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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

17 CR 630 (ER)

5 MARK S. SCOTT,

6 Defendant.

7
8 New York, N.Y.
9 November 7, 2019
9:00 a.m.

10 Before:

11 HON. EDGARDO RAMOS,

12 District Judge

13 APPEARANCES

14
15 GEOFFREY S. BERMAN,
16 United States Attorney for the
17 Southern District of New York
18 CHRISTOPHER DiMASE
19 NICHOLAS FOLLY
20 JULIETA V. LOZANO
21 Assistant United States Attorneys

22 COVINGTON & BURLING LLP
23 Attorneys for Defendant

24 BY: ARLO DEVLIN-BROWN
25 KATRI STANLEY

-AND-

DAVID M. GARVIN

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1 (Jury not present)

2 THE COURT: So let's get started.

3 MR. DiMASE: Your Honor, do you have a copy of the
4 filing from the government last night? I do have an extra
5 copy.

6 THE COURT: I do have it. I am on page three.

7 MR. DiMASE: OK.

8 THE COURT: So tell me about Apex. What is Apex?
9 Close to a microphone.

10 MR. DiMASE: One moment.

11 (Counsel confer)

12 MR. DiMASE: So Apex is a fund administration company,
13 one of the several fund administration companies that Mr. Scott
14 engaged to administer his purported investment funds. And
15 Mr. Spendiff was a high-level executive at that entity. That
16 was really the main point of contact for Mr. Scott with Apex.

17 Mr. Scott actually reached out to Apex very early on
18 to help set up the bank accounts for his funds. Apex was the
19 entity that actually had the relationship with DMS bank in the
20 Cayman Islands and facilitated the opening of the bank
21 accounts. And Apex also had the responsibility over the course
22 of the brief period where they served as fund administrator to
23 do due diligence on the various transactions that Mr. Scott was
24 attempting to effectuate into and out of the Fenero Funds.

25 And the import of his testimony is that in a

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1 relatively short period of time, in part because of a mistake
2 made by Mr. Scott by forwarding an e-mail containing the word
3 OneCoin and in part --

4 THE COURT: I'm sorry. Forwarding an e-mail that
5 what?

6 MR. DiMASE: That listed an e-mail address
7 OneCoin.edu.

8 In other words, Mr. Scott was not disclosing the
9 connection to OneCoin and the funds from OneCoin to Apex.
10 That's a critical part of the testimony. At some point he
11 accidentally forwarded an e-mail which contained that word.
12 There were also a number of suspicious transactions underway.
13 And Apex at that point started asking a lot more questions.
14 Ultimately, it told Mr. Scott that it could no longer handle
15 those transactions, put them on hold and the very last day of
16 the relationship with -- between Apex and Scott there was a
17 phonecall that was recorded in which the Apex representatives,
18 including the witness we anticipate testifying, asks a number
19 of questions about the source of the funds, the investors in
20 the funds and so on and so forth. And Mr. Scott provided a
21 number of recorded answers. The entire call was recorded.
22 Shortly after that call the relationship is terminated and
23 Mr. Scott then finds other ways to move his money in and out of
24 the bank in the Cayman Islands.

25 Critically, this is the only witness from a bank or

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1 financial institution that Mr. Scott directly dealt with in
2 connection with his management of the funds that the government
3 presently anticipates calling at this trial. There are other
4 bank witnesses related to other banks that interacted with the
5 funds in various ways. The Bank of Ireland witnesses were
6 going to be additional witnesses who dealt directly with
7 Mr. Scott but the Court is obviously aware of how that played
8 out. So this is a very critical witness for the government and
9 this recording is very important evidence regarding the
10 misrepresentations that Mr. Scott made to the fund
11 administration firm.

12 The only thing I would add, your Honor, is the call is
13 an hour long. It's not short. An hour is a long time for a
14 jury to sit and listen to something. So we have endeavored to
15 cut it down to the portions that we think are most relevant.

16 There's a lot of circling around on similar topics
17 several times in the course of the call so we've tried to
18 cutout the duplicative parts of it. The main goal really from
19 our perspective is to limit this to the most relevant parts and
20 not waste the jury's time.

21 We did try to come to some sort of understanding with
22 the defense and asked them if they had particular portions that
23 they would want to introduce in addition to our portions and
24 they have indicated they want the entire call into evidence.

25 The concern we have is if the entire call is into

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1 evidence then the government will likely play the entire call
2 because we don't want to be seen as hiding some portion of the
3 call from the jury, but an hour is a long time.

4 THE COURT: So the only issue -- the only controversy
5 between the parties is not that they're keeping stuff out that
6 ought to be included under the rule of completeness but simply
7 you want to be more efficient and they want to put the entire
8 thing before --

9 MR. DiMASE: I think that's sort of the root of the
10 disagreement.

11 But the legal basis for the government to keep out the
12 remainder of the call is really that it can't be admitted by
13 the defendant because it's his own statement. He's not a party
14 as far as himself, as far as the government is a party to the
15 action, we can introduce the statements. So the only remaining
16 possibility as far as the admission of the remainder of the
17 call is the rule of completeness to explain portions of the
18 call that can't be understood without the necessary context.
19 And it's our position that the remainder of the call is not
20 necessary to provide context for the portions the government
21 seeks to admit.

22 THE COURT: OK.

23 MR. DEVLIN-BROWN: So I'm glad this was raised, your
24 Honor, because it's been a -- I think disagreement the
25 government and defense have had for a while. There's the

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1 narrow issue of the call. The government's probably selected
2 45 minutes versus an hour.

3 MR. DiMASE: Just to be clear. I think it's closer to
4 a half an hour. We cut it down further from where it was at
5 the beginning.

6 MR. DEVLIN-BROWN: But I think it's been hard to
7 negotiate with the government on this because of their position
8 that the only thing the defense has in its quiver is this rule
9 of completeness and I think that's actually a very fundamental
10 misunderstanding.

11 If I could just step back for one second before
12 getting into the rules of evidence.

13 The government's charges here, both the bank fraud and
14 the money laundering, are both broad and vague. But the
15 gravamen of the charges, and it's been clear in the opening, is
16 that Mr. Scott lied to Apex, to financial institutions, etc.,
17 about the connection between Ruja and OneCoin and the money
18 coming into these funds. It's not just false statements the
19 government said. It's material omissions. It's misleading
20 half-truths. So that's the government's case.

21 And obviously, when the government can show through a
22 witness that Mr. Scott is not saying something about OneCoin
23 that can be very compelling evidence for the government both in
24 terms of proving the act itself. You did not mention OneCoin
25 and therefore that's part of the fraud. And also it's very

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1 relevant to a critical issue we've been talking about the last
2 few days which is Mr. Scott's state of mind as to whether
3 OneCoin is a fraud scheme because presumably the less he's
4 willing to say about OneCoin the stronger the government's
5 circumstantial argument that he didn't want to talk about
6 OneCoin because he knew it was a fraud scheme. And the
7 converse is true from the defense. The more he would be
8 willing to talk about OneCoin, that's supports an argument that
9 he didn't think it was a fraud scheme.

10 So fundamentally, your Honor, this is not a situation
11 where we're talking about a postarrest statement or something.
12 This is the act of the crime. What did Mr. Scott tell bankers,
13 tell Mr. Spendiff and others about OneCoin. And the government
14 is trying to pursue a theory where they get to elicit
15 evidence -- here's all the things that are not OneCoin and the
16 defense is precluded from saying well here are some things he
17 did say about OneCoin. And those are the portions of the call
18 that the government does not want the defendant to permit.

19 It would be like, your Honor, in a case involving a
20 offering prospectus where the plaintiff or the government says:
21 Look, it's a misleading prospectus because AB and C are said
22 and the other side can't say but DE and F are there as well.

23 So the government comes back to the rule of
24 completeness as the basis for their position. And I don't
25 think that's right.

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1 First of all, the government's clearly not offering
2 the statements of Mr. Scott for the truth of the matter
3 asserted. I think they submit that all of this or much of what
4 they're going to offer is a lie. It's the act itself they're
5 trying to prove. What was said to Mr. Spendiff. And then they
6 will prove whether that is true or false presumably.

7 So it's not -- and we are, therefore, not trying to
8 offer what Mr. Scott said about OneCoin, specific statements
9 for the truth of what he said about OneCoin, but simply that he
10 made these statements about OneCoin to a party that the
11 government says is being deceived about the relationship
12 between OneCoin and the funds.

13 So I think that's been the problem, is that the
14 government's position is the only avenue the defense has is
15 rule of completeness. And I don't think that's the case.

16 As for the call, we're happy to play portions of it.
17 We think the whole thing should come into evidence. If you go
18 line by line there's probably all sorts of other nonhearsay
19 reasons. For example, questions are not hearsay. Statements
20 of intention are not hearsay. But I don't think you need to do
21 that. I think the jury needs to decide whether Mr. Scott
22 shared all the information about OneCoin or didn't. And they
23 should be able to have the entirety of the call.

24 MR. DiMASE: Just briefly in response. Sorry.
25 Mr. Devlin-Brown, are you done?

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1 First of all, I just want to make clear and perhaps we
2 should push this off a little bit for the Court to review the
3 portions that the government is seeking to introduce so that
4 the Court can see.

5 The government is not extracting from this call
6 information about Mr. Scott talking about OneCoin. That's in
7 the call, for sure. I mean he's been caught at this point by
8 Apex and he has to explain the connection to OneCoin and that
9 is part of the portion of the call that the government fully
10 intends to admit. So I want to make that clear, first of all.

11 But as far as the legal admissibility here. The
12 defense is not putting these statements in to show that
13 Mr. Scott lied. That's certainly not why they want the
14 remainder of the call in. They want the remainder of the call
15 in to show that he told the truth, which is precisely what
16 they're not allowed to do, to admit evidence of the defendant's
17 own statements, false exculpatory statements for their truth.

18 Mr. Scott is obviously permitted to testify and make
19 representations about what he told to Apex at that time. But
20 it's not appropriate for the defense to put the statements in
21 for their truth. And that leaves the rule of completeness as
22 the remaining option.

23 We just have not received any suggestions from the
24 defense about which portions of the call are needed to explain
25 the portions that are admitted by the government. Right now

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1 it's just all of the call. And I certainly don't think that
2 all of the remaining call is required to provide context.
3 That's where we are I think at this stage, your Honor.

4 MR. DEVLIN-BROWN: Perhaps the Court should take more
5 time, if the Court wishes. There are actually a couple of
6 issues with this witness who is on cross that it might be
7 helpful to preview to avoid a sidebar.

8 I'll just say one thing to I think, give you an
9 example. If you look at transcript page 7.

10 The white is stuff the government says should be
11 cutout. So Mr. Scott starts talking about OneCoin. I mean he
12 started talking about it in the part that's included. But then
13 he says: If you have the internet and look up cryptocurrency,
14 look up OneCoin --

15 THE COURT: Slow down.

16 MR. DEVLIN-BROWN: Like this company has like four
17 hundred thousand members that pay into it. It's basically in
18 120 countries. OK. It should be enough for you to say, hey,
19 profits reach a billion a year.

20 So I don't need to read the rest of it. But the point
21 in terms of hearsay, your Honor, is we are not offering that
22 for the truth that say OneCoin has four hundred thousand
23 members or that it's profits are a billion dollars a year.
24 Those things may well be false.

25 What we're offering it for is that Mr. Scott was --

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1 who has been accused of trying to hide OneCoin and who has been
2 alleged to have a guilty state of mind about whether it's a
3 fraud scheme is discussing what he has heard about OneCoin to
4 Mr. Spendiff.

5 Whether it has four hundred thousand members or ten
6 members isn't relevant. It's that he's sharing this with
7 someone the government is saying has been misled because
8 OneCoin information has been hidden.

9 MS. LOZANO: Your Honor, yes. To briefly respond.
10 Taking that section specifically, Mr. Devlin-Brown points out,
11 I note that these transcripts have a lot of repetition. And,
12 in fact, if you look on -- if the Court looks on page
13 transcript 9 there are two full paragraphs at the beginning and
14 at the end that talks about the legitimacy of OneCoin and he
15 says you have to go out and see these people have a good
16 reputation. Have they done anything illegal? Are there
17 business actions? Yes. You check all that and that's it. But
18 you don't go to their clients and ask them, hey, did you really
19 send them these five dollars that they're giving us now.

20 And then he is asked: Did you do due diligence on
21 OneCoin or did you do due diligence on IMS? And Mr. Scott
22 explains that he did due diligence on IMS and B&N and that the
23 two companies are providing a service for OneCoin. And then it
24 goes on to the next page. And he explains that there is no
25 reason to believe that these companies are doing anything

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1 illegal and it's inappropriate for Apex to be asking him to
2 provide OneCoin financials.

3 On page ten he says they are in an industry, as you
4 can see from the writeup from our board where it's very
5 detailed what's going on in crypto. They are in some
6 countries, some regulated, some unregulated so they get paid.
7 This is not a small undertaking to go to them and say, hey,
8 just put together your financials.

9 So there are ample sections that the government has
10 included. And we carefully reviewed these transcripts to
11 ensure that they did completely communicate the essence of this
12 phonecall.

13 If the Court reviews the transcript carefully the
14 Court will note there are many areas that are repeated. In
15 fact, I believe both Mr. Spendiff and Mr. Scott on the call say
16 at one time we're going in circles because they repeat the same
17 things.

18 So Mr. Devlin-Brown's objection is not legitimate.
19 There are plenty of sections in which Mr. Scott's
20 representations about OneCoin, IMS and B&N are included. The
21 remaining sections that we took out are not necessary. In
22 fact, many of them are just repetitive of the sections that we
23 have included and they're inadmissible hearsay when offered by
24 the defendant.

25 MR. DEVLIN-BROWN: Your Honor, this is a fraud case

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1 and with all due respect to Ms. Lozano I'm not comfortable with
2 the idea that we should just trust the government to make sure
3 everything important Mr. Scott said about OneCoin is in there.

4 And, again, I reject the hearsay basis because whether
5 OneCoin has four hundred thousand members or ten members,
6 that's not the issue. The issue is he's willing to share the
7 information about OneCoin

8 Some other issues, your Honor. Mr. Scott gets very
9 angry and frustrated on the call. The jury might infer wow,
10 that's because he's an unreasonable person, because he's
11 guilty, who knows. The fact that the call goes on and that
12 things do go around in circles explains to some degree why he
13 gets upset on the call.

14 It's just such a critical piece of evidence. There's
15 a lot of indicia of reliability, your Honor. Mr. Scott did not
16 know he was being recorded whereas the Apex people were
17 secretly recording him.

18 We're happy to work with the government to agree to
19 portions. But it's not a real negotiation we can have where
20 the government's view is we'll decide and you can't do anything
21 because it's hearsay.

22 THE COURT: Is that the government's position?

23 MS. LOZANO: The government's position is that we have
24 attempted to engage defense in eliciting from them what
25 portions they want to include and when we did not get any

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1 response except we want the whole call, we went back and looked
2 and fairly excerpted -- chose excerpts for admission to -- as
3 evidence and that is our position. Our position is that these
4 portions which by the way are significant. They are at least I
5 would say approximately half of the call.

6 And, in fact, to Mr. Devlin-Brown's point about
7 frustration, on page transcript 18 there is a long paragraph
8 from Mr. Scott explaining why he's frustrated that every little
9 piece of paper was sent to Apex and we gave all the paperwork
10 about the underlying transactions and documents. So that is in
11 there. And our position is that the other portions are
12 repetitive and are not needed to explain this.

13 THE COURT: Can I just ask one quick question.
14 There's an Exhibit A and an Exhibit B. Is that just one
15 transcript or are those two calls?

16 MS. LOZANO: It is one call, your Honor. And it was
17 recorded in two portions. The first half of the call is A.
18 The second half of the call is B.

19 THE COURT: So I guess what I'm not hearing the
20 government say is I'm not hearing them say, Mr. Devlin-Brown,
21 that this stuff is self-interested, false exculpatory material.
22 What I hear them saying is: Look, it's a long call they go
23 over stuff again and again. We're just trying to make this as
24 painless as possible for the jury. And if that's true, why
25 isn't there some basis for you folks to get together and say OK

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1 this excerpt is not really discussed in any other place. It
2 doesn't -- we don't care whether or not it comes in. Is there
3 any basis for additional discussions between you two?

4 MS. LOZANO: Your Honor, to answer the Court's first
5 question, there are actually portions that we have not included
6 that we believe are false exculpatories. To give this call
7 context, at this point Mr. Scott had inadvertently forwarded an
8 e-mail to Apex revealing the OneCoin connection with
9 Ms. Dilkinska and B&N. He knew -- we believe he knew that Apex
10 now had discovered that OneCoin was involved. And Mr. Scott
11 was doing everything in his power to justify previously
12 concealing that information. So there are false exculpatory
13 statements.

14 To the Court's second point, we have tried. We have
15 been trying. We have sent at least two different versions of
16 our excerpts to defense in an effort to reach some consensus,
17 to have them reply to us and say what portions do you want out
18 that we want in and what portions do you want in that we want
19 out. And the response we've gotten across the board is we want
20 the whole call in.

21 MR. DEVLIN-BROWN: Your Honor, I just don't think
22 that's quite fair. First of all, I don't think that's what the
23 evidence is going to show about what Mr. Scott said to Apex and
24 how they discovered it was OneCoin-related. So there's a lot
25 of disputes that will be there.

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1 But even in the government's cover letter to your
2 Honor last night they cite rule of completeness and hearsay and
3 that's the issue we've been hearing all along which just made
4 it very hard to negotiate when they take the position, just
5 like the postarrest statement, which didn't work out so well
6 for us, all you can do is argue on rule of completeness
7 grounds.

8 THE COURT: But isn't that the appropriate rubric
9 through which I have to analyze this particular issue? They're
10 putting in a statement. They don't want to put in the entire
11 statement. And then the question for me is ought I make them
12 put in at least some additional portions of the statement so
13 that the jury is not left with the mistaken impression that
14 Mr. Scott made certain representations and not others?

15 MR. DEVLIN-BROWN: Your Honor, I think it -- there is
16 a rule of completeness issue but that's like -- that's the
17 backstop. This is -- that's not fundamentally what it is
18 because the crime -- the crime itself is what was Paul Spendiff
19 told.

20 It would be like a bank fraud case where a loan
21 application where someone discloses their financial condition.
22 And the government says it's a misleading and false loan
23 application. The whole loan application needs to come in. The
24 entire -- that's the act, submitting a false application. So
25 what's in the application is relevant to that very issue.

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1 THE COURT: I generally agree with that but we don't
2 have a business record or an application or some other form.
3 We have statements. And the question is what ought to be put
4 in front of the jury if some part is going to be put in front
5 of the jury. I would recommend that you folks continue
6 talking.

7 When does the government intend to put this in?

8 MS. LOZANO: Well we intend to call Mr. Spendiff as
9 our next witness and I believe -- depending on how long
10 Mr. Ignatov's cross-examination is. We have Mr. Spendiff ready
11 to start today. We may put him on after a short witness after
12 Mr. Ignatov. But the recording would come in at the end of
13 Mr. Spendiff's testimony which we expect whether he comes on
14 next or after a short witness would be tomorrow.

15 THE COURT: OK. How long do you expect Mr. Spendiff's
16 testimony to be?

17 MS. LOZANO: I expect that the direct will be at least
18 two to two-and-a-half hours.

19 THE COURT: And you'll have the opportunity to cross
20 Mr. Spendiff with respect to those portions that perhaps don't
21 get in. So let me read it. And it looks like I won't -- it
22 won't be proffered until for a little while.

23 I won't hold you to this, Mr. Devlin-Brown, but any
24 idea how much longer on cross with Mr. Ignatov?

25 MR. DEVLIN-BROWN: I'm thinking perhaps an

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1 hour-and-a-half, your Honor.

2 I know it's already 9:26. There are two issues where
3 the government may object. We can take it up at the time or we
4 can do it now.

5 THE COURT: Why don't you at least give me a preview.

6 MR. DEVLIN-BROWN: Certainly, your Honor.

7 Can I hand something up, your Honor?

8 THE COURT: Absolutely.

9 MR. DEVLIN-BROWN: So your Honor may recall that there
10 was a line of cross-examination yesterday about how certain
11 Mr. Ignatov was that Irina Dilkinska was at that meeting, the
12 single meeting she had with Mr. Scott. And the witness had
13 testified on direct actually to some significant details about
14 this meeting with Irina Dilkinska including that Ruja told
15 everyone leave the floor, this is the only time she's ever said
16 it, so Irina, Ruja, and the defendant can speak together.

17 Well, we went on the computer database of the
18 government's discovery last night and based on information we
19 believe that she was not there and found an e-mail from Irina
20 Dilkinska to Mark Scott saying in relevant part I am traveling
21 for the whole week. She sends that Sunday, July 17. The
22 meeting is on July 20.

23 So I intend to do two things with this, your Honor.
24 First, I'm going to show it to the witness. It's not in
25 evidence so I'm not going to ask him to read it. But after

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1 setting this up I am going to ask him: Isn't it true that she
2 was not at that meeting? So we'll see how he answers to that.

3 THE COURT: OK.

4 MR. DEVLIN-BROWN: But the evidentiary issue is "I am
5 traveling for the whole week" is admissible. It's not hearsay.
6 It's a statement of a plan.

7 And I apologize. I just e-mailed cases to your Honor
8 and the government. Our entire computer network, including
9 e-mail, was down from 12 a.m. to early this morning. So I
10 apologize for that. And we don't necessarily need to decide it
11 when the witness is on the stand but I think this is
12 admissible.

13 THE COURT: OK.

14 MR. DEVLIN-BROWN: That's the first issue.

15 MR. FOLLY: Your Honor, obviously we're hearing this
16 as you are hearing this for the first time and we have not
17 reviewed any of the cases that were sent after we started court
18 today.

19 Your Honor, this statement does not contradict the
20 witness's testimony. There is no evidence that she actually
21 did travel anywhere. For that reason alone there's really no
22 basis to admit this.

23 He has already testified on this. This question has
24 been asked and answered I think three -- at least two times if
25 not three times because Mr. Devlin-Brown was obviously trying

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1 to set this up.

2 So there is no reason to revisit this. Our objection
3 would be the witness's testimony is in on this. There is no
4 need to ask additional questions. There is no reason to show
5 him the document that he's never seen in his life and he was
6 not cc'ed on and that does not have any bearing on his
7 testimony. And there's certainly no basis to admit this
8 hearsay e-mail.

9 THE COURT: Well there's a certain basis to allow
10 Mr. Devlin-Brown to attempt to refresh Mr. Ignatov's
11 recollection as to whether or not she was there. As I recall
12 his testimony, he never bought into the hundred percent sure
13 but that he was pretty sure and was pretty close to a hundred
14 percent.

15 This might jog his memory in some fashion. That
16 doesn't necessarily mean that the document comes in but it can
17 be used for that purpose; then whether or not it comes in is a
18 different story. I guess, again, depending on what he says.

19 MR. FOLLY: Your Honor, I just would flag one thing.
20 This is not a prior inconsistent statement of the defendants.
21 There would be no basis -- of the witnesses. There would be no
22 basis for its admission on that basis.

23 I'm also unclear just how this statement would refresh
24 the witness's recollection. He's never -- it's an e-mail
25 without him on it that he has never seen in his life. If

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1 Mr. Devlin-Brown wants to ask him would something refresh your
2 memory and he says, yes, an e-mail with Irina Dilkinska would,
3 then maybe that would make sense.

4 THE COURT: As I recall from the Irving Younger tapes
5 that I watched when I was a law student, you can refresh a
6 witness's recollection with anything, a plate of fettuccini, he
7 said.

8 MR. FOLLY: If they are testifying that they don't
9 remember something that's accurate, your Honor. But that's not
10 the witness's testimony. That was clear yesterday.

11 MR. DEVLIN-BROWN: I do remember the pizza box I think
12 is what I learned. But you don't have to approach it as
13 refreshing a recollection. You can attempt to impeach a
14 witness and his direct testimony. And it's obviously improper
15 for me to read a document that's not in evidence. But I can
16 put something before him and ask him a question and that's all
17 I'm planning to do.

18 In all candor, I did not know this e-mail existed last
19 night. I'm not going to reveal privileged communications with
20 my client. But I did not believe that she was likely at that
21 meeting and, lo and behold, found this on the database last
22 night. So I think he testified -- I mean he testified in great
23 detail about this meeting and I think it's false.

24 THE COURT: It's 9:30. There's another issue?

25 MR. DEVLIN-BROWN: The other is very quick, your

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1 Honor. One of the things produced to us in 3500 material is
2 Mr. Ignatov's diary. We are going to ask him -- we're going to
3 show him his diary.

4 THE COURT: He has a diary?

5 MR. DEVLIN-BROWN: He has a diary. He kept a journal.
6 We are going to ask him questions. There's a doctrine -- we
7 may not seek to admit it but there's a doctrine of a prior
8 recollection recorded where if someone does not recall a
9 statement and they made it contemporaneously it could be
10 admitted or portions could. So that's the final one.

11 THE COURT: Ms. Rivera, is the jury here?

12 THE DEPUTY CLERK: Yes.

13 THE COURT: We'll get started -- let's get Mr. Ignatov
14 out.

15 (Continued on next page)

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Ignatov - Cross

1 (Jury present)

2 KONSTANTIN IGNATOV,

3 called as a witness by the Government,

4 having been previously sworn, testified as follows:

5 THE COURT: Ladies and gentlemen, good morning. Thank
6 you again for being so prompt. We will now continue with the
7 cross-examination of Mr. Ignatov.

8 Mr. Ignatov you are reminded that you are still under
9 oath.

10 Mr. Devlin-Brown.

11 CROSS-EXAMINATION

12 BY MR. DEVLIN-BROWN:

13 Q. Good morning, Mr. Ignatov.

14 A. Good morning.

15 Q. So you were arrested on March 6 of 2019; is that correct?

16 A. Correct.

17 Q. You were at the L.A. Airport I think when you were
18 arrested?

19 A. Yes.

20 Q. And you've been detained ever since, right?

21 A. Yes.

22 Q. You've been living at the MCC since I believe March; is
23 that right?

24 A. End of March.

25 Q. End of March.

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Ignatov - Cross

1 You made a bail application as you testified
2 yesterday?

3 A. I did.

4 Q. That was denied?

5 A. Yes.

6 Q. And that was pretty upsetting to you, I imagine?

7 A. Yes.

8 Q. And the MCC is a pretty terrible place, right?

9 A. Yes.

10 Q. And you have a fiancée who you're having a baby with not
11 with you, obviously, right?

12 A. Yes.

13 Q. And it's been a big priority to get out of jail as soon as
14 you can so you can be with them, right?

15 A. Yes.

16 Q. So after your bail application was denied you started
17 proffering with the government; is that right?

18 A. Yes.

19 Q. And the proffering essentially means as you understand it
20 sitting down with agents and prosecutors and answering their
21 questions; is that right?

22 A. Yes. Providing information.

23 Q. Providing truthful information?

24 A. Yes.

25 Q. And you met with them between July of this year and

JB79SC01

Ignatov - Cross

1 September maybe ten or more times when you were doing these
2 proffers, right?

3 A. Yes.

4 Q. And at some point you became aware that they had a trial
5 coming up against Mark Scott, right?

6 A. Yes.

7 Q. So on October 4 of 2019 you pled guilty to a cooperation
8 agreement, right?

9 A. Yes.

10 Q. And you testified about that agreement a little bit
11 yesterday on direct examination?

12 A. Yes.

13 Q. And the big advantage of a cooperation agreement is there's
14 a possibility of the government writing what's called a 5K
15 letter to the judge before sentencing, right?

16 A. If I testify truthfully, yes.

17 Q. And the 5K letter gives you a potential, right, for a much
18 lower sentence?

19 A. Yes.

20 Q. You could be sentenced to as little as time served, right?

21 A. Yes.

22 Q. No guarantees, of course?

23 A. No.

24 Q. It's up to the judge?

25 A. Yes.

JB79SC01

Ignatov - Cross

1 Q. But that's what you would be hoping for, right?

2 A. Yes.

3 Q. And as you mentioned, the cooperation agreement requires
4 you to do certain things, right?

5 A. To testify truthfully.

6 Q. You've mentioned a few times it requires truthful
7 testimony?

8 A. Yes.

9 Q. It also requires you to sit down and meet with the
10 government when they want, right?

11 A. Yes.

12 Q. And to appear as a witness at trial?

13 A. Yes.

14 Q. And the only trial that you know about where you may have
15 to testify is this one, right, Mark Scott's trial?

16 A. Yes.

17 Q. So I think you testified -- well after you've signed the
18 cooperation agreement and pled guilty you continued to meet
19 with the prosecutors, right?

20 A. Yes.

21 Q. As I believe you said on direct examination it wasn't just
22 about Mark Scott you were meeting with them, right?

23 A. No.

24 Q. But it was maybe 20 or more times you met with them?

25 A. Around 20 times.

JB79SC01

Ignatov - Cross

1 Q. And some of it was certainly about Mark Scott?

2 A. Yes.

3 Q. Fair to say as the trial got closer and closer more of the
4 discussion at a particular meeting was about Mark Scott?

5 A. It was always more or less the same amount of time we
6 discussed.

7 Q. And you the prosecutors went over the kinds of questions
8 that Mr. Folly would ask you on direct examination, right?

9 A. We went over different types of questions. In most cases
10 every time he showed me, for example, new evidence that I did
11 not see before my arrest and also parts of my discovery, every
12 time it was something different.

13 Q. But the questions you were asked on direct by Mr. Folly
14 yesterday, none of them were surprising to you, were they?

15 A. Well it wasn't a role play if you mean this. We had some
16 types of questions. But not all exactly of them.

17 Q. I didn't suggest it was a role play. But my question was
18 none of his questions surprised you, did they?

19 A. A few things were a little bit unexpected but most of them
20 did not surprise me.

21 Q. And when you would go do these preparation sessions
22 sometimes the prosecutors would suggest different ways of
23 phrasing your answer; is that fair to say?

24 A. The only time this happens was when I asked for an English
25 word because I don't know it.

JB79SC01

Ignatov - Cross

1 Q. So the prosecutors never suggested a different way of
2 phrasing your answer.

3 A. Not if I didn't ask explicitly because I don't know how to
4 express myself.

5 Q. So you only met, as you testified yesterday, with Mr. Scott
6 one time in your life, right?

7 A. Yes.

8 Q. The prosecutors asked you in the preparation sessions lots
9 of questions about that meeting, right?

10 A. Yes.

11 Q. Because it was the only meeting about Mr. Scott?

12 A. Yes.

13 Q. And you did your best to remember everything about the
14 meeting, right?

15 A. Yes.

16 Q. It was more than three years ago but you tried really hard,
17 right?

18 A. I tried about everything that I testified to.

19 MR. DEVLIN-BROWN: If we could put, Mr. Barile,
20 Government Exhibit 62 on, which is in evidence, on the screen.
21 And specifically paragraph -- page 2, paragraph L.

22 It's not on my screen. Is it on the jurors' screen?

23 Mr. Barile.

24 THE DEPUTY CLERK: Everything seems fine from here.

25 MR. DEVLIN-BROWN: It's not working, I gather?

JB79SC01

Ignatov - Cross

1 Go to page 2, paragraph L, Mr. Barile.

2 Q. So I'm just going to read page 2, paragraph L: Scott
3 traveled from Miami to Frankfurt on July 19, 2016, and traveled
4 to Frankfurt and Sofia, Bulgaria on July 20, 2016; Scott
5 returned from Sofia to Frankfurt on July 21, 2016.

6 So the meeting was July 20 or July 21, 2016, right,
7 Mr. Ignatov?

8 A. Yes.

9 MR. DEVLIN-BROWN: Will you leave that on the screen,
10 please, Mr. Barile.

11 Thank you.

12 Q. So you testified on direct about a lot of details about
13 this meeting from more than three years ago, right?

14 A. There weren't that many details as I did not attend it but
15 on some details I was there, yes.

16 Q. Do you remember testifying on direct examination that after
17 Mr. Scott arrived there was small talk such as how was your
18 travels, do you want something to drink? Do you remember
19 testifying to that?

20 A. As this was part of my job. I did this to everybody that
21 came to visit Ruja.

22 Q. So you didn't actually specifically remember --

23 A. Yes, I did.

24 Q. If you could just let me finish for the court reporter.

25 Sitting here today do you specifically remember in

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Ignatov - Cross

1 your mind's eye that when Mr. Scott arrived you asked him how
2 his travel was and if he wanted something to drink or is it
3 just that's what you normally do so you assume you did it with
4 Mr. Scott?

5 A. I remember definitely the drinking question.

6 Q. OK. And you also testified on direct I think I made him
7 coffee or gave him water or something. Is that just something
8 that you assume you did because you usually do or you have that
9 memory of giving him coffee or water or something?

10 A. I don't know exactly what he drank.

11 Q. Sorry?

12 A. I don't recall exactly what he wanted to drink.

13 Q. You testified on direct, didn't you, that the meeting with
14 Mr. Scott was initially just with Ruja, right?

15 A. The first minutes, yes.

16 Q. And then Ruja called you, you testified, and asked you to
17 bring in Irina. Do you remember that?

18 A. Yes.

19 Q. And you brought in Irina, you testified?

20 A. Yes.

21 Q. Did you walk her into the office with Ruja?

22 A. Not with Ruja. I walked Irina alone as Ruja was sitting
23 with Mr. Scott in the office.

24 Q. But that's what you remember. You walked Irina in to Ruja?

25 A. Yes.

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Ignatov - Cross

1 Q. And then you testified on direct that Ruja asked you at
2 that same occasion to make sure everybody on the floor left and
3 went home so that Irina, Mark and Ruja could meet together. Do
4 you remember testifying to that?

5 A. Yes.

6 Q. And you also testified that that was very unusual, right?

7 A. It was the only time it happened.

8 Q. So that memory must be clear if that's the only time it
9 happened?

10 A. This memory is clear.

11 Q. OK. You remember I asked you -- one more thing. You also
12 testified on direct, didn't you, that after the meeting in
13 Sofia the following week Irina told you that during that
14 meeting with Mr. Scott she had to stay a long time until Mark
15 Scott understood. Do you remember testifying to that on
16 direct?

17 A. This was the part I told you yesterday I'm pretty sure
18 about it. Yes.

19 Q. So you're pretty sure after the meeting Irina told you she
20 had to stay a long time until Mark Scott understood. That's
21 the part you were pretty sure about?

22 A. Yes.

23 Q. The part about Irina being at the meeting, are you a
24 hundred percent sure about that?

25 A. Yes.

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Ignatov - Cross

1 Q. You're a hundred percent sure?

2 Because I did ask you a number of questions on
3 cross-examination about whether you were a hundred percent sure
4 or pretty sure, right?

5 A. Yes.

6 Q. And I think you settled on you were almost a hundred
7 percent sure. That's what you testified yesterday on
8 cross-examination?

9 A. Yes. I think I'm pretty sure so I don't -- I recall this
10 happening.

11 Q. Now this is the only meeting you had with Mr. Scott?

12 A. Yes.

13 Q. This is an important trial for Mr. Scott, right?

14 MR. FOLLY: Objection.

15 THE COURT: Overruled.

16 THE WITNESS: Yes.

17 Q. It's important that you testify to things you have a great
18 deal of confidence in about the one meeting you had with
19 Mr. Scott, right?

20 MR. FOLLY: Objection.

21 THE COURT: Overruled.

22 THE WITNESS: Yes.

23 MR. DEVLIN-BROWN: May I approach, your Honor?

24 THE COURT: You may.

25 Q. Mr. Ignatov, I'd like you to just look by yourself at

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Ignatov - Cross

1 what's been marked for identification as Defense Exhibit 550.
2 Once you look at the top of that exhibit -- do you see the top?

3 A. Yes.

4 Q. Do you see the date of that, that's on that document?

5 A. Yes.

6 Q. And if you could just to yourself read the first two lines.

7 A. Hi Mark.

8 THE COURT: No, no.

9 MR. DEVLIN-BROWN: To yourself.

10 THE WITNESS: Sorry.

11 Q. Mr. Ignatov, Irina Dilkinska was not at that meeting with
12 Mr. Scott was she?

13 A. I'm pretty sure she was.

14 Q. You're still confident that she was?

15 A. Yes.

16 Q. She wasn't even in Sofia, was she?

17 A. As I told you I'm pretty sure she was.

18 MR. DEVLIN-BROWN: We'd offer Defense Exhibit 550.

19 MR. FOLLY: The same reasons we discussed earlier for
20 the objection.

21 THE COURT: The offer is denied.

22 MR. DEVLIN-BROWN: We can take that off the screen,
23 Mr. Barile.

24 Q. So I want to ask you, Mr. Ignatov, a few more questions
25 about your cooperation agreement. So, you have been meeting

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Ignatov - Cross

1 for proffer sessions a number of times as you've said before in
2 July and August and September with the government, right?

3 A. Yes.

4 Q. And in late September they provided your attorney with a
5 plea agreement, right?

6 A. Yes.

7 Q. And originally you had just been charged with wire fraud;
8 is that right?

9 A. Yes.

10 Q. And I believe you testified on direct that was the crime
11 of, as you understood it, lying to people to get them to buy
12 OneCoin, right?

13 A. Yes.

14 Q. Now the plea agreement that you received as a part of your
15 cooperation agreement had four counts, right?

16 A. Yes.

17 Q. They also, as part of the cooperation agreement, required
18 that you plead guilty to a money laundering conspiracy and a
19 bank fraud conspiracy, right?

20 A. Yes.

21 Q. And this was not subject to negotiation which counts you
22 were pleading to if you wanted to cooperate, right?

23 A. Can you rephrase the question.

24 Q. Well it was a take-it-or-leave-it deal, wasn't it,
25 Mr. Ignatov?

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Ignatov - Cross

1 A. Well, I discussed this with my lawyer and he --

2 Q. I don't need to know what your lawyer said.

3 A. OK.

4 Q. If you can answer the question without saying what you
5 discussed with your lawyer. The question is: As you
6 understood, it was it a take-it-or-leave-it deal?

7 A. But the discussion with my lawyer might be important for
8 this so he explained to me what exactly this means for me.

9 MR. FOLLY: Objection, your Honor.

10 THE COURT: Sustained.

11 Q. I don't want to know what your lawyer said. But after your
12 lawyer said things to you, what's your understanding that you
13 either had to accept this offer to plead guilty to four counts
14 or there would be no cooperation agreement?

15 A. Well it was nothing about accepting. I am guilty about
16 these counts because this is part of what I did.

17 Q. You didn't try to reduce the number of counts you had to
18 plead guilty to as part of the cooperation agreement?

19 A. I wanted to have it explained why this happened.

20 Q. So on direct examination Mr. Folly asked you I believe two
21 times what made you guilty of the bank fraud and money
22 laundering crimes that you pled guilty to. Do you remember
23 that?

24 A. Yes.

25 Q. And he asked you the questions together, bank fraud and

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Ignatov - Cross

1 money laundering crimes. Do you remember that?

2 A. Yes.

3 Q. Those are two separate crimes, aren't they?

4 A. They are.

5 Q. And you also made statements about what made you guilty of
6 those crimes when you actually pled guilty before the judge,
7 right?

8 A. Yes.

9 Q. And that was in a courtroom much like this one where you
10 had to answer questions the judge was asking, right?

11 A. Yes.

12 Q. And with respect to the bank fraud account in court you
13 said --

14 MR. FOLLY: Objection.

15 THE COURT: Overruled.

16 Q. We lied to banks regarding --

17 MR. FOLLY: Your Honor, may we approach.

18 THE COURT: You may.

19 (Continued on next page)

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Ignatov - Cross

1 (At sidebar)

2 MR. FOLLY: Your Honor, Mr. Devlin-Brown has not laid
3 any foundation for any inconsistency as to what the defendant
4 is testifying to on this subject. He can't simply start
5 reading into the record prior statements of this witness
6 without first establishing that he is making the statement now
7 on the stand that is inconsistent with the prior out-of-court
8 statement. There's simply no other basis to do that. That's
9 how impeachment works.

10 MR. DEVLIN-BROWN: Thank you, Mr. Folly.

11 I'm not attempting to impeach the witness. I'm
12 attempting to elicit what he understood he was pleading guilty
13 to. He made a statement in open court which has presumably
14 some indicia of reliability about what he did and I want to ask
15 him a question or two about that.

16 THE COURT: OK. That's fine.

17 MR. DEVLIN-BROWN: Thank you.

18 (Continued on next page)

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Ignatov - Cross

1 (In open court)

2 MR. DEVLIN-BROWN: May I continue, your Honor?

3 THE COURT: Yes.

4 Q. So you made statements before a judge in court as to why
5 you were guilty of the various crimes charged, right?

6 A. Yes.

7 Q. And with respect to the bank fraud count you said: We lied
8 to banks regarding the unlawful sources of funds and the
9 purposes of wire transfers from the accounts causing banks,
10 including those insured by the U.S. Government, to transfer
11 OneCoin proceeds in and out of accounts on behalf of OneCoin.

12 Do you remember saying that?

13 A. Something like this. I don't remember every word but, yes.

14 Q. Do you remember saying that the bank fraud count included
15 accounts at banks insured by the U.S. Government?

16 A. No. I don't remember it exactly.

17 Q. You didn't actually write the statement yourself you read
18 in court when you pled guilty, right?

19 A. My lawyer helped me with it.

20 Q. You understand, don't you, that a bank fraud count requires
21 there to be --

22 MR. FOLLY: Objection.

23 THE COURT: Overruled.

24 Q. You understand, don't you, that a bank fraud count requires
25 there to be deceit that causes some influence on a bank that is

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Ignatov - Cross

1 insured by the U.S. Government, right?

2 MR. FOLLY: Objection.

3 THE COURT: Overruled.

4 THE WITNESS: I don't understand this question really.

5 Q. I'll rephrase it.

6 A. Thank you.

7 Q. You understand the bank fraud count has to involve banks
8 that are in the United States to some degree, right?

9 A. I think so.

10 Q. Do you know of any banks in the United States that you
11 conspired with others to deceive or to obtain money from?

12 A. I never seen all the bank accounts.

13 Q. So you don't know of any banks in the United States?

14 A. No.

15 Q. Moving to another topic, Mr. Ignatov. You testified on
16 direct examination yesterday to a number of things that Irina
17 Dilkinska told you about Mark Scott, right?

18 A. Yes.

19 Q. And, in fact, you testified that it was based on what Irina
20 Dilkinska told you that caused you to conclude that Mr. Scott
21 was, in your words, a money launderer, right?

22 A. Yes.

23 Q. In fact, you testified that after Ruja disappeared you were
24 searching for sources or you and Irina were searching for
25 sources where other companies that had some funds, right?

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Ignatov - Cross

1 A. Yes.

2 Q. And Irina told you there were funds that were available
3 with Mark Scott among other people, right?

4 A. Yes.

5 Q. You had no personal knowledge of that, right?

6 A. No.

7 Q. It was just something Irina told you?

8 A. Yes.

9 MR. DEVLIN-BROWN: Could we put up Government Exhibit
10 3003-S which is in evidence.

11 Q. So you remember yesterday Mr. Ignatov speaking --
12 testifying about text messages you and Irina Dilkinska
13 exchanged in June 2018, right?

14 A. Yes.

15 Q. And these text messages are the basis for why you concluded
16 or why you testified that Mr. Scott was a money launderer,
17 right?

18 A. Not only as I was sitting almost everyday with Irina in the
19 office and we had discussions.

20 Q. But you testified yesterday about these text messages,
21 didn't you?

22 A. Yes.

23 Q. So I'd like to go over a few things here. Let's start at
24 the beginning. Irina Dilkinska says: Hey. Talking to Mark
25 Scott.

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Ignatov - Cross

1 You don't know if she was actually talking to Mark
2 Scott at that time, right?

3 A. No.

4 Q. And you ask: What does he say?

5 Now, this is June 14, 2018, right?

6 A. Yes.

7 Q. The last time you were in any communication with Mark Scott
8 was early 2017, right?

9 A. I think so.

10 Q. And he hadn't been involved in anything relating to OneCoin
11 to your knowledge since that time, right?

12 A. In that gap I don't know what anything he did.

13 Q. So you don't know anything that Mr. Scott had to do with
14 OneCoin between early 2017 and this period June 14, 2018,
15 right?

16 A. I don't know if or what happened.

17 Q. But you were at OneCoin that entire time, right?

18 A. Yes.

19 Q. And since October 2017 when Ruja left you played a
20 leadership role in OneCoin, right?

21 A. It took some time until I took this role.

22 Q. But you became a leader of OneCoin, right?

23 A. Yes.

24 Q. And you didn't have any dealings with Mark Scott since
25 early 2017?

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Ignatov - Cross

1 A. No.

2 Q. Then Irina Dilkinska says: He wants to know what's up with
3 Phoenix so to help.

4 We'll stop right there.

5 You don't know if Mark Scott had offered to help Irina
6 with anything having to do with Phoenix, right?

7 A. No, I don't.

8 Q. That's just what Irina Dilkinska said there?

9 A. Yes.

10 Q. And Irina Dilkinska asks: Shall I tell him?

11 What did you understand her to be asking about what
12 should be told to him?

13 A. Maybe that Amer Abdulaziz stole the money.

14 Q. Because you hadn't told him that so far, as you know,
15 right?

16 A. I don't know if she did.

17 Q. Well she's asking you: Shall I tell him, right?

18 A. Yes.

19 Q. And you understood that at the time to be a reference to
20 the fact that Amer Abdulaziz stole the money?

21 A. It might be, yes.

22 Q. And Irina Dilkinska says: He says he may help.

23 A. Yes.

24 Q. And you have no idea whether he, in fact, said that to
25 Irina Dilkinska?

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Ignatov - Cross

1 A. No.

2 Q. Now your response was: Ruja was not happy with him.

3 By that you are referring to the fact that Ruja and
4 Mark Scott separated ways by early 2017, right?

5 A. By that I refer to the telephone call that I overheard
6 where she was pretty upset about him.

7 Q. She said Mark, I think you used curse words, was an idiot
8 or something like that, right?

9 A. Yes.

10 Q. But they stopped doing business as far as you know by early
11 2017?

12 A. This is the last time I heard from Mark Scott but I don't
13 know if they continued doing business.

14 Q. And you said: I don't see him as much trustworthy, right?

15 A. Yes.

16 Q. In the text message.

17 So you weren't sure whether it was a good idea or a
18 bad idea to share with Mark Scott that this money had been
19 stolen by Abdulaziz, right?

20 A. The thing is I was referring to what I heard from Ruja and
21 Ruja said that somebody messed it up. Then when she was not
22 happy I don't know if we should continue with this gentleman
23 this way.

24 Q. So you didn't know if you could trust Mark Scott?

25 A. Yes.

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Ignatov - Cross

1 Q. Because you hadn't dealt with him since early 2017?

2 A. Yes.

3 Q. And Irina Dilkinska says: Also true, right?

4 A. Yes.

5 Q. And then she says: At least I have asked him to send all
6 relevant agreements.

7 Do you see that?

8 A. Yes.

9 Q. And by that you understood her to be referring to whatever
10 agreements or documents he had put together with Irina
11 Dilkinska or others back when he had been involved with OneCoin
12 investors, right?

13 A. Honestly I don't know exactly which agreements are involved
14 in here.

15 Q. OK. Let's go to the second page of this exhibit.

16 So this is the continuation of the same what's
17 WhatsApp exchange, right, Mr. Ignatov?

18 A. Yes.

19 Q. So Irina Dilkinska says: This is his last message just
20 now.

21 Do you see that?

22 A. Yes.

23 Q. And then she puts something in quotes. Let me just read
24 that.

25 First of all she puts something in quotes. You

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Ignatov - Cross

1 understood that to be her quoting Mark Scott's last message to
2 her, right?

3 A. Yes.

4 Q. And Irina Dilkinska writes, "It is better to let me know
5 what is going on. We have our audits going on in BVI. And
6 will submit to the financial commission."

7 That's not an offer to help, right?

8 A. Actually I don't understand it because I don't understand
9 what a BVI is.

10 Q. But let's just try just the first sentence then. "It's
11 better to let me know what's going upon."

12 That's a request to know what is going on, to know
13 what is happening, right?

14 A. Yes.

15 Q. It's not -- you don't interpret "let me know what's going
16 on" as "I am here to help you," right?

17 A. Well this is the last message. I don't know which messages
18 were being exchanged before.

19 Q. Understood. I'm just asking you to -- what your
20 understanding is of what's on the screen before you.

21 A. Yes.

22 Q. You don't know what the BVI is, you said?

23 A. No.

24 Q. But audits, you know what an audit is, right?

25 A. Yes.

JB79SC01

Ignatov - Cross

1 Q. So according to Irina's message here Mark Scott says he has
2 audits going on and they have to submit to the financial
3 commission.

4 Do you know what financial commission he was referring
5 to?

6 A. Not which but I know what a financial commission is.

7 Q. Did you know that the Fenero Funds were registered in the
8 British Virgin Islands?

9 A. I heard about it after my arrest.

10 Q. And did you understand that the British Virgin Islands has
11 a financial commission that regulates funds?

12 MR. FOLLY: Objection.

13 THE COURT: Overruled.

14 THE WITNESS: Well I think every country has it but I
15 don't understand much of financial commissions to be honest.

16 Q. Did you learn that when Mark Scott separated from OneCoin
17 he held back some money in case there was litigation with the
18 people who had sent it to him. Did you know that?

19 A. No.

20 Q. So then Irina Dilkinska writes: Assuming this may cause
21 issues for him too, right?

22 A. Yes.

23 Q. So she's indicating some assumption about Mark Scott?

24 A. Yes.

25 Q. And then she says: I will ask him to send me the

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Ignatov - Cross

1 agreements and then we talk again, right?

2 A. Yes.

3 Q. And you agreed: Yes than let's decide again.

4 A. Yes.

5 Q. So based on this text exchange the decision is to just ask
6 him to send some agreements, right?

7 A. Yes.

8 Q. Not to do anything else?

9 A. Yes.

10 MR. DEVLIN-BROWN: We can take this one off the
11 screen.

12 But if we could put on from the same day Government
13 Exhibit 3005-S.

14 I guess, sorry, not from the same day. It's from
15 June 22, 2018.

16 Q. This is another text message exchange between you and
17 Ms. Dilkinska?

18 A. Yes.

19 Q. And she writes: Can you tell FS that Mark himself will try
20 to push Phoenix to release funds.

21 FS is Frank Schneider you talked about yesterday?

22 A. Yes.

23 Q. You have no idea if Mark Scott has ever had any dealings
24 with Frank Schneider, right?

25 A. I seem to recall that Frank Schneider told me that they had

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Ignatov - Cross

1 communication but I don't know exactly.

2 Q. But you don't know what?

3 A. Exactly when this was.

4 Q. So Frank Schneider at some point told you that he had some
5 communication with Mark Scott?

6 A. It was part of an e-mail, I think.

7 Q. But you don't remember anything beyond that, right?

8 A. No.

9 Q. Then Irina says: Mark is Fenero.

10 A. Yes.

11 Q. Do you see that?

12 Because prior to June 22, 2018 you didn't have any
13 understanding of Mark's relationship with this entity Fenero,
14 right?

15 A. Yes.

16 Q. Yes, you did not have any understanding?

17 A. I did not have understanding because Irina was in charge of
18 all the subcompanies and everything else. I had no access to.

19 Q. So you respond to that: OK. Will do.

20 Irina Dilkinska says: He will send him e-mail.

21 Let's see what will happen, etc.

22 MR. DEVLIN-BROWN: If we could go to -- I think
23 there's a second page of that. Right. And if you could,
24 Mr. Barile, just scroll. That's good.

25 Q. So on June 25, 2018 there is another posting -- actually,

JB79SC01

Ignatov - Cross

1 sorry.

2 MR. DEVLIN-BROWN: Just go back to the bottom of the
3 last page. I thought there might be something missing. Sorry.
4 Go to the second page is fine.

5 Q. So this is a message -- an e-mail you had gotten from Frank
6 Schneider; is that right?

7 A. Yes.

8 Q. And you posted a screen shot to WhatsApp in your
9 communication with Irina?

10 A. Yes.

11 MR. DEVLIN-BROWN: Could we zoom in on that,
12 Mr. Barile.

13 Q. So Frank Schneider responds to some message that was sent
14 to him: Sorry, I answered a little too quick.

15 Do you see that?

16 A. Yes.

17 Q. And what he had answered too quick was you can reach out to
18 Mark Scott?

19 A. Excuse me.

20 Q. The thing that he had responded to too quickly telling you
21 and Irina it was OK to reach out to Mark Scott?

22 A. I don't remember what he wrote before.

23 Q. Well you hadn't, in fact, reached out to Mark Scott by
24 then, right?

25 A. This I don't know. I didn't reach out to him at all; if,

JB79SC01

Ignatov - Cross

1 Irina.

2 Q. You never reached out to him in June 2018 or any other
3 time, right?

4 A. No.

5 Q. So, Frank Schneider says there's a potential problem with
6 Mark that you need to know.

7 Do you see that?

8 A. Yes.

9 Q. And he talks about seeing a presentation that US
10 authorities gave to international working group called
11 Operation Satellite.

12 Do you see that?

13 A. Yes.

14 Q. You understood that to mean some kind of law enforcement
15 presentation that Mr. Schneider probably wasn't supposed to
16 know anything about, right?

17 A. Yes.

18 Q. And this presentation is in January 2017 it says, right?

19 A. Yes.

20 Q. And Frank Schneider reports that the presentation mentioned
21 GA. That's Gilbert Armenta, right?

22 SG. That's Sebastian Greenwood?

23 R. That's Ruja?

24 You have to answer audibly just so the court
25 reporter --

JB79SC01

Ignatov - Cross

1 A. Yes.

2 Q. But there was no mention of Mark Scott, he tells you,
3 right?

4 A. Yes.

5 Q. And he then tells you that based on this January 2017
6 presentation R and I concluded that the highly placed informant
7 might be Mark Scott, right?

8 A. Yes.

9 Q. So based on this e-mail after Frank Schneider saw a
10 presentation in January 2017 he and Ruja determined they
11 couldn't trust Mark Scott, right?

12 A. Seems like, yes.

13 Q. And after early 2017 is, in fact, when you stopped having
14 any communications with Mark Scott?

15 A. Yes.

16 MR. DEVLIN-BROWN: We can zoom back out. Thank you.

17 Q. So after reading this you say you don't trust Mark Scott,
18 right? Do you see that towards the bottom?

19 A. I was talking about Frank Schneider, not about Mark Scott.
20 And then she answers me that she doesn't trust Mark Scott too.

21 Q. Well you didn't trust Mark Scott either, right? In terms
22 of being able to share information with him about what was
23 going on at that point --

24 A. At that point I didn't trust anybody, to be honest, but
25 Mark Scott included, yes.

JB79SC01

Ignatov - Cross

1 Q. And if we could go --

2 MR. DEVLIN-BROWN: Is there another page, Mr. Barile?
3 Or is that the end of it?

4 Q. The bottomline, Mr. Ignatov, is that at this point in
5 June 25, 2018 you hadn't been in touch with Mark Scott for a
6 very long time?

7 A. Yes.

8 Q. And there were concerns that he might be an informant,
9 right?

10 A. Yes.

11 Q. And you didn't think along -- you and Irina agreed that it
12 didn't make sense to share any information about OneCoin with
13 Mark Scott, right?

14 A. But I don't know how continued -- I don't know if she
15 shared it or not.

16 Q. Well your belief was based on what Frank Schneider has said
17 you shouldn't share information with Mark Scott?

18 A. That it was risky, yes.

19 Q. It was risky because you couldn't trust Mark Scott not to
20 tell the information to law enforcement, right?

21 A. Yes.

22 MR. DEVLIN-BROWN: We can take that off the screen.

23 Q. You also testified a little bit about Irina's reaction to
24 Mark Scott's arrest, right?

25 A. Yes.

JB79SC01

Ignatov - Cross

1 Q. You testified that she seemed panicked, right?

2 A. Yes.

3 Q. You testified that she burned documents, right?

4 A. Yes.

5 Q. And you understood from Irina that one of the things she
6 had done with Mr. Scott is send him money that was linked to
7 OneCoin for investments, right?

8 A. She never said it explicitly.

9 Q. But that was what you ultimately understood?

10 A. Not ultimately but with the information I got in the last
11 months this was my conclusion, yes.

12 Q. So that's your understanding today?

13 A. Yes. Not today. At this time.

14 Q. So given that back then you didn't even really understand,
15 it sounds like, that she had sent money to Mark Scott -- let me
16 stop there.

17 Before you were arrested you didn't really have a
18 clear understanding of whether she sent money to Mark Scott?

19 A. I know that they were involved in a company that was in
20 charge of sending money or moving money.

21 Q. Sounds like your knowledge was very vague. Is that fair to
22 say?

23 A. I don't know who sent money to this company, for example.

24 Q. So you also then don't know if Irina ever told Mark Scott
25 that OneCoin was a fraud, right?

JB79SC01

Ignatov - Cross

1 A. No. I don't know.

2 Q. Now Irina Dilkinska at this point in June 2015 knew OneCoin
3 had no blockchain, right?

4 A. If she told him this?

5 Q. No. She -- you understood in June 2015 that Irina
6 Dilkinska knew OneCoin had no blockchain?

7 MR. FOLLY: Your Honor, just objection.

8 Mr. Devlin-Brown keeps say June 2015. I'm not sure that's
9 the --

10 MR. DEVLIN-BROWN: No. That's totally fair. Can we
11 change to 2018.

12 Q. You understand I'm talking about 2018?

13 A. I don't know if she told him about it.

14 Q. But we're all clear, the questions I'm asking you are about
15 June 2018.

16 A. OK.

17 Q. So you understood in June 2018 that Ms. Dilkinska new that
18 OneCoin does not have a real blockchain?

19 A. As far as we had our understanding, it is not what it
20 should be.

21 Q. Well you had testified, I believe, yesterday that it was I
22 think May of 2015 where Irina had been drinking and told you
23 that they were not really mining coins. Do you remember that?

24 A. May 2018.

25 Q. Am I doing the 2015 thing again?

JB79SC01

Ignatov - Cross

1 A. Yeah.

2 Q. Sorry. May 2018 is when she told you they weren't really
3 mining coins?

4 A. She told me that more coins are sold than actually mined
5 and that coins within the blockchain can be moved so that the
6 problem doesn't exist anymore.

7 Q. So you have no idea whether she ever said anything like
8 that to Mark Scott?

9 A. No.

10 Q. You have no idea what she told Mark Scott about the money
11 that OneCoin or OneCoin-affiliated companies may be sending to
12 him, right?

13 A. I was never part of the discussion so I don't know.

14 Q. Exactly.

15 So you have no reason to know whether Mark Scott had
16 any reason -- strike that.

17 So we've just spoken about a bunch of things that
18 Irina Dilkinska has communicated to you about Mark Scott,
19 right?

20 A. Yes.

21 Q. And that has helped form your opinion that Mark Scott is a
22 money launderer, right?

23 A. Yes.

24 Q. Now, Irina Dilkinska is not an honest person, is she?

25 A. No.

JB79SC01

Ignatov - Cross

1 Q. She's extremely dishonest. Is that fair to say?

2 A. Yes.

3 Q. By April 2018, which is before June 2018 you were pretty
4 convinced Irina Dilkinska was stealing money from OneCoin,
5 right?

6 A. Yes.

7 Q. In fact, you believe she was stealing it with Amer
8 Abdulaziz, right?

9 A. At this time, yes.

10 Q. And that's the guy that bought the horses?

11 A. Yes.

12 Q. And you also believed she was working with someone named
13 Adrienne Tulari from Dubai to set up companies to steal money?

14 A. Yes.

15 Q. And you had observed she had been spending wildly on travel
16 expenses, right?

17 A. Yes.

18 Q. And in fact ever since Ruja left she had been acting like
19 she should be in control of OneCoin, right?

20 A. Yes.

21 Q. And she had access to all sorts of information about cash
22 coming in and cash going out that she wasn't sharing with
23 people, right?

24 A. Yes. This was the main problem for her.

25 Q. And you also testified that you believe she had forged not

JB79SC01

Ignatov - Cross

1 one but two powers of attorney?

2 A. Yes.

3 Q. And a power of attorney, so we understand that, is a
4 document that gives whoever has the power of attorney the right
5 to do things as if they were the person who gave them the
6 power, right?

7 A. Yes.

8 Q. So if you have a power of attorney that says you can access
9 Ruja Ignatova's bank accounts that could give you huge amounts
10 of money, right?

11 A. I don't know how much money she has in these bank accounts
12 but I could have access to her money.

13 Q. It's a pretty serious thing to forge, wouldn't you agree?

14 A. Yes.

15 Q. So you couldn't trust really a word that Ms. Dilkinska was
16 telling you in June 2018, right?

17 A. I had serious doubts about it.

18 Q. You certainly couldn't trust her about anything important
19 in your life?

20 A. No.

21 Q. I have just a few questions about Mr. Gilbert Armenta.

22 A. Yes.

23 Q. Do you remember testifying about Mr. Armenta yesterday?

24 A. Yes.

25 Q. I believe you testified you met him six or seven times or

JB79SC01

Ignatov - Cross

1 so; is that right?

2 A. Something around this, yes.

3 Q. Which would be five or six times more than Mr. Scott met
4 him?

5 A. Yes.

6 MR. DEVLIN-BROWN: If we can put up Government Exhibit
7 118, if you don't mind.

8 Q. So I believe you testified yesterday that this was some
9 sort of resort house that Ms. Ignatova had?

10 A. Yes.

11 Q. And you were there for a christening of her daughter?

12 A. Yes.

13 Q. Mr. Armenta was there as well?

14 A. Yes.

15 Q. Sebastian Greenwood was there?

16 A. Yes.

17 Q. Irina Dilkinska was there?

18 A. Yes.

19 Q. Mark Scott was not there?

20 A. No.

21 Q. And you stayed there for five days or so?

22 A. Yeah.

23 Q. You talked with Gilbert Armenta almost everyday?

24 A. Yes.

25 Q. But almost never about business, right?

JB79SC01

Ignatov - Cross

1 A. In most cases we were talking about dogs and his cats,
2 about sports and women.

3 Q. And you talked very little about business?

4 A. Yes.

5 Q. He never mentioned Mark Scott?

6 A. No.

7 Q. He did say, as I believe you testified on direct, quote,
8 Ruja is following me like a black shadow.

9 Do you remember that?

10 A. This I did not say. I said that he said the work he did
11 for and with Ruja is following him like a big black shadow.

12 Q. So you didn't say yesterday Ruja -- you didn't say he said
13 to you yesterday Ruja is following him like a black shadow?

14 A. No. I said the work he did with and for Ruja.

15 Q. I think -- that's fine.

16 And the prosecutors asked you what you understood that
17 to mean, following him like a black shadow, right?

18 A. Yes.

19 Q. And you responded that Ruja did not ask -- did not allow
20 you to ask a lot of questions or details of her friends or
21 business associates, right?

22 A. Yes. Otherwise I would get fired.

23 Q. But despite that you testified yesterday that based on his
24 reference to black shadow as to what you understood it meant, I
25 assume that Gilbert had a bank in Georgia, the European Georgia

JB79SC01

Ignatov - Cross

1 and Ruja has a lot of funds that might get frozen and I was
2 pretty sure Gilbert is involved in moving funds.

3 Do you remember saying that yesterday?

4 A. Well the thing is Ruja told me that they got to know each
5 other with this bank in Georgia. And at the time various times
6 money got frozen all over the world. So I think if you got
7 problematic funds it wouldn't be a problem having a boyfriend
8 who has a bank.

9 Q. But that's not what I asked you, right, just now?

10 A. Then please repeat it.

11 Q. I asked you about your testimony yesterday. When the
12 prosecutors asked you what you understood following him like a
13 black shadow to mean. And your answer was this long answer
14 that I just stated, wasn't it, about him having some bank in
15 Georgia and frozen funds, etc.?

16 A. Yes.

17 Q. That's what you understood him to mean from the phrase
18 black shadow?

19 A. I thought so. That's what I assumed.

20 Q. So you testified early on direct yesterday that
21 Ms. Ignatova, Ruja, your sister, was very well educated, right?

22 A. That she was what?

23 Q. Very well educated.

24 A. Yes.

25 Q. She went to Oxford in the U.K.?

JB79SC01

Ignatov - Cross

1 A. Yes.

2 Q. She had a Ph.D., right, or two?

3 A. I don't know exactly what a Ph.D. is. I don't know the
4 English word.

5 Q. Like a doctorate?

6 A. Yes. She had a doctor in law and a degree in economics.

7 Q. And she worked as McKinsey is what you understood?

8 A. Yes.

9 Q. Which is a big international consulting company?

10 A. Yes.

11 Q. You idolized Ruja, right?

12 A. Yes, I did.

13 Q. She had an impressive background and credentials to be a
14 business leader, right?

15 A. I didn't idolize her because of this.

16 Q. She also would exaggerate her background at times, right?

17 A. This I wouldn't say to be honest. Because about her
18 education she was always truthful.

19 Q. Do you remember before joining OneCoin seeing a Forbes
20 article about Ruja Ignatova?

21 A. Which was fake, yes.

22 Q. But you remember seeing an article from Forbes, a cover
23 that had her photo on it, right?

24 A. Yes. I remember it. I thought it was real because I even
25 showed this on my Facebook page.

JB79SC01

Ignatov - Cross

1 Q. At the time you actually believed she had been in Forbes,
2 right?

3 A. Yes.

4 Q. But it turned out to be some paid promotion with Forbes?

5 A. Yes.

6 MR. DEVLIN-BROWN: Do we have that exhibit,
7 Ms. Stanley?

8 MS. STANLEY: 827.

9 MR. DEVLIN-BROWN: 827. Could we show just the
10 witness and the attorneys Government Exhibit -- Defense Exhibit
11 827 for identification.

12 May I approach, your Honor?

13 THE COURT: You may.

14 Q. Is that is the Forbes magazine cover you were referring to?

15 A. Yes.

16 MR. DEVLIN-BROWN: We'd offer Exhibit 827.

17 MR. FOLLY: No objection.

18 THE COURT: 827 will be received.

19 (Defendant's Exhibit 827 received in evidence)

20 MR. DEVLIN-BROWN: Given the technological difficulty
21 may I just briefly show it to the jury, your Honor?

22 THE COURT: Sure.

23 Q. So Mr. Ignatov -- there we go. You can show it to the
24 jurors.

25 I think we've all seen it now. So let me move on to

JB79SC01

Ignatov - Cross

1 one more topic.

2 So you've testified now for a number of hours, between
3 the government and me, with respect to your dealings with
4 OneCoin over the years, right?

5 A. Yes.

6 Q. And the government has asked you lots of questions about
7 OneCoin and whether certain activities it was engaged in were
8 fraudulent, correct?

9 A. Yes.

10 Q. Do you remember answering a lot of those questions saying
11 well I learned later such and such was a fraudulent practice?

12 A. Some of them, yes.

13 Q. And I think the government asked you did you learn
14 everything all at once or was it something over time and I
15 think you answered over time, right?

16 A. Yes.

17 Q. Mr. Ignatov, you kept a journal, right?

18 A. Yes.

19 Q. Sort of a diary?

20 A. Yes.

21 Q. And I believe Dreamer Doer was the title on the page of the
22 diary?

23 A. This was the book, when you buy it, is called. This was a
24 present from a friend of mine.

25 MR. DEVLIN-BROWN: May I just show it to the witness

JB79SC01

Ignatov - Cross

1 for identification, your Honor?

2 THE COURT: Yes.

3 MR. DEVLIN-BROWN: It's Defense Exhibit 734.

4 Shall I hand one up to your Honor as well?

5 THE COURT: Sure.

6 Q. Is that the diary you kept to yourself?

7 A. Yes. First of all, excuse my handwriting.

8 Q. No one is looking at it yet.

9 So this diary you started in around April 2018?

10 A. Yes.

11 (Continued on next page)

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JB77SCO2

Ignatov - cross

1 BY MR. DEVLIN-BROWN:

2 Q. And you finished it around March of 2019 when you were
3 arrested, or near that time, right?

4 A. Yes.

5 Q. And you made dated entries on the pages of the diary,
6 right?

7 A. Yes.

8 Q. Not every day but some days you would make a dated entry.

9 A. These were days when I was traveling. I was in an
10 airplane.

11 Q. And you wrote those entries in the diary on the days that
12 you wrote them at a time when memories were fresh of what
13 happened that day and what you were feeling that day, right?

14 A. Yes.

15 Q. You wrote them down shortly after they happened, right?

16 A. Not shortly after they happened. Some of them might be
17 longer.

18 Q. But it was while your memory of the day in question or what
19 what you were feeling that day was still fresh?

20 A. This is exactly what I felt. As I said to you, I wrote
21 them when I was sitting in an airplane, and this is what I was
22 thinking about at that moment.

23 Q. So when you wrote a date and then you wrote what you were
24 thinking or feeling at that moment, that was sort of in almost
25 real-time, right?

JB77SCO2

Ignatov - cross

1 A. It was what I was feeling that moment, but it's not
2 guaranteed that it happened on this day.

3 Q. Now, you wrote this diary just for yourself, right?

4 A. Yes.

5 Q. You didn't think anyone would ever necessarily read these
6 private thoughts?

7 A. Not in a courtroom, no.

8 Q. Certainly not in this situation, right? In fact, when the
9 F.B.I. or the government asked you for the diary, you asked if
10 you really had to turn it over, right?

11 A. I don't recall asking this question.

12 Q. You were a little reluctant to turn it over, right?

13 A. I don't recall.

14 Q. You don't recall whether you were reluctant to provide the
15 diary to the government?

16 A. When I got arrested I gave everything that I had without
17 making any trouble.

18 Q. OK. So, I want to ask you about some of the experiences
19 you've had with OneCoin in your final year. You don't
20 necessarily have to look at that, but we can come to it if
21 necessary. So, in 2018 and up to 2019 you were traveling a
22 lot, right?

23 A. Yes.

24 Q. You were doing OneCoin presentations?

25 A. Yes.

JB77SCO2

Ignatov - cross

1 Q. Do you remember traveling to Africa and Mozambique among
2 other places?

3 A. Yes.

4 Q. Mozambique is in Africa. Do you remember traveling within
5 Africa and to Mozambique?

6 A. Yes.

7 Q. And in May of 2018 you spent a couple of days in
8 Mozambique; is that right?

9 A. One or two days, yes.

10 Q. And you remember seeing some of the poorest places but the
11 happiest people that you have ever seen in your life; do you
12 remember that?

13 A. Yes.

14 Q. And do you remember thinking at the time that seeing how
15 people went crazy for giving balls and toys to kids in the
16 villages could even bring a tear to your eye, right?

17 A. Could make what?

18 Q. Could bring a tear to your eye to see that.

19 A. Yes. Actually when I didn't work, this is what I was -- I
20 brought to villages some balls and toys, and when you see how
21 the kids -- I had gave out something like a toy, it was an
22 emotional moment.

23 Q. So it was very moving to see the children and people when
24 you were in Africa, right?

25 A. Yes.

JB77SCO2

Ignatov - cross

1 Q. And you were there for a OneCoin presentation, right?

2 A. Yes.

3 Q. Mr. Ignatov, in May of 2018 when you were there in Africa
4 for a OneCoin presentation you didn't think you were ripping
5 these people off, did you?

6 A. I know I am doing something wrong because I know for which
7 company I was working.

8 Q. So even in May of 2018 when you talked about -- when you
9 reflected on people's smiles and their love of life and the
10 beautiful things in it, you believed you were ripping those
11 people off?

12 A. At the events of OneCoin investors, yes.

13 Q. And the events for OneCoin investors involved people from
14 these countries, right?

15 A. Yes.

16 Q. Do you remember going to Africa again in October of 2018?

17 A. I think this was Uganda.

18 Q. And do you remember having similar reactions to visiting
19 Africa?

20 A. This time it was even a little bit harder, yes, but I
21 remember it.

22 Q. You remember people from the whole continent coming to see
23 you and knowing people would spend days on busses to meet you
24 and get to hear the OneCoin presentation?

25 A. Yes.

JB77SCO2

Ignatov - cross

1 Q. You believed in October 2018 you were ripping these people
2 off?

3 A. Yes.

4 Q. Well, in February 2019 -- that's just a few -- that's a
5 month or so before you were arrested, right?

6 A. Yes.

7 Q. Do you remember thinking or feeling at the time that there
8 is no guilty conscience working to make people rich?

9 A. Did I say this?

10 Q. Do you remember thinking that at the time?

11 A. At that moment I don't remember it because I wanted to
12 possibly very fast leave the company. But may I have a look?

13 Q. Yeah. If you could look at the page in there, if you can
14 find it -- if not, I will find a copy for you -- of February 4,
15 2019, and it's marked as 734-4 for identification. But you
16 have it in front of you, Mr. Ignatov?

17 A. Yes.

18 Q. So just read that to yourself, please. You can read as
19 much as you want but towards the bottom of the page especially.

20 So, does this refresh your memory that even on
21 February 4, 2019 you didn't feel a guilty conscience in making
22 people rich?

23 A. If we take it within the context, maybe.

24 Q. Sure. Don't read it but --

25 A. No, it is just me mentioning how exhausting meetings are,

JB77SCO2

Ignatov - cross

1 that actually going to a meeting is not a place where you can
2 expect something but only where people want something want from
3 you, where they expect something from you. And the thought
4 behind it was that people -- that I don't get any money for
5 these events, for all these travels, the only thing that's
6 offered to me that they pay for the flight and the hotel. And
7 I was talking the day before to my mother about it, and I
8 thought with my travels, I help people getting rich, so why
9 should I have a guilty conscience making them pay for the
10 flight.

11 Q. The bottom line is you didn't feel a guilty conscience in
12 February for making people rich, right?

13 A. This is again -- this is what I said, but if you take it in
14 the context what I said before then...

15 Q. Mr. Ignatov, you didn't go into OneCoin thinking it was a
16 fraud, right?

17 A. No.

18 Q. And until June of 2018 you believed that the blockchain
19 could be real.

20 A. I heard there were issues with it in Germany.

21 Q. And when you heard there were issues, you thought it was
22 possible to fix the issues.

23 A. This is what I was told, yes.

24 Q. And when you took over more of a leadership role of
25 OneCoin, you wanted to try to make it a good honest company,

JB77SCO2

Ignatov - redirect

1 right?

2 A. I wanted to try it, but you can't fix a fraud scheme to an
3 honest company.

4 Q. And you only -- that was a gradual process once you took it
5 over, learning just how fraudulent OneCoin was, right?

6 A. Well, from the very beginning I seen a lot of red flags.

7 Q. But it was a gradual process, right?

8 MR. FOLLY: Your Honor, I ask that he be allowed to
9 answer the question.

10 THE COURT: You can answer the last question Mr.
11 Devlin-Brown asked.

12 MR. DEVLIN-BROWN: Which I think was a gradual
13 process.

14 A. It was a process until I learned everything, yes. It
15 wasn't a moment where it happened.

16 Q. And you are still learning even more about that even today,
17 right?

18 A. Yes.

19 MR. DEVLIN-BROWN: One moment. Nothing further.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MR. FOLLY:

23 Q. Mr. Ignatov, do you recall yesterday and today you were
24 asked some questions on cross-examination about OneCoin's
25 blockchain?

JB77SCO2

Ignatov - redirect

1 A. Yes.

2 Q. And specifically you were asked some questions about when
3 you learned that there were some problems with OneCoin's
4 blockchain. Do you remember that?

5 A. Yes.

6 Q. Now, Mr. Ignatov, prior to learning that there were
7 problems with OneCoin's block chain, did you have an
8 understanding that OneCoin involved fraud?

9 A. Well, as I said, from the very beginning there were various
10 red flags for me. For example, seeing the presentations, this
11 was the biggest thing. People were promised to become
12 millionaires very quickly. Promises were made to the investors
13 that weren't kept. I've seen bags of cash. I heard bribes
14 were being paid. This is all things that I did not hear, for
15 example, in connection with Coca-Cola and Nike.

16 Q. And prior -- again, prior to learning about these specific
17 issues with OneCoin's blockchain, did you have an understanding
18 that OneCoin was making promises that were not true?

19 A. Yes.

20 Q. And those promises were being made to the investors; is
21 that right?

22 A. Yes.

23 Q. And to be clear, did your sister Ruja Ignatova ever tell
24 you that OneCoin was a fraud scheme?

25 A. No, exactly the opposite, she always tried to justify

JB77SCO2

Ignatov - redirect

1 everything and tell me that everything is a legitimate
2 business.

3 Q. And did you, nevertheless, reach an understanding that it
4 was a fraud scheme?

5 A. Yes.

6 Q. Can you publish what is in evidence as Government Exhibit
7 102 and highlight the top half of that e-mail chain.

8 Now, Mr. Ignatov, do you recall yesterday being asked
9 some questions about what happened after this time period of
10 October 2016 between Mark Scott and Ruja?

11 A. Yes.

12 MR. FOLLY: Your Honor, the government offers
13 Government Exhibit 1270 at this time.

14 MR. DEVLIN-BROWN: No objection.

15 THE COURT: 1270 will be received.

16 (Government Exhibit 1270 received in evidence)

17 Q. If we publish that and zoom in on the top half.

18 Now, Mr. Ignatov, the e-mail we looked at a moment ago
19 involving the discussion of the London city police
20 investigation, that was in October, correct?

21 A. Yes.

22 Q. Now, this e-mail is in November; is that right?

23 A. Yes.

24 Q. And this is an e-mail from Mark Scott to you dated November
25 1, 2016, and it says, "Hi Konstantin. No problem at all. I am

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Ignatov - redirect

1 working out when I can go. My fiancée is pregnant and has many
2 doctoral appointments over the next few weeks that I should
3 attend with her." Some other discussion of travel logistics.
4 And then Mr. Scott says, "I would prefer not meeting in Sofia
5 as I don't want too many travels there on my flight list."

6 Now, Mr. Ignatov, is this the e-mail you were
7 referring to yesterday when you indicated that Mr. Scott had
8 said that he would prefer not to come to Sofia at times?

9 A. Yes.

10 Q. Mr. Ignatov, you were asked some questions on
11 cross-examination about whether you participated in certain
12 meetings between Mark Scott and Ruja. Do you recall those
13 questions?

14 A. Yes.

15 Q. Mr. Ignatov, at the time Mark Scott came to Sofia,
16 Bulgaria, how long had you worked at OneCoin?

17 A. Two or three weeks maybe.

18 Q. And just to be specific -- because that question wasn't
19 clear -- when he came for the July 2016 meeting, how long had
20 you worked at OneCoin?

21 A. Yes, around two or three weeks.

22 Q. And what was your position at OneCoin at that time?

23 A. I was Ruja's personal assistant.

24 Q. And were you in that same position through the fall of 2017
25 when she disappeared?

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Ignatov - redirect

1 A. Yes.

2 Q. What were your main responsibilities in that position?

3 A. Logistics. For example, take care of her travels, to
4 arrange her flights, to schedule meetings for her. And Ruja;
5 loved shopping. When she ordered something from the Internet,
6 to make sure that everything goes to the right address.

7 Q. Would you attend meetings between Ruja and the other top
8 members at OneCoin management?

9 A. The only moment I entered this is when she called me to
10 bring some notebooks or something to drink.

11 Q. Who was the number one person at OneCoin?

12 A. Ruja Ignatova.

13 Q. Who was number two?

14 A. Sebastian Greenwood.

15 Q. Were you one of the managers before Ruja disappeared?

16 A. No.

17 Q. Did you have any involvement with the company's finances
18 before Ruja disappeared?

19 A. No.

20 Q. Did you use a crypto card?

21 A. No.

22 MR. DEVLIN-BROWN: Objection.

23 THE COURT: Overruled.

24 Q. Who were the people who used the crypto cards?

25 A. Ruja, Sebastian, Gilbert, Mark Scott and Irina.

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Ignatov - redirect

1 Q. I'm going to ask you a couple of questions about what
2 happened after Ruja disappeared. Let's focus on the time
3 period immediately after she disappeared. Can you describe
4 what happened during that time period?

5 A. The first two weeks, to be honest, everybody in the office
6 was happy she's not there because she is a very demanding
7 person. But then very fast panic broke out, speculations.
8 There were many anonymous blogs on the Internet who were
9 writing a lot of dirt. For example, there were articles that
10 my sister got executed, stuff like this, and a big panic in the
11 network broke out. Everybody thought that she is either dead
12 or that she got arrested.

13 Then at this time people from the network approached
14 me if I could present an event in Bangkok so that people see a
15 familiar face because I was traveling with her and people knew
16 that I am her brother, and people are not worried that much,
17 and so that I can dispel some of their concerns.

18 Q. What was your understanding of why the people at OneCoin
19 approached you to help dispel some of the concerns surrounding
20 Ruja's disappearance?

21 A. It was only because I was her brother and had the same
22 name, not that I had a special role in the company. After this
23 event the management even started printing me business cards so
24 that I appear more important than just as a personal assistant.

25 Q. Did you start communicating with some of the leaders at

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Ignatov - redirect

1 OneCoin with more frequency after Ruja disappeared?

2 A. Yes.

3 Q. Who became the face of OneCoin after Ruja's disappearance?

4 A. I.

5 Q. Was it after the time that Ruja disappeared that you began
6 to learn more about Mark Scott?

7 A. Yes.

8 Q. If we can go to Government Exhibit 3005 and turn to the
9 final page.

10 Mr. Ignatov, you were asked some questions on
11 cross-examination about this e-mail. Do you recall that?

12 A. Yes.

13 Q. And in particular Frank Schneider in this e-mail wrote to
14 you that there is a potential problem with Mark that you need
15 to know. What was your understanding of why he was informing
16 you about this potential problem with Mark.

17 A. Because I did not know it before.

18 Q. And what was the significance or the importance of the fact
19 that Mark might in fact be a highly placed U.S. informant?

20 A. They were giving him information about the company now, and
21 the ongoing fraud might lead to more prosecution.

22 Q. Mr. Ignatov --

23 You can take this exhibit down.

24 Mr. Ignatov, you were asked a question on
25 cross-examination about your guilty plea to bank fraud

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Ignatov - redirect

1 conspiracy. Do you recall that?

2 A. Yes.

3 Q. Now, during the time period that you were working for
4 OneCoin did you have an understanding that OneCoin was having
5 difficulties banking?

6 A. Yes.

7 Q. And I believe you testified on direct examination that they
8 were having accounts that were getting frozen; is that correct?

9 A. Yes.

10 Q. And you also testified that to solve that problem they were
11 using shell companies; is that correct?

12 A. Yes.

13 Q. Who managed those shell companies at OneCoin?

14 A. Irina Dilkinska.

15 Q. Did yourself manage any of those companies?

16 A. No.

17 Q. Did you yourself know what banks those companies had
18 accounts at?

19 A. No.

20 Q. But did you have an understanding that there were lies that
21 were being told to banks connected with those accounts?

22 A. Yes, they were under different names so they are not
23 connected to OneCoin.

24 Q. And did you have an understanding that lies were being told
25 about where the money was coming from into those accounts?

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Ignatov - recross

1 A. Yes.

2 Q. And did you have an understanding that lies were being told
3 about where the money was going out of those accounts?

4 A. Yes.

5 MR. FOLLY: No further questions, your Honor.

6 THE COURT: Anything more, Mr. Devlin-Brown?

7 MR. DEVLIN-BROWN: Just a brief recross.

8 RECROSS EXAMINATION

9 BY MR. DEVLIN-BROWN:

10 Q. You just testified a moment ago, Mr. Ignatov, that you
11 eventually -- you learned at some point that bank accounts were
12 being shut down, right?

13 A. Yes.

14 Q. And that you learned from Irina Dilkinska, right?

15 A. From Maya Antonova.

16 Q. Maya Antonova the accounting person for OneCoin, right?

17 A. Exactly.

18 Q. And you learned that around the summer of 2018, right?

19 A. Before.

20 Q. A few months before, right?

21 A. No, I learned that money got frozen constantly from almost
22 the very beginning since I started with OneCoin.

23 Q. You were just testifying at the beginning of redirect
24 examination about how you were just a personal assistant until
25 Ruja Ignatova left, right?

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Ignatov - recross

1 A. Yes.

2 Q. So, you're now testifying that when you were just a
3 personal assistant before Ruja Ignatova left that you knew
4 about banks accounts being frozen?

5 A. If you open Google and put up OneCoin, this was one of the
6 first things you saw.

7 Q. I'm not asking what someone might see if they go into
8 Google. I'm asking if when you were her personal assistant
9 someone -- Maya or someone else -- told you bank accounts were
10 being frozen for OneCoin.

11 A. Maya told me over the time that they were frozen, but I
12 knew from the very beginning. And I also heard once Irina or
13 Maya getting screamed at from Ruja because money got frozen. I
14 think it was in Germany.

15 Q. You just said you learned from the very beginning. So when
16 you first went to the Coin Rush in 2016 you knew bank accounts
17 were being frozen? Is that what you're saying?

18 A. Not from the beginning, but when I started working with the
19 company I started to Google.

20 Q. You never applied for any bank accounts, right, from
21 OneCoin?

22 A. No.

23 Q. You never saw any account opening documents, right?

24 A. Only the one, Phoenix Investment.

25 Q. Phoenix is not a bank account, right?

JB77SCO2

Ignatov - recross

1 A. This was the bank accounts opening statement.

2 Q. What bank?

3 A. That wean even saw here.

4 Q. Do you remember what bank it is?

5 A. United Bank of Dubai.

6 Q. You saw the account opening documents for United Bank of
7 Dubai?

8 A. Yes.

9 Q. Did you see any other bank statements at any time working
10 for OneCoin?

11 A. No.

12 Q. Do you know what people at OneCoin told the banks about
13 what their business was? You don't, right?

14 A. I know that it was not OneCoin.

15 Q. Well, you told the agents during debriefings that you
16 assumed the banks were told it was not OneCoin because
17 otherwise they would be shut down, right?

18 A. Yes.

19 Q. That was an assumption you made.

20 A. Yes.

21 MR. DEVLIN-BROWN: No further questions.

22 MR. FOLLY: No further questions, your Honor, for this
23 witness.

24 THE COURT: OK. Ladies and gentlemen, it's five
25 minutes to the hour, so we're going to break now; we're going

JB77SC02

Ignatov - recross

1 to break until ten minutes after the hour, so please be
2 prepared to come out then. Do not discuss the case.

3 OK, Mr. Ignatov, you may step down.

4 Thanks to the marshals service.

5 (Jury not present)

6 THE COURT: So, who is next?

7 MR. DIMASE: Your Honor, the government plans to call
8 Donald Semesky. Mr. Devlin-Brown's cross was much shorter than
9 the government anticipated, so Mr. Semesky is in a cab, but I
10 expect he will be here by the time the break is over.

11 THE COURT: You do?

12 MR. DIMASE: I do.

13 THE COURT: OK.

14 MR. DEVLIN-BROWN: Could I just raise one concern
15 based on conversations with the government yesterday? Because
16 as I understand it, Mr. Paul Spendiff of Apex has to be done
17 testifying by the end of the day tomorrow; he is going on some
18 travel arrangements. And I just want to be certain --
19 particularly given that the estimate for the direct of
20 Mr. Konstantin Ignatov went longer -- that we're not going to
21 run into a situation by calling Mr. Semesky first and the
22 defense is not going to have sufficient time to cross him
23 tomorrow. That's just my concern about the witness order.

24 THE COURT: Is that a basis for concern?

25 MR. FOLLY: Your Honor, we believe we will be able to

JB77SC02

Ignatov - recross

1 accomplish that objective, and based on Mr. Devlin-Brown's
2 representations, he doesn't think he will cross longer than the
3 direct will be, as I understand it, and if that's the case I
4 think we will be able to complete everything on that schedule.

5 Mr. Devlin-Brown's cross today went more quickly than
6 anticipated, and that made us more comfortable proceeding in
7 this order of calling these witnesses.

8 THE COURT: OK.

9 MR. DIMASE: For what it's worth, I think the next
10 witness will be somewhere in the ballpark of 45 minutes on
11 direct. Mr. Devlin-Brown has indicated a similar length of
12 cross, which would give us some time today to put Mr. Spendiff
13 on the stand and then all of tomorrow.

14 THE COURT: OK, it sounds like it should not be a
15 problem.

16 MR. DEVLIN-BROWN: It's the government's call.

17 THE COURT: OK. Don't be late.

18 (Recess)

19 (Continued on next page)

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25

JB77SCO2

Semesky - direct

1 (Jury present)

2 THE COURT: Will the government please call your next
3 witness.

4 MR. DIMASE: Yes, your Honor. The government calls
5 Donald Semesky.

6 DONALD SEMESKY,
7 called as a witness by the government,
8 having been duly sworn, testified as follows:

9 THE COURT: Please bring your seat up to the
10 microphone. Please speak directly into the microphone. And if
11 you can begin by stating your full name and spelling your first
12 and last name.

13 THE WITNESS: My name is Donald Charles Semesky, Jr.
14 First name is spelled D-o-n-a-l-d. Last name S-e-m-e-s-k-y.

15 THE COURT: Mr. DiMase.

16 MR. DIMASE: Thank you, your Honor.

17 DIRECT EXAMINATION

18 BY MR. DIMASE:

19 Q. Good morning, Mr. Semesky.

20 A. Good morning.

21 Q. What do you do for work?

22 A. I'm currently self-employed as an independent consultant
23 providing anti-money laundering compliance and investigative
24 services.

25 Q. How long have you been working as an independent

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Semesky - direct

1 consultant?

2 A. Since June of 2008.

3 Q. I'm going to take a moment to go back a little bit and ask
4 you about your educational background and your employment
5 background. Let's start with your educational background. Did
6 you attend college?

7 A. Yes, I did.

8 Q. Were you awarded a degree?

9 A. Yes, I was.

10 Q. AND what college and what degree?

11 A. I attended Villanova University and was awarded a Bachelor
12 of Science degree in accounting.

13 Q. And after graduation where did you go to work?

14 A. I went to work for the Internal Revenue Service. The
15 division was then known as the Intelligence Division. I was a
16 special agent, law enforcement criminal investigator. The
17 division later became known as the Criminal Investigation
18 Division.

19 Q. So the IRS is the Internal Revenue Service, correct?

20 A. That's correct.

21 Q. Many people know that as the organization that collects
22 taxes. What was the criminal division within the organization
23 that you worked for?

24 A. The Criminal Investigation Division investigates alleged
25 offenses of the Internal Revenue laws. I started in 1973, and

JB77SCO2

Semsky - direct

1 that was the division's sole authority at that point in time.

2 Later when we gained authority to investigate what is known as
3 the Bank Secrecy Act or the currency reporting requirements of
4 the United States, and then in 1986 the money laundering
5 statutes were enacted and the IRS was given authority along
6 with a number of other agencies to investigate alleged offenses
7 of those statutes as well.

8 Q. So you said you started in the IRS as a special agent in
9 1973?

10 A. That's correct.

11 Q. How many years have you served in that role?

12 A. A little over 30 years, to October 2003.

13 Q. And as a special agent working for the IRS in the Criminal
14 Investigations Division, could you describe for the jury some
15 of the various duties and responsibilities you had over that 30
16 year period, particularly with any focus during that time in
17 the area of money laundering.

18 A. Yes. In 1973, as I said, we investigated tax crimes
19 solely, and I was a field investigator for the first seven
20 years of my career, until 1980. At that point in time I
21 received a promotion to a position which was called the
22 investigative report reviewer. In that position I reviewed
23 other special agents' reports recommending prosecution and made
24 a decision whether those reports were ready to be forwarded to
25 the Department of Justice for prosecution.

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Semsky - direct

1 In 1982 I was assigned to the financial -- Maryland
2 Investigative Task Force, and that was a multi-agency task
3 force headed up by the U.S. Attorney's office for the District
4 of Maryland. It consisted of IRS, the F.B.I., the Drug
5 Enforcement Administration and the United States Customs
6 Service. And the mission of that task force was to identify
7 individuals that were handling large amounts of currency and
8 then make a decision and try to determine whether that currency
9 came from illegal activity. And if we had indication that it
10 had, then we would open up investigations and pursue that line
11 of inquiry.

12 In 1984 I was assigned as a regional coordinator
13 representing IRS on the Organized Crime Drug Enforcement Task
14 Force. It's commonly known by its acronym OCDEF. In that
15 capacity I oversaw all of IRS's investigative activity on major
16 narcotics investigations for the mid Atlantic region. And like
17 the financial task force that I mentioned, it was a
18 multi-agency. This actually was nine different agencies
19 involved again under the U.S. Attorney's office and in the core
20 city which was Baltimore for the region. I held that position
21 until 1994, and then I was assigned back to the field as a
22 field investigator again on the financial task force, and in
23 that capacity investigated primarily money laundering offenses.

24 As I mentioned, money laundering statutes were passed
25 in 1986, so at that point I was the OCDEF coordinator for the

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Semesky - direct

1 Mid Atlantic region, so I oversaw all of the money laundering
2 investigations -- drug-related investigations that the IRS was
3 conducting within the region during that period of time and
4 conducted investigations of my own once I went back to the
5 financial task force.

6 In 2000 I was promoted and reassigned to IRS criminal
7 investigation headquarters and was assigned as the liaison to
8 the Office of National Drug Control Policy. And that office is
9 an agency of the Executive Office of the President. It's
10 commonly referred to as the Drug Czar's office. And my primary
11 responsibility in that office was to act as the money
12 laundering policy advisor to the Drug Czar and his staff. I
13 held that position until July 2003 when I went to the DEA.

14 Q. And about how many investigations during the 30 years you
15 worked at IRS were you personally involved in some way money
16 laundering?

17 A. In some capacity probably several hundred.

18 Q. You said that in 2003 you moved to the DEA. And that's the
19 Drug Enforcement Administration?

20 A. That's correct.

21 Q. And what role did you take on there?

22 A. I was assigned to DEA headquarters, and I was tasked with
23 standing up the Office of Financial Operations which is the
24 headquarters level division within the Drug Enforcement
25 Administration, and I became the first chief of that division.

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Semesky - direct

1 In that capacity I oversaw all of the DEA's financial
2 investigations and money laundering investigations globally.
3 The DEA has a global presence in 86 countries around the world.
4 And I assisted -- I set policy and strategy and designed
5 programs to help accomplish the DEA's counter drug mission
6 through financial investigations.

7 Q. And how long did you hold that position for, Mr. Semesky?

8 A. I held that position through May of 2008, when I retired
9 from the DEA and became an independent consultant.

10 Q. And did you continue to have a relationship with the DEA
11 after you left in 2008?

12 A. Yes, I did. I was about two months from retirement --
13 mandatory retirement -- and the administrator at the time,
14 Michelle Linhart, asked me to stay on with the DEA, and we
15 worked out a consulting agreement, and I stayed with the DEA
16 providing policy, strategic and investigative consulting for
17 the Agency up until the end of September of this year.

18 Q. In what area?

19 A. The primary area was money laundering investigation.

20 Q. Mr. Semesky, during your career have you had association
21 with any advisory board or anti-money laundering groups?

22 A. Yes. I am a member of the advisory board for an
23 association known as the Association of Certified Financial
24 Crime Specialists. I am also on the board of advisors of a
25 publication service in Bogota, Colombia known as INFOLAFT.

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Semesky - direct

1 It's an acronym basically meaning anti-money laundering -- or
2 the laundering of illegal powers.

3 Q. And have you also served on any joint government working
4 groups involving federal agencies on the area of money
5 laundering?

6 A. Yes. In my capacity with both IRS at the Drug Czar's
7 office and then later with DEA I sat on a number of working
8 groups in the Washington -- interagency working groups in the
9 Washington area. The black market peso exchange working group
10 which was -- the black market peso exchange is a mechanism by
11 which the drug cartels sell their drug proceeds to other
12 parties as a means of laundering the money.

13 I was also a member of the High Intensity Financial
14 Crime Area Working Group; the Money Laundering Working Group;
15 and I was also DEA's representative on the King Pin Committee
16 which was chaired by the Office of Foreign Assets Control, and
17 that is the office of the Treasury Department that sanctions
18 through designation of high-level drug traffickers, money
19 launderers, and then also they have sanctions jurisdiction for
20 terrorism and weapons of proliferation.

21 Q. Mr. Semesky, have you been involved in the drafting and
22 issuance of national money laundering threat assessments?

23 A. Yes, I have.

24 Q. Have you published articles regarding money laundering?

25 A. Yes.

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Semesky - direct

1 Q. Have you taught in your field?

2 A. Yes, I have taught extensively both domestically to
3 virtually every federal investigative agency that has
4 jurisdiction for money laundering, as well as probably most of
5 the states in the U.S., law enforcement, prosecutorial and
6 judicial officials.

7 I have also trained the same types of categories of
8 officials for foreign countries, I would estimate over a
9 hundred different foreign countries.

10 Q. And have you been involved in the design of money
11 laundering training programs yourself?

12 A. Yes.

13 Q. Have you testified in court before regarding the
14 techniques, means and methods of money laundering?

15 A. Yes, I have.

16 Q. About how many times have you testified in court?

17 A. I've testified I believe in 53 trials and 23 federal
18 judicial districts in the areas of money laundering, financial
19 investigation and methods and techniques used to hide income or
20 to launder money.

21 Q. Have you been qualified as an expert some of the times that
22 you've testified?

23 A. Yes, I would estimate probably about two thirds of the
24 trials that I testified in I was offered and qualified as an
25 expert witness.

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Semesky - direct

1 Q. Was there ever a time when you were offered as an expert
2 but the court declined to qualify you as an expert?

3 A. No, there was not.

4 MR. DIMASE: Your Honor, the government requests that
5 Mr. Semesky be qualified as an expert in the techniques, means
6 and methods of money laundering.

7 THE COURT: Any objection?

8 MR. DEVLIN-BROWN: No, this won't break his record.

9 THE COURT: Very well. So his testimony will be
10 allowed as expert testimony on the techniques, means and
11 methods of money laundering.

12 Mr. DiMase.

13 Q. Mr. Semesky, of the cases in which you previously testified
14 have you testified on behalf of the United States?

15 A. Yes, I have.

16 Q. Have you also in some cases consulted on behalf of criminal
17 defendants?

18 A. Yes, I have. And one criminal defendant in the United
19 States, one in Colombia and one in Peru.

20 Q. Are you being compensated in connection with your work
21 involving this case?

22 A. Yes, I am.

23 Q. What's your hourly rate?

24 A. It's \$150 an hour.

25 Q. Is your rate for testifying any different from your rate

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Semsky - direct

1 for preparing to testify?

2 A. No, it's the same.

3 Q. And is the rate you charge the U.S. government the same or
4 a different rate than you charge other clients?

5 A. It's less than I charge other clients.

6 Q. What do you charge other clients ballpark?

7 A. It can range anywhere from \$175 an hour to \$325 an hour.

8 Q. And why do you offer a different rate to the government?

9 A. I figured the government employed me for 46 years and
10 provides me with a pension, so I can give them a discount.

11 Q. Have you met with the government previously to prepare for
12 your testimony today?

13 A. Yes, I have.

14 Q. Have you been paid yet for your work?

15 A. No, I have not.

16 Q. Let's talk briefly about your involvement in this
17 particular case. Have you been asked to review any materials
18 related to this particular case?

19 A. No, I have not.

20 Q. Have you even reviewed the charges or the indictment in
21 connection with this case?

22 A. No.

23 Q. Do you have any personal knowledge regarding particular
24 facts of this case?

25 A. No, I do not.

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Semesky - direct

1 Q. Have you been asked to render any kind of opinion whether
2 the conduct of the defendant in this case constitutes money
3 laundering or any other offense?

4 A. No, I have not.

5 Q. What kind of information are you here to testify about
6 today for the jury?

7 A. As far as I've been told, just general information on money
8 laundering methods and techniques.

9 Q. So let's start with the concept of money laundering. Could
10 you briefly describe to the members of the jury what money
11 laundering is.

12 A. OK. Simply put, money laundering is the taking of proceeds
13 or money earned through illegal activity, and then through one
14 or more financial transactions or physical movements, or
15 combination of the two, distancing that money from its original
16 illegal source, and also giving the money the appearance of
17 coming from a legal source, which could also include either the
18 complete concealment of the funds or the appearance of legal
19 source income that can then be spent by the true beneficial
20 owner without any connection to the illegal activity.

21 Q. You use the word beneficial owner. What does that mean?

22 A. Beneficial owner is the person who derived the money from
23 illegal activity.

24 Q. The real owner.

25 A. The real owner of the money.

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Semsky - direct

1 Q. Mr. Semsky, in your experience can the act of money
2 laundering be broken down into different stages?

3 A. The money laundering cycle is typically broken down into
4 three separate stages. The first stage is known as the
5 placement stage. And by placement stage that is where illegal
6 funds are placed into the financial system, and that enables
7 the money launderer, or the person, or the criminal that
8 generated the money, to do other types of transactions to
9 further conceal or launder the money and to move the money very
10 quickly around the world if need be.

11 Q. Let me stop you there. When you say financial system,
12 basically what do you mean?

13 A. Financial system is primarily banks but could also be
14 investment brokerage houses. It can be wire transmission
15 companies, any other type of financial institution.

16 Q. And so after placement, what is the second stage?

17 A. The second stage is known as layering. By layering in the
18 money laundering cycle that is -- and again it's dependent on
19 the sophistication and desired end game or goal of the money
20 laundering -- to put the money through a number of different
21 transactions or movements to again, as I said, distance the
22 money, to disguise the nature of the money as if it came from a
23 legal source instead of an illegal source, and to also conceal
24 the true ownership of the money.

25 Q. And you said there was a third face. What is the third

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Semesky - direct

1 stage?

2 A. The third stage is the integration stage. By integration I
3 mean at the point where the money, to the satisfaction of the
4 true owner and the money launderer, has gone through enough
5 layering that it has lost its connection to the illegal source.
6 Then the money can be brought out as legally earned funds and
7 used however the true owner or beneficial owner sees fit.

8 Q. For example, to buy things?

9 A. To buy assets, to invest, to make deposits into other bank
10 accounts.

11 Q. Mr. Semesky, are all three of those stages necessary
12 components of money laundering?

13 A. No, they are not. The money laundering can be accomplished
14 or fall short in any one of those stages but still has entered
15 the cycle.

16 Q. Is there any one way to launder money?

17 A. No, not at all. Money laundering is really an art form
18 more than a science, and it's really dependent on the financial
19 sophistication, the creativity and the connections that the
20 money launderer has enabling it to set up primarily the
21 placement and then the layering stages.

22 Q. Let me turn to a different topic. Are you familiar with
23 the term white collar crime?

24 A. Yes, I am.

25 Q. And generally speaking, what does that term refer to?

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Semsky - direct

1 A. White collar crime is generally the term used for illegal
2 proceeds or illegal activity that is more in the business
3 nature rather than crimes of violence such as drug trafficking,
4 prostitution, human trafficking. White collar is more
5 associated with businesses, tax evasion. Tax evasion is
6 considered a white collar crime. Fraud is considered a white
7 collar crime. And there are a number of other activities.
8 Fraud covers a very wide range of illegal activity, and it's
9 all considered white collar.

10 Q. And can you tell the jury in the context of money
11 laundering in general what is the difference between money
12 laundering in the white collar crime context versus the
13 narcotics violent crime context?

14 A. The primary difference is the form that the money is at the
15 time it's generated. In crimes of violence -- as I mentioned
16 narcotics trafficking being a primary one -- the money is
17 generated in the form of cash, and cash, as you can imagine,
18 presents an added burden on a money launderer or narcotics
19 trafficker if they try to place that cash into the financial
20 system.

21 White collar crime -- as I mentioned, tax evasion is
22 considered a white collar crime, fraud is considered a white
23 collar crime -- and typically that money is placed into --
24 especially in the area of fraud -- is placed into the banking
25 system or the financial system by the victim. So at the time

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1 the money is involved in the fraud it's already in the banking
2 system as opposed to a typical narcotics money laundering
3 scenario.

4 Q. And why would there be a need in your experience for
5 individuals involved in white collar crime to launder the
6 proceeds of their criminal activity?

7 A. Because it's still generated by criminal activity, and at
8 that first stage, especially when it's placed by a victim, the
9 victim knows where they sent the money, so that money has to be
10 moved, and the further and the more layering and further away
11 from the original placement by the victim into the banking
12 system, the better and more sophisticated the laundering cycle.

13 Q. Let's turn now, Mr. Semesky, to some of the common methods
14 and techniques of laundering money that you observed in your
15 experience, particularly in the area of white collar crime.

16 Are you familiar with the use of shell companies for
17 the purpose of laundering criminal proceeds?

18 A. Yes, I am.

19 Q. What is a shell company?

20 A. A shell company or a shell corporation is a company that
21 has no physical presence; it exists on paper. And usually a
22 shell company is incorporated for the purpose of opening up a
23 bank account and being a legal owner of that bank account or
24 legal name on the account for acquiring an asset. For the same
25 reason the legal owner would be the shell corporation. Or

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1 entering into a business endeavor where everything would be
2 under that shell company name, and the purpose for that is
3 typically to limit legal liability to that one business.

4 Q. So to be clear, in your experience can there be legitimate
5 reasons for people in business to utilize shell companies?

6 A. Yes.

7 Q. And in your experience are there also illegitimate reasons
8 for people to use shell companies in the context of money
9 laundering?

10 A. Yes.

11 Q. Mr. Semesky, in your experience, can you describe how
12 people involved in money laundering can utilize shell company
13 structures?

14 A. Well, it all kind of blends together, but the use of shell
15 companies initially when the money is placed, if it's in a
16 shell corporate name, number one, the corporation -- and even a
17 shell company -- will have some kind of corporate
18 organizational papers or articles which will be presented to a
19 bank for purposes of opening an account or presented during the
20 acquisition of an asset.

21 The shell companies and probably the major technique
22 that is used is to layer the shell companies and layer them in
23 different jurisdictions. What I mean by that is that if shell
24 company A is the first site of deposit of illegal funds, if
25 those funds are then transferred to a bank account, say shell

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1 company A in the United States, shell company B is in the
2 Cayman Islands. So you transferred the money to an offshore
3 jurisdiction that has bank secrecy and historically has not
4 been a friendly jurisdiction for gaining information as to the
5 true owner of that company. And that company may be owned by
6 then yet another shell company in Panama. And to get to the
7 true owner you have to first go to the Cayman Islands and then
8 once -- and it could take a year or two at least to get that
9 information. Then you have to go to Panama to get the
10 information on the owner of that, which could then be owned by
11 yet another company. Those companies all will have bank
12 accounts, and the money can be transferred between all of those
13 accounts for various reasons. There is usually business
14 transactions, supposed business transactions, to again give the
15 appearance of those funds being generated by legal activity.

16 Q. Let me turn to a second concept, the concept of a nominee.
17 Are you familiar with the word nominee?

18 A. Yes, I am.

19 Q. What does that refer to?

20 A. A nominee is a person who allows the use of their name and
21 identifying information and possibly business to stand in as
22 the true owner of illegal money or an illegally acquired asset.
23 The nominee is usually compensated for this activity, or they
24 may act as a nominee due to a close personal relationship with
25 either the criminal or the money launderer, or they can be

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1 both; they could have that relationship and also be
2 compensated.

3 Typically what you will see is a nominee -- if a
4 nominee is going to be used one time or maybe twice for their
5 information to be used to open up an account or to conduct a
6 transaction there will not be that close relationship. The
7 close relationship is more needed by the money launderer and
8 the criminal when the asset is going to be in their name for a
9 long period of time or there will be a continuing number of
10 transactions where they have to depend on that relationship to
11 make sure that the nominee will, number one, stand up to
12 scrutiny and, number two, be loyal to them and to remain the
13 front person or as the true owner of the property.

14 Q. I think you have basically answered this question, but just
15 to be clear, what is the purpose of using the nominee in the
16 context of money laundering?

17 A. Again, like I said, the purpose is to act as the true
18 owner, to stand in place of the real true owner and to act as
19 the true owner with the purpose being to conceal the true
20 ownership of the money or the asset.

21 Q. A moment ago I think you also mentioned something about the
22 ability to stand up to scrutiny or withstand scrutiny. What
23 did you mean by that?

24 A. If government authorities -- or even the banks now have
25 anti-money laundering compliance requirements. I will start

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1 with the banks -- and other financial institutions as well --
2 not just in the United States but around the world, they look
3 at money coming into and going out of their institution to see
4 if the transaction makes sense, makes business sense, and if
5 their customer can justify the amount of funds being received
6 or transferred.

7 That is more of a new phenomenon in law enforcement,
8 which for decades has been chasing criminally derived money.
9 So, the scrutiny has to be on the front end with the bank now
10 and then on the back end with law enforcement should the scheme
11 or the illegal activity be discovered and the investigation
12 started.

13 So, when the money gets to a certain point in time
14 when the audit trail is followed, law enforcement gets to a
15 certain transaction, there will be a lot of scrutiny, and a
16 nominee that can justify the amount of money and has the
17 paperwork to justify why that money has come to them will be
18 able to withstand the scrutiny of law enforcement.

19 Q. And going back to the nominee concept, in what role might a
20 nominee serve for a shell company, for example?

21 A. Well, the roles could be in the initial incorporation, it
22 would be the directors of the corporation or listed as the
23 beneficial owner. A number of states in the U.S. require the
24 disclosure of beneficial ownership, but virtually no state in
25 the United States verifies that ownership. And it's the same,

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1 many countries around the world do not require the disclosure
2 of beneficial ownership.

3 Q. In other words, in that case the nominee would be listed a
4 as the beneficial owner even though they would not the true
5 owner.

6 A. That's correct.

7 Q. In your experience, Mr. Semesky, are there times when a
8 money launderer might move funds through companies registered
9 in their own name?

10 A. Yes.

11 Q. And under what sort of circumstances?

12 A. Again, that gets to the scrutiny. If the money launderer
13 has the wherewithal, the business activity and the wealth to
14 justify the amount of criminal funds being introduced in their
15 bank accounts, that is actually a very effective means of
16 laundering money. In those occasions their company would be
17 known more as a front company rather than a shell corporation.
18 A front company actually has a physical presence, actually
19 conducts business, and has a justifiable reason to be receiving
20 money into their bank accounts and dispersing money.

21 Q. Let's move on to the topic you've discussed, the concept of
22 layering. In terms of layering involving various bank
23 accounts, how does that process work in the context of money
24 laundering?

25 A. Well, bank accounts, again with money laundering the bank

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1 accounts are going to be in different names and different
2 owners, different corporations, and each of those bank accounts
3 would be set up with, you know, a justification to the bank as
4 to who the owner of the account is, and the expected volume of
5 money going through the account, as well as the purpose of the
6 business. And usually that is satisfied by the production of
7 the corporate organizational papers to the bank.

8 Q. And so what is the purpose of moving money through, for
9 example, more than one bank account or more than one company
10 bank account in the process of laundering money?

11 A. Because if money moves between bank accounts it changes
12 ownership, so if the money moves from company A, when it's
13 sitting in company A's bank account it belongs to company A.
14 When it moves to company B, it belongs to company B.

15 So, say company A comes under scrutiny or the audit
16 trail leads the government to company A, unless they can then
17 prove, number one that company A was complicit -- and even if
18 they can, then when the money transfers to company B, that's a
19 new ownership, and if the government cannot prove that company
20 B was involved in the money laundering cycle or conspiracy,
21 they would have a very difficult time seizing or forfeiting
22 those funds and assigning ownership to the funds.

23 Q. And is there any other reason to move money to a series of
24 bank accounts as opposed to just one account?

25 A. Well, again, especially in layering among multiple

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1 jurisdictions it takes the government a long time to get the
2 information needed to assign ownership and be able to locate
3 the funds, and during that period of time the money can be
4 taken out and moved somewhere else during that cycle of the
5 investigation. What they're buying is time, and they're buying
6 time to move the money, to disperse the money where it cannot
7 be found.

8 Q. And how does each movement to another bank account distance
9 the funds from the original owner?

10 A. Again, it's because of the names on the accounts,
11 especially when you're using nominees to open up the accounts
12 or shell corporations. As I said, it's different owners.
13 Every time it moves it distances it from illegal activity and
14 further distances it from the true owner.

15 Q. Let me now move to another area. Are you familiar with the
16 term offshore bank or offshore financial institution?

17 A. Yes, I am.

18 Q. What does that refer to?

19 A. Offshore is a name that's been given to jurisdictions. It
20 can mean any country outside the United States as far as the
21 U.S. authorities, but it's typically used as a classification
22 of jurisdiction that historically have had strict bank secrecy
23 laws and at times -- although there are very few anymore --
24 numbered accounts where the true owner is not even listed on
25 the account or even the nominee owner, or has very lacks

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1 oversight of its financial system. As I said, many countries
2 don't require the disclosure of a beneficial owner of a company
3 or a bank account.

4 Q. What are some of those jurisdictions?

5 A. The ones that are typically named are, as I mentioned, the
6 Cayman Islands before, British Virgin Islands, Antigua, St.
7 Kitts and Nevis in the Carribean, and then there are others.
8 In Europe it would be Switzerland has always been a prime
9 country known as an offshore jurisdiction. Lichtenstein,
10 Luxembourg. The United Kingdom is actually known as a place to
11 launder money. If you go to the Far East in Asia, Hong Kong,
12 Singapore. In the Pacific, countries, small islands like
13 Nauru. Off the coast of Africa there is an island called
14 Mauritius. They are all known as money laundering havens or
15 offshore jurisdictions.

16 Q. In your experience, why do people who are involved in money
17 laundering activities utilize offshore banks and offshore
18 financial institutions to engage in money laundering?

19 A. It makes it harder to track down the money itself. It
20 makes it harder to identify the true ownership. And, as I
21 said, it gives the money launderer and the true owner time to
22 move the funds if they become aware of an investigation.

23 Q. And are there other reasons that people engaged in money
24 laundering might choose to avoid banking institutions here in
25 the United States?

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1 A. I'm sorry?

2 Q. Are there other reasons why individuals involved in money
3 laundering might choose to avoid the use of banks and financial
4 institutions here in the United States?

5 A. Yes, there are. The United States law enforcement agencies
6 are by far the most aggressive and have the most robust
7 jurisdiction and resources to investigate money laundering, to
8 take down illegal assets and to seize illegal assets, and also
9 have the wherewithal and the connections globally to work with
10 foreign counterparts to gain their cooperation. So, the more
11 the United States can be avoided for purposes of laundering
12 money, usually the better for the money launderer or the
13 criminal.

14 Q. In your experience, is it easy or difficult for individuals
15 involved in money laundering to entirely avoid the United
16 States?

17 A. It's usually very difficult, because any transfer in United
18 States dollars has to transit the United States, and most
19 foreign banks are underwritten, their monetary instruments like
20 their cashiers checks or bank checks are underwritten and held
21 in U.S. dollars in the United States, so they clear here. So,
22 in some way a financial transaction, any financial transaction
23 in U.S. dollars, is going to touch the United States.

24 Q. Let me move to another area which is representations made
25 to banks and financial institutions. Are you familiar with the

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1 representations made to those entities in the process of
2 opening accounts plays in the laundering of funds through such
3 financial institutions?

4 A. Yes.

5 Q. Are you familiar with the term onboarding?

6 A. Yes, I am.

7 Q. What does that term mean?

8 A. Onboarding is a term given by financial institutions to new
9 customer application and acceptance. So they are actually
10 onboarding or bringing a new customer into the bank, into the
11 brokerage service, into the wired remission service. That's
12 all known as the onboarding process.

13 Q. And how might representations made during the onboarding
14 process as a financial institution relate to the laundering of
15 funds through such an institution?

16 A. OK. Well, as I mentioned, banks now have anti-money
17 laundering compliance requirements, and part of those
18 requirements means that new customers get a much harder look
19 and much deeper scrutiny than they did in years past. So
20 during the onboarding process many institutions will inquire as
21 to, as I said, the expected volume. They also run a credit
22 check on a new customer. They will look for expected volume to
23 go through the account, and then also the purpose of the
24 account, why are you opening this account. Is it personal? Is
25 it business? What type of business do you have?

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1 So, the representations made by the money launderer at
2 the time of onboarding are very important to explain the
3 expected activity that will be going through the account and
4 also to give the bank a comfort level that the money that they
5 will see go through the account is coming from a legal source.

6 Q. In other words, to give the bank the impression that the
7 funds flowing through the account are legitimate.

8 A. That's correct.

9 Q. And let me turn to a related topic. Are you familiar with
10 the role that representations made in connection with wire
11 transfers might play in the laundering of funds through
12 financial institutions?

13 A. Yes, I am.

14 Q. Are you familiar with the term payment message?

15 A. Yes.

16 Q. What is a payment message?

17 A. A payment message is the direction that a customer gives to
18 his or her bank to make a wire transfer, so to transfer money
19 by electronic means from their account to another account.

20 And in a wire transfer scenario the customer that's
21 wiring the money is known as the originator, and the customer
22 or the person receiving the money or the company receiving the
23 money is known as the beneficiary. So, it's the originator,
24 the originator's bank, the beneficiary and the beneficiary
25 bank.

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1 A message, a typical wire transfer message, will
2 contain all of the details of the originator, the originator's
3 bank, to include the account number and the amount of money
4 involved, as well as usually it will have a notation for the
5 receiver, meaning that this the purpose of this transfer is to
6 pay invoice number 123. OK? And they may send it to the
7 attention of John Doe. That will all be in the notation
8 section of a wire transfer message.

9 The receiving bank will when they receive that
10 message, once the account -- once the money is settled, they
11 will credit the beneficiary's account for the amount of money
12 in the wire transfer based on the instructions given in the
13 wire message.

14 Q. And is that true both domestic and international wire
15 transfers?

16 A. That's true, yes.

17 Q. And without getting into the details, are there times when
18 there are intermediary banks involved in the middle of a
19 transfer between the originating bank and the receiving bank?

20 A. Yes. And I'll put this as simple as possible. If the
21 originating bank and the beneficiary bank do not have a
22 relationship -- and they call it a correspondent
23 relationship -- then they will use other banks as
24 intermediaries that do have correspondent relationships with
25 either both of those banks or one or the other. So you may

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1 have at least four and sometimes more banks involved in a
2 single wire transfer.

3 Q. And have you heard the term swift message or swift payment
4 message?

5 A. Yes.

6 Q. Is that one form of a wire payment message?

7 A. Yes. Swift is a clearing process which involves messaging
8 between banks.

9 Q. Now going back to the original question I asked in this
10 area, how might representations made in connection with wire
11 transfers in such payment messages relate to the laundering of
12 funds through the wire transfers?

13 A. It could be done in several ways. Information could be
14 withheld, which would not give the true purpose of the
15 transaction, or false information may be given as to the
16 purpose of the transfer, or the attention or the name again of
17 the receiving party, again if it's a nominee, it's false
18 information.

19 Q. When you say -- could you explain the last part.

20 A. Yes. If the recipient or the beneficiary of the wire
21 transfer is not the true owner of the company, say the shell
22 corporation who owns the account, again by inserting their name
23 into the wire messaging or the payment message, that's again
24 false information that again distances the money from the
25 original source and the true owner.

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1 Q. And is that equally true with respect to the originating
2 party as well?

3 A. Yes, it is.

4 Q. Let me turn to -- one moment.

5 So, just two final areas, Mr. Semesky. You were
6 testifying earlier about layering. Are you familiar with the
7 use of law firm escrow accounts in the process of layering
8 funds for the purpose of laundering the funds?

9 A. Yes, I am.

10 Q. And in what way might a person involved in money laundering
11 utilize a law firm escrow account as part of the layering
12 process?

13 A. OK. There are a number of ways that an escrow account may
14 be used. One of the primary reasons is to acquire an asset, so
15 the purpose of the laundering is to acquire an asset either
16 domestically or in a foreign jurisdiction. Typically that
17 money would first go to a law firm's escrow account, and that
18 firm would then handle the settlement on the property and
19 disperse the money.

20 The fact that the money is going into a law firm
21 account, again as far as the bank that holds -- the dispersing
22 bank, they're seeing it going to a law firm. That is a normal
23 business transaction and will not raise any particular scrutiny
24 by the bank. The law firm's bank, again it's a normal way of
25 doing business; they receive funds into the account all the

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1 time, so it will raise no suspicion on the part of that bank.
2 And then the disbursement for either to settle a real estate
3 transaction or to make an investment on behalf of a client
4 again should not set off any alerts in the bank's anti-money
5 laundering software.

6 The law firm escrow account can be used to -- as I
7 said, it's an escrow account so it's holding money, it's
8 holding money for a purpose, and the purpose could be for a
9 business deal. And if the business deal falls through, if it's
10 in fact supposed to fall through and set up to look like a
11 business deal, once it falls through the client can then
12 redirect the money or the law firm to send the money to yet
13 another third-party account that would be a further layering of
14 the transactions. And again that third-party account, their
15 bank is going to see the money coming in from a law firm
16 account. Again, it raises the comfort level and lessens the
17 risk associated with that transaction so the bank is less
18 likely to alert and look at that and scrutinize that
19 transaction.

20 (Continued on next page)

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1 Q. And is it fair to say, Mr. Semesky, that that kind of
2 activity could take place with or without the knowledge of the
3 lawyer or the law firm that was in charge of the account?

4 A. That's correct.

5 Q. Let me turn finally to the concept of papering or papering
6 a transaction. Are you familiar with that term?

7 A. Yes, I am.

8 Q. What does the term papering refer to?

9 A. Papering is a term given to the creation of business
10 documents to justify the transfer of money. So what I mean by
11 that is if money is going to be transferred from shell
12 corporate account A to shell corporate account B, a contract or
13 an investment agreement or a debt obligation or a loan could be
14 created. The paperwork could be created to -- that would
15 require a payment to leave the account of company A and be
16 transferred to the account of company B. It would -- again,
17 this gives a comfort level to the bank that the money is
18 involved in a legal transaction and is far less likely to cause
19 an alert in their anti-money laundering software.

20 Some countries require any amounts over a certain
21 let's say ten thousand dollars, just to pick an amount, that
22 the company receiving the money actually produce the documents
23 associated with the transaction. There are types of
24 transactions in any country such as the sale or purchase of
25 commodities, trade goods, that require -- that are financed

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1 through some type of trade finance agreement such as a letter
2 of credit where the bank holds the money basically in escrow, a
3 bank does, and it requires the production of custom documents
4 and bills of lading to show that the goods were actually
5 shipped and received by the party that purchased them before
6 they will release the funds to the beneficiary or to the seller
7 of the goods.

8 Again, this is done in business all the time. It's a
9 very normal transaction. The banks see these types of
10 documents all the time. If this type of paperwork is created
11 to justify a completely fictitious transaction, again, if the
12 paperwork is not completely identifiable as fictitious or phony
13 and is done somewhat professionally it will probably pass the
14 scrutiny of the bank.

15 Q. And you mentioned one particular example at the end of that
16 answer regarding bills of lading. Is it fair to say that's
17 just one of many potential ways to paper a transaction?

18 A. That's correct.

19 Q. And I think you've basically spoken to this but what is the
20 purpose of papering a transaction? Is it just with respect to
21 the bank or is it also with respect to other entities?

22 A. Again, the purpose of papering a transaction is to show
23 that the money was involved in a legal transaction or a legal
24 business transaction.

25 Again, it raises the comfort level of the banks

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Semesky - Cross

1 involved in the transaction and it could also stall or
2 completely stop a government investigation as far as being able
3 to identify illegal funds that can be seized and forfeited.

4 Q. Mr. Semesky, one last question for you. Is there any one
5 way to paper a transaction in the money laundering context?

6 A. No. No. It would depend on the parties involved, their
7 ability to create the documents, the banks, what they feel the
8 banks need and the purpose they are giving the bank to justify
9 the transfer of the funds.

10 MR. DiMASE: One moment.

11 (Counsel confer)

12 MR. DiMASE: Thank you very much. No further
13 questions.

14 THE COURT: Cross-examination.

15 MR. DEVLIN-BROWN: Thank you, your Honor.

16 CROSS-EXAMINATION

17 BY MR. DEVLIN-BROWN:

18 Q. Good afternoon, Mr. Semesky. How are you?

19 A. I'm doing fine, sir. Thank you.

20 Q. I'm Arlo Devlin-Brown. I represent Mark Scott. I'm not
21 sure we know each other but we might have been on a panel or
22 something?

23 A. Possibly.

24 Q. I'm maybe not memorable. Anyway, I don't have a lot of
25 questions for you but I want to clarify a few points you made.

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Semesky - Cross

1 First, as I believe Mr. DiMase asked you, you're not
2 testifying at all here about the facts of this case, right?

3 A. No, sir.

4 Q. In fact, you don't know anything about the facts?

5 A. No.

6 Q. That's going to be for the jury later, right?

7 A. That's correct.

8 Q. And equally important you're not purporting to provide
9 guidance on what the law of money laundering is, right?

10 A. No. Not at all.

11 Q. That will be up to Judge Ramos to instruct the jury?

12 A. That's correct.

13 Q. You are aware there are specific criminal statutes in the
14 United States that make it a crime to engage in some forms of
15 what you've just described as money laundering, right?

16 A. That's correct, yes.

17 Q. But not everything that bank professionals or other
18 financial experts might describe as money laundering is
19 necessarily criminal under the U.S. criminal laws, right?

20 A. I'm not quite sure I follow that.

21 Q. Well, I don't want to again get into too many legal issues
22 but to clarify the question, the money laundering statutes
23 require money to come from a specified unlawful activity,
24 right?

25 A. That's correct.

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Semesky - Cross

1 Q. That's not every crime out there, right?

2 A. No. It's over two hundred crimes to include certain
3 foreign crimes as well but that's correct.

4 Q. Exactly. But within the community you're in, the expert
5 community on money laundering, people might describe money
6 laundering that includes other crimes that aren't specified
7 unlawful activities?

8 A. It's not out of the realm of possibility I guess but there
9 are very few crimes that -- most economically -- economic
10 crimes, crimes of greed, are included in the statute and I'm
11 just having a hard time thinking of any that aren't.

12 Q. Sure. I don't want to put you on the spot.

13 Tax evasion. A lot of people do things to hide their
14 money and not pay taxes, right?

15 A. That's correct.

16 Q. That's not actually money laundering under U.S. law, right?

17 A. Tax evasion is a little different the way it's handled in
18 the law. It is not a specified unlawful activity as you stated
19 but it is, his Honor will instruct the jury, but it can be a
20 designed purpose behind the money laundering. So it is -- it's
21 included but it's not included as a source of funds for -- as a
22 specified unlawful activity.

23 Q. So maybe we should leave it at the law can be complicated
24 and Judge Ramos will instruct the jury on it later, fair
25 enough?

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Semesky - Cross

1 A. I'm sure he will.

2 Q. And you've testified about various techniques that you said
3 can be used to money launder, right?

4 A. That's correct.

5 Q. Including various sources of complex financial
6 transactions, right?

7 A. Yes.

8 Q. And some of those techniques can also be used for
9 legitimate activity, right?

10 A. Yes. That's the purpose of it, to make it look normal.

11 Q. Right. So some of the things that could be done to make
12 something look normal might in some cases be because it is
13 normal, right?

14 A. Yes.

15 Q. And just to give one example. I think at the end of your
16 testimony you were discussing papering?

17 A. That's correct.

18 Q. And that was the idea -- and please correct me if I didn't
19 have it exactly right -- but that's the notion of making lots
20 of documents around a fake transaction so that the bank or
21 someone else looks at it and says: Oh, it's a real
22 transaction, because there are lots of documents around it?

23 A. Either a fake transaction or a transaction that occurred
24 that isn't as represented.

25 Q. But there can also, of course, be a real transaction that

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Semsky - Cross

1 has lots of papers and documents around it because it's a real
2 transaction, right?

3 A. Real -- real legal or real illegal?

4 Q. Like a normal business transaction, particularly if it's a
5 complicated transaction, might have a lot of paperwork and
6 documents relating to it, right?

7 A. Absolutely would.

8 Q. But to your same point if you have a fake transaction you
9 might go out of your way to have fake documents to make it look
10 real?

11 A. That's correct.

12 Q. So the fact that there are a lot of documents by itself
13 won't tell you one way or the other if a transaction is legal
14 or illegal?

15 A. No, sir.

16 Q. You talked about shell companies during your direct
17 examination?

18 A. Yes, sir.

19 Q. And shell companies can be used for illegal purposes
20 certainly, right?

21 A. That's correct.

22 Q. And they can also be used for legal purposes?

23 A. Yes.

24 Q. And would it be fair to say they can be used for purposes
25 that are legal and -- well let me scratch that question for

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Semesky - Cross

1 now.

2 So a shell company is just a company that I think the
3 definition is doesn't have a building or facilities or
4 full-time employees, right?

5 A. That's correct.

6 Q. And someone could set up a shell company right here in
7 New York, right?

8 A. Any state in the union.

9 Q. In fact, the United States has some of the most open laws,
10 shall we say, allowing people to set up corporations?

11 A. Some states are more open than others. But that's correct,
12 yes.

13 Q. I believe there's one or two states that you can set up a
14 corporation and they won't even report the owners to the IRS?
15 They don't cooperate with the IRS; is that right?

16 A. At this point there is no reporting to the IRS or the
17 Treasury Department of the owners by any state.

18 Q. OK. Are you familiar with the Financial Secrecy Index?

19 A. As far as countries, all sorts of jurisdictions.

20 Q. You're aware that there are various organizations that
21 often rank countries in terms of how secretive their financial
22 systems are?

23 A. That's correct. I don't know. Is that transparency?

24 Q. Sorry?

25 A. Go ahead. I'm sorry.

JB79SC03

Semesky - Cross

1 Q. But you're aware of ranking of that sort, right?

2 A. Yes.

3 Q. And the U.S. often comes near the top of the list in terms
4 of financial secrecy, right?

5 A. Yes, it does.

6 Q. And you talked before about offshore jurisdictions that
7 could be used for money laundering, right?

8 A. That's correct.

9 Q. And I believe you named a number of countries all around
10 the world, right?

11 A. Yes.

12 Q. The countries that are most used for offshore money
13 laundering change all the time, right?

14 A. Yes. They change because as countries -- it's usually a
15 reaction to enforcement and scrutiny or new laws by a
16 government. So money will -- illegal money will flee a
17 jurisdiction if it's put under more scrutiny. And so they
18 change for a number of reasons. That can be governmental
19 change. It can be pressure from outside jurisdictions.

20 Q. Right. So a country that might be a top money laundering
21 haven one year, a few years later may not be if the laws change
22 in that jurisdiction, right?

23 A. Yeah. The organization that judges that is known as the
24 Financial Action Task Force or the acronym FATF F-A-T-F and
25 they evaluate countries' anti-money laundering programs and

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Semesky - Cross

1 grade them as complying or noncomplying or somewhere in
2 between. And, yes, they do what -- a country that they judge
3 is not compliant one year by the next evaluation may not be
4 judged that way.

5 Q. And I don't want to put you on the spot about where a
6 country is ranked, what numbers or anything like that, but is
7 it fair to say that a decade or so back the Cayman Islands were
8 sort of one of the worst jurisdictions for money laundering?

9 A. That's correct.

10 Q. Meaning money launderers favored the Cayman Islands for
11 various reasons?

12 A. Yes.

13 Q. And that's changed since then, hasn't it?

14 A. The Caymans have enacted much better anti-money laundering
15 laws. Again, if -- and the United States is no different here.
16 Shell corporations, unless there's a lead to a shell
17 corporation, it's a dead end. There is no registry that
18 associates a shell corporation to the true owner in any country
19 that I know of. So the government authorities could not go
20 into a database and check shell corporations that are owned by
21 their target in virtually any country.

22 Q. So the shell company problem is a problem almost around the
23 world?

24 A. It is.

25 Q. Are you familiar with the Foreign Account Tax Compliance

JB79SC03

Semesky - Cross

1 Act, FATCA?

2 A. FATCA, yes.

3 Q. And that's a law in the United States that requires
4 foreign -- requires financial institutions to report
5 information about offshore assets connected to U.S. persons,
6 right?

7 A. That's correct.

8 Q. And the United States has treaties with various foreign
9 countries where they agree to have their own banks comply with
10 FATCA?

11 A. Yes.

12 Q. And some foreign countries have such treaties and others do
13 not, right?

14 A. That's correct.

15 Q. Just a couple more things on shell companies I want to come
16 back to. You said they could also be used for legal purposes,
17 right?

18 A. Yes, sir.

19 Q. And, in fact, there are -- Fortune 100 companies often have
20 shell companies all over the place, right?

21 A. That's correct. As I said, it will be done for a
22 particular business endeavor or to have subsidiaries around the
23 world that conduct business in other countries.

24 Q. If a country has operations around the world it's likely to
25 have a more complicated corporate structure, right?

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Semesky - Cross

1 A. That's correct.

2 Q. Which may include shell companies?

3 A. Yes.

4 Q. You can have a shell company, for example, that owns
5 intellectual property, right?

6 A. Yes, sir.

7 Q. And a lot of U.S. companies have shell companies in
8 Ireland, don't they?

9 A. Yes, they do.

10 Q. And that's because there's ways to avoid U.S. taxes by
11 setting up companies in Ireland?

12 A. Yeah.

13 Q. And taxes in other jurisdictions as well, right?

14 A. That's correct.

15 Ireland is an example of a country that has a very low
16 tax rate for foreign -- those types of holding companies they
17 call them, so businesses conducted out of that holding company
18 for jurisdictions around the world. So the income is not taxed
19 in the United States. It's taxed in Ireland. If the other
20 country required a tax, it would be paid there.

21 Q. And periodically there's sort of public outrage about that
22 and pressure to change the law, right?

23 A. That's correct.

24 Q. But currently setting up such a company to avoid taxes can
25 be legal even if, you know, some people don't like it, right?

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Semsky - Cross

1 A. That's correct.

2 Q. There's a difference between tax avoidance and tax evasion,
3 right?

4 A. Correct. Tax avoidance complies with the law. Tax evasion
5 violates the law.

6 Q. Thanks. I'm almost done. I just want to come to one more
7 topic.

8 And I believe you testified before that criminal
9 organizations can launder money through all sorts of different
10 companies, right?

11 A. That's correct.

12 Q. They can use investment houses, brokerage houses, financial
13 institutions, banks, securities dealers, law firms, right?

14 A. That's correct.

15 Q. Real estate companies, I guess we should add to that,
16 right?

17 A. Yes.

18 Q. And the companies that have money launder through them are
19 not always aware that the money is criminal, right?

20 A. That's correct. They can be witting, they know and they're
21 complicit; or unwitting where they don't know.

22 Q. For example, law firm escrow accounts, as you mentioned,
23 can be used for laundering criminal money, right?

24 A. That's correct.

25 Q. Hopefully they can also be used for like the legitimate

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Semesky - Cross

1 work of a law firm?

2 A. Absolutely.

3 Q. And they can be used for, for example, making real estate
4 purchases where money comes into the escrow account and then
5 once there's a transaction it leaves the escrow account?

6 A. That's correct.

7 Q. And the clients can of course lie to the law firms about
8 what the purpose of sending the funds is, right?

9 A. Absolutely.

10 Q. Just like they can lie to banks or investment companies or
11 private equity funds or any one of those, right?

12 A. That's right.

13 Q. And you've done some consulting work for banks, right?

14 A. I have.

15 Q. And advising them on anti-money laundering programs and the
16 like?

17 A. Yes, sir. Consulting work and also training during my time
18 with the government.

19 Q. And is it fair to say a lot of the money from criminal
20 activity that you see from your experience going through banks
21 comes without the banks being aware of what's going on?

22 A. That's correct.

23 MR. DEVLIN-BROWN: Just check with my colleague.

24 (Counsel confer)

25 MR. DEVLIN-BROWN: No further questions. Thank you.

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Spendiff - Direct

1 THE COURT: Any redirect?

2 MR. DiMASE: No, your Honor.

3 THE COURT: All right. Mr. Semesky, you may step
4 down.

5 THE WITNESS: Thank you, your Honor.

6 (Witness excused)

7 THE COURT: Will the government please call your next
8 witness.

9 MS. LOZANO: The government calls Paul Spendiff.

10 THE COURT: Sir, please step forward. Go towards your
11 right and come to the witness stand here on my left. Please
12 step up into the witness stand and remain standing.

13 PAUL SPENDIFF,

14 called as a witness by the Government,

15 having been duly sworn, testified as follows:

16 THE COURT: Ms. Lozano.

17 MS. LOZANO: Thank you.

18 DIRECT EXAMINATION

19 BY MS. LOZANO:

20 Q. Good afternoon, Mr. Spendiff.

21 A. Hi.

22 Q. How old are you?

23 A. 45 next week.

24 Q. And where do you live?

25 A. I live in the UK, in England.

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Spendiff - Direct

1 Q. If you could pull up the microphone just a little bit.

2 A. Sure. Is that better?

3 Q. Perfect. Thank you. What kind of work do you do?

4 A. Currently I'm what's called a third-party management
5 company. I work for a third-party management company.

6 Q. And where is that company located?

7 A. Based in London.

8 Q. How long have you been with that third-party management
9 company?

10 A. Almost 18 months.

11 Q. What is your position there?

12 A. I'm the group head of global sales. I'm also what's called
13 a CF1 which means I'm the director of their UK business.

14 Q. Very briefly what does a third-party investment management
15 company do? What kind of work?

16 A. Particularly when a foreign investment manager wishes to
17 set up a European fund they typically -- so the UK, Luxembourg
18 or Ireland, they may not have the requisite staff regulatory
19 ability to open an office and so they use a service provider, a
20 third-party management company to provide the risk and
21 oversight responsibilities and then they will have the
22 investment management of a selling or distribution of their
23 products given back to them.

24 Q. So you have been doing that you said for approximately a
25 little over a year, a year-and-a-half?

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Spendiff - Direct

1 A. Yes. So since mid July 2018.

2 Q. What is your educational background?

3 A. I went to what you would call high school here until I was
4 18. I then I took four what I call advance levels. Then went
5 on to do university where I got a bachelor, a B.A. bachelor of
6 arts economic geography. So I was a major in geography and a
7 minor in economics I think is probably how you would describe
8 it here in the U.S.

9 Q. After university did you work or did you continue with your
10 education?

11 A. No. Sadly, I had to work. So I joined a company called
12 Thomson Financial, which was headquartered in Boston. But I
13 worked from their London office.

14 Q. What kind of work did they do?

15 A. Thomson Reuters. So it's a data and financial services
16 company.

17 Q. How long were you there?

18 A. Approximately six years.

19 Q. And then where did you go?

20 A. I left there to join an oil and gas, it was called TWC Oil
21 and Gas data and events company.

22 Q. What was your role there?

23 A. I ran the publishing and data information group.

24 Q. After you left there where did you go?

25 A. I started my own business with a business partner, which we

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Spendiff - Direct

1 ran for approximately eight years.

2 Q. Was this in London?

3 A. Again in London.

4 Q. And what kind of business was it? What did you do?

5 A. Financial publishing, conferences and events.

6 Q. After you left your own firm where did you go?

7 A. I joined the Apex Group.

8 Q. Where is the Apex Group located?

9 A. The headquarters of Apex is in Bermuda. But it has over 25
10 offices around the world. And I worked in the London office.

11 Q. What type of work does Apex do?

12 A. Broadly as a group we are what we called a fund
13 administrator.

14 Q. And I'm just going to ask you to slow down just a little
15 bit and speak into the microphone.

16 A. Sure.

17 Q. How long all in all were you at Apex?

18 A. Just short of six years.

19 Q. What were your different roles at Apex?

20 A. So my first role was managing director of what was called
21 Apex Technologies. And that was a business unit set up by Apex
22 to encourage the clients to use what we call third-party
23 portfolio management systems. So technology which would help
24 investment managers run their portfolios more effectively.

25 Q. After that position did you have another position at Apex?

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1 A. Whilst I was doing that I became simultaneously the
2 European head of sales for all of Apex's products.

3 And then for the final three years I stepped away from
4 the technology group but I became managing director of Apex
5 Fund Services UK Limited, which just shy of three years, which
6 was the UK office of Apex and I ran that office.

7 Q. And as the managing director there of the UK office of Apex
8 what were your responsibilities?

9 A. Well I was the director of a business what was called a
10 CF1, again, which was a regulatory designation. I was
11 responsible for all the operational team reports into me, human
12 resources, accounts, finance director. I was responsible for
13 what's called the P&L, it's the profit and loss of that office.
14 And also I sat on the European executive board so I represented
15 the UK office at the European level for -- with the other
16 managing directors.

17 Q. You mentioned that Apex had offices worldwide. What kind
18 of services did Apex offer out of the UK office where you were
19 the managing director?

20 A. So the UK office was what was called an operation office,
21 which meant it actually had staff in the office doing fund
22 administration. So we had other offices which were just sales
23 or were just offering directorships. But in the UK we had an
24 operation office which meant we actually did the fund
25 administration of a variety of funds, over a hundred funds,

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1 from the UK office itself.

2 Q. During your time at Apex, did Apex, and were you involved,
3 with the administration of funds managed by a person by the
4 name of Mark Scott?

5 A. Yes, we were.

6 Q. Did you ever meet Mr. Scott?

7 A. Yes, I did.

8 Q. When did you meet him?

9 A. Towards the end of May 2016.

10 Q. And this is meeting in person?

11 A. Yes. I met him in person.

12 Q. And what was the purpose of that meeting?

13 A. Mark Scott had been due to visit our offices. Due to a
14 change in his circumstance he couldn't make it over. But he
15 had a packet of information that he was required to give to us.
16 So I had a meeting in the West End. So I stopped into the
17 hotel to pick that up and although I was supposed to pick it up
18 from the concierge, he was actually still in the hotel so I met
19 him briefly.

20 Q. Do you see Mr. Scott, Mr. Mark Scott, in the courtroom
21 today?

22 A. Yes, I do.

23 Q. Can you please identify him by describing an article of
24 clothing he's wearing and where he's sitting?

25 A. The gentleman over there with a white handkerchief in his

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1 upper left-hand breast pocket.

2 MS. LOZANO: Your Honor, indicating the defendant.

3 THE COURT: The record will reflect that Mr. Scott has
4 been identified.

5 MS. LOZANO: Thank you, your Honor.

6 Q. Mr. Spendiff what were the names of the defendant's funds
7 that Apex administered?

8 A. The initial fund, they were called the Fenero Funds
9 generically. And then each fund had a slightly different
10 misnomer; so the equity, Fenero Equity Investment LP was one
11 fund.

12 Q. During the period of time that Apex administered these
13 funds did the defendant tell you that the money that was coming
14 into the funds originated from an entity called OneCoin?

15 A. No, he did not.

16 Q. During that period did he disclose to you that the funds
17 in -- sorry, that the money in the funds belonged to a person
18 called Ruja Ignatova?

19 A. No, he did not.

20 Q. Now, let's turn back to your work at Apex. As managing
21 director of the Apex UK office were you familiar with the books
22 and records kept and maintained by Apex?

23 A. Yes, I was.

24 MS. LOZANO: May I approach the witness, your Honor?

25 THE COURT: You may.

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1 Q. Mr. Spendiff, I've just handed you two exhibits. One is
2 marked Government Exhibit 2200-A and it is CD containing the
3 following exhibit numbers on it. These are exhibit numbers
4 2203, 2204, 2207, 2225, 2229, 2232, 2245, 2255, 2289, 2290,
5 2291, 2292, 2298, 2299, 2300, 2301, 2304 through 2310.

6 Mr. Spendiff, do you recognize that CD, Exhibit
7 2200-A?

8 A. Yes, I do.

9 Q. What do you recognize it to be?

10 A. A CD-ROM DVD of the records provided from Apex.

11 Q. And how do you recognize that that exhibit contains Apex
12 records?

13 A. I reviewed this disk yesterday. And then I signed with my
14 initials and dated it.

15 Q. When you reviewed the disk where were you when you reviewed
16 the disk?

17 A. I was in your offices.

18 Q. And after looking through -- well what did you do when you
19 reviewed the disk? Did you look through every exhibit that's
20 on that disk?

21 A. I looked through every exhibit, yes.

22 Q. Were the records that are marked on that exhibit the list
23 that I just dictated that are on that disk recorded and
24 maintained -- were they recorded and maintained by someone with
25 knowledge at Apex?

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1 A. Yes. Our head of IT.

2 Q. Were they made and kept in the regular course of Apex's
3 business?

4 A. Yes, they were.

5 Q. Was it the regular practice of Apex's business to make the
6 records that are contained on that exhibit?

7 A. Yes. We have to make and keep them for seven years.

8 Q. And were the records on that exhibit made at or near the
9 time that the activity reflected in the records took place?

10 A. Yes. They were.

11 MS. LOZANO: Your Honor, the government offers
12 Government Exhibit 2200-A with all of the exhibits contained on
13 that exhibit into evidence.

14 THE COURT: Any objection.

15 MR. DEVLIN-BROWN: Can I just have one moment, your
16 Honor?

17 THE COURT: Sure.

18 MR. DEVLIN-BROWN: No objection.

19 THE COURT: All those exhibits will be received.

20 (Government's Exhibits 2200-A, 2203, 2204, 2207, 2225,
21 2229, 2232, 2245, 2255, 2289, 2290, 2291, 2292, 2298, 2299,
22 2300, 2301, 2304 through 2310 received in evidence)

23 Q. Mr. Spendiff I've also handed you a disk that is marked
24 GX2200-B and this exhibit contains the following documents and
25 e-mails on the disk and those are exhibits marked GX2201, 2202,

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1 2205, 2206, 2208 through 2224, 2226 through 2228, 2230, 2231,
2 2233, through 2244, 2246 through 2254, 2256 through 2288 and
3 2311.

4 Do you recognize that disk?

5 A. Yes, I do.

6 Q. And what do you recognize that disk to contain?

7 A. These are e-mails between Apex and mostly Mark Scott
8 relating to the administration of the Fenero Funds.

9 Q. How do you know that that's what is on that disk?

10 A. I reviewed this disk yesterday in the offices.

11 Q. How do you know that that's the disk that you reviewed?

12 A. Because I signed and dated it at the time.

13 Q. Are the records contained on that disk -- were they
14 recorded and maintained by someone with knowledge of Apex?

15 A. Yes. Our head of IT.

16 Q. Are the records contained on that disk made and kept in the
17 regular course of Apex's business?

18 A. Yes, they are.

19 Q. Was it the regular practice of Apex's business to make and
20 maintain these records?

21 A. It was a regulatory requirement for seven years.

22 Q. Were the records on that exhibit made at or near the time
23 that the activity reflected in those records took place?

24 A. Yes, they were.

25 MS. LOZANO: At this time the government offers

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1 Government Exhibit 2200-B with all of the list of exhibits
2 contained thereon into evidence.

3 MR. DEVLIN-BROWN: No objection.

4 THE COURT: Very well. Those exhibits will be
5 received.

6 (Government's Exhibits 2200-B, GX2201, 2202, 2205,
7 2206, 2208 through 2224, 2226 through 2228, 2230, 2231, 2233,
8 through 2244, 2246 through 2254, 2256 through 2288 and 2311
9 received in evidence)

10 Q. Mr. Spendiff you described Apex funds services as in the
11 business of fund administration. Can you please briefly
12 describe for the jury what that means? What kind of work does
13 that entail?

14 A. It was often described as the back office of the fund.
15 There are two primary functions. The first is the valuation of
16 the fund. Typically it's the valuation of the net asset value
17 of the fund. And this gives an indication of what the assets
18 within the fund are typically worth.

19 The second is what would be considered we call
20 transfer agency. And that's the movement and collection of
21 investor data moving in and out of the fund.

22 Q. And with respect to the transfer agent function, what are
23 the responsibilities and function of the fund administrator?

24 A. So it varies a little bit depending on whether it's a
25 close-ended fund or open-ended fund, whether it's a regulated

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1 or unregulated fund. But atypically it will be to review and
2 collect the subscription or redemption form from -- either
3 directly from the client or an agent of theirs or an investment
4 manager; to review that information; check for AML and KYC; and
5 review the source of wealth; and then move the money into the
6 fund or its investments on the instructions of the investment
7 manager.

8 Q. You just mentioned that there may be differing roles based
9 on the kind of fund that it is. Can we step back and I would
10 like you to describe what -- when you use the term "funds,"
11 what are you referring to? Are there many different kinds of
12 funds?

13 A. See, you get different types of funds. So they might be
14 different types of funds because of the way they invest. So
15 they might be private equity funds, hedge funds, mutual funds
16 as you with would see here in the U.S. They might be also
17 different types of regulations. So they might be considered
18 onshore funds or '40 Act funds here in the U.S. or UC funds in
19 Europe or they may be offshore funds, Cayman Islands, British
20 Virgin Islands.

21 Q. Did Apex administer all types of funds?

22 A. Yes. It administered all types of asset classes.

23 Q. What types of funds were defendant's Fenoro Fund?

24 A. They were a British Virgin Island approved fund.

25 Q. Were they --

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1 A. It was a private equity fund.

2 Q. Can you briefly describe just what a private equity fund
3 means. What are the characteristics?

4 A. So it would be easier to describe what it's not. A public
5 equity would be shared, that are available to the general
6 public, which you can buy and sell regularly or exchange
7 through other intermediaries. Private equity are typically
8 investing in private equities, so these are privately-owned
9 companies of which shares are readily available. So they will
10 normally buy these companies. And they will look to perhaps
11 restructure them and/or add businesses to them and then
12 typically sell them in the lifetime of the fund to realize a
13 gain which they'll return to their investors.

14 Q. Who were the investors in private equity funds?

15 A. Private equity funds are usually set up for sophisticated
16 investors. So they may be for retail. So general public
17 typically aren't able to buy them. So they'll probably have a
18 very large initial subscription, at least north of usually a
19 million dollars. And so it's usually bought by high net-worth
20 individuals, family offices, pension plans, insurance
21 companies, government funds, would all typically buy into
22 private equity funds.

23 Q. You mentioned a term subscription. What do you mean by
24 that term?

25 A. A private equity fund, a subscription is when you commit

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1 to, or the investor commits to investing in the fund. So
2 they'll sign either what would be considered to be a
3 subscription agreement. Or if the fund was a partnership, that
4 may also be called a limited partnership agreement.

5 Q. You also described -- you also explained that some funds
6 may be close ended and some may be open ended. Can you explain
7 what the difference between close ended and open ended is?

8 A. Sure. With an open-ended fund you can buy and sell shares
9 according to -- every fund in theory lasts forever. So shares
10 are bought and sold on a dealing date. That may be daily,
11 weekly, monthly or even annually. But you can get a valuation
12 typically from your fund administrator. You can sell your
13 shares at that value because normally the underlying assets are
14 readily sellable so that when an a investor decides they want
15 to redeem, to sell their shares the investment manager can sell
16 the underlying assets easily to meet that redemption and pay
17 out money to the investor.

18 In a close-ended fund which is how a private equity
19 company is typically set up, the underlying assets are hugely
20 illiquid. So to investors don't have the ability to redeem
21 because it's not possible. If ten percent of investors decided
22 to sell, it's not possible to sell ten percent of a company.
23 The investment manager would have to sell all of the company.
24 It's a private company. It may take a lot of time. So usually
25 investors are committed to the lifetime of the fund, which may

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1 be anywhere between five to ten, twelve years.

2 Q. And to keep it very simple, when you refer to redeem, an
3 investor redeeming, does that just mean an investor takes out
4 his or her money?

5 A. Yeah. They sell their shares.

6 Q. What is the role of an investment manager in a private
7 equity fund?

8 A. The investment manager, we usually have two primary
9 functions. One is to run the money, so to make investment
10 decisions about what is and isn't a good asset for them to buy;
11 and secondly, to raise money for the fund; so to sell, to sell
12 the fund to investors.

13 Q. Can you give a brief description, please, of the life cycle
14 of a private equity fund in terms of collecting the money,
15 earnings, profit on your investment, and then sending money
16 back to the original investors?

17 A. Sure. So I mean private equity funds are quite esoteric so
18 each one is a little bit different depending on the assets, who
19 the investment manager is. But a typical fund would have a
20 capital raising period where the investment manager will go out
21 and raise commitments. So they'll go out and meet lots of
22 different investors, talk about strategy, talk about the fund
23 and they will get what are called soft commitments or semihard,
24 hard commit. And that's where investors commit, if the fund is
25 set up and it goes ahead that they're going to commit this

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1 capital based on the information that's been provided by the
2 investment manager.

3 Once the private equity manager has sufficient
4 commitments, there will be a first closing. They will normally
5 launch and does what's called a first closing in the fund.

6 So they will then have what are called legally binding
7 commitments. So each investor will commit legally by signing
8 the subscription agreement or the LPA that they will put five
9 million into the fund or ten million or whatever amount the
10 capital they have committed.

11 What then happens usually is a typical private equity
12 manager doesn't want all that money because it's very difficult
13 to spend a hundred, two hundred, three hundred million right at
14 the start. So at the start of the fund what they'll normally
15 do is draw down perhaps 25 percent of the committed capital.
16 So perhaps they'll take one or two million from a five million
17 subscription because they normally have a couple of deals ready
18 to go which have been waiting for the fund to launch.

19 The rest of the money, as the investment manager finds
20 deals and opportunities to invest in, will have capital calls.
21 So the investors will be asked to put in the rest of their
22 investment during that period to invest on behalf of the fund.

23 And the reason they do it like that is because they
24 get paid typically a performance fee. And if they hold cash, a
25 lot of cash, but they only hold a very few number of assets,

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1 the return being generated by those assets dilutes their
2 performance, so they get paid less.

3 Also the investment -- the investors are putting money
4 into an account which doesn't pay any income. So they
5 typically want to hang on to their cash; perhaps invest it
6 somewhere else nice and liquid so when they get the capital
7 call they will allocate that money.

8 That's usually an investment cycle in a fund. Might
9 be anywhere up to three years.

10 That may or may not be stipulated in the prospectus,
11 the money has to be called within that period and spent and
12 used within that period.

13 You then typically have a consolidation period. This
14 is where whatever is going to happen to those investments
15 should be happening. They should be cutting staff. The idea
16 is to cut costs, to close factories, to invest heavily in
17 technology, to buy other businesses which are complementary
18 which allow them to leverage their opportunities, so add value
19 to the portfolio.

20 Then you get the divestment cycle. And as each asset
21 is sold. Money is typically returned back to the investor to
22 reflect the fact that that investment has closed. And that
23 normally would be -- and there's a hard close. That may be ten
24 years or ten plus one, plus one, so you get an extra couple of
25 years. Then the fund has to close without the agreement of the

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1 investors. They will have their money back.

2 Q. You mentioned the divestment --

3 THE COURT: Actually, Ms. Lozano we're going to take
4 our second break. So we'll get back together in fifteen
5 minutes.

6 Ladies and gentlemen, don't discuss the case.

7 (Jury not present)

8 Before we break, Mr. Spendiff, I will speak only for
9 myself; not for everyone else in the room. My Yankee ears are
10 very unsophisticated. So it's a little hard to get my ears
11 around some of the things you're saying. So if I could ask you
12 to slow down it will be very helpful for me. Thank you so
13 much.

14 THE WITNESS: No problem.

15 (Recess)

16 (Jury present)

17 THE COURT: Ms. Lozano.

18 MS. LOZANO: Thank you, your Honor.

19 Q. Mr. Spendiff when we broke you had just finished describing
20 the life cycle of private equity funds and divestment.

21 With respect to the divestment and return of money to
22 the investors, are there rules or best practices that a fund
23 administrator must follow governing where the private equity
24 fund must send the money back to?

25 A. I mean there are no -- each company has its own set of best

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1 practices to reflect regulations typically in or around money
2 laundering, but also to protect the investors from theft.

3 So typical rules or processes would involve only
4 wiring money back to the bank account from which it came. So
5 if an investor wished the money to go to a different bank
6 account, there would be certain controls or protocols to ensure
7 that that bank account was also owned by the investor and it
8 wasn't someone purporting to be them. And if someone wanted to
9 change bank accounts, then that would be processed.

10 Something called world checks or background checks
11 would be done on the investor to make sure that when they
12 invested the money they may have been fine but actually,
13 Breaking Bad style, they've become a criminal in the meantime
14 and therefore they would have been or perhaps they hadn't been
15 sentenced or prosecuted but then they had subsequently, and so
16 that would flag so that the money couldn't then be returned
17 back to that investor.

18 Q. And are those policies and procedures that Apex followed
19 when you were there?

20 A. Yes, they were.

21 Q. So let's talk a little bit more about those policies and
22 procedures at Apex. You mentioned the two major functions of a
23 fund administrator and they were the valuation function and the
24 transfer agent function.

25 With respect to the transfer agent function, are there

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1 responsibilities surrounding due diligence as a transfer agent?

2 A. There's normally two. One is anti-money laundering and
3 know your client rules, which are typically AML and KYC, as
4 they are usually shortened to, and those vary a little bit from
5 country to country but they are relatively standard globally.

6 And then you would also know source of wealth. So
7 that's usually understanding who the ultimate beneficial owner
8 is, who really owns the assets and also where that money is
9 coming from; so, has it come from criminal activity or it's
10 government funds or whatever that might be.

11 Q. So what kinds of practices or checks do -- does a fund
12 administrator do in order to satisfy the due diligence inquiry?

13 A. It varies a little bit from investor to investor. So if
14 you were just investing as an individual, if you were a
15 high-net-worth, very wealthy individual you then would look for
16 a utility bill and a passport. We will conduct what's called a
17 world check or a background check on you.

18 So the background check may pull up lots of Paul
19 Smiths who have been in trouble with the law who have been in
20 terrorist activities. But we use the address to locate where
21 that individual has lived. And then we'll use their passport
22 to identify their date of birth, their age, where they live.
23 And that combination allows it to narrow down as to where they
24 are on that background check, whether it comes back clean.

25 Q. What is the purpose of the utility bill?

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1 A. So a utility bill is actually quite hard to come by these
2 days; whereas, it's quite easy to get a mobile phone bill, for
3 instance, compared to getting electricity or gas. You normally
4 need to live there. You normally need to have -- you normally
5 need to have a mortgage or some sort of tenancy agreement in
6 order for you to engage and it will be odd for somebody to pay,
7 frankly, somebody else's gas bill.

8 Q. If I could ask you to slow down just a little bit and speak
9 into the microphone.

10 A. Sure.

11 Q. You also mentioned a term, you said ultimate beneficial
12 owner. Define what that means. What do you mean when you use
13 that term?

14 A. What that means is it's not always clear who the ultimate
15 beneficiary or ultimate beneficial owner will be. So a company
16 may be the investor in a fund but the company is not in itself
17 the ultimate beneficial owner. If that company is a hundred
18 percent owned by another company and that company is owned a
19 hundred percent by an individual, the ultimate beneficial owner
20 is the individual who owns all of the shares of the last
21 company.

22 Q. Why is that important to determine in the context of fund
23 administration?

24 A. Because it gives an understanding of where the source of
25 wealth might be. It gives an understanding of who actually

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1 you're dealing with rather than the company, you're dealing
2 with a specific individual so you can do the background checks
3 on them. And also if somebody has a significant stake in a
4 fund, they may be able to have undue influence on that fund.
5 So if you are accounting for investment, 80 percent, 90 percent
6 of an investment managing portfolio in an investor base then,
7 obviously, you can put undue pressure or pressure on them to
8 act in a specific way.

9 Q. So let's stay a little while longer on the KYC AML checks.
10 In addition to the criminal record checks, the world checks,
11 the terrorism checks, are there other checks you do about
12 individuals on individuals?

13 A. There are on occasion. We may do, so we do a politically
14 exposed person check.

15 Q. What is that again?

16 A. A PEP or politically exposed person.

17 Q. What is that?

18 A. That's where someone will have -- there may be a government
19 minister. They may be senator. They may work a position at a
20 large state organization. And what it means is, is that
21 they -- therefore, their actions may be the actions of that
22 state or unfortunately probably they may have taken money or
23 gained money illicitly from their activities and used that
24 for -- to put into a fund or elsewhere. So there are --
25 enhanced due diligence takes place when we're aware of a PEP,

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1 for instance.

2 Q. And we'll get to enhanced due diligence in a moment.

3 Who supplies the information given to the fund
4 administrator in order to conduct these checks?

5 A. It varies. So sometimes the investors will come direct to
6 the administrator. The details of where to submit the
7 documents will usually be on the subscription or limited
8 partnership agreement. Sometimes they'll come through an
9 intermediary; might be a financial adviser, private bank, a
10 family office. Or finally it may -- it may come through the
11 investment manager because, obviously, they'll have an in-depth
12 relationship with the investor to persuade them to invest and
13 they'll have engaged, so they may collect documentation.

14 Q. And typically what kinds of information or documentation is
15 provided to a fund administrator by a fund manager, for
16 example, on his or her investors?

17 A. So, again, it varies a little bit. So I think we've
18 outlined what it would be for an individual.

19 For a company it would be incorporation documents,
20 shareholder certificates, financial accounts, directorships,
21 company registrations and filings, so information that might be
22 publicly or privately available on a company.

23 For a trust it would be looking for details of the
24 trustees, details of the incorporation, a statement from the
25 trustees potentially on who the ultimate beneficial owner might

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1 be who is going to benefit from that trust. So a charity,
2 maybe. Charity filings, details. Maybe details from the
3 website, all sorts of background information so that you can
4 understand what entity and how that entity is structured.

5 Q. And then the fund administrator's job, is this correct, is
6 to perform the checks that you have described given the
7 information that has been supplied to you?

8 A. Yes.

9 Q. About who the investors are and who the EBOs are?

10 A. Yes. That's correct.

11 Q. What is the -- what's the purpose of conducting these due
12 diligence checks and performing the customer investigations?

13 A. Typically it's to try and prevent money from crimes being
14 laundered through, funding for terrorism are the two primary
15 purposes. Legislation most countries in and around what's
16 expected in order to stop that.

17 Q. Is due diligence conducted also on fund managers by fund
18 administrators?

19 A. Yes. We have the same responsibility. Our client to a
20 degree is the investment manager. And so obviously their
21 credibility, their -- in terms of whether they're a genuine
22 organization is obviously a key part of whether we as the
23 administrator would like to go into business with them. And
24 then also to comply with the rules and regulations of us
25 engaging with the client.

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1 Q. Now, you mentioned a term, source of funds. How does
2 source of funds play into the due diligence inquiry?

3 A. So, again, the source of funds or the source of wealth are
4 slightly different. So with the source of funds we just need
5 to understand where is the money coming from.

6 Q. Literally physically where the money is coming from in
7 terms of a bank account?

8 A. Correct.

9 Q. And how is that different than source of wealth?

10 A. So the source of funds may be a specific amount from a bank
11 account but that it doesn't explain how that money got there
12 which would be the source of wealth. So the did the money in
13 the bank account come from an inheritance? Did it come from a
14 bonus because you are a very successful asset manager? Did it
15 come from selling another asset or some other source of income?
16 That's the source of wealth. The source of funds is simply the
17 bank account.

18 Q. So, is it fair to say that the source of funds is more
19 where that money is coming from and the source of wealth is how
20 that money was made?

21 A. Correct.

22 Q. Does or did when you were at Apex did Apex undertake the
23 same level of diligence for all investors in the funds that
24 Apex administered?

25 A. No, we didn't.

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1 Q. How did you determine what level of due diligence to
2 perform?

3 A. Again, it varied a little bit. So it depended a little bit
4 on what type of investor, what type of country the investor was
5 coming from, what type of entity was investing, and so what
6 type of legal entity was investing, and whether any of the
7 information provided created any concerns for us as an
8 administrator that would lead us to investigate further. So
9 enhanced due diligence is really just investigating further.

10 Q. What constitutes enhanced due diligence? What steps do you
11 take?

12 A. So it varies. We may do an more in-depth search on a
13 specific company. So we may go to different information
14 sources in the initial sources that we do for regular due
15 diligence. We may ask the investor to provide us with
16 additional information or comfort so that may be -- say they
17 raise some money by an inheritance. We may ask to -- we would
18 seek to ask for a copy of the will or perhaps we would get the
19 lawyer who arranged that inheritance to say yes, there was an
20 inheritance and that was the source of the wealth. Or we might
21 get the family office to state that the money had come from
22 their portfolio activity and provide us with some sort of -- I
23 guess some information that would sort of confirm the
24 information that had been provided in the regular due
25 diligence.

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1 Q. Did certain circumstances automatically trigger enhanced
2 due diligence?

3 A. There were certain circumstances such as if the investors
4 were based in Africa that would always be subject to enhanced
5 due diligence; if they were a PEP, a politically exposed person
6 they would always be subject to enhanced due diligence. If
7 they held initially a significant stake in the fund, they may
8 be subject to enhanced due diligence. And really it was -- it
9 was a risk-based approach. So the risk is if at any point
10 employees or offices of Apex are uncomfortable, then they can
11 request as much information as they are required to get
12 comfortable that they understood where the money was coming
13 from, who was the beneficial owner. And that was made out in
14 our contracts with both the investors and with the investment
15 manager in the fund administration agreement.

16 Q. I'd like to turn now to talk a little bit more about Fenero
17 Funds and Mr. Scott. When -- approximately when did Apex begin
18 administering Fenero Funds?

19 A. Early May 2016.

20 Q. And how was Mr. Scott introduced to Apex or how was Apex
21 introduced to Mr. Scott?

22 A. I can't comment exactly how that happened. I know he was
23 originally in contact with our Cayman office which also
24 serviced the British Virgin Islands, so a guy called Bouden and
25 Deborah Buscema who was the salesperson based here in New York.

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1 Q. So when did you first make contact with Mr. Scott?

2 A. So Deborah called me in the London office and stated that
3 there was a client that they had been in discussions with for a
4 period of time.

5 Q. Around when was this?

6 A. This would be the end of April.

7 Q. Of what year?

8 A. It would be the end of April 2016; 27th, 28th.

9 Q. And when -- did you eventually have a conversation with
10 Mr. Scott about fund administration by Apex?

11 A. Yes. So Deborah and myself and Mark I think had a call to
12 talk about his plan funds and his administration requirements.

13 Q. Who was on that phonecall?

14 A. I think it was Deborah and myself and just Mark. I think
15 the other members of my team were tied up.

16 Q. What was the purpose of that call?

17 A. It was to introduce the London office. Mark had originally
18 been going to engage with the New Jersey office of Apex Fund
19 Services but had decided that -- stated there was a preference
20 to have the fund administration done outside of the U.S.,
21 preferably in Europe. And so Deborah introduced Mark to me and
22 Mark had explained his requirements for his funds.

23 Q. What did you understand Mr. Scott's role to be in the
24 Fenero investment funds?

25 A. He stated he would be the investment manager.

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1 Q. And how was -- how was he going to be the investment
2 manager? Was it just individually or through a corporate
3 structure?

4 A. No. It was through a corporate -- a company set up in the
5 BVI.

6 Q. In?

7 A. The British Virgin Islands.

8 Q. What was the name of that company?

9 A. I believe was MSSSI Consultants BVI Limited.

10 Q. Was MSSSI Consultants in the BVI owned by another company?

11 A. Yes. The understanding was, according to the information
12 relied on by Mr. Scott, it was hundred percent owned by a
13 Florida entity with a similar name.

14 Q. By a similar name. I'm sorry?

15 A. Also called MSSSI but minus the BVI attachment.

16 Q. And your understanding of who owned that Florida-based MSSSI
17 company was who?

18 A. There was a diagram provided after the call, a structure
19 diagram and on that Mark stated it was a hundred percent, that
20 foreign entity was hundred percent owned by himself.

21 Q. Did Mr. Scott indicate that he would be managing these
22 funds on his own or was he going to have an accountant?

23 A. So there was another individual that he mentioned, David
24 Pike, and who we understood would be doing a lot of the
25 administrative burden that needs to be done by the investment

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1 management and that Mark's role was to be the investment
2 manager, portfolio manager.

3 Q. What did you understand Mr. Pike's role to be in the Fenero
4 Funds?

5 A. That he was the -- I believe he was a partner but I will
6 describe him as the junior partner.

7 Q. Please tell us what the defendant said to you when you had
8 this initial conversation about his funds.

9 A. Our plan was to set up four -- ultimately four funds in the
10 BVI. Each of them had a maximum investment size of a hundred
11 million dollars. That's the legal maximum that that type of
12 fund in BVI can have; that they would invest into European
13 financial services -- stressed European financial services and
14 financial technology firms within Europe. And that the
15 investors would be wealthy European family offices that Mark
16 had made connections with in his 25 years as a private equity
17 and real estate lawyer.

18 Q. So did the defendant give you a little bit of background
19 about himself during that call?

20 A. Yes. So he mentioned that he had obviously been a partner
21 at a U.S. law firm called Locke Lord and bragged about a lot
22 of other large U.S. and global law firms.

23 And then subsequent to the conversation we received a
24 CV and a little background information about Mark's activities;
25 some of it taken from the Locke Lord website, some of it from

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1 his CV.

2 Q. Did he explain why he was seeking fund administration
3 services outside of the United States?

4 A. That's not totally uncommon if you have a fund which is
5 investing into European assets and you have investors who are
6 outside of the U.S., then there on occasion managers may seek
7 to have the administration done outside of the U.S. because
8 they don't want to create a tax issue by having investment or
9 administrative activity taking place in the United States.

10 Q. And, again, the funds were based where?

11 A. The British Virgin Islands.

12 Q. You referred to a term family office. What does that term
13 mean?

14 A. Slightly different things. It would be -- it's usually
15 the -- an entity set up to run the wealth of an individual or a
16 number of individuals within a family. So maybe -- and it's
17 usually disconnected from their primary source of income. So
18 if somebody owned a factory, obviously they would run the
19 factory and own the factory, but the money that would come off
20 of that asset would need to be invested, managed, kept safe.
21 And so rather than pay a third-party, a large Swiss bank or a
22 large asset management company, they will look to set up their
23 own family office at a small investment management company just
24 managing their assets. And they will usually hold a more
25 interesting asset; might be real estate, they might hold fine

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1 arts, their own properties they live in and other assets may
2 all be collected into and run by that family office.

3 Q. And to be clear, family offices can be investors in private
4 equity funds?

5 A. They often are, yeah.

6 Q. All in all, how many funds, actual funds did Apex
7 administer for the defendant?

8 A. Of the four, two eventually were set up in bank accounts
9 opened for them before or whilst Apex was the fund
10 administrator.

11 Q. Do you remember the names?

12 A. Fenero Equity Investments LP was the first and the primary
13 one. And the second one was Fenero Switzerland Limited, Equity
14 Switzerland Limited.

15 Q. Now, as a fund administrator for the Fenero Funds was Apex
16 responsible to ensure that the investments made by the fund
17 into private equity projects were consistent with the fund's
18 prospectus or mission statement?

19 A. So each BVI fund has to have what's called a term sheet. I
20 think in this case it was called a mission statement which
21 states the basic objectives of the fund. And it's not a
22 requirement of the administrator, but it's best practice
23 because the administrator fundamentally looks after the
24 investor's interest in the fund, even though they're
25 appointed -- the fund pays for the services provided by the

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1 fund administrator to try and act in their best interests. So
2 if and when the investment starts not complying with that
3 mission statement or term sheet, then the administrator would
4 want to understand why have the investors been -- has the basis
5 on which the investors have invested changed sufficiently to
6 give them the ability to withdraw their capital because it
7 wasn't the basis on which their investment has changed.

8 So all of those things will be examined to decide and
9 perhaps understand why the investment manager had changed the
10 strategy, whether they had spoken to the investors and if so --
11 and the investors were aware and accepted that, then that's no
12 problem, the term sheet could be adjusted.

13 Q. And how did the defendant describe the investment strategy
14 that Fenero Funds were going to pursue? What were they going
15 to invest in?

16 A. They were buying distressed, so companies in typically
17 financial difficulty in the financial services and financial
18 technology industries within Europe was the primary target.

19 Q. Now, surrounding this phonecall with the defendant did he
20 send you any paperwork reiterating what he had told you on the
21 telephone about his intentions with the Fenero Funds?

22 A. The following day I think. I followed up the phonecall
23 with some additional questions. And I think in response Mark
24 sends a large series of attachments outlining the fund's
25 activities, some more information about him personally.

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1 MS. LOZANO: Mr. Barile, could you put on the
2 witness's screen Government Exhibit 2201 and just scroll
3 through the document for Mr. Spendiff, please.

4 Q. Take a look at that and let me know if you recognize that.

5 A. Yes. This is a series of attachments that were sent
6 initially sent on an e-mail by Mark Scott to myself and my
7 colleagues in our office.

8 MS. LOZANO: Mr. Barile, if we could go to the first
9 page and we're there and if we can publish to the jury at this
10 point.

11 Q. So Mr. Spendiff this is -- well you tell me. What is this?

12 A. This is the e-mail from Mark to myself and cc'ed in Deborah
13 Buscema and Muzammil Koyratty who was the compliance officer.

14 Q. He was who?

15 A. The compliance officer so head of compliance for Apex in
16 London.

17 Q. There's another e-mail address that reads DR Pike?

18 A. Yes.

19 Q. Do you understand who that was?

20 A. That was, I understand, David Pike's e-mail.

21 MS. LOZANO: So let's go to the organizational chart,
22 Mr. Barile.

23 If we could blow that up.

24 Q. Mr. Spendiff, what is this?

25 A. This is a structure diagram showing the investment manager

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1 and -- and the ownership structure and also the fund itself,
2 which you can see is yellow, called Fenero Equity Investments
3 LP and there was a series of what we would call SBV or special
4 purpose vehicles which are the green boxes at the bottom that
5 appear to be owned directly by the MS International Consultants
6 Limited.

7 So you can see because the line goes back to there the
8 assumption is that they're a hundred percent owned.

9 Q. So let's walk through this. This was provided to you by
10 the defendant?

11 A. It was attached to the e-mail.

12 Q. So the middle yellow box that is the -- that is what?

13 A. That's the fund, the Fenero -- first Fenero fund.

14 Q. And was that what Apex administered?

15 A. Correct.

16 (Continued on next page)

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1 BY MS. LOZANO:

2 Q. And the line from the top of that goes to a box MSS
3 International Consultants BVI?

4 A. Correct.

5 Q. And your understanding was that based on this chart that
6 that was in turn owned by a Florida company MSSSI and ultimately
7 at the top by Mr. Scott.

8 MR. DEVLIN-BROWN: Objection to leading.

9 THE COURT: Overruled.

10 A. Based on my discussions with Mark and the supporting
11 evidence, yes, that was our assumption.

12 Q. OK. And when you had a discussion with him on the
13 telephone, did you explore the green boxes, the SPVs as you
14 have described them?

15 A. No.

16 Q. And, by the way, what does SPV stand for?

17 A. Special purpose vehicle.

18 Q. What is that?

19 A. It's a company set up to do typically one objective, a
20 special purpose.

21 Q. An investment objective.

22 A. Typically, yeah.

23 Q. Mr. Barile, if we could scroll down -- oh, let's stay at
24 that for one moment. I'm sorry. Let's stay back on the chart.

25 You mentioned that Mr. Scott represented himself as

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Spendiff - direct

1 the fund manager for Fenero Equity Investments. What was your
2 understanding about the entity that would serve as the fund
3 manager?

4 A. So, the agency or the general partner to the fund. So a
5 limited partnership has no legal personality, it can make no
6 investment decisions on its own, it doesn't have a board of
7 directors to make a decision, so the decisions are all made by
8 what is called a general partner, and that's typically an
9 investment manager, and in this case the general partner, the
10 investment manager, was MSS International Consultants BVI.

11 Q. You mentioned that the funds themselves are limited
12 partnerships. Between who?

13 A. Between the investors. So the investors are the limited
14 partners, and often a general partner will also be a limited
15 partner, so they will have a stake in their own fund.

16 Q. So here the general partner was MSS International
17 Consultants BVI?

18 A. Yes.

19 Q. Mr. Barile, could you scroll down to the mission statement.
20 And I believe that's at page 6 and 7. Put the pages side by
21 side.

22 Mr. Spendiff, is this the mission statement you
23 received and reviewed in connection with the Fenero Funds?

24 A. Yes.

25 Q. Mr. Barile, if you can zoom in on paragraph 2.

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1 Mr. Spendiff, tell me in that paragraph, can you read
2 to me the description of who the initial investors of Fenero
3 reported to be by the defendant?

4 A. "So Fenero has been created at the request of a select
5 group of European-based families and companies that want to
6 take advantage of potential business synergies between them to
7 aggregate their funds for larger transactions and separate a
8 portion of their capital from their individual family
9 businesses."

10 Q. And then if you could read the last sentence.

11 And, Mr. Barile, if we can highlight that, starting
12 with the initial investors?

13 A. "The initial investors of Fenero have been represented
14 legally by Mr. Scott ranging from three to 12 years and have
15 closed in excess of \$2.1 million in transactions under
16 Mr. Scott's business and legal guidance."

17 Q. And your understanding was -- well, what was your
18 understanding about who authored this mission statement?

19 A. This had been authored by Mark Scott.

20 Q. We it take that down. Thank you.

21 After this phone call, did the defendant send you
22 additional documentation in connection with the Fenero Funds --
23 the creation of the Fenero Funds?

24 A. It was a large number of what we will call incorporation
25 documents which are the documents that are created when a fund

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1 or company or partnership are formed. And a more extensive
2 limited partnership agreement was sent.

3 Q. Let's look now at Government Exhibit 2202, and as it's in
4 evidence we can pull it up on the witness screen and also
5 publish it to the jury.

6 Looking at the first page of this exhibit, Mr.
7 Spendiff, first of all when is this dated?

8 A. Monday, May the 2nd, 2016.

9 Q. And according to this e-mail -- first of all, who is it
10 from?

11 A. David Pike.

12 Q. And who is copied on it?

13 A. It's from David to myself, and then copied on it is Mark
14 Scott and --

15 Q. Other people.

16 A. Other people.

17 Q. Does this e-mail have multiple attachments?

18 A. Yes, it does.

19 Q. So let's go to the attachment that is the limited
20 partnership agreement which is at pages 23 to 26.

21 So, look at page 23 of this exhibit, Mr. Spendiff,
22 what is this?

23 A. This is a memorandum of limited partnership.

24 Q. For which fund?

25 A. For the Fenero Equity Investments limited partnership.

JB77SCO4

Spendiff - direct

1 Q. Who are the parties?

2 A. I believe the parties are on the subsequent page, I think.

3 Q. Let's turn the page. So we're now on page 24, I believe.

4 So, who is identified as the general partner?

5 A. The general partner is MSS International Consultants BVI
6 Limited.

7 Q. And if we can scroll to the next page -- and the following
8 page. So, who signed on behalf of the general partner?

9 A. Mark Scott.

10 Q. And who is identified as the limited partner in this
11 agreement?

12 A. B & N Consult Food.

13 Q. Who signed on behalf of B & N?

14 A. Irina Dilkinska.

15 Q. When is this limited partnership agreement dated?

16 A. The 29th of February, 2016.

17 Q. What is the significance of this limited partnership
18 agreement? Is it a subscription agreement?

19 A. No, it's not.

20 Q. So, how would you describe the significance of this
21 agreement?

22 A. Earlier on I referenced getting commitments for a fund, so
23 this would typically be a commitment to invest in the fund as
24 and when the fund becomes available.

25 Q. So there is no specific amount of money articulated in this

JB77SCO4

Spendiff - direct

1 agreement.

2 A. Not that I can see.

3 Q. At that point, or at the point that the defendant sent you
4 this agreement, what did he tell you, if anything, about B & N
5 or Ms. Dilkinska?

6 A. He didn't tell us anything.

7 Q. Let's go back to the first page of the exhibit. So if we
8 can zoom in on just the text of the e-mail. Mr. Spendiff, can
9 you read what Mr. Pike writes in this e-mail, please?

10 A. "Good day everyone. Please find attached copies of the
11 ready to send due diligence for MSCI BVI, items 1-10 of 13, the
12 remaining three will follow immediately. A am waiting for
13 mailing instructions from Debora to send originals to London.

14 "Please note, we followed your lead on the declaration
15 of trust and completed it for MSS International Consultants BVI
16 Limited. Which had been filled in in advance however, feeling
17 this document pertained to the trust directly I have also
18 included a version completed for Fenero Equity Investments L.P.

19 "We look forward to bringing this process to a close
20 as soon as possible and completing any outstanding tasks when
21 we are there on Thursday."

22 Q. The items 1 to 10 referenced in this e-mail, were those, to
23 your knowledge, due diligence requests that Apex made of the
24 defendant in connection with opening the funds?

25 A. Yeah, I'm not sure whether they already had those or this

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Spendiff - direct

1 is the initial request for information. But we asked of the
2 fund and the investment management company.

3 Q. And based on the attachment, the file names there, can you
4 describe to me what documentation was sent with this e-mail?

5 A. It was a copy of our client acceptance checklist which
6 outlined the information that we would require from them, a
7 Fenero declaration of trust, the Fenero Funds application form,
8 limited partnership agreement, the Fenero Funds approval, the
9 Fenero MLP. I am assuming it's limited partnership, but it's a
10 bit hard to tell without looking at the document. And then a
11 series of incorporation documents relating to the creation of
12 MSIC LLC and MSIC BVI. So, it's the articles of association
13 drafted by Appleby, the MSIC BVI articles of association, the
14 certificate of incorporation and statement of entity self
15 certification.

16 Q. And these are all the documents you were referring to when
17 you testified earlier that as part of the due diligence you
18 request documentation from the fund manager and that's the
19 information that you then vet.

20 A. Correct.

21 Q. So let's go back to page 23, the limited partnership
22 agreement, and I want you to remind us again what role does the
23 general partner play in a limited partnership.

24 A. So, the general partner is the investment manager and
25 ultimate controller of a limited partnership.

JB77SCO4

Spendiff - direct

1 Q. And what does that mean the ultimate controller?

2 Controller of what?

3 A. So they have executive power to make all decisions, even
4 around the limited partnership.

5 Q. So all decisions in terms of where money is going to be
6 invested or sent?

7 A. Correct.

8 Q. And limited partner, the role of the limited partner is
9 simply the investor?

10 MR. DEVLIN-BROWN: Objection.

11 THE COURT: Overruled.

12 A. Typically it's governed by whatever the limited role is,
13 whatever is in the limited partnership agreement, and normally
14 with this type of fund that will stipulate that they don't have
15 decision, for instance, and they are passive investors.

16 Q. So after receiving -- well, let me ask you this: When you
17 were at Apex you were not the one directly receiving all of the
18 documentation in connection with the Fenero Funds.

19 MR. DEVLIN-BROWN: Objection to leading.

20 THE COURT: Overruled.

21 A. No, typically they would be, even if they were sent to me,
22 they would be forwarded on to compliance and the team or the
23 private equity team to process.

24 Q. So who at Apex was the compliance person assigned to
25 process the Fenero Funds documentation and paperwork?

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Spendiff - direct

1 A. A gentleman, Muzammil Koyratty.

2 Q. What was Muzammil Koyratty's role at Apex?

3 A. He was the compliance and onboarding manager.

4 Q. To whom did he report?

5 A. Ultimately to myself and the board of directors.

6 Q. So, after -- you can take that down.

7 After the defendant and Mr. Pike send you numerous
8 documents related to the Fenero Funds, do Apex and Mr. Scott
9 enter into a fund administration agreement?

10 A. Yes, we do.

11 Q. And approximately when did that happen?

12 A. Second or third week of May 2016.

13 Q. Mr. Barile, please pull up and show the witness as well as
14 publish to the jury GX 2204.

15 Now, what is this? This is page 1 of this exhibit.

16 A. This is an Apex fund administration agreement between
17 Fenero Equity Investments as the fund, MSS International
18 Consultants BVI Limited as the general partner, and therefore
19 the MC paperwork went into an agreement on behalf of the fund.
20 And Apex Fund Services Limited, which is the Bermuda held of
21 Apex.

22 Q. And we will go through this exhibit, but broadly speaking,
23 what did this agreement set forth in terms of the services that
24 Apex was going to provide the defendant?

25 A. It outlined what services would be provided to the fund by

JB77SCO4

Spendiff - direct

1 the administrator -- in this case Apex -- and what the
2 requirements were Apex had of the general partner as investment
3 manager to Apex in order to allow Apex to fulfill its
4 functions.

5 Q. I'd like to now focus on the specific sections of this
6 agreement.

7 Mr. Barile, if we can scroll down to Section 4.5.

8 Mr. Spendiff, are you familiar with this section of
9 Apex's administration agreements?

10 A. Yes, I am.

11 Q. And what is this covenant?

12 A. This states that the general partner has to notify --
13 properly notify the administrator of any concerns in connection
14 with the partners, investors, introduce the administrator by
15 the fund or its delegates in the context of relevant money
16 laundering legislation/regulations in the event that they
17 become suspicious or any suspicious circumstances relating to
18 any such partners comes to its attention.

19 Q. What does that mean? In plain English what does that mean?

20 A. It means if they have any concerns or doubts, or there are
21 any changes in the status of the investors in the fund that
22 they become aware of, they have a legal obligation to notify us
23 as the administrator.

24 Q. And the reference to partners in 4.5 is a reference to who?

25 A. To the general partner, which is MSSSI.

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Spendiff - direct

1 Q. The reference to partners --

2 A. Oh, I'm sorry. So, the partners would be the limited
3 partners, which would be the investors in the funds.

4 Q. All right. Let's scroll down now to Section 7.3 -- I'm
5 sorry -- 7.2.3. Are you familiar with this section, Spendiff?

6 A. Yes, I am.

7 Q. And what does this section convey?

8 A. This states -- this is one of the terms in which the fund
9 or the administrator can terminate the relationship with 30
10 days notice. And this is one of those terms.

11 Q. What does this term communicate about circumstances under
12 which termination is appropriate?

13 A. One is because subject to a lawsuit, regulatory action or
14 government investigation that the non-defaulting party
15 reasonably determines could cause reputational harm.

16 Q. But other than that -- well, let's back up. Can we look at
17 7.2.1. Is that also a term or circumstance under which
18 termination is appropriate?

19 A. Yes.

20 Q. And then let's look at 7.2.2.

21 A. So if one of the parties then commit any material breach,
22 the provisions of this agreement, which, if capable of remedy,
23 is not fixed within 30 days, then the contract can be ended.

24 Q. And we don't need to blow them up. 7.2.4 and 2.5 are other
25 limited circumstances under which termination is appropriate;

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Spendiff - direct

1 is that fair to say?

2 A. Yes, correct.

3 Q. So your understanding of this administration agreement is
4 that there were -- or were there certain specific and limited
5 circumstances under which Apex could terminate the
6 relationship?

7 A. Yes. It's to protect the investors of the fund by making
8 it difficult for the administrator or general partners to leave
9 the relationship.

10 Q. Let's now scroll down to Section 8.2, and if we could blow
11 that up.

12 What does Section 8.2 in the administration agreement
13 say?

14 A. "Unless required by applicable law or with the written
15 authority of the other party neither of the parties hereto
16 shall during the term of this agreement or thereafter disclose
17 to any person, firm, corporation or governmental agency
18 whatsoever any confidential information of the other party or
19 information which is proprietary in nature, of which it may in
20 the course of its duties and operations hereunder or otherwise
21 become possessed and each party shall use all reasonable
22 endeavors to prevent any such disclosure as aforesaid."

23 Q. So this provision in the administration agreement, what did
24 that mean in terms of Apex's ability to share any confidential
25 information that the defendant may have provided to you in

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Spendiff - direct

1 connection with the Fenero Funds?

2 A. We would not be able to share that information.

3 Q. Lastly let's look at Section 6 of the administration
4 agreement. That one reads -- what does that read as to the
5 number? You don't have to read the whole paragraph.

6 A. This just references that the fees for our services will be
7 paid out of the Fund's bank account.

8 Q. And what were the fees? If we can go to the third schedule
9 at the end of this exhibit.

10 What were Apex's fees that they were to earn in
11 connection with administering the Fenero Funds?

12 A. So there was a one-off set-up fee which was \$3,500 U.S.,
13 and then an annual fee which would be \$50,000 per year.

14 Q. We can take that down.

15 You mentioned previously that one of the two roles of
16 the fund administrator is to give a valuation of the fund.

17 A. Correct.

18 Q. And is there a term for the process by which you do that?

19 A. Normally it's getting the net asset value, the NAV.

20 Q. And under the administration agreement was there a
21 provision that Apex was going to deliver a NAV to the Fenero
22 Funds?

23 A. Yes, I think it was quarterly basis, so every three months.

24 Q. Was Apex ever able to conduct an inquiry and deliver a NAV
25 for the Fenero Funds?

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Spendiff - direct

1 A. No, the contract was terminated before the first NAV was
2 delivered.

3 Q. And to be clear, the contract was terminated by whom?

4 A. Muzammil.

5 Q. I'd like to turn now to talk a little bit about the
6 accounts that -- oh, I'm going to back up for a moment.

7 Net asset value, NAV, describe to me what that is.

8 A. So, that's all of the assets of the fund, and so whatever
9 the fund owns minus all of its liabilities, so its debts, maybe
10 management fees or regulatory charges, the difference between
11 those two is the net asset value for all of the fund.

12 Q. And to whom is the NAV delivered? Who gets that
13 information?

14 A. It would usually be used to create the reports and
15 accounts, and it's usually sent to the investors.

16 Q. So now let's turn and talk a little bit about bank accounts
17 that were set up in connection with the Fenero Funds. Did
18 Apex's administration of the Fenero Funds include setting up
19 and opening a bank account for the funds?

20 A. Usually the set-up fee and the bank accounts are opened, so
21 it covers the opening of the bank accounts. And the bank
22 accounts are typically opened by the fund administrator to
23 receive the monies from the investors. And then once the AML
24 and KYC is complete, to move that money into an operating
25 account, which is controlled by the general partner, or to move

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Spendiff - direct

1 that money directly to investments made by the fund.

2 Q. And did Apex do that for any of the Fenero Funds?

3 A. We opened I think two accounts, and I think we did the
4 paperwork for a third account, but I'm not aware if that bank
5 account ever opened.

6 Q. The two accounts that you did open, what bank did you open
7 them?

8 A. A bank called DMS Bank in the Cayman Islands.

9 Q. Why did you select DMS Bank to open the fund accounts?

10 A. The bank is actually selected by the general partner, but
11 it's based on typically the ability of the administrator to
12 open a bank account with that particular bank, and also the
13 willingness of that bank to take on a specific type of fund.

14 Q. And in whose name were these accounts that Apex opened
15 opened?

16 A. In the name of the fund, so Fenero Equities Investment LP
17 and Fenero Limited.

18 Q. In connection with the opening of this account did Apex
19 communicate with DMS about due diligence on the funds?

20 A. Yeah. So, obviously we provided a large amount of due
21 diligence to them on the funds and the investment manager. We
22 had also provided -- Apex provided what is called a letter of
23 comfort to DMS Bank.

24 Q. If we can pull up Government Exhibit 2203.

25 Mr. Spendiff, what is this?

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Spendiff - direct

1 A. This is a letter from the compliance officer at Apex
2 addressed to DMS Bank and Trust explaining the AML and KYC
3 processes that Apex has been engaged to do on behalf of the
4 fund. These would be a comfort letter.

5 Q. There is the comfort letter you're referring to.

6 A. Correct.

7 Q. If we can highlight the fourth paragraph starting with "we
8 can confirm."

9 A. "We can confirm that we perform the relevant AML and
10 customer due diligence checks on the investors that subscribe
11 into Fenero Equity Investments L.P."

12 Q. And so there was in connection with which account?

13 A. The Fenero Equity Investments account.

14 Q. When is this letter dated?

15 A. The 9th of May.

16 Q. What is the purpose of a comfort letter?

17 A. In financial services rather than each entity having to do
18 their own due diligence on each and every investor, different
19 institutions will provide a comfort letter which will outline
20 what they've done with the investors, and they will provide
21 that to another financial services firm, and that financial
22 services firm then decides whether they accept the comfort
23 letter or whether they will choose in addition to do their own
24 AML KYC client due diligence themselves.

25 Q. So we're actually going to go through the entire letter.

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Spendiff - direct

1 Let's start with the first two paragraphs. We can just leave
2 it up there for the jury to read. And there is a reference
3 here, Mr. Spendiff, that the company is a registered company
4 authorized by Bermuda monetary authorities. That is Apex.
5 That's a reference to Apex, right?

6 A. Yes.

7 Q. And then the second paragraph simply confirms that you have
8 policies and procedures and due diligence?

9 A. Right.

10 Q. So then let's go to the next couple of paragraphs. OK.
11 This one I would like you to read.

12 A. "Our AML policies, procedures and documentary requirements,
13 at a minimum, cover identification and verification of the
14 identity of the relevant investors, source of wealth, sanctions
15 screening and screening against international lists of
16 terrorists, AML training our staff, reporting of suspicious
17 activity to the relevant authorities, and recordkeeping for a
18 minimum of five years from the cessation of the relationship
19 with an investor."

20 Q. The reference to source of wealth there, is that the source
21 of wealth inquiry that you were describing previously in your
22 testimony?

23 A. Correct.

24 Q. And what is sanctions screening?

25 A. So, when we I said we do background checks, there is a list

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Spendiff - direct

1 of countries and individuals and companies which will be
2 subject to sanctions within a certain jurisdiction, and when we
3 put the legal entities or the names in it will flag those as a
4 possible hit, which would then lead to further investigation.

5 Q. OK. And we read that paragraph, and so let's move on to
6 the next two paragraphs. And, Mr. Spendiff, what are these
7 paragraphs communicating?

8 A. So what it states is that this is the inquiry to DMS Bank
9 that we would make available documents that we have to DMS Bank
10 in order to provide those to the relevant authorities.

11 Q. So if somebody in authority comes from DMS Bank asking
12 about the Fenero Funds --

13 A. So when a regulator comes -- when the regulator comes to
14 DMS Bank and asks for details of a specific investor, they
15 obviously would only be able to furnish them with a copy --
16 they don't have any of those records, so we -- Apex would agree
17 to provide those on request if there was a legal sort of
18 inquiry to DMS Bank.

19 Q. Thank you.

20 Mr. Barile, if you can pull up the last paragraph.

21 Mr. Spendiff, can you read that.

22 A. "Please note that the information contained in this letter
23 is highly confidential and may only be utilized by yourselves
24 in relation to satisfying your firm's anti-money laundering
25 regulations, and may not be used for any other purpose."

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Spendiff - direct

1 Q. And so is it fair to say that that paragraph indicates that
2 if you have provided information about specific investors in
3 the Fenero Funds to DMS Bank, DMS Bank could not disclose that
4 information except for satisfying its own AML regulation?

5 MR. DEVLIN-BROWN: Objection to leading.

6 THE COURT: Overruled.

7 A. Yes, that's true.

8 Q. Who are the signatories -- or who was the signatory on the
9 DMS accounts for the Fenero Funds?

10 A. So, the signing on the application form has to be done by
11 the general partner, so it was Mark Scott and David Pike on
12 behalf of the general partner investment manager.

13 Q. And as the signatory on these accounts, what authority did
14 the defendant have over the money in the accounts?

15 A. They could look at the accounts, but they couldn't move the
16 money from the account.

17 Q. Why not?

18 A. Because the money in the account -- the movement of money
19 from the account was controlled by Apex and the list of
20 signatures provided to the bank as to who they could let take
21 that money out.

22 Q. So the authority to approve movement was held by Apex as
23 fund administrator?

24 A. Yes, Apex could instruct the movement of money, but on that
25 instruction it would then act to move the money.

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Spendiff - direct

1 Q. So if Apex didn't have the authority to instruct the
2 movement of money, who had that authority?

3 A. The general partner.

4 Q. And the defendant?

5 A. Which would be MSSI.

6 Q. All told, during the period of time that Apex administered
7 Fenero Funds, approximately how much money was received by the
8 Fenero Funds in this case?

9 A. I believe it was just short of 150 million euros.

10 Q. Over what period of time?

11 A. Maybe eight, nine weeks.

12 Q. Was any of that 150 million euro paid out pursuant to
13 investment agreements?

14 A. Yes, some money was moved for investments.

15 Q. And then please slow down just a little bit and speak into
16 the microphone. So how much of the 150 euros was disbursed or
17 transferred out in connection with purported investments?

18 A. Roughly 40 million euros was moved from the account.

19 Q. So let's talk a little bit about the payments. How many
20 investments or investment projects did Fenero Funds undertake
21 under Apex's management?

22 A. I would say two.

23 Q. Two? What were they?

24 A. One was an initial investment and then a subsequent capital
25 injection into a UK payments business. And the second was a

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Spendiff - direct

1 loan made to a German lawyer -- or an entity controlled by a
2 German lawyer -- which was roughly \$30 million or 26, 27
3 million euros.

4 Q. In connection with what? Was there a clarity about what
5 the loan was financing?

6 A. As I understand, the loan was to be subsequently lent into
7 another entity which had an oil and gas interest in Madagascar.

8 Q. In Madagascar?

9 A. In Madagascar.

10 Q. And we will come back to these in detail. Was there
11 another category aside from investment payments? Was there
12 another category of payments made out of Fenero Funds?

13 A. So, there was some funds that were paid pursuant to the
14 general partner investment management agreement, so that was
15 monies that were paid to MSSSI as the investment manager of the
16 fund.

17 Q. So would those be the managers fees?

18 A. Yes. Yes, there was a subscription fee of one percent and
19 then some other fees associated with acting as the investment
20 manager to the fund. And there was a loan made -- or a move of
21 money made for a loan to an entity controlled by Mark Scott
22 called Fenero Equity Island.

23 Q. And who was loaning the money?

24 A. The loan was from one of the investors of the fund, an
25 entity called B & N Consult.

JB77SCO4

Spendiff - direct

1 Q. Before we talk about payments out of the funds, I'd like to
2 ask you some questions about where and when the funds
3 originated. When did Apex receive the first completed
4 subscription agreement committing a specific amount of money to
5 the Fenero Funds?

6 A. Early May.

7 Q. Of 2016?

8 A. Sorry. 2016.

9 Q. And who was the subscriber on that agreement?

10 A. The subscriber was a company, a Bulgarian company called B
11 & N Consult EOOD.

12 Q. And is your understanding that B & N is B ampersand N?

13 A. Correct.

14 Q. Who was the representative of B & N?

15 A. A lady named Irina Dilkinska.

16 Q. And where was she from?

17 A. From Bulgaria.

18 Q. Your understanding, was this the same person who was the
19 limited partner?

20 A. Yes, correct.

21 Q. And before we get into the details of the subscription
22 agreement, remind us again what exactly a subscription
23 agreement is. How does it differ from a limited partnership
24 agreement?

25 A. It's often the same thing, so in this case the subscription

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Spendiff - direct

1 is the same thing as the full LPA, limited partnership
2 agreement, so it outlines the basis that the investor will
3 enter into the partnership. So it will state the terms, it may
4 state the length of period that the investment will be held
5 for, it may be certain terminology that's required to be in
6 there in terms of disclosures about the risk the investor is
7 taking. It may include or require them to add information
8 about themselves which helps identification with AML KYC. It
9 may include a list of the requisite due diligence that we're
10 required to provide alongside the limited partnership
11 agreement. It will often include the bank details of the bank
12 account of the fund where we need to move the money. So, all
13 of those things would be typical for a limited partnership or
14 subscription agreement.

15 Q. And does it specifically articulate the amount of money
16 that is being committed to the investment?

17 A. Yes.

18 Q. Or to the fund?

19 A. Yes.

20 Q. So is it fair to say that the subscription agreements are
21 basically investment agreements between the investor limited
22 partner and the general manager?

23 A. Sorry. Could you repeat that?

24 Q. Yes. So, is it fair to say that a subscription agreement
25 is basically an agreement to invest between the investor

JB77SCO4

Spendiff - direct

1 limited partner and the fund manager?

2 A. No, I wouldn't say that. It's the basis on which they go
3 into -- it's the basis on which they can invest into the fund,
4 so it stipulates the fund. The agreement between the fund, all
5 the limited partners and the general partner is usually
6 included in the general partner agreement or the investment
7 management agreement between the general partner and the fund.
8 So, it's the basis on which they invest; it's not typically a
9 legal agreement between the limited partner and the general
10 partner.

11 Q. OK. But it is a commitment to invest by an investor into a
12 fund?

13 A. Into a fund which is managed by the general partner,
14 correct.

15 Q. Understood. So, the subscription agreement from May of
16 2016 with investor B & N and Mr. Pinsker committed how much
17 money to the fund?

18 A. I think it was it was 5 million euro was the initial
19 subscription.

20 Q. Mr. Barile, can we put on the screen and for the jury
21 Government Exhibit 2207.

22 So what is this? Is a page of it --

23 A. Yes, it is.

24 Q. And let's go to the second page. Let's go to the last page
25 actually. It is dated what?

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Spendiff - direct

1 A. May 17, 2016.

2 Q. And it is signed by?

3 A. Irina Andreeva Dilkinska.

4 Q. And if you could scroll up.

5 And here -- what does it describe next to where it
6 says role of with respect to B & N Consult?

7 A. It states she is the sole manager.

8 Q. And how does it describe B & N Consult?

9 A. That it's a Bulgarian single-member limited liability
10 company.

11 Q. Let's go -- here.

12 Can you read to me what it says with respect to the
13 capital commitment? First of all, what is capital commitment?

14 A. It's the amount that the investors ultimately commit to the
15 fund.

16 Q. And what is the capital commitment here?

17 A. 25 million euro.

18 Q. What is in parentheses?

19 A. A minimum of 5 million euros.

20 Q. What does that mean?

21 A. That she would have to invest a minimum of 5 million euros,
22 but she has the capacity to invest up to 25.

23 Q. Who is this agreement signed by on behalf of the general
24 partner?

25 A. That's Mark Scott.

JB77SCO4

Spendiff - direct

1 Q. And the general partner is listed as?

2 A. CEO/director?

3 Q. Right. You?

4 A. I'm sorry. Company MSS International Consultants BVI.

5 Q. Can we go back to the front page of this exhibit. Now,
6 highlight the Fenero Equity Investments line, first line of the
7 document.

8 Now, this subscription agreement was for which fund,
9 Mr. Spendiff?

10 A. As what it says there? Fenero Equity.

11 Q. No, what it actually was.

12 A. It was supposed for Fenero Equity Investments LP.

13 Q. So was this a typo?

14 A. Yes, I think so.

15 Q. And was it later discovered and amended?

16 A. Yes, it was.

17 Q. And when was that?

18 A. Perhaps four or five weeks later perhaps.

19 Q. Did any of the other terms of the agreement change in terms
20 of the amount committed?

21 A. I don't think so.

22 Q. Let's look at if we could pull up Government Exhibit 2216,
23 and if we can publish -- so this is what, Mr. Spendiff?

24 A. This is a notification to the compliance officer at Apex.

25 Q. And could you read the first?

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Spendiff - direct

1 A. "Please find attached the letter from Ms. Dilkinska
2 acknowledging the inadvertent mislabeling of the name of Fenero
3 Equity Investments LP and confirming the original subscription
4 of 25 million euro."

5 Q. And this is dated when?

6 A. June 11.

7 Q. And this was sent from whom?

8 A. From Mark Scott.

9 Q. To who?

10 A. To Muzammil Koyratty.

11 Q. If we can go to the next page and highlight the title
12 there, Fenero Equity Investments LP. Is that the correct name
13 of the fund?

14 A. Yes, correct.

15 Q. And if we can scroll down to page 36. Oh, we, actually
16 let's start at page 4 for a moment. There is a paragraph at
17 number 1.6. Can we zoom in on that one.

18 And can you explain to the purpose of this paragraph?

19 A. This is a swift or wiring instructions that an investor
20 would need to give to their bank to ensure the monies were
21 placed into the bank account of the investment fund.

22 Q. And do you see that there is a line that says intermediary
23 bank?

24 A. Yes.

25 Q. What does that mean?

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Spendiff - direct

1 A. Typically small banks will use a larger clearing or
2 intermediary bank to process their cash payments or to clear
3 that payment. In this case the details have been provided by
4 DMS Bank say that their intermediary bank is the Bank of New
5 York Mellon.

6 Q. If we go down to page 36 of this exhibit. What is this,
7 Mr. Spendiff?

8 A. I think this is the letter that Mark refers to in his
9 e-mail from Irina Dilkinska stating the typo on the original
10 agreement and recommitting the subscription to the Fenero Funds
11 equities investments.

12 Q. You can take that down. If we can go back to I believe it
13 was page 4. In paragraph 1.6 again, Mr. Spendiff, do you see
14 it says free text?

15 A. Yes, I do.

16 Q. What does that mean?

17 A. That's normally a description of the payment, so we move
18 money so it's correctly allocated by the recipient. It's a
19 description of the purpose of the money.

20 Q. Who puts that in?

21 A. Whoever enters the money into the bank or instructs their
22 bank to move the money.

23 Q. So the person sending the money, not the bank?

24 A. Yeah, correct, whatever you tell them to put in that
25 section the bank will put in that section. It's a free text

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Spendiff - direct

1 you can write what you wish.

2 Q. And it's a description of what? What is it supposed to
3 show?

4 A. Well, it's so that the fund administrator or investment
5 manager can see what's going into the bank account and then
6 allocate it correctly.

7 Q. And here in this subscription agreement what was the
8 instruction with respect to the free text or the purpose?

9 A. The request was "subscription into Fenero Equity
10 Investments LP".

11 Q. We can take that down.

12 So if we could go back actually to Government Exhibit
13 2207 and to page 2. 1.6 here, is this the same provision as
14 the other subscription agreement we saw with respect to
15 pretext?

16 A. It would appear so, yeah.

17 Q. And intermediary bank?

18 A. Yes, it would appear so.

19 Q. Let's go down to page 11, and I want to direct your
20 attention to Section 9.1. What is this section?

21 A. It's just the details of the name of the subscriber.

22 Q. And who is the subscriber here?

23 A. The subscriber is B & N Consult EOOD.

24 Q. Located where?

25 A. In Bulgaria.

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Spendiff - direct

1 Q. And does the contact Ms. Dilkinska provide the e-mail
2 address?

3 A. Sure, it's Irina.dilkinska@RavenR.com.

4 Q. Did you know what Raven are was.

5 A. No.

6 Q. Is there any indication in this subscription agreement
7 that -- including these registration details -- that
8 Ms. Dilkinska was connected in any way to OneCoin?

9 A. No.

10 Q. Is there any indication in the subscription agreement that
11 B & N was in any way connected to OneCoin?

12 A. No.

13 Q. I'd like to show you now page 17 of the subscription
14 agreement and look at schedule 1. So, take a look at that and
15 tell me what letter B is asking for?

16 A. So, B, the investor entity type, so the type of investor.
17 And the related requirements that will be of those based on the
18 on the type of investor.

19 Q. And when you say the required information that is going to
20 be requested, are you referencing -- are those the due
21 diligence documents that need to be provided?

22 A. Correct.

23 Q. So let's look in this agreement what type of investor is
24 identified.

25 A. It's a private company or partnership.

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Spendiff - direct

1 Q. So if we can highlighted or maximize "for a company" and
2 the bullet points. What are those?

3 A. So, the certificate of incorporation, which needs to be
4 certified or notarized.

5 Q. Well, is that a list of documents?

6 A. A list of all the documents that Apex would expect to
7 receive along with the completed subscription in order to
8 process the investor.

9 Q. And because B & N was an entity, these requirements would
10 apply?

11 A. Correct.

12 Q. Lastly, let's take a look at page 20, appendix 1, of this
13 document. If we can zoom in on the box at the top that says
14 beneficial owner and directors. OK. Here what does this
15 agreement indicate with respect to who the beneficial owner of
16 B & N is?

17 A. It states that Irina Dilkinska -- Irina Andreeva Dilkinska
18 is the beneficial owner, so she owns the whole company.

19 Q. Does this form identify Mr. Dilkinska's source of wealth?

20 A. It states on here legal profession and private business
21 owner.

22 Q. And how about in terms of directors, who serves as the
23 director?

24 A. The same, Irina Andreeva Dilkinska.

25 Q. And just one more question about there and then we will

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Spendiff - direct

1 done with this exhibit. If we can zoom in on the box below
2 that says general nature of the company and partnership for B &
3 N. How is B & N described in terms of its general nature of
4 operations?

5 A. It says sales and marketing consulting.

6 THE COURT: Ms. Lozano it is now 2:30, so we have
7 reached the end of the day. Ladies and gentlemen, we will
8 reconvene tomorrow morning and we will start promptly at 9:30,
9 so please be here on time. In the meantime have a wonderful
10 evening. Be safe getting home and do not discuss the case.

11 (Continued on next page)

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Spendiff - direct

1 (Jury not present)

2 THE COURT: Mr. Spendiff, you may step down.

3 Any business for me?

4 MR. DEVLIN-BROWN: I was just hoping to get some sense
5 from Ms. Lozano as to how much longer the direct will be.

6 Again, I have to reiterate the concern that Mr. Spendiff can't
7 be here after Friday. The cross-examination will be curtailed.
8 I think his direct as been at least an hour and a half so far.

9 THE COURT: More like two.

10 MS. LOZANO: I believe I have approximately an hour
11 and a half left.

12 MR. DEVLIN-BROWN: If that's correct --

13 THE COURT: Does that include the tape?

14 MS. LOZANO: No, it does not. But that is also the
15 tape once it's put into evidence can also be played outside of
16 his presence. That's not our preference, but that's what is in
17 evidence.

18 THE COURT: Why does he have to leave tomorrow?

19 MS. LOZANO: He has a flight in the evening.

20 MR. DEVLIN-BROWN: Your Honor, I mean I raised this
21 before for a reason. I can understand why they would like to
22 have the money laundering expert first, but it shouldn't be
23 done at the expense of curtailing cross. We may want to play
24 parts of the tape in front of him to ask him questions or
25 impeach him as to what was said. So I do have a concern. I

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Spendiff - direct

1 think, you know, if it's an hour and a half including whatever
2 portions they play, that gives the defense three hours, the
3 same time as the direct. If it's anything less than that, I
4 think it would be a problem and we may need to make
5 arrangements.

6 THE COURT: Why don't you edit your direct, Ms.
7 Lozano.

8 MS. LOZANO: I will do that.

9 THE COURT: I'm not going to bring him back. I don't
10 want to unless it's absolutely necessary, so one way to avoid
11 that is for you to edit the remainder of your direct. And I
12 think we've gotten a sense from him as to what representations
13 were made. So anyway, anything else?

14 On the objections to leading, they were well placed
15 objections, but it was noncontroversial stuff.

16 MR. DEVLIN-BROWN: I understand. I probably should
17 stop at some point.

18 MS. LOZANO: And also in an effort to move things
19 along.

20 MR. DEVLIN-BROWN: I can understand why the Court
21 was -- periodically I made them when I thought it had gone too
22 far.

23 MR. DIMASE: Your Honor, before the jurors leave, in
24 an effort to address there potential issue, would it be
25 appropriate or possible to request that they be able to stay

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Spendiff - direct

1 slightly longer tomorrow to finish the testimony of the
2 witness.

3 THE COURT: If I know jurors, that room is empty as we
4 speak.

5 MR. DIMASE: Say again.

6 THE COURT: If I know jurors, that room is empty. So,
7 you know, I did tell them this is the commitment I made to
8 you, ly keep you for there amount of time and be here on time
9 and I will send you home as I am sending you home. Like I
10 said, this is something that can be addressed tomorrow by you
11 in the way of questioning Mr. Spendiff.

12 In terms of the tape, I have reviewed it. I haven't
13 had time to study it all that carefully, but it seems to me
14 that the material that is included, what the government has to
15 play, substantially incorporates the stuff that is not
16 included. There is a lot of going back and forth, a lot of
17 obviously Mr. Scott being frustrated about the demands that are
18 being played, but that is all captured in the materials that
19 the government is looking to include, so I don't see any basis
20 for adding the additional materials.

21 MR. DEVLIN-BROWN: If you don't mind, your Honor, we
22 will look at it a little further, discuss it with the
23 government and perhaps there are things they would like to
24 remove.

25 THE COURT: I am happy to receive whatever agreement

JB77SCO4

Spendiff - direct

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you guys reach. OK, have a good night, folks.

(Adjourned to November 8, 2019 at 9 a.m.)

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GOVERNMENT EXHIBITS

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1270	438
2200-A, 2203, 2204, 2207, 2225, 2229,	501
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DEFENDANT EXHIBITS

Exhibit No.	Received
827	427

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