

Exhibit B
Redacted Portions
Filed Under Seal

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE)

COMMISSION,)

Plaintiff,) Case No.

vs.) 20 CV 10832 (AT)

RIPPLE LABS, INC.; BRADLEY)

GARLINGHOUSE, and CHRISTIAN A.)

LARSEN,)

Defendants.)

-----)

DEPOSITION OF WILLIAM HAROLD HINMAN, JR.

WASHINGTON, D.C.

JULY 27, 2021

REPORTED BY: Tina Alfaro, RPR, CRR, RMR

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1 expertise with respect to the application of the
2 federal securities laws to transactions in digital
3 assets?

4 A. I was someone in the firm that people came
5 to with questions of that sort. So, you know, sort
6 of in the middle. It was new for everyone, but I
7 had taken an interest in it and had studied it a
8 little bit. So probably above average, but no one
9 knew a whole lot.

10 Q. And why is that no one knew a whole lot?

11 A. Because the instruments were just being
12 shaped and formed and it was early days of this
13 activity.

14 Q. And there had not been a lot of litigation
15 as to when a transaction in a digital asset would
16 constitute a security, correct?

17 MR. TENREIRO: Object to form.

18 A. I don't believe so.

■ ■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

█ [REDACTED]

2 A. I don't think they were ever a client.
3 They might have been involved with matters I was
4 involved in, but I don't think they were a client.

5 Q. And how about ConsenSys?

6 A. No.

7 Q. And how about the Ethereum Foundation?

8 A. No.

9 Q. And I mean this in a very broad sense When
10 I talk about the Ethereum foundation and I'm
11 reading from language on their Website. So if
12 you'll bear with me.

13 "The Ethereum Foundation is not a company
14 or even a traditional nonprofit. Their role is not
15 to control or lead Ethereum, nor are they the only
16 organization that funds critical development of
17 Ethereum-related technologies. The Ethereum
18 FoundationSo with that very amorphous, broad
19 definition of the Ethereum Foundation do you
20 believe you represented any company, individual, or
21 entity that was involved in the Ethereum Foundation
22 as I just described it?

1 because I didn't know what order we were going to
2 be offering the documents there's an internal
3 document.

4 So Mr. Hotseater, I'm showing Mr. Hinman a
5 document that is in the outline as Exhibit CC. I'm
6 sorry. AA.

7 (Hinman Exhibit 6 was marked
8 for identification.)

9 BY MR. FIGEL:

10 Q. Do you have Exhibit 6 in front of you?

11 A. The only thing I have is my bio.

12 Q. So I show you what's been marked as
13 Exhibit 6. I'll represent to you that I believe
14 this is the Supreme Court's decision in SEC versus
15 Howey. I just want to follow up on your earlier
16 testimony that you said that prior to joining the
17 SEC you had familiarized yourself with Howey as it
18 may relate to digital assets, correct?

19 A. I believe so.

20 Q. Okay. Approximately when was that?

21 A. Probably mid 2016, late 2016 I believe.

22 Q. And did you do that in anticipation of

1 becoming the director of the division of corporate
2 finance?

3 A. No.

█ [REDACTED]

20 Q. All right. Prior to joining the SEC had
21 you applied the Supreme Court's decision in Howey
22 to any facts that you had at that time about

█ [REDACTED]

11 Q. Again, we will -- I think we've created
12 the record and, you know, just so the record's
13 clear, we don't believe that's an appropriate
14 privilege instruction, but we'll move on.

15 Before the break I was asking you about
16 whether you were aware in, say, the first six
17 months after you became the division director about
18 various work product that had been created. Were
19 you aware of any work product that had been created
20 within the division of corporate finance as to
21 whether XRP or transactions in XRP were securities
22 or investment contracts under the federal

1 Q. So any time the division of corporate
2 finance issued a no action letter that would be
3 publicly available?

4 A. That's right.

5 Q. So let's put aside interactions with
6 lawyers and the public that are requesting a no
7 action letter.

8 A. Okay.

9 Q. Do you recall other issues that were
10 brought to you and members of your staff about the
11 application of the federal securities laws to
12 digital asset transactions in which they sought
13 guidance without seeking a no action letter?

14 A. Yes.

15 Q. Tell me what you -- tell me what you
16 recall on that issue.

17 A. Frankly, the one I recall the most clearly
18 is probably the one when XRP came in with a person
19 who had my position before me, as well as
20 enforcement counsel. They were interested in is
21 there a way to restructure what we're doing to
22 bring it within compliance of the securities laws,

█ [REDACTED]

2 Q. Any other lawyers representing --
3 withdrawn.

4 Any other lawyers you recall coming to you
5 or members of the staff seeking advice on digital
6 asset -- the application of the federal securities
7 laws to digital asset transactions other than what
8 you've testified to?

9 A. Yes. I mean, this is a -- this is a big
10 topic at the SEC. So there's lots of folks coming
11 in and asking for advice how to comply. I don't
12 want to get into law firm names or -- unless you
13 think it's relevant, but, you know, other folks at
14 law firms would come in, talk about an idea that
15 would be embedded in a token, and there were a
16 number of folks that said we'd like to do this on a
17 registered basis because we think -- we recognize
18 it is a security and how would we best do that,
19 could we use regulation A, could we use form S1.

20 Because these were somewhat novel
21 securities there were questions around what's
22 material in terms of the disclosures you might have

1 to do in that context. We had those kinds of
2 discussions with XRP specifically, if they were
3 going to register, what would the things be that
4 would be relevant.

5 Q. Move to strike about XRP because I asked
6 you for your recollection of meetings that didn't
7 involve XRP or --

8 A. I'm sorry. I missed that.

9 Q. There were frequent meetings; is that fair
10 to say?

11 A. Yes. I mean, it was something that
12 happened with some frequency at the division.

13 Q. And when lawyers or industry participants
14 came to you and asked for guidance, I believe you
15 earlier testified that the division of corporate
16 finance didn't provide legal advice, correct?

17 A. That's right.

18 Q. So how were you able to -- withdrawn. Let
19 me try this differently.

20 Did you keep a calendar when you were at
21 the SEC?

22 A. Yes.

1 So a number of instances.

2 Q. Okay. So picking up on your testimony
3 with respect to Ms. Szczepanik --

4 A. Yes.

5 Q. -- I'd like to show you 9; is that
6 correct?

7 THE REPORTER: Yes.

8 (Hinman Exhibit 9 was marked
9 for identification.)

10 BY MR. FIGEL:

11 Q. What I'll ask the court reporter to mark
12 as Exhibit 9. It's DD in the outline. Again, I'll
13 represent to you this is a copy of a page on the
14 SEC's Website -- or available on the SEC's Website,
15 which I believe is the press release announcing
16 Ms. Szczepanik in the position that you just
17 described.

18 A. Okay.

19 Q. The date of this press release is
20 June 4th, 2018, correct?

21 A. That's right.

22 Q. And is that approximately the date on

1 which you appointed Ms. Szczepanik to be the senior
2 advisor for digital assets and innovation?

3 A. That's the date it was announced. She was
4 sort of functionally operating this way for some
5 time, but in terms of making a formal announcement
6 of it and creating the actual office, yes, June 4th
7 is about the time.

8 Q. And that office was within the division of
9 corporate finance, correct?

10 A. That's right.

11 Q. So Ms. Szczepanik reported to you?

12 A. That's right.

13 Q. And this you testified to earlier I
14 believe was one of the examples of an action that
15 you spearheaded as described in the Andreessen
16 Horowitz blog post, correct?

17 MR. TENREIRO: Object to form.

18 A. This is an action that was done under my
19 direction.

20 Q. But this would be an action that would
21 fall within the statement on Exhibit 8 that you
22 spearheaded the SEC's early work with digital

1 MR. TENREIRO: Okay.

2 MR. FIGEL: For the hotseat this would be
3 a document that you would have received this
4 morning that has -- that's marked JJ2, and I'll ask
5 the court reporter to mark this document as
6 Exhibit 14.

7 (Hinman Exhibit 14 was marked
8 for identification.)

9 BY MR. FIGEL:

10 Q. Mr. Hinman, you're not on this e-mail.

11 A. Uh-huh.

12 Q. So you're free to read it if you'd like,
13 but I'll represent to you you're not on it.

14 MR. TENREIRO: Reid, is this from last
15 night's production?

16 MR. FIGEL: Yes.

17 MR. TENREIRO: Okay.

18 MR. FIGEL: I'll explain to Mr. Tenreiro,
19 you can correlate these to the earlier ones --

20 MR. TENREIRO: The earlier ones being
21 Exhibits 1 through 3?

22 MR. FIGEL: Yes.

[REDACTED]

19 A. Okay.

20 Q. And the issues as he describes it above

21 are issues involving blockchain tokens and

22 securities regulations.

1 A. Okay.

2 Q. Did you have an understanding in advance
3 of the December 13th meeting with ConsenSys as to
4 what specific issues involving blockchain tokens
5 and securities regulations they wanted to address?

6 A. No, I don't have a recollection of a
7 specific set of topics.

8 Q. This may be an unfair question, but I'm
9 going to ask it. Do you have any recollection of
10 clicking on the links to these e-mails or reviewing
11 the documents that are associated with these links?

12 MR. TENREIRO: He's not copied on the
13 e-mail, but go ahead.

14 A. Yeah. I was just going to say that. I'm
15 not sure I got this e-mail, but I don't remember
16 clicking on any links.

17 Q. Do you remember doing any reading before
18 the December 13th meeting?

19 A. No, I don't.

20 Q. So let's go to the meeting on December 13,
21 2017. You attended a meeting on that date with
22 representatives of ConsenSys, correct?

1 MR. FIGEL: Oh, did he?

2 MR. TENREIRO: Now he has up Exhibit 146,
3 which is Exhibit 3.

4 MR. FIGEL: So let's go back to the one
5 you did have up then. He was correct. Sorry.

6 (Hinman Exhibit 15 was marked
7 for identification.)

8 BY MR. FIGEL:

9 Q. Do you recall reading this document before
10 the meeting that you attended that you recall as
11 the first meeting you had with representatives of
12 ConsenSys?

13 A. I don't recall that.

14 (Hinman Exhibit 16 was marked
15 for identification.)

16 BY MR. FIGEL:

17 Q. I'm going to show you a document that I'll
18 ask the court reporter to mark as Hinman
19 Exhibit 16. Again, you're not on this, but I think
20 for the record it will be useful.

21 A. Okay.

22 MR. FIGEL: And Mr. Tenreiro, I'll just

1 represent to you that our understanding of the
2 documents we got from ConsenSys last night suggests
3 that Exhibit 15, which is in front of Mr. Hinman,
4 was attached to this e-mail that has been marked as
5 Exhibit 16 and was transmitted by Mr. Corva to Amy
6 Starr on December 12th.

7 Q. I don't have any questions for you on
8 that, Mr. Hinman, other than I'm just making a
9 representation that our understanding is this was
10 something that was circulated to the division of
11 corporate finance before the meeting.

12 A. When you say "the meeting" --

13 Q. Well, the meeting --

14 MR. TENREIRO: There's no -- there's no
15 question on the record. I don't have any -- I
16 don't have any -- you know, thank you for your
17 representation. I don't think there's any question
18 pending.

19 MR. FIGEL: There is not.

20 If you could take a look at --

21 MR. TENREIRO: Just, you know, you do keep
22 saying "the meeting" and there's a little bit of

1 explore the regulatory challenges raised by
2 blockchain technology?

3 A. Do I recall someone saying that to me?

4 Q. Yes.

5 A. No.

6 Q. In substance.

7 If you could look at the page of this
8 exhibit that ends with Bates 299. Do you recall
9 seeing this page in connection with the meeting
10 that you recall?

11 A. I don't recall this slide deck. So
12 certainly not this page.

13 Q. Do you remember anyone telling you in
14 substance that entrepreneurs and others lack
15 guidance on how to sell tokens that should not be
16 securities?

17 MR. TENREIRO: From the outside, is that
18 what you're asking, someone from the outside
19 telling him that?

20 MR. FIGEL: Yes. Yes. Sorry.

21 Did you understand my question,
22 Mr. Hinman?

1 A. Why don't you repeat it.

2 Q. I'm focusing you on the meeting that you
3 recall and Mr. Tenreiro's observation that you
4 don't remember the date, which I understand. I
5 think the record's clear on that. I'm now asking
6 you if you recall that during that meeting that you
7 remember you were told in substance that
8 entrepreneurs and others lack guidance on how to
9 sell tokens that should not be securities.

10 A. I don't have a specific recollection of
11 that being said to me at that meeting, no.

12 Q. How about a general recollection?

13 A. Well, you made a very specific statement.
14 Anything like that in terms of people lacking
15 guidance?

16 Q. Uh-huh.

17 A. No, I don't remember that coming up.

18 Q. If you could turn the page to the next
19 page ending in Bates No. 300.

20 A. Yes.

21 Q. I take it this doesn't refresh your
22 recollection of seeing this slide deck, correct,

1 seeing this page?

2 A. It doesn't.

3 Q. All right. Do you remember anyone stating
4 in substance at the meeting you remember that
5 entrepreneurs and investors may lack an
6 appreciation for regulatory risk?

7 A. Not at that -- not at the meeting I do
8 recall, no.

9 Q. How about more generally? Do you remember
10 hearing from third parties that entrepreneurs and
11 investors lack an appreciation of the regulatory
12 risk of transactions in digital assets?

13 A. I didn't hear something specifically
14 lacking an appreciation of regulatory risk. I did
15 hear -- not at this meeting that we're talking
16 about, but in general that some people had the idea
17 that if you called something a token it wouldn't be
18 subject to the U.S. securities laws, that just by
19 naming it a token and by creating a digital token
20 you create an instrument that wasn't subject to
21 U.S. securities law regulation.

22 Q. And that was a perception that you

1 approach is what he said.

2 MR. TENREIRO: He said that.

3 THE REPORTER: Hey, guys.

4 MR. FLUMENBAUM: The record should reflect
5 what he said.

6 MR. TENREIRO: Absolutely.

7 MR. FLUMENBAUM: Principle-based approach,
8 and then you interrupted.

9 MR. TENREIRO: Yes. I just want to
10 caution Director Hinman not to discuss
11 deliberations with the staff.

12 THE WITNESS: Got it.

13 MR. TENREIRO: Sorry. And thank you.

14 BY MR. FIGEL:

15 Q. Why don't we try this. Yes or no, did the
16 commission promulgate regulations that created a
17 safe harbor for the issuance of digital assets
18 during your tenure as the director of the division
19 of corporate finance?

20 A. No.

21 MR. FIGEL: All right. Let's go to in the
22 outline it is tab UU, and we're up to 19.

1 seems to be a response to the chairman's question,
2 Chairman Huizenga.

3 MR. FIGEL: Did I miss that?

4 MR. TENREIRO: I just want there to be a
5 clear record. Towards the top it says "Chairman
6 Huizenga: Thank you."

7 MR. FIGEL: Thanks. You're correct.

8 You gave that testimony, correct?

9 A. Yes.

10 Q. And you were under oath?

11 A. Yes.

12 Q. Was it true that you were trying to
13 provide as much guidance as you could to the
14 marketplace?

15 A. Yes.

16 Q. As of April 26, 2018 had the division of
17 corporate finance issued an interpretive relief
18 about the circumstances under which a digital asset
19 transaction would be an investment contract or a
20 security?

21 A. Did you say "interpretive release"?

22 Q. Uh-huh.

1 A. No.

2 Q. As of April 26, 2018 had the SEC --
3 withdrawn.

4 As of April 26, 2018 had the division of
5 corporate finance issued a regulation about the
6 circumstances under which a digital asset
7 transaction would be an investment contract or a
8 security?

9 A. No.

10 Q. And the division of corporate finance had
11 not engaged in any rulemaking activity about the
12 circumstances in which a digital asset transaction
13 would be a security, correct?

14 MR. TENREIRO: I object to form and also
15 instruct the witness not to answer internal
16 deliberations about potential rulemaking. Are you
17 talking about rulemaking activities externally such
18 as requesting notice of comments or --

19 MR. FIGEL: Yes.

20 MR. TENREIRO: Okay.

21 MR. FIGEL: Public announcement of a
22 potential rulemaking as to when a digital asset

1 transaction would be viewed as a security under the
2 federal securities laws.

3 A. No.

4 Q. And that is all guidance that you could
5 have provided, correct?

6 A. That's a form of guidance, yes.

7 (Hinman Exhibit 26 was marked
8 for identification.)

9 BY MR. FIGEL:

10 Q. Director Hinman, I'm now going to show you
11 what's in the binder as tab YY and which I will ask
12 the court reporter to mark as Exhibit 26 I believe.

13 (Witness reviewing document.)

14 A. Okay.

15 Q. Do you recall receiving this e-mail from
16 Ms. Szczepanik on May 16, 2018?

17 A. This refreshes my recollection.

18 Q. And you responded to that e-mail, correct,
19 at the top?

20 A. Yes.

21 Q. Any reason to believe this is not a true
22 and accurate copy of the e-mail that you exchanged

1 response.

2 A. That's right. This is not a proposed
3 response. These are, I believe, subtopics for the
4 major heading. These were additional questions
5 they were thinking of asking.

6 Q. What is your basis for your testimony that
7 you understood that these were subtopics that they
8 proposed?

9 A. Because when you read them all in context,
10 it's clear that they are sort of follow-on
11 questions. If you read No. 2, for instance, it's
12 pretty clear that's another question they're going
13 to ask.

14 Q. And focusing now on 4A --

15 A. Right.

16 Q. -- you'll see that it was deleted?

17 A. Right.

18 Q. And I will represent to you my
19 understanding is that Mr. Seaman deleted this
20 portion of the document.

21 MR. TENREIRO: What's the basis of that
22 understanding, Reid?

1 MR. FIGEL: Our review of the metadata.

2 If you look to -- depends how you present it, but
3 if you go to the second document, it says on some
4 version of it deleted by Michael Seaman.

5 MR. TENREIRO: Okay. I think there's no
6 foundation to that right now in the record, but go
7 ahead and ask the question.

8 MR. FIGEL: Let's open the native file and
9 I'll try and show you because I think it's
10 important.

11 MR. TENREIRO: Even if it is, you can ask
12 him if he directed Seaman to delete it, I mean,
13 does he remember that.

14 BY MR. FIGEL:

15 Q. Did you direct Mr. Seaman to delete these
16 subtopics?

17 A. I don't recall directing him to do that.

18 Q. Do you have an understanding as to why he
19 deleted these subtopics?

20 MR. TENREIRO: Without disclosing
21 deliberations or conversations.

22 A. I don't have a specific recollection of

1 reading the particular deletion here. I think he
2 may have been looking for a broader question rather
3 than something that was characterizing some of our
4 advice or our guidance in this area. This looks
5 very narrow and we might not have agreed with the
6 premise of the question.

7 Q. Well, do you agree that one of the key --
8 one of the key points of your June 14, 2018 speech
9 was that "The token and the offering may be
10 distinct. The token may be offered in a securities
11 offering at some point and the future offerings may
12 be nonsecurities. Nonetheless the touchstone of
13 the analysis is likely the Howey test prong
14 regarding an expectation of profit solely from the
15 efforts of others. A sufficiently decentralized
16 network token does not rely on the efforts of
17 others"?

18 MR. TENREIRO: Object to form. Do you
19 want to break that up? I mean --

20 MR. FIGEL: No.

21 MR. TENREIRO: It's impossible to answer
22 that. Go ahead.

1 MR. FIGEL: Do you disagree that that was
2 a key point of your June 14, 2018 speech?

3 MR. TENREIRO: Object to form.

4 A. I think that is too narrow a reading of
5 the speech. I think it's -- again, I think why
6 Michael may have deleted this is the premise of
7 this was that these were the key items, and I think
8 it was reducing a five-page speech or six-page
9 speech, whatever it is, to one paragraph.

10 Q. Turn the page, if you would, and go to
11 question 6.

12 A. Yeah.

13 Q. So you'll see in the portion of the e-mail
14 that's in different colors that, according to your
15 understanding, "The moderators suggested another
16 issue is that to the outside observer the SEC can
17 be opaque. With all the divisions -- different
18 divisions and offices how do you know who to call?
19 You call ten different law firms, they give you ten
20 different answers, each of them has their own
21 particular spin. It's like the white light of your
22 speech went through a prism and came out in ten

1 different colors of legal advice."

2 Let's just focus on those sentences. Do
3 you know why -- did you direct Mr. Seaman to delete
4 that portion of the proposed question?

5 MR. TENREIRO: Object to form.

6 A. I don't recall directing him to do that.
7 It's hard to tell from the way this document's
8 presented whether he added the statement "Another
9 issue is that to the outside observer is that the
10 SEC can be opaque. With all the different
11 divisions and offices how do we know who to call."
12 That looks like that's something he added. It was
13 probably trying to give me an opportunity to say
14 here's how you can get your answers -- answers to
15 questions you may have.

16 Q. Do you believe that Mr. Seaman wrote "You
17 call ten different law firms, they give you ten
18 different answers"?

19 A. No. I think that is struck out in the
20 document I have in front of me. So my guess is
21 that this is a very long three-paragraph, almost a
22 full page question, and he may have deleted it for

1 any number of reasons.

2 Q. Fair to say that the moderators believe
3 that "You call ten different law firms, they give
4 you ten different answers," correct?

5 MR. TENREIRO: I'm just going to -- Reid,
6 I'm going -- I'm going to just to note an
7 objection. Judge Netburn has ruled on your fair
8 notice defense. The focus is not on what the
9 market participants believed. It's an objective
10 test. You're skating dangerously close in my
11 opinion to opening the door to what people
12 believed, including your client. Go on if you'd
13 like.

14 MR. FIGEL: Noted.

15 Can you answer my question?

16 A. Sure. I just want to make sure -- answer
17 the question? Okay.

18 I don't know what the moderators thought
19 when they were coming up with these questions, what
20 was in their mind, if they thought It was a
21 colorful way to describe a question or ask a
22 question. I don't really know what they had in

1 their mind. It's hard for me to read somebody
2 else's mind.

3 Q. But you have no reason to believe that
4 Mr. Seaman added that portion to this document,
5 correct, "You call ten different law firms" all the
6 way down to "Ten different colors of legal
7 advice"?

8 A. No. Again, I think this was a deletion,
9 but I don't know the history of the -- of the
10 questions, who initially drafted them, who changed
11 them, but my best guess would be that Mr. Seaman
12 added the language that's in red but not struck out
13 and struck the things that are struck.

14 Q. All right. Let's go to sub A on 6.

15 A. Sub A on 6. Okay.

16 Q. Beginning with "Another issue" and ending
17 with "Different lawyers." Do you have an
18 understanding as to whether Mr. Seaman added that
19 or whether Mr. Seaman deleted that?

20 A. Again, I don't know the editorial history
21 here. So my previous statement that I think he
22 probably struck things that are marked out and

1 added things that are just in red, but I don't have
2 firsthand knowledge of that.

3 Q. All right. Same question with respect to
4 the next portion of this, "New insights are based
5 on who can get a meeting or which lawyer says they
6 know someone in the right office. There have been
7 some efforts to avoid this and to try to bring the
8 conversations on this topic into an open forum and
9 find consensus on best practice." Do you have any
10 reason to believe that Mr. Seaman added this?

11 MR. TENREIRO: Object to form.

12 A. Same answer.

13 Q. And same set of questions all the way to
14 the bottom. Any information about who added the
15 language and who deleted it?

16 A. No. Again, I think things that are in red
17 such as "Do you have plans to issue more guidance"
18 were likely added by Mr. Seaman, and other things I
19 just don't know the editorial history.

20 Q. Do you know whether there was a video
21 recording made of your remarks at the Tech GC
22 National Summit on November 26th?

1 what's in the outline as QQQ and which I'll ask the
2 court reporter to mark as Exhibit 36.

3 (Witness reviewing document.)

4 A. Okay.

5 Q. You're not on Exhibit 35, but have you
6 seen that document?

7 A. I don't remember seeing that e-mail.

8 Q. And the attachment, do you recall seeing
9 that document?

10 A. I don't.

11 Q. All right. You'll see on
12 Exhibit 35 -- let me back up. Do you know Robert
13 Cohen in the division of enforcement?

14 A. I do know Rob, yes.

15 Q. And who is he?

16 A. At the time I think he was, you know, a
17 staff member in enforcement. He may have -- I
18 don't know the exact date, but there was a crypto
19 asset group and Rob may have been heading it at
20 that point.

21 Q. And you'll see in the e-mail there's a
22 reference to setting up a potential meeting. Did

1 you attend a meeting with Mr. Cohen and Ms. Johnson
2 and Mr. Rosenblum?

3 A. I don't think so.

4 Q. To your knowledge, did anyone from the
5 division of corporate finance attend a meeting with
6 Ms. Johnson, Mr. Rosenblum, and --

7 A. I don't know.

8 Q. Let's go to tab 36, and if you could take
9 a look at the page here that ends in 2983. In
10 outline form it's direct your attention to D1.

11 A. B1.

12 Q. D as in David.

13 A. I'm probably on the wrong page. Give me
14 the page number again.

15 Q. The Bates is 2983.

16 A. Okay.

17 Q. And the portion of the outline is the --
18 is D and D1, D and Romanette 1.

19 A. My 2983 is -- okay. So it's 85. Oh, 85
20 on mine.

21 MR. TENREIRO: There's two Bates. That's
22 why it's confusing him. I think it's from where it

1 says "From a petitioner's perspective," right?

2 MR. FIGEL: Correct. As I understand
3 your --

4 A. All these pages are 83 except for the
5 specific page you're trying to get to is 85.

6 Q. I believe the way the SEC produces
7 documents is the top one suggests a number that is
8 posted on all things that are connected, and then
9 the one below it is the sequential number.

10 MR. TENREIRO: Your guess is as good as
11 mine.

12 A. I think it's the other way around, but
13 that's okay.

14 Q. If you could just read into the record D
15 and Romanette 1.

16 A. "From a practitioner's perspective the
17 situation in the cryptocurrency markets is
18 extremely unusual. Token issuers can speak to two
19 different well-regarded experienced law firms and
20 get diametrically opposite views on the current and
21 future applicability of federal securities laws and
22 what steps the token issuer needs to take to engage

1 in a compliant token offering."

2 Did you learn from any source on or about
3 October 23rd, 2018, you know, within weeks that
4 Ms. Johnson and Mr. Rosenblum had informed
5 Mr. Cohen in substance of the information you just
6 read?

7 A. I don't remember ever hearing about that.

8 Q. If you could read D Romanette 3-2 into the
9 record, please.

10 A. "This is not normal and, in fact, this is
11 largely unprecedented in our experience."

12 Q. Go down to 2, if you would.

13 A. You want me to read the --

14 Q. Yeah. "Lawyers, law firms, and other
15 gatekeepers."

16 A. So not the general one, the other one?
17 Okay.

18 "Lawyers, law firms, and other
19 gatekeepers, however, do not typically disagree on,
20 for example, whether federal securities laws apply
21 at all or what analysis is for determining
22 whether -- or what the analysis is for determining

1 whether instruments are securities."

2 Q. Did you learn from any source on or about
3 October 23rd, 2018 that Ms. Johnson and
4 Mr. Rosenblum had expressed this view to Mr. Cohen
5 and others?

6 A. I don't recall that, no, I don't think I
7 did.

8 MR. FIGEL: Can we go off the record for a
9 second.

10 THE VIDEOGRAPHER: Off the record at 5:39.

11 (A short break was had.)

12 THE VIDEOGRAPHER: Back on the record at
13 5:45.

14 EXAMINATION

15 BY MR. FLUMENBAUM:

16 Q. Good afternoon, Mr. Hinman.

17 A. Hi.

18 Q. I'm going back to the privilege logs that
19 Mr. Figel introduced. They reflect that you sent
20 your speech to Mr. Clayton, correct?

21 A. Among others, yes.

22 Q. Did you send them to any other

1 MR. FLUMENBAUM: You may answer.

2 A. I didn't feel like the input was going to
3 be worth the extra delay.

4 Q. So the only commissioner that you cared
5 about was Mr. Clayton, correct?

6 MR. TENREIRO: Object to form.

7 A. That's not true.

8 Q. Do you know whether Mr. Clayton had a
9 relationship with ConsenSys or Ether or any of the
10 entities in the Ether network prior to his joining
11 the SEC?

12 A. Not that I'm aware of.

13 Q. Are you aware that Sullivan & Cromwell
14 represented ConsenSys?

15 MR. TENREIRO: Objection to form. Go
16 ahead.

17 A. I didn't know if they were a firm client.
18 I think some of the people at the ConsenSys
19 meetings had a Sullivan & Cromwell background. I
20 don't know if they were still there appearing as,
21 you know, the law firm for ConsenSys. So I wasn't
22 aware if they -- of their relationship.

1 Q. Now, you testified earlier that the SEC
2 had policy against owning digital assets for quite
3 some time; do you remember that?

4 A. Do I remember testifying to that?

5 Q. Yes.

6 A. Yes.

7 Q. And when did you first become aware that
8 the SEC had a policy against owning digital assets?

9 MR. TENREIRO: Object to form and to
10 relevance. This is way beyond what she ordered you
11 to ask him about. Go ahead.

12 A. When did I become aware of that policy?

13 Q. Yes.

14 A. While I was at the SEC, probably the first
15 year I was at the SEC.

16 Q. When you joined the SEC in May of 2017 did
17 the SEC have a policy against owning digital
18 assets?

19 A. I'm not sure.

20 Q. Isn't it a fact that the policy against
21 owning digital assets wasn't instituted until 2018?

22 MR. TENREIRO: Objection to form.

1 A. I'm not sure that's right.

2 Q. When do you think it was instituted?

3 MR. TENREIRO: Objection to form.

4 A. I think a policy was adopted probably
5 around the time you're suggesting, but prior to
6 that time I think if you had any financial interest
7 in something you were involved in you were to
8 recuse yourself or not have the interest. So I
9 think the policies are broad enough to, you know,
10 stop people from having interest in assets that
11 they were involved in.

12 Q. You're talking about two different things,
13 aren't you? You're talking about a conflict of
14 interest policy as opposed to a policy against
15 owning digital assets, correct?

16 MR. TENREIRO: Objection to form.

17 A. I'm talking about policies that might
18 restrict someone from owning digital assets.

19 Q. Did the policy against conflicts of
20 interest restrict people from owning digital assets
21 if they didn't have any conflicts of interest?

22 MR. TENREIRO: Objection to form.

1 No. 1345799. We'll mark this as -- what are we up
2 to? 38?

3 MS. PROSTKO: 38. And for the hotseat
4 this is document 040.

5 (Hinman Exhibit 38 was marked
6 for identification.)

7 BY MR. FLUMENBAUM:

8 Q. Have you ever seen this document before
9 today?

10 A. I may have seen this. I don't recall
11 specifically.

12 Q. Am I correct, sir, that this is a policy
13 with respect to ethics conflicts among the staff,
14 correct?

15 A. Right.

16 MR. TENREIRO: Object to form.

17 Q. And this policy doesn't prohibit anybody
18 from owning Bitcoin; isn't that correct?

19 MR. TENREIRO: Objection to form and
20 mischaracterizing, the document speaks for itself.

21 A. Does it prohibit owning Bitcoin? I'm
22 sorry.

1 Q. Yes.

2 A. Well, again, looking at this quickly, "I
3 own Bit-" -- the document has a question, "I own
4 Bitcoin, have been assigned to part of a working
5 group at the SEC making recommendations with
6 respect to Bitcoin, can I do this." "Answer: No."
7 Then it goes on to cite parts of the U.S. code that
8 say federal employees are -- prohibits all federal
9 employees from working on any particular matter
10 where they may have a direct or particular effect
11 on the employees's financial interest, and then
12 they go on to give examples.

13 Q. So am I correct, sir, that if you were not
14 involved in making recommendations as to how to
15 regulate Bitcoin, you would be able to own Bitcoin
16 by the SEC?

17 MR. TENREIRO: Objection to form. You're
18 asking him to give you a legal opinion --

19 MR. FLUMENBAUM: Come on. Object to form
20 and let's move on. No speeches.

21 A. I'm sorry. Could you ask your question
22 again?

1 Q. Yeah. Does this refresh your recollection
2 that employees of the SEC unless they had a
3 conflict of interest were permitted to own digital
4 assets?

5 MR. TENREIRO: Object to form.

6 A. Again, if they were not involved in the
7 space in any way, which, you know, that's a pretty
8 broad -- SEC views these things pretty broadly. So
9 potentially I think you could own Bitcoin if you
10 were involved in something completely away from it.

11 Q. And would you actually need permission to
12 buy Bitcoin if you were in that position of not
13 having anything to do with the regulation of
14 Bitcoin?

15 MR. TENREIRO: Objection to form.

16 A. I'd have to refresh myself on the
17 securities clearance procedures. If you buy
18 securities you're supposed to get them precleared.

19 Q. And am I correct that digital assets were
20 not covered by the securities clearance form until
21 2018?

22 MR. TENREIRO: Objection to form.

1 A. Again, I'll take your word for that, but

2 I --

3 Q. Didn't you help write the policy in 2018?

4 MS. KELLY: Object to form.

5 MR. TENREIRO: Object to form. Go ahead.

6 A. I don't remember specifically helping on

7 the policy. I probably had conversations with

8 people on the staff about it.

9 Q. I want to point your attention to also it

10 says in this document that the "OEC has been

11 informed that the status of Bitcoin as either

12 currency or securities is undetermined at this

13 time"; do you see that?

14 A. Yeah.

15 Q. And as far as you knew, that was true?

16 MR. TENREIRO: Objection to form.

17 A. With respect to the ethics office? The

18 document speaks for itself.

19 Q. Did there come a time that the status of

20 Bitcoin as either currency or securities changed?

21 MR. TENREIRO: Objection to form.

22 A. For what purpose? For the purpose of the

1 regulations from the Department of Treasury?

2 MR. TENREIRO: Object to form.

3 A. I don't know what Treasury had applied in
4 terms of their money laundering rules to Ether. I
5 don't know off the top of my head.

6 Q. And what about with respect to Bitcoin?

7 MR. TENREIRO: Object to form.

8 A. Same answer. I'm not sure how they are
9 applying those rules to those two assets.

10 Q. Now, you mentioned in response to
11 Mr. Figel's questioning that you were not aware of
12 any rulemaking proceedings that you were involved
13 in in connection with digital assets; is that
14 correct?

15 MR. TENREIRO: Object to form.

16 A. Rulemaking proceedings is very broad. So,
17 you know, we did a lot of rulemaking while I was at
18 the SEC in my division and in other divisions.
19 Would they -- you asked broadly would they apply to
20 digital assets. If someone was in the business of,
21 you know, mining Bitcoin or pick a digital asset
22 business and they were a registered company with

1 us, the rulemakings would be relevant to them in
2 terms of disclosures. So you're asking a very
3 broad question. If you mean are there specific
4 digital asset rules -- rulemakings that I was
5 involved in, I don't think we had a specific
6 rulemaking per se.

7 Q. That's what I was getting at.

8 A. Okay.

9 Q. And you also mentioned no action letters?

10 A. Right.

11 Q. Were there any no action publicly -- no
12 action letters approved in 2017 that related to the
13 applicability of digital assets to securities laws?

14 A. I don't know if anyone sought one in 2017.
15 There were some people trying to use blockchain
16 technology for stock transfers. I don't know if
17 they got a no action letter, but some of that would
18 precede a little of my time all 2017.

19 Q. Well, the first no action letter that I
20 see under your regime was in 2019. Am I missing
21 something?

22 MR. TENREIRO: Objection to form.

1 A. I'd have to go back and look at the no
2 action letters to see, you know, each one that was
3 granted and dates.

4 Q. Do you recall any that specifically
5 related to the applicability of the securities laws
6 to digital assets in 2017 or 2018?

7 A. I don't remember when we issued the pocket
8 full of coins or there was a -- I forget the name
9 of it -- a jet token, what the dates of those are.
10 Maybe you do.

11 Q. Is that the only one you remember?

12 A. I think there were some others, but I
13 might have been less involved with those. Again,
14 you asked very broadly if that applied to digital
15 assets. So you were --

16 Q. I changed the question slightly --

17 A. Okay.

18 Q. -- to involve the applications of
19 securities laws to digital assets.

20 A. Again, I remember the two, and I'd have to
21 go back and do some work to see if there were
22 others that were relevant.

1 Q. But there wasn't a plethora of no action
2 letters issued by the SEC in this space during your
3 tenure?

4 MR. TENREIRO: Objection to form.

5 A. I remember the ones I remember. So...

6 Q. The two?

7 A. Yes.

8 Q. Okay.

9 A. Actually I think there might have been a
10 third, but, again, I'd have to go back and look.

11 Q. Mr. Figel showed you the Dow report, that
12 was in 2017?

13 A. Yes.

14 Q. And that was issued a couple months after
15 you joined?

16 A. Yes.

17 Q. And what role did you play in the issuance
18 of that report?

19 MR. TENREIRO: Just generally the role.

20 A. I reviewed it, I commented on it, talked
21 to different members -- you know, enforcement about
22 it, talked to the chairman's office about it.

1 clients that hired them or just instead as
2 objective observers of the market?

3 MR. FLUMENBAUM: Objection as to form.

4 MR. FIGEL: Objection.

5 A. Generally people were -- if they were
6 counsel, they had been hired by someone to present
7 their views on their behalf.

8 Q. Thank you.

9 Did you attend meetings while you were
10 director of the division of corporation finance
11 with representatives of Ripple in connection with
12 the SEC's staff's investigation of Ripple?

13 A. Yes.

14 Q. Approximately how many meetings?

15 A. Probably four, maybe a few phone calls as
16 well.

17 Q. Where were those meetings?

18 A. Either in the SEC's offices or on Zoom
19 calls.

20 Q. Was Mr. Garlinghouse at some of those
21 meetings?

22 A. I think he may have been at one or two of

1 the early meetings.

2 Q. What about Andrew Ceresney, do you know
3 who that is? Do you know who Andrew Ceresney is?

4 A. I do.

5 Q. Who is that in connection with this case?

6 A. I believe he was Ripple's counsel and
7 formerly the director of the division of
8 enforcement at the SEC.

9 Q. What about Meredith Cross?

10 A. She's -- she attended some of these
11 meetings and is a partner at WilmerHale and
12 formerly held the same position I formerly hold,
13 director of the division of corporation finance.

14 Q. Did you have meetings with either
15 Ms. Cross or Mr. Ceresney about the SEC staff's
16 investigation of Ripple's conduct?

17 A. Yes.

18 Q. Have you ever at any time told any
19 Ripple's representatives that you did not think
20 their offers and sales of XRP were securities
21 transactions?

22 MR. FLUMENBAUM: Objection as to form, and

1 I'm specifically stating that if you enlisted an
2 answer, you're violating the process.

3 MR. TENREIRO: No. This is external.
4 External statements -- just you --

5 MR. FLUMENBAUM: We're going to ask for
6 notes of his meetings. You're opening the door to
7 things that you've claimed privilege on.

8 MR. TENREIRO: You've asked for those
9 notes already.

10 MR. FLUMENBAUM: We're going to get them
11 this time. Go ahead.

12 MR. TENREIRO: Have you ever, Mr. Hinman,
13 at any time told any Ripple's representatives that
14 you did not think their offers and sales of XRP
15 were securities transactions?

16 MR. FLUMENBAUM: Objection as to form.
17 You may answer.

18 A. No.

19 Q. Have you ever told any Ripple
20 representative that the SEC itself or any of its
21 commissioners did not think that Ripple's offers
22 and sales of XRP were securities transactions?

1 MR. FLUMENBAUM: Objection as to form.

2 A. No.

3 Q. Did you ever witness anyone at the SEC
4 tell any such thing to any Ripple representative
5 while you worked at the SEC?

6 MR. FIGEL: Objection.

7 MR. FLUMENBAUM: Objection as to form.

8 A. No.

9 Q. What did you tell Ripple's representatives
10 at these meetings about sort of your views? And
11 only communicate what you told them externally.

12 A. A number of things. So that's a broad
13 topic, but when Meredith Cross came in with Andrew,
14 one of the purposes of that meeting as I understood
15 it was to try to bring the company into compliance
16 and to examine ways that that could happen. So one
17 of the things I told them was the first thing you
18 need to do and I'm kind of surprised you haven't
19 done it already is stop selling XRP on an
20 unregistered basis publicly.

21 We also told them that we were concerned
22 about the asymmetries between what they -- what the

1 people at Ripple knew about the prospects for XRP
2 and what the market knew, and we explored with them
3 the idea of Ripple becoming a public company to
4 help reduce those asymmetries.

5 THE REPORTER: Did you say "help reduce"?

6 THE WITNESS: Help reduce those
7 asymmetries.

8 Q. Anything else you recall generally that
9 you told -- that you told them at these meetings?

10 A. Yeah. I think I expressed concerns about
11 did investors have all the information that they
12 should have about the prospects and did they get
13 that on a timely basis. I expressed the concern
14 about the lack of transparency.

15 Q. These meetings, can you give us the time
16 frame for them approximately?

17 A. I think they were the last couple of
18 years. It was a pretty long process. I don't
19 remember exactly when Meredith first got involved.
20 You know, Meredith as a capital markets lawyer
21 would be someone who would understand the
22 undertakings to become a public company, to provide

1 the disclosure, to bring the sales of XRP into
2 compliance.

3 Q. But in terms of the years, I think you
4 said the last few years? Are you talking about the
5 last few years of your tenure there?

6 A. Yes. I'm sorry. Yeah. So that would
7 have been probably -- I think some of these
8 meetings began in 2018 and some early meetings with
9 XRP representatives, general meetings, and then
10 meetings trying to figure out how XRP could come
11 into compliance were later, probably 2020.

12 Q. Okay.

13 Now, setting aside meetings with other
14 members of any government, did you ever tell any
15 person outside of the SEC that you did not view
16 Ripple sales of XRP as securities transactions? So
17 I'm talking about third parties only.

18 A. No.

19 MR. FLUMENBAUM: Objection.

20 Q. Did you ever witness any person from the
21 SEC tell any person in the, again, outside world,
22 not U.S. Government or other governments, that the

1 SEC did not view Ripple's sales of XRP as
2 securities transactions?

3 MR. FLUMENBAUM: Objection as to form.

4 A. No.

5 Q. Did you have a meeting with Chair Clayton
6 and representatives of Ripple sometime in 2018?

7 A. I believe they came in to meet with the
8 chairman, yes.

9 Q. Did you ever hear Mr. Clayton tell anyone
10 at Ripple that Mr. Clayton did not view Ripple's
11 transactions as securities transactions?

12 MR. FLUMENBAUM: Objection as to form.

13 A. No.

14 Q. Did you ever hear Mr. Clayton give any
15 assurances to anyone at Ripple that the SEC would
16 determine that Ripple's sales were not securities
17 transactions?

18 MR. FLUMENBAUM: Objection as to form.

19 A. No.

20 MR. TENREIRO: I'm going to mark -- I
21 guess Exhibit 41 will be the next one?

22 THE REPORTER: Yes.

1 (Hinman Exhibit 41 was marked
2 for identification.)

3 BY MR. TENREIRO:

4 Q. For the record, this is a memorandum SEC-
5 LIT-E-MAILS-456558. The date is August 20, 2018.

6 A. Okay.

7 Q. Mr. Hinman, do you see this memorandum
8 says it's written from Sean Memon?

9 A. Yes, I see that.

10 Q. Who is that in 20 -- in August 2018?

11 A. Deputy chief of staff to the chairman.

12 Q. Okay. Have you seen this memorandum
13 before?

14 A. You showed them to me.

15 Q. Okay. And have you had a chance to read
16 it now?

17 A. Yes.

18 Q. Okay. Do you -- are the statements in
19 this memorandum consistent with whatever
20 recollection you might have -- actually, do you see
21 that it says here that you attended a meeting on
22 August 20, 2018 with representatives from Ripple?

1 Do you see that part?

2 A. Yes.

3 Q. Do you have any reason to doubt that that
4 is true?

5 MR. FLUMENBAUM: Objection as to form.

6 A. No.

7 Q. Having read the document, is whatever
8 stated here consistent with whatever recollection
9 you might have about what occurred at this meeting?

10 MR. FIGEL: Objection.

11 A. Let me finish reading.

12 It's consistent.

13 Q. Okay. And so just to be -- just to wrap
14 up on the prior point, setting aside this meeting
15 in this document, Director Hinman, I just want to
16 be sure I understood you. You at some point told
17 Andrew Ceresney in his capacity as Ripple's
18 attorney that you thought the XRP transactions
19 might be problematic under the securities laws; is
20 that correct?

21 MR. FLUMENBAUM: Objection as to form.

22 It's inconsistent with his testimony.

1 MR. TENREIRO: Did you ever tell
2 Mr. Ceresney in his capacity as Ripple's attorney
3 that you thought that their transactions in XRP
4 might, you know, have an issue under the securities
5 laws?

6 MR. FLUMENBAUM: Objection as to form.

7 MR. FIGEL: The leading is really
8 inappropriate with the commission witness.

9 MR. TENREIRO: Okay. Can you answer,
10 please.

11 A. Basically my answer would be what I
12 told -- what I remember telling Mr. Ceresney and
13 Meredith Cross about my views on XRP, that I viewed
14 it as a security and I viewed the continuing
15 offerings -- periodic offerings of XRP in a way
16 where they were not restricted in the way a
17 securities offering would be restricted and
18 therefore exempt or they weren't registered as a
19 problem under the securities laws. If they were
20 interested into coming into compliance they should
21 start by stopping those sales.

22 Q. Based on the meetings you attended and

1 your conversations with Ripple's representatives,
2 did you have any reason to believe that Ripple's
3 representatives did not understand the securities
4 laws principles that might apply to their conduct?

5 MR. FLUMENBAUM: Objection as to form.

6 A. I had no reason to believe they didn't
7 understand it. Meredith was a very accomplished
8 securities lawyer.

9 MR. TENREIRO: I don't have anything else.
10 Thank you.

11 FURTHER EXAMINATION

12 BY MR. FLUMENBAUM:

13 Q. Meredith Cross occupied your position as
14 head of corp fin?

15 A. She did.

16 Q. And she -- she said to you that in her
17 view XRP was not a security, correct?

18 A. I don't think she ever said that to me.

19 Q. She never said that to you?

20 A. I don't recall her saying that, no.

21 Q. Mr. Ceresney was head of enforcement at
22 the SEC?

1 at some point in 2018 that sales of XRP may violate
2 the securities laws. Is that what you testified
3 to?

4 MR. TENREIRO: Object to form.

5 A. That I had a view that their sales
6 violated securities laws?

7 Q. Yes.

8 A. Yes.

9 Q. Okay. And just to be clear, in 2018 there
10 was no preliminary injunctive relief that the
11 commission sought against Ripple in relation to any
12 sales of XRP; is that correct?

13 A. That's right.

14 Q. And that's true of 2019 also, correct?

15 A. Correct.

16 Q. And that's true of 2020 also, right?

17 A. That's right.

18 Q. In fact, the lawsuit wasn't brought
19 against Ripple in relation to any of its sales of
20 XRP until December 22nd, 2020, correct?

21 MR. TENREIRO: Go ahead. Object to form.

22 If you're going to keep asking him facts that are

1 in the record, we're going to instruct -- we're
2 going to finish the deposition and you can
3 call Judge --

4 MR. SOLOMON: I'm trying to move through
5 this quickly if you'll give me a few more minutes.

6 MR. TENREIRO: Matt, it is in the record
7 when the lawsuit was filed.

8 MR. SOLOMON: Is that correct?

9 A. When this lawsuit was filed?

10 Q. Yes.

11 A. I've not examined the record. So I don't
12 know the date --

13 Q. Was it late December 2020?

14 THE REPORTER: Guys.

15 A. I don't -- I don't know. I think it was
16 December 20, 22nd, somewhere in that range.

17 Q. Fair enough. And when that lawsuit was
18 brought there was no preliminary injunctive relief
19 sought in relation to sales of XRP; is that your
20 recollection?

21 A. Not that I'm aware of.

22 Q. No, there was no preliminary injunctive

1 relief sought at that time?

2 A. I wasn't at the SEC at that time. So not
3 that I was aware of.

4 Q. Let's take a look at one document that
5 Mr. Tenreiro showed you which is an August 20, 2018
6 memorialization of one of the meetings that you
7 testified to where my client Brad Garlinghouse
8 attended. Do you have that document in front of
9 you?

10 A. I do.

11 Q. Okay. This looks like a post-speech
12 memorandum authored by two individuals, Sean Memon,
13 deputy chief of staff, and Brian Rabbitt, senior
14 policy advisor; is that right?

15 A. Yeah. I just want to --

16 Q. Sorry. This is just a one-page document.

17 A. Yes. Yes.

18 Q. Okay. And this memorandum, is there
19 anything about this that strikes you as inaccurate,
20 or does this seem to you to be an accurate
21 memorialization, albeit a summary memorialization,
22 of the meeting that you attended and testified

1 about on August 20th, 2018?

2 A. Yes, it was a short meeting. This seems
3 accurate.

4 Q. Okay. And to be clear, by August 20, 2018
5 you had delivered your speech to the marketplace
6 where you gave your view that neither Ether nor
7 Bitcoin are securities; is that correct?

8 MR. TENREIRO: Object to form.

9 A. Yes.

10 Q. Okay. And in this memo there was a
11 discussion involving my client and Schwartz. Is
12 that David Schwartz?

13 A. I believe so. That's what the memo says.

14 Q. Okay. About Ripple's business in
15 technology, that's what the memo writes, right?

16 A. Correct.

17 Q. Okay. And it looks like there's also a
18 notation that towards the end of the meeting
19 Garlinghouse briefly noted that Ripple was in
20 purgatory due to uncertainty as to whether XRP, the
21 cryptocurrency with which Ripple is associated, is
22 or is not a security. Do you see that sentence?

1 A. I do.

2 Q. Okay. So two individuals who attended
3 that meeting were reporting back to an internal
4 memo that at this point in time, August 2018, my
5 client had orally indicated that there was
6 uncertainty around the status of XRP. That's what
7 this memo establishes, right?

8 MR. TENREIRO: Objection to form.

9 A. The memo says that. It says what it says.

10 Q. Do you have any reason to believe that the
11 memo inaccurately reflects what my client said
12 during that meeting?

13 A. No.

14 Q. Because Sean Memon and Brian Rabbitt
15 wouldn't put something in an internal memo the day
16 it happened if it was not accurate, right?

17 MR. TENREIRO: Object to form.

18 A. That's right.

19 Q. I'm sorry. What was your answer?

20 A. That's right.

21 Q. Thank you.

22 Then it goes on, the memo, to say "In

1 response Chairman Clayton immediately stated that
2 the meeting was not the proper forum for a
3 discussion about that topic." Do you see that
4 sentence?

5 A. Yes.

6 Q. So there's no note in here that Chairman
7 Clayton responded that there is clarity around
8 whether XRP is a security, right?

9 MR. TENREIRO: Objection to form.

10 MR. SOLOMON: That's not in the memo.

11 A. I don't see that in the memo. Do you? I
12 don't see it.

13 Q. Doesn't matter what I see. Do you see it?

14 A. I don't see it.

15 Q. I don't either. Okay.

16 Then it says "He then asked Garlinghouse
17 to back up from that issue and steered the meeting
18 to a discussion about Ripple's business in
19 technology." Do you see that sentence?

20 A. I do.

21 Q. And then the last sentence of the memo,
22 "Following further discussion of these issues, the

1 memo concluded and Chairman Clayton encouraged the
2 Ripple executives to continue ongoing discussions
3 with the staff, the division of corporation
4 finance." Do you see that as well?

5 A. I do.

6 Q. Is there anything in this memo that
7 indicates that Chairman Clayton was of the view
8 that sales of XRP in August of 2018 were security
9 sales?

10 MR. TENREIRO: Objection to form. You
11 mean other than when he tells him not to talk about
12 that with him?

13 MR. SOLOMON: That wasn't my question.

14 Is there anything in the memo that
15 indicates that Chairman Clayton stated the view
16 that XRP sales were sales of securities? Do you
17 see that here?

18 MR. TENREIRO: Objection to form.

19 A. I don't see him saying one way or another
20 anything about the characterization of Ripple --
21 XRP.

22 Q. And that would have been a significant

1 piece of information had he said that, correct?

2 A. I think the chairman was steering the
3 conversation away from that topic because I think
4 he was aware that people were gathering more
5 information about XRP at that point.

6 Q. Okay. And is there anything in here,
7 Mr. Hinman, that indicates that you expressed a
8 view at this meeting that you believed sales of XRP
9 were security sales at this point in time?

10 A. No.

11 MR. SOLOMON: That's all I have.

12 MR. TENREIRO: Great. We're done. You
13 guys have spent more time than we did on the
14 questions. If you want to move to bring him back,
15 we'll see your motion.

16 MR. FIGEL: Jorge --

17 MR. TENREIRO: He's been here for 11
18 hours. He has been here for 11 hours. You showed
19 him about 20 documents that he was not even copied
20 on with Rob Cohen on them and with other people on
21 them. You've had him for 11 hours and you could
22 have asked him all of these questions. You had

1 As I understand your testimony both in
2 response to Mr. Tenreiro's questions and
3 Mr. Flumenbaum's questions about the meetings with
4 Ripple or representatives of Ripple, there was a
5 meeting that you attended in December, sometime
6 after December 11th when you apparently resigned
7 but before you were off the payroll, correct?

8 A. Yeah. I wasn't officially resigned until
9 December 20th I believe or 18th, something like
10 that. Because of the amount of unpaid leave I had
11 accumulated I was in effect taking vacation, but I
12 had additional people calling me with questions
13 during that period even though --

14 Q. So you attended a meeting by Zoom with
15 Ripple representatives?

16 A. I believe so.

17 THE REPORTER: Guys.

18 Q. And there was also a meeting I believe in
19 September that Ms. Cross, Mr. Ceresney, and various
20 people attended, correct?

21 A. You would know the date better than I, but
22 yes.

1 Q. And then there was a meeting with the
2 chairman in August; is that correct?

3 A. August of 2018, yes.

4 Q. All right.

5 Now, directing your attention to the
6 meeting in September where you answered questions
7 in response to Mr. Tenreiro about what you said to
8 Ripple.

9 A. Right.

10 Q. Did you prepare talking points prior to
11 that meeting?

12 A. No.

13 Q. Was there a memorandum or a transcript
14 made of what was discussed at that meeting?

15 A. Not that I'm aware of.

16 Q. Now, you testified that you didn't have a
17 specific recollection about what was discussed in
18 December, the December 2020 meeting, correct?

19 A. Yes. Yes.

20 Q. All right. And the September meeting
21 obviously was a few months before that?

22 A. Yes.

1 Q. Mr. Tenreiro asked you a series of leading
2 questions in which you described what you said.
3 I'd like to have you focus on what your
4 recollection is of specifically what you said.

5 MR. TENREIRO: Object to form.

6 MR. FIGEL: Do you have a specific
7 recollection of the words you spoke on the issue of
8 bringing the company into compliance?

9 A. Yes.

10 Q. What specifically did you say?

11 A. This is probably not verbatim, but I think
12 the beginning of the conversation was we understand
13 you want to come into compliance. If you want to
14 come into compliance you need to register these
15 sales or stop these sales that you're doing
16 periodically on -- I remember expressing some
17 surprise that that had been ongoing.

18 Q. And you remember speaking those words?
19 You're not describing what you said. Those are the
20 words you remember saying; is that correct?

21 A. Again, it's probably not verbatim, but
22 that was the message I was providing.

1 Q. I'm not asking about the message. I'm
2 asking about the words.

3 A. Okay. The words were I think I started
4 with I'm very surprised to see that you are still
5 offering XRP on an unregistered basis. You're here
6 to talk about how to come into compliance, you
7 should stop doing that before we even think about
8 anything else that we could do here.

9 Q. What did Ms. Cross say in response to
10 that?

11 A. I think she said she understood.
12 Basically her response was one of I get it.

13 Q. Do you remember the specific words she
14 said in response?

15 A. I don't.

16 Q. How about Mr. Ceresney?

17 A. I don't think he had much to say about
18 it.

19 Q. Did you refresh -- prior to your testimony
20 in connection with the preparation for your
21 deposition did you review any documents that
22 refreshed your recollection about what specifically

1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, TINA M. ALFARO, Registered Professional
3 Reporter, Certified Realtime Reporter, and Notary
4 Public, the officer before whom the foregoing
5 deposition was taken, do hereby certify that the
6 foregoing transcript is a true and correct record
7 of the testimony given; that said testimony was
8 taken by me stenographically and thereafter reduced
9 to typewriting under my direction; that reading and
10 signing was requested; and that I am neither
11 counsel for, related to, nor employed by any of the
12 parties to this case and have no interest,
13 financial or otherwise, in its outcome.

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and affixed my notarial seal this 27th day of
16 July, 2021.

17 My Commission expires October 31, 2025.

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22

23 _____
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25 DISTRICT OF COLUMBIA