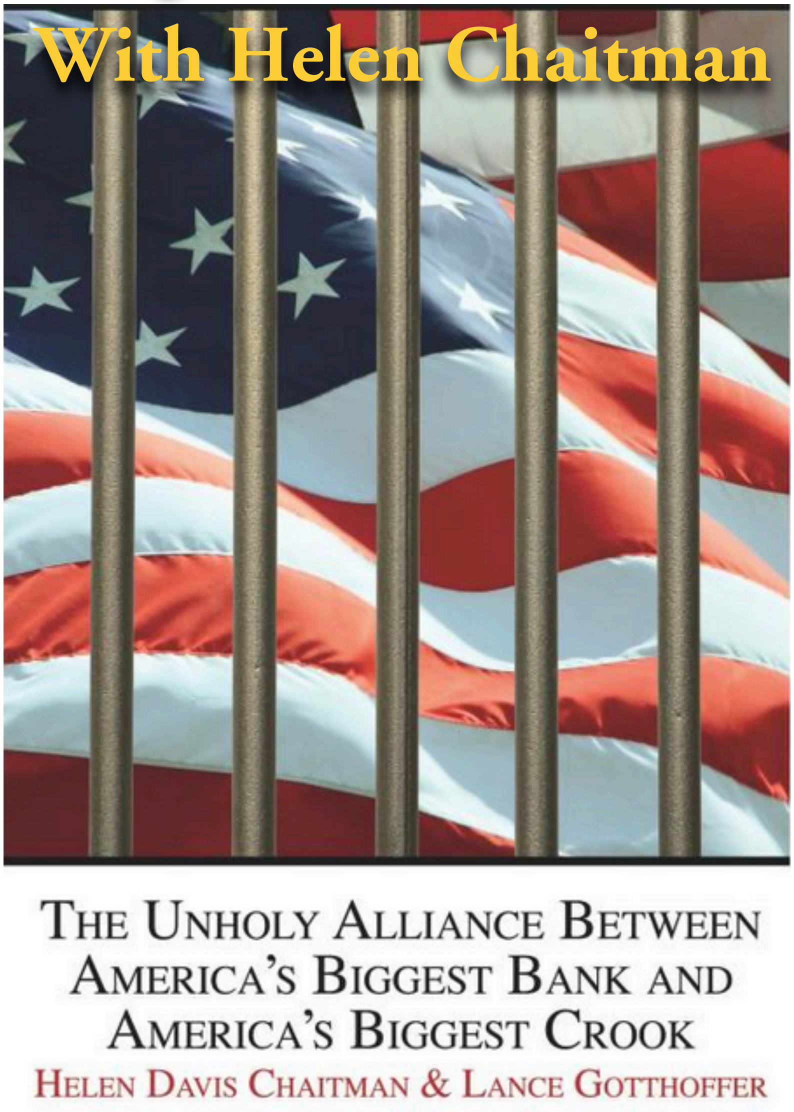
The Solari Report

May 19, 2016

JP Madoff

With Helen Chaitman



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C. Austin Fitts: Ladies and gentlemen, it's a pleasure to welcome to The Solari Report Helen Chaitman, who has a very distinguished career as an attorney in New York and is currently the Chairman of Chaitman, LLP. She is also the coauthor of *JP Madoff: The Unholy Alliance between America's Biggest Bank and America's Biggest Crook*. If you haven't read it, it's a doozy. If you want to understand what is really going on at JP Morgan, this is a book you want to read.

So, Helen, thank you so much for joining us this morning on The Solari Report.

Helen Chaitman: Thank you, so much for having me.

C. Austin Fitts: I came to know about you and your work from an associate of mine who lost money in Madoff, and I've been able to follow Madoff for many years because the financial frauds in and around JP Morgan interested me, including the housing bubble. So I've watched you from afar. Then when you posted your website for JP Madoff, I was very impressed. I couldn't wait to get the book.

I got the book immediately, and I just have to get you to tell the story of why you wrote *JP Madoff*.

Helen Chaitman: I became involved in helping Madoff victims in December of 2008, because I myself was a victim.

My area of specialty as a lawyer was litigation involving financial institutions. I termed the phrase "lender liability" in the early 1980s, and I wrote a treatise called *The Law of Lender Liability*, which was published in 1990.

So it was always my area of specialty, and my law practice was always litigation involving financial institutions. In 2008, when the economy collapsed, all of the banks stopped litigating. It didn't matter what the case was or what stage the proceeding was in; no bank was willing to pay $.03 to litigate.

So my law practice came to a complete halt. Then on December 11, I learned that I had lost all of my investment assets. So I was a little depressed, as one could imagine, but also I had no income, because I earn income based only on what I do and my practice had come to a halt. So I figured, "I might as well do something to help people since I can't do anything else."

I let it be known that I would help people on a *pro bono* basis with life issues. People had 99-year-old mothers in nursing homes and couldn't afford to pay the nursing home. What could they do? Some of them didn't have money to buy food because they had invested everything in Madoff.

So that was how it all started, and I operated a 24-hour hotline for people around the country. Then gradually I thought, "How can I help these people?"

I realized that the Internal Revenue procedures were unclear. They allow a theft loss – which would give taxpayers tax refunds for the last five years, when the investors had paid taxes on fictitious income. That procedure was not clear enough. I and a number of other people went to Congress and started lobbying for clarification of this provision. In fact, by March of 2009, Revenue Procedure 2009-20 was promulgated by the Internal Revenue Service, allowing people to apply for tax refunds. And the IRS agreed to give refunds within 45 days. So that provision was wonderful.

That was the beginning, and then I gradually began representing claimants and then representing defendants in the notorious claw-back actions that Irving Picard has filed, the SIPA trustee for the liquidation of Bernard L. Madoff Investment Securities LLC (BLMIS). That's how I became involved.

C. Austin Fitts: It's a marvelous story, and you're still, of course, involved today.

Helen Chaitman: Yes, very much so. And if I could just pick up on that, it became known that I was a spokesperson for victims. And sometime in late 2009, after Madoff had been in prison, whom I had never met or spoken with, I was walking down Lexington Avenue when my cell phone rang. The voice said, “Hello, Helen. This is Ruth Madoff.”

Of course, I had never met Ruth. I said, “Hello, Ruth. How are you?”

She said, “I’m fine; Bernie wants to talk to you.”

I said, “How do we arrange that?”

She said, “If you give me a landline number, he’ll call you collect tomorrow morning at 10:00.” So that is how it started. Then Bernie wanted me to come to the prison to visit him. I applied, and the prison warden, in her infinite wisdom, decided that I would be a threat to the security of the prison.

I didn’t know if that was because I’m so gorgeous that I would start a prison riot or because I always carry a gun. In any event, I never was able to visit Bernie in prison, but I have spoken to him many times on the phone.

In one of my first conversations, he said, “JP Morgan Chase knew from day one what I was doing.”

In one of my first conversations, he said, “JP Morgan Chase knew from day one what I was doing.”

C. Austin Fitts: Of course.

Helen Chaitman: When he first said that to me, I thought, “It couldn’t have been true.” But he was telling me the truth.

C. Austin Fitts: Right. One of my questions, which we’ll get to, is about JP Morgan being a senior partner, which is how it looks to me. But I won’t jump ahead.

For the people who are listening who are not familiar with Madoff and the Madoff fraud, can you just give us an overview of the fraud and how it happened. I know it’s a very complex situation, and your book does a marvelous job of unpacking it and making it clear. But if you could just give us the *411* directory assistance on Madoff as a fraud, that would be great.

Helen Chaitman: Sure. Bernie Madoff started an investment advisory business. He was a broker dealer on Wall Street. He started in 1960, and he operated from 1960 to 2008. He went under after Bear Stearns went under and Lehman Brothers went under.

Madoff employed approximately 200 people, of whom about 190 were engaged in a legitimate trading operation. Madoff did what is called "market making" for the major investment houses – Stearns, Schwab, Merrill Lynch. He had companies like that as his customers, and he did trades at certain periods equal to 10% of the daily volume of the New York Stock Exchange. This volume was more than those of Goldman Sachs or Merrill Lynch.

He was a huge player on Wall Street, and then he was became President of the NASDAQ. He was revered by everybody, but some people, beginning in the late 1990s, reported to the SEC that they felt that he was operating a Ponzi scheme, not with respect to the market-making business, but with respect to the investment advisory business that he had five or six people running, out of the 200 people he employed.

As to this investment advisory business, the SEC investigated it six times over 16 years, involving 122 separate individuals who worked for the SEC. There were times when someone young would report to a senior person, "I think Mr. Madoff is lying to us; he's done something dishonest. He's done something illegal."

Time and time again, that person would be taken off the team and assigned to a different project.

So Madoff was a protected individual on Wall Street, and the SEC protected him just as much other people did who should have uncovered his crime. But he became a household word for a lot of people. I have a number of clients who are third- generation Madoff investors.

C. Austin Fitts: Right. I've seen that pattern several times now. It was inconceivable for people that Madofff not be a reliable investment, because they or their families had had such a long Madoff experience that Madoff appeared to them rock solid. In other words, Madoff was an insider.

Helen Chaitman: Right, and a respected insider. I don't think that anyone had reason to believe that he was dishonest. There were some hedge funds starting around 2005, when the hedge fund investments increased so radically. The hedge funds were inducing people to invest who didn't know where their money was going.

The people who had been third-generation Madoff investors considered his investments like US Treasury notes. They had no reason to believe anything was wrong.

C. Austin Fitts: Is it fair to say that all the statements that went out to the investment advisory clients were, in essence, fabrications – that the securities were really never there?

Helen Chaitman: When Madoff pled guilty, he said that he started falsifying the statements in the early 1990s. Before that time, everything was legitimate. Even though Irving Picard, the Madoff trustee, claims that that the Madoff defense is not true, Picard has no evidence.

So I don't know what the answer. I think that Madoff is not an honest person, and probably never was. But I don't know whether or not he purchased securities for his investment advisory customers from 1960 to 1992. I just don't know the answer to that. Certainly I've never heard an allegation with respect to his market making business which, again, was 90% of his business. I've never heard an allegation that he was dishonest with respect to that business.

C. Austin Fitts: Right. So when you read the book, it looks to me that JP Morgan was Madoff's lead bank. Is that fair to say that?

Helen Chaitman: With respect to the investment advisory business, it was the only bank.

C. Austin Fitts: Okay.

Helen Chaitman: The market-making business banked with other banks. So the only part of Madoff's business that JP Morgan Chase had any connection to was the investment advisory business.

C. Austin Fitts: So from reading the logistics of how the business worked and how it was managed, particularly from the 1990s on, it sounded to me like JP Morgan Chase was the senior partner, not the junior partner. In other words, Madoff worked for Morgan, not vice-versa.

Helen Chaitman: That's intriguing because in a sense you're right. It's not that JP Morgan Chase made the decisions as to who would deposit money, but JP Morgan Chase sat there and saw every check deposited into what was called the 703 account. That was the number of the account. So they knew that upstate New York plumbers' pension fund was invested in Madoff. They knew that universities had invested in Madoff. They knew that charities had invested in Madoff, and they had a glass-bottom-view boat of the activity in the account. They knew, as they were required to know by Federal law, that Madoff was using this account solely for his investment advisory business. They knew that he never purchased securities with any of the money.

C. Austin Fitts: Who was supposedly doing custodian and clearance work for the investment advisory accounts?

Helen Chaitman: There was a man named Richard Cassa, who was the account officer and the relationship manager. It was his job under written policies of JP Morgan Chase that complied with the Bank Secrecy Act, which was a statute enacted by Congress in 1970. It recognized that if you wanted to prevent financial crimes, you needed the cooperation of banks.

So the Bank Secrecy Act imposed upon banks the obligation to know their customers, to understand the cash flow in businesses, and to monitor customer accounts and to inform the Federal government if there were any suspicious activity. Of course, if you felt there was any suspicious activity, you were to close the account.

Cassa was the man who had the obligation at JP Morgan Chase throughout a 20-year period to monitor that account and report suspicious activity. Now, the biggest check-hiding scheme in the history of the world, involving $106 billion, was carried out between Madoff and one of his crooked cronies, Norman Levy. JP Morgan Chase in 1994 wrote an internal memo saying that it looked as if Levy and Madoff were hiding checks, and Morgan wanted to make sure that it did not pay interest on the kited funds.

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They weren't concerned that they were doing something illegal; they just wanted to make sure that they were not losing money on it.

C. Austin Fitts: Right, but I still don't understand. The money came into the account, and supposedly it needed to go someplace. In theory, if he's buying securities, the funds must go to an account that is part of the clearance process. So I'm assuming Madoff was operating as his own custodian. So Morgan wasn't the securities custodian for the investment advisory business.

Helen Chaitman: Right. There was no securities custodian. There were no securities purchased.

C. Austin Fitts: So in theory, I assume Madoff was telling the people doing due diligence for the various institutions that looked at him, that he was the custodian.

Helen Chaitman: Yes.

C. Austin Fitts: So the money comes in. Morgan has to see it go out. It went out someplace.

Helen Chaitman: It went out to Norman Levy, one of Madoff's conspirators. It went out to Jeffry Picower, who was – according to Madoff – the mastermind of the fraud, and certainly its largest beneficiary just on that particular issue. A lot of people don't realize that when Madoff's total net worth was liquidated, the Madoff trustee realized $125 million.

Jeffry Picower put $650 million into Madoff and took out $7.8 billion, over a 25-year period. So if you simply invested that net amount, which was $7.2 billion, in treasury notes over that 25-year period, it would have tripled in value.

So there's good reason to believe that Picower, assuming he had no other source of income – which is not true because he had a number of different very successful businesses – just from the Madoff theft he would have had a net worth of $30 billion.

C. Austin Fitts: Right. So I'll get to conjecture later about where the money might have gone. Needless to say, it is impossible that JP Morgan did not know that this was not a real investment advisory business. Whatever it was, it was a front for something else. It's impossible that Morgan didn't know.

Helen Chaitman: I agree.

C. Austin Fitts: It was in their face every day for almost two decades.

Helen Chaitman: It was.

C. Austin Fitts: That's why I ask, "Was JP Morgan Chase the junior partner or the senior partner?"

One of the things you do in the book is to transition from the specific Madoff fraud and describe a wider pattern of systemic fraud at JP Morgan. Maybe you could just describe through some of the other situations in your book.

Helen Chaitman: Sure. I just want to step back because I feel that President Obama has done a tremendous disservice to the people of this country by allowing Eric Holder to espouse this farce that we can't afford to prosecute a criminal who works at a large financial institution because the economy will collapse. When you think about it, if the viability and sustainability of JP Morgan Chase depends upon the continued employment of someone who has committed felonies, then the institution should be closed.

What I've done is I started – as you say – with the Madoff fraud and the fact that you know who at JP Morgan Chase was monitoring that account and who knew exactly what was going on. Then you go and you analyze other activities of JP Morgan Chase, and you inevitably come to the conclusion that it is run like the Gambino crime family.

The bank figures out – no matter what area of their business – how to violate the law because violation is where the real profits are. When the bankers get caught, thanks to Obama and Eric Holder, all they do is cough up as a penalty a small percentage of the profits they realize from their criminal conduct, and then they move onto the next crime.

C. Austin Fitts: I would describe that sum not as an enforcement fee; I would describe that as a kickback.

Helen Chaitman: I love that. You are absolutely right. It is like a kickback because, of course, why would Obama allow Eric Holder, his Attorney General, to espouse such a policy so absurd as to allow a Wall Street actor no better than a mobster? The answer is that these are the people who are supporting their political campaigns. Obama got millions of dollars from Wall Street, and in particular from JP Morgan Chase, and unfortunately Hillary Clinton got the same. How can she accept $675,000 for doing three speeches for Goldman Sachs? What does that fee really mean?

C. Austin Fitts: Right.

Helen Chaitman: Her answer is, "That's what they were willing to pay me." Well, why would they be paying that money? Goldman is not a charity.

C. Austin Fitts: It's an illegal kickback scheme.

Helen Chaitman: Yes, it is.

Basically we know that they pled guilty to two felonies with respect to the Madoff relationship – two felony violations of the Bank Secrecy Act. That cost them $1.7 billion. I don't have all of the information; I just know what the government has released in its stipulation with JP Morgan Chase.

From 2003 to 2007, Bernie Madoff kept on deposit at JP Morgan Chase in the

703 account $3 to $5 billion. Now this holding was before the Fed started throwing money out the window to the banks. So how much is it worth?

Remember the days when you would get a toaster if you opened up a bank account with $5,000? So what do you get if you leave $3 to $5 billion in the bank?

C. Austin Fitts: Right. The float on that account was astonishing.

Helen Chaitman: Yes because a lot of people don't realize that the banks have the right to invest that money. In fact, when Jamie Dimon in 2004 came to JP Morgan Chase, he had this idea of setting up the JP Morgan Chase Chief Investment Office in London, which became the scene for the London Whale fiasco. What was he doing? He was taking depositors' money and speculating, and making a fortune for the bank until it all collapsed.

C. Austin Fitts: Right. He was doing proprietary trading with it.

Helen Chaitman: Exactly. So you have to assume that Madoff's $3 to 5 billion was what started that office. It's inconceivable that any other customer would have had funds like that on deposit.

C. Austin Fitts: Actually there was another customer who could have done it, but let me step back and we'll dive into the government side of this and then come back to the other frauds.

My background in this is I served as Assistant Secretary of Housing in the first Bush administration. Then my company ended up as the lead financial advisor for FHA for years, and I ended up in a very ugly litigation with the Federal government, starting in 1996-1997. I decided to get to the bottom of the housing fraud.

At the root of the problem was the discrepancy between what the law said the government was supposed to do in the housing area and what was really going on.

My experience as Assistant Secretary of Housing or Lead Financial Advisor showed me that any time over the last 20 years people who came into the government housing operations saw that the managers were not operating according to the law, and when the new people started to fix it – bam! They got thrown out, got fired, and some died under suspicious circumstances.

The immunity of the institution to the law was extraordinary. I finally decided, "I'm going to get to the bottom of the matter." I have to tell you that JP Morgan Chase was right at the heart of it.

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I don't know if you remember the First American Bankshares situation. Clark Clifford was the chairman of the bank that had been indicted.

Helen Chaitman: Yes.

C. Austin Fitts: Well, Harry Albright was appointed by Morgenthau. Harry was both a friend and a business associate. Morgenthau appointed him as the trustee. There was a squabble because the asset forfeiture that funded the Department of Justice was trying to grab all the money, and Morgenthau wanted it to go back to the depositors who had been harmed.

So Harry got put as the trustee, and Harry asked me to come on the board to help govern the situation, and the first thing that happened, Helen, was a delivery of bad news. I had a big house with all glass windows over the Potomac. Harry had the law firm send out a Brinks truck to my house with 2,000 pages plus of legal documents. I spent three days – and I'm a speed reader – reading everything. When I finished I realized that everything that Clifford and his team were doing could have happened only if the White House, the New York Fed, the Federal Reserve, the FDIC, and Comptroller of the Currency, the Secretary of the Treasury, and institutionally everyone had to have gone along with it, top-down.

I realized I was looking at a creature different from an individual Madoff fraud. It was systemic fraud.

When I dove in and started looking at the mortgages, it was the same thing. So I decided that I would step back and try to figure out why the Federal government and the New York Fed member banks were engaging in massive systemic fraud on a huge scale.

When I look at something like the $1.7 billion payment by JP Morgan Chase back to the Department of Justice, what I see now are two business partners together, who split the profits. It's a legal mechanism that can look okay in the papers. They call it a fine, but it's not a fine; it's basically a kickback between two partners. That's how they share the government's portion of the profits.

If you look at how the government engineered and supported and facilitated the Madoff scandal, that result takes a lot of work, to get the SEC to stand down many, many times for many years.

Helen Chaitman: That's a brilliant way of looking at it. As you were talking, I was thinking about a couple of years ago when HSBC was fined a couple of billion dollars for financing terrorists. When you think of the cost to this country, of fighting terrorists, and how the HSBC violated the law by financing terrorists, and nobody went to jail, The bank just paid a fine; it's hard to believe it could happen.

It's the same thing. You're right. It's just a division of the profits.

C. Austin Fitts: I don't know if you're familiar with the Exchange Stabilization Fund. The Exchange Stabilization Fund is a fund under the umbrella of the Secretary of the Treasury, but managed on behalf of the Secretary of the Treasury by the New York Fed member banks.

If you try to do a FOIA to the New York Fed or the Fed, the banks will say, "We don't have that information because it's managed by those banks directly for the Secretary of Treasury." It's one of the reasons that appointment, along with White House Counsel, is so important.

At the end of World War II, the money seized by the United States at the end of the war – both in Asia and in Europe –was moved, I believe, some into a hidden system of finance and some into the Exchange Stabilization Fund.

Those two pots of money became the basis of financing secret and highly confidential projects.

Literally the intelligence community was put in charge of the hidden system of finance, and the New York Fed member banks were running the Exchange Stabilization Fund. The Exchange Stabilization Fund became, among other things, the mother of all slush funds, not only dribbling money, but also using wide powers to engage in market interventions on behalf of the government.

I won't bore you with the whole story – and I have lots of information on this if you're interested.

Helen Chaitman: Oh my God! It's not boring; I'm intrigued by this.

C. Austin Fitts: What grew out of it, by what I can tell, is an enterprise. You have a hidden system of finance, you have the Exchange Stabilization Fund used among other things as a slush fund, and a market intervener. Then this money gets leveraged with all sorts of activities that you and I would describe, many of them, as systemic frauds leveraged with things like mortgage fraud and derivatives.

What they created is part of the Federal credit mechanism by which the New York Fed member banks financed the US government. So whether it's the overt financing with US Treasuries being issued or the covert financing. Which is secret projects and intervening and managing the markets, you – the President, the Secretary of the Treasury – are completely dependent on the New York Fed member banks for both overt and covert financing.

So to the extent that they're financing –because I believe part of all this money is going is into intelligence agencies and secret operations – we are dependent on these guys. We have got a construct that says under national security, this fraud is all legal, or that's how you're going to defend it.

Basically what you've built is a machinery of massive organized crime. You can't penalize a banker, because if you penalize one, then all the others will stop the things you need to get the money for the budget. So you're in a bind.

Helen Chaitman: That's really unbelievable.

C. Austin Fitts: Well, it would sound completely absurd, but look at the pattern of the frauds and the fact that no banker has been accountable, and fraud continues to happen. I would never have believed it if I hadn't gone through basically all the housing frauds – year after year after year – in the 1980s and the 1990s. My job in the Bush administration and then in the Clinton administration was to stop the mortgage fraud.

I discovered that fraud was unstoppable, because a "giant sucking sound" was coming from people superior to the White House, demanding that cash.

I've gone off track, but let's go back to the US government. It's clear to say that if you'd been Attorney General, something very different would have happened.

Helen Chaitman: There's no question about it. Believe me, if Bernie Sanders were elected, I would give anything to be his Attorney General. The banks would have a real worry at that point.

You may have seen Matt Taibbi's article in *Rolling Stone,* about Alayne Fleischmann.

C. Austin Fitts: No, I didn't. Wait, was that the Federal Reserve whistleblower?

Helen Chaitman: Yes. Not the Federal Reserve whistleblower; that was with Goldman Sachs. In 2005, Alayne Fleischmann worked for JP Morgan Chase. She is a lawyer, and she was working on the sales of the garbage housing loans. She said to her superior, "We can't make these representations in the prospectus because they're not true as to the quality of the loans that we're selling."

The guy sent out a memo saying, "Nobody is to send any emails and nobody is to comment upon the quality of the loans, etc."

So Alayne then went to this man's superior and said, "Look, we can't describe the loans the way we're describing them in this portfolio because it's not accurate."

That guy decided that Alayne really belonged in a different department of the bank. Then, of course, she was terminated.

She was deposed by the government in connection with its investigation of JP Morgan Chase's mortgage fraud. Before the $13 billion settlement was announced (the settlement between the Federal government and JP Morgan Chase with respect to its fraudulent mortgage practices), she was led to believe that the government was going to prosecute JP Morgan Chase. I'm sure there was never an intention on the part of Eric Holder to prosecute JP Morgan Chase; it was just a decision to try to get money out of it. And there was so much public pressure that they had to do something to create a big headline.

The headline was that it was a $13 billion settlement, but in fact, $4 billion of the $13 billion was so-called "consumer relief,"

The headline was that it was a $13 billion settlement, but in fact, $4 billion of the $13 billion was so-called "consumer relief," whereby the government was going to trust JP Morgan Chase to provide consumer relief.

C. Austin Fitts: Right.

Helen Chaitman: Of course, some of that consumer relief consisted of JP Morgan Chase releasing liens on loans previously sold to third parties.

C. Austin Fitts: Right. So one of the things I would find is that often the government intervenes, not so much to penalize the perpetrator (who really was a partner in the perpetration), but to assert control over the situation.

Helen Chaitman: Exactly.

C. Austin Fitts: So, by asserting control the government would stop the civil and private litigants from making any headway, not just with respect to holding people accountable, but to bringing real transparency to what had happened.

Helen Chaitman: Well, you know, that's the structure of the False Claims Act, which is the statute that allows whistleblowers to report situations where the government is being cheated. Very often the government takes over the case, not in order to assure that the government isn't cheated, but rather to assure that the cheating that has been established with government complicity can continue.

C. Austin Fitts: Right. Exactly. Believe it or not, I was the target of a *qui tam*, so I'm very familiar.

Helen Chaitman: Oh, my gosh!

C. Austin Fitts: Oh, yes. A lot of times what they will do to get somebody honest out, is to target that person under the whistleblower statute. It's quite interesting. In fact, we ended up writing about the case and putting legal documents online. One of the ways we were able finally to deal effectively with the situation was just making so much of the legal documentation available that it shifted things.

So we talked about SEC and Department of Justice. One of the most intriguing parts of you involvement in the Madoff case is the Securities Investor Protection Corporation (SIPC) situation, and I think that's very important for investors to know about. Maybe you could describe what happened on Madoff with SIPC.

Helen Chaitman: This is one of the most discouraging parts of the whole story, because the Securities Investor Protection Act was enacted in 1970. That year was really a banner year. That was the year that Congress enacted the Bank Secrecy Act and, of course, the Securities Investor Protection Act. Both statues have been nullified in the last decade, and the Securities Investor Protection Act set up the Securities Investor Protection Corporation. It was enacted during the administration of Nixon, and he said he signed the bill to provide SIPC insurance to people who invested in the stock market comparable to the FDIC insurance for people who put money in a bank.

The stated purpose of Securities Investor Protection Act was to encourage average, honest, hardworking Americans to put their money in the stock market because it insured each account up to $500,000 if the broker was dishonest and stole the money and didn't buy the securities or the broker bought and then stole the securities.

C. Austin Fitts: So let me step back. So if you had your money in Madoff, and let's say you're a teacher and you had saved $450,000 in your whole life. You had it all in Madoff, and you felt secure having it all in Madoff because you knew under $500,000 that 100% of your account was SIPC insured, right?

Helen Chaitman: That's exactly right.

C. Austin Fitts: So, what happened?

Helen Chaitman: In the early stages, in December of 2008 when I was talking to Madoff victims, they all said, "Well, I know I'm going to get my $500,000 because on every statement it says SIPC insured." And if you go to see your Merrill Lynch broker, there is going to be a bronze plaque on his desk that says "SIPC insured." Everybody thinks this is like FDIC insurance. Well, forget about that.

The mistake that Congress made was it allowed the Wall Street firms to run SIPC and to decide how much money to put into the insurance fund. So, the Wall Street firms typically in the period from 1996 through 2008 set the fee for SIPC insurance at $150 a year per firm.

So, let's say Goldman Sachs had one million customer accounts. They assured each customer that the account was insured up to $500,000. For the ability to do that, they paid one check of $150 to SIPC each year. Merrill Lynch probably had 30 million customer accounts. It paid one check of $150 to SIPC.

Over the years, the subcommittee on capital markets in the House had, on a number of occasions, written to SIPC and said, "Hey, guys, maybe $150 isn't enough. You're not going to have enough to cover a major liquidation."

Well, the Wall Street firms loved it because they were getting the benefit of assuring the public that their money was safe up to $500,000, and they didn't have to pay for it. What could be better?

Then 2008 happened, Lehman files, Madoff files, and SIPC says, "Well, we don't have enough money to cover this."

There were two choices: One was to assess specific members as they should have been assessed from 1996 to 2008. Or, the alternative was to screw the investors. Obviously that was an irresistible alternative. So all of a sudden, the President of SIPC, Steve Harbeck, started telling the press, "You know, the statute doesn't mean what it says, and even though as recently as a week ago the General Council of SIPC said that every Madoff customer is insured up to $500,000, she misspoke. She didn't really understand the statute. She's only been working for us for 30 years, and she got it wrong. What the statue means is that if your broker was dishonest and didn't buy the securities, then you only get your net investment."

So of the $64.8 billion in outstanding claims among approximately 5,200 Madoff accounts, SIPC insured only about $16 billion of that amount. It insured only about 2,200 accounts, and the $16 billion was the full account value. They Madoff and JP Morgan Chase insured only up to $500,000 per 2,200 accounts. So they reduced their liability for SIPC insurance by about $1.5 billion.

C. Austin Fitts: Helen, they did that by saying that all the dividends that you've gotten since the beginning were netted?

Helen Chaitman: Because Madoff was a crook, and they decided that he was a crook since 1960. So let's say my grandfather put $100,000 into Madoff in 1960, and that appreciated over the years. If he had bought IBM in 1960 at $100,000, it would be worth $10 million today.

C. Austin Fitts: Right.

Helen Chaitman: So let's say that my grandfather died in 2006 and left me a Madoff account of $10 million and he had never taken any money out. I would have paid $5 million to the Federal government in estate taxes, and Irving Picard, the Madoff Trustee, would be suing me for $4,900,000 because my grandfather put in $100,000 and I took out $5 million. I'm now representing approximately 100 people who have been sued on that basis.

So, they didn't get SIPC insurance, and now whatever meager little assets they have left they're being sued to recover.

C. Austin Fitts: Right. So basically SIPC took most of a pass, and now the trustee is coming back for essentially value gained.

It's all gains over your principal? Does it include dividends, or is it just the capital gains?

Helen Chaitman: It's anything you took out. It's a cash-in/cash-out calculation.

C. Austin Fitts: Okay. So any cash you took out – and that goes all the way back to 1960.

Helen Chaitman: Yes, and I represent a 98-year-old physician who had an IRA account. From the time he was 70 and a half, he took out mandatory IRA withdrawals. He paid out half of it to the Federal government. He can't get that back from the Federal government, but Picard is suing him for the money he paid to the Federal government.

C. Austin Fitts: You're kidding!

Helen Chaitman: No. Thank God we got the Second Circuit to do the right thing on this. The bankruptcy code does not permit fraudulent transfer actions against customers of a stock broker unless you can show actual fraud, and the transfer can only have occurred within the last two years of the broker's existence.

Picard had used the state fraudulent transfer law, and had sued for six years of claw-backs. We ended up succeeding on that issue, and I was thrilled about that. Picard thought certain the Supreme Court and I opposed it, and the Supreme Court denied *cert*, so Picard was unable to recover against a lot of my clients who hadn't taken money out in the last two years but had taken out money before that.

I believe that ultimately the Second Circuit will hold that Picard does not have the right to claw-back from anyone because that step is a distortion of the law. The law, since Elizabeth I in 1645, enacted the first fraudulent transfer statute, and every single fraudulent transfer statute since Elizabeth I has had an exception. The statutes have all said that if a payment is made to a creditor in good faith and satisfaction of an antecedent debt, no matter what the intent of the transferor was, the transferee is entitled to keep the money.

Now Madoff customers had a debtor/creditor relationship with Madoff. When they took out money, it reduced the amount that Madoff owed them. If in 2007 I had wanted to take money out of my Madoff account, and Madoff said, "I'm not giving it to you," I would have marched right into the New York Supreme Court, and I would have gotten a court judgment or order compelling Madoff to turn over the money to me because he owed me that money.

Picard doesn't allege that any of the customers knew that Madoff was a criminal. Of course they didn't. So these are all good faith customers, and the concept that you can sue a creditor is inconsistent with 400 years of law.

C. Austin Fitts: Right, but here's the problem. I'm just going to talk politics now. If you are the New York Fed member banks and the government and SIPC, you are all these different organizations together. Remember they're running a day-to-day business that is raising and financing the government – both overtly and covertly.

What is the total number of Madoff victims?

Helen Chaitman: The total number is 35,000. The account holder number is 5,240.

C. Austin Fitts: So let's talk about those 5,000 people. In my experience, just from the Madoff victims I've known, you've got a lot of really smart, successful people. These are people who have a lot of intelligence, a lot of education, a lot of power in formal and informal ways. What you need is for them not to understand what was going on, because if they really understood what was going on, then the reality is that the US government and the New York Fed member banks owe them back every penny plus interest plus money for the time that has been done and the stress that has been hit because a fraud was perpetrated on them.

Traditionally in these situations, the best defense is a good offense. So it's projective identification: You accuse them of what you were doing. "They were doing business with a fraudster. They should have known better."

Part of this is just pure politics, but it looks to me, if you look at what Picard SIPC have done, that the people who perpetrated this fraud – and remember, they're not just worried about this one; they're worried about all the cases. They need that 5,000 account holders not to grasp what is going on.

Helen Chaitman: You know, I don't represent the 5,000 account holders, but I represent a significant percentage of them.

C. Austin Fitts: Right.

Helen Chaitman: I have done everything that I can think of to help them. I sued the SEC under the Federal Tort Claims Act for negligence because the Congress has waived sovereign immunity with respect to the negligence of an officer to the Federal government. I alleged that it was negligent for the SEC to have failed to uncover Madoff's fraud. Further, the SEC affirmatively stated in a press release to the *Wall Street Journal* in 1992, when a feeder fund to Madoff went under and the SEC closed it down, then it turned out that that feeder fund just fed the money to Madoff, and the SEC issued a press release that was published in the *Wall Street Journal,* saying they had investigated Madoff and Madoff came out clean.

The truth was that they had never investigated Madoff. But even with that undisputed record, my case was dismissed. The court held that there is no standing to sue the Federal government on the facts of this.

I filed a lawsuit against SIPC. I had a similar result there. So what you have to appreciate is that it's not simply that there is the alliance that you've described between the government, the Department of Justice, and Wall Street; the courts are now peopled with judges who have an overwhelming sympathy for Wall Street and for large corporations.

C. Austin Fitts: Right. So it's very, very difficult to achieve relief in the courts.

Helen Chaitman: That is exactly right.

C. Austin Fitts: Did Madoff have an E&O insurer provider? I'm assuming not.

We should win on that issue because the law is absolutely clear.

Helen Chaitman: I don't know that he did. I don't think he did, and it wouldn't have protected for fraud. There is always an exception in those policies.

C. Austin Fitts: Right. So you continue to represent against the trustee claims. And where does that stand?

Helen Chaitman: I had been defending about 140 cases, and a number of my clients' cases were dismissed because of that limitation to two-year withdrawals. I'm now down to about 95 cases, and we've just started discovery.

We have to wait in any case – whether I'm defending or someone else is defending – and get that to the Second Circuit on the issue that I described earlier--about the defendants being innocent creditors and there can't be a fraudulent transfer claim against an innocent creditor.

We should win on that issue because the law is absolutely clear. I can't guarantee that I'll win on it because the courts don't always follow the law, but if the Second Circuit follows the law, we should win on that. That would result in the dismissal of all these cases.

C. Austin Fitts: There was a great moment in my *qui tam* case where the judge was the former CIA General Counsel. We had a recent Supreme Court case on point. My attorney with his voice cracking, said, "But your honor, you have to do it; it's the law."

The judge said, "Mr. McManis, I disagree with the law. If you have a problem with that, take it up with Congress." I think you would have laughed if you had been there.

One of my favorite parts in your book is on page 177, when you say, "It is impossible to explain why the American public, 50% of whose households do business with JP Morgan Chase, would accept criminality from a financial institution."

I can no more fathom why anyone would bank with JP Morgan Chase. I just can't even fathom it, and yet more and more people seem to be doing it as though it's perfectly safe.

Helen Chaitman: It's really horrifying because I'm sure you've seen this roulette wheel on my website for *JP Madoff*. It's in the middle of the home page. If you click on the roulette wheel, it revolves. Then it stops wherever. Then each slice of the roulette wheel is a different judgment that JP Morgan Chase has paid out just in the last five years. The total amount that they have paid out in fines and settlements for violating the law or defrauding people is $36 billion. It ranges from defrauding veterans to credit card holders to homeowners to improperly managing trusts that they are the trustees of.

There is no aspect of their business that isn't permeated by fraud and dishonesty. It's just remarkable that they get away with it.

C. Austin Fitts: So let me ask you something. The website has been up for a while now. What is the response you've gotten from the media and the general public to both the book and the website?

Helen Chaitman: The major media will not acknowledge any of these issues.

C. Austin Fitts: Right.

Helen Chaitman: In fact, I had a very interesting experience. I had been invited on the 6th anniversary of Madoff's confession by Maria Bartiromo to appear on *Opening Bell*. I was about to go on a vacation, and I bought all of her books that she'd written and I dutifully read them on the vacation, assuming that I would have to be able to talk to her about her books and compliment them.

I had emailed the producer who had invited me a couple of times and asked him what it was that Maria wanted me to talk about, and he wrote back and said, "Whatever you are doing."

I said, "Take a look at www.JPMadoff.com and you'll see what I'm working on now."

Unfortunately the fellow didn't have time to do that, so I showed up at Fox Business's offices in New York, and they took 45 minutes to make me up. This lovely lady did a wonderful job making me up on the understanding that I was going to be on for seven minutes, which on TV is a lot of time.

C. Austin Fitts: Right.

Helen Chaitman: I didn't meet Maria before I went on camera. So I was brought in, and there was a setup with an L-shaped desk. She is on one side of the L and I sit down on the other side of the L.

She says, "And now we have with us Helen Davis-Chaitman, the leading lawyer representing the Madoff victims. Now, Ms. Chaitman, tell us what you're working on."

I said, "At the moment, I'm suing JP Morgan Chase."

Of course, JP Morgan Chase was one of the primary sponsors of *Opening Bell.* So she says, "Suing JP Morgan Chase! For Heaven's sake! What are you suing them for?"

I said, "Well, the evidence shows that they knew for 20 years that Madoff was committing a crime, and they allowed him to continue as a bank customer, and they should have shut him down."

"Well why would they have an obligation to shut him down?"

C. Austin Fitts: Was this live?

Helen Chaitman: Yes. It's live.

C. Austin Fitts: Wow!

Helen Chaitman: I said, "They would have an obligation to shut him down because under the Bank Secrecy Act, which was enacted in 1970, Congress made it a crime for banks not to monitor their customers' accounts and not to shut down criminal activity and report it to the Federal government."

At that I could hear a lot of static in her earpiece. At that time she announced an emergency commercial. So we go off camera, and I'm a little bit shocked because I knew I had seven minutes.

She said, "I'm really sorry, but we had an emergency."

It happened so quickly. I couldn't figure out what was going on. I said, "Are we going to continue?"

She said, "No, this is it. Thank you very much. Goodbye."

Then two men came and escorted me out. I went to pick up my coat, and this poor lady who had spent 45 minutes making me up because she figured I'd be on for seven minutes said, "What happened?"

I said, "I don't know."

C. Austin Fitts: So this has happened to me. I have standing instructions to my staff because someone will call and say that they want me on such-and-such a show. They'll get all excited because it's a show with major, major market share. I tell them, "Look, it's going to be cancelled. We'll prepare and we'll say yes, but it's going to be cancelled." They are always cancelled, and it's usually the morning of.

So somebody higher up figures out, "What?" Boom! It's cancelled.

Tell us what we can do because I'm a great believer in working with what you've got. What could the people listening to this do to help you and the

Madoff victims and to help your efforts?

Helen Chaitman: I just want them to help themselves. The book that I wrote doesn't help the Madoff victims; they learned their lesson the hard way. But I feel this whole change in the pattern and focus of my legal career was not exactly fortuitous, but it gave me an opportunity to try to help people. I want so desperately to educate the public so that they can protect themselves.

C. Austin Fitts: Right. One of the things I constantly say to people is, "You want to limit your business to parties that have both excellence in the competency of what they do, but also have integrity."

I always say to people who lost money at MF Global, "If Jon Corzine came to run that institution, why did you stay? What were you thinking?"

I think we grew up in a world where the government was going to fix everything and we didn't have to worry about doing old-time due diligence, but now we do. It really matters that you're banking with an institution whose primary business is serving individual customers, and they have to have integrity to do it or they go out of business. That doesn't include everybody; it's a portion of the banking system. It's not everybody.

We have to be able to differentiate, and it's extremely important. If everybody in the country just said, "We're not going to talk to, associate with, date, marry, or do business with anybody who is part of these kinds of activities," a lot of it would stop. It couldn't go on.

Helen Chaitman: I agree with you. I actually feel that the movement of the economy and the political system in the last 30 years is untenable long-term. I mean, it's like we've become a futile society.

My own view was that it was going to end up in violence because at some point the public was going to stand up and rebel.

I thought it was going to end up in a civil war, but I was so encouraged by the fact that Bernie Sanders has such widespread support among young people. It really gives me hope. Bernie Sanders has been the strongest voice expressing some of what we've talked about. It really gives me hope, and I hope that people will read my book because it will give them the hardcore facts which Bernie Sanders rests his views on.

C. Austin Fitts: Right.

Helen Chaitman: There are voices like yours and like mine and like Bernie Sanders, and we just have to continue speaking. We are a democracy, and if people stand up and vote, the majority of people is being victimized. If they stand up and vote, they can change this. But it means changing Congress completely because there are very few people in Congress who are not corrupted by the process.

I tend to think that it's actually become very easy for people in Congress to vote; they don't have to know about the issues; they just calculate who is paying them to vote which way. It's a mathematical calculation.

I tend to think that it's actually become very easy for people in Congress to vote; they don't have to know about the issues; they just calculate who is paying them to vote which way. It's a mathematical calculation.

C. Austin Fitts: I also think they're scared. I mean, I've seen a lot of very good Congress people try to do things, up against a system that's gotten away from itself.

You have the most powerful financial credit mechanism, Helen, ever created, which is the Federal credit mechanism. JP Morgan Chase is at the heart logistically. It has the most important train tracks for running that credit in the New York Fed member banks, which are the depository for the US government.

The US government operation depends on JP Morgan Chase and all these folks for an extraordinary number of day-to-day logistics. I mean, if anything, Morgan is in control in many different ways.

So if I'm in a company and the company does bad things, then the stock exchange cuts me off or my creditors cut me off, and the money stops. The problem with the Federal credit mechanism is that the military is successful. The Federal credit keeps on going. The question is, "How do you stop it?" If you're a government official, how do you say no?

Financial responsibility does not generally get popular support. So you've got a runaway system, like a big runaway train. How do you slow it down? How do you get it stopped? That's what we're all grappling with.

Please give out your URL one more time for *JP Madoff*.

Helen Chaitman: It's www.JPMadoff.com. The book is also available on Amazon.

C. Austin Fitts: It's a page-turner. Don't start it in the evening because I assure you that you won't go to sleep; you'll keep on reading.

Well, Helen, it's just been a delight to have you on The Solari Report. I really appreciate you giving your time. You've been very generous, and I know with the litigation you're doing you're a very, very busy person. You clearly have an extraordinary new career in front of you.

I want to thank you again. Is there anything else you want to say to our subscribers before we close down?

Helen Chaitman: Just how lucky they are to have you to educate them. You've taught me so much in the past hour. Thank you so much.

C. Austin Fitts: Well, I appreciate it. If there's anything I or our network can do to support you, I hope you will let us know. We would love to see you triumph in the courts, and we would love to see anything that can be done to help those Madoff victims. Just let us know.

Helen Chaitman: Alright. Thank you so much. I really appreciate it.

C. Austin Fitts: Goodbye.