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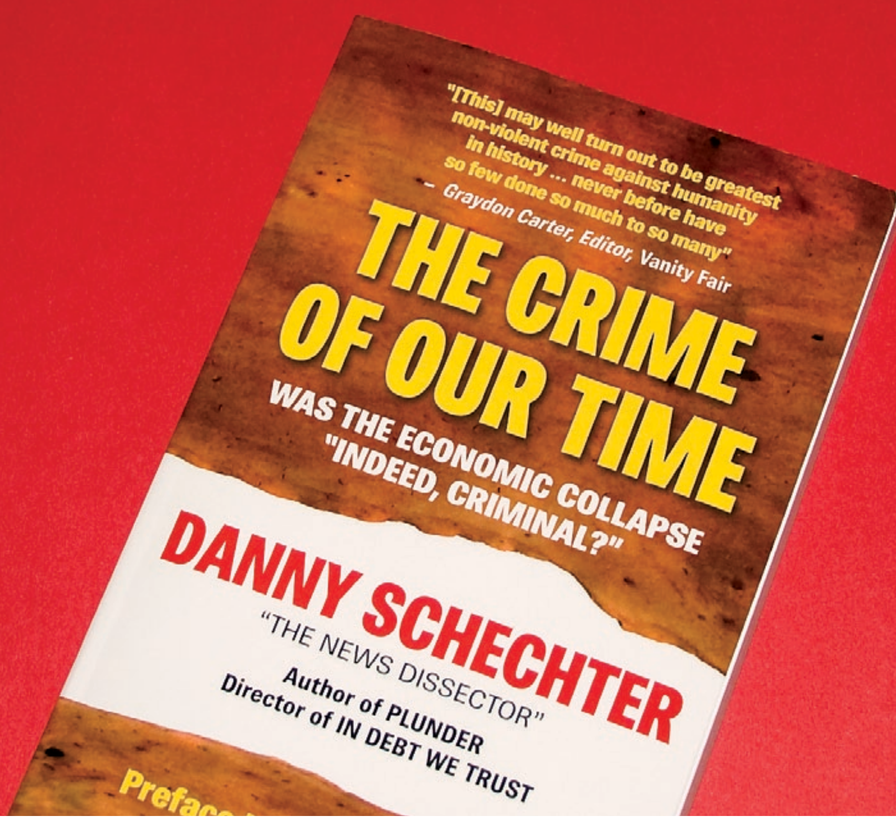
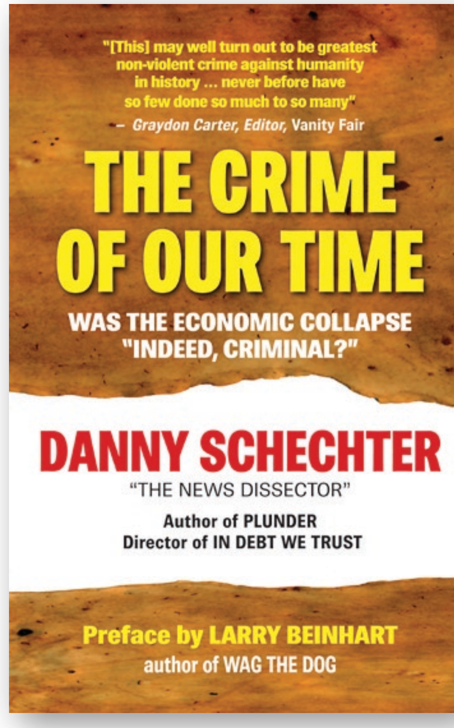
THE MADOFF MOMENT

AN EXCERPT FROM

THE CRIME OF OUR TIME

BY DANNY SCHECHTER





THE AUTHOR

DANNY SCHECHTER, "The News Dissector," has spent decades as a truth teller in the media. He has worked in print, radio, local news, cable news (CNN and CNBC), network news magazines (ABC) and as an independent filmmaker and TV producer with the award-winning independent company Globalvision. His film "IN DEBT WE TRUST" (2006) was the first to expose Wall Street's connection to subprime loans, predicting the economic crisis that this book investigates.

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More on this book and its companion film at **www.PlunderTheCrimeOfOurTime.com**

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BEFORE: *Cell phone message (according to his long-time secretary): "Hi, you've reached Bernie Madoff. I'm unavailable right now. If you need me, you can call my office at 212 230 2424. Or just leave a message and I'll get back to you." (Phone no longer in service.)*

AFTER: *Madoff became Prisoner Number 61727-054. He was sent to the federal prison in Atlanta for processing. That's the place that once housed Charles Ponzi, the man after whom the Ponzi scheme was named, but also such giants of dissent as Socialist Party leader Eugene Victor Debs and Jamaica's black nationalist hero Marcus Garvey. He was later moved to the federal prison in Butner, North Carolina, which has a hospital. (Rumor is he may have cancer.) He has now been slated for release on Nov. 14, 2139, 20 years less than the full sentence. Two weeks afterwards, Madoff's accountant David Friehling, pled not guilty of any wrongdoing.*

"indeed," (adverb)

1. used to emphasize a statement or response confirming something already suggested: *it was not expected to last long, and indeed it took less than three weeks| "She should have no trouble hearing him." "No indeed."*

• used to emphasize a description, typically of a quality or condition: *it was a very good buy indeed | thank you very much indeed.*

ORIGIN: Middle English: originally as in deed.

His phrase was "indeed, criminal," and it was uttered in open court in the Spring of 2009 by the arch financial fraudster Bernard Madoff after he confessed to running an illegal Ponzi scheme.

"I knew what I was doing was wrong, indeed criminal," was the whole statement. (Later his CFO, Frank DiPascali would confess to another federal judge, "I knew it was criminal, and I did it anyway," He pled guilty to ten felony counts, including conspiracy and tax evasion.)

For his candor and his chutzpah, this market genius credited with popularizing computer trading and chairing the NASDAQ exchange, will be spending the rest of his life behind bars as one more example of a big man taking a hard fall, as well as a symbol of all financial crisis crime, even if Madoff was not really connected to the crimes that shattered our economy.

Some of the details of how Madoff's firm operated came out in Frank DiPascali's testimony. The *New York Times* reported that "he and unidentified others helped Mr. Madoff perpetuate the crime – using historical stock data from the Internet to create fake trade blotters, sending out fraudulent account statements to clients and arranging wire transfers between Mr. Madoff's London and New York offices to create the impression that the firm was earning commissions from stock trades."

The SEC complaint alleged, "DiPascali helped generate bogus annual returns of 10 to 17 percent by fabricating backdated and fictitious trades that never occurred. The SEC further alleges that DiPascali helped Madoff cover up the fraud by preparing fake trade blotters, stock records, customer confirmations, Depository Trust Corporation (DTC) reports and other phantom books and records to substantiate the non-existent trading.

"DiPascali and Madoff ran an extraordinary and massive counterfeiting operation that concealed their fraud from investors and regulators alike," said Robert Khuzami, Director of the SEC's Division of Enforcement. The site Seeking Alpha added, "DiPascali declined to identify any accomplices other than Madoff. To date, only Madoff, DiPascali and the firm's outside accountant David Friehling have been charged in connection to the $50B fraud, though authorities are said to be investigating at least ten other people."

"On the weekend before his sentencing the Judge ruled he would have to give up his interest in all his properties. He then issued a whopping $171 billion foreclosure order, three times the alleged size of the crime when it was first revealed

Bernie, as he came to be known – as if his status as a folk character came straight out of a Woody Allen movie – had merged into popular culture after the media at first reported he committed a $50 billion dollar scam, a figure few New Yorkers could wrap their minds around. Bear in mind that his criminal practices began years before the economy crashed, although it mirrored its get rich psychology. Madoff is thought to be in a league of his own although the ponzi-process itself now has a new name: "Madoffication."

As the courts looked into the details, that figure climbed to $65 billion. On the weekend before his sentencing the Judge ruled he would have to give up his interest in all his properties. He then issued a whopping $171 billion foreclosure order, three times the alleged size of the crime when it was first revealed.

His lawyers then said the "$177 billion" demand – it apparently went up after the first press reports – was exaggerated, as if differences in billions had no meaning.

The judge left his wife Ruth with a mere $2.5 million. His lawyers argued he should only get 12 years in prison because of age (71), cooperation and his expression of "shame." They even denounced an "atmosphere of mob vengeance" even though his most vociferous critics were his own victims. Prosecutors rejected the argument, demanding instead a whopping 150-year prison term, the maximum.

The federal probation department recommended 50 years.

Finally, "M Day," July 30, 2009, came and Bernie went – sent away for a long, long time. Judge Denny Chin threw the book at him – the maximum sentence – to set an example, to warn others, to express how pissed off everyone was. Madoff said he will not appeal the sentence.

In his statement, Judge Chin explained that punishment has several purposes: First "retribution" for crimes that he characterized as "extraordinarily evil." Second, deterrence "and the symbolism is important here because the strongest possible message must be sent to those who would engage in similar conduct." And, finally, it was for the victims because, "Mr. Madoff's very personal betrayal struck at the rich and not so rich, the elderly living on retirement."

The media focused on well known victims like film director Steven Spielberg, who claimed to have lost $300 million, but tax returns uncovered by online muckrakers at web of Deception.com found that he earlier reported $126,093 in income from Madoff. Many prominent people gravitated to Madoff because he was known for his consistent and, unusually high returns. Many assumed he had "insider" knowledge.

The judge referenced 133 letters he had received from victims as a basis for his decision.

The *Wall Street Journal* reported a day earlier that just $1.2 billion, of some $13.2 billion in estimated net losses suffered by investors since December, 1995, had been recovered.

Although Mrs. Madoff got to keep $2.5 million for her living expenses, she had to give back millions in property, and fur coats said to be worth $48,500. The government is suing some investors who took large amounts of money out through so-called "Clawback" actions. Some of these investors, who want more, are suing the government.

"Although Mrs. Madoff got to keep $2.5 million for her living expenses, she had to give back millions in property, and fur coats said to be worth $48,500. The government is suing some investors who took large amounts of money out through so-called "Clawback" actions

Every report on the details seemed to dish up different numbers: The Associated Press reported: "At the time of Madoff's arrest, fictitious account statements showed thousands of clients had $65 billion. But investigators say he never traded securities, and instead used money from new investors to pay returns to existing clients."

Prosecutors said the total losses, which span decades, haven't been calculated. But, they said, "1,341 accounts opened since December, 1995, alone suffered losses of $13.2 billion. The sheer scale of the fraud calls for severe punishment," the prosecutors demanded.

In a high profile case such as his, the public and the media would not accept another normal Wall Street "settlement," where fines are paid to avoid incarceration. In this case, the judge did not just rule on the law but branded Madoff's action "evil." At the same time, Madoff's lawyer called the sentence "absurd" and writer Michael Wolf suggested on his Newser website it was because he is Jewish:

> The notion is that Bernie has come to represent the financial meltdown; he's symbolically paying for the whole thing. He's going to jail not just for the $15 billion he stole but for the other $6 or $7 trillion lost in the collapse.

Actually there were many Jews who opposed Madoff.

Vanity Fair reported: "Laura Goldman of the Tel Aviv-based LSG Capital decided not to invest with Madoff. She even sent anti-Madoff articles to members of the Palm Beach Country Club. "I was expecting a thank you, all I got back in return was a hostile response. Some of the Madoff investors said I was behaving unprofessionally and was bad-mouthing a competitor. Oh, they were nasty. Nasty! They said the publications were jealous of Bernie. They were being anti-Semitic. People called me an anti-Semite. I'm not only a Jew, I live in Israel.'"

Madoff's victims were not all rich or celebrities, despite the impression fostered by the victims. One of them, Lawrence Velvel wrote on Op-Ed News.com:

> Most of Madoff's victims are not the billionaires, "centa-millionaires," hedge funds, and banks that the celebrity-driven mass media has focused on, thereby causing the public to believe that the victims of Bernard Madoff are all wealthy plutocrats. Most Madoff victims are, instead, "small people." They are people who usually started with little or nothing, as members of the working class or lower middle class, as immigrants, as children of holocaust survivors. They are people who worked like dogs all their lives, finally saved up enough money to make an investment in Madoff, and now find themselves wiped out.

WHO ELSE WAS INVOLVED?

When Madoff told his sons, and then, the FBI about his crimes, the speculation was immediate: Who else was involved? Did he act alone in the spirit of that "lone gunman" who is blamed for all US assassinations? Soon, sure enough the men operating the "feeder" funds that kept him in business, and others who profited through his largess, were being accused of crimes by financial regulators, who looked the other way when "Bernie" became one of the richest operators on the street.

He was known for impeccable balance sheets and cozy associations with the big shots of the Jewish world of New York, Palm Beach, and even, Tel Aviv. In the shock of the disclosure of his perfidy, the *Ha'aretz* newspaper said he had done "more harm to Israel than Hamas." (He had been seen as a big shot, a big "macher" in Yiddish, and a respectable philanthropist.)

Sam Antar recognized a criminal technique in the way Madoff ingratiated himself to leaders in his community, with a veneer of philanthropic activity. Antar told me, "He built a wall of false integrity around him. He was the guy that, that was in with every single social crowd. In with, with all the charities. So everybody thought of Bernie Madoff as some kind of a god. Nobody questioned him.

"The SEC investigator, that did that audit, that female – I forgot her name, I don't recall her name – uh, she says, 'How am I supposed to find the second set of books?' Well, you weren't trained to find the second set of books, which is another problem that we have. We don't have trained investigators, and we don't have trained experienced investigators working with the government authorities to be able to prosecute these criminals. And you can't just send one investigator to find out what's going on; you need sometimes a team of investigators."

The people he ripped off denounced him in court even as many had, for years, welcomed his reassurances of the high returns they thought he was getting for their money. Many had lobbied their "*lanzman*" to please manage their money, secure in the belief he would come through for them. Some went to him believing insider (i.e., illegal) connections were the source of his success. In short, many were no less greedy, assuming that the only way he could deliver high returns so consistently was because he was flaunting the law by engaging in insider trading. As long as their neatly prepared monthly statements kept coming, no questions were raised.

Madoff's crimes received the media attention they did, not just because of their scale, but because he had also ripped off the rich and famous. The millions of poorer subprime borrowers who have lost homes because of Wall Street scams were not, in contrast, considered sympathetic enough victims.

In Madoff's case, 15,400 investors filed claims. That number had skyrocketed to meet a deadline, the end of June 2009, set

" Madoff's crimes received the media attention they did, not just because of their scale, but because he had also ripped off the rich and famous. The millions of poorer subprime borrowers who have lost homes because of Wall Street scams were not, in contrast, considered sympathetic enough victims

by Irving H. Picard, the Court-appointed trustee in charge of the claims process.

The *New York Times* reported: "The claims tally adds a new metric to the enormous fraud, which was already remarkable for the amount of paper profits wiped out ($64.8 billion), the amount of cash that flowed through the Ponzi scheme since its inception ($170 billion) and the number of years the fraud continued undetected (nearly 30, according to the government prosecutors)."

The list of victims even included his sons Mark and Andrew who said they were out $15 million in compensation and investments. Andrew reportedly called this a "father-son betrayal of biblical proportions."

Many investors believed his sons were in on it. His secretary told *Vanity Fair* that her boss carefully planned the final act of his Ponzi scheme, confiding supposedly in no one, insulating his family from responsibility. Suspicion surrounded his wife Ruth who eventually issued a statement expressing sympathy for those who were defrauded, sounding like a betrayed woman:

> From the moment I learned from my husband that he had committed an enormous fraud, I have had two thoughts – first, that so many people who trusted him would be ruined financially and emotionally, and second, that my life with the man I have known for over 50 years was over … I am embarrassed and ashamed. Like everyone else, I feel betrayed and confused. The man who committed this horrible fraud is not the man whom I have known for all these years.

Despite her statement and profession of innocence, Ruth Madoff would be sued too, as this release from the Trustee's office explained:

> NEW YORK CITY – July 29, 2009 – Irving L. Picard, the Trustee appointed to liquidate the business of Bernard L. Madoff Investment Securities LLC ("BLMIS"), filed suit today against Ruth Madoff, the wife of Bernard L. Madoff, seeking to recapture at least $44,822,355 in funds that were transferred from BLMIS during the past six years directly to Mrs. Madoff or for her benefit to companies in which she was an investor.
>
> In the Trustee's complaint, filed in Bankruptcy Court in Manhattan by the Trustee's law firm, Baker & Hostetler LLP, Mr. Picard details 111 transactions which he alleges were fraudulent transfers or conveyances recoverable under the Bankruptcy Code.

"Many investors believed his sons were in on it. His secretary told *Vanity Fair* that her boss carefully planned the final act of his Ponzi scheme, confiding supposedly in no one, insulating his family from responsibility

Noting that "for decades, Mrs. Madoff lived a life of splendor using the money of BLMIS's customers," Mr. Picard states in the complaint that "regardless of whether or not Mrs. Madoff knew of the fraud her husband perpetrated" money she received from BLMIS should be recovered "to the extent possible for the benefit of BLMIS and its defrauded customers."

"Under pressure by investors claiming that not enough money has been recovered, Picard is clearly playing to the public," business journalist Gary Weiss commented, on his website, "Certainly Ruth is not the first wife to have benefited from the thievery of her husband. Down through history, from Mrs. Jesse James to Mrs. Lansky to Mrs. Gotti and, of course, our beloved if fictional Carmela Soprano, wives have enjoyed lavish lifestyles because of their husbands' criminality, and I imagine they could have been sued by the feds by the same logic that Picard is using. I guess there might have to be a bankruptcy involved, but maybe not. Prosecutors can be creative, after all."

The Court would order Mrs. Madoff to file a monthly financial report itemizing all personal expenses above $100. Picard had found a hundred and a eleven wire transfers from the Madoff firm to her bank account, and noted that she was listed as holding an interest in her husband's British affiliate.

Ruth Madoff was known as a serial shopaholic, addicted to almost unlimited consumption of luxury items. She bought an expensive cashmere sweater the day after her husband was arrested. She made charitable donations with the company's credit card financed by stolen money, money stolen from other charities, "Even after Bernie was behind bars, Ruth was out spending like there was no tomorrow," writes Jerry Oppenheimer in his book *Madoff With the Money,* an examination of the family's criminal background that contends he was obscenely materialistic with no redeeming values.

"The evidence of Ruth's piggishness was in black and white," Oppenheimer concluded after studying court records itemizing their American Express account. Her charges in December 2007 to January 2008, after the markets melted down, were $29,887.94. "The total Amex bill for the Madoff clan was $100,121.99." No wonder the trustee Irving Picard would later sue her and her sons for millions more.

Later, when a juicy book came out by Sheryl Weinstein, a Madoff client and executive of the Jewish charity Hadassah, claiming she had an affair with Madoff for twenty years, Mrs. Madoff's attorney commented that this fresh scandal within a scandal, "stands as a powerful reminder to those who say that Ruth must have known of her husband's criminal scheme, that there are some things that some spouses – however close they are – do not share with each other."

Weinstein's book is among many to come probing Madoff's personality, and upbringing in a family that also ran illegal stock schemes. Some focus on his personal history; others show him as emblematic of "lax" times, and as an arch criminal even though his actual operation was pedestrian if systematic. It's much easier to indict an errant, and now larger than life individual, than probe the entangled institutional environment in which he operated. Some

A new lawsuit against Madoff, filed in October 2009, contends he promoted a "culture of sexual deviance" at his New York headquarters that featured vast quantities of cocaine and drug-fueled parties with topless waitresses

even ask who will play him in the inevitable movie to come?

He swam in a swamp of like minded-operators. Jailing him does not drain the swamp. A new lawsuit against Madoff, filed in October 2009, contends he promoted a "culture of sexual deviance" at his New York headquarters that featured vast quantities of cocaine and drug-fueled parties with topless waitresses.

"Madoff's affinity for escorts, masseuses and attractive female employees was well known in the office culture," the complaint filed by California lawyer Joseph Cotchett on behalf of dozens of fraud victims says. It charges that "a significant amount of the money stolen from investors went towards these lavish indulgences as well as other expenses for his employees, family and favorite feeders."

The suit charges that a number of the "feeders" brought investors to Madoff and also took part in the 'sexual revelry" including trysts on his office couch. It also contends that coke was so rampant in his Manhattan headquarters that it was known as "The North Pole."

This lawsuit is not just about his alleged sexual practices. It also charges that he was in cahoots with major financial institutions including JPMorgan Chase. It suggests that a conspiracy to defraud involved many more key players.

Bernard Madoff's psychology led to even more speculation. A website called *The Real Wolf of Wall Street,* asked, "What was his motivation? How did he rationalize things? How did he look in the mirror each day and make sense of it all? Did he feel guilty? Remorseful? Was he conflicted? Was he worried about getting caught?"

Actually, in at least one conversation when Madoff talked publicly about his business on the Internet, he comes off very self-assured, even cocky. Among his comments:

I Suppose You Could Program a Computer To Violate A Regulation, But We Haven't Gotten There Yet …

I'm very close to the Regulators … my niece married one.

> Now, no one is going to run a benefit for Wall Street, so whenever I go down to Washington and meet with the SEC and complain to them that the industry is either over-regulated or the burdens are too great, they all start to roll their eyes, just like all of our children do whenever we talk about the good old days.

> Today, basically the big money on Wall Street is made by taking risks. Firms were driven into that business – including us – because you couldn't make money charging commissions, primarily because the rates were lowered and because of the regulatory infrastructure you had to have dealing with clients.

So what's clear here is that he understood that regulations would cost him money, and like many in the industry, opposed them.

And what about the victims? What the hell were they thinking? Why did they ignore the obvious warning-signs of a Ponzi scheme? These aren't widows and orphans, after all; they're the wealthiest and most sophisticated investors in the world. So why would they blindly trust someone, without doing even the slightest bit of due diligence? Was it plain old greed that blinded them, or was there something more profound at work – some basic human frailty that makes all people, both rich and poor alike, susceptible to bubbles, Ponzi schemes, and irrational exuberance?

Madoff targeted people like himself, reports Reuters:

> While basically insolvent from the start, it feeds, fraudulently, on the natural desire to obtain financial gain.

> "It's human nature and psychology, it's preying on individuals that are vulnerable," Maria Yip, a forensic accounting expert at Yip Associates, told Reuters. "Successful Ponzi schemes prey on close-knit communities of victims, so-called 'affinity groups,' [to] which the perpetrators of the frauds are either already linked to or can tap into."

"Why would they blindly trust someone, without doing even the slightest bit of due diligence? Was it plain old greed that blinded them, or was there something more profound at work – some basic human frailty that makes all people, both rich and poor alike, susceptible to bubbles, Ponzi schemes, and irrational exuberance?

And so the process or rationalization goes into high gear, or so suggests that Real Wolf website:

> At first, when he looks in the mirror, he feels sick to his stomach. But slowly he becomes desensitized; he gets 'used to' things. As the years pass, he maintains his sanity by tucking his scam into a tiny corner of his mind – barricading it behind walls of rationalizations. He says to himself, Everyone on Wall Street is a crook, so why am I any worse? Merrill Lynch bankrupted Orange County, for Chrissake; Prudential Bache stole a billion dollars from grandmas and grandpas; Salomon Brothers rigged the treasury market! My scam is mere child's play compared to those!

> He even rationalizes taking his friends to the cleaners. "It's no big deal," he says to himself. "They're rich anyway, so they can afford to lose a few bucks."

For years Madoff remained in the shadows even as a shadow banking system emerged on a giant scale building his network of victims through referrals and from so-called "feeder funds" which sent him customers for part of the take.

Of all the reporting on Madoff, few have probed as deeply as Mark Mitchell, a reporter with controversial businessman Patrick Byrne's Deep Capture website. (Disclosure: Sam Antar and journalist Gary Weiss with whom I have spoken both denounced Byrne and claim he is engaging in nefarious practices.) While I have no way of verifying Mitchell's allegations that link Madoff to other criminal enterprises, they deserve to be scrutinized by financial reporters with far more access. Mitchell writes:

> Madoff's brokerages engaged in naked short selling (offloading stock that

> had not been borrowed or purchased – phantom stock), likely on behalf of miscreant hedge funds looking to drive down prices. In fact, Madoff successfully lobbied the SEC to enact a rule that allowed market makers, such as himself, to engage in naked short selling. At the SEC, this rule was called "The Madoff Exception."
>
> … in other words, Madoff's operation was not just the largest known swindle in history. It was also a phantom stock machine. And that makes it but one participant in a much bigger scandal – a crime that might have brought us to the brink of a second Great Depression.
>
> … it was no surprise to learn that one of Madoff's most important "feeders" was Fairfield Greenwich Group, part-owned by a "prominent investor" named Philip Taub. Philip's father, Said Taub, a "prominent investor" from Europe, had been an important "feeder," along with Michael Milken's cronies and other people affiliated with the Genovese Mafia, for the Investors Overseas Services Ponzi.
>
> Another Madoff "feeder" (and a partner with Madoff in a brokerage called Cohmad) was a "prominent investor" named Robert Jaffe. Previously, while working for E.F. Hutton, Jaffe ran money for the Anguilo brothers, the Boston dons of the Genovese organized crime family …

I am not endorsing these claims because I have not investigated them, but surely Madoff's other business associates besides his high profile "victims" deserve to be probed.

There was one more name in his list, according to Mitchell:

> This is the sad story of the French aristocrat Monsieur Rene Thierry Magon de La Villehuchet … this French aristocrat also raised billions of dollars for the greatest Ponzi scheme the world has ever known – a Ponzi scheme that entailed illegal naked short selling that probably helped topple the American financial system.

"A few days after the Ponzi scheme became public, police entered a luxurious office in a New York skyscraper. On the desk, there were pills (what kind of pills has not yet been revealed). On the floor, there was a box cutter. There was no note.

A few days after the Ponzi scheme became public, police entered a luxurious office in a New York skyscraper. On the desk, there were pills (what kind of pills has not yet been revealed). On the floor, there was a box cutter. There was no note.

But there he was – Monsieur Rene Thierry Magon de La Villehuchet.

Dead.

They said it was "suicide."

On October 25, 2009, another Madoff associate, Palm Beach, Florida, billionaire Jeffrey Picower, was also found very dead at the bottom of the pool at his mansion alongside the Atlantic ocean. According to Reuters, "The trustee handling the Madoff fraud case, Irving Picard, said in court documents filed in U.S. Bankruptcy Court that Picower, newly listed as one of the 400 wealthiest Americans by *Forbes* magazine, was complicit in the fraud." He was being accused of being the biggest beneficiary of Madoff's scheme, having withdrawn either directly or through the entities he controlled more than $7.2 billion of other investors' money." He had denied the charges as false.

Soon, Madoff's invisibility turned into super-visibility.

He got the full celebrity treatment with more than one hundred TV crews and ten satellite trucks staked out to "go live" with any "Breaking News" outside one of his court hearings. His trip to the courtroom was shadowed live by TV helicopters offering a hyped up play-by-play. In one encounter there was almost a physical altercation between Madoff and a pushy TV cameramen outside his upper Eastside building.

I spoke with one correspondent from Fox News who asked me "What are you doing here?"

I said, "I'm making a film in part about the role of the media in exposing this story."

He quipped, "that will be a short documentary."

His comment was a humorous admission that most of the media has been late to the story if not complicit in keeping it covered up so long. Once the media made it a big deal, the public went ballistic: Standing outside the Courthouse in Lower Manhattan with hundreds of journalists and TV crews from around the world, I spoke to Richard Friedman who lost over a million dollars. I asked, "How did he get away with this for so long?"

"I wondered that myself," he replied, "how a person could run a scam for so many years without being detected – that was one of the players who do as much business with each other (with few questions asked) as they compete against each other. It can't be a scam. Nobody can successfully run a scam for that long," suggesting that the government was in on it.

His answer to my question about that: "Of course there is a cover-up. The government does not want people to know how grossly negligent the SEC was in investigating him. The largest fraud in history and they didn't know about it."

Actually Madoff appeared before the SEC on more than one occasion. His niece, Shana Madoff, even married an SEC investigator, Eric Swanson. Court documents showed that the SEC closed an investigation in 2006 after Madoff responded to questions with false testimony.

"Madoff appeared before the SEC on more than one occasion. His niece, Shana Madoff, even married an SEC investigator, Eric Swanson. Court documents showed that the SEC closed an investigation in 2006 after Madoff responded to questions with false testimony

The SEC's chief watchdog in New York said that she missed it too, telling the *New York Post*: "Why are you taking a mid-level staff person and making me responsible for the failure of the American economy?' an upset Meaghan Cheung, with eyes tearing up, told the *Post.*"

The Agency's former head, Harvey Pitt, said, "The U.S. Securities and Exchange Commission should have apologized for missing Bernard Madoff's $65 billion Ponzi scheme."

In early September 2009, the SEC issued a report that reviewed its failed investigations into Madoff's crimes. Madoff says he was "lucky" that they blew their probe. AP reported:

> WASHINGTON — Disgraced financier Bernard Madoff tried by turns to bully and impress the federal examiners who looked into his business, but the investigators managed by themselves to botch the probes and enable Madoff's multi-billion-dollar fraud to continue for nearly two decades, a new report shows.
>
> A trove of revelations came to light in the report by the Securities and Exchange Commission inspector general, David Kotz. … The 477-page document paints in excruciating detail how the SEC investigations of Madoff were bungled over 16 years — with disputes among agency inspection staffers over the findings, lack of communication among SEC offices in various cities and repeated failures to act on credible complaints from outsiders that formed a sea of red flags.

NBC reported on Madoff's version of the event, "One portion of the report shows how Madoff thought he was toast in May 2006, but got away scot-free thanks to SEC investigators who dropped the ball on his case.

"I thought it was the end game, over," Madoff was quoted as saying in the report. He also said he felt fortunate SEC officials didn't call to check up on the account number he'd provided to the investigators.

"After all this, I got away lucky," Madoff said."

The SEC's reportedly admitted incompetence on the agency's part but some financial bloggers think it may have been an act of "self-exoneration," covering up something more insidious. Writes Jayanth Varma, "I think the report pushes the incompetence story a bit too much to the point where it almost reads like a whitewash job. I counted the term "inexperienced" or "lack of experience" being used 25 times in the report and that count excludes several other similar phrases. When an investigator is a good attorney, the report complains that the person had no trading experience; when the person had trading experience, it complains about his lack of investigative experience.

I am a firm believer in Hanlon's Razor: "Never attribute to malice what can be adequately explained by stupidity," but the report's furious attempt to document incompetence makes one wonder whether it is trying to cover up something worse than incompetence." (http://jrvarma.wordpress.com/2009/09/06/the-sec-madoff-investigation-report/)

In an essay on one of the spate of new books about Madoff, the *Financial Times* reviewer John Kay noted, "The SEC, is populated by box-tickers whose job is to assess procedure, not to raise queries. Most importantly, the downside for junior SEC officials from annoying rich and powerful Wall Street figures was far greater than the upside in exposing the fraud of the century. Until that changes, there will be little to prevent another Bernie Madoff."

A month after he was sent to Federal prison, Madoff met with two lawyers to whom he admitted that he was surprised that his scheme lasted so long. "There were several times that I met with the SEC and thought 'they got me,'" Madoff told his visitors, according to ABC News.

The agency had many files and documents alleging guilt. A Boston-based investigator blew the whistle on Madoff nine years before his admission of guilt.

Harry Markopolos testified before Congress of his own ordeal in trying to stop the Ponzi scheme. He submitted a report of over 100 pages explaining:

> I find it difficult to compress my testimony because there were so many victims, the damages have been vast, and the scandal has ruined or harmed so many of our citizens. I feel that by writing this testimony in narrative form, the public will better understand what steps my team and I took, the order in which we took them, along with how and why we took them. The details will also afford the Committee the information necessary to ask the right questions and hopefully aid the Committee in ferreting out the truth and in restructuring the SEC which currently is non-functional and, as witnessed by the Madoff scandal, is harmful to our capital markets and harmful to our nation's reputation as a financial leader around the globe.

A month after he was sent to Federal prison, Madoff met with two lawyers to whom he admitted that he was surprised that his scheme lasted so long

If you are thinking it was "All in the Family," you may be right. But it wasn't a Mafia-type family but an extended financial one, a global community often operating on the edges of, or outside, the law.

He was one of the players who do as much business with each other as they compete against each other. The notion of counterparties is pervasive in the financial industry where risks and deals are shared. No wonder there is the suggestion that much of this industry runs like one big Ponzi scheme.

Clearly the regulators had no interest in shutting him down even though for ten years this one Boston-based investigator petitioned the SEC to do so.

I asked John Coffee, the Columbia Law School's expert on corporate crime about Madoff:

"I think our regulatory system failed, and failed badly over basically the last six or seven years, in failing to spot a Mr. Madoff," he explained, adding, "although in fairness Mr. Madoff has been a crook for almost 20 or 25 years, and we can't just pick on the last couple of years there."

One of my other experts on corporate crime, Sam Antar, said we still don't have all the facts about with whom he wheeled and dealed. "What's happening with Bernie Madoff," he told me, "is that he's protecting the second, third, and fourth tier from not just criminal liability, but civil liability in particular. He's protecting family members and close friends from possible civil liability, from having to pay back money to the victims."

A debate about Madoff's own personality is in the news as a slew of tell-all books emerge, One is by Jerry Oppenheimer of the *New York Post* which milked the story to the max. The *Post* quotes him: "Many Madoff acquaintances were stunned by his massive con, as they considered him 'the dumbest man on Earth.' "

Oppenheimer also claims the case is far from over, with "the Russian mob, the Israeli mob and people." The book suggests he was mentored by members of the Chicago mob. And what of rumors about other government and international connections? A widely quoted financial website, International Forecaster suggests there is much more to investigate:

> Americans are well aware of the Madoff scandal, but procedures used in his conviction leave many unanswered questions.
>
> Conspiracy charges were never brought against Mr. Madoff. We had information we published just prior to the story breaking of what Mr. Madoff had been doing. Our contacts not only gave us the story, but details of how the funds were transferred from NYC to Israel and other offshore locations, such as the Cayman Islands, Belize and Switzerland. There were many wire transfers and also the physical transfer of bearer bonds to these locations.
>
> What was interesting was Mr. Madoff's association with veteran officers in the US military. That leads us to intelligence sources that have told us that Mr. Madoff was operating his scheme with elements of the CIA, the Russian-Israeli mafia and the Mossad. This would explain Mr. Madoff's closed trial.
>
> A number of banks were used in the operation. The Israeli Discount Bank, Bank Leumi, Bank of New York, Chase and Citibank's private banking facility.
>
> There is no question funds were being used by government agencies just as were those of AIG.

These suggestions may or may not be true, but a real life conspiracy like the Madoff scam inspires many other conspiratorial suggestions.

We live, of course, in a globalized economy where financial crime is also often international. Critics in the US challenge a "shadow banking system" but, outside the US, there are reports of Italian financiers working with the mafia, and even underground banks. Financial Crime OnLine reported on one, suggesting there may be many others available for laundering illegal transactions like the ones documented in the Madoff affair:

> Police in south China say they have broken up an underground bank that illegally sent 10 billion yuan (1.46 billion in U.S. dollars) of laundered criminal cash abroad since 2004. Around 200 police officers raided the underground bank in Fangchenggang in May this year and seized 70 deposit books, 590 bank cards, two cars, six computers and 680,000 yuan of cash. They also froze 327 banking accounts involved in the money-laundering case with book value of 47.5 million yuan …
>
> The group acted as a bank and offered financial services to criminals that wanted to move their money out of the China. Since the group had no real financial network, they had to rely on the infrastructure of other banks to wire transfer funds. All they did is open accounts and use these to funnel criminal funds for third (criminal) parties.
>
> Some Chinese investors who want to speculate in foreign real estate and other markets have turned to underground

"Critics in the US challenge a "shadow banking system" but, outside the US, there are reports of Italian financiers working with the mafia, and even underground banks.

banks, such as the one run by the alleged gang, to evade government restrictions on money transfers. But such limits have been eased in recent years. Criminals have always been drawn to similar set-ups since they allow for a anonymous shell that hides their own identities."

The real question is: will we ever get to the bottom of the larger financial crime wave that caused much of this crisis with encouragement from government agencies and politicians? Madoff may put a human face on one aspect of the corporate crime wave, even as more money disappeared through institutional practices, not just individual wrong-doing.

In June 2009, the head of the FBI said the bureau was investigating 1,300 securities fraud cases, including many Ponzi schemes, as well as more than 580 corporate fraud cases. Most of these cases get little attention. One investigator told the press "there is a 'Ponzimonium' underway."

Putting Bernie Madoff behind bars may satisfy national indignation, but it won't solve the deeper problem argues online columnist Eric Lotke of Ourfuture.org: "This isn't just about Madoff. This is about the system in which Madoff's scam took place. This is about systemic fraud and malpractice, the cultural trade of due diligence for easy profit. It's about conflicts of interest where companies paid ratings agencies for their ratings. It's about ideological blinders that let regulators and the Federal Reserve look the other way while banks turned into betting parlors.

"So Madoff got 150 years for breaking into the bank. Fine.

"But what about the guard who was asleep out front? What about the clerk who forgot to lock the door? What about the $300 billion that Citigroup walked out with from one vault, and the $200 billion that AIG took from another? Does anybody know where that money went or what we got for it? Don't they get in trouble too?

"The real question is: will we ever get to the bottom of the larger financial crime wave that caused much of this crisis with encouragement from government agencies and politicians? Madoff may put a human face on one aspect of the corporate crime wave, even as more money disappeared through institutional practices, not

Did you know that, or do you know why, Goldman Sachs is paying its biggest bonus payouts in its 140 year history?"

Actually, Madoff did not receive the longest sentence for financial fraud. He was only in fourth place in the seriousness of sentence sweepstakes. Number # 1 was Sholam Weiss who got 845-years for his role in the collapse of an insurance company. His co-defendant, Keith Pound, drew 740 years. Number #3 was Norman Schmidt who ran "high yield" investment schemes. When convicted, he drew 330 years. None of these long sentences appears to have deterred Mr. Madoff.

Just before he arrived at his new home at Building No 1 at the Federal prison in Butner, North Carolina, the *New York Post* spoke to inmates. Some expressed admiration according to their unnamed source. "He got a lot of respect from other inmates because he didn't tell on anybody, he didn't take everybody down with him," the source said.

"Some of the inmates admired that."

There are many unanswered questions about where the money went and even the possibility that Madoff was part of some larger plot. Investigative reporter Wayne Madsen reported: "The failure of federal prosecutors to bring conspiracy charges against Bernard Madoff, the mega-billion dollar Ponzi scammer who pleaded guilty March 12 to eleven counts of fraud and other crimes in U.S. District Court in Manhattan, is providing cover to those who pulled the strings on Madoff's illegal operation."

Madsen spoke to a former close aide to Madoff who related how he handled a number of transactions personally for the man. The source said that Madoff was running a special type of "pump and dump" scheme. The source said Madoff would "pump money out of the system and dump it out to another place." When asked what that "other place" was, the source replied, "Israel."

In Israel, the newspaper *Ha'aretz* reported:

> A number of quite worried clients have shown up at the doors of the best-known Israeli law firms specializing in tax law in the past few days asking for an urgent consultation. The fears that Picard will reveal the names and amounts, or be forced to reveal them as the result of a lawsuit, has caused the large number of requests.
>
> "Already at this stage it is possible to say that large sums of money reached Madoff's funds from Swiss banks and various tax havens," said Dr. Avi Nov, a lawyer specializing in tax planning. "Usually the money there is not money that the owners are interested in reporting to the authorities.
>
> "Here there was an excellent linkup of sophisticated investors who knew how to avoid paying taxes in Israel, and funds specializing in hiding their true purposes. Private investors in Israel always spoke about Madoff's returns. European banks recommended investing with him, and when they heard the success stories, they asked to increase their investment," said Nov.

England's *Guardian* noted that billions are still unaccounted for:

> So far Irving Picard, the court-appointed trustee of Madoff's collapsed firm, has recovered just $1.2 billion on behalf of investors. It is a small return for a six-month investigation that involved the US justice department, the financial regulator, the Securities and Exchange Commission, Picard's office and the US marshals.
>
> If Picard is to narrow the gap between asset recovery and escalating investor losses, it now seems likely that he will have to focus more on those who did business with Madoff rather than rely on tracking down his personal assets.

"

My guess is that the money is probably in the Cayman Islands where most of these funds go from Anglo Saxon economies. The Cayman Islands cooperates with law enforcement officials from other countries and will surrender information if there's a search warrant involving a beneficial owner

> Although those assets give a fascinating insight into the fraudster's lifestyle they cover only a fraction of investors' losses.

Canadian columnist Diane Francis also wonders where the money went. She consulted a tax expert knowledgeable about offshore maneuvers, who told her:

> My guess is that the money is probably in the Cayman Islands where most of these funds go from Anglo Saxon economies. The Cayman Islands cooperates with law enforcement officials from other countries and will surrender information if there's a search warrant involving a beneficial owner. But in this case, I would suspect that Madoff's wife, sons or a trusted relative have signing authority or beneficial ownership. If they haven't been charged, the Cayman Islands won't disclose or surrender any information about what they may have on deposit there [or may have received and transferred elsewhere] without search warrants.

According to this source, here's how crooks get away with stashing money in secret havens:

> 1. He sets up a company to act as advisor to his funds in the Cayman Islands [or another secrecy haven]. This company has a management role – call it Ffodam [Madoff backwards] Limited. Ffodam earns 10% in fees on the capital raised and puts this money into Ffodam Limited.
>
> 2. The beneficial owner is not Bernie Madoff. So when Bernie pleads guilty and a search warrant is served all over the world asking for any and all information and assets in his name, nothing happens unless he is the beneficial owner which he won't be for obvious reasons.
>
> 3. They can't touch these assets or even find out if anything is there. It's the perfect crime.

But beyond the actual losses, there was

another surreal dimension to his conviction. With Madoff getting what may or may not have been his just rewards, there was a sense that somehow corporate criminals are getting theirs. He's become a larger than life symbolic substitute for those vast institutional practices that now may not be pursued.

When *Portfolio,* a now defunct business magazine, convened its own panel of experts, it ran up against considerable equivocation in legal circles – a sense that the massive theft by many Wall Street firms did not meet a prosecutable standard. "The problem isn't a lack of targets. Hatred of financial executives comes cheap these days. Instead, we're missing something bigger: a Leader (capital L) with the ego, hubris, and imagination to bring Wall Street to heel."

Many of the experts the magazine reached out to seemed jaded insisting that " '…most current and former top executives are guilty not of criminal behavior but of poor judgment. It's surely hubris, but how is that actionable?' asked lawyer Stanley Arkin."

Hubris? Maybe. But public rage is likely to press for more prosecutions. *Portfolio* concluded, "If the executives do go to trial, look out. Justice depends upon the willingness of a jury to weigh facts without fear or favor. And it's going to be difficult to find a group of people who are unaffected by the economic collapse. The law, therefore, is not the executives' biggest enemy. Anger is."

Look what happened to Madoff. His sentence drew cheers in the courtroom and widespread approval in a media that has not been as zealous about crimes against lesser victims. Some even suggested that he be tortured, too.

Did he deserve a 150-year sentence? His lawyer called it "absurd." But many in the media were far more punitive in spirit. John Gapper of the *Financial Times* said such a long sentence was very rare:

> There was a moment during Bernard Madoff's sentencing hearing in Manhattan on Monday when it became obvious that the 71-year-old fraudster was going down for a very, very long time, indeed.
>
> It was when Judge Denny Chin cited the case of a woman who went to see Mr. Madoff after her husband's death to be reassured that his legacy was safe. The avuncular titan put his arm around her shoulder and assured her that all would be well; she could trust him.
>
> Fraud is often a difficult crime to prosecute, and for which to obtain punitive sentences. It is complex and hard for juries to understand and the harm it causes – the losses to investors in the companies involved – are intangible compared with violent and physical crimes.
>
> If someone is mugged and robbed in the street, both the damage and the way in which it was caused are obvious for all to see. In cases where a chief executive fiddles [with] the accounts to cover losses, how it was done and the way that it hurts mutual fund investors are harder to grasp.
>
> So Bernard Madoff was a prosecutor's dream – the Hollywood incarnation of a white-collar criminal. He dealt face-to-face with many of his victims and looked them straight in the eye; he did not merely taint the value of the investments but squandered the cash they entrusted to him.

But was the sentence fair? Not according to the website MacDoctor: "The absurdly long sentence makes no particular sense as a punishment (Madoff, at 71, will be unlikely to make 15 years, let alone 150) nor does it make much sense as a deterrent (this kind of crime is committed by people who think they are too smart to be caught and who would be terrified of 150 weeks in prison, let alone years). It does not even

"His sentence drew cheers in the courtroom and widespread approval in a media that has not been as zealous about crimes against lesser victims. Some even suggested that he be tortured, too

make sense as a protection of society as Madoff is never going to be in a position to do this again. Therefore a punishment of this length can only be put down to one thing: Revenge.

> People have been embarrassed. I don't mean financial embarrassment, although there is that, too. I mean true 100% egg-on-your-face and-call-me-a-donkey embarrassment. And least we get all self-righteous and blather on about all the mom-and-pop investors who have been financially destroyed (and who have a legitimate grievance against Madoff), the people we are talking about here are bankers, lawyers and politicians. People who should have known better.

"People have been embarrassed. I don't mean financial embarrassment, although there is that, too. I mean true 100% egg-on-your-face and-call-me-a-donkey

Yet there is so much more to look into in this case. Many unanswered questions. And does the US government want the full story out?

Many believe that since he has been convicted and sent away, the story is over.

Writing in the *New York Times*, Frank Rich said Madoff's sentence had a ho-hum response because his crime didn't seem so spectacular and because of what else was going on: "The estimated $65 billion involved in Madoff's flimflam is dwarfed by the more than $2.5 trillion paid so far by American taxpayers to bail out those masters of Wall Street's universe. AIG alone has already left us on the hook for $180 billion. It's hard for those who didn't have money with Madoff to get worked up about him when so many of the era's real culprits have slipped away scot-free. Already some of those same players are up to similarly greedy shenanigans, again, now that the coast seems to be clear."

Economist Loretta Napoleoni, who appears in my film, asks in her book *Rogue Economics*, "What if the root of the Madoff scandal and of the credit crunch which crippled the world economy and revealed the nakedness of capitalism "… is something much worse" defining the system itself, not just a few bad apples or culprits. She believes that Wall Street became a Ponzi scheme which "can be described as the best formula for creating and inflating a financial bubble."

Futurist James Howard Kuntsler believes major crimes are pervasive but probably won't be exposed, writing: "Something like $14 trillion worth of nominal dollars is being sucked into a cosmic vortex never to be seen again. It was last seen in the spectral forms of so many collateralized debt obligations, credit default swaps, so-called structured investment vehicles and other now-obvious frauds. That giant sucking sound we hear means the process is still underway, and the 'money' disappearing into yawning oblivion will out-pace any effort orchestrated by the Federal Reserve and the US Treasury to replace it …

"Notice the two words largely absent from whatever public discussion exists around these matters – 'swindle' and 'fraud.' The reason they're missing is because if they happened to enter the conversation, something would have to be done about them, namely investigations and prosecutions."

Once again, it is up to the public to demand accountability. One big fish is in the tank; many others are swimming away.