they sent Stanford a copy of that data via FTP every -- every morning.

Q Uh-huh.

A So essentially the flow would go like this, you know, Pershing custody account data would go to Advent, they would do all the reconciliation of share positions and market values, send that data -- a copy of that data back to Stanford. I mean, it was an outsource.

So when I think Juan got the sense that the bank data would be the same, you know, sort of fall in line with the same scenario, and he was very reluctant to have any of that bank data leave the Stanford world. And so we were like, hey, we're -- we're brainstorming. There are -- There are options. It doesn't have to live at Advent.

And so that's -- that was pretty much the primary reason the call blew up was he was concerned that the data was going to leave the Stanford world.

Q And -- And what did he say when got off the line?

A He just said that was a deal breaker and, you know --

Q So providing the CD cash flows to Advent was a deal breaker.

A Having data leave Stanford's world is -- was

the deal breaker.

Q Okay. And specifically the data regarding the certificates of deposit?

A Correct.

Q Just to wrap all this up. Is it fair to say that all your efforts to get cash flow information relating to the CDs were fruitless?

A Yes.

Q Okay. And I think you used the word stonewalled when we were in Boston and just a minute ago?

A Yes.

Q Okay. So again, I'm trying to narrow the scope of what you were doing when you first got there. You said you had those challenges with the CDs, so essentially you had no data so you couldn't do anything with the CDs, correct?

A I ended up doing absolutely nothing with the CD.

Q Okay. And then I think -- I don't want to belabor the issue, but when we talked in Boston, I think you talked about gold and bullion and there were challenges regarding the pricing?

A Correct.

Q Okay. Was it generally that some of those assets it's hard to get publicly available price data?

A Yes. They are very subjectively priced especially the rare coins.

Q Okay. And -- And in Stanford's context when say subjectively priced, I think you made a reference to

one guy at the company determining the price?

A Yes. Joe -- Joe Freeze or Freedman the head of the division, he -- he and his wife -- my understand was he and his wife priced everything on a spreadsheet on a quarterly basis. And from a performance guy's perspective that just never sits well.

Q What are the problems with that?

A Well, you know, it can really -- you know, it can really affect your performance, especially if I'm trying to bring that number into, you know, a bunch of numbers that are market priced, so I'm mixing apples and oranges in the same bag.

Q Okay.

A And actually, my recommendation to Zack Parrish and Mark Stys after I learned more about the rare coins was to absolutely not even attempt to include that in a client total return number. You know, put it on the -- on the page as a value or an estimated value, but don't include it in your rate of return, because it's going to skew it up or down based upon an arbitrary valuation.

Q Okay. What came of those recommendations?

A I'm not sure. I really don't have a lot of visibility into where they are with the Odessy platform today. Rob Baker would be able to speak to that in detail. I know -- All I can say is that I know Rob has had more success in this integration with the other assets into the Odessy platform than I did with Advent.

Q Okay. Just to kind of wrap this issue up. Are

the -- Are some of the problems with the subjective nature of the gold and bullion valuations just that you don't have an objective, kind of, third-party valuation that you can rely on?

A Well, that's really out of my comfort zone, that asset class. I know they had a system called Intelequote, and I'm not sure how accurate that system is and how -- how much that system is used in the actual final valuations. So for -- you know, and I only met with -- with the gold and coin guys for probably two hours total in my engagement there, and my sense of the matter -- of -- of the sense I got from the head of the division was that he knew more than anyone else in the business and what he thought a coin was worth was what it was worth.

Q Okay. And what gave you that -- how -- how did you reach the conclusion that they were doing their own kind of, you know, discretionary pricing for lack of a better term?

A He told me.

Q Okay. He told you that's he how he did it?

A I think he used -- he had -- you know, there was a method to his madness, but at the end of the day I think the final number was he maybe looked at this source, this source, and this source and said here is the number.

Q Okay. And in the performance world it seems to me, and this is one of the problems there that you're grading your own cooking to a degree?

A Absolutely.

Q I mean, so -- I mean, he's putting someone in that asset and then he is telling them that that asset has increased in value presumably?

A Exactly. And then, you know, he pretty much justified it at the end of the day just I guess as you would in the real estate market and a rare coin is what somebody is willing to pay for at the end of the day, so, you know, there's a number of different ways they sold these coins.

You know, they had all these different types of, you know -- I don't know coin geek conventions or auctions and, you know, several different ways to sell a coin and until you bring that to bear, what is it worth?

Q So in other words, until you actually have a sale, it's worth what you say its worth?

A Exactly.

Q Okay. Okay. So you weren't able to do anything with the CDs, you weren't able to do anything with gold -- the gold coin operations, correct?

A Correct.

Q Okay. So what does that leave?

A We're back to just really the assets in Pershing, you know, the -- the more traditional assets. And so, you know, I felt like there was enough work to be done there to clean up that process and to put in a tight operational process, get good, clean and accurate results

out of Advent, take it a step further along and build these composites for marketing purposes that I attacked that.

That was something that, you know, suited my background and there was plenty of -- of work to be had, so, you know, just to give you an appreciation some kind of scope, is at this time there was probably about 4 to 5,000 accounts on the Advent platform.

Q And this time is early '06 or late '06?

A Late '06.

Q Okay.

A Early '07. So come spring of '07, February march, I'm actively helping executive level management at Stanford, Jason Green specifically, negotiate a new Advent contract. And I convinced all the powers that be, Jason Green, Mark Stys, Zack Parrish, that until this Odessy thing is up and running, which was at least everyone agreed that that was a year or two year -- a year to two years away, that we were going to make the best out of Advent.

So we signed a new Advent contract that I helped negotiate, and come March of '07 we went from 5,000 to 22,000 accounts on Advent. And so there was plenty of work there to make that happen, and then put a process in place, you know, we recruited a team of people to support it, so that's when all of those things were going on.

The -- The legacy performance people were moved out of the scene by that point. They had moved

onto bigger and better things, as we like to call it, and I recruited some people I knew in performance reporting and we put in an operation and we basically plugged in an operation.

At that same time, you know, Rob Baker was -- was working on a lot of that stuff, too, but he -- he slowly started to get pulled into more of the Odessy type of stuff, so that's how he and I as consultants started to the divide and conquer a lot of work.

I mean, that's why we were easily billing, you know, 40 plus hours a week. We were buried. We were like full-time employees.

Q Okay. And so these Pershing accounts were these largely the managed accounts like we have talked about earlier, the SAS models?

A The bulk were probably retail. So just, you know, managed by the -- the adviser.

Q Okay. So they didn't necessarily fall into a specific strategy?

A Correct. I mean, even to this today I think SAS has only about 7,000 accounts, so these were -- and you know, there's a handful of other Stanford programs. They had PA, which was called portfolio advisers they had PP, which was portfolio partners, they had SAM, which was Stanford asset management, which was a global fixed income strategy.

But even after naming all those strategies I think that still only may be gets you up to 8 or 9,000

accounts, and so the rest were just, you know, your typical retail financial adviser type accounts.

Q Right. In terms of assets, though, SAS was pretty big piece, I understand?

A Yeah, absolutely.

Q Okay.

A Absolutely.

Q And we'll go through these in a little bit, but I think of got you -- kind of your three-year audit --

A Okay.

Q -- numbers and we'll go through those. But, for example, in '07, you got percent firm assets SAS growth 38 percent?

A Well, that's -- that's misleading. That's a misleading report. That's because we didn't have a number for firm assets, in order to make that report run you need to plug a number, so the number I plugged was actually SAS assets. So each composite is -- is expressed as a percentage of SAS assets not firm.

Q Okay. But the end of year assets in each strategy should be accurate?

A Yes.

Q Okay.

A At the strategy level that should absolutely be accurate, the firm numbers are bogus.

Q Okay. But in theory you should able to get pretty close by taking the end of year SAS number from your reports and then just dividing it by the total managed by Stanford Capital Management?

A If you were to sum those up the entire SAS program and then divide it by total Stanford assets, if you were able to got that number then you would be able to get the percentage of SAS. Yeah.

Q Okay.

A I never saw a number like that, but in order to claim GIPS compliance, that is a number they would have to get to on at least a monthly basis is what our firm asset as the firm is defined. And they weren't there, so I plugged the number in.

Q Okay. So let's focus a little bit on, you know, the SAS or MFP, when you got there had it already changed names from Mutual Fund Partners to SAS?

A It had.

Q Okay. And just for the record what does SAS stand for?

A That is a good question. I think it's Stanford Allocation Strategy.

Q That's correct. Okay.

So -- So when you first got in, what were your responsibilities or what did you do relative to SAS and --

A Well, you know, another good question. There were pulling me in a lot of different directions when I first arrived. It was almost like, you know, a relief I

think to a lot of folks that someone was finally there that knew performance measurement, because they had so many, you know, different performance measurement issues that, you know, Jose was unable to address. So, you know, I think I went through pretty explicitly my original marching orders, but then I would get pulled into other things.

And one of the other things that came up pretty quickly was this whole concept of account level performance differing from market level performance, so I started to look at what the guys in investment advisory group were -- were doing for returns, and I was essentially trying to prove their numbers.

And at that point in time we were focusing on a 12-month period that went from October of '05 through -- through September of '06, I believe, so because I was doing this in November, so that was all the -- you know, I started at least looking at it maybe in November or December. But I wanted to do a 12 month or at least four -- I think I was doing a four-quarter analysis.

And, you know, so that's -- that's when I first started looking at SAS at the model level.

Q Okay. So you -- your initial look at SAS you looked at basically a 12-month period ending with third quarter 2006?

A I believe so.

(SEC Exhibit No. 30 was marked for identification.)

BY MR. KELTNER:

Q Okay. I'm going to go ahead and hand you a document that I'm marking as Exhibit 30, and I'll represent to you that this came from your electronic production and based on some e-mail correspondence that I have seen, I think this may represent the analysis you were just discussing.

But can you take a look and tell me what Exhibit 30 is?

A Yes. This Exhibit 30 looks exactly to be what I was just speaking about.

Q Okay. So just in -- let's start at a high level and explain to me what Exhibit 30 is and then let's walk through it a little bit.

A Okay. Well, it looks like I took the model returns as they were calculated by the folks in Jason D'Amto's group in IAG, and then I believe at this time, you know, this was still very early and -- and Jose was still in the picture, so I asked Jose to give me a dump out of AXYS, because at this point in time I still didn't even have access to AXYS, which is the Advent product. And so he had -- in Advent there is -- you can label an account with a strategy or an objective.

Q Uh-huh.

A And so Jose gave me a dump of account level returns for each month end from October, '05 through September, '06 that were labeled as such. Now, he had no faith or confidence that those labels were correct or

incorrect, but our working assumption was for the most part we say we made the assumption that -- that these accounts were correctly labeled as growth or balance growth and so on.

So what I did was I did a very quick and dirty composite equal weighted calculation, because I didn't take market values into consideration, I just took the return, I took all the accounts that were tagged as growth and, et cetera, I threw out the really high returns, I threw out the really low returns, and came out with this -- what I would call a preliminary quick and dirty composite return.

And what I was trying to do get at is how big and bad is this problem. You know, and I think what this Exhibit 30 showed Mark Stys, who most likely was the first recipient of this is that some of the models weren't that bad and some of them were.

Q Okay.

A So some were obviously worse than others, and you know, from a consultant's perspective, you know, day one you try justify your existence?

Q Right.

A So I'm looking at this saying there is -- there is some definitely good work for me to do here. These numbers are probably inaccurate, and I can -- I can get these numbers tighter and I can solve their problem.

Q Okay. When you say these numbers are probably inaccurate, were you referring to the model return numbers?

A Correctly.
Q Okay. So and the model return numbers were the numbers that you got from Ken Johnson?
A Correct.
Q Okay. And these are the numbers that we talked about earlier today that you think were model performance numbers that was likely used in the marketing materials?
A Correct.
Q Okay. And we talked about the complaints from certain financial advisers that their actual clients were not receiving the model returns, right?
A That's correct. And -- And let me just elaborate on one point. At the time I produced this document, I still did not have the knowledge as to whether I could rely on the account level performance coming out Advent -- the account level performance coming out of Advent, so that was just -- you know, in my mind as I was doing this analysis is there is a possibility that the account level returns could be wrong, because I didn't feel confident in their process for producing account level returns.
Now I can say, you know, in hindsight that it was a rare exception that we actually ever revised an account level return. So in summary what that meant was contrary to Jose's opinion at the time, Advent was doing their job. Advent was reconciling these accounts. Advent was in fact producing inaccurate account level return.

So when we did go back and recalculate, you know, good composite returns, when we did go back and calculate more accurate model returns, we came up with similar composite model numbers -- or model and composite numbers that were very, very close.
Q Okay. So your preliminary review in Exhibit 30, and I'm not tying you to any specific number, but just in general, you think these composite return numbers were fairly accurate and later proved to be when you did your more specific analysis?
A That's correct.
Q Okay. So with all the -- the benefit of all the time you've had at Stanford, you think these composite return numbers were fairly reliable give or take a little bit?
A Correct.
Q Okay. So this -- just walking through the chart, let's start with SAS balance growth and use that as an example, since it's at the top of page one of Exhibit 30. So there is a first -- there appear to be return periods down the left-hand side, and as we talked about it includes Q4, 2005, Q1 '06, Q2 2006, and Q3 2006; is that correct?
A Correct.
Q Okay. And then you also it appears calculated a 12-month return as well?
A Yes.
Q Okay. And then the first column is composite return, and for simplicity that represents actual client

performance?
A Correct.
Q Okay. And the model return in the second column that's the number that was given to you by Ken Johnson?
A Correct.
Q Okay. And who did Ken Johnson report to?
A Jason D'Amto.
Q Okay. And then difference column that -- that is essentially composite return minus model return; is that correct?
A Correct.
I just had to look at the number to see which --
Q Which was --
A It was simple addition, subtraction, I just wanted to see which column I was taking away from.
Q Okay.
A And it looks like I subtracted model return from composite return.
Q Okay. So a negative number in the difference column reflects a return where the composite return was less than the model return?
A Correct.
Q Okay. So just going through the numbers, just for an illustration, Q4 2005, you found that the model was 111 basis points higher than the composite?
A That's right.

Q Okay. And the Q1 '06 110 basis points higher than the composite?
A Correct.
Q And Q2 '06, it's 26 basis points higher than the model?
A That's right.
Q And then Q3 2006 is 64 basis points higher than the model?
A That's right.
Q Okay. And so the total for the year you found that the model return was 332 basis points higher than the composite return?
A That's right.
Q Okay. And then it looks like you did the exact same analysis for SAS growth, SAS income, these other -- model these other models?
A That's right.
Q Okay. Each of them -- I guess strategy is the right term. Each of the strategies identified Exhibit 30, are these the strategies that you preformed your audit work on?
A That's correct. I'm admiring my work. This is good work.
Q Good.
A This -- This paints the picture exactly as it was at this point in time.
Q Okay. So you come in, you do this preliminary, turns out, good work on -- represented on Exhibit 30, so generally you said you were trying to justify your

existence. So what -- what are you telling them in terms of what the problems are?

A Well, you know, I'm -- I'm starting, I think, to make the preliminary case for composites and justifying the -- the work required to get a composite return and, you know, essentially educating these folks on what a composite is and the benefits of composite.

You know, the -- the most obvious being that, you know, if you create a composite return that's made up of account level returns, you're going to eliminate this problem of having differences between a strategy level return and an account level return. It's just, you know, a mathematical fact, if you construct the composite, you know, well.

I'm also starting to develop an opinion that the folks that were calculating -- calculating the model return had performance as is a second language. You know, it wasn't their -- you know, these guys are trading, managing portfolios, and, you know, my experience throughout my career it's very rare to find a guy that also has the performance skills set along with sort of the portfolio management and the trading skills set.

I have been educating portfolio managers on performance my whole career, you know, when they --

they call me up in previous roles as an analyst and say, there is no way I underperformed a benchmark by that much, or over-performed. Hardly get that call. But it -- it still -- it's an educational process, so this didn't surprise me that much that, you know, these guys were not able to produce an accurate number.

Q And just to step back, these guys were not able to produce an accurate number. Who were those guys?

A Ken Johnson specifically or anyone else in IAG that had anything to do with these model calculations.

Q Okay. And IAG is the Investment Advisory Group?

A Correct.

Q Okay. Is that D'Amto's group?

A Correct.

Q Okay.

A I don't know where they're getting their data to -- to come up with their returns, because I very simply went to Bloomberg and Yahoo and their -- all the holdings within these strategies are very liquid mutual funds, so very easy -- easy to get a price. So you take a price return and your weight and there is your model return.

And I think we talked about this in Boston, my speculation was -- is that they didn't keep very good records about when and what was rebalanced intra-period, so if you don't capture those intra-period rebalances, you will get bad numbers, it's -- it's a mathematical fact, because let's say you bought a new

mutual fund on the -- the last day of the month. What I think Ken Johnson was doing is -- is taking a snapshot of the model at month end and assuming that that was the model for the whole month and calculating the return that way.

Now that I have had some time to think about this, that -- that is what I think he did, potentially. I don't know for a fact. But you can't do that. If you're in and out of mutual funds during the period then your performance is going to, you know, be dictated by which mutual funds you held during the period.

And the account level, the account level is capturing all the rebalances and you have to pretty much mimic the account level with the model. And I don't think they did that.

Q Okay. The failure to account for the rebalances, would that always skew the results high?

A No.

Q Okay. So the obvious question I've got for you looking at Exhibit 30 is SAS balanced growth according to your good analysis appears to show that the model was 332 basis points high, SAS growth was 334 basis points high, and then some of the other strategies were a little lower, also SAS balance appeared to be 281 basis points high.

In looking through Exhibit 30 on an annualized basis were there any models that you found

that under-preformed the composite? In other words, are there any instances where actual client performance was higher than the model on an annualized basis?

A Not as group.

Q Okay.

A Remember everything in the composite return column was in our -- relatively arbitrary group based on some assumptions that I made from the account level data. You know, assumption one that the account was tagged properly as growth. Assumption two was that I only took really the sweet spot of the returns, I didn't take the outliers, so given those two assumptions that produced my composite return --

Q Okay.

A -- column.

Q But you did throw out outliers in an effort to --

A High and low.

Q High and low. Okay.

A Yes.

Q And eventually you did do more thorough composites, correct?

A Correct.

Q Okay. And those more thorough composites, did they generally confirm or did they disprove your analysis in Exhibit 30?

A My further analysis confirmed Exhibit 30.

Q Okay. So generally once you did the more detailed analysis and confirmed that the accounts were

classified correctly, you did those things as part of your composite analysis later?
A Well, we really started from, you know, the ground floor scratch when we constructed the actual composites that we have today, we didn't take any of the tags into account or -- or any of that recordkeeping we went right after the account level holdings and account level returns in order to construct the composite.
Q Okay. So you made sure that the accounts were classified correctly?
A Correct.
Q Okay. And after you did that, again, your conclusions really didn't change much from Exhibit 30? You may have had more precision, but generally speaking your conclusions didn't change?
A That is true, my conclusions remained the same that I did not think that this model performance prior to my arrival was accurate.
Q Okay. And is it also fair to say that the model performance was higher than the composite performance before your arrival?
A Yes.
Q Okay. Was it consistently higher with the exception of a few quarters?
A For the most part, yes.
Q Okay. You know, we talked about rebalancing as one possible explanation, and you said rebalancing would not necessarily result in always being on the high side?

A I'm sorry. Could you repeat that question?
Q Sure. We talked at possible explanations for why the model would be wrong, and one of the things that you offered was rebalancing?
A Yes.
Q If rebalancing was the sole cause, would you expect the model to always be high -- higher --
A No.
Q -- than composite performance?
A No, I would not.
Q Okay. All things being equal, would you expect to roughly see the same amount on the high and low side depending on how the timing issues worked out?
A Yes.
Q Okay. So did it strike you as unusual that the model was consistently higher than the composite returns and many cases more than 300 basis points?
A It did strike me as a little bit off.
Q Okay. And explain why.
A Well, I mean, just, you know, from a mathematical, statistical perspective it -- it would be difficult to error in the favor consistently as consistent as you I think can visibly see here in Exhibit 30.
Q Okay. It's unlikely from a mathematical standpoint that it's just happenstance?
A It's -- I would say it's unlikely. I mean, I don't want to point any fingers, although at the time, you know, I might have.

Q You may have pointed fingers at Ken Johnson?
A I think I was just -- my gist of it to Mark was, you know, these guys don't know what they're doing. And I did probably, I would say knowing me, point out to Mark it did also seem a little bit fishy that they were always higher.
Q Okay.
A Or higher most of the time, I should say.
Q Okay. And just so we put all this in a timeframe, this analysis was early 2007?
A Late '06.
Q Early 2007?
A Yes.
Q Okay.
A If you found this file in my -- in my electronic folders, then the date of it I would guess it would be December of '06.
Q Okay.
A So after I was on the ground for a month or two.
Q Okay. I think I may have seen a preliminary version of this that just had SAS balanced growth maybe, maybe you did one account and then later you did this complete analysis?
A I think I did. I mean, I think, you know, I recall correctly, Mark -- Mark was getting a lot of calls from the advisers in the field, and with specific examples, and I think Mark asked me to look at one of

these in depth and after I showed him one, he was like, Jesus, okay. Might as well run them all.
So then I eventually ran them all.
Q Okay. So you told Stys something to the effect of "this seems fishy"?
A Well, basically, you know, I'm not able to prove out this -- this return is what I told him.
Q And was the fishy part was that it was always on the high side?
A Yep.
Q Okay. What was Mark's reaction?
A Well, I think Mark, you know, genuinely wanted to get this issue resolved. He had a lot on his plate, and he -- this was a nuisance to him, because this was -- this all predated him. So he was trying to look forward and he is got the advisers calling him, you know, on a daily basis trying to pull him back into the history and what was done before he got there.
So, you know, I think that could best describe it as this was a nuisance to him on some level he wanted me to take care of it. Mark was relatively big picture guy, so he wanted, you know -- that's why I tried to keep my analysis relatively high level. I'm sure I did a lot behind the scenes of this three-page document. I know I highlighted the months on Exhibit 30 where I was, like -- I highlighted months that in my estimation there was no way in hell that that return is correct.
Q Okay.
A Those -- Those are the highlighted ones.

Q So for example October, 2005, on SAS balanced growth where the model return is about 97 basis points better than the composite?
A Right.
Q Okay. So these are examples -- the highlighted ones are months you identified were clearly the model was wrong?
A Right. And if you notice the double star and revised column.
Q Uh-huh.
A If you read what it says on Exhibit 30, revised model is an estimate that assumes the recalculated model matches the composite return exactly. The actual calculation will vary approximately plus or minus the annualized tracking -- I don't even know what that means.
Q Well, I was trying to guess. I mean, does that mean -- is this what you're proposing revising the model to, or is this a revised model number that perhaps you got from IAG after you had given them some results or --
A Well, yeah. And then I have that model impact, so I think what I'm saying is if you revise the model -- okay. I get it. I remember now.
If you revise the model -- for example, on SAS balance growth, if you revise October, 2005 and February, 2006, you would get a new return of 9.99, which

would at least be to closer to my 8.91.
Q Okay.
A Did you follow me on that?
Q I think so. Okay.
A So just by restating those two months you would shave off 224 -- you would be 224 basis points lower, and in my estimation more accurate.
Q Okay.
A And they did, in fact, just for the record, go back and -- and revise some of these months that I pointed out to Ken Johnson.
Q Yeah. I mean, just generally without getting into a lot of detail, it looks like over time some of the performance numbers that were presented to marketing were walked down, like, perhaps -- I mean, perhaps as you were doing your work maybe some of this preliminary work, the models were adjusted downward. Does that sound consistent with your recollection?
A Well, again, I never had much visibility, if any, into marketing materials.
Q But in terms of the models that you saw?
A I think, you know, I was communicating this back to both Mark and in some instances Ken Johnson and Jason D'Amto, and I think in some instances they went back to their math and fixed it.

Q Okay. Did you show Exhibit 30 to Ken Johnson?
A I can't say for sure.
Q Did you convey the message from Exhibit 30 to Ken Johnson?

A I think so. I think so. That's good a question. I honestly don't remember. It would probably be in my E-mail communications. If I did, I would have fired it over to him via e-mail.
Q Okay. What about D'Amto, did you discuss Exhibit 30 or more generally the problems identified in Exhibit 30?
A Well, I did. I mean, we definitely had dialogue about it. You know, we -- we definitely -- you know, I definitely wanted to get Jason on board, and essentially I was trying to build his confidence in my abilities as a performance person to calculate an accurate number. And so I'm trying -- I was trying to demonstrate a level of -- of expertise above and beyond his team and the ability to calculate a good number here.
And so it was definitely communicated -- you know, I think Mark Stys was pretty much my buffer as opposed to any finger pointing as to did you guys blatantly do -- overstate your numbers. You know, I let Mark -- if that message was carried, that would have been carried by Mark not by me.

Q Okay. But what the numbers actually were, you conveyed that message, in terms of accusing people that wouldn't have been your role?
A Well, I pointed out inaccuracies.
Q Okay.
A I left -- I stopped at the point where the inaccuracies were in the favor of the investment manager.

Q Okay.
A Mark would have carried that message.
Q So you present these results in Exhibit 30 to Mr. Stys and likely others, so based on that, what happens next?
A Well, just to -- just to correct your -- your statement. Most likely this document would -- would not have been seen by anyone other than anyone Mark and whoever he would have chosen to share it with.
Q Okay.
A Because I don't think we wanted to blast this out -- Exhibit 30 around the firm, which was, you know, preliminary analysis that was proving the financial advisers that they had a legitimate gripe.
Q Okay. And ultimately you conclude -- you concluded that they did have a legitimate reason to be -- I think you used the word pissed in Boston?
A Yeah. They -- They definitely, you know --

well, let me rephrase that. In some instances they had a legitimate gripe. In other instances, their accounts were not entirely discretionary, so they were -- if you were recall our conversation in Boston, they were two sources of tracking them. One was the fact that the model returns were inaccurate. Once you took that error out of the equation, then it was did the model exactly -- I'm sorry. Did the account exactly follow the model. And that was your other source tracking error.
Q Right. And as I understand it from talking to you and some FAs the failure to track the model can be

caused by either the failure of the IAG group to track their own model or the FAs having an account that's -- has some discretionary elements as well?
A That's exactly right.
Q Okay.
A Both of those scenarios would cause an account not to follow in line.
Q Okay. So IAG failed to follow their own model, you might -- that might result in deviation from model performance in a given customer's account?
A Absolutely. Trading errors, lag time in trades, you know, if -- if you rebalance 90 percent of the accounts on, you know, the 5th of the month and then the other ten percent on the 20th of month, they will have different returns.
Q Okay. And again, failing to track the model, would that tend to skew the results higher or lower?
A It could. Again, mathematical fall equally on either side.
Q Okay.
A Roughly.
Q But there is no reason that it should always skew things to the high side?
A Correct.
Q Okay. So I know you say, you know, let Mark carry the water in terms of, you know, delivering any bad news, but did you get any pushback from Baker or D'Amto, did they try to defend their model?

A Well, Baker was working for me.
Q Sorry. Johnson?
A Ken Johnson, yeah. They -- They did try, you know, there was a few defenses and they actually did make one good point, which was -- which was valid and that was that, you know, in addition to the analysis I did in Exhibit 30 I also did some other analysis that you may have as other exhibits, I don't know, or they're in my files, where I just did pure model performance. Where I took their -- their weights at -- at given months end -- month end and calculated a model return, and I remember being frustrated at the time because their recordkeeping for rebalances was horrendous. I mean, just to put it in perspective when I -- when I recreated what the rebalances should have been for a given year, I had, you know, a five-page document, where they have literally years of rebalancing on one page, which kind of just all right, you know, if you get the gist of what I'm saying is they weren't keeping a record of rebalance on those things.
So it was almost impossible for me to calculate a good model return. So -- I forget what my point was.
So when started coming up with -- with my version of a pure model return and we started to compare notes, their one accurate defense was that my returns didn't account for dividend reinvestment in the mutual fund price, so I had to go back and redo my numbers to take dividend reinvestment different mutual funds that

paid a dividend into account, but for the most part that -- that bumped the returns a handful of basis points here and there.
Q Handful is, what less than five?
A Five basis points here, may be a worse case on SAS income that has some pretty high yielding mutual funds in it that paid a big, you know, dividend and had a larger impact on return. In a given month it could have been as high as 25 basis points.
Q Okay. But it was -- was your net conclusion that the dividend reinvestment was only a very small fraction of the difference between your composites and the model?
A Well, it was actually a difference between my model and their model, because the accounts have all the dividends reinvested, so again the account returns they go back to be your benchmark of what the right number is, what's the real number.
I was creating a, you know, theoretical model on paper in my Excel spreadsheet, and so when we compared models, we had differences there. So it's a totally different analysis then this.
Q Okay.
A This is account to model. We were doing theoretical model to theoretical model.
Q Okay. So you try to reconstruct the models that were being used IAG?
A Correct.

Q And when you did that, generally what did you find?
A Well, we differed because of the dividend issue that I just explained, so we got that out of the way and we still differed. And the reason we differed, I'm guessing, is because of this whole notion of rebalancing.
We would have to rebal the models exactly the same in order to come up with the same number, and because of their recordkeeping that was virtually impossible. I believe they did go back and take another stab -- yes. And I know Ken Johnson did do this and you probably find this in my e-mail correspondence with Ken, is that when I couldn't prove out of his model numbers, I -- I said that it has to be because you're not giving me accurate rebalancing data to create an accurate model.
So he did go back and give me another document that had more details as to dates and details of rebalancing.
Q Okay. So -- But initially it was impossible for you to reconstruct their model with the records that they had on hand?
A Correct.
Q Okay. And so the horrendous recordkeeping played a role in the inaccuracy of their model returns?
A Correct.
Q Okay. Again, the rebalances, those would not result necessarily in skewing performance higher on average?
A It -- It should go either way. Right.

Q Okay.
A You know, unless -- You know, and this is pure speculation here, but just to get my arms around, I think, what you're saying is that unless you decide on the last day of the month to see which mutual fund performed the best during that month added to the -- add it to the model at month end and then assume that that was in there the whole period and then calculate your return. If you did that, then you would have a higher return every time.
Q And if you did that you would be intentionally skewing the model higher?
A Exactly.
Q Okay. That would be one way to intentionally skew the model high?
A Exactly.
Q Okay. So just going with the benefit of hindsight, picking the best performing fund and assuming it had been in there for entire period that you're analyzing?
A Correct. Yeah. That would not be cool.
MR. KELTNER: Let's go off the record.
(A brief recess was taken.)
MR. KELTNER: We're back on the record at 11:50.

BY MR. KELTNER:
Q So we talked a little -- we've talked quite a bit about your preliminary conclusions regarding the model versus composite returns. And we talked about the fact that you generally concluded that the model returns were high?
A Yes.
Q Okay. And then we talked about the fact that you later compared a reconstructed model to a model that was generated by IAG, correct?
A Correct.
Q And when you did that analysis you concluded that the IAG model was high?
A Correct.
Q Okay. And then when you later did your composite returns of actual client data, did that confirm your prior analysis that the IAG models were generally speaking high?
A Correct.
Q Okay. So, you know, we talked about rebalancing issues and how those might impact the model performance numbers. Were you ever able to discern any reason as to why the models were always high?
A No.
Q Okay. Did you try to?

A No. My primary goal was to get it right.
Q Okay.
A And to me getting it right meant being able to construct a model return that matched a composite -- a

true composite return. And when I did that for 2006 that -- that was a victory for me. Was that I was actually able to do an entire year of data where model returns matched composite returns and I have a document that proves that to within -- on an average 10 to 15 basis points for the year.
Q Okay. And when did you do that work?
A Probably in the middle part of '07, I was probably getting to that. Probably mid -- I think in -- in April of '07, I finally had model returns that I felt good about, and then later in '07, so I'm guessing, you know, definitely in the second half of '07, towards maybe even the end of '07, I had composites constructed for '06 that the matched the models I had for '06.
Q Okay.
A We had to build the tool to -- to do composite construction.
Q Okay.
A That took some time.
Q Okay. When you constructed these models in mid '07 for 2007 that you were comfortable with, did that

involve lowering the returns that had been used, or were these from '06?
A You know, that's a good question. It's funny at that point, Tom, I pretty much stopped relying on or looking at anything that got out of IAG.
Q And why was that?
A Because I didn't have any confidence in any of

the documents that -- that they had sent me to -- sent to me previously, so it had definitely by that point had become a source of frustration for me of getting any right information out of them, so I started to go on my -- you know, go on my own.
I had been on the ground probably for six plus months, six -- six or eight months, and I started to rely on other sources for -- for data, so I stopped comparing my results to theirs because it was just a waste of my time.
Q Okay. And generally speaking that was because you had no confidence in their recordkeeping?
A I didn't have confidence in their recordkeeping, their numbers, their calculations or -- or much of any information that they provided me.
Q Okay. Did you convey that frustration to Mr. Stys?
A I did.

Q Okay. Is that kind of on an ongoing basis, open dialogue in terms of, you know, what you're finding?
A What do you mean?
Q Well, I mean, was there one moment where you went and told him, I've got these concerns, or was it just over time?
A Oh, no. It was over time.
Q Okay.
A It was over time.
Q Okay.
A And say like for an example I had a model -- I

got documentation from them with a model that didn't add up to a hundred percent, which is, you know, fourth grade math.

Q The spreadsheet should foot out?

A You have a total holdings that should equal a hundred percent, if you add up all your allocations.

Q And if that doesn't then that means that formula bust or you're missing data or something?

A I don't even know how you do that. You're not checking your work.

Q Okay. One of the things we talked about in Boston was when you got the model data, the model, returns from IAG, what form did they take?

A It was typically handed to me hard copy, or I may have gotten a PDF via e-mail.

Q Okay.

A So, you know, from a performance guy's perspective, you know, you want this in Excel so you can kick the tires on it. And I'm not sure I ever got much of anything in Excel, which would have been much more useful to me.

Q Okay.

A Which was another source of my frustration.

Q Okay. So these -- these PDF files who would they come from?

A Ken Johnson.

Q Okay. And I just to, I think, state the obvious is the frustrations that you can't look inside

the cells and see what the calculations are?

A Yeah. Exactly. I mean, then I would be able to answer your question earlier as to why -- why did they give me a model that didn't add up to a hundred percent, so I would basically have to take the hard copy or the PDF and type everything into Excel so that I could check everything.

Q Right.

A I mean, the simple stuff, like does the model add up to a hundred percent.

Q Okay. So what did you do with this frustration, did you e-mail Ken back, did you call Ken back, say, hey, if you would give me the stuff in Excel my job would be a whole lot easier?

A You know, I think I was very careful as -- if I had been a full-time employee, like, if I was the managing director of performance there, I would have blasted him.

Q Okay. But you're trying not to ruffle any feathers?

A As a consultant, yeah, I don't want to rock the boat. I mean, these guys are paying me well, Mark was my guy, so I was able to talk to Mark off the record and vent to him. So, you know, it started being just like, hey, this is what it is and -- and I also have the attitude as a consultant is on an hourly contract, is the meter is ticking, and if you want to give me a hard copy and make me type it in, that's an extra hour. Again as a full-time employee would I allow a guy like that to waste

my time like that? Absolutely not.

Q When you keyed the number -- when the keyed the numbers back in manually, were you able to figure out what calculation errors may have -- might have been in play or --

A You know, no, because there is just so many moving parts to getting a good number.

Q Uh-huh.

A Like I said, the rebals, the pricing, the weightings, everything has got to be just right, which is -- which as I said earlier, when I was able to get composite numbers that matched theoretically constructed model and have a match that was -- that was a huge victory for me in that we have finally arrived at the place where we wanted to be.

Q Okay.

A And that wasn't until the second half of '07. You know, that said, I do recall in April of '07 when I did do Riordan Consulting calculated models for '06 at that point I was engaged with compliance, and at that point they were starting to use my numbers instead of Ken in the marketing materials, which was again a small victory I think for me.

Because I remember vividly marketing folks and compliance folks waiting and asking me on a daily basis in April of '07 when do you think you will have '06 numbers, Steve? When are the '06 numbers going to be done? So I think at that time whoever, Mark Stys,

compliance, whoever talked to say, hey, you know, what? We've got this guy in here, he's a performance expert --

Q Uh-huh.

A -- let's use his numbers for -- at least for '06.

Q Okay.

A So I think they were at that point there was recognition that what was coming out of IAG maybe less than accurate and that if we've got a guy here, we're paying him, let's use his numbers for '06 even though they're still model numbers at this point.

Q Okay. And when you say there was recognition, who do you attribute that to?

A I mean, I have to attribute it to Mark and Mark explaining my case that I made to him to the -- to the other folks, the powers that be.

Q So Mark Stys was your primary contact and then you think he disseminated that up to Zack Parrish --

A Yes.

Q -- D'Amto --

A Yeah.

Q -- on up the chain?

A Yes. He was -- He was my guy. He was my guy I reported pretty much everything to, talked to on a regular basis, and -- and I expected him to communicate with, you know, throughout the people I needed to know.

Q Okay. I understand that that's generally how it worked, were there any meetings that you can recall where D'Amto was present or where Parrish was present