiffs' Emergency Motion for Temporary Injunction is resolved as provided herein.
2. Defendant Michael D. Sullivan ("Defendant") shall resign as Managing General Partner of both P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (together with P&S, the "Partnerships"), and consents to the appointment of Margaret J. Smith ("Ms. Smith") as Managing General Partner in his

EXHIBIT

C

stead. Plaintiffs' agreement to allow Defendant to resign is not a waiver of any positions asserted in this action.

3. Ms. Smith is deemed the Managing General Partner of the Partnerships effective upon entry of this Order and will remain as such unless and until she withdraws from her role as Managing General Partner, or is removed consistent with the terms of the Partnership Agreements.
4. As Managing General Partner, Ms. Smith will be given full access to all of the Partnerships' books, records, assets and property and will be afforded all of the rights and duties of a Managing General Partner, including but not limited to those contemplated by Article 8.02 of each of the Partnerships' respective Partnership Agreements.
5. Defendant does not now and will not in the future challenge the appointment of Ms. Smith as Managing General Partner on August 17, 2012. Defendant agrees that he is no longer authorized to act in any capacity as Managing General Partner of the Partnerships, and is to direct all Partnership business to Ms. Smith. In so consenting to his withdrawal as Managing General Partner, Defendant reserves all other rights and defenses, and such consent to Ms. Smith's appointment shall not be deemed or considered an admission of liability either on his own behalf or on behalf of any of his employees, affiliates, assigns or agents.
6. The Parties further reserve all rights with respect to the action styled *P&S Associates, et al. v. Roberta Alves, et al.*, Case No. 2012CA013587, currently pending in the Circuit Court of the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County (the "Interpleader Case"). Defendant may not act as representative or Managing General Partner of the Partnerships with respect to that action. However, the Parties specifically agree, as a condition of the

relief provided herein, that the Interpleader Case will not be unilaterally dismissed by Ms. Smith in her capacity as the Managing General Partner of the Partnerships. Without prejudice to the rights of the Managing General Partner pursuant to paragraphs 7.05 and 8.02 of the Partnership Agreements, it is the intent of the Parties that the Interpleader Action provide the basis for the methodology used to determine how distributions will be made to partners, *i.e.*, without limitation, based on the amount in the partner's capital account (last statement balance), in the amount of the net investment of the account holder over the life of the account, or based on other equitable principles. Plaintiffs reserve all defenses to the Interpleader Action, and do not, by virtue of this Order, concede that venue in Palm Beach County is appropriate.

7. On or before September 5, 2012, Defendant shall provide to Ms. Smith all books and records not previously provided to Plaintiffs or their representatives, including electronic records of the Partnerships. Subject to Defendant's right to raise any written objection under the Florida Rules of Civil Procedure, Defendant shall provide the books and records of JS&P Associates, General Partnership, and SPJ Investments, Ltd. Defendant has represented that he does not have custody, possession or control of the books or records, electronic or otherwise, of Guardian Angel Trust, LLC. Defendant further agrees to use his best efforts to insure an efficient, orderly and smooth transition from his role as Managing General Partner to Ms. Smith's role as Managing General Partner.
8. This case is hereby stayed pending further order of the Court, but for a period of not less than 60 days, without prejudice to the rights of any parties to this action. This stay will be lifted upon a motion by either party.



9. This Order is binding on all Parties, including Ms. Smith, who is not a named party but has submitted herself to the jurisdiction of this Court by accepting the appointment as Managing General Partner as provided in paragraph 3 above.

10. Defendant, by agreeing to the terms of this Order specifically denies and does not admit any liability or wrongdoing and nothing in this Order shall constitute any finding of liability or wrongdoing either by Defendant or any of his employees, affiliates, assigns or agents. It is Defendant's position that he has agreed to the relief herein to preserve the resources of the Partnerships.

DONE AND ORDERED in Chambers in Broward County, Ft. Lauderdale, Florida, on this \_\_\_\_\_ day of August, 2012.

JEFFREY E. STREITFELD

AUG 29 2012

JEFFREY E. STREITFELD  
CIRCUIT COURT JUDGE

A TRUE COPY

Copies furnished to:

All Counsel of Record

***EXHIBIT 9***  
***AFFIDAVIT OF MATTHEW CARONE***

---

IN THE CIRCUIT COURT OF THE 17th  
JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO. 12-034123 (07)

P & S ASSOCIATES GENERAL  
PARTNERSHIP, etc. et al.,

Plaintiffs,

vs.

STEVEN JACOB, et al.

Defendants.

STATE OF FLORIDA

COUNTY OF Broward <sup>ss:</sup>

**AFFIDAVIT OF MATTHEW CARONE**

Before me, the undersigned authority, personally appeared Matthew Carone, who was sworn and says that the following is true:

1. My name is Matthew Carone, I am over the age of 18, and I have personal knowledge of the matters set forth in this affidavit.

2. The document attached hereto as **Exhibit A** contains an e-mail from me to Michael Sullivan dated June 30, 2009, at 5:46 PM, an e-mail from Michael Sullivan to me dated June 30, 2009 at 5:55 PM, an e-mail from me to Michael Sullivan dated June 30, 2009, at 6:19 PM, and an e-mail from Michael Sullivan to me dated June 30, 2009 at 6:45 PM.

3. The document attached hereto as **Exhibit B** contains an e-mail from me to Nancy and Frank Avellino dated July 9, 2008, at 1:54:24 PM, an e-mail from Frank Avellino to me

dated July 14, 2008 at 13:57:57 PM, and an e-mail from me to Raymond A. Ballotta dated July 14, 2008 at 2:11 PM.

4. The document attached hereto as **Exhibit C** contains an e-mail from me to Frank Avellino dated December 11, 2008 at 5:50:01 PM, and an e-mail from Frank Avellino to me dated December 12, 2008, at 7:39 PM.

5. The document attached hereto as **Exhibit D** contains an e-mail from me to Frank Avellino dated December 24, 2008, at 1:36:19 PM, an e-mail from Frank Avellino to me dated December 25, 2008, at 9:57:10 AM, and an e-mail from me to James Judd dated December 25, 2008, at 12:35 PM.

6. The document attached hereto as **Exhibit E** contains an e-mail from me to Dianne Bienes dated January 13, 2009, at 10:50:14 AM., and an e-mail from Dianne Bienes to me dated January 13, 2009, at 11:09 AM.

7. The document attached hereto as **Exhibit F** contains an e-mail from an e-mail from Dianne Bienes to me to dated April 24, 2009, at 7:38:33 PM, and an e-mail from me to myself dated April 24, 2009, at 8:15 PM.

8. The document attached hereto as **Exhibit G** contains an e-mail from Dianne Bienes to me dated May 1, 2009, at 8:35 AM.

9. The documents attached hereto as **Exhibit H** contains an e-mail from me to Michael Bienes dated July 13, 2008 at 2:37 AM, an e-mail from Dianne Bienes to me dated July 13, 2008 at 6:14 PM, and an e-mail from me to Dianne Bienes dated July 13, 2008 at 6:41 PM.

10. The document attached hereto as **Exhibit I** contains an e-mail from me to Michael Bienes dated March 18, 2008 at 19:47, an e-mail from Dianne Bienes to me, and an e-mail from me to Dianne and Michael Bienes dated March 19, 2008 at 9:49 A.M.

11. The document attached hereto as **Exhibit J** contains an e-mail from Sebastian Spreng to me dated November 11, 2008 at 11:04 A.M. and an e-mail from Dianne Bienes to me dated November 11, 2008 at 1:44 PM.

12. The document attached hereto as **Exhibit J** contains an e-mail from me to Dianne and Michael Bienes dated November 11, 2008 at 12:18:34, and an e-mail from Dianne Bienes to me dated November 11, 2008 at 1:44 PM.

13. The document attached hereto as **Exhibit K** contains an e-mail from me to Dianne and Michael Bienes dated October 7, 2006 at 16:28:41 and an e-mail from Dianne Bienes to me dated October 7, 2006 at 5:02 PM.

14. The document attached hereto as **Exhibit L** contains an e-mail from Dianne Bienes to me dated February 5, 2009 at 2:02 PM.

15. The document attached hereto as **Exhibit M** contains an e-mail me to Dianne and Michael Bienes dated October 8, 2006 at 11:13:04 AM and an e-mail from Dianne Bienes to me dated October 8, 2006 at 6:37 PM.

16. The document attached hereto as **Exhibit N** contains an e-mail from me to Dianne Bienes to me dated October 30, 2006 at 9:29 PM.

17. The document attached hereto as **Exhibit O** contains an e-mail from Dianne Bienes to me dated January 12, 2009 at 4:44 PM, an e-mail from me to Dianne Bienes dated January 19, 2009 at 1:43:47 PM, an e-mail from Dianne Bienes to me dated January 19, 2009 at 2:17 PM, an e-mail from me to Dianne Bienes dated January 19, 2009 at 8:28:54 PM and an e-mail from Dianne Bienes to me dated January 19, 2009 at 9:10 PM.

18. The document attached hereto as **Exhibit P** contains an e-mail from Michael Sullivan to me, an e-mail from me to Michael Sullivan dated December 18, 2008 at 1:29 PM, and an e-mail from Michael Sullivan to me dated December 18, 2008 at 1:37 PM.

19. The document attached hereto as **Exhibit Q** contains an e-mail from me to Michael Sullivan dated July 30, 2009 at 12:43 PM, and an e-mail from Michael Sullivan to me dated July 30, 2009 at 4:05 PM.

20. The document attached hereto as **Exhibit R** contains an e-mail from Dianne Bienes to me, and an e-mail from me to James and Valerie Judd dated December 4, 2008 at 11:07 AM.

21. The document attached hereto as **Exhibit S** contains an e-mail from Dianne Bienes to me dated February 5, 2009 at 2:02 PM.

22. Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, and S contain e-mails that were made at or near the time of the occurrence of the matters set forth in Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, and S by, or from information transmitted by, a person with knowledge of those matters.

23. It was my regular practice to keep and make the e-mails in Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, and S in the ordinary course of business of my investments with S&P Associates, General Partnership.

24. I learned of the investment opportunity with S&P General Partnership and P&S General Partnership (the "Partnerships") through Michael Bienes.

25. I trusted Frank Avellino and Michael Bienes advice regarding investments.

26. At times I was concerned about the investment with the Partnerships, but Frank Avellino and Michael Bienes, or his wife Dianne Bienes, reassured me the investment was safe.

27. Frank Avellino and Michael Bienes, or Michael's wife Dianne, continued to communicate with me regarding investments with BLMIS after December 2008.

28. After the discovery of Madoff, I relied upon the managing general partner of the Partnerships, Michael D. Sullivan, to protect the interests of the Partnerships.

Matthew Carone  
Matthew Carone

Sworn to and subscribed before me on this 1<sup>st</sup> day of February, 2016.

Nancy Barrus  
Signature of notary public

NANCY BARRUS  
Printed name of notary public



My commission expires on 8/14/16.

## EXHIBIT A



Michael Sullivan <mdsassoc@bellsouth.net>  
To: Matthew Carone <mattcarone@comcast.net>

June 30, 2009 6:45 PM

Re: Ruth Madoff Breaks Silence Video - Comcast.net9541234567

I have not heard from Michael or Frank and I think the next thirty days will tell us a lot. What a mess. I am so sorry for the way this has turned out. I makes me physically sick.

Michael D. Sullivan  
6550 North Federal Highway  
Suite 210  
Fort Lauderdale Florida 33308

Landline (954) 492-0088  
Fax transmission (954) 938-0069  
Email address investli@bellsouth.net

"The information transmitted herein is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer."

On Jun 30, 2009, at 6:19 PM, Matthew Carone wrote:

Don't be naive-----They all knew. I must say that Michael Bienes looked pretty bad on PBS. He showed no remorse or concern for the people he dealt with. Have you heard from Frank? Things don't look good for him. He's the one who got me involved with P&S. Remember?-----Matt  
It looks like those who gave through a feeder are gonna get screwed.  
On Jun 30, 2009, at 5:55 PM, Michael Sullivan wrote:

What are your thoughts?

Michael D. Sullivan  
6550 North Federal Highway  
Suite 210  
Fort Lauderdale Florida 33308

Landline (954) 492-0088  
Fax transmission (954) 938-0069  
Email address investli@bellsouth.net

"The information transmitted herein is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer."

On Jun 30, 2009, at 5:46 PM, Matthew Carone wrote:

| [http://www.comcast.net/video/ruth-madoff-breaks-silence/1167672850/Comcast/1167092672/?cid=net\\_dvid\\_carousel](http://www.comcast.net/video/ruth-madoff-breaks-silence/1167672850/Comcast/1167092672/?cid=net_dvid_carousel)

## EXHIBIT B

Matthew Carone <maltcarone@comcast.net>  
To: Raymond A. Ballotta <RBallotta@lkbcpa.com>  
[Fwd: Re: P&S]

July 14, 2008 2:11 PM

Ray,  
I just received this from Frank Avellino-----I received a similar response from Michael Bienas.-----The say the capital is safeguarded in US Treasury Bills-----I didn't know that-----did you?-----It looks like David will be coming up to Lenox on the sme day that you do. I told him to conmtact you---maybe you can get on the same flight. Johnny is looking forward to seeing you too.-----Matt

----- Original Message -----

Subject:Re: P&S

Date:Mon, 14 Jul 2008 13:57:57 EDT

From:Frank Nanc@aol.com

To:maltcarone@comcast.net

Dear Matt,  
I hope you are feeling better and recovering well from your surgery. As you may have surmised, Nancy and I are in Nantucket for the summer. We had been to Spain for three weeks with friends. We returned to New York for a few weeks before coming to Nantucket (508-325-7042).

As for the markets and S&P you must recall that the rate of return for the quarterly interim periods are never what they will be at the end of the year. Your past experience was not any different. Of course, this period of time may be different with the press scaring everyone. Unfortunately I do not have a better place to place my money. As long as the capital is safeguarded in US Treasury Bills I do not worry.

I do not want you to be apprehensive. Michael, Dianne, Nancy and I still have the money in the same place and have not intention of taking it out.

As for the art market, we have seen how crazy that is. We have been offered many millions for the Francis Bacon we have (and you know what Bacon has been selling for) but we refuse to sell.

Please let me know where you are so that we can speak.

Nancy and I send our love.

Frank

In a message dated 7/9/2008 1:54:24 P.M. Eastern Daylight Time, maltcarone@comcast.net writes:

Hi Nancy/Frank,  
I guess you're in Nantucket.-----Hope all is well.-----Frank, it looks like the better days of P&S are over. I'm considering pulling out since since most of my \$'s are in it and 2.5 % will have me dipping into the principle. What is you take on the situation?-----I have had to sell some of my art. As you know the art market is unbelievable! One of my brother's pieces came up last week at Christies. Because it was his first time at auction, they estimated it at \$2-\$3000.-----He was sick when he saw it, but surprised that it brought \$80,500.-----His dealer, Washburn Gallery, thinks he's going to fly now!-----a Marco-Relli sold for \$408,000 a couple of days ago in London.-----a small piece (@30 in) of Jenkins brought over \$90,000. All of the second generation abstract expressionists are the next crazy prices.-----I'm sure you're up on this as much as I am.-----Anyway, let me know what you think about P&S.-----I haven't heard rom Michael in some time. Have you?-----Best to both of you,-----  
Matt

Get the scoop on last night's hottest shows and the live music scene in your area - Check out [TourTracker.com](http://TourTracker.com)

## EXHIBIT C

FrankNanc@aol.com  
To: maticarone@comcast.net  
Re: re Madoff

December 12, 2008 7:39 PM

Hi Matt,

I received your phone message. Sorry I could not get back to you by phone. We have been on the telephone constantly from 7am this morning. We know, as may you already from Michael Sullivan, that the SEC is involved and the court has appointed a Receiver to seize all assets and that a big number of auditors have been going through the records as of last night (Thursday) and have been working throughout the night and will continue to do so to determine how much is in assets. If I hear anything new I will let you know.  
Frank

In a message dated 12/11/2008 5:50:01 P.M. Eastern Standard Time, maticarone@comcast.net writes:

Frank,  
How bad is this??—Matt

---

Make your life easier with all your friends, email, and favorite sites in one place. [Try it now.](#)

## EXHIBIT D

Matthew Carone <mattcarone@comcast.net>  
to: james.judd <jamesjudd@comcast.net>  
(Fwd: Re: P&S)

December 25, 2008 12:10 PM

VERY INFORMATIVE!----MATT

----- Original Message -----

Subject: Re: P&S

Date: Thu, 25 Dec 2008 09:57:10 EST

From: Frank Nard <FrankNard@aol.com>

To: mattcarone@comcast.net

Hi Matt,

I have been informed by P&S that legal counsel has been retained and that all you can do at this time is wait for information from the authorities as this goes on. I believe you will be advised as to what you can do when the information is available.

Best, Frank

In a message dated 12/24/2008 1:35:19 P.M. Eastern Standard Time, mattcarone@comcast.net writes:

Hi Frank,

Is there any light at the end of this tunnel?—any ideas as to how I should proceed?—We've both seen happier holidays—Best, Matt

One site keeps you connected to all your email: AOL Mail, Gmail, and Yahoo Mail. [Try it now.](#)

## EXHIBIT E



Dmbianes@aol.com  
To: maticarone@comcast.net  
Re: Bris

January 13, 2009 11:09 AM

1 Attachment, 39 KB

Dear Matt

You've got to be kidding. We are wiped out!

Trying to pickup the pieces but there aren't any left.

Probably didn't hear from Frank as we all only now what's in the papers.  
Besides, he has his own problems.

Love  
Dxo

In a message dated 1/13/2009 10:59:14 A.M. Eastern Standard Time, maticarone@comcast.net writes:

Hi Diane,  
Are you still in London?—Frank said he would keep me informed, but I haven't heard from him in a while. I doubt if anyone is in my financial situation. Any advice?—Matt

Dmbianes@aol.com wrote:

Dearest Matt

I was going to e-mail you today but you got me 1st.  
Glad someone sees the funny side.  
I swear to you that we never had a clue and have nothing left.  
We are in shock.

So very sorry.

Much Love  
Dxo

In a message dated 1/12/2009 10:39:48 A.M. Eastern Standard Time, maticarone@comcast.net writes:



## EXHIBIT F

Matt Carone <[matcarone@comcast.net](mailto:matcarone@comcast.net)>  
To: Carone Matthew <[matcarone@comcast.net](mailto:matcarone@comcast.net)>  
Fwd: madoff / avellino see the Fortune story below

April 24, 2009 8:15 PM

4 Attachments, 33 KB

Begin forwarded message:

From: [Dmbienes@aol.com](mailto:Dmbienes@aol.com)  
Date: April 24, 2009 7:38:33 PM EDT  
To: [matcarone@comcast.net](mailto:matcarone@comcast.net)  
Subject: Fwd: madoff / avellino see the Fortune story below

From: [mraymond@broadandcassel.com](mailto:mraymond@broadandcassel.com)  
To: [Dmbienes@aol.com](mailto:Dmbienes@aol.com)  
CC: [Michaelbienes@aol.com](mailto:Michaelbienes@aol.com), [glehman@broadandcassel.com](mailto:glehman@broadandcassel.com), [drosenberg@broadandcassel.com](mailto:drosenberg@broadandcassel.com)  
Sent: 4/24/2009 2:49:07 P.M. Eastern Daylight Time  
Subj: RE: madoff / avellino see the Fortune story below

Special Report **MADOFF MESS**

## How Bernie did it

Madoff is behind bars and isn't talking. But a Fortune investigation uncovers secrets of his massive swindle.

By James Bandler and Nicholas Varchaver

Last Updated: April 24, 2009: 12:56 PM ET



Photos



Scenes from a double life

The Madoff family business seemed to be an inspiring success – until its patriarch revealed himself to be a con man for the history books.

[View photos](#)

**MADOFF MESS**

NEW YORK (Fortune) -- The employees were transfixed. Standing on the mid-Manhattan trading floor of Bernard L. Madoff Investment Securities in late 2007, a half-dozen staffers stared up at the ceiling-mounted TV as CNBC aired a report on the mysterious Palm Beach death of a hedge fund manager who had been leading a double life. The police, it appeared, were even considering the possibility that he had been murdered. "Bernie," someone casually asked as Madoff happened to walk by, "have you heard of this guy?"

Madoff glanced at the screen, blanched, and exploded: "Why the fuck would I be interested in some shit like that?" The employees recoiled. "I never saw him react like that before," says a Madoff trader who witnessed the outburst. "It obviously hit a nerve."

#### Minnesota's Madoff mess

Such a loss of control was highly out of character for the boss. But the traders didn't know at the time that Madoff had an extraordinarily elaborate second life going on just two floors below them, one that was building toward an epic, and inevitable, explosion. It took a special pass to get into the "back office" on 17, where Madoff was conducting his \$65 billion Ponzi scheme. And even if a person could get in, there wasn't much to see: an antiquated IBM computer server kept in a locked room, piles of trading statements, and a staff of about 20 paper pushers and clerks.

#### Talkback: What do you think of the Madoff scandal?

In retrospect, of course, there were clues, as a Fortune investigation has discovered. The IBM server, for instance, an AS/400 that dated from the 1980s, was so old that some data had to be keyed in by hand, yet Madoff refused to replace it. The machine -- which has been autopsied by the government -- was the nerve center of the fraud. The thousands of pages of statements printed out from it showed trades that were never made.

Then there was the man who ran the floor, Frank DiPascali, Madoff's chief deputy on 17. He was a 33-year veteran of the firm, with a rough Queens accent and a high-school education, but nobody was quite sure what he did or what his title was. "He was like a ninja," says a former trader in the legitimate operation upstairs. "Everyone knew he was a big deal, but he was like a shadow."

There were other mysteries, as we shall see. But even after it detonated five months ago in a fireworks display of betrayal and recrimination, Madoff's scheme -- possibly the biggest investment fraud in the nation's history -- has remained among the hardest to penetrate. Most commonly, white-collar cases begin with a quiet, behind-the-scenes investigation, followed by a series of deals with junior employees, who are squeezed by prosecutors to cough up details about their superiors. Step by step, the prosecutors move up. Finally comes the denouement: the ringmaster hauled into court in handcuffs.

But with Madoff every aspect of that traditional narrative has been inverted. The case began with his flabbergasting confession, which set off the investigation. Madoff claimed he committed his crimes all by himself, but because they spanned decades and continents, a fog of suspicion immediately engulfed Madoff family members who worked at the firm, as well as employees and business associates.

Now that fog may be about to lift. Fortune has learned that Frank DiPascali is trying to negotiate a plea deal with federal prosecutors in which, in exchange for a reduced sentence, he would divulge his encyclopedic knowledge of Madoff's scheme. And unlike his boss, DiPascali is willing to name names.

According to a person familiar with the matter, DiPascali has no evidence that other Madoff family members were participants in the fraud. However, he is prepared to testify that he manipulated phony returns on behalf of some key Madoff investors, including Frank Avellino, who used to run a so-called feeder fund, Jeffrey Picower, whose foundation had to close as a result of Madoff-related losses, and others. If, for example, one of these special customers had large gains on other investments, he would tell DiPascali, who would fabricate a loss to reduce the tax bill. If true, that would mean these investors knew their returns were fishy. (Lawyers for Avellino and Picower declined to comment. Marc Mukasey, DiPascali's attorney, says, "We expect and encourage a thorough investigation.")

The emergence of this potential star witness may well shatter assumptions about the case on their heads: Some people widely assumed by the public to have been involved in the fraud may not have been, and a small group of Madoff investors who appeared to be innocent victims may not have been entirely innocent after all. But then, few things about the life of Bernie Madoff turn out to be as they seem.

#### A business dynasty

Before it all went to pieces, Bernard L. Madoff Investment Securities appeared to be a charmed firm run by a tight clan. People believed in Bernie. Nasdaq made him its chairman; the SEC appointed him to industry panels; Congress invited him to testify. New York Senator Charles Schumer stopped by the office in the run-up to the Iraq war and gave a rousing talk on the trading floor. Everywhere you looked, there were signs that Madoff -- and by extension his firm -- had special status. Bernie was even able to arrange with his friends the Wilpons, owners of the New York Mets, for staffers to play charity softball games on the field at Shea Stadium.

If Bernie was the center of the firm's solar system, the nearest planet was his brother Peter, the head of compliance and de facto chief operating officer for the Madoffs' original, legitimate trading business. They were a savvy pair with a long-established dynamic. "They were the ultimate good cop/bad cop duo," says Christopher Keith, a former chief technology officer of the New York Stock Exchange who worked for the Madoffs on a side project (and who acknowledges that he clashed with them). Peter was the hands-on brother, the one immersed in detail, and most of all, the designated tough guy. "Peter was like five miles of bad road," Keith says.

Bernie's role was to glide in at the end and make peace, says Keith, who compares him to the biblical Solomon: "He was the type of person who was sort of above the fray -- the wise man."

Peter, now 63, was tethered to his BlackBerry. A lawyer by training, he was the driving force behind the firm's technology innovations. Though he couldn't write code, he could discuss software algorithms with surprising facility.

Bernie didn't have a BlackBerry. He didn't even use e-mail -- he could barely turn his computer on. His PC was configured essentially just to give him financial news, says Nader Ibrahim, who used to work on the technology help desk at Madoff's firm. "It was set up in a manner that the computer never shut off," Ibrahim explains. "So the format on the screens, how his Windows were set up, and everything like that would just come up the same way. If he wore to touch the stock menu and something [unexpected] came up in front of his system, he would get all flustered and call us."

Bernie and Peter were the first generation of the dynasty. The second was dominated by another set of brothers, Bernie's sons, Mark and Andy, now 45 and 43. Andy was the more cerebral one, with a better understanding of complex technological issues. But many viewed him as haughty and unapproachable, though those who know him say a kind person is concealed behind the reserved exterior. Andy survived a bout of lymphoma a few years ago (he is now in remission), and when he returned to the office, he ceased working on the firm's original trading operation and focused on other projects, such as the Madoffs' foray into energy trading, a business neither the company nor Bernie was involved in.

Mark was in charge of the main trading business at the time the firm collapsed. If he didn't have his younger brother's intellect, he had the people skills that marked him as heir to the Madoff throne. A frat boy, he was easygoing and low-key, occasionally driving his Vespa to work from his SoHo apartment. In his younger days, he would accompany his fellow traders to the rooftop bar Scores.

There was no question that the Madoffs were the firm's royal family. Mark and Andy worked among their colleagues on the trading floor, but they sat on a raised platform, a few feet above everybody else. And even star employees knew that they could rise only so high.

Still, for the most part people loved working for the Madoffs -- a surprising number stayed for decades. Bernie's wife, Ruth, was effervescent and gracious. She wrote lovely personal notes to employees. Bernie himself could be charming, even compassionate. In 2002 a rookie trader was seriously injured when he got hit by a car while training for the New York City marathon. "I passed out and woke up in the emergency room," the trader remembers. When he came to, he says, "I looked to one side of my bed, and my mom and dad were there. On the other side was Bernie."

But Bernie was moody, and he could make people uncomfortable. At times he would stare wordlessly into space. One former trader remembers being at a holiday party when he noticed that Madoff was glaring at him from across the room. And glaring. And glaring. "You in trouble?" the trader's fiancée whispered to him when she noticed the boss's icy gaze. Uncomfortable, the couple left early; they never got an explanation.

And Madoff could be less than sensitive. One day a female trader remarked to a colleague that she'd had a nightmare about being raped, not realizing that the boss was listening behind her. Bernie piped in: "That's not a nightmare, that's a fantasy."

Bernie had his quirks, and to a startling extent they colored the firm — quite literally when it came to the décor. Virtually every piece of furniture, equipment, or decoration was black or gray. That extended even to the pushpins in employees' cubicles. "Bernie had the manufacturer just send boxes of black ones," says Bob McMahon, a former employee.

Madoff was even more obsessed, if that's possible, with cleanliness. Even while he was responsible for billions of dollars, it was not uncommon to see him dusting his office or the two-foot sculpture of a screw behind his desk. One staffer recalls getting off the elevator to find Madoff, clad in one of his innumerable tailored suits, on his hands and knees in the lobby, straightening the rugs so that they were aligned perfectly.

That was Madoff's third fixation. Everything needed to be symmetrical and in straight lines. When Madoff was in the office, all window blinds had to be aligned at the same height, all computer screens had to be arrayed at the same angle and position, and on and on. So insistent was he on perfect alignment that, more than once, he dropped his trousers in the office — startling female employees — to ensure that the line of his shirt buttons was precisely vertical. More than one writer has pointed out how odd it was that Madoff, a seeker of the parallel and the perpendicular, should have chosen to house his firm in the Lipstick Building, designed by Philip Johnson and John Burgee in the form of an ellipse.

The Madoff firm had 2-1/2 floors in that building. The trading floor was on 19, and the software programmers worked on 18. Employees in those parts of the firm knew there was a different, lucrative business on half of the 17th floor, but they didn't know exactly what it did. "We were all aware of this hedge fund that had had great returns for 20 years," recalls one trader. "We knew it was statistically impossible [to have the steady gains for which Madoff became famous]. As a collective, we always kind of wondered: How the hell does he do it? Every person was curious. But that's where it stopped. You'd stop yourself from wondering. You'd say, 'There couldn't be anything bad. The Madoffs had such a name — and such an aura.'"

#### Mom, Dad and the SEC

Peter Madoff, a trustee of the Lower East Side Tenement Museum, wrote a line on that institution's website about his family's roots: "My grandparents ran a Turkish bath in the area that served as a focal point for many new immigrants of different nationalities." Census and marriage records show that the Madoff grandparents came to the U.S. from Poland, Romania, and Austria between 1900 and 1905.

Bernie, when he rode through the area many decades later, would occasionally point out places where his family had lived or worked. But though he embraced the family's gritty immigrant success story, he avoided talking about his own parents and his more suburban upbringing. Bernie and Peter Madoff were raised in Laurelton, a middle-class area of Queens. Located beyond the end of the subway line on the border of Long Island's Nassau County, Laurelton felt more like a village in those days than a part of New York City. Families would run into each other at the local Chinese restaurant, the ice-cream parlor, and the Laurelton Jewish Center. The Madoffs — the parents, Ralph and Sylvia; the boys, Bernie and Peter; and their older sister, Sondra — lived in a modest three-bedroom brick house with a detached garage on 228th Street, a broad, tree-lined street with a grassy median.

Little is known about the career of Ralph Madoff, and no member of the extended Madoff clan would discuss the family. Ralph gave his occupation as "credit" on his marriage license, and one of Bernie's high school classmates, Ed Heiberger, recalls that he "was either a stockbroker or a customer's man" (the latter is the equivalent of a client or account representative). Years later he would work for his son Bernie's firm. "Ralph looked like a truck driver," adds Joe Kavanau, an old friend of Bernie's. "Kind of a rough-and-tumble kind of guy — not the kind of guy you screw with."

Ralph Madoff wrangled with the government on one occasion. Along with three people, he owed a tax debt of \$13,245.28 (about \$100,000 in today's dollars) that caused the IRS to place a lien on the Madoff home. The taxes were assessed in 1956, but the lien was not paid off until 1965 after the house was sold, suggesting that Ralph was either fighting the tax bill or unable to pay it.

Like Ralph, Sylvia had a run-in with the government. In August 1983, the Securities and Exchange Commission announced it was instituting proceedings to determine whether 48 broker-dealers, including "Sylvia R. Madoff [doing business as] Gibraltar Securities," had "failed to file reports of their financial condition ... and if so, whether their registrations should be revoked." Then, in January 1984, the SEC dismissed administrative proceedings against a number of the firms, including Madoff's, in what appeared to be a deal: No penalties if you promise to stay out of business.

What's mysterious is that Bernie Madoff's childhood friends don't recall his mother's being involved in stocks or bonds. For a woman to head her own securities firm in the early '60s was unusual. And given that the company's address was listed as the Madoff home in Laurelton, Bernie's friends would seem likely to have noticed the business. Yet they didn't and it's impossible to know why not. One could speculate that Ralph, his name tarnished by federal tax troubles, decided to put his wife's name on the application to open a stock brokerage.

Either way, one of Bernie Madoff's parents was involved in securities — and got into trouble for it. And according to his friend Joe Kavanau, who attended law school with Madoff (before both dropped out), Madoff knew he was going to go into that line of work from a young age. "Bernie," he says, "was always going to have this business."

#### 'Cash on hand \$200'

Perhaps that explains why most people's memories of the young Bernie Madoff concern his extracurricular activities rather than anything having to do with academics. Most of them, for example, recall his side business of installing sprinkler systems, which he launched as a teenager. "He was a very aggressive kind of kid that wanted to get ahead in life," says his high school classmate Heiberger. "He was a regular guy who was always hustling."

Madoff achieved little distinction at Far Rockaway High School. He was a lifeguard and made the swim team, specializing in the butterfly. But even in this, he didn't excel enough to compete in individual races on a regular basis, according to the team's co-captain, Fletcher Eberle. Instead, Madoff swam in the team relays.

The only other activity that Madoff cited in his senior yearbook entry was "locker guard." This, according to classmates, was a variation on the role of hall monitor. During a more innocent time, the mid-1950s, when fears of student misbehavior centered on truancy and pranks rather than drug use and shootings, the future Ponzi schemer was deputized by school authorities to prevent horseplay in the locker area.

One constant in high school was Ruth Alpern, Madoff's sweetheart. They were a couple, says Jane Kavanau, one of Ruth's old friends, "from early high school, maybe even from when she was in eighth grade." Bernie was smitten by the ebullient, energetic girl who also had an excellent head for numbers. Every morning he would pick Ruth up at home, and they would ride the train together to high school.

Madoff left home to attend college, passed a lonely semester at the University of Alabama, and then returned, according to two sources, because he was pining for Ruth.

He began commuting to what was then Hofstra College, 10 miles across the city line in Long Island. His studies seemed almost incidental. What mattered to him were work and family. The day before Thanksgiving in 1959, he married Ruth at the Laurelton Jewish Center. Two days later he found the time to fill out an SEC application to register his own self-named broker-dealer firm. He later appended a "financial statement" to the application. It consisted of seven words: "Assets: Cash on hand \$200. Liabilities: None."

Madoff hadn't even graduated — that came in 1960 — and he had a tendency to get flustered or tongue-tied around people. But he didn't lack for determination. And he had another quality, which Joe Kavanau puts in early terms: "I guess the word is 'balls.'"

#### The 'under-the-counter' market

Even as Madoff continued his schooling — he spent a year at Brooklyn Law School — he plunged into the securities business. Six months in, he reported a single stock position: 12 shares of a company called Electronics Capital, worth a total of \$300. But by the end of 1961, his initial \$200 stake had grown to \$16,140, according to his SEC disclosures — a significant sum in those days for a firm that consisted solely of Bernie and his wife/bookkeeper, operating at first from a shared desk at her father's accounting firm.

Madoff specialized in over-the-counter stocks, the unglamorous, mostly small-company shares that didn't trade on an exchange. He was a wholesaler, a person who would buy and sell small-company stocks to brokers whose clients were looking to invest or to exit a position. "In those days," Madoff explained in a 2007 panel discussion, "over-the-counter stocks were traded always over the telephone with no automation. So you would call a broker; the broker would call up over the telephone any number of dealers like myself, and there were hundreds of dealers around the country that were making these markets."

This was not the staid institutionalized world of the New York Stock Exchange. Since they didn't trade on a centralized exchange and there was no technology to provide up-to-date prices, over-the-counter dealers could — and did — take all sorts of liberties with their quotes. "A lot of people started referring to the over-the-counter market as the under-the-counter market," said Gordon Macklin, the late president of Nasdaq, in the Wall Street history *What Goes Up*.

Madoff was successful from the beginning, and his capital account began mounting: By 1987 he was reporting \$127,517 to the SEC. In 1969 it had reached \$555,157, and in 1973 it was listed as \$1.1 million.

By this point Madoff had also been quietly managing money for years. There was no hint of this on his SEC forms. But beginning sometime in the early 1960s, he had started taking on investors. It originated with a small nucleus of family and friends, and then spread outward in larger and larger circles. For example, Carl Shapiro, an apparel executive who had met the young investor and been impressed by him, gave him tens of thousands to invest in the early '60s. Shapiro would stick with him for close to half a century, losing around \$545 million when Madoff's scheme collapsed.

Another key figure was Ruth's father, Saul Alpern. He not only let his son-in-law share a desk at his accounting firm but also channeled clients and friends to Madoff. Eventually, according to Michael Bienes, who joined Alpern's firm in 1968, Alpern began gathering smaller investors together and creating a fund that invested with Madoff as a single account. This was among the first of what came to be called feeder funds.

Madoff was adept at subtly cultivating relationships with people like Bienes. The accountant had represented Madoff in a successful audit in the late 1960s. Then, little by little, Madoff began drugging him in. "I got to know him," Bienes says. "I once went swimming naked with him. He invited me to the New York Athletic Club on Central Park South [where members swam in the nude at the time]. He asked me to come and meet him and got a rubdown ... We didn't discuss anything, really. I think he wanted to get the feel of me, you know, and bring me into his orbit." Bienes evidently won Madoff's trust, and when Alpern retired in the mid-1970s, his feeder fund was passed to his accounting partners and became known as *Avellino & Bienes*.

Around this time, Bienes recalls, Madoff invited him to the bar mitzvah of one of his sons. "It was a lunch," Bienes recalls, "a buffet lunch. And I was very impressed because he didn't go over the top. He was a wealthy guy, you know, but he did it in a very moderate way. And I remember my partner, Frank Avellino, and myself and Bernie meeting in the middle of the dance floor, and we were saying, 'Thanks for having us,' and he said, 'Hey, come on — we're family, aren't we?' And at that moment, he had me. He had me. We were family. Oh, my God! I was in! It really took me because he had a presence about him, an aura. He really captivated you." Bienes, who ultimately lost his entire savings to Madoff, still seems dazzled decades later. (Another part of the appeal, according to Bienes's lawyer, Mark Raymond, was that Madoff led Avellino & Bienes to believe they were his only investing client. "I honestly thought we were the one and only," says Bienes, who says that he and his partner jokingly referred to Madoff as "our boyfriend.")

In those days Madoff would tell investors he was employing a much different investing strategy from the split-strike conversion approach that would later become synonymous with his fraud. Madoff explained the early strategy in a 1992 *Wall Street Journal* article: Before 1982 or so, "Mr. Madoff confirms ... [investors'] money was being used to engage in so-called convertible arbitrage in securities of such companies as Occidental Petroleum Corp., Limited Stores Inc. and Continental Corp." Madoff invested in high-yield issues that were convertible into common stocks while simultaneously short-selling the common stock, the article explained. Investors then earned "the spread between the higher dividend paid on the convertible securities and the lower dividend on the common stock, plus interest from investing the proceeds of the stock short sale."

Even as Madoff was planting the first seeds for his future role as a Ponzi schemer, he got a firsthand lesson in fraud: He was fleeced by one of the great charlatans of the 1950s. The perpetrator was a con artist with the evocative name of Jack Dick, who was sanctioned by the authorities multiple times and yet regularly managed to launch new schemes. His largest and most famous operation was known as Black Watch Farms, which sold investments in Angus bulls in the days when tax shelters were the rage. Dick himself became a wealthy and prominent figure in society. The *New York Times*' Gay Talese chronicled a 1964 bull auction conducted by Dick that was attended by the likes of U.S. Senator Al Gore Sr. and a representative for former President Dwight Eisenhower. Newspapers described Dick's "opulent" life in a mansion that had formerly belonged to the mother of an owner of the New York Yankees.

Then it all collapsed. Dick was accused of embezzling \$3.2 million from Black Watch's bank but died before the case could be resolved. Madoff, who had committed \$85,000, was one of many left holding the bag. The press descriptions of Dick's downfall resonate today. "He's one of the most brilliant persons I ever met," said one victim quoted in a 1971 *Wall Street Journal* article. The article noted, "If he has any flaw, one critic says, it's confidence in his own judgment that is so excessive it borders on a belief in his own infallibility."

#### A bonanza in software

Long before Madoff attained infamy as a criminal mastermind, he earned respect as a pioneer in electronic trading. Yet Madoff apparently wasn't satisfied with his place in history and was prone to embellish it on occasion. Such fibbing may be the moral equivalent of failing to plug the parking meter for your getaway car while you're inside — in Madoff's case, robbing a bank of \$65 billion. Still, he felt the need to puff up his credentials.

Consider how he described the creation of Nasdaq. Launched in 1971, it was a primitive computer system that displayed stock quotes — hence the name National Association of Securities Dealers Automated Quotations. The system simply listed the bids and offers; it was not until a decade later that it became possible to use Nasdaq to trade stocks. Said Madoff at a 2007 panel: "In about 1971 computers were showing up and being used. So we — meaning my brother and myself — saw that there was an opportunity to bring automation in the over-the-counter marketplace and create some visibility and transparency in the marketplace. So we came up with the concept of developing a screen-based trading mechanism where prices would appear on a computer screen. That was the start of Nasdaq." The way Madoff told it, his firm and four others "made a proposal to build a screen-based trading system, which then became Nasdaq. Then that went through various stages of automation, so that you were able to turn on your computer screen and any brokerage firm in the country would list all the dealers that were willing to trade the security and the prices. Then that eventually went on to where you could actually trade the security automatically."

That account is largely correct — except for Madoff's role in it. Says Charles "Dick" Justice, who started with the National Association of Securities Dealers in 1968 and was its chief technology officer for decades (and knows Madoff), "he wasn't involved in the founding of Nasdaq at all." Asked about a separate Madoff comment that he was "involved in the design of the Nasdaq technology," Justice says, "No, he wasn't."

According to Justice and others who played roles in early electronic trading, it was only in the late 1970s and early 1980s that Madoff made his mark. And when he did so, it wasn't because his firm created the concept of electronic trading — it was because the Madoffs were among the first to recognize the value of the idea and designed software that could trade stocks electronically in seconds. "If you have a brokerage firm that advertises they will get their trade done with you in five seconds," says one longtime Madoff tech employee, "that's because our system will get it back to them in two. That's the innovation."

Trading through Madoff was not only fast — it was cheap. Actually, "cheap" understates the matter. Rather than taking a fee for trading stocks, as NYSE specialists did, Madoff paid firms like Charles Schwab and Fidelity a penny or two a share for their orders, a practice known as "payment for order flow." In those days, there was a prevailing spread of at least 12.5¢ between the price that a "market maker" like Madoff's firm paid to buy shares and the price at which it would sell the same shares. Using its own software, Madoff's firm was adept at hedging the risk that buy-and-sell orders would be out of balance, preserving its profit. So even if he gave away a penny, Madoff could still make a tidy sum.

The allure for customers was obvious. And these ultra-cheap, fast electronic trades were among the things that helped discount brokers like Schwab and Fidelity slash commissions and bring stock trading to the masses.

By the early 1990s, Madoff's firm alone was executing 9% of the daily trading volume of stocks listed on the New York Stock Exchange. Madoff's realm was known as the "third market." His firm specialized in trading Big Board shares outside of the exchange. Such trading had existed for decades, but Madoff's firm led the charge as it went electronic. "He was viewed as the leading third-market firm on the Street," says former Nasdaq president Joseph Hardiman, who became close to Madoff. "He was very much respected and listened to by his peers."

His peers did not include the specialists of the New York Stock Exchange. That group viewed Madoff with disdain. They likened order payments to kickbacks. And

they were incensed at being placed at a competitive disadvantage by this outsider. "We are being forced to play full-contact football in tennis whites," sniffed one specialist to the Wall Street Journal in 1990. The anger and condescension still linger today. "The Madoffs were poaching scallops from my plate," says one retired NYSE director. He dismisses Madoff himself as nothing more than a "chilloni" — a ragpicker.

Call it shabby if you want. Payment for order flow was legal, and Madoff fought to keep it so. Under pressure from the SEC, the NASD, the securities industry's self-regulatory body, assembled a panel to study the issue in 1990. At the time, payment for order flow was highly controversial, and opposition was intense.

Madoff, who was named chairman of Nasdaq that year, played a key role. Not only did he serve on the panel, but he also suggested witnesses to interview. Managing to cast himself as a statesman who just happened to be the most knowledgeable man in the room rather than as an advocate fighting to protect his livelihood, Madoff took the lead in the discussions.

Slowly and subtly, he steered the group to his line of thinking, four members recall. "He wasn't pushy about his view," says David Ruder, a former SEC chairman and head of the panel. "He wouldn't say, 'We've got to protect my business.'" Instead, Madoff would tell the members, "You have just got to understand it." During the process, says Ruder, "we got pretty chummy."

When all was said and done, Madoff prevailed. The panel endorsed payment for order flow in its 1991 report, concluding that the practice was no different from other inducements offered on Wall Street. "The report put the NASD imprint on the process," says Norman Pessin, a committee member who admires Madoff's political skills. "It legitimized his business." Eventually the SEC followed, giving its own imprimatur to the payments as long as they were disclosed.

For Madoff it was a sweet victory, one that cemented his role as a force in trading. The years that followed marked the lucrative peak for Madoff's market-making firm, earning him millions in honest profits.

But beginning in 1997, the rules governing trading spreads changed. They were slashed from 12.5¢ a share to 6.25¢ that year and then dropped to a penny in 2001. Madoff's firm, which had eschewed traditional commissions and made its money on the spread, watched its profit margins evaporate. Madoff's market-making operation would never again be the prodigious cash generator it had been. Indeed, there were times after the turn of the century when it would dip into the red.

#### A private club

One of the reasons Madoff was able to perpetrate his fraud for so long was his preference for marketing his investment business by word of mouth. Until the scam's later years, people heard about it from friends. It was a private club, one that, famously, became only more desirable because of Madoff's seeming reluctance to admit new investors. One of the tacit conditions, as we know now, was an understanding that information about Madoff investments — including their existence — was to be held closely. Most investors complied. Who would want to anger Madoff and risk losing their privileges?

Still, despite his best efforts, every so often Madoff's secret investment business would emerge publicly. Each time Madoff would spring into action, showing a characteristic mix of reactions. He would take direct control, responding personally. And he would employ his self-deprecating charm.

In 1992, for example, Madoff's name surfaced in a major SEC investigation involving one of his feeder funds. Avellino & Bienes was accused of running an unregistered securities operation, issuing \$441 million of notes that promised returns of 13.5% to 20%. SEC officials feared it was a Ponzi scheme. They raced into court, won an injunction to shut the firm down — and discovered that all the investors' money was safely in the hands of one Bernard L. Madoff. According to court records, Madoff was able to return all the money to Avellino & Bienes in a matter of eight days. (The two men ultimately paid a combined \$350,000 in civil penalties to the SEC.)

Once the money was produced, essentially, the SEC exhaled. It didn't occur to the agency to investigate Madoff. Much of the rest of the case was handed over to a court-appointed trustee whose job was to make sure investors were made whole, and to what was then Price Waterhouse, which tried to reconstruct the mostly nonexistent books of Avellino & Bienes.

What's striking is that Madoff appears to have played the role of model citizen in this case. Billing records show that Lee Richards, the trustee, and Joel Whitman, who then worked for Price Waterhouse, held multiple phone conversations and at least one meeting with Madoff, who was able to provide investing records when Avellino & Bienes couldn't. They also show Madoff personally handling requests for computer records and the like, the sort of routine queries that in almost any other firm would have been handed off to the chief technology officer or a more junior person.

Madoff's personal touch seemed to score points. Whitman testified that Madoff was "forthright" in answering his questions. (Whitman said he couldn't comment for this article unless Richards, his client, granted permission. Richards did not respond to e-mails and phone calls.)

In May 2001 a more probing spotlight was shone on Madoff, and once again he escaped. In that month, two articles — the first in a trade publication called *Mar/Hedge*, the second in *Barron's* — raised serious questions about Madoff's investment operation. For starters, its very existence was surprising: According to *Mar/Hedge*, its \$6 billion to \$7 billion in assets under management made it the largest or second-largest hedge fund in the world at the time. Yet it was unknown. The articles went on to note the improbability of Madoff's smooth and steady 15% annual returns. They wondered why Madoff charged no fees to run his seemingly successful investment operation and instead accepted only minimal trading commissions.

Once again, Madoff got personally involved. The *Mar/Hedge* article noted that "Madoff sounds and appears genuinely amused by the interest and attention aimed at [his] asset-management strategy," and he pooh-poohed his own investing success, waving it off as the benefit of a bull market.

Madoff does not appear to have swayed either reporter, and both articles had a skeptical tone. *Barron's* asserted, for example, that "some on the Street have begun speculating that Madoff's market-making operation subsidizes and smooths his hedge-fund returns." Madoff was quoted dismissing that notion as "ridiculous." (As it happens, the opposite hypothesis was common among employees of Madoff's legitimate business. "We had a sense he was probably paying rent from the asset management," says a trader who worked for Madoff at the time.)

So what happened when two publications, one of them among the most prominent on the subject of investing in the country, raised questions about Madoff? Nothing. What seemed like clear warnings disappeared into a void of indifference. Even inside Madoff's firm, the reaction was a shrug. "We knew about the *Barron's* article," recalls the trader. "We went on about our business as if it was another firm that had nothing to do with us."

As it would later turn out, Madoff's illegal investment business was indeed subsidizing his legal trading operation. Among the charges to which Madoff pleaded guilty in March were three counts of money laundering, which involved transferring millions of dollars from Madoff's fraudulent business through his London operation to his legitimate New York business. At least \$250 million was transferred in this manner, according to the charges.

Then came the closest call: The SEC launched an investigation in 2003. A whistleblower named Harry Markopolos had spent years trying to persuade the SEC that Madoff was running a Ponzi scheme (he had been a key source for the *Mar/Hedge* article). The SEC also examined whether Fairfield Greenwich, a giant feeder fund, was properly disclosing the extent of its reliance on Madoff.

Madoff had always been terrified of the SEC. "Every time the SEC came into the office," remembers one longtime employee, "Bernie was a basket case." Whenever Madoff was in the world, he would fly back, even for a routine examination. He peppered employees with questions about their preparedness. "What's up?" he would ask nervously. "What's up? What's up?"

This time Madoff was being asked specifically about his fraudulent investment business. Once again he prepared — not only himself but also his customer Fairfield Greenwich. A phone conversation with representatives of Fairfield Greenwich in December 2005 was taped, transcribed, and made public as part of a Commonwealth of Massachusetts suit charging Fairfield Greenwich with essentially abdicating its responsibility to protect its investors. The transcript provides a revealing example of Madoff's thinking and his ability to manipulate.

"Obviously, first of all, this conversation never took place ... okay?" Madoff began. ("Yes, of course," was the reply from Fairfield Greenwich's risk manager, though the company has since asserted that it informed the SEC of the conversation at the time.) Madoff proceeded to spin a strange, fragmentary — he seemed to interrupt himself every few words — self-contradictory set of talking points for Fairfield to follow in its SEC interview.

In reality, Fairfield's Sentry funds had their entire \$6.6 billion stake invested with Madoff, and he controlled every investing decision (though, of course, in this case, "investing decision" meant Madoff simply took whatever money was sent his way). But he reminded them of their cover story: "You've approved the parameters of the strategy, and I've agreed to follow these." Fairfield, he kept repeating, had selected the strategy and a range of stocks, and Madoff's only role was to control the timing of when these investments were entered into and exited. "[W]e never wanted to be looked at as the investment manager," he said. "So in the past, if we've ever been asked about what our role is with any of these types of funds, it has always been that we are the executing broker for these transactions." Having just said that Fairfield had the sole power to choose the investing strategy, Madoff turned around and explained to them that he had changed the "trading directives" several years ago and was only now getting around to informing Fairfield Greenwich that its strategy had changed. "I'll send you up the new trading instructions today," Madoff said blithely.

Madoff was telling Fairfield to deny the obvious: that he was managing their money. At the same time, he portrayed his firm's role as something well known to the SEC. "They're aware of the fact that we do this," Madoff said, adding later, "The commission knows how we — how we operate." (An SEC spokesman declined to comment.)

Madoff went on to disparage the SEC investigation as a "fishing expedition," saying that "these girls" — the SEC's lawyers — might not understand the strategy, and implying that they might not press too hard because SEC lawyers have ambitions to go into lucrative private practice and don't want to alienate the sorts of firms that might hire them. "It's none of their business," he added. Madoff, who appeared at times to be reading from a list of bullet points, also advised the Fairfield Greenwich team on the tone they should take. "You don't want them to think that you're concerned about anything ... You're best off [if] you just be, you know, casual." Fairfield has said it told the truth to the SEC.

When it was his turn to be interviewed by the SEC, in May 2006, Madoff flat-out lied. When he was asked, for example, "Is it correct, then, that the equities are traded in Europe?" he responded, "Yes." (Madoff often told people he made all sorts of trades in Europe, where it would be harder to verify what he was doing.) Needless to say, there were no equities being traded in Europe or anywhere else.

Madoff's lies paid off — at least, at the time. The SEC "found no evidence of fraud," as a staff attorney wrote in a "case closing recommendation" (this despite the fact that the SEC had previously noted that Madoff's firm "misled the examination staff" and withheld information). The punishment: Madoff's firm had to register as an investment adviser.

#### 'Bernie's world'

Today, the radio announcer intoned solemnly, the New York Mets have lost one of their greatest fans: Roger Madoff. Bernard Madoff's 32-year-old nephew, Peter's son, had died on April 15, 2006, from complications related to leukemia. The announcement, aired on the Mets' radio station, was an unusual acknowledgement of a fervent Mets fan. It also reflected the decades-long bond between the team's owners, the Wilpon family, and the Madoffs. (The Wilpons also had millions invested with Madoff, and lost the money.)

Roger's protracted illness shook the entire Madoff family. It was especially devastating for his sister, Shana, a compliance lawyer at the firm, Roger and Shana "were like stamp and envelope," recalls one employee. "You couldn't separate them." Peter Madoff was in even worse shape. Peter had been a frequent visitor to the hospital, bringing bagels for the nurses and newspapers for his son. A doctor once entered Roger's hospital room to find Peter tenderly applying ointment to his dying son's feet. Chuffed home in his BMW on the Long Island Expressway, Peter would weep quietly in the back seat.

Cancer reached deep into the Madoff family. Peter had survived a bout of bladder cancer in 2000, and Bernie's son Andrew was in treatment for lymphoma. Another nephew, who also worked at the firm, was preoccupied with his young daughter's leukemia treatment. "We should curse the Madoff bloodline," Roger wrote in a posthumously published book on his struggle with the disease.

As Roger got sicker and sicker, the family channeled most of its philanthropy, which swelled into eight figures, into cancer research. "I hadn't realized the extent of the wealth that existed there," Roger noted with some surprise in his book.

By then, Bernie Madoff's "investment business" had ballooned. According to research by Harry Markopolos, it grew from as much as \$7 billion in 2000 to as much as \$50 billion by the end of 2005. What had started decades before as a small-time recruiting effort by Madoff agents at country clubs had gone global. Massive international institutions such as Grupo Santander, Fortis Bank, and Union Bancaire Privée were all funneling billions — sometimes through intermediaries — to Madoff, lured by the call of steady 10% to 12% returns. Even one of the world's biggest sovereign funds, the Abu Dhabi Investment Authority, ended up sinking tens of millions of dollars into the Ponzi scheme run by the guy from Queens on the Lipstick Building's 17th floor.

"Bernie's world" is the phrase Bob McMahon uses to describe the operations on 17. McMahon, a project manager specializing in information technology, was brought in to help rationalize the company's systems from 2007 to 2008. The situation he found was odd, especially for a firm whose legitimate business had been built on software prowess.

Traders had begun grouching about the firm's proprietary MISS software and the decades-old mainframe it ran on. The system was designed to trade equities; reconfiguring it to trade anything new was cumbersome. But replacing the mainframe wasn't so simple, says McMahon. It would also entail replacing a venerable IBM server, the AS/400, which served as the investment business's main computer backbone.

"Managing the AS/400 was getting to be a very, very hands-on, manual process," recalls McMahon. But "Bernie never wanted to get rid of [it]. That was the books and records of quote 'the company.'"

There were other idiosyncrasies in Bernie's world that might have raised suspicions. Around 2002 he proposed eliminating e-mail throughout his firm but was persuaded not to. Lots of Wall Street firms were talking about restricting it in the wake of corporate scandals featuring incendiary messages, but Madoff ultimately did the opposite of what you'd expect. He allowed e-mail for staffers at his trading business — the one the SEC regulated — while abolishing it for the people working in the unregulated investment business on 17.

Madoff took another step. He decreed that e-mails would no longer be stored electronically. First he decided that each of the firm's e-mails would be printed and then stored in boxes, but he was persuaded by others that such a plan was impractical. In the end, Madoff ordered that old e-mails be transferred to microfiche, a cumbersome process that costs much more than archiving the records digitally. Why would Madoff want to increase his archiving costs? Perhaps it had to do with the fact that microfiche is orders of magnitude more difficult to search than electronic records.

The 17th floor seemed like a galaxy far removed from the rest of the company. Most of the people there were a different breed from the overachievers upstairs. Many had arrived at Madoff's firm straight out of high school. "This was the only world they ever knew," says McMahon. "It was the old analogy of mushrooms: You keep them well fed and happy in the dark."

For weeks at a time, it was a torpid operation. Employees tended to disappear for long stretches of time — for lunch, for vacation, for anything. Then, six to eight times a year, a frenzy would erupt. Madoff's purported investing strategy was the "split-strike conversion." We'll spare you the details — they seem beside the point, given that Madoff didn't actually execute this strategy — other than to note that he claimed it consisted of a "basket" of 35 or so large-company stocks hedged with stock options. In theory Madoff's investing genius consisted of knowing the best time to enter or leave the market. Ostensibly, every so often Madoff's team was "buying" or "selling" massive quantities of stocks and options. Each time that happened, the 17th floor team would spring into action and spend all-nighters churning out trade confirmations for thousands of customers.

Providing over this process was Frank DiPascoli. Raised in the blue-collar Queens community of Howard Beach, he was a high school graduate who had arrived at Madoff's firm in 1975 — and then spent the next three-plus decades there moving through an unusual combination of legitimate jobs (at various times he was a gofer, a stock trader, and the person who coordinated the firm's move to new offices in 1997) before assuming his ultimate role as the chief lieutenant in Madoff's investment business.

DiPascoli shared his boss's love of the sea, and like Madoff, he spoke with a distinct New York accent. In his mouth, the word "three" had no "h." DiPascoli came to work in an incongruously starched version of a slacker's uniform: pressed jeans, a sweatshirt, and pristine white sneakers or boat shoes. He could often be found outside the building, smoking a cigarette.



Some customers found DiPascali off-putting. "I'd call Madoff and they would put me on with Frank," recalls Carl Englehardt, a longtime investor. "Quite frankly, when I was talking to him, I thought I was talking to someone in the Mafia. He didn't sound very professional to me. He never inspired a lot of confidence."

He may not have looked or acted like a financier, but when giant customers like Fairfield Greenwich came in to talk, DiPascali was usually the only Madoff employee in the room with Bernie. Madoff told the visitors that DiPascali was "primarily responsible" for the investment operation, according to a Fairfield memo.

As the business ballooned to ever more massive proportions in its final years, DiPascali complained of overwork. He even begged Madoff not to add more customers. "No more! No more!" he was heard pleading on several occasions. But the boss kept signing them up until the very end.

*'I'm a steady and true investor'*

The storm broke in 2008. The markets began a calamitous and accelerating decline. With their non-Madoff investments pulverized, more and more customers turned to what they thought was their most solid holding: They began requesting withdrawals from Madoff's fund.

For a time, Madoff seemed to defy the worst collapse since the Great Depression. While double-digit monthly drops suddenly became common, Madoff was somehow eking out a heroic positive return, ostensibly 4.5% through October.

Madoff's investors nervously hung on the firm's every word in e-mails that read now as tragicomedy. On Sept. 15, when Lehman Brothers collapsed and Merrill Lynch announced its sale, Fairfield Greenwich executives circulated e-mails describing Frank DiPascali's reassurances that Madoff wasn't using those firms as counterparties and his assertion that Madoff did "not want to sell into weakness." On Nov. 4, another Fairfield executive reported that DiPascali had told him that "they have their buying hats on."

Madoff appeared to be his smooth old self. In November he sat down with members of the investment committee for the American Jewish Congress, one of the nation's oldest Jewish philanthropic organizations. The group's president, Richard Gordon, asked how Madoff could be making money in one of the worst markets in history. "I could explain it to you, Richard, but it's really complicated," Madoff replied evenly. "I'm a steady and true investor." He gently tried to put Gordon on the defensive. "Aren't you happy with the returns?" Madoff asked. Gordon left the meeting as confused as he had been when he arrived. But he had no reason to doubt Madoff's integrity, he says, or to imagine there was a problem. Madoff, he says, was "extraordinarily avuncular — calm, direct, and to the point."

Madoff was keeping up his facade at work. But at home his desperation had begun to show. In November and early December, he asked his wife to make two transfers totaling \$15.5 million from a brokerage account to her personal bank account so that the cash would be at hand. Madoff had never made such a request before, two sources say. Ruth has insisted her husband didn't inform her of the fraud until the day before he was arrested. She maintains, according to one of these sources, that Bernie said he needed the cash to pay customer redemptions.

By this point, \$15.5 million was a pittance compared with what he needed. As of early December, investors had demanded the return of some \$7 billion. If Madoff truly withdrew his wife's money for that purpose, he had reached the point where he was rooting around in the sofa cushions for loose change.

The man once famous for rebuffing potential investors was now openly soliciting the ultrawealthy: Ken Langone, the Pritzker family, and others were invited to invest. And Madoff leaned on some of his most loyal investors for cash infusions. Carl Shapiro ponied up \$250 million. Some of the principals at Fairfield Greenwich added another \$15 million. But it just wasn't enough.

On Dec. 8, Madoff's cool veneer finally cracked. He berated Jeffrey Tucker of Fairfield Greenwich over that fund's inability to replenish the money that had been withdrawn from the firm. He threatened to close Fairfield's account and warned that there were plenty of other institutions that could take its place. His traders, Madoff said, were "tired of dealing with these hedge funds."

There is no better indication of the hold that Madoff exerted over his investors than Tucker's response. Tucker, after all, was co-founder of a \$6.6 billion investor in Madoff's firm. In normal circumstances, a client of that magnitude would expect to be coddled. Instead, Tucker fretted about what he could do to placate Madoff. "We best talk," he told colleagues in a worried e-mail that day. "I think he is sincere."

Two days later Tucker sent a pleading letter to Madoff. He apologized for not keeping him better informed. "Our firm is very dependent on its relationship with your firm," he continued. "You are our most important business partner and an immensely respected friend ... Our mission is to remain in business with you and keep your trust." Tucker's lawyer, Marc Kasowitz, says his client "was deceived by Bernie Madoff just like the SEC and hundreds of other very sophisticated investors."

Madoff may never have seen the letter, for that was the day his fraud came apart. That afternoon Madoff drove up to his apartment with his two sons. There, as the world would soon learn, he apparently confessed his entire crime.

Afterward the sons proceeded to their lawyer's office, setting in motion the chain of events that led to their father's arrest. Madoff himself came downstairs a few minutes after the sons. According to one person who saw him then, he was as "calm as ever." Madoff returned to the office and then joined his wife at the company's holiday party at a local Mexican restaurant. According to employees who were present, Madoff seemed his usual self. But Mark and Andy never showed up.

*Tabloid Bernie*

As his black Mercedes S550 made its way north from Manhattan's federal courthouse to his apartment the afternoon after the holiday party — the day he was arrested — Bernie Madoff told his driver nothing about why he had been at the judicial complex for hours. It wasn't uncommon for Madoff to be silent, and only later did the driver grasp the meaning of the one observation Madoff did make: "All my life, I've watched the evening news. But tonight I sure won't be watching."

Within hours, Bernard Madoff, wise man of Nasdaq, had been transformed into Tabloid Bernie, the \$65 billion Villain. Almost as fast, Madoff's life collapsed into isolation. Only two people would visit him and his wife during his three months under house arrest, and neither was a close family member. Mark and Andy haven't called since Bernie's arrest. "They've had no desire to talk to their parents," says a person close to the sons.

Dozens of agents from the Federal Bureau of Investigation, the SEC, and the Securities Investor Protection Commission descended on the offices of Madoff's firm. The 17th floor was designated a crime scene, and guards were posted. The staffers who worked on 17 were herded to a small conference room near the coffee machines on the 18th floor, where they sat nervously in what some of them called "office arrest." One by one they were taken to be questioned by the FBI. The company's computer and e-mail systems were shut down, so dozens of staffers passed the time watching movies, playing cards, and talking.

Several days after the feds had locked down the office and told staffers not to remove anything, Peter instructed several employees to carry four boxes and two shopping bags filled with documents downstairs, where his driver was waiting with his own Ford Explorer (the company vehicles were now off-limits). The driver was halfway to the offices of Peter's lawyer when the authorities discovered what was happening. An agitated federal agent called the driver and told him to turn around immediately. When the driver arrived back at the Madoff offices with his cargo, a teary Peter told him, "Sorry I got you involved in this." Peter was assigned an armed FBI "escort" to accompany him wherever he went on the premises that day and later was told not to return at all. A lawyer for Peter Madoff, John Wing, calls the incident "a misunderstanding" between Madoff's office and the FBI over "the removal of his personal files and other personal items."

*Where's the money?*

The Bernie Madoff who appeared in court in March was a diminished figure, a sad version of the vital, regal person he'd been just a few months before. Gone was the smirk that some had detected in the videos of him right after his arrest. From 10 feet away in the jury box, where a handful of reporters were seated, one could detect what looked like turbulent currents under the placid exterior. Even with his eyes closed, Madoff blinked furiously at moments, his eyebrows spasming above his fingers trembled.

The impression was of a mighty attempt at control. And somehow, Madoff managed to preserve a modicum of dignity, even as he pleaded guilty to 11 charges of fraud, theft, money-laundering, and perjury and absorbed the anger directed at him from the audience, where his victims watched. One of them addressed Madoff directly: "I don't know whether you had a chance to turn around and look at the victims," he said angrily. Madoff hesitated and then wheeled awkwardly in his seat as the judge admonished the victim for speaking to Madoff rather than to the court.

When the judge remanded him to custody that day, Madoff silently pulled his shoulders back and allowed himself to be handcuffed. The cuffs, which gleamed as if freshly polished, seemed somehow suited to the fastidious elegance of the defendant. And then Madoff was gone, likely never to take another step on free soil. He awaits sentencing on June 18. And even if he doesn't get the maximum 150 years, whatever he does receive will effectively be a life sentence for a 71-year-old.

The federal investigation proceeds. Less than a week after Madoff's plea, the firm's outside accountant, David Friehling, was charged with criminal fraud for years of signing off on phony statements. (Friehling's lawyer, Andrew Lankier, declined to comment.) The charges did not assert that Friehling knew of the Ponzi scheme. Friehling now appears to be trying to negotiate a deal with prosecutors.

Investigators continue to try to locate Madoff assets — a bit more than \$1 billion has been discovered so far, with specialists now fanning across the world's offshore locations. The court-appointed trustee, whose job it is to gather assets, has hired lawyers in the Cayman Islands, Gibraltar, and Luxembourg, with more jurisdictions likely to come. They're uncovering \$50 million here, \$75 million there. What isn't going to happen is the miraculous discovery of a giant vault with \$65 billion in cash. That's because that \$65 billion — the most widely cited figure for the size of Madoff's hoard — is a fiction and always was. It's a tally of the stated value of all the account statements of every Madoff account holder as of Nov. 30. The total includes, in some cases, decades of fabricated returns. According to experts, the actual amount investors gave to Madoff over the years is probably closer to \$20 billion. But even that outlandish sum will never be found; it was chipped away year after year after year. That, after all, is the definition of a Ponzi scheme: Most of the cash put up by new investors went to pay the old ones.

Put another way, if Madoff had still enjoyed access to large sums of cash in December, he would have continued paying his investors. The collapse of a Ponzi scheme means there is no money left. In the end, victims will likely collect only a tiny fraction of what they lost — and some substantial portion of that will come from other Madoff investors who had appeared lucky enough to pull their cash out before the entire edifice crumbled.

This is arguably the most prominent financial crime ever, and the prosecutors — who declined to be interviewed — have to be aware that the public's rage won't be placated with the conviction of Bernie Madoff. So it will likely come as a huge relief to the Madoff family that DiPascali is telling prosecutors they were not participants in the scam. After all, nobody, apart from Bernie Madoff, is better positioned to describe who took part. But it's worth remembering that such a statement represents less than a full exoneration.

One of the most widely made assumptions is that various family members "had to know" what was going on. Frank DiPascali, of course, is not in a position to say what the family knew or didn't know. Representatives for all the family members have declared their innocence.

Even if Bernie Madoff never informed his family members of the fraud, there were a number of events that could have — perhaps should have — raised their suspicions. As the people in charge of the legitimate Madoff businesses, Peter, Mark, and Andy knew or should have known, for example, that some \$250 million had been transferred from the Madoffs' London office to their business. That cash, Madoff later admitted, was money laundered from the illegitimate operation to the legitimate one. (Those funds, it turns out, were crucial. In court, prosecutor Marc Litt asserted that "at times, his [legitimate] firm would've been unable to operate but for the cash generated by this Ponzi scheme.") A lawyer for Mark and Andy Madoff says, "They had no knowledge whatsoever that their father engaged in any fraudulent activities, including allegedly fraudulent transfers of funds through Madoff Securities International in London."

Whatever happens, Peter, Ruth, and to a lesser extent the other Madoffs have many years of civil litigation to look forward to as various individuals, funds, and government entities try to recover whatever assets they can find.

As for DiPascali, his potential testimony may provide some good news for at least one feeder fund. According to a person familiar with the matter, DiPascali has no evidence that Fairfield Greenwich's top brass knew of the scam.

But DiPascali could spell trouble for certain key Madoff customers. DiPascali, according to this source, admits manipulating the returns of several clients, jiggering them up or down — phantom gains added or reduced — to suit their needs. Says the source: "This is a group of inside investors — all individuals with very, very high net worths who, hypothetically speaking, received a 20% markup or 25% markup or a 15% loss if they needed it." The investors would tell DiPascali, for example, that their other investments had soared and they needed to find some losses to cut their tax bills. DiPascali would adjust their Madoff results accordingly.

According to this source and a second one familiar with the investigation, these special deals for select Madoff investors have become a central focus for federal prosecutors. The second source describes the arrangements as "kickbacks" and "bonuses." A spokesperson for the U.S. Attorney declined to comment. But a little-noticed line in a public filing by the prosecutors in March supports at least part of these sources' account. The document that formally charged Madoff with his crimes asserted that he "promised certain clients annual returns in varying amounts up to at least approximately 46 percent per year." That was quite a boost when most investors were receiving 10% to 15%. It appears to reflect the benefits that accrued to those who helped bring large sums to Madoff.

As for Madoff himself, he has traded a 4,000-square-foot penthouse for a 78-square-foot jail cell. The bespoke charcoal suits have been replaced by an orange jumpsuit. Even so, one person close to the family says he's bearing up well in jail. He's exercising. He is reading a lot of books. "He makes the best of it," adds this person, who says that Madoff looks surprisingly good these days. Perhaps that's because for the first time in decades, Madoff has no secret weighing him down.

That burden has been passed. To his family members, whose name is eternally blackened whether or not they were involved. To his former employees, who lost their livelihoods and are now struggling to get new jobs with the taint of his company's name on their résumés. And most of all, to his victims, many of whom are struggling to make ends meet. Madoff left a historic mess. It's going to take a long time to clean it up. ■

First Published: April 24, 2009; 5:08 AM ET

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From: [Dmbienes@att.com](mailto:Dmbienes@att.com) (mailto:[Dmbienes@att.com](mailto:Dmbienes@att.com))  
Sent: Friday, April 24, 2009 2:31 PM  
To: [MRaymond@broadandcassel.com](mailto:MRaymond@broadandcassel.com); [Cassel@broadandcassel.com](mailto:Cassel@broadandcassel.com); [mjmo-da94.nyx.net](mailto:mjmo-da94.nyx.net)  
Subject: Fwd: madoff / avellino

## EXHIBIT G

Dmbienes@aol.com  
To: Michaelbienes@aol.com, seperson@comcast.net, matcarone@comcast.net  
Fwd: FW: THE BEGGARS

May 1, 2009 8:35 AM

---

From: matthewjsteeples@googlemail.com  
Sent: 5/1/2009 7:56:46 A.M. Eastern Daylight Time  
Subj: Fwd: FW: THE BEGGARS

I don't normally send on these forwards but this one really did make me laugh! Enjoy.

M

----- Forwarded message -----  
From: Linda rooney <linda.rooney@hotmail.com>  
Date: Fri, May 1, 2009 at 12:38 PM  
Subject: FW: THE BEGGARS  
To: Matthew Steeples <matthewjsteeples@googlemail.com>

POLITICALLY INCORRECT!

---

Subject: THE BEGGARS

Parvinder and Habib are beggars. They beg in different areas of London .

Habib begs just as long as Parvinder but only collects £2 to £3 every day.

Parvinder brings home a suitcase FULL of £10 notes, drives a Mercedes, lives in a mortgage-free house and has a lot of money to spend.

Habib says to Parvinder 'I work just as long and hard as you do but how do you bring home a suitcase full of £10 notes every day?'

Parvinder says, 'Look at your sign, what does it say?'

Habib's sign reads 'I have no work, a wife and 6 kids to support'.

Parvinder says 'No wonder you only get £2- £3

Habib says... 'So what does your sign say'?

Parvinder shows Habib his sign....

It reads, 'I only need another £10 to move back to Pakistan'.

---

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Matthew Sleeples  
Mobile: +44 (0) 791 769 4989  
Skype: matthewsleeples  
Email: [matt@sleeples.co.uk](mailto:matt@sleeples.co.uk)

---

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## EXHIBIT H

Dmbienes@aol.com

July 13, 2008 6:14 PM

To: "Matthew Carone" <mattcarone@comcast.net>

Reply-To: dmbienes@aol.com

Re: contact

Dear Matt

Glad to hear you are over Surgery and on the mend. Always difficult to go through.

I assume Frank is in Nantucket. Since the age of e-mail we can always be in touch so do not have to really have to keep each other's schedules. I don't think you should be concerned about the return at this point. Often we do not show our true percentage of gain until the year end. We are invested in safe options and to be honest what would you expect to get a better return from without the risk factor. I'm sure if you give Frank a call you will be able to reach him.

Much Love

Dianne

-----Original Message-----

From: Matthew Carone

To: Michael Bienes

Sent: 13 Jul 2008 02:37

Subject: contact

Hi Diane/Michael,

I hope you're both well. I'm in Lenox, still recuperating from back surgery-----coming along nicely. I wrote to Frank Avellino about 4 days ago concerning his views with P&S. But he hasn't responded yet. Do you know if he's in Nantucket, or out of the country? I told Frank I was considering pulling out of P&S since it is annualized at 2.5% and it looks like the better days are gone--which would mean I will have to draw from my principle. If you have any thoughts about it I would appreciate it.-----Where are you? Weather here has been terrific! Tanglewood is in full swing.-----  
looking forward to hearing from you-----Hugs, Matt

Let your email find you with BlackBerry from Vodafone

Matthew Carone <matcarone@comcast.net>  
To: dmblenes@aol.com  
Re: contact

July 13, 2008 6:41 PM

Hi Dianne,

Thanks for the reply. I really don't want to get back into dealing as before. But you're probably aware that the art market is going through the roof.----  
-a de Kooning painting sold last year for \$137,500,000--(Frank should be very happy unless he sold his too soon)----a Pollock went for 140 million.---  
-----I sold a Picasso print last year that I purchased 4 years ago for \$24,000 and it brought \$102,000 at Sotheby's. My only concern is that just  
about everything I own is in P&S and I'd hate to hit my principle. -----I will wait out the year and hopefully be surprised.-----Where are you?---Frank  
may be on a trip. I'm sure he'll get back to me.-----Hugs, Matt

dmblenes@aol.com wrote:

Dear Matt

Glad to hear you are over Surgery and on the mend. Always difficult to go through.

I assume Frank is in Nantucket. Since the age of e-mail we can always be in touch so do not have to really have to keep each other's schedules.

I don't think you should be concerned about the return at this point. Often we do not show our true percentage of gain until the year end. We are invested in safe options and to be honest what would you expect to get a better return from without the risk factor. I'm sure if you give Frank a call you will be able to reach him.

Much Love  
Dianne

-----Original Message-----

From: Matthew Carone  
To: Michael Bienes  
Sent: 13 Jul 2008 02:37  
Subject: contact

Hi Diane/Michael,

I hope you're both well. I'm in Lenox, still recuperating from back surgery-----coming along nicely. I wrote to Frank Avellino about 4 days ago concerning his views with P&S. But he hasn't responded yet. Do you know if he's in Nantucket, or out of the country? I told Frank I was considering pulling out of P&S since it is annualized at 2.5% and it looks like the better days are gone--which would mean I will have to draw from my principle. If you have any thoughts about it I would appreciate it.-----Where are you? Weather here has been terrific! Tanglewood is in full swing.-----looking forward to hearing from you-----Hugs, Matt

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## EXHIBIT I

Matthew Carone <maltcarone@comcast.net>  
To: dimbienes@aol.com  
Re: P&S

March 19, 2008 9:49 AM

Hi Diane/Michael

Thanks for getting back to me. It takes the edge off my worries. I did hear from Frank who sent a similar reply. Hopefully I'll be recuperating somewhere around April 30th. Best to both of you.-----Lech??? Are people from there called Lechers??? -----Hugs, Matt

dimbienes@aol.com wrote:

Hi Matt

Don't think there is need to be concerned. They stocks we see they are invested in are all solid and not in areas that are in Banking. We have watched the current trades and so far all is fine. If you want you can call Frank who should still be in Palm Beach until the weekend when he returns to NYC.

Going to Lech Austria Sat for one week.  
In Fla 30th April.

Hope tests turnout well.

Love and a kiss  
Gianne

-----Original Message-----

From: Matthew Carone  
To: Michael Bienes  
Sent: 18 Mar 2008 19:47  
Subject: P&S

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## EXHIBIT J

Dmbienes@aol.com

November 11, 2008 1:44 PM

To: "Matt Carone" <mattcarone@comcast.net>

Reply-To: dmbienes@aol.com

Re: Fwd: The Maestro huffs off: Conductor quits birthday concert for Charles after Queen's 'interference'

Hi Matt

Yes we will be there.

It is all too true that Charles has in the past insisted on selecting the program for all the events and the time factor has always been an issue. I should know as I've been in the middle of these negotiations on a number of occasions. He is not to be challenged about his selection of music. This is the first time I've heard about the Queen being involved. It is all too believable as she is not a great fan of classical music. Will see how it turns out but I do know Charles is very fond of Christopher.

Pray you are well.

Love

Dianne

Let your email find you with BlackBerry from Vodafone

-----Original Message-----

From: Matt Carone <mattcarone@comcast.net>

Date: Tue, 11 Nov 2008 12:18:34

To: Bienes Dianne and Michael<Dmbienes@aol.com>

Subject: Fwd: The Maestro huffs off: Conductor quits birthday concert for Charles after Queen's 'interference'

Will you be there??-----Happy Gobble, Gobble!! (but don't tell anyone in the Mother country!)-----Matt

Subject: Fwd: The Maestro huffs off: Conductor quits birthday concert for Charles after Queen's 'interference'

From: "sebastian spreng" <ssdd22@bellsouth.net>

To:

Date: November 11, 2008 11:04:09 AM EST

Subject: The Maestro huffs off: Conductor quits birthday concert for Charles after Queen's 'interference'

The Maestro huffs off: Conductor quits birthday concert for Charles after Queen's 'interference'  
By REBECCA ENGLISH

It is the centrepiece of the Prince of Wales's 60th birthday celebrations.

A lavish party for several hundred friends, statesmen and relatives thrown by the Queen at Buckingham Palace on Thursday night.

And the highlight of the evening? An intimate performance by the illustrious Philharmonia Orchestra led by the world-famous conductor Riccardo Muti.

Unfortunately for Buckingham Palace, their glorious gala evening has already been marred by a spat which has seen the Maestro - as his staff reverently refer to him - flounce off centre stage with a toss of his famously flowing locks.

When the Monarch met the Maestro: The Queen and Riccardo Muti enjoy a chat before a performance at La Scala in 2000

## EXHIBIT K

Dmbienes@aol.com  
To: "Matthew Carone" <mattcarone@comcast.net>  
Reply-To: dmbienes@aol.com  
Re: Thanks

October 7, 2006 5:02 PM

Hi Matt

It was great to finally see you.

M will keep 20th & 21st open until he hears from you.

Have a fantastic time

Lots of Love

Dianne

Let your email find you with BlackBerry from Vodafone

-----Original Message-----

From: Matthew Carone <mattcarone@comcast.net>

Date: Sat, 07 Oct 2006 16:28:41

To: Diane and Michael Bienes <Dmbienes@aol.com>

Subject: Thanks

Hi Diane/Michael,

Again, thanks for dinner the other night. It was very good, but the company was better. I leave for Lenox in the morning and will be back in Ft. Laud., on the 17th. ---Michael, are you free for dinner on the 20th or 21st?? Let me know as soon as possible so that I may coordinate with Lippman and Zellser. Diane, I know that you're leaving for London next week-----I wish you could be here also-----you're prettier than Michael!-----You both look great!-----let me know, ASAP-----Hugs, Matt

## EXHIBIT L

Dmbienes@aol.com  
To: matcarone@comcast.net  
Fwd: Fw: Fw: stimulus check

February 5, 2009 2:02 PM

From: smwd@bellsouth.net  
To: r.wiesemann@googlemail.com, rubbersidedown@comcast.net, slever1717@bellsouth.net, luluk@bellsouth.net,  
Dmbienes@aol.com, bjwp7@embarqmail.com  
Sent: 2/5/2009 9:14:38 A.M. Eastern Standard Time  
Subj: Fw: Fw: stimulus check

----- Original Message -----

From: Brad Pfeiffer  
To: Buddy  
Sent: Wednesday, February 04, 2009 2:01 PM  
Subject: Fwd: Fw: stimulus check

"This year, taxpayers will receive an Economic Stimulus Payment. This is a very exciting new program that I will explain using the Q and A format:

"Q. What is an Economic Stimulus Payment?

"A. It is money that the federal government will send to taxpayers.

"Q. Where will the government get this money?

"A. From taxpayers.

"Q. So the government is giving me back my own money?

"A. Only a smidgen.

"Q. What is the purpose of this payment?

"A. The plan is that you will use the money to purchase a high-definition TV set, thus stimulating the economy.

"Q. But isn't that stimulating the economy of China?

"A. Shut up."

Below is some helpful advice on how to best help the US economy by spending your stimulus check wisely:

If you spend that money at Wal-Mart, all the money will go to China.

If you spend it on gasoline it will go to the Arabs.



If you purchase a computer it will go to India.

If you purchase fruit and vegetables it will go to Mexico, Honduras, and Guatemala (unless you buy organic).

If you buy a car it will go to Japan.

If you purchase useless crap it will go to Taiwan.

And none of it will help the American economy.

We need to keep that money here in America. You can keep the money in America by spending it at yard sales, going to a baseball game, or spend it on prostitutes, beer (domestic ONLY), or tattoos, since those are the only businesses still in the US.

---

Great Deals on Dell Laptops Starting at \$499

--  
E-mail all responses to [tom@alpinepools.com](mailto:tom@alpinepools.com)

--  
E-mail all responses to [kari@alpinepools.com](mailto:kari@alpinepools.com)  
Lot Designer/Alpine Pools  
Cell 412-8748265

---

Stay up to date on the latest news - from sports scores to stocks and so much more.

## EXHIBIT M

Dmbienes@aol.com

To: "Matthew Carone" <mattcarone@comcast.net>

Reply-To: dmbienes@aol.com

Re: CNN.com - Charles bemoans 'royal soap opera' - Oct 8, 2006

October 8, 2006 8:37 PM

Well we are wondering what you are doing & who you are doing it with. I guess it's OK as long as you're having fun & not children.

M is looking forward to seeing you & will tell Marvin. Meanwhile I will certainly tell "Chuck" how much you admire his art work even though he is not King.

Special Love

For a special guy

Dianne

Let your email find you with BlackBerry from Vodafone

-----Original Message-----

From: Matthew Carone <mattcarone@comcast.net>

Date: Sun, 08 Oct 2006 11:13:04

To: Diane and Michael Bienes <Dmbienes@aol.com>

Subject: CNN.com - Charles bemoans 'royal soap opera' - Oct 8, 2006

O.K. Michael,

I'm in NY now. I'll be back on Oct 17th. and will discuss dinner on the 20th.-----Diane, give my regards to Chuck!-----Matt  
<http://www.cnn.com/2006/WORLD/europe/10/08/charles.soap.reut/index.html>  
<<http://www.cnn.com/2006/WORLD/europe/10/08/charles.soap.reut/index.html>>

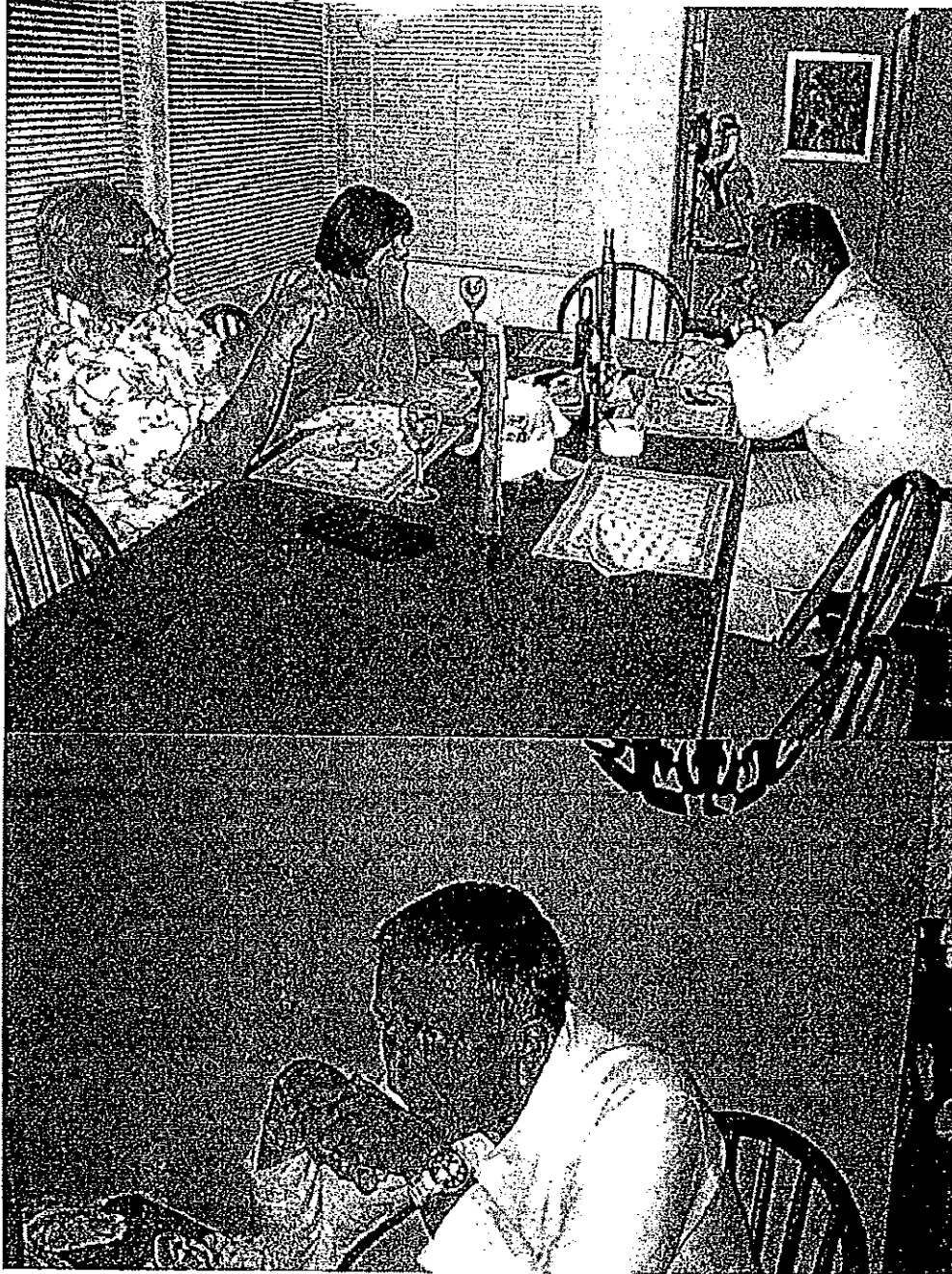
## EXHIBIT N

Matthew Carone <matcarone@comcast.net>  
To: Diane and Michael Bienes <Dbienes@aol.com>  
pics

October 20 2008 9:29 PM

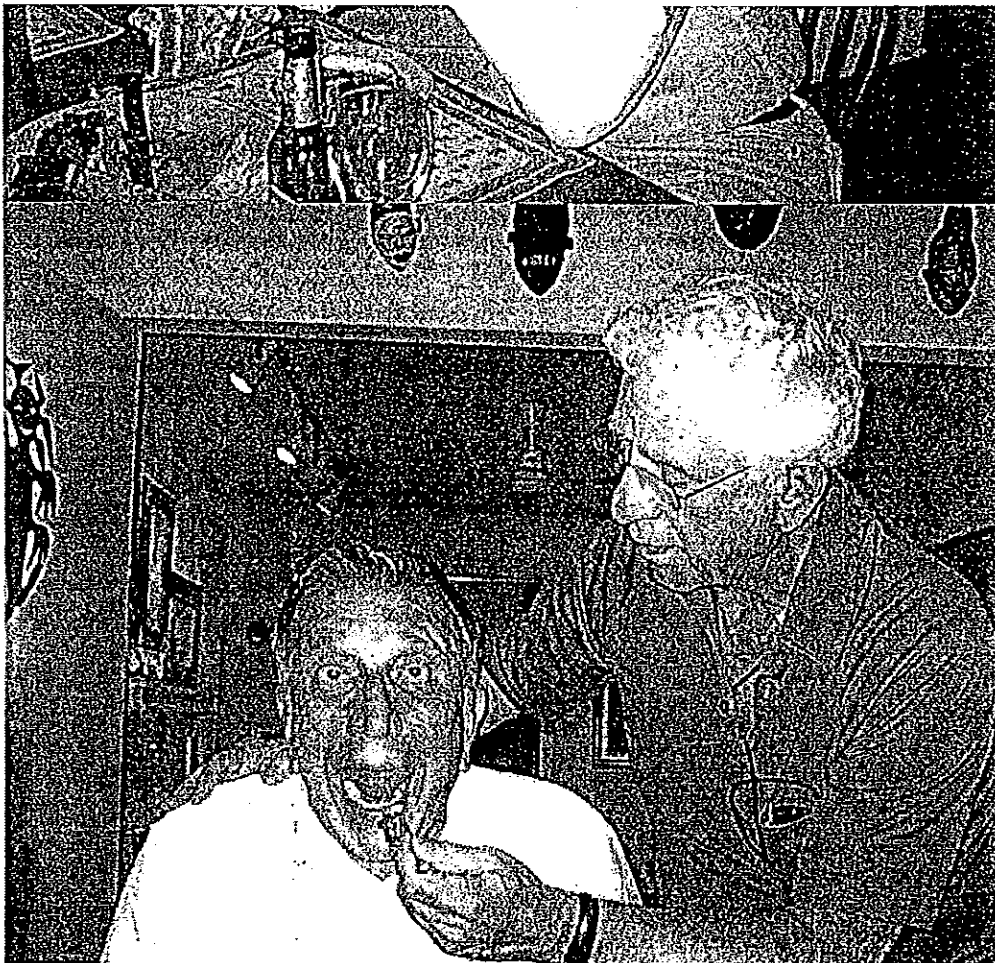
3 Attachments, 314 KB

Hi Diane,  
Wish you could have been here tonight.....Matt



CONFIDENTIAL

09-24-15\_PLAINTIFFS\_0032673



CONFIDENTIAL

09-24-15\_PLAINTIFFS\_0032674

## EXHIBIT O

Dmbienes@aol.com  
To: mattcarone@comcast.net  
Re: Brits

January 13, 2009 9:10 PM

1 Attachment, 35 KB

Matt

I'd want a hug - a real one.

I think of all the special times we had together. Did we ever dream that this would be. I am really scared as we can't even afford health insurance. did we do all we did for so many years to end up on the date. Should with all the money we gave away end up on a charity ward. Matt life is not looking too good.

Dianne

In a message dated 1/19/2009 3:28:54 P.M. Eastern Standard Time, mattcarone@comcast.net writes:

Hi Dianne,  
I will be returning from NY the day of the meeting, but my accountant will be my proxy.-----Hugs, Matt  
On Jan 19, 2009, at 2:17 PM, [Dmbienes@aol.com](mailto:Dmbienes@aol.com) wrote:

Dear Matt

We have all the articles. Thank you.

We have never done any business since 1992 and have no knowledge of what Frank was doing. If he did take in funds over the last 16 years he's in big trouble. That's why we can't meet with him or Nancy.

Are you going to the Sullivan meeting? Marvin & Sandy will be there.

Love  
Dxo

In a message dated 1/19/2009 1:43:47 P.M. Eastern Standard Time, [mattcarone@comcast.net](mailto:mattcarone@comcast.net) writes:

Hi Diane,

You probably being sent all the articles in the papers. A big one in the New Times. Let me know if you want me to send them to you. As bad as things look for Michael, they look much worse for Frank.

Wouldn't it be nice if this whole thing turns out to be a bad dream-----Hugs, Matt

On Jan 12, 2009, at 4:44 PM, [Dmbienes@aol.com](mailto:Dmbienes@aol.com) wrote:

Dearest Matt

I was going to e-mail you today but you got me 1st.

Glad someone sees the funny side.

I swear to you that we never had a clue and have nothing left.

We are in shock.

So very sorry.

Much Love  
Dxo

In a message dated 1/12/2009 10:39:48 A.M. Eastern Standard Time, [mattcarone@comcast.net](mailto:mattcarone@comcast.net) writes:





## EXHIBIT P

Michael Sullivan <mdsassoc@bellsouth.net>  
To: Matthew Carone <maticarone@comcast.net>  
Re: Re: Fwd: FW:

December 18, 2006 1:37 PM

I am very sorry for all of this Matt. I am so so sorry. Do not believe this stuff about Frank and Mike.

Michael D. Sullivan  
6550 North Federal Highway  
Suite 210  
Fort Lauderdale Florida 33308

Landline (954) 492-0088  
Fax transmission (954) 938-0069  
Email address [investit@bellsouth.net](mailto:investit@bellsouth.net)

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On Dec 18, 2006, at 1:29 PM, Matthew Carone wrote:

I feel the same way-----unless I learn that they haven't lost everything as Frank has told me-----

Michael Sullivan wrote:

Matt I do not believe they had anything to do with what happened. I would not believe it unless they told me. They are good people and love them both very much.

Michael D. Sullivan  
6550 North Federal Highway

## EXHIBIT Q

Michael Sullivan <mdsassoc@bellsouth.net>  
To: Matthew Carone <mattcarone@comcast.net>  
Re: Madoff Whistleblower's Lawyer Branches Out On Own

July 30, 2009 4:05 PM

This is nothing new.. Frank and Mike had no connection with this. No one has any credible information because there is none. By the way in response to your earlier email, we were not an extension of Frank and Mike. We had our own company. Michael and Frank had no connection with S&P or P&S. Rumors swirl but all are lies.  
Hope all is well as we all recover.

Michael D. Sullivan  
6550 North Federal Highway  
Suite 210  
Fort Lauderdale Florida 33308

Landline (954) 492-0088  
Fax transmission (954) 936-0069  
Email address investit@bellsouth.net

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On Jul 30, 2009, at 12:43 PM, Matthew Carone wrote:

| <http://amlawdaily.typepad.com/amlawdaily/2009/07/madoff-whistleblowers-lawyer-branches-out-on-own.html>

## EXHIBIT R

Matthew Carone <matcarone@comcast.net>  
To: Judd, James and Valerie <judd2000@aol.com>  
from Diane

December 4, 2008 11:07 AM

I bet you're dying with envy!----Matt

Emhines@aol.com wrote:

Hi Matt:

Only in for a few days for the Library & St Thomas Aquinas.

Have not seen Donald for ages but had invited him to Thanksgiving & received a nice note.  
We had dinner for 44 at the Ritz. It was sensational and the talk of the Town

Returning to London as we have a new Carmen at the Royal Opera Friday and are a party of 18 for performance & dinner

Holidays will be spent in Austria from 23rd Dec. to 6th Jan. It will be in the Alps so no chance of seeing the Kahns. Very exciting trip for us.

Michael returns to FL on 7th to 12th.

Where will you be for Christmas/New Year?

Broke & Lonely & Still waiting for fried shrimp!

Love

One Half of the Deadly Duo

## EXHIBIT S

Dmbienes@aol.com  
To: mattoarone@comcast.net  
Fwd: Fw: Fw: stimulus check

February 5, 2009 2:02 PM

From: smwd@bellsouth.net  
To: r.wiesemann@googlemail.com, rubbersidedown@comcast.net, stever1717@bellsouth.net, luluk@bellsouth.net,  
Dmbienes@aol.com, bjwp7@embarqmail.com  
Sent: 2/5/2009 9:14:38 A.M. Eastern Standard Time  
Subj: Fw: Fw: stimulus check

----- Original Message -----

From: Brad Pethtel  
To: Buddy  
Sent: Wednesday, February 04, 2009 2:01 PM  
Subject: Fwd: Fw: stimulus check

"This year, taxpayers will receive an Economic Stimulus Payment. This is a very exciting new program that I will explain using the Q and A format:

"Q. What is an Economic Stimulus Payment?

"A. It is money that the federal government will send to taxpayers.

"Q. Where will the government get this money?

"A. From taxpayers.

"Q. So the government is giving me back my own money?

"A. Only a smidgen.

"Q. What is the purpose of this payment?

"A. The plan is that you will use the money to purchase a high-definition TV set, thus stimulating the economy.

"Q. But isn't that stimulating the economy of China?

"A. Shut up."

Below is some helpful advice on how to best help the US economy by spending your stimulus check wisely:

If you spend that money at Wal-Mart, all the money will go to China.

If you spend it on gasoline it will go to the Arabs.



***EXHIBIT 10***  
***DIPASCALI TRANSCRIPT***

---

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA

4 v.

10 Cr. 228 (LTS)

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

Jury Trial

8 Defendants.

9 -----x

New York, N.Y.  
December 5, 2013  
9:10 a.m.

10 Before:

11  
12 HON. LAURA TAYLOR SWAIN

13 District Judge

14  
15 APPEARANCES

16  
17 PREET BHARARA  
18 United States Attorney for the  
Southern District of New York  
19 MATTHEW L. SCHWARTZ  
RANDALL W. JACKSON  
20 JOHN T. ZACH  
Assistant United States Attorneys

21 GORDON MEHLER  
22 SARAH LUM  
23 Attorneys for Defendant O'Hara

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

1 Q. And who was Ike Sorkin?

2 A. I recognized the name, and then it popped into my head  
3 immediately that he was the attorney that Bernie had hired for  
4 Frank and Mike, Frank Avellino and Mike Bienes much earlier, in  
5 1992. And I knew Ike Sorkin because his mom had an account  
6 with us, and I knew he was a former SEC attorney and that had  
7 been in private practice with -- he was a securities lawyer,  
8 white collar crime lawyer.

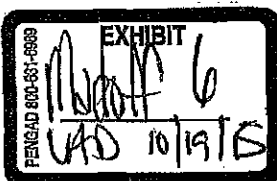
9 Q. Now, did he, Mr. Madoff, present a timetable for how long  
10 this might take?

11 A. Yes.

12 Q. What was the timetable that he described?

13 A. It was predicated on the withdrawals that were going to go  
14 out of the 703 account. He explained to me that he had laid  
15 out on paper a time line of events. One of the first things  
16 that he needed to do was to sit with Ike, which I think was  
17 going to happen that coming Friday or he was going to attempt  
18 to have it happen that Friday. And once I sit with Ike, I'll  
19 have a better understanding of how the process works, and he's  
20 talking about the legal process of giving himself up.

21 He looked at Jodi's pad and saw huge redemptions that  
22 were scheduled to go out. A lot of redemptions that were on  
23 that pad he had instructed us to persuade the client to wait  
24 until we're out of the market. So there was a huge amount of  
25 dollars going out simply referenced, not with a date but when



SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

1 A. Typically, the fake trading occurred in codes like 10-30,  
2 40, 50, 70. The 60 and the 20 were earmarked for a specific  
3 purpose.

4 Q. That specific purpose was to store real securities?

5 A. That's correct.

6 Q. Let's take that down. Now I want to step back for a moment  
7 and talk about the IA account trading that was going on with  
8 respect to the split strike strategy. OK?

9 A. Sure.

10 Q. As part of that component of the business, were certain  
11 accounts promised a rate of return?

12 A. Yes.

13 Q. How was that rate of return determined?

14 A. By Bernie.

15 Q. What is that rate of return conveyed to you?

16 A. Yes.

17 Q. Did you convey that to other people that you worked with?

18 A. Yes.

19 Q. Who were some of the people that you conveyed that to?

20 A. Jodi.

21 Q. How did you come to learn that certain of these accounts  
22 had a rate of return that was targeted?

23 A. As it pertained to me in the basket split strike strategy?

24 Q. Yes.

25 A. I was called into a meeting that was about to break up

1 between Bernie and Frank Avellino.

2 Q. Can we step back. Frank Avellino, was that the Avellino of  
3 Avellino & Bienes?

4 A. Yes.

5 Q. When, approximately, did this occur?

6 A. The winter of '93.

7 Q. What happened in that meeting?

8 A. Bernie introduced me to Frank Avellino, who I don't think I  
9 had met him up to that point. They basically gave me a quick  
10 synopsis of what their meeting was about and handed me a  
11 document that had figures on it that illustrated the meat and  
12 potatoes of their meeting.

13 Q. What was your understanding of the figures that were on  
14 there?

15 A. It was funds that needed to be put into various client  
16 accounts that had split strike strategy as a method of paying  
17 these individuals for bringing in money.

18 Q. Who were some of the individuals that were going to get  
19 this credit?

20 A. Stephen Mendelow, Ed Glantz, Richard Glantz, a trust for  
21 Aaron Levy controlled by his son Joel. That's all I can  
22 remember off the top of my head.

23 Q. These accounts were of individuals that were bringing  
24 additional customers in to Madoff Securities?

25 A. Yes.

1 Q. As part of bringing in new customers, what was given to  
2 them?

3 A. In essence, a commission.

4 Q. The commission for bringing in those customers?

5 A. Correct.

6 Q. Now I would like to show you what's in evidence as  
7 government 105-G51. Looking at this cover page, do you  
8 recognize the handwriting?

9 A. It's mine.

10 Q. What does it say?

11 A. It says, "I need to shtup."

12 Q. What did you mean by "shtup"?

13 A. To put funds into clients' accounts.

14 Q. Can we turn to page 3 of this document. Do you recognize  
15 that document?

16 A. I do.

17 Q. What is it?

18 A. The typewritten information on the document is what was  
19 given to me at the tail end of the Bernie Madoff-Frank Avellino  
20 meeting explaining who and in what quantities we were going to  
21 quote-unquote shtup these accounts, put funds into these  
22 accounts.

23 Q. Is that the credit for bringing in the clients that you  
24 just discussed?

25 A. It is.

1 Q. Can we blow up the top half of it. First of all, Mr.  
2 DiPascali, when is this dated?

3 A. February 3, 1994.

4 Q. Do you see there is a row that says "1993 only"?

5 A. Correct.

6 Q. Do you recall what that meant, "1993 only"?

7 A. Yes.

8 Q. What did it mean?

9 A. It meant that there was an arrangement in place between  
10 Frank and these clients and then subsequently between Bernie  
11 and Frank that because A&B had unwound in late '92 and these  
12 individuals were due a payment for '93 that had not yet  
13 occurred, and here it is in early '94 that they were addressing  
14 this payment, they were instructing me that for '93 only these  
15 people would get these amounts, then going forward after '93  
16 they would get a different amount.

17 Q. On the left side you see a list of four underlined names.  
18 Are those the folks that were going to get schtupped?

19 A. Yes.

20 Q. Did this process continue going forward?

21 A. Yes.

22 Q. Stepping back for a moment, A&B had been, we talked about  
23 it earlier, shut down by the SEC, right?

24 A. That is correct.

25 Q. You and others were involved in the process of bringing

1 those A&B clients back to Madoff Securities, right?

2 A. That is correct.

3 Q. Again, who were the people that were speaking to these A&B  
4 clients that were coming back in?

5 A. Bernie, myself, Jodi, Annette, members of Annette's staff.

6 Q. These people were asking you questions about the trading  
7 that was going to occur at Madoff Securities?

8 A. Yes.

9 Q. Did you lie to those folks?

10 A. Yes.

11 Q. As part of these people coming back in, did folks like we  
12 see here bring in additional customers to Madoff Securities?

13 A. These entities were clients of A&B. A&B, being closed down  
14 by the SEC, had no vehicle to pay them any longer. The purpose  
15 of this was illustrated to me and explained to me that since  
16 Frank can't pay these guys anymore for the money they  
17 originally brought in to A&B and now those very same clients  
18 are going to be transferred, if you will, to Madoff, if you  
19 will, and have direct accounts, the only vehicle that Frank and  
20 therefore now Bernie would have to pay these managers of other  
21 people's money would be to shutup their personal accounts with  
22 extra P&L.

23 Q. Just so the record is clear, when you say Frank, were you  
24 referring to Frank Avellino?

25 A. I was.



1 Q. This was the process by which to pay these folks money,  
2 right?

3 A. Exactly that.

4 Q. What were they getting that extra money for?

5 A. For originally bringing in the clients to A&B and then  
6 subsequently those clients became clients of Madoff.

7 Q. Did those payments continue after this and into the '90s  
8 and beyond?

9 A. Yes.

10 Q. How were those payments made to these folks?

11 A. We would design an option transaction, typically an index  
12 option, and we would calculate what the payment should be.

13 These numbers over the years changed somewhat. But once we  
14 identified what the number was, then we would write a  
15 fictitious buy ticket and a subsequent fictitious sell ticket  
16 that would create P&L in their accounts, and the value of their  
17 account would therefore increase equal to the amount of  
18 theoretical commission Bernie owed them.

19 Q. These trades that were being put into their accounts to get  
20 back credit, were those trades real?

21 A. No.

22 Q. Over time did the number of folks that were getting  
23 shipped increase?

24 A. Yes.

25 Q. How would folks get added to the shipping?

1. A. A number of ways.

2. Q. What are some of the ways, Mr. DiPascali?

3. A. Since this mechanism was in place, we would typically put  
4. these transactions through as the last or one of the last  
5. orders of business before closing out a year. We also had a  
6. situation from time to time where some of the very small  
7. accounts that did not have enough money to justify purchasing a  
8. full-blown basket of securities, those accounts would typically  
9. sit in a treasury instrument pretty much all year or in some  
10. money market fund pretty much all year. Their rate of return  
11. was in the 2 or 3 or 4 percent range when other similar clients  
12. that simply had more money were in the 10 and 14 range.

13. In an effort to be equitable, we would put extra P&L  
14. into some of these smaller accounts. I ran a quick Excel  
15. program to identify who these people were and how much money  
16. would bring them up to some midpoint of a bell curve of all our  
17. clients, identified the dollar amount, and then ran a quick  
18. program to process a series of tickets that would put that P&L  
19. into those accounts using the same format that I used for these  
20. accounts.

21. Q. Did you keep track of these various accounts in a file?

22. A. Yes.

23. Q. When in the year did you do most of this activity?

24. A. Late in the year.

25. Q. Can you describe the process that you would engage in in

1 doing it late in the year.

2 A. I typically worked on this between Christmas and New  
3 Year's. By Christmas more than likely the trading for the  
4 entire year, the amount of tickets that were going to be posted  
5 to all of my accounts were pretty much done, so I could take a  
6 preliminary view of where all of these accounts sat in terms of  
7 their P&L.

8 I used that information and created a fictitious trade  
9 buy side and a fictitious trade sell side, and I set it up into  
10 the system as a basket trade. I ran some rudimentary Excel  
11 programs that would take the information and run the tickets  
12 against this file. So we were able to accomplish a couple of  
13 tasks with the same process.

14 Q. Why would you do this at the end of the year?

15 A. Some of these accounts had almost like a double mandate.  
16 For instance, these accounts in particular, it was promised to  
17 these guys by Bernie that they would earn 17 percent on their  
18 account, pretty much dead-on 17 percent, and on top of that  
19 they would receive this exact dollar amount.

20 In order to see where they were vis-a-vis 17 percent  
21 at the end of the year, you needed to wait until the end of the  
22 year. You couldn't do that in June. By Christmas, all the  
23 chips had pretty much settled, I had a very close handle on  
24 where these accounts were going to wind up. And then on some  
25 of these accounts I looked at them and I first adjusted them to

1 17 and then I added extra P&L on top of that. That's why it  
2 was done at the end of the year.

3 Q. Who would help you with this process?

4 A. I pretty much did it on my own, with keypunch help.

5 Q. You would do this right before New Year's?

6 A. Usually between Christmas and New Year's, yes.

7 Q. For how many years did you do that?

8 A. 14 or 15 years.

9 Q. Were most of the clients that got this extra shup clients  
10 that had brought in at some point new clients to Madoff  
11 Securities?

12 A. A good part of the list was that, yes.

13 Q. As part of this process, did you engage in activity that  
14 helped certain clients with their taxes?

15 A. Yes.

16 Q. What sorts of activity did you engage in to help certain  
17 clients with their taxes?

18 A. The concept in general helps all of these clients with  
19 their taxes. If this is in essence a commission payment for  
20 bringing in money, you would typically account for that as  
21 ordinary income; you would bill and you would receive a payment  
22 and you would book it as ordinary income on your income tax  
23 return. By doing in it this format, and using index options in  
24 particular as the transaction vehicle, it became treated  
25 differently by the IRS because index option profits are

1 favorably treated by the IRS and it is not ordinary income. It  
2 is calculated at a different rate.

3 Everyone who got P&L or received P&L because they were  
4 owed a commission took advantage of the fact that the vehicle  
5 we chose to use to pay that commission was very tax  
6 advantageous. There was also situations where occasionally a  
7 loss would be put through that would offset other ordinary  
8 income.

9 Q. To be clear, these index options that had favorable tax  
10 treatment, those trades that were put into the accounts were  
11 fake?

12 A. Absolutely.

13 Q. The losses that were put in the accounts, those were fake  
14 as well?

15 A. Yes, they were.

16 Q. They just had the effect of helping people pay less taxes?

17 A. That's correct.

18 Q. When you did that, did you know what you were doing was  
19 wrong?

20 A. Sure.

21 Q. Now let me ask you this. Did Ms. Crupi have an accounts in  
22 the IA business?

23 A. Yes.

24 Q. Were those accounts were for her, her friends, and her  
25 family?

1. A. I believe so.

2. Q. Did you have conversations with Ms. Crupi about sktupping  
3. her accounts?

4. A. Yes.

5. Q. Could you describe what types of conversations you had with  
6. Ms. Crupi about sktupping her accounts.

7. A. Going back, one of the purposes of sktupping was to get  
8. some of the little people to have a rate of return that was  
9. pretty much the average of all people. I noticed one year that  
10. the employees, some of which had small accounts, were on the  
11. low side of the bell curve. I started to do a little study of  
12. some of the employee accounts and where they stood because I  
13. felt that certainly the employees should attain a rate of  
14. return that was the average of all our customers.

15. I started to request from people that I knew had  
16. accounts for themselves and their family a list of the account  
17. numbers because I wasn't familiar with all of them and I didn't  
18. want to miss one. It was during those discussions with her and  
19. other members of my staff that had family accounts that we had  
20. these conversations.

21. Q. Did you have an account or did someone in your family have  
22. an account?

23. A. My mother.

24. Q. Were other people at the firm that had these type of  
25. accounts?

1 A. Yes.

2 Q. We can take down that down, Ms. Baskin, and put up 105-C51.  
3 Can we go to page 42. I want to direct your attention to the  
4 bottom Post-it. Do you see that?

5 A. I do.

6 Q. Whose handwriting is that?

7 A. Jodi's and mine.

8 Q. What is yours and what is Jodi's?

9 A. The part that says "J. Crupi 5,000" crossed out, "option  
10 loss see 12/10/40" is Jodi's. The number 15,000 is mine.

11 Q. Do you recall what this related to?

12 A. I do.

13 Q. Did you have a discussion with Ms. Crupi about what this  
14 relates to?

15 A. We did.

16 Q. Tell the jury what discussion you had with Ms. Crupi about  
17 this Post-it.

18 A. We discussed the fact that it would have been advantageous  
19 for her to take a loss at the end of that particular year. I  
20 asked her to make sure she left a note with her account number  
21 and the amount of loss she wanted to take. Sometime after that  
22 there was this sticky on my desk. Subsequent to seeing the  
23 sticky, I just put it in a folder, because we were going to get  
24 to that sometime after Christmas.

25 Then, when I was about to do this transaction based on

1 custody account, and they were simultaneously taken into the IA  
2 business and posted to the customer statement.

3 Q. When you say posted to the customer statement, does that  
4 mean that they were reflected as an asset on the customer  
5 statement?

6 A. Yes.

7 Q. After they were reflected as an asset on the customer  
8 statement, how were they used elsewhere?

9 A. They were delivered in via DTC. They were received into  
10 the business. The net effect was there was a position stated  
11 in our trading inventory, so they would be used as an asset of  
12 the firm.

13 Q. When you say they were used as an asset of the firm, what  
14 were some of the different ways that these customer real  
15 securities were used?

16 A. They were often used as collateral to draw down on a bank  
17 loan.

18 Q. When you draw on a bank loan, does that give cash to Madoff  
19 Securities?

20 A. It does.

21 Q. Where you aware of times when Madoff Securities was running  
22 low on money?

23 A. Yes.

24 Q. How, if at all, were these loans that were obtained using  
25 customer real securities used at those times?



1 A. The cash from those loans replenished the account that was  
2 running low on money.

3 Q. Were there specific times that you remember that happening?

4 A. Yes.

5 Q. What are some of those specific times that you recall that  
6 happening?

7 A. December of '08, during the period that Bernie needed to  
8 refund back to the trustee the Avellino & Bienes funds, and  
9 other times.

10 Q. Was Mr. Bonventre involved in any of these loans?

11 A. Yes.

12 Q. How do you know Mr. Bonventre was involved?

13 A. That was his job function.

14 Q. What was his role?

15 A. He was the firm's liaison to our banks, the senior most  
16 person that dealt with our banks.

17 Q. Did you have discussions with Mr. Madoff about how these  
18 loans were obtained using customer securities?

19 A. Yes.

20 Q. In any of those discussions did Mr. Madoff mention Mr.  
21 Bonventre?

22 A. Yes.

23 Q. What did Mr. Madoff say about Mr. Bonventre's role in using  
24 real customer securities to get loans from banks?

25 A. Typically, he would just mention to me, I'm getting in

1 stock or I'm getting in bonds from so-and-so, do me a favor and  
2 stay on the cage's backs, I want to know when they come in. So  
3 I would occasionally walk in the cage and ask them if the bonds  
4 came in.

5 In that conversation he would say that he -- he  
6 obviously told Danny the same thing. He just was playing  
7 double safe, double sure, having two guys do the same thing.  
8 It was kind of like just a conversation as to what the process  
9 Bernie expected was going to be.

10 Q. In those discussions did Mr. Madoff mention how these loans  
11 were going to be utilized on the books and records of the firm?

12 A. I'm not so sure the loans were reflected on the books and  
13 records of the firm.

14 Q. Did he discuss how these were going to be accounted for in  
15 the firm?

16 A. Not specifically, but I know how they were accounted for.

17 (Continued on next page)

1 Q. Well, how do you know they were accounted for?

2 A. Because at one time, I was a trader on that desk and I saw  
3 those very same securities that came in from customers,  
4 specifically Norman Levy. And I saw where they put them, which  
5 was in a trading account up in that room, and I know that that  
6 trading account appears on our books and records as an asset.  
7 So I just -- it's logic.

8 Q. And what is a trading account?

9 A. It's a subsidiary account of the firm's inventory broken up  
10 by each trader responsible for a group of securities; so each  
11 group has its own account, but the collective account is the  
12 collective firm inventory.

13 Q. Now, going back to those customers that Ms. Bongiorno  
14 managed, were they part of the so-called split-strike strategy?

15 A. No.

16 Q. How were their accounts typically traded?

17 A. In what's known as a long position account.

18 Q. And what is a long position account?

19 A. Typically an array of securities of various portfolios,  
20 sometimes hedged, sometimes not, but it could be a portfolio of  
21 one stock, it could be a portfolio of 40 stocks, depending on  
22 the account.

23 Q. And who was it that was in charge of putting in the trades  
24 for Ms. Bongiorno's accounts?

25 A. She was.

1 Q. Were any of those trades real?

2 A. No.

3 Q. Now, are you, sir, familiar with a entity called ACF?

4 A. I am.

5 Q. What was ACF?

6 A. It was a pension-type account controlled by Jeffrey  
7 Picower.

8 Q. And who was Mr. Picower?

9 A. A wealthy investor.

10 Q. Where did he live?

11 A. I have no idea.

12 Q. And what was -- or what is a pension plan?

13 A. It's a pool of money that has been earmarked to pay the  
14 retirement funds of typically employees or something like that.

15 Q. Now, in the course of working down on the 17th floor, do  
16 you recall that there were problems with the ACF account?

17 A. I do.

18 Q. How did you learn that there were problems with the ACF  
19 account?

20 A. I observed people talking about it.

21 Q. Who are some of the folks you observed talking about it?

22 A. Jodi, Annette and Bernie.

23 Q. And what did you hear them say about the problems that were  
24 being had with the ACF account?

25 A. ACF was, I believe, a typical long position account that