

Exhibit 22

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,) Case No.:
v.) 20-Civ-10832(AT)(SN)
)
RIPPLE LABS, INC., BRADLEY)
GARLINGHOUSE, and CHRISTIAN)
LARSEN,)
)
Defendants.)
_____)

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

VIDEOTAPED DEPOSITION OF
RYAN ZAGONE
Tuesday, July 20, 2021

Reported by:
BRIDGET LOMBARDOZZI,
CSR, RMR, CRR, CLR
Job No. 210720BLO

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE)
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Plaintiff,) Case No.:
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RIPPLE LABS, INC., BRADLEY)
GARLINGHOUSE, and CHRISTIAN)
LARSEN,)
)
Defendants.)
_____)

Videotaped deposition of RYAN ZAGONE taken on
behalf of Plaintiff, held at the offices of Debevoise &
Plimpton, 919 Third Avenue, New York, New York,
commencing at 9:12 a.m. and ending at 6:17 p.m., on
Tuesday, July 20, 2021, before Bridget Lombardozzi, CCR,
RMR, CRR, CLR, and Notary Public of the States of New
York and New Jersey, pursuant to notice.

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17 , Ripple

18 DAVID SHERECK, Videographer
19 Shereck Video Service

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2 9:12 a.m.

3 June 29, 2021

4 - - -

5 THE VIDEOGRAPHER: Okay. We're
6 on the record. Excuse me. We're on the
7 record. The time is approximately 9:12
8 a.m. Today's date is Tuesday, July 20th,
9 2021. This is the video deposition of
09:12:19 10 Ryan Zagone in the matters of
11 Securities -- Securities and Exchange
12 Commission versus Ripple Labs, et al.
13 Index number is 20-Civ-10832 in the United
14 States District Court, Southern District
09:12:33 15 of New York.

16 My name is David Shereck,
17 certified legal videographer with Shereck
18 Legal Video in association with Gradillas
19 Court Reporting of Glendale, California.

09:12:47 20 Today we're at the offices of
21 Debevoise & Plimpton located at 919 Third
22 Avenue, New York, New York.

23 All attorneys that are present
24 will be noted on the stenographic record.

09:12:59 25 The court reporter today is

09:13:00 1 Bridget Lombardozzi, also with Gradillas.
2 And will you please swear in the witness.

3 R Y A N Z A G O N E, having
4 been duly sworn, was examined and
09:13:07 5 testified as follows:

6 DIRECT-EXAMINATION

7 BY MR. HANAUER:

8 Q. Good morning. My name is Ben Hanauer.
9 I represent the plaintiff, the SEC.

09:13:24 10 MR. HANAUER: Counsel, is there a
11 stipulation you want to put on the record?

12 MR. CERESNEY: Yes. Just that
13 a -- an objection by one counsel is an
14 objection -- considered an objection for
09:13:33 15 all counsel.

16 MR. HANAUER: So stipulated.

17 MR. CERESNEY: And one other
18 thing while we're on the record, just that
19 the transcript will be marked
09:13:42 20 confidential. The transcript is to be
21 marked confidential under our protective
22 order.

23 BY MR. HANAUER:

24 Q. Sir, could you please state your name
09:13:50 25 for the record.

09:13:52 1 A. Ryan Zagone.

2 Q. Is there any reason you cannot give
3 accurate deposition testimony today?

4 A. No.

09:13:57 5 Q. And how many preparation sessions did
6 you have for today's deposition?

7 A. I had a couple with my counsel and a
8 couple with Ripple's counsel.

9 Q. And in total, how much time did you
09:14:09 10 spend preparing with attorneys for today's
11 deposition?

12 A. A couple calls each.

13 Q. Can you give me a --

14 A. A couple hours on each call.

09:14:19 15 Q. Okay. Thank you.

16 Have you --

17 THE REPORTER: Excuse me. Could
18 the witness put the mic on your tie? It's
19 hard to hear you. Thank you.

09:14:32 20 THE WITNESS: Is that better?

21 BY MR. HANAUER:

22 Q. And have you ever been deposed or given
23 testimony in a lawsuit before?

24 A. No.

09:14:40 25 Q. Can you please tell me about any

09:14:42 1 education you've had since high school?

2 A. I went to undergrad at a small liberal
3 arts school in Mississippi.

4 Q. Which one?

09:14:50 5 A. Millsaps College.

6 Q. Is that the extent of your education
7 since high school?

8 A. Yes.

9 Q. And did you graduate from college?

09:15:01 10 A. I did.

11 Q. And what did you major in?

12 A. Economics.

13 Q. Are you an attorney?

14 A. No.

09:15:06 15 Q. Have you ever been an attorney?

16 A. No.

17 Q. During what time period did you work for
18 Ripple Labs, Inc.?

19 A. I joined in 2014, late 2014, and I left
09:15:20 20 in July 2019.

21 Q. And going forward just to save some
22 time, do you understand if I say "Ripple," I'm
23 referring to the defendant in this case, Ripple
24 Labs, Inc.?

09:15:33 25 A. Yep.

09:15:33 1 Q. Okay. And where did you -- where did
2 you work before Ripple?

3 A. I started my career at the [REDACTED]
4 [REDACTED]. Focused on policy and
09:15:47 5 economics.

6 Q. And when you say started your career,
7 you did that right out of college?

8 A. Correct.

9 Q. And how long were you at the [REDACTED]
09:15:53 10 [REDACTED]?

11 A. Four years and nine months, around
12 there, under five years.

13 Q. And what did you do for the [REDACTED]
14 [REDACTED]?

09:16:02 15 A. I sat on the policy team analyzing
16 regulatory proposals from the Fed, FDIC and OCC.
17 And I did that for three years. And then I left
18 there to go -- I was on the communications team,
19 focused on payments and mortgages.

09:16:22 20 Q. And where did you work after that?

21 A. I went to [REDACTED] on their financial
22 services practice.

23 Q. And what did you do at [REDACTED]?

24 A. I researched -- I was on a team that
09:16:33 25 looked at emerging issues for the banking

09:16:36 1 industry. Focused on retail, then strategy and
2 payments.

3 Q. Was that on the consulting side?

4 A. It was a research team that worked with
09:16:44 5 consulting and advisory.

6 Q. And how long were you at [REDACTED] for?

7 A. Two years.

8 Q. Okay. And where did you work at after
9 [REDACTED]?

09:16:53 10 A. Left [REDACTED] and joined Ripple.

11 Q. And after you left Ripple, where did you
12 go to work after that?

13 A. I took a year off after Ripple, a year,
14 18 months off. Had some side projects that I was
09:17:09 15 working on unrelated to Fintech. And in September
16 2020 returned to the payment space.

17 Q. And where -- where did you go to work
18 after --

19 A. I worked at -- I'm sorry.

09:17:22 20 Q. And I should have said this earlier.

21 One of the important things to remember during
22 this deposition is we can't speak over each other
23 for -- for the court reporter, so I would just ask
24 to please wait until I'm done asking my questions
09:17:35 25 before you start to answer and I'll try and do the

09:17:37 1 same with you.

2 A. I joined a company called [REDACTED]
3 now referred to as [REDACTED]. We're an international
4 payments company. I lead our North America
09:17:49 5 practice for our partnerships with banks.

6 Q. And does your cur -- and does your
7 current employer do business with Ripple?

8 A. No.

9 MR. CERESNEY: Objection to form.

09:18:02 10 Q. Has it --

11 A. No.

12 Q. Has your current employer done business
13 with Ripple since you started working there?

14 A. No.

09:18:11 15 Q. Why did you leave Ripple?

16 A. My role was terminated.

17 Q. And do you have an understanding why
18 your role was terminated?

19 A. New leadership was brought in and my
09:18:25 20 understanding was they wanted to bring in new
21 people and move the role from New York to D.C.

22 Q. And when you say "new leadership," who
23 was the new leadership that came in?

24 A. New general counsel and new head of
09:18:39 25 regulatory relations.

09:18:49 1 Q. Were you terminated for cause?

2 MR. CERESNEY: Objection to form,
3 foundation.

4 Q. You can answer.

09:18:57 5 A. I don't fully know what that means. I
6 had a strong performance record.

7 Q. So -- so it's your understanding that
8 your -- the reason you were let go, it didn't have
9 anything to do with your job performance, but the
09:19:12 10 new management wanted to bring in the new team?

11 A. Correct.

12 MR. CERESNEY: You need to pause
13 for a second so that I have a chance to
14 object. That's fine.

09:19:22 15 THE WITNESS: Okay.

16 BY MR. HANAUER:

17 Q. Are you still friends with any Ripple
18 employees?

19 A. Not current employees.

09:19:32 20 Q. Who are you still friends with that used
21 to be a Ripple employee?

22 A. There are four people that I stay in
23 contact with that are former employees.

24 Q. Could you name them, please?

09:19:44 25 A. Sure. [REDACTED]

09:19:48 1 [REDACTED] from the media team and [REDACTED]
2 [REDACTED] also from the media team.

3 Q. Do you know [REDACTED] last name?

4 A. [REDACTED].

09:20:10 5 Q. And are those the only current or former
6 Ripple employees that you are still friends with?

7 A. Yes.

8 Q. Have you had discussions with any of
9 those four individuals about this lawsuit?

09:20:23 10 A. No.

11 Q. Can you please describe how you came to
12 work at Ripple?

13 A. While at [REDACTED] in my last year there,
14 I began researching the way banks could use crypto
09:20:43 15 and blockchain technology. We wrote a paper, did
16 some -- some internal research. In that period, I
17 was meeting with different crypto and blockchain
18 companies. One of those companies was -- was
19 Ripple.

09:20:59 20 So we began talking with them about the
21 ways -- my interest is in how banks could use the
22 debt. Most of the companies in the space at this
23 time were very consumer focused. So I developed a
24 relationship with -- with some folks at Ripple
09:21:13 25 that were based in New York. That progressed over

09:21:17 1 about six months and over lunch they offered me a
2 role to come on full time.

3 Q. And who was it at Ripple that offered
4 you the job?

09:21:27 5 A. Patrick Griffin.

6 Q. What was his job at Ripple?

7 A. He was head of business development at
8 the time.

9 Q. And when you joined Ripple, what was
09:21:39 10 your job title?

11 A. It was head of research on the business
12 development team.

13 Q. And what were your responsibilities in
14 that role?

09:21:46 15 A. My role was to map out what type of
16 products we needed to build to work with banks and
17 financial institutions for cross-border payments,
18 to segment the market, and to research and
19 understand the pain points that banks faced.

09:22:07 20 Q. And who did you report to in that
21 position?

22 A. Patrick Griffin.

23 Q. And how long did you hold that position
24 at Ripple for?

09:22:17 25 A. I was in that position for nine months

09:22:19 1 to a year.

2 Q. And then what was your next position at
3 Ripple?

4 A. Then I moved to the regulatory relations
09:22:28 5 role.

6 Q. And what specifically was your title at
7 that point?

8 A. It was director of regulatory relations.

9 Q. And who did you report to as director of
09:22:39 10 regulatory relations?

11 A. Antoinette O'Gorman.

12 Q. And is Ms. O'Gorman an attorney?

13 A. No.

14 Q. And who did Ms. O'Gorman report to?

09:22:57 15 A. Brad Garlinghouse, the CEO.

16 Q. And how long did you hold the role of
17 director of regulatory relations?

18 A. Through the end of my term there.

19 Q. Are you a Ripple shareholder?

09:23:13 20 A. Yes.

21 Q. Since when?

22
23
24
09:23:29 25



09:23:31 1 Q. And how many shares do you currently
2 own?

3 A. I currently own around [REDACTED].

4 Q. And did you continue to receive shares
09:23:39 5 over the course of your employment?

6 A. I did.

7 Q. Have you ever sold your -- any of your
8 Ripple shares?

9 A. I have.

09:23:47 10 Q. And how did you go about selling them?
11 Like, what markets were they on, if any? How --
12 how did you make that happen?

13 MR. CERESNEY: Objection to form.

14 You can answer.

09:23:57 15 A. I sold my shares through a -- through a
16 broker, a third-party broker.

17 Q. Okay. So -- and I just want to make
18 sure I'm clear on this -- you received [REDACTED]
19 shares over the course of your employment?

09:24:15 20 A. No, by the time I left, I had vested
21 around [REDACTED] to [REDACTED] shares. I exercised about
22 [REDACTED] of them.

23 Q. Okay. And so when you sold your Ripple
24 shares, how much money did you receive for selling
09:24:37 25 them?

09:24:39 1 A. Around [REDACTED]

2 Q. And just so I'm clear, you still own
3 approximately [REDACTED] shares?

4 A. Correct.

09:24:52 5 Q. Have you ever received XRP as part of
6 your compensation?

7 A. Not as part of my compensation.

8 Q. Have you obtained XRP in another way?

9 A. I received XRP for reimbursements,
09:25:08 10 company reimbursements.

11 Q. Like if you incurred business expenses,
12 you would be repaid -- or recompensated in XRP?

13 A. Correct.

14 Q. Is that the only way in which you've
09:25:23 15 obtained XRP?

16 A. I've also bought XRP on the open market,
17 on an exchange.

18 Q. And when did you buy XRP on an exchange?

19 A. In 20 -- around 2017 or 2018, in that
09:25:38 20 time period.

21 Q. And why did you buy XRP on an exchange?

22 A. The -- the whole crypto market was going
23 up. I wanted exposure to that.

24 Q. You hoped that the XRP would rise in
09:25:53 25 value after you bought it?

09:25:55 1 A. Correct.

2 Q. Do you still own XRP?

3 A. No.

4 Q. When did you sell your XRP holdings?

09:26:11 5 A. If -- two transactions: The first in
6 20 -- in late 2018/early 2019 time frame and the
7 second in the summer of 2020.

8 Q. Did you profit from your sales of XRP?

9 A. On one transaction I did.

09:26:31 10 Q. And how much money did you make?

11 A. [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
09:26:45 15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 A. Correct.

09:27:02 20 Q. Going back to your -- your ownership of
21 Ripple shares, who did you sell your shares to?

22 A. I -- I don't know. It was through a
23 broker.

24 Q. So as director of regulatory relations
09:27:20 25 at Ripple, can you tell me what your job

09:27:22 1 responsibilities were?

2 A. The primary work in this role was to
3 work with our banks and their -- our banking
4 clients, the banks that were using our products,
09:27:32 5 and their regulators to get Ripple approved as a
6 vendor. So we would go through vendor due
7 diligence and meet the vendor expectations of the
8 bank and their regulator.

9 The second portion of that role was to
09:27:46 10 drive policy that would support the use of
11 blockchain and crypto and Ripple's products within
12 the financial sector.

13 Q. Did your responsibilities change over
14 time while you were director of regulatory
09:28:01 15 relations?

16 A. No.

17 Q. As part of your job responsibilities,
18 did you meet with regulators from various
19 countries?

09:28:12 20 A. Yes.

21 Q. When you met with regulators, was it
22 your practice to take notes of those meetings?

23 A. Yes.

24 Q. Did you save your notes?

09:28:29 25 A. Yes.

09:28:29 1 Q. And have you heard of something called
2 the Confluence system?

3 A. At Ripple?

4 Q. At Ripple, correct.

09:28:41 5 A. Oh. Yes.

6 Q. And what's that?

7 A. It's an internal website we used for
8 sharing notes or documenting details about Ripple.

9 Q. And so when you took notes of your
09:28:53 10 meetings with regulators, did you upload those
11 notes to the Confluence system so that other
12 Ripple employees could review them?

13 A. I wasn't a heavy user of Confluence. I
14 took my notes in Google Docs and saved them in a
09:29:11 15 folder in Google, Google Drive.

16 Q. Okay. Do you know if your notes were
17 available to other Ripple employees to review?

18 A. They were saved on the company drive so
19 other people may or may not have had access to it.

09:29:30 20 Q. Were -- at the time you left Ripple,
21 were your meeting notes still saved on Google
22 Drive?

23 A. Correct.

24 Q. And I think I've been asking you about
09:29:43 25 notes of meetings with regulators.

09:29:46 1 Were there other types of notes that you
2 saved -- that you took and saved on Google Drive?

3 MR. HECKER: Objection to form.

4 THE WITNESS: Continue to answer?

09:29:56 5 MR. HECKER: You can answer.

6 A. I generally stored all my notes on
7 Google Drive.

8 Q. So it sounds like you took notes of
9 meetings other than meetings with regulators?

09:30:05 10 MR. HECKER: Objection to form.

11 You can answer.

12 A. Correct.

13 Q. Besides your deposition here today, have
14 you ever communicated with the SEC, its
09:30:18 15 Commissioners or its staff?

16 A. No.

17 Q. While you worked at Ripple, were you a
18 member of any organizations outside of Ripple?

19 A. I was.

09:30:39 20 Q. Which ones?

21 A. I served on the steering committees for
22 the Federal Reserves Master Payments Task Force.
23 I was elected to -- elected to that role by the
24 industry. So that was a board of -- I believe it
09:30:53 25 was 13 individuals who set the strategy for faster

09:30:56 1 payments in the U.S.

2 I served on the advisory boards for the
3 CSBS, the Conference of State Bank Supervisors.
4 It's actually a group of state bank regulators.

09:31:11 5 It was an advisory boards on innovation in
6 Fintech.

7 Q. How did you come to be on that board?

8 A. I -- I applied to that role and was
9 selected by CSBS.

09:31:22 10 And, third, I served as the -- as an
11 advisor to the Better Than Cash Alliance. That's
12 an alliance at the United Nations to drive digital
13 payments in developing countries.

14 Q. And can you tell me a little bit more
09:31:35 15 about the Federal Reserve task force you were on?

16 A. Sure. In 20 -- around 2017, the Federal
17 Reserve started a industry task force to drive
18 faster payments in the U.S., so improved payment
19 infrastructure. It was about 300 participants
09:31:58 20 from the industry that signed up. They recognized
21 a need to have a leadership committee to steer
22 this and created an open election.

23 I put my name forth to represent the
24 technology sector, so everything from Google
09:32:13 25 through Visa.

09:32:15 1 I won that election and represented the
2 technology industry on that steering committee.

3 Q. And did Ripple support your candidacy?

4 A. Yes.

09:32:26 5 Q. And do you know if the other technology
6 companies who participated on the board, do you
7 know if they coordinated with Ripple to try and
8 get you elected?

9 MR. HECKER: Objection to form.

09:32:47 10 A. I -- I don't know what the other
11 companies did. I reached out to my counterparts
12 at the other technology companies to let them know
13 I was running, let them know our views on
14 payments, to see if we aligned. And then I was
09:33:00 15 elected from there.

16 Q. Did personnel from any of the other
17 technology companies on the steering committee run
18 in that election?

19 A. There were four seats that represented
09:33:16 20 the technology sector so I was one of four
21 representing.

22 Q. Do you know how many candidates there
23 were for the -- those four technology sector
24 seats?

09:33:26 25 A. I don't.

09:33:31 1 Q. As Ripple's director of regulatory
2 relations, were you familiar with Ripple's
3 business?

4 MR. HECKER: Objection to form.

09:33:40 5 A. I was familiar with our -- our products
6 that we were selling.

7 Q. Were you familiar with XRP?

8 A. Yes. Familiar in that it was a -- a
9 piece of technology that was within one of our
09:33:56 10 products.

11 Q. And -- and just for the record, what is
12 XRP?

13 A. XRP's a digital currency that Ripple
14 used within our liquidity product to connect
09:34:07 15 currencies more efficiently.

16 Q. As Ripple's director of regulatory
17 relations, were you familiar with how Ripple
18 generated revenues?

19 A. I was.

09:34:22 20 Q. Did you ever act as a spokesperson for
21 Ripple?

22 A. I did.

23 Q. And did you ever make public
24 announcements about Ripple?

09:34:34 25 MR. CERESNEY: Objection; form.

09:34:37 1 A. I -- I never made a public announcement,
2 like, releasing news about Ripple. I would repeat
3 news that our communications team had released.

4 Q. Okay. Repeat it to who?

09:34:47 5 A. Either speaking at a panel or a
6 conference or on social media.

7 Q. And when you spoke on a panel or at a
8 conference, you did so as a Ripple representative?

9 A. Yes.

09:35:06 10 Q. Did you ever provide interviews to the
11 media?

12 A. I did.

13 Q. And when you acted as a Ripple
14 spokesperson via social media, how did -- how did
09:35:17 15 that work?

16 MR. HECKER: Objection to form.

17 A. I used social media to share news about
18 the company, so press releases, new partners,
19 views on regulation that we saw coming forth.
09:35:33 20 There was talk around policy and how -- which
21 policy we needed to take for this new technology.

22 Q. I don't want to get in -- into any
23 specifics of any conversation you had with an
24 attorney, but I -- I -- I just want to ask this
09:35:51 25 general question: Have you ever received guidance

09:35:54 1 from attorneys about how to talk about Ripple and
2 XRP when speaking publicly on Ripple's behalf?

3 MR. HECKER: So object to the
4 form of the question.

09:36:05 5 But you can answer that question
6 either yes or no if you understand it.

7 A. Can you repeat the question?

8 MR. HANAUER: Can you read it
9 back, please?

09:36:12 10 (Whereupon, the record was read
11 back.)

12 A. Yes.

13 Q. And when did you start receiving that
14 guidance?

09:36:39 15 MR. HECKER: Objection to form.
16 You can answer.

17 A. I can't recall the exact date I started
18 receiving guidance from the legal team on XRP.

19 Q. So I take it you received guidance
09:37:15 20 from -- well, did you receive guidance from
21 internal Ripple attorneys about how to speak
22 publicly about Ripple and XRP?

23 MR. HECKER: Same -- same
24 objections.

09:37:28 25 You can answer that yes or no.

09:37:40 1 A. The -- the primary guidance I
2 received --

3 MR. CERESNEY: I think Mr. Hecker
4 instructed you to answer that yes or no.

09:37:49 5 A. Oh, yes or no. Yes.

6 Q. And who were the internal Ripple
7 attorneys that provided you guidance about how to
8 speak publicly about Ripple and XRP?

9 A. [REDACTED] and [REDACTED].

09:38:12 10 Q. Anyone else?

11 A. Those are the two I recall.

12 Q. What about outside attorneys, non--
13 non-Ripple attorneys?

14 MR. HECKER: Object to form.

09:38:30 15 But you can -- you can answer.

16 A. No.

17 Q. Let me just make a better record.

18 Did you ever receive guidance from
19 non-Rip -- attorneys who didn't work at Ripple
09:38:43 20 about how to speak publicly about Ripple or XRP?

21 A. No.

22 Q. Did you ever receive guidance from
23 nonattorneys about how to talk about Ripple and
24 XRP when speaking publicly on Ripple's behalf?

09:39:02 25 MR. HECKER: Objection to form.

09:39:04 1 And I would just caution the
2 witness that to the extent that a
3 guidance was provided in discussions with
4 counsel, that that would still be a
09:39:14 5 privileged conversation.

6 So I think you should understand
7 the question to be asking about guidance
8 he received outside the presence of
9 counsel about this topic.

09:39:23 10 MR. HANAUER: Yeah, that's fair.

11 BY MR. HANAUER:

12 Q. You can answer.

13 A. Yes.

14 Q. And who provided that guidance?

09:39:28 15 A. The communications team.

16 Q. Who was on the communications team?

17 A. It was a team run by Monica Long. There
18 was a variety of people on that team. It changed
19 over time.

09:39:42 20 Q. And when did the communications team
21 start providing you guidance about how to talk
22 about Ripple and XRP when speaking publicly?

23 A. When I began to serve as a public
24 spokesperson.

09:39:57 25 Q. And when was that?

09:40:01 1 A. I believe that was around 2016.

2 Q. What did the communications team tell
3 you about how you should go about speaking about
4 Ripple and XRP when speaking publicly?

09:40:14 5 A. I received a public speaking packet, a
6 prep packet. It generally had three topics in it:
7 Recent news that the company released so it could
8 stay current on -- on recent statements; two, what
9 competitors were doing; and, three, context on the
09:40:35 10 event. There was generally an FAQ section at the
11 end about facts about Ripple.

12 Q. Did you ever receive guidance from
13 Ripple's public relations -- public relations
14 firms?

09:40:49 15 A. I did.

16 Q. Which firms?

17 A. [REDACTED] is the primary one. We had an
18 events team as well. [REDACTED]

19 Q. Did you ever receive guidance from
09:41:11 20 nonattorneys about talking about XRP not being a
21 security or not being subject to regulation by the
22 SEC?

23 MR. HECKER: Objection to form.

24 And the same -- same caveat
09:41:24 25 would apply. Outside the presence of

09:41:26 1 counsel.

2 A. No.

3 Q. Did you ever receive guidance from
4 nonattorneys about the issue of whether XRP was a
09:41:49 5 security or not?

6 MR. HECKER: Same -- same caveat.

7 You can answer.

8 A. No.

9 Q. Did you ever receive -- okay.

09:42:04 10 Did you ever receive guidance about how
11 to talk about Ripple and XRP as they relate to the
12 SEC?

13 MR. HECKER: Are you -- are you
14 excluding discussions with counsel again?

09:42:19 15 MR. HANAUER: Yes.

16 A. No.

17 Q. Did you ever provide guidance to Ripple
18 personnel about how to talk publicly about Ripple
19 and XRP as they relate to the SEC?

09:42:34 20 A. I worked with legal to --

21 Q. And --

22 MR. HECKER: Yeah.

23 Q. -- I -- I don't want to get into your
24 communications with -- with lawyers, so --

09:42:44 25 MR. HECKER: Why don't -- why

09:42:44 1 don't you start -- maybe answer that
2 question with a yes or no. And then maybe
3 you can lay a foundation to try and make
4 sure you're not capturing discussions with
09:42:52 5 counsel.

6 BY MR. HANAUER:

7 Q. Yeah. So did you ever provide guidance
8 to Ripple personnel about how to talk publicly
9 about Ripple and XRP as they relate to the SEC?

09:43:04 10 A. Yes.

11 Q. Did you ever provide that guidance to
12 Ripple personnel outside the presence of counsel?

13 A. No.

14 Q. When you started working at Ripple, what
09:43:28 15 was your understanding of the SEC's position as to
16 whether the SEC considered XRP to be a security?

17 A. When I started at Ripple, I was on the
18 business development team, so that was outside of
19 my focus. I did not have an understanding of that
09:43:49 20 topic.

21 Q. And at some point did you gain an
22 understanding that how the SEC viewed XRP was
23 important for Ripple?

24 MR. HECKER: Objection to form.

09:44:13 25 A. Yes.

09:44:14 1 Q. Okay. How did you gain that
2 understanding?

3 MR. HECKER: And, again, you
4 know, to the extent that it's through
09:44:19 5 discussions with counsel --

6 THE WITNESS: Uh-huh.

7 MR. HECKER: -- that's privileged
8 and I'll instruct you not to answer that
9 question.

09:44:33 10 A. Discussions with counsel in 2016 and
11 the -- a growing coverage in the media around how
12 digital assets would be classified.

13 Q. Okay. So outside of your communications
14 with counsel, when did you first learn that how
09:45:00 15 the SEC viewed XRP would be important for Ripple's
16 business?

17 MR. HECKER: Objection to form;
18 foundation.

19 A. In late -- I'd say it was in 2017.

09:45:22 20 Q. And so in late 2017, what was your
21 understanding of the SEC's position as to whether
22 it considered XRP to be a security? And, again, I
23 don't want to know anything that an attorney told
24 you.

09:45:36 25 MR. HECKER: I'm not sure it's

09:45:39 1 possible to parse that. He may have had
2 some discussion with counsel or may have
3 read about it in the press. But if his
4 understanding is based on both, then it's
09:45:47 5 going to be difficult to tease out the
6 nonprivileged portion of it.

7 MR. HANAUER: Well, let's give it
8 a try.

9 MR. CERESNEY: Well, I'm going to
09:45:55 10 instruct you not to answer the question to
11 the extent that your understanding was
12 based on discussions with counsel in -- in
13 whole or in part.

14 A. The media coverage was about digital
09:46:05 15 assets in general. It wasn't specific to XRP.
16 And then my XRP knowledge came from legal.

17 Q. So coming from the media, what was your
18 understanding in 2017 as to whether the SEC
19 considered XRP to be a security?

09:46:27 20 MR. HECKER: Objection to form;
21 foundation. I think he just said that his
22 public discussion was based on digital
23 assets generally, not XRP.

24 MR. HANAUER: Yeah, that's fair.
09:46:41 25 I'll lodge a different question.

09:46:42 1 BY MR. HANAUER:

2 Q. So what was your understanding in 2017
3 based on what you read in the media as to whether
4 the SEC considered digital assets to be
09:46:54 5 securities?

6 A. The media coverage at the time was
7 asking what the proper regulatory framework should
8 be for crypto broadly. There wasn't a specific
9 conclusion to come from them. It was more of an
09:47:13 10 open question.

11 Q. And in 2017, did you understand that
12 there was a public debate on the issue of whether
13 certain assets should be -- should be considered
14 securities by the SEC?

09:47:32 15 MR. CERESNEY: Objection; form.

16 A. Could you repeat the question, please?

17 Q. Yeah.

18 In 2017, did you understand that there
19 was a public debate on the issue of whether
09:47:44 20 certain assets should be considered securities
21 by -- certain digital assets should be considered
22 securities by the SEC?

23 A. In that time frame, the conversation was
24 more broad than just the SEC. It was about how
09:48:00 25 countries should be treating digital assets and

09:48:03 1 blockchain technology broadly and -- and
2 generally.

3 Q. Was one of your responsibilities at
4 Ripple to attempt to have the SEC decide that XRP
09:48:15 5 was not a security?

6 MR. CERESNEY: Objection; form.

7 A. The engagement we did with regulatory
8 bodies, with industry groups, was more on
9 education about what XRP was and how it functions.
09:48:33 10 It was -- it was an education effort.

11 Q. Did Ripple make efforts to try and
12 convince the SEC to decide that XRP was not a
13 security?

14 MR. CERESNEY: Objection; form.

09:48:52 15 MR. HECKER: Objection; form.

16 A. I never met with the SEC. I can speak
17 for myself.

18 Q. And I appreciate that. My question's a
19 little broader about meetings with the SEC or your
09:49:06 20 meetings with the SEC. And that's -- did you have
21 an understanding of -- of whether Ripple ever
22 attempted to try and have the SEC decide that XRP
23 was not a security?

24 MR. HECKER: Objection to form.

09:49:19 25 MR. CERESNEY: I also want to

09:49:20 1 instruct you on this, that there could be
2 discussions with counsel. I just want to
3 just make sure you're not revealing those.

4 A. My engagement was around education of
09:49:32 5 what XRP was, the company's view. And that edu --
6 that engagement was -- was broad in the industry.
7 It wasn't specific with the SEC.

8 Q. Were you aware that other Ripple
9 personnel were meeting with the SEC?

09:49:51 10 MR. CERESNEY: Again, I'd just
11 instruct you not to reveal information you
12 obtained from counsel. So the question
13 should be interpreted as other than
14 discussions with counsel, were you aware
09:50:01 15 of that?

16 A. No.

17 Q. Did you ever talk to Mr. Garlinghouse
18 about his meetings with the SEC?

19 A. No.

09:50:15 20 Q. Did you ever communicate with
21 Mr. Garlinghouse about his communications with the
22 SEC?

23 A. No.

24 Q. Do you have any understanding of what
09:50:26 25 was said at any meeting between the SEC and anyone

09:50:30 1 from Ripple?

2 MR. HECKER: Same -- same caveat.

3 A. No.

4 MR. HECKER: If you had awareness
09:50:38 5 through counsel, you are not to disclose
6 that.

7 MR. CERESNEY: Also objection to
8 form.

9 BY MR. HANAUER:

09:50:50 10 Q. Did you have any role in helping Ripple
11 personnel prepare for meetings with the SEC or its
12 staff?

13 A. No.

14 Q. Do you know who at Ripple interacted
09:51:01 15 with the SEC, its Commissioners or its staff?

16 MR. HECKER: Same caveat. You
17 can answer.

18 A. Yes.

19 Q. And who at Ripple interacted with the
09:51:14 20 SEC, its Commissioners or its staff?

21 A. It's my understanding that Brad
22 Garlinghouse had engaged with the SEC along with
23 counsel.

24 Q. Counsel for Ripple?

09:51:31 25 A. Yeah.

09:51:36 1 Q. What was your understanding of what
2 Mr. Garlinghouse was trying to accomplish when he
3 met with the SEC?

4 MR. HECKER: Objection to form.
09:51:42 5 To the extent information you
6 have about those meetings or the
7 objectives of those meet -- those
8 meetings came from discussion with
9 counsel, those are privileged.

09:51:54 10 THE WITNESS: Okay.

11 A. That would be privileged.

12 Q. So the only understanding you have of
13 what Mr. Garlinghouse was trying to accomplish
14 when he met with the SEC came through counsel?

09:52:09 15 A. Yes.

16 Q. Did anyone from Ripple ever try to get
17 the SEC, any of its staff or any of its
18 Commissioners, to publicly state that XRP was not
19 a security?

09:52:34 20 MR. HECKER: Same caveats.

21 A. Not that I was aware of.

22 Q. Did Ripple ever seek a formal SEC
23 statement that XRP was not a security?

24 MR. WARD: Objection to form.

09:53:01 25 A. Not that I was directly aware.

09:53:04 1 Q. What do you mean when you say "directly
2 aware" of?

3 A. Not that I was aware of.

4 Q. Did anyone ever -- anyone who wasn't an
09:53:12 5 attorney ever tell you that Ripple had tried to
6 seek a formal statement from the SEC that XRP was
7 not a security?

8 MR. CERESNEY: Objection to form.

9 A. No.

09:53:26 10 Q. Do you know what an SEC no action letter
11 is?

12 A. Yes.

13 Q. And what's your understanding of an SEC
14 no action letter?

09:53:37 15 A. It's a letter that a company can request
16 to get regulatory assurance that what they're
17 doing isn't out of line with the SEC rules.
18 They're not going to take action against you.

19 Q. Did Ripple ever submit a no action
09:53:55 20 letter request to the SEC?

21 MR. CERESNEY: Objection to form.

22 A. Not that I recall.

23 Q. Were you ever part of discussions not
24 involving attorneys on the issue of whether Ripple
09:54:11 25 should seek a no action letter from the SEC?

09:54:13 1 MR. HECKER: Objection to form.

2 A. Not that I recall.

3 Q. Did Ripple employ lobbyists to interact
4 with the SEC?

09:54:32 5 MR. CERESNEY: I'm -- I'm going
6 to let him answer this first question. I
7 want to put counsel on notice, though,
8 that we're going to object to any
9 questions about lobbying activities by
09:54:40 10 Ripple in light of Judge Netburn's order
11 on that issue.

12 MR. HANAUER: That's understood
13 and I still may try and explore the issue
14 a little bit.

09:54:49 15 MR. CERESNEY: You can. We will
16 object and I'll instruct him not to
17 answer.

18 A. So the question --

19 MR. CERESNEY: If the question is
09:54:56 20 a yes or no, did they, then that's fine.
21 I'll let you ask that question.

22 A. Did Ripple employ lobbyists to engage
23 with the SEC?

24 Q. Correct.

09:55:13 25 A. We employed lobbyists, but they were not

09:55:15 1 directed at the SEC.

2 Q. Did Ripple employ lobbyists relating to
3 the SEC?

4 MR. HECKER: Objection to form.

09:55:27 5 A. The lobbyists we employed were focused
6 on the Hill and the various bills that were being
7 floated around how to classify blockchain or -- or
8 crypto frameworks.

9 Q. And what did Ripple employ those
09:55:51 10 lobbyists to accomplish?

11 MR. CERESNEY: I'm -- I'm going
12 to object on the basis that Judge Netburn
13 has ruled that lobbying activities by
14 Ripple are not relevant in this matter and
09:56:02 15 I'm going to instruct the witness not to
16 answer that question for that reasons.

17 Next question.

18 MR. HANAUER: Okay. Can you --
19 so you're not letting the witness answer
09:56:17 20 questions relating to the substance of
21 Ripple's lobbying efforts?

22 MR. CERESNEY: Yes, in light of
23 Judge Netburn's June 15, 2021 order, in
24 which Judge Netburn said that "The SEC's
09:56:29 25 request to compel production of documents

09:56:31 1 related to Ripple's lobbying efforts is
2 denied. As discussed in the Court's
3 earlier opinion and order denying access
4 to Ripple's privileged communications,
09:56:39 5 Ripple's fair notice defense centers on
6 activities of the SEC, not its own
7 behaviors," and citing a couple of things.
8 The last sentence says "In the same vein,
9 Ripple's lobbying efforts regarding the
09:56:52 10 status of XRP are not relevant; and any
11 relevancy argument is outweighed by the
12 burden of production."

13 In light of that ruling, we
14 would object to any questions about that
09:57:02 15 issue and I am instructing the witness
16 not to answer.

17 MR. HANAUER: Okay. Can you
18 please mark that portion of the testimony?
19 Thank you.

09:57:10 20 Will you instruct the witness
21 not to answer any questions related to
22 the substance of Ripple's lobbying
23 efforts?

24 MR. CERESNEY: Yes.

09:57:25 25 BY MR. HANAUER:

09:57:26 1 Q. Did Ripple employ any other consultants
2 other than lobbyists related to the SEC?

3 MR. HECKER: Objection to form.

4 A. No, not that I'm aware of.

09:57:44 5 Q. Did Ripple make efforts to convince
6 Congress to pass legislation that would determine
7 that XRP is not a security?

8 MR. CERESNEY: Objection. Again,
9 this relates to lobbying efforts
09:57:57 10 presumably. Are you asking about efforts
11 that don't relate to lobbying? Is that
12 what you're asking?

13 MR. HANAUER: Any efforts.

14 MR. CERESNEY: Okay. So I will
09:58:05 15 instruct the witness other than anything
16 that might relate to lobbying, are you
17 aware of any other efforts?

18 THE VIDEOGRAPHER: No.

19 MR. HANAUER: And you're
09:58:14 20 instructing the witness not to answer the
21 question as it relates to lobbying?

22 MR. CERESNEY: Yes.

23 Q. Did Ripple make lobbying efforts related
24 to the SEC directed to the executive branch?

09:58:33 25 MR. CERESNEY: Objection. Same

09:58:34 1 objection. And if you're asking about
2 lobbying activities to the executive
3 branch, I'm going to instruct him not to
4 answer.

09:58:41 5 MR. HANAUER: Step one was a yes
6 or no.

7 MR. CERESNEY: Okay. Why don't
8 you answer that yes or no.

9 A. Did we make lobbying efforts directed at
09:58:50 10 the executive branch? That was the question?

11 Q. Correct. Related to the SEC. Lobbying
12 or -- let me start over.

13 A. Okay.

14 Q. Did -- did Ripple make lobbying efforts
09:59:08 15 relating to the SEC directed at the executive
16 branch?

17 MR. CERESNEY: And I'm just going
18 to object on form.

19 You can answer it yes or no as
09:59:16 20 far as you know.

21 A. No.

22 Q. What is the Ripple protocol?

23 A. The Ripple protocol or -- or the name
24 that was involved in XRP protocol was the
09:59:54 25 open-source ledger that -- that runs XRP.

09:59:58 1 Q. So is the Ripple protocol and the XRP
2 protocol the same thing?

3 A. The names have evolved over time. How I
4 think about that is the XRP protocol is what --
10:00:13 5 what it would be today.

6 Q. So are the term -- as you understand it
7 or as you use the terms, is the Ripple protocol,
8 does it mean the same thing as the XRP protocol?

9 A. How I use the term is -- XRP protocol is
10:00:32 10 the code that runs the XRP ledger.

11 Q. And how is that different from the
12 Ripple protocol?

13 A. Ripple protocol could be the same thing.
14 It could be the name for our -- the company's
10:00:45 15 products. The names have evolved significantly
16 over time and I'm not close to how they use the
17 terms today, how the company's using those terms
18 today.

19 Q. Did Ripple create the Ripple protocol?

10:00:56 20 MR. HECKER: Objection to form.

21 A. Ripple did not create the XRP ledger,
22 XRP protocol, if that's what you're asking.

23 Q. Did Ripple develop XRP?

24 A. No.

10:01:24 25 MR. HANAUER: Did you get an

10:01:25 1 answer?

2 MR. HECKER: He said no.

3 THE REPORTER: There's a delay.

4 MR. HANAUER: Oh, okay, I'm
10:01:29 5 sorry. There we go.

6 Twenty-nine. There are going to
7 be leftovers, I'm quite sure. Did you
8 get one for the court reporter? There
9 are definitely enough.

10:01:56 10 (Whereupon, exhibit is presented
11 and marked SEC Zagone Exhibit RZ-29 for
12 identification.)

13 MR. HANAUER: So I just tendered
14 the witness a document labeled Exhibit
10:01:59 15 RZ-29, which begins with a Bates number
16 ending in 4881.

17 BY MR. HANAUER:

18 Q. And, Mr. Zagone, is Exhibit RZ-29 an
19 e-mail and an attach -- and attachment that you
10:02:21 20 sent to [REDACTED] on December 18th, 2014?

21 A. Correct.

22 Q. And who is Mr. [REDACTED]?

23 A. Mr. [REDACTED] was also on the business
24 development team.

10:02:41 25 Q. And you were forwarding Mr. [REDACTED] an

10:02:43 1 e-mail and attachment that Ripple had sent to the
2 British Treasury?

3 A. That's correct.

4 Q. And why was Ripple submitting
10:03:06 5 information to the British Treasury?

6 MR. CERESNEY: I'd instruct the
7 witness just to take a moment to look at
8 the document.

9 (Pause)

10:04:05 10 A. It appears the company was responding to
11 a call from -- for information from HM Treasury.

12 Q. And HM Treasury, that's the British
13 Treasury?

14 A. Correct.

10:04:17 15 Q. And when Ripple submitted information to
16 the British Treasury, did Ripple provide truthful
17 and accurate information?

18 A. I -- I assume so.

19 Q. And I want to refer you to the page --
10:04:35 20 it's the second page of the submission, the page
21 ending in -- a Bates number ending in 883. And
22 the second full paragraph says "Ripple Labs is the
23 parent company that created and supports the
24 Ripple protocol - an open-source, distributed
10:04:54 25 payment protocol for accounting for financial

10:04:56 1 balances held within and moved between ledgers.
2 The Ripple protocol enables payment in any fiat or
3 virtual currency, including the math-based virtual
4 currency developed by Ripple Labs, XRP."

10:05:14 5 Do you see that?

6 A. I see that.

7 Q. So Ripple was representing to the
8 British Treasury that Ripple developed XRP --

9 MR. CERESNEY:

10:05:21 10 MR. WARD: Hold on for a moment.
11 I would just inform the sound isn't coming
12 through on the Zoom.

13 MS. GRESSEL: Jorge, we just got
14 an e-mail.

10:05:29 15 THE WITNESS: I wonder if it's
16 because I moved the mic. Maybe?

17 MS. GRESSEL: Can folks on --

18 MR. HECKER: Are you able to hear
19 now?

10:05:38 20 MS. GRESSEL: Maureen, if you
21 can see us --

22 MR. HANAUER: Let's go off the
23 record, please.

24 THE VIDEOGRAPHER: Off the record
10:05:46 25 at 10:05.

10:20:11 1 (Whereupon, a recess is taken.)

2 THE VIDEOGRAPHER: Okay. Back on
3 the record at 10:20. Go ahead.

4 BY MR. HANAUER:

10:20:23 5 Q. Mr. Zagone, before we went on the break,
6 we were talking about Exhibit 29 and I had asked
7 you to refer to the third page of the exhibit.

8 The last question I asked before we went
9 off the record is, did Ripple represent to the
10:20:40 10 British Treasury that Ripple developed XRP?

11 (Pause)

12 MR. WARD: Objection to form.

13 Q. And if it helps, Mr. Zagone, I'm only
14 asking you about the second paragraph of the
10:23:28 15 letter.

16 MR. HECKER: So to be clear, the
17 question is whether that -- that paragraph
18 includes a representation about that?

19 MR. HANAUER: Did Ripple
10:23:42 20 represent to the British Treasury that
21 Ripple developed XRP?

22 MR. HECKER: In that one
23 paragraph?

24 MR. HANAUER: Correct.

10:23:56 25 A. Just related to the one paragraph here,

10:24:04 1 this paragraph states: "Ripple protocol enables
2 payments in any fiat or virtual currency,
3 including the math-based virtual currency
4 developed by Ripple Labs, XRP."

10:24:16 5 Q. So Ripple represented to the British
6 Treasury that Ripple developed XRP?

7 MR. HECKER: Objection to form.

8 MR. WARD: Objection.

9 MR. CERESNEY: Objection to form.

10:24:26 10 A. The statement here is that "including
11 the math-based currency developed by Ripple Labs,
12 XRP." That's what it says.

13 (Whereupon, exhibit is presented
14 and marked SEC Zagone Exhibit RZ-1 for
10:24:45 15 identification.)

16 MR. HANAUER: I'm tendering the
17 witness a document marked as Exhibit RZ-1,
18 beginning with a Bates number ending in
19 5167.

10:25:25 20 BY MR. HANAUER:

21 Q. And before I ask you any questions about
22 the exhibit, was selling XRP part of Ripple's
23 business model?

24 A. The business that I understood is we
10:25:37 25 were selling payment solutions, xCurrent and

10:25:37 1 xRapid, to banks.

2 THE REPORTER: Repeat the last
3 part.

4 A. We were selling payment solutions,
10:25:46 5 xRapid and xCurrent, to banks.

6 Q. Was that the only part of Ripple's
7 business model?

8 MR. CERESNEY: Object to form.

9 A. The company sold XRP. We were public
10:25:59 10 about that.

11 Q. And how -- what do you mean, "The
12 company sold XRP"?

13 A. The company held XRP and sold it.

14 Q. So Exhibit RZ-1, that's an e-mail from
10:26:20 15 you to [REDACTED] forwarding an e-mail you
16 received from [REDACTED]?

17 A. I'm not sure how I received it. I'm not
18 on -- listed on the e-mail thread, but I am
19 forwarding it to [REDACTED].

10:26:39 20 Q. And you are also forwarding the
21 attachment to the e-mail?

22 A. Correct.

23 Q. And who is Mr. [REDACTED]?

24 A. Mr. [REDACTED] was on the markets team.

10:26:59 25 Q. And do you see how Mr. [REDACTED] e-mail

10:27:01 1 is going to someone at [REDACTED]?

2 A. Correct.

3 Q. And what was -- what information was
4 Ripple submitting to [REDACTED]?

10:27:18 5 MR. HECKER: Objection;
6 foundation.

7 A. I'd have to review the document to see.

8 Q. Okay. Could you take a quick look?
9 (Pause)

10:29:19 10 A. These are responses to the questions
11 from [REDACTED].

12 Q. And I guess why was Ripple interacting
13 with [REDACTED]?

14 MR. WARD: Objection to form.

10:29:37 15 A. I -- I don't know exactly.

16 Q. So in 2015 Ripple had significant XRP
17 holdings, is that right?

18 A. Ripple had XRP holdings in 2015.

19 Q. Did Ripple have the majority of the XRP
10:30:01 20 in existence in 2015?

21 MR. CERESNEY: Objection; form.

22 A. I don't know.

23 Q. And one of Ripple's goals was to
24 increase the use of XRP?

10:30:21 25 MR. HECKER: Counsel, are we

10:30:22 1 talking about this document or are we done
2 with this document?

3 MR. HANAUER: We're still on it.

4 MR. HECKER: Okay.

10:30:27 5 MR. CERESNEY: Objection to form.

6 A. The goal of the company was we were
7 building a payment network, so the adoption of our
8 payment solutions.

9 Q. And XRP was part of the way those
10:30:40 10 payment systems worked?

11 A. XRP was a component of one of the
12 products that we sold.

13 Q. And was it a goal of Ripple to increase
14 the use of XRP?

10:30:53 15 MR. CERESNEY: Objection.

16 MR. HECKER: Objection to form.

17 A. The -- the goal of Ripple was to -- to
18 build a payment network and get broader adoption
19 of our -- of our products, xCurrent, xRapid, the
10:31:05 20 two primary products when I was there.

21 Q. Did you understand that XRP could
22 appreciate in value as the use of XRP increased?

23 MR. CERESNEY: Objection; form.

24 A. XRP -- I did understand that.

10:31:26 25 Q. Did you agree with that?

10:31:29 1 MR. CERESNEY: Objection; form.

2 A. The price of XRP and all the digital
3 assets are -- seem to be just flowing with the
4 market, market sentiment.

10:31:45 5 Q. Did you agree that the price of XRP
6 would generally go up as the use of XRP increased?

7 MR. CERESNEY: Objection; form.

8 A. Depends on the market conditions. It's
9 kind of hard to say. There was periods of greater
10:32:07 10 adoption of all digital assets, but the prices
11 were coming down.

12 Q. What about long term?

13 MR. CERESNEY: Objection to form.

14 MR. WARD: Objection to form.

10:32:21 15 A. It's a big hypothetical. There's so
16 many variables in what's guiding price. Greater
17 adoption generally would -- would -- greater
18 adoption would be greater demand. Demand is a
19 factor in price.

10:32:40 20 Q. So can I ask you to look at the second
21 page of Exhibit 1? And do you see the last
22 paragraph before heading 6? And Ripple was
23 representing to [REDACTED] that XRP may
24 appreciate in value with increased use of the
10:33:07 25 Ripple protocol?

10:33:10 1 A. I see it says that.

2 Q. That's something that Ripple represented
3 to [REDACTED]?

4 MR. HECKER: Objection to form.

10:33:19 5 A. It says that they appreciate in value
6 with increased use of the protocol.

7 Q. And you agree with that statement?

8 A. I -- I didn't write this document.

9 Q. Do you agree with that statement?

10:33:42 10 A. I agree that it may -- it may
11 appreciate. It's a possibility with increased
12 use.

13 Q. Did Ripple make efforts to increase the
14 price of XRP?

10:33:50 15 MR. HECKER: Objection to form.

16 You can answer.

17 A. No.

18 Q. Did Ripple make efforts to increase the
19 use of XRP?

10:34:06 20 A. We made efforts to educate people in the
21 market on XRP, how it worked, its advantages. It
22 was -- it was -- to me it was, like, educational.

23 Q. Did Ripple make efforts to create more
24 ways in which XRP could be used by market
10:34:27 25 participants?

10:34:28 1 MR. HECKER: Objection to form.

2 A. XRP's an open-source protocol, so
3 there's -- anyone can develop on it. And we saw
4 that happening in that time frame. So there was
10:34:44 5 factors outside of the company creating new ways.
6 The company was focused on the payment network.

7 Q. When you say "the company," you mean
8 Ripple?

9 A. Ripple, yeah.

10:34:55 10 Q. And was Ripple focused on a payment
11 network that used XRP as part of that network?

12 A. Yeah.

13 Q. And was Ripple trying to promote the use
14 of a payment network that used XRP as part of that
10:35:15 15 network?

16 MR. CERESNEY: Objection to form.

17 MR. WARD: Objection.

18 A. We were promoting a payment -- our
19 products, the payment network. One of the
10:35:24 20 products used XRP as a liquidity tool.

21 Q. How did Ripple generate revenues while
22 you worked there?

23 A. When I was there, we sold contracts to
24 banks to use our payment products and we sold XRP.

10:35:52 25 Q. And how did Ripple's revenues from

10:35:55 1 selling software and professional services compare
2 to its revenues from selling XRP?

3 A. I -- I don't know.

4 Q. Do you know whether Ripple generated
10:36:12 5 more revenues from selling XRP than it did from
6 selling software products and other services?

7 A. I don't know definitively what the split
8 was. I -- I only served on the business
9 development team for -- it was around nine months.

10:36:28 10 Q. Did you have a general understanding?

11 A. No, I didn't focus on the financials.

12 Q. Did Ripple raise working capital by
13 selling XRP?

14 MR. WARD: Objection to form.

10:36:53 15 A. We sold XRP. We funded the company
16 through traditional equity. So we did -- when I
17 was there, we did a Series A and a Series B round.
18 Shortly after I left, we closed a C.

19 Q. And how much money did Ripple bring in
10:37:09 20 from those funding rounds?

21 A. I -- I can't recall.

22 Q. Did Ripple also raise working capital by
23 selling XRP?

24 MR. HECKER: Objection to form.

10:37:20 25 MR. CERESNEY: Objection to form.

10:37:21 1 A. We sold XRP.

2 Q. Can I ask you to look at the page of
3 Exhibit 1 ending with 5178? And do you see the
4 paragraph under the heading 2 where it says "XRP
10:37:54 5 II, LLC"?

6 A. I see that.

7 Q. And what was XRP II, LLC?

8 A. It was a subsidiary of Ripple Labs that
9 sold XRP to institutional investors and market
10:38:09 10 makers.

11 Q. What do you mean by "institutional
12 investors"?

13 A. Institutions, not like retail, like you
14 or me, individuals, but institutional funds, the
10:38:22 15 professional business, or market makers.

16 Q. And for the institutional investors
17 who -- they thought Ripple -- they thought XRP
18 would go up in value when they purchased XRP?

19 A. I -- I don't know what -- what they
10:38:37 20 thought.

21 Q. Well, what was your understanding of why
22 institutional investors were buying XRP from
23 Ripple?

24 A. I think -- you have to ask them what --
10:38:49 25 what they were doing. There was a lot of market

10:38:51 1 makers who were making markets on an XRP ledger.
2 There were -- and institutional investors. So
3 either wanting exposure to crypto -- usually in
4 that time wanting exposure to crypto pretty
10:39:07 5 generally.

6 Q. Meaning the institutional investors
7 wanted XRP as part of their investment portfolio?

8 MR. HECKER: Objection to form.

9 A. I mean, you would have to ask the
10:39:14 10 institutional investors why they were buying it.

11 Q. Did you have an understanding of why the
12 institutional investors were buying XRP?

13 A. I was not on the markets team. I didn't
14 have an understanding.

10:39:25 15 Q. What was your understanding of why
16 market makers were purchasing XRP from Ripple?

17 A. To -- to make markets on the XRP ledger
18 and other -- other assets. So buying and selling
19 for a margin.

10:39:41 20 Q. And who was trading on those markets?

21 A. They were open markets. Anyone could
22 access and trade.

23 Q. Do you have an understanding of why
24 people were trading XRP on those markets?

10:39:55 25 MR. HECKER: Objection; form.

10:39:58 1 A. I don't know -- not on XRP specifically.
2 Market makers generally buy and sell for margin,
3 kind of regardless of price, but they buy and sell
4 a lot. They make a small margin on that.

10:40:18 5 Q. Did Ripple pay market makers to make a
6 market in XRP?

7 A. I don't know.

8 Q. When Ripple sold XRP, did it place
9 restrictions on who the purchasers could sell XRP
10:40:34 10 to?

11 A. I don't know.

12 Q. Did Ripple know what the persons and
13 entities who purchased XRP would do with it after
14 they bought it from Ripple?

10:40:49 15 A. I don't know.

16 Q. And referring you back to that paragraph
17 on page 178 of Exhibit 1, do you see how it says
18 "All sales of XRP conducted by XRP II are for the
19 benefit of Ripple Labs, its ultimate parent
10:41:10 20 company, and represents one method by which Ripple
21 Labs raises working capital"?

22 A. I see that.

23 Q. When did Ripple stop raising working
24 capital by selling XRP?

10:41:27 25 MR. HECKER: Objection to form.

10:41:29 1 MR. WARD: Objection to form.

2 A. I don't know. I wasn't on the marketing
3 or finance team -- the markets or finance team.

4 Q. What was [REDACTED]?

10:41:48 5 A. I don't know. I can't recall.

6 (Whereupon, exhibit is presented
7 and marked SEC Zagone Exhibit RZ-2 for
8 identification.)

9 MR. HANAUER: I'm tendering the
10:42:01 10 witness a document marked as Exhibit RZ-2
11 with a Bates number ending in 1111.

12 BY MR. HANAUER:

13 Q. Do you see, is Exhibit RZ-2 an e-mail
14 from [REDACTED] to [REDACTED], copying you and
10:42:29 15 others, dated September 2nd, 2015?

16 A. I see that.

17 Q. And why don't you take a look at the
18 e-mail and see if that refreshes your recollection
19 about [REDACTED]?

10:43:33 20 (Pause)

21 A. Okay.

22 Q. So does looking at Exhibit RZ-2 refresh
23 your recollection as to what [REDACTED] was?

24 A. It does not.

10:43:47 25 Q. Do you know what the XRP fund was?

10:43:52 1 A. No.

2 Q. Do you know if Ripple was selling XRP to
3 [REDACTED]?

4 A. I don't know.

10:44:19 5 Q. So besides institutional investors and
6 market makers, in 2016, who else was Ripple
7 selling XRP to?

8 A. It was my understanding we were selling
9 to institutional investors and market makers. I
10:44:38 10 don't have awareness outside of that.

11 Q. Any other financial institutions?

12 A. Not that we were selling to that I was
13 aware of.

14 (Whereupon, exhibit is presented
10:44:52 15 and marked SEC Zagone Exhibit RZ-3 for
16 identification.)

17 MR. HANAUER: I tendered the
18 witness a document marked as Exhibit RZ-3,
19 starting with the Bates number ending in
10:45:00 20 1249.

21 BY MR. HANAUER:

22 Q. And is Exhibit RZ-3 an e-mail [REDACTED]
23 [REDACTED] sent to various folks at [REDACTED], copying you and
24 others, on March 21st, 2016?

10:45:21 25 A. Correct.

10:45:24 1 Q. And there's an attachment to Mr. [REDACTED]
2 e-mail as part of Exhibit RZ-3?

3 A. Yes. I see the attachment.

4 Q. Who is [REDACTED]?

10:45:34 5 A. [REDACTED] was the controller on the
6 finance team.

7 Q. For Ripple?

8 A. For Ripple.

9 Q. And why was Ripple interacting with [REDACTED]
10:45:46 10 [REDACTED]?

11 MR. WARD: Objection to form.

12 A. I don't know specifically. I assume it
13 was part of a BD discussion.

14 Q. And I want to refer you to the first
10:46:08 15 page of the attachment in the Exhibit RZ-3. Do
16 you see under the heading "Request," it says "To
17 support Ripple's growth in the near term, the
18 company is seeking a bank partner to provide"
19 business banking -- "a business banking account
10:46:26 20 for a wholly owned subsidiary XRP II, LLC"?

21 A. I see that.

22 Q. So was XRP II looking for a bank?

23 MR. HECKER: Objection to form.

24 A. This shows that we're looking for a bank
10:46:39 25 partner, yes. I recall that that was part of our

10:46:48 1 application to New York DSS for a virtual currency
2 license.

3 Q. And then do you see on the bottom, the
4 last paragraph of the page ending in 250, it says
10:47:02 5 "XRP II, LLC would use this bank account to book
6 revenue and pay operating expenses from its
7 primary business activities: Selling digital
8 assets to financial institutions and institutional
9 investors"?

10:47:16 10 A. I see that.

11 Q. And is it accurate that XRP II's primary
12 business activities in 2016 were selling XRP to
13 financial institutions and institutional
14 investors?

10:47:29 15 MR. HECKER: Objection to form.

16 A. To the best of my understanding, yes.

17 Q. What was your understanding of the
18 financial institutions being described in this
19 memorandum?

10:47:42 20 A. So we were working -- financial
21 institution being a bank, a bank that we were
22 working with that would be using that product.

23 Q. And in 2016, why were banks -- what were
24 they doing with XRPs?

10:48:04 25 MR. CERESNEY: Objection to form.

10:48:05 1 A. In 20 -- in 2016, we were undergoing --
2 we had a series of proof of concepts and pilots
3 going on with a number of banks that we were
4 working with to -- this is in the company -- the
10:48:22 5 company, Ripple Labs, at the time, we were
6 experimenting with what the right -- well, I guess
7 the optimal product design would be for
8 connectivity and liquidity for payments. So we
9 had several pilots and proof of concepts going on
10:48:35 10 and it included XRP.

11 Q. So if a bank was using XRP in 2016, it
12 would have been for a pilot or use of concept?

13 A. In the 2014 to maybe early 2016 range,
14 somewhere in there, yeah. My -- my memory of the
10:48:58 15 timeline is hazy at this point, but it had a
16 number of proof of concepts and pilots going on.

17 Q. Were -- were banks using -- were banks
18 purchasing XRP from Ripple for purposes other than
19 pilot testing or use of concepts?

10:49:18 20 A. I don't know.

21 Q. In 2016 was XRP used by consumers?

22 A. Yes.

23 Q. Which consumers were using XRP in 2016?

24 A. XRP was -- an XRP ledger open source,
10:49:45 25 you could acquire it from exchanges. You could --

10:49:49 1 any consumer could go in and buy XRP or bitcoin,
2 either, on an exchange.

3 Q. What uses for consumers did XRP have in
4 2016?

10:50:06 5 A. This is in the early day of crypto.
6 There were people using it as -- the primary use
7 case for crypto at the time was using it as a
8 currency, so as a replacement for the U.S. dollar.
9 So people would be buying coffee or goods or
10:50:19 10 services with crypto. So that would be a consumer
11 use case.

12 Q. And I want to refer you to the last page
13 of Exhibit 1. And do you see how the first
14 paragraph on the page ending in 1252 says "XRP as
10:50:53 15 a digital asset is not used by consumers and is
16 not a replacement for government issued money"?

17 A. I see that.

18 Q. Ripple was representing to XRP -- or
19 Ripple was representing to [REDACTED] that XRP is not
10:51:10 20 used -- or was not used by consumers in 2016?

21 A. That is meant -- what I -- what I
22 believe that's meant to say is that Ripple's use
23 of XRP in our products is not a direct-to-consumer
24 tool. So it was meant really to distinguish
10:51:26 25 between X -- Ripple's use of XRP as its liquidity

10:51:31 1 bridge from what was happening in the majority of
2 the crypto market at this time where exchanges
3 sold crypto to replace the U.S. dollar.

4 So this was -- this was speaking to how
10:51:42 5 Ripple was using XRP. We're not selling it to
6 consumers. We're not using it to replace
7 government-issued money but rather to connect it
8 more efficiently.

9 Q. How did the amount of XRP that Ripple
10:51:57 10 sold to institutional investors compare to the
11 amount of XRP Ripple sold for use in Ripple's
12 products?

13 MR. CERESNEY: Objection to form.

14 MR. HECKER: Objection to form.

10:52:12 15 A. I don't know.

16 (Whereupon, exhibit is presented
17 and marked SEC Zagone Exhibit RZ-4 for
18 identification.)

19 MR. HANAUER: I'm tendering the
10:52:34 20 witness a document that's been marked as
21 Exhibit RZ-4, which begins with a Bates
22 number ending in 9845.

23 MR. HECKER: Mr. Zagone, when
24 you're reviewing it, you're kind of
10:53:09 25 humming to yourself. We heard it.

10:53:17 1 BY MR. HANAUER:

2 Q. And is Exhibit RZ-4 an e-mail and
3 attachment that you sent to [REDACTED] on
4 January 6, 2017?

10:53:27 5 A. That's correct.

6 Q. And do you see how your -- the first
7 line of the exhibit says "To assist [REDACTED] in their
8 application, I provided them with the attached
9 paper of info that had to provide for the
10 BitLicense"?

11 A. I see that.

12 Q. What was [REDACTED]?

13 A. [REDACTED] was a Japanese company that we were
14 partnering with. I believe we were -- at this
10:53:58 15 point, I can't recall if we were partnering with
16 them or -- yes, we were partnering with them,
17 [REDACTED] Ripple ledger.

18 Q. And what is the BitLicense you reference
19 in Exhibit RZ-4?

10:54:14 20 A. The BitLicense was the New York
21 Department of Financial Services' virtual currency
22 license.

23 Q. And why were you e-mailing Mr. [REDACTED] --
24 or why were you e-mailing [REDACTED] the paper that you
10:54:37 25 provided in connection with the BitLicense?

10:55:06 1 (Pause)

2 A. It says here, in Japan, there was a
3 draft version of the government ordinance for
4 cryptocurrencies to be licensed -- for crypto
10:55:21 5 exchanges to be licensed. I believe they had to
6 provide background on the assets that they were
7 trading, one of which was XRP. Since we were a
8 partner with [REDACTED], we provided them content on XRP.

9 Q. And can I refer you to the page in
10:55:45 10 Exhibit 4 ending in 9852?

11 A. I see it.

12 Q. And did -- did you write this paper
13 titled "XRP Overview for [REDACTED]"?

14 A. I can't recall if I wrote it myself or
10:56:14 15 pieced it together from other documents we had at
16 Ripple.

17 Q. Was the information that Ripple was
18 providing to [REDACTED] in this paper truthful and
19 accurate?

10:56:28 20 A. I -- I assume so, yeah.

21 Q. Can I refer you to the -- the second
22 page of the paper? And that's the one with the
23 Bates number ending in 853.

24 A. Uh-huh.

10:56:50 25 Q. And do you see in the last paragraph on

10:56:52 1 that page, it says "XRP II, LLC sells or transfers
2 XRP to financial institutions and accredited
3 investors who bring payment volume and/or FX
4 liquidity to Ripple"?

10:57:07 5 A. I see that.

6 Q. And in 2017, Ripple was selling XRP to
7 financial institutions and accredited investors?

8 A. That was my understanding.

9 Q. What did you understand the term
10:57:25 10 "accredited investors" to mean?

11 A. This I got from the -- from our markets
12 and legal team. I was not on the markets team.

13 Q. Do you have an understanding of what the
14 term "accredited investor" means?

10:57:50 15 A. An understanding that it's a -- it's a
16 defined class of investors who have a certain net
17 worth or income.

18 Q. And who were the accredited investors
19 Ripple was selling XRP to in 2017?

10:58:01 20 A. I don't know.

21 Q. And when the paper talks about selling
22 XRP to financial institutions and accredited
23 investors who bring payment volume and/or FX
24 liquidity to Ripple, what does that mean when
10:58:28 25 speaking about the pay -- payment volume and/or FX

10:58:31 1 liquidity?

2 MR. HECKER: Objection to form.

3 A. I'm not certain. I -- I got this
4 from -- this is -- that's not something that looks
10:58:46 5 like I -- that I recall writing.

6 Q. Can I refer you to the last page of
7 Exhibit 4, please?

8 A. Sure.

9 Q. And under the heading "Supply of XRP,"
10:59:06 10 do you see it says "While buyers and sellers
11 determine the market price of XRP, the supply of
12 XRP is an important variable to consider when
13 valuing the asset"?

14 A. I see that.

10:59:22 15 Q. How did the supply of XRP affect its
16 price?

17 A. Generally supply and demand drive price.
18 So if there's an increase or a decrease in supply
19 relative to an increase or decrease in demand, you
10:59:36 20 would see a change in price.

21 Q. So if the supply goes up, all other
22 things being equal, what happens to the price?

23 MR. WARD: Objection to form.

24 A. If supply goes up and demand is -- is
10:59:48 25 the same, price would go down.

10:59:51 1 Q. And what if supply went down but demand
2 stayed the same?

3 MR. WARD: Object to form.

4 A. If supply went down, but demand stayed
11:00:03 5 the same, price would go up.

6 Q. What if supply stayed the same and
7 demand went up?

8 MR. WARD: Object to form.

9 A. Price would go up.

11:00:12 10 Q. What if supply stayed the same and
11 demand went down?

12 MR. WARD: Object to form.

13 A. Price would go down.

14 Q. Then do you see the second paragraph
11:00:27 15 where it says "As of December 26, 2016, Ripple
16 held approximately 63 billion of the 100 billion
17 XRP"?

18 A. I see that.

19 Q. What -- what did that mean?

11:00:43 20 A. There were 100 billion XRP in existence.
21 Ripple held 63 billion of them.

22 Q. And then do you see the next sentence
23 says "Ripple's distribution strategy, including
24 the timing, volume and pace of distribution, will
11:01:01 25 impact the supply and ultimately the value of

11:01:03 1 XRP"?

2 A. I see that.

3 Q. What did that mean?

4 A. That as the company distributes or sells
11:01:13 5 XRP, either they sell it or give it away, that
6 will impact the supply -- it will increase the
7 supply and could impact the price, depending on
8 what happens to demand.

9 Q. So how Ripple went about distributing
11:01:30 10 its XRP holdings could impact the price of XRP?

11 MR. CERESNEY: Objection to form.

12 A. Hypothetically it could, depending on
13 what happens with demand and general market
14 conditions.

11:01:51 15 Q. And then do you see the next paragraph
16 says "Ripple aims to distribute XRP in a way that
17 supports a stable or strengthening value of XRP"?

18 A. I see that.

19 Q. Was that an aim of Ripple?

11:02:07 20 A. It says Ripple -- it says "Ripple's aim
21 is to distribute XRP in a way that supports a
22 stable or strengthening value."

23 Q. So did Ripple aim to distribute XRP in a
24 way that would cause XRP's price to stay the same
11:02:25 25 or go up?

11:02:28 1 MR. CERESNEY: Objection to form.

2 A. That's what I understand that statement
3 says.

4 Q. And then the last sentence said -- says
11:02:37 5 "Ripple expects to see an increase in demand for
6 XRP that more than offsets the additional supply
7 that is injected into the market via sales of the
8 asset."

9 What does that mean?

11:02:59 10 A. Seems to say our expectation for demand
11 would increase more than the additional supply.

12 Q. So even though the supply of XRP was
13 going up, because the demand for XRP was going up
14 also, the price of XRP would not fall?

11:03:21 15 MR. CERESNEY: Objection --

16 MR. HECKER: Objection to form.

17 A. The statement's saying that we were --
18 we were looking to be responsible with our own
19 transactions for -- to ensure a stable or
11:03:34 20 strengthening value of XRP.

21 Q. And by "stable or strengthening value,"
22 you meant the price of XRP not going down?

23 MR. HECKER: Objection to form.

24 A. That's what we were -- I'm sorry.
11:03:56 25 That's what we were looking for, a stable or

11:03:58 1 strengthening value, so not declining. Not
2 declining from our activity.

3 (Whereupon, exhibit is presented
4 and marked SEC Zagone Exhibit RZ-12 for
11:04:24 5 identification.)

6 MR. HANAUER: And I just tendered
7 the witness a document labeled as Exhibit
8 RZ-12, which begins with a Bates number
9 ending in 6910.

11:04:51 10 BY MR. HANAUER:

11 Q. Is Exhibit RZ-12 an e-mail and
12 attachment that you sent to various people at MAS
13 on June 16th, 2017?

14 A. That's correct.

11:05:09 15 Q. What is MAS?

16 A. That's the Monetary Authority in
17 Singapore, Central Bank of Singapore.

18 Q. And there's a paper attached to the
19 e-mail you sent to the monet -- Monetary Authority
11:05:24 20 of Singapore titled "XRP Overview - Long-term
21 Vision and Short-term Tactics"?

22 A. Correct.

23 Q. Did you draft that paper?

24 A. I can't recall if I drafted it or --
11:06:04 25 from scratch or if I -- it was pulled together

11:06:06 1 from existing materials.

2 Q. You had a role in --

3 A. I had a role in producing it.

4 Q. And why were you providing this paper to
11:06:16 5 the Monetary Authority of Singapore?

6 A. So MAS was and still is one of the
7 leading players, central banks, in looking at how
8 digital currency can be used within payments,
9 international -- particularly international

11:06:37 10 payments. So we were engaging with them on a
11 series of experiments that they were doing.

12 Q. And the information you provided to the
13 Monetary Authority of Singapore was truthful and
14 accurate?

11:06:52 15 A. Correct.

16 Q. And I'd like to refer you to page -- the
17 page ending in 942 labeled "Appendix 1."

18 Referring you to the second paragraph,
19 it says "XRP II, LLC. This subsidiary sells XRP
11:07:34 20 to a limited" custer bay -- "customer base,
21 including financial institutions and accredited
22 investors."

23 A. I see that.

24 Q. Ripple was still selling XRP to
11:07:46 25 accredited investors in June of 2017?

11:07:49 1 A. XRP II was -- that's the entity that
2 would sell to accredited investors and financial
3 institutions. To the degree that it was or it
4 wasn't in that time frame, I don't know.

11:08:09 5 Q. Was XRP selling -- was XRP II, LLC
6 selling XRP to accredited investors in June 2017?

7 MR. WARD: Objection.

8 A. If we -- that was the entity that -- XRP
9 II, LLC, is the entity that would sell XRP II.
11:08:29 10 It's sold to financial institutions and accredited
11 investors. I don't know if transactions were
12 happening in that time frame. If they were, they
13 would have happened through XRP II.

14 Q. And just to be clear, your -- your paper
11:08:44 15 to the Monetary Authority of Singapore is dated
16 June 2017?

17 A. Correct.

18 Q. And I want to refer you to the -- the
19 next page ending in 943 where -- under the heading
11:09:01 20 "Supply of XRP."

21 A. I see it.

22 Q. And do you see the second paragraph
23 talks about "a cryptographically secured escrow
24 that manages the timing and release of" XRP?

11:09:26 25 A. I see that.

11:09:35 1 Q. Could you describe what that escrow
2 program was?

3 A. The escrow program was a initiative to
4 take a significant portion of the company's XRP
11:09:46 5 and place it outside of control of the company,
6 like locked in an escrow. On a certain period, a
7 certain amount of XRP would be released to the
8 company. I can't recall what that period or what
9 the amount was.

11:10:02 10 The -- the effort came about, we were
11 seeing bad actors in the crypto space that were --
12 that held a lot of crypto and were dumping it at
13 will and walking away.

14 We wanted to give assurance to the
11:10:18 15 market that we were going to be a responsible
16 player and would not -- were not going to do that
17 with our own holdings.

18 Q. So Ripple wanted to convey to the market
19 that Ripple would not flood the market with its
11:10:31 20 own XRP holdings?

21 A. Correct.

22 MR. HANAUER: Could we go off the
23 record, please?

24 THE VIDEOGRAPHER: Yep. Going
11:10:38 25 off the record at 11:10.

11:10:53 1 (Whereupon, a discussion is held
2 off the record.)

3 THE VIDEOGRAPHER: Okay. Back --
4 back on the record at 11:12.

11:12:30 5 Go ahead.

6 BY MR. HANAUER:

7 Q. So the reason Ripple set up the escrow
8 program was to address concerns for market
9 participants that Ripple could dump large amounts
11:12:50 10 of its XRP holdings into the market?

11 MR. CERESNEY: Objection.

12 MR. HECKER: Objection to form.

13 A. The -- there were bad actors in the
14 crypto space that were dumping their -- their
11:13:02 15 holdings and crashing prices of other cryptos. So
16 we saw that as the -- the market became concerned
17 across all the cryptocurrencies that this could
18 happen.

19 Ripple proactively set up the escrow to
11:13:18 20 give assurance to the market that we weren't going
21 to do that. We were going to be a responsible
22 player. We're locking this aside. We're not
23 going to dump our holdings. So it was a proactive
24 step we took.

11:13:29 25 Q. And if Ripple had dumped large amounts

11:13:33 1 of XRP into the market all at once, would that
2 have negatively affected XRP's price?

3 A. Yeah, there would be --

4 MR. CERESNEY: Objection; form.

11:13:43 5 A. That would be a -- a flood of supply
6 into the market. Depending on what demand was at
7 the time, if demand was stable or unchanged, price
8 would go down.

9 Q. How did the escrow program affect XRP's
11:14:02 10 price?

11 MR. CERESNEY: Objection to form.

12 A. When we announced the escrow program, it
13 was a reduction in supply and the price went up.
14 The market had more certainty around how we were
11:14:14 15 going to use or dispose of the XRP.

16 Q. In June 2017, did Ripple continue to
17 distribute XRP in a way that would support or
18 increase XRP's price?

19 MR. HECKER: Objection to form.

11:14:40 20 A. The -- the guiding factor for Ripple was
21 not to have an impact on the price. We -- we saw
22 that -- I saw that in the quarterly market reports
23 showing that our trading and -- not our trading,
24 our selling activity was only a small portion of
11:14:58 25 the trading that was happening.

11:15:00 1 Q. In June 2017, did Ripple still aim to
2 distribute XRP in a way that supported a stable or
3 strengthening value of XRP?

4 MR. CERESNEY: Objection; form.

11:15:13 5 A. I -- I can't speak to the -- what the
6 marketing team -- the market -- the markets team
7 was doing during that time.

8 Q. What were Ripple's -- you can put that
9 exhibit down.

11:15:38 10 What were Ripple's OTC sales?

11 A. Over-the-counter sales. I -- I don't
12 know much about them.

13 Q. How did the over-the-counter sales
14 differ from XRP II, LLC's sales of XRP?

11:16:04 15 A. I don't know.

16 MR. HANAUER: Exhibit 14.

17 (Whereupon, exhibit is presented
18 and marked SEC Zagone Exhibit RZ-14 for
19 identification.)

11:16:17 20 MR. HANAUER: I'm tendering the
21 witness a document that's been marked as
22 Exhibit RZ-14, which begins in a Bates
23 number ending in 5510.

24 BY MR. HANAUER:

11:16:38 25 Q. Is Exhibit RZ-14 an e-mail exchange

11:16:54 1 between you and Miguel Vias dated October 9th,
2 2017?

3 A. I see that, yes.

4 Q. And do you see the third e-mail in the
11:17:14 5 chain, you write to Mr. Vias, "Question: We seem
6 to be seeing a lot of OTC demand and sales. By
7 selling OTC, that demand doesn't get captured on
8 exchanges or reflected in market prices. Would we
9 be better off shifting some demand to exchanges
11:17:36 10 for XRP purchases?"

11 What are you writing about there?

12 MR. WARD: Object to form.

13 A. I'm not certain. The rest of the e-mail
14 doesn't seem to be about OTC. It doesn't seem to
11:18:28 15 be about OTC sales. I'm asking if we -- if the
16 company should shift from selling OTC to
17 exchanges. I'm asking mainly out of curiosity
18 for -- and I'm asking Miguel Vias, head -- he's
19 the lead for the markets team, about what the
11:18:52 20 impact of OTC versus exchange selling is as that's
21 new for me.

22 Q. And -- and I guess, what was the
23 significance of selling XRP over the counter as
24 opposed to on an exchange?

11:19:06 25 MR. HECKER: Objection to form.

11:19:09 1 A. I -- from the question here at the time,
2 I don't seem to understand what the difference or
3 what the impact would be from OTC versus exchange
4 selling. So I'm trying to ask Miguel to clarify
11:19:22 5 that.

6 Q. And then Mr. Vias responds "This wasn't
7 a concern before, but coming to a head quickly, I
8 think we will put a cap on how much we sell OTC."

9 A. I see that.

11:19:40 10 Q. Why would capping OTC sales be
11 beneficial to Ripple?

12 MR. CERESNEY: Objection; form.

13 A. I don't know. You'd have to ask Miguel
14 for details on that.

11:20:02 15 Q. And then do you see in the bottom e-mail
16 from Mr. Vias and the subject's "XRP Market
17 Updates"?

18 A. Uh-huh. I see that.

19 Q. Mr. Vias writes "XRP has been on quite a
11:20:17 20 roll over the last week," and then he talks about
21 the -- writes about the price increase.

22 Do you see that?

23 A. I see that.

24 Q. Was that -- was it a good thing for
11:20:29 25 Ripple when the price of XRP increased?

11:20:34 1 MR. CERESNEY: Objection to form.

2 A. If the price of XRP increased, the
3 holdings -- Ripple's holdings of XRP was more
4 valuable.

11:20:49 5 Q. And that was good for Ripple?

6 A. Yes.

7 Q. Did Ripple ever make public
8 announcements about the rising price of XRP?

9 MR. HECKER: Objection to form.

11:21:04 10 A. I can't recall.

11 (Whereupon, exhibit is presented
12 and marked SEC Zagone Exhibit RZ-33 for
13 identification.)

14 MR. HANAUER: And I just tendered
11:21:39 15 the witness a document labeled RZ-33
16 beginning in a Bates number ending in
17 6858.

18 BY MR. HANAUER:

19 Q. And is Exhibit RZ-33 an e-mail from
11:22:02 20 insights@ripple.com to you dated December 20th,
21 2017?

22 A. That's correct.

23 Q. And what is this Ripple -- or the Ripple
24 Insights or [REDACTED]@ripple.com?

11:22:20 25 A. Ripple Insights, I believe it was a

11:22:22 1 newsletter that we -- that the company would send
2 out to people that are subscribed to it.

3 Q. And did that newsletter go to only
4 Ripple internally or to members of the public,
11:22:33 5 also?

6 A. I can't recall. We had an internal
7 version that shared internal news, and I believe
8 there was an external subscription newsletter you
9 could -- you could subscribe to. I don't recall
11:22:51 10 if this one was internal or external.

11 Q. And do you see on the third page of
12 Exhibit RZ-33, the e-mail talks about Ripple's
13 price increasing 89 percent in a single day?

14 A. I see that, yes.

11:23:31 15 Q. Did Ripple convey price increases of XRP
16 to the public?

17 A. I can't tell if this was the public
18 newsletter or not. We had an internal one. In
19 this e-mail, we seem to be capturing a news
11:23:56 20 article.

21 Q. Do you see how the very last portion of
22 Exhibit RZ-33 provides Ripple's mailing address?

23 A. I see that.

24 Q. And does that give you any indication of
11:24:10 25 whether the Ripple Insights' e-mail went only to

11:24:17 1 Ripple internal employees?

2 MR. WARD: Object to the form.

3 A. You would have to ask the marketing team
4 what -- what this specific one was. I just
11:24:25 5 received it. I received a daily -- a daily e-mail
6 on recent news and this one as well.

7 Q. To the extent that Ripple was promoting
8 XRP price increases to the public, did you have
9 any concerns about that?

11:24:49 10 MR. CERESNEY: Objection.

11 MR. HECKER: Objection to form.

12 MR. WARD: Objection.

13 A. Well, in this newsletter here, we're --
14 we're just quoting a news report it looks like.
11:25:06 15 CoinMarketCap.

16 Q. To the -- to the extent that Ripple was
17 publicly announcing price increases of XRP, did
18 you have any concerns about that?

19 MR. CERESNEY: Objection; form.

11:25:21 20 A. I did not, no.

21 Q. When you left Ripple, was On-Demand
22 Liquidity, or ODL, Ripple's primary product that
23 it sold to customers?

24 A. When I left Ripple, we had two products,
11:25:51 25 xCurrent and xRapid. We were in the midst of

11:25:58 1 evolving the branding of those products. The
2 majority of the time I was there, it was xCurrent
3 and xRapid.

4 Q. And did xCurrent use XRP as part of its
11:26:14 5 product?

6 A. We did not.

7 Q. And xRapid did use XRP to make that
8 product work?

9 A. Correct.

11:26:28 10 Q. Was xRapid the first product Ripple sold
11 for commercial use that used XRP?

12 A. We had variants of xRapid leading up to
13 the product that we were selling when I left that
14 also used XRP. That was the primary product
11:26:49 15 that -- that leveraged XRP technology.

16 Q. Was xRapid the first Ripple product that
17 used XRP that Ripple sold to customers as opposed
18 to did pilot testing or proof of concept testing?

19 MR. CERESNEY: Objection; form.

11:27:17 20 A. That product is what we sold that used
21 XRP. I can't recall if we had another name for it
22 before or after, but xRapid was the branding that
23 we were using when I was there.

24 Q. And I guess was -- was xRapid the first
11:27:31 25 Ripple product in widespread commercial use that

11:27:38 1 used XRP?

2 MR. CERESNEY: Objection; form.

3 A. That was the primary product that used
4 XRP when I -- when I was there that we were
11:27:45 5 focused on banks.

6 Q. And I guess was there a -- a product
7 before xRapid that was -- Ripple sold for
8 commercial use that used XRP?

9 MR. WARD: Objection to form.

11:28:02 10 A. Our product journey started with a
11 single product that we ran pilot testing, proof of
12 concepts. As we evolved -- that single product
13 covered connectivity and liquidity. As we evolved
14 the solution, we split those into two separate
11:28:25 15 products so we could specialize the tech used in
16 each: One connectivity, one liquidity.

17 So there were times when we were selling
18 one solution. In the early days, we called it
19 Ripple Connect. It evolved into two separate
11:28:40 20 products. XRP was a part of the early platform
21 when it was just one single product as well.

22 Q. When did the first Ripple customers
23 begin using xRapid?

24 MR. WARD: Objection to form.

11:29:02 25 A. I don't a -- I'm sorry. I don't recall

11:29:03 1 a specific date when it was launched.

2 Q. Was xRapid the first Ripple product that
3 used XRP that made it beyond the pilot testing or
4 proof of concept stage?

11:29:15 5 MR. HECKER: Objection to form.

6 A. We -- we might have had other customers
7 in the early day that were full commercial
8 customers using that initial platform we used
9 beyond just a pilot. I can't recall specifics.

11:29:38 10 MR. CERESNEY: Can I just make
11 sure that we're talking here just about
12 the payments products? Because there were
13 other products that were using XRP, so I
14 just want to make sure that the record is
11:29:46 15 clear on this.

16 MR. HANAUER: I was asking about
17 products that used XRP.

18 MR. CERESNEY: You mean all
19 products?

11:29:50 20 MR. HANAUER: Correct.

21 MR. CERESNEY: Because I think he
22 was focused on the xRapid-type products.

23 A. So my work at Ripple was on the payment
24 products. So xRapid, xCurrent, and the products
11:30:02 25 that led up to those -- those two. I -- I didn't

11:30:05 1 have engagement with other products using X --
2 XRP.

3 Q. Are you aware of Ripple selling products
4 that used XRP prior to xRapid?

11:30:23 5 A. Ripple had other projects going on that
6 used XRP.

7 Q. All right. But did Ripple sell products
8 for commercial use using XRP before it began
9 selling xRapid?

11:30:39 10 A. Not that I was involved in. That could
11 have been for other parts of the BD team
12 potentially.

13 Q. Can you name another product other than
14 XRP that Ripple sold that used XRP as part of the
11:30:52 15 product?

16 A. There --

17 MR. WARD: Objection.

18 A. -- were other products on ongoing. One
19 was TradeSafe, a trade finance platform that used
11:31:02 20 XRP. It was built on the XRP ledger with the
21 Development Bank of Singapore and a few others.

22 So there were -- there was definitely
23 other experimentation happening on XRP ledger
24 using XRP. I can't recall the commercial
11:31:18 25 arrangements to say if we sold that or not.

11:31:21 1 Q. Are you aware of any Ripple products
2 that used XRP other than xRapid that entered
3 widespread commercial use?

4 MR. HECKER: Objection to form.

11:31:37 5 A. My focus was on xRapid and xCurrent. So
6 there was other stuff happening in that -- in the
7 company that I wasn't involved in, other products.
8 But my focus was specific to the payments
9 products.

11:31:56 10 Q. Was xRapid commercially viable for
11 Ripple?

12 MR. HECKER: Objection to form.

13 A. I believe so, yes.

14 Q. Did Ripple bring in more revenues from
11:32:08 15 xRapid than it spent developing xRapid?

16 A. I don't know that --

17 MR. WARD: Objection.

18 A. I don't know the commercial terms of the
19 xRapid deals.

11:32:35 20 Q. Was a liquid market in XRP needed for
21 Ripple's products that used XRP to work?

22 A. Yes. You would need a liquid market for
23 xRapid to work.

24 Q. Why?

11:32:53 25 A. You would need enough trading to be able

11:32:54 1 to process the payment from, say, U.S. dollar to
2 XRP and on the receiving end, say it's a payment
3 to Mexico, from XRP to Mexican peso.

4 Q. When you worked at Ripple, did Ripple
11:33:10 5 attempt to create a liquid trading market for XRP?

6 MR. CERESNEY: Objection; form.

7 A. When I was at Ripple, we had a markets
8 team that worked with the broader market to ensure
9 the liquidity -- necessary liquidity was available
11:33:27 10 in the countries that were deploying xRapid.

11 Q. And what efforts, specific efforts, did
12 Ripple make to create liquid trading markets in
13 XRP?

14 MR. HECKER: Objection to form.

11:33:39 15 A. I'm not certain. That wasn't my role.

16 Q. When did enough XRP liquidity first
17 exist for xRapid to be commercially viable?

18 MR. HECKER: Objection to form.

19 A. I'm not certain. You'd have to ask the
11:33:55 20 markets team.

21 Q. As of January 2017, was there enough
22 liquidity for XRP to -- to be -- to be used for
23 commercially viable cross-border payments?

24 MR. HECKER: Objection to form.

11:34:11 25 A. Depends on the corridors that we're

11:34:13 1 discussing.

2 Q. U.S. Mexico?

3 A. I'm not certain on what the liquidity
4 was for a Mexican peso to XRP in 2017.

11:34:27 5 Q. What corridors was there sufficient
6 liquidity in for XRP to be used for commercially
7 viable cross-border payments in 2017?

8 MR. WARD: Objection.

9 A. I'm not certain. My role was the
11:34:44 10 regulatory approvals for the banks.

11 MR. CERESNEY: Why don't we do
12 one more document and then take a break no
13 matter whether the judge calls or not?
14 Because we've been going for awhile.

11:35:08 15 MR. HANAUER: Sure.

16 (Whereupon, exhibit is presented
17 and marked SEC Zagone Exhibit RZ-7 for
18 identification.)

19 MR. HANAUER: And I just tendered
11:35:25 20 the witness a document marked as Exhibit
21 RZ-7 beginning with a Bates number ending
22 in 2646.

23 BY MR. HANAUER:

24 Q. And is Exhibit RZ-7, is that a copy of a
11:35:47 25 Slack chain that you were on and a file uploaded

11:35:53 1 to that Slack chain?

2 A. That's correct.

3 Q. And the document beginning on the second
4 page of Exhibit RZ-7, is that a paper you wrote
11:36:12 5 called "XRP Overview for Regulators: Long-term
6 Vision and Short-term Tactics"?

7 A. That's correct.

8 Q. And do you see how on the first page of
9 Exhibit RZ-7, the first entry in the Slack chain
11:36:36 10 you reference sending a paper to the Bank of
11 Mexico?

12 A. Yes.

13 Q. And had you, in fact, sent the XRP
14 overview for regulators' paper to the Bank of
11:36:47 15 Mexico in January of 2017?

16 A. Yes, I did.

17 Q. Why?

18 A. I can't recall specifically on this
19 time. We had engagement with Mexico over a number
11:37:08 20 of years. Mexico came up through a Bank of
21 International Settlements meeting that was hosted
22 in Mexico City by the Bank of Mexico and I was
23 presenting on the future of payment infrastructure
24 with blockchain in digital assets.

11:37:34 25 Q. And I'm sorry if I didn't hear you.

11:37:36 1 Who in Mexico were you providing this
2 paper to?

3 A. The central bank.

4 Q. The central bank?

11:37:42 5 A. Yeah.

6 Q. Did you provide this document to
7 regulators in other countries?

8 A. I believe so. It was our general
9 document on overview of XRP and xRapid.

11:38:02 10 Q. And the information you provided in the
11 XRP overview for regulators paper was truthful and
12 accurate?

13 A. It was.

14 Q. So I want to refer you to the page
11:38:17 15 ending -- the third page of the paper, the one
16 ending with Bates number 649.

17 A. I see it.

18 Q. You see it says "Ripple is working to
19 create the necessary conditions needed for digital
11:38:35 20 assets to be used for liquidity. We are pursuing
21 three short-term tactics to develop this liquidity
22 solution."

23 A. I see that.

24 Q. And the first one is "validating the use
11:38:44 25 case"?

11:38:44 1 A. Yes.

2 Q. Can you describe that, please?

3 A. Validating the use case, we ran a trial
4 in the early days of the company with 12 banks and
11:38:52 5 another experimentation or consulting firm called
6 [REDACTED]. And that trial was used -- trialing using XRP
7 to test the liquidity savings for international
8 payments.

9 Q. Then what about "Driving regulatory
11:39:11 10 certainty"? How was that a tactic to develop
11 liquidity?

12 A. Yeah. First we proved there was a valid
13 use case, which -- which we did. The second step
14 for broader adoption was creating regulatory
11:39:23 15 certainty, that banks could adopt this type of --
16 of solution. And so this was primarily my work
17 here, working with our banking clients and their
18 regulators, sharing we're meeting vendor due
19 diligence requirements. We're okay to be
11:39:41 20 leveraged as a new vendor.

21 And, also, here, the -- securing a
22 virtual currency license for XRP II.

23 Q. And then tactic three, "Creating market
24 liquidity"?

11:39:54 25 A. Market liquidity was needed to be able

11:39:55 1 to process payments through XRP. And here are
2 some bullet points on what the markets team was
3 doing to build that market liquidity, either build
4 it or -- or establish it through an ecosystem.

11:40:09 5 Q. And then do you see on the next page,
6 there's a heading "Tactic 3: Creating Market
7 Liquidity"?

8 A. Yes, I see that.

9 Q. And this section of the paper describes
11:40:27 10 Ripple -- Ripple's efforts to create a liquid
11 trading market in XRP?

12 A. Yeah. This section here talks about the
13 support we were doing for -- to drive liquidity in
14 the market.

11:40:48 15 Q. And as one of the ways to drive
16 liquidity in the market, did Ripple pay its --

17 MR. HANAUER: Let's go off the
18 record.

19 THE VIDEOGRAPHER: Going off the
11:40:59 20 record at 11:41.

21 (Whereupon, a discussion was
22 held off the written record.)

23 MR. TENREIRO: We're on the
24 record, Judge.

11:43:21 25 THE COURT: Thank you.

11:43:23 1 MR. HANAUER: Good morning, your
2 Honor. This is Ben Hanauer with the SEC.
3 We are currently in the middle of the
4 deposition of Mr. Ryan Zagone, who was
11:43:32 5 Ripple's director of regulatory relations.
6 We understand that he had responsibility
7 related to Ripple's lobbying efforts as
8 they relate to the SEC. And we started
9 asking questions related to Ripple's
11:43:54 10 lobbying efforts as they relate to the
11 SEC. Counsel for Ripple objected, citing
12 the Court's relevancy rulings as to
13 written discovery and then instructed the
14 witness not to answer any questions
11:44:11 15 regarding the substance of the lobbying
16 efforts. And at that point the SEC
17 requested Court involvement.

18 We understand the Court's ruling
19 as it related to document production and
11:44:26 20 we understand that was a burden issue.
21 Respectfully, your Honor, we have the
22 witness here for a seven-hour deposition,
23 so we don't think the -- the burden
24 exists. But as a -- as a larger issue,
11:44:45 25 the fair notice defense is being played

11:44:48 1 out not only by your Honor's rulings as
2 they relate to discovery, but they're
3 also -- that defense has been raised to
4 Judge Torres on a motion to strike. And
11:45:01 5 the SEC feels it's appropriate to probe
6 and explore that defense. Namely, we
7 believe that Ripple should -- cannot
8 assert that defense in good faith when it
9 was itself making lobbying efforts with
11:45:19 10 the goal of creating the very regulatory
11 uncertainty that Ripple claims existed at
12 the time.

13 And, your Honor, it's relevant,
14 Ripple's lobbying efforts are very much
11:45:35 15 relevant to the individuals'
16 scienter-based defenses to the extent
17 Defendants Garlinghouse and Larsen were
18 retaining lobbyists with the express
19 purpose of trying to get the SEC to say
11:45:53 20 XRP was not a security.

21 For those reasons, even in light
22 of the Court's relevancy and burden
23 rulings as they relate to written
24 discovery, the SEC believes it's very
11:46:05 25 much important to explore those topics at

11:46:10 1 Mr. Zagone's deposition.

2 MR. CERESNEY: Your Honor, this
3 is Andrew Ceresney. Just some brief
4 thoughts. What -- what Mr. Hanauer said,
11:46:21 5 I'd just direct your Honor to -- I don't
6 know if you have it in front of you, but
7 the June 15th, 2021 ruling that your Honor
8 made on lobbying efforts, I would note
9 your last sentence of this ruling, the
11:46:32 10 final paragraph of that order, and it's
11 clear from the last sentence that your
12 Honor made a ruling both on relevance and
13 on burden. So you said "In the same vein,
14 Ripple's lobbying efforts regarding the
11:46:44 15 status of XRP are not relevant; and any
16 relevancy argument is outweighed by the
17 burden of production."

18 And so from our perspective,
19 your Honor, and obviously you can speak
11:46:55 20 to this directly, but your prior ruling
21 ruled the lobbying efforts were not
22 relevant and you noted in that ruling
23 that the fair notice defense centers on
24 the activities of the SEC, not Ripple's
11:47:06 25 behaviors and cited in case law to

11:47:10 1 support that.

2 And so, therefore, from our
3 perspective, this questioning at the
4 deposition, you've already ruled it's not
11:47:16 5 relevant. You ruled the documents can't
6 be produced, and we don't believe it
7 should occur.

8 I should note that Mr. Hanauer
9 has already spent two plus hours and I
11:47:24 10 think is going to go all seven hours on
11 lots of other issues. This is not the
12 central issue, I think, of the day.
13 Mr. Zagone covered regulatory regulations
14 more broadly and dealt with foreign
11:47:35 15 governments. We're letting the SEC
16 explore all other areas. This is the
17 sole area that we've -- we've instructed
18 the witness not to answer questions on,
19 other, obviously, than privilege.

11:47:46 20 MR. HANAUER: And if I may just
21 briefly respond, your Honor. I would note
22 that in regards to Ripple's lobbying
23 efforts, the -- the only line of
24 questioning we -- we seek as to their
11:47:56 25 substantive efforts are those lobbying

11:47:59 1 efforts as they relate to the -- the SEC
2 and the issue of whether Ripple is a
3 security -- or XRP is a security.

4 MR. CERESNEY: And on that, your
11:48:06 5 Honor, I would just note, I don't really
6 know how to cabin that. You know,
7 lobbying efforts in general for
8 legislation, you know, they could relate
9 to whether something is a security or not.
11:48:17 10 But what regulatory classification, I
11 think that that's a false narrowing,
12 frankly. I think, you know, all lobbying
13 probably relates to something in some
14 sense that might be related to SEC
11:48:26 15 activities.

16 THE COURT: Okay. I'm going to
17 just ask for a few minutes just to review
18 that order. If everybody can just take a
19 brief recess.

11:48:39 20 MR. HANAUER: Great. Thank you.

21 (Pause in the proceedings)

22 THE COURT: Okay. I've had an
23 opportunity to review the docket and to
24 discuss the issue with my law clerk. I'm
11:53:09 25 going to authorize the limited questioning

11:53:13 1 here. I think given that there is this
2 pending motion before Judge Torres,
3 obviously I've ruled in discovery about
4 the fair notice defense, but that is an
11:53:22 5 open question how she's going to interpret
6 it.

7 I did, and I stand by my a
8 ruling that for the purposes of document
9 production, I think the relevancy is
11:53:31 10 sufficiently limited that the burden
11 outweighed the relevancy, and so I stand
12 by my decision with regard to the
13 document production.

14 But if the SEC wants to spend
11:53:43 15 part of its time asking this witness
16 questions related to the lobbying
17 efforts, I'm going to authorize it.

18 MR. CERESNEY: Okay. Your Honor,
19 is there any limitations in terms of -- of
11:53:53 20 depth or -- or burden here or is it -- is
21 it just questions of this witness of his
22 knowledge basically on these issues?

23 THE COURT: I'm not sure exactly
24 what you're asking me. I'm certainly
11:54:06 25 going to allow the SEC to use its time as

11:54:09 1 it sees fit, so I'm not going to limit the
2 amount of time it can spend on this
3 subject. I don't know that it's intending
4 to spend a whole lot of time on it, but
11:54:18 5 I'm not going to limit it. To the extent
6 you're asking me about other witnesses
7 that aren't before me, I'm not sure I want
8 to make a ruling that's reflected in that
9 way.

11:54:27 10 MR. CERESNEY: Okay.

11 THE COURT: Hopefully this
12 ruling gives the parties enough guidance
13 for future depositions.

14 MR. CERESNEY: Okay. Thank you,
11:54:33 15 your Honor.

16 MR. HANAUER: Thank you, your
17 Honor.

18 THE COURT: Thank you,
19 everybody.

11:54:35 20 (Whereupon, a recess is taken.)

21 THE VIDEOGRAPHER: Okay. Back on
22 the record at 12:08.

23 Go ahead.

24 BY MR. HANAUER:

12:08:04 25 Q. Mr. Zagone, before we went off the

12:08:06 1 record, we were on Exhibit 7, on page 2650 of the
2 exhibit.

3 And do you remember I was asking you
4 questions about efforts Ripple made to create a
12:08:22 5 liquid market in XRP?

6 A. I remember the topic, yeah. I see that.

7 Q. And one of the ways Ripple helped create
8 a liquid market in XRP was to pay exchanges to
9 list XRP on -- on those exchanges?

12:08:43 10 MR. HECKER: Objection.

11 A. Was that a question or --

12 Q. Yeah, that's a question.

13 A. Oh, I don't know.

14 Q. You don't know whether Ripple paid
12:08:55 15 exchanges to list XRP?

16 A. I don't --

17 MR. HECKER: Objection.

18 Objection to form. Asked and answered.

19 A. I don't believe we did, but I'm not on
12:09:03 20 the markets team to handle the relationships with
21 the exchanges.

22 Q. And did Ripple have volume incentive
23 programs for either exchanges or market makers?

24 A. According to the diagram here, it did,
12:09:24 25 yeah.

12:09:25 1 Q. Okay. And how -- how did those work?

2 A. I don't know. The column here "Creating
3 Market Liquidity," No. 3, came from our markets
4 team. So I captured that -- I got that
12:09:35 5 information from -- from them.

6 Q. Okay.

7 A. I was primarily focused on No. 2.

8 Q. That was the "Driving Regulatory
9 Certainty"?

12:09:49 10 A. Correct.

11 Q. And your -- your role driving regulatory
12 certainty, did that have anything to do with
13 driving regulatory certainty as it relates to the
14 SEC?

12:10:02 15 A. It related to Ripple as a vendor. XRP
16 was part of xRapid. So it would relate to the
17 classification of XRP.

18 Q. When you say the "classification" as XR
19 -- "of XRP," you mean whether the SEC considered
12:10:20 20 XRP to be a security?

21 A. How it would be classified in the U.S.,
22 commodity, security. Yes.

23 (Whereupon, exhibit is presented
24 and marked SEC Zagone Exhibit RZ-8 for
12:11:00 25 identification.)

12:11:01 1 MR. HANAUER: I'm tendering the
2 witness a document labeled as Exhibit
3 RZ-8, which starts with a Bates number
4 ending in 2018.

12:11:26 5 BY MR. HANAUER:

6 Q. And before I ask you a question about
7 that document --

8 A. Uh-huh.

9 Q. -- in 2017, was XRP used in any of the
12:11:46 10 software products that Ripple sold to banks?

11 A. Prior to 2017? Prior to 2017, all of
12 the products were built on XRP ledger. We had one
13 platform that we were selling all of our -- we
14 were doing connectivity and liquidity on, so XRP
12:12:09 15 was included in that. Over time we evolved the
16 solution to two separate products, xCurrent and
17 xRapid. I'm not sure -- I can't recall the time
18 frame, the year -- the year when we made that
19 split.

12:12:20 20 Q. And did -- did banks ever use the xRapid
21 product?

22 A. The financial institutions did. We --
23 we started rolling out the products -- you need
24 connectivity first to make a payment and liquidity
12:12:40 25 second. Banks generally have a connectivity

12:12:42 1 problem, so we started them first with xCurrent.
2 It was, like, first you have to connect to make a
3 payment. The strategy was get banks to adopt
4 xCurrent for connectivity. As they mature, they
12:12:52 5 need liq -- they need to scale liquidity so then
6 we add xRapid.

7 For money services business, or
8 remittance companies, they don't have a
9 connectivity problem, but they can connect to
12:13:03 10 their own subsidiary overseas. They have a
11 liquidity challenge. So we started those -- that
12 client segment directly with xRapid.

13 Q. Okay. So I -- I get -- so were the --
14 the money transmitters, was that the -- the -- the
12:13:16 15 primary intended purchaser of the xRapid product?

16 A. There were both banks and money
17 transmitters, would -- were intended to use
18 xRapid. The money transmitters don't have a
19 connectivity problem, so they kind of fast track
12:13:30 20 right to xRapid.

21 Q. And when did banks start using xRapid?

22 A. The strategy was to build connectivity
23 first because they -- banks have a connectivity
24 problem today. So they would use xCurrent first
12:13:44 25 to build connectivity. And as they scaled to new

12:13:47 1 currencies or corridors, they need to scale
2 liquidity, they would add xRapid.

3 Q. I'm -- I'm just trying to figure out
4 when did banks start using the xRapid piece?

12:13:55 5 A. In my time, I was -- I left Ripple at a
6 time when the money services businesses were using
7 xRapid. MoneyGram was one of the partners that I
8 was working with. And banks were on the adoption
9 of xCurrent. So we were -- the banks were then,
12:14:10 10 say, moving -- after I left, the strategy was they
11 would move on to xRapid. I wasn't there for that.

12 Q. Yeah. And I just want to focus on
13 when -- when you were there.

14 A. Yep.

12:14:19 15 Q. So at the time you left Ripple, were
16 banks using xRapid?

17 A. They were on the path to.

18 Q. But had not yet started?

19 A. You had to build a network with xCurrent
12:14:35 20 first for connectivity before you can use xRapid
21 for liquidity, and the banks were on the path to
22 use -- of adopting xCurrent. So that was the
23 prerequisite to -- connectivity is the
24 prerequisite to xRapid.

12:14:49 25 Q. And -- and I think I understand that.

12:14:50 1 I'm just trying to get a clear answer.

2 Had banks started using xRapid at the
3 time you left Ripple?

4 A. They hadn't at the time -- that I recall
12:14:59 5 at the time I left. They were on the path to with
6 the xCurrent adoption.

7 Q. Okay. So let's talk about Exhibit 8,
8 please. And Exhibit 8 is an e-mail you sent to
9 various people at DFS on January 31st, 2017?

12:15:24 10 A. That's correct.

11 Q. And what -- what is DFS?

12 A. DFS is the New York Department of
13 Financial Services. So they were XRP II -- they
14 were the regulator for their license.

12:15:40 15 Q. And one of the things you were sending
16 DFS was a audit report?

17 A. Correct.

18 Q. And why were you sending an audit report
19 to DFS?

12:16:00 20 A. I believe it was a required piece of our
21 license.

22 Q. And what was the purpose of the audit?

23 A. It looks like an AML audit. So an audit
24 of our AML program and concerns -- and controls.

12:16:18 25 Q. And A -- AML, that's anti-money

12:16:20 1 laundering?

2 A. That's correct.

3 Q. And the information Ripple sent to DFS
4 in this audit was truthful and accurate?

12:16:34 5 A. I assume so. I was not involved in the
6 audit and we used an external auditor for it.

7 Q. So can I ask you to please turn to
8 page -- of the audit report -- ending in 2027?
9 And do you see the Section 2.1, "Business Model"?

12:17:29 10 A. I see that.

11 Q. And just take a moment to review that
12 section.

13 Do those three paragraphs accurately
14 depict XRP II's business model?

12:18:21 15 (Pause)

16 MR. CERESNEY: I'm going to
17 object on form grounds.

18 A. The piece I -- I don't think is correct
19 is that Ripple Labs created and maintains the
12:18:43 20 Ripple protocol, the Ripple Consensus Ledger.
21 If -- and the way they're using it here, Ripple
22 protocol means XRP ledger.

23 Q. And beyond that, the section is
24 accurate?

12:19:18 25 A. I would also clarify that XRP II is only

12:19:23 1 sold -- XRP to institutional investors and
2 financial institutions is the way I understood it.

3 Q. Is there anything else in that section
4 that's not accurate?

12:20:01 5 A. The last sentence "Presently XRP has
6 limited commercial use." I would argue the work
7 that the work we were doing in the pilots and in
8 development of xRapid was a commercial use of XRP.

9 Q. And XRP II's auditor was representing to
12:20:23 10 New York regulators that XRP had limited
11 commercial use?

12 MR. WARD: Objection to form.

13 MR. CERESNEY: Objection to form;
14 foundation.

12:20:35 15 A. The auditor wrote -- the auditor wrote
16 that it had limited commercial use. I'm not
17 certain if -- what context they're writing that.
18 Is that within our product at the current time or
19 is that more broadly in the market?

12:20:51 20 Q. And that the auditor also represented
21 that XRP is mainly held as a speculative
22 investment by companies and individuals that
23 expected to rise in value as the Ripple network
24 expands?

12:21:05 25 A. I see that they wrote that.

12:21:08 1 Q. Did you --

2 A. It's hard for me to say why people
3 bought XRP or crypto in general. There are many
4 people in the market buying crypto from a more,
12:21:18 5 like, libertarian-type view where they just didn't
6 want to use the U.S. dollar. Is that speculative
7 or not? I -- I don't know.

8 Q. But these are the representations
9 Ripple -- Ripple's auditors made to the New York
12:21:35 10 regulators?

11 MR. HECKER: Objection.

12 Objection to form and the use of "Ripple's
13 auditors."

14 A. This was the -- the audit report that
12:21:45 15 was provided to DFS.

16 Q. When you worked at Ripple, was XRP used
17 primarily for trading?

18 A. I -- I don't know how it was primarily
19 used. Is that question in regards to the company
12:22:06 20 or in general?

21 Q. I'm just asking you, during the time you
22 worked at Ripple, was XRP used primarily for
23 trading?

24 A. I'm not -- I can't speak to the whole
12:22:18 25 market, how it was used.

12:22:30 1 Q. Let's look at Exhibit 13.

2 (Whereupon, exhibit is presented
3 and marked SEC Zagone Exhibit RZ-13 for
4 identification.)

12:22:52 5 MR. HANAUER: And Exhibit RZ --
6 I -- I'm sorry. I tendered the witness an
7 Exhibit labeled -- I tendered the witness
8 a document labeled Exhibit RZ-17 (sic)
9 starting with the Bates number ending in
12:23:10 10 7779.

11 BY MR. HANAUER:

12 Q. Is Exhibit RZ-17 an e-mail chain ending
13 with an e-mail you sent Monica Long on June 19th,
14 2017?

12:23:24 15 A. Are we on 17 or 13?

16 Q. Oh. Thirteen. Thirteen. I'm sorry.

17 A. Okay. Thirteen is an e-mail I sent to
18 Monica Long.

19 Q. Okay. And so I want to direct you to
12:23:44 20 the e-mail starting at the bottom of the first
21 page, the one from [REDACTED] at [REDACTED].

22 (Pause)

23 A. Okay.

24 Q. It -- who is [REDACTED] at [REDACTED]
12:24:25 25 [REDACTED]?

12:24:29 1 A. I don't recall who [REDACTED] is. [REDACTED]
2 [REDACTED] was a communications or public relations
3 firm that we used at one time.

4 Q. And do you see how Ms. [REDACTED] -- or
12:24:44 5 Ms. [REDACTED] is asking folks at Ripple if we can go
6 and -- if we can go ahead and share information
7 with [REDACTED]?

8 A. I see that, yes.

9 Q. And what was -- what was [REDACTED]?

12:24:58 10 A. [REDACTED] was a website that looked -- I
11 believe it's the website that looked at financial
12 services offerings.

13 Q. And then do you see right above
14 Ms. [REDACTED] e-mail, [REDACTED] forwards that e-mail
12:25:21 15 to you and Ms. Long, asks if the submission to
16 [REDACTED] is okay?

17 A. I see that.

18 Q. And then you make -- in the second
19 e-mail on the chain, you make two suggestions and
12:25:39 20 then you write "Otherwise, looks okay to me"?

21 A. Yes, I see that.

22 Q. And you were reviewing Ms. [REDACTED]
23 e-mail to make sure it was fine to -- to send to
24 [REDACTED]?

12:25:55 25 A. That's correct.

12:26:01 1 Q. And so on the second page, do you see --
2 second page of the exhibit, in Ms. [REDACTED] e-mail
3 under heading 4, she writes "XRP is available to
4 trade in 12 countries around the world. Currently
12:26:16 5 it is used primarily for trading"?

6 A. I see that.

7 Q. Did you suggest any edits to the
8 response to Question No. 4?

9 A. I did not.

12:26:38 10 Q. Did you agree at the time, in June 2017,
11 that XRP was used primarily for trading?

12 MR. HECKER: Objection to form.

13 A. That was not a topic that I understood
14 enough to be able to make an edit on.

12:27:07 15 MR. HANAUER: Exhibit 34.

16 (Whereupon, exhibit is presented
17 and marked SEC Zagone Exhibit RZ-34 for
18 identification.)

19 MR. HANAUER: Okay. I'm
12:27:31 20 tendering the witness a document labeled
21 as Exhibit RZ-34 beginning with a Bates
22 number ending in 6147.

23 BY MR. HANAUER:

24 Q. And is Exhibit RZ-34 an e-mail chain
12:27:59 25 ending in an e-mail you sent to [REDACTED]

12:28:07 1 on February 26, 2018?

2 A. That's correct.

3 Q. And who is -- is it Mr. or

4 Ms. [REDACTED]?

12:28:21 5 A. Miss.

6 Q. Miss [REDACTED].

7 And what was Miss [REDACTED] position
8 at Ripple?

9 A. She was on the business development team
12:28:27 10 in Europe.

11 Q. And you're providing Miss [REDACTED] with
12 information about the history of the development
13 of the xRapid product?

14 A. Yeah. She was speaking on a panel and
12:28:53 15 she had requested some guidance on the XRP trial
16 that we were running which was -- led to xRapid.
17 And she was -- she had not been involved in that
18 trial.

19 Q. And -- and you're talking about the
12:29:07 20 Ripple money transmittal software products that
21 used XRP?

22 A. Correct. We didn't have a name for it
23 initially, so I -- I short-handed a lot in my own
24 writings around just calling it XRP. We didn't
12:29:27 25 have a name for the software solution yet. It

12:29:29 1 became xRapid.

2 Q. And you write that for that software
3 solution that used XRP in 2017, there was a proof
4 of concept stage involving 12 banks?

12:29:43 5 A. That's correct.

6 Q. And then in 2017, Ripple actually
7 started building the product that became --
8 eventually became known as xRapid?

9 A. Correct.

12:29:58 10 Q. And in 2018, Ripple eventually started
11 deploying that product for commercial use?

12 A. According to this document, yes.

13 Q. And at the time of your e-mail, February
14 2018, xRapid was still in its pilot testing stage?

12:30:29 15 A. So we -- from this time on here, in
16 2018 -- we had finished the -- let's see. We were
17 commercializing the -- the product. The first
18 pilots had already been announced. So we're in
19 the phase of rolling out that product through some
12:30:51 20 pilots.

21 Q. By "pilot," you mean pilot testing?

22 A. Correct.

23 Q. Okay. You -- you can put that down.

24 When did you first become aware that the

12:31:17 25 SEC could determine that XRP was a security and

12:31:19 1 subject to its jurisdiction?

2 MR. CERESNEY: Objection; form.

3 A. In late 2016, early -- or in 2017, I
4 believe. Around there.

12:31:41 5 Q. And how did you become aware of that?

6 A. The -- the media and the market were
7 talking more and more about how to classify
8 digital assets. So I noticed that and that --
9 that's how I -- came on my radar.

12:31:59 10 Q. And what's your understanding of when
11 Mr. Larsen and Mr. Garlinghouse first became aware
12 that the SEC could determine that the -- that XRP
13 was a security subject to its jurisdiction?

14 MR. WARD: Objection to form.

12:32:15 15 MR. CERESNEY: Objection.

16 A. I -- I don't know when they became
17 aware.

18 Q. When did you first have a conversation
19 with Mr. Larsen on that issue?

12:32:21 20 MR. WARD: Objection to form.

21 MR. CERESNEY: Objection to form,
22 foundation.

23 A. I did not have a conversation with Chris
24 on that issue.

12:32:30 25 Q. Have you had conversations with

12:32:32 1 Mr. Garlinghouse on the issue about the SEC,
2 whether it could determine that XRP was a
3 security?

4 A. I had conversations with Brad generally
12:32:44 5 about XRP's classification, more -- even more
6 globally than just the U.S.

7 Q. Now I'm going to focus on the -- the
8 SEC --

9 A. SEC?

12:32:55 10 Q. -- piece of it.

11 A. That was a small -- maybe once or twice
12 we had conversations. The topic of XRP in the
13 U.S., particularly with the SEC, was owned by
14 legal. So I -- legal was in charge of that issue.

12:33:15 15 Q. But you did have conversations with
16 Mr. Garlinghouse on the issue of SEC
17 classification of XRP?

18 MR. CERESNEY: Without the
19 presence of legal. That's the question.

12:33:28 20 THE WITNESS: Yeah.

21 A. Without the presence of legal, no.
22 There's one conversation that I had with Brad and
23 it was more around ensuring support for crypto and
24 blockchain in the U.S. and what we were doing from
12:33:44 25 a -- a general view around ensuring the U.S. could

12:33:48 1 be a leader on these technologies.

2 Q. And --

3 A. It wasn't specific to XRP and the SEC.

4 Q. When was that conversation?

12:33:54 5 A. That conversation was around the end of
6 2018.

7 Q. And -- and I'm trying to be precise on
8 this question and I don't want to probe into any
9 substantive communications.

12:34:13 10 But you referenced having a conversation
11 with Mr. Larsen -- or, I'm sorry, Mr. Garlinghouse
12 and legal on the issue of XRP classification.

13 When did that conversation occur?

14 MR. HECKER: Objection to form.

12:34:30 15 You can answer.

16 A. Let me -- let me clarify. I had a
17 conversation with Brad, or Mr. Garlinghouse, on
18 U.S. competitiveness on blockchain and crypto
19 assets. That was a one-on-one call that we had.

12:34:43 20 Q. And that was the one in late 2018?

21 A. Correct. That was the conversation with
22 Brad. The rest of my conversations were with
23 legal.

24 Q. Okay. So did you ever have a
12:35:03 25 conversation with Mr. Garlinghouse, legal or --

12:35:08 1 well, did you ever have a conversation with
2 Mr. Garlinghouse where lawyers were present where
3 the subject of XRP's classification as a security
4 was discussed?

12:35:20 5 MR. CERESNEY: And that's just a
6 yes or no.

7 A. No.

8 Q. And have you had conversations with
9 Ms. O'Gorman about the subject of XRP's
12:35:31 10 classification as a security?

11 A. Yes.

12 Q. And when did those conversations start?

13 A. Those conversations started when I
14 became aware that this was an issue in that 2017
12:35:49 15 time frame. So I raised it with her. She was my
16 manager at the time. So I raised the conversation
17 with her, the topic with her.

18 Q. And what did you guys talk about?

19 A. I raised that this -- it's a growing
12:36:02 20 topic in the media around how generally crypto
21 assets should be classified. Uncertainty around
22 the framework in the U.S. I asked if we had
23 guidance and she said we did and pointed me to our
24 legal team to get that.

12:36:24 25 Q. Were you ever involved in promoting the

12:36:25 1 message that XRP should not be classified as a
2 security?

3 MR. CERESNEY: Objection to form.

4 MR. HECKER: Objection to form.

12:36:35 5 A. I was involved in sharing educational
6 content around XRP and the company's view that it
7 was not a security.

8 Q. When you say "sharing the company's
9 view," you mean sharing the company's view to the
12:36:47 10 public that XRP was not a security?

11 A. Correct.

12 Q. When did Ripple first learn that the SEC
13 was bringing lawsuits involving digital assets?

14 MR. HECKER: Objection to form.

12:37:11 15 A. I can't speak for the company, when the
16 company first learned. So I don't know when the
17 company first learned.

18 Q. How about you? When did you first
19 learn?

12:37:26 20 A. I first learned around the time -- there
21 was a number of cases, particularly around
22 celebrities promoting ICOs. And that was when --
23 that's when the topic came up. The exact time
24 frame I can't remember, but those are the types of
12:37:42 25 cases I remember seeing.

12:37:57 1 (Whereupon, exhibit is presented
2 and marked SEC Zagone Exhibit RZ-30 for
3 identification.)

4 MR. HANAUER: I just tendered the
12:38:10 5 witness a document labeled Exhibit RZ-30,
6 which begins with a Bates number ending in
7 2232.

8 BY MR. HANAUER:

9 Q. And Exhibit 30 is an e-mail that [REDACTED]
12:38:39 10 [REDACTED] sent you on May 21st, 2015?

11 A. That's correct.

12 Q. And do you see how she starts -- Ms. [REDACTED]
13 starts her e-mail, "Ryan, thanks for talking to me
14 last week"?

12:39:02 15 A. I see that.

16 Q. In what capacity were you interacting
17 with Ms. [REDACTED]?

18 A. I don't recall Ms. [REDACTED] or this e-mail.

19 Q. Was she your -- was she Ripple's lawyer?

12:39:19 20 MR. WARD: Objection.

21 MR. CERESNEY: Objection to form,
22 foundation.

23 A. I don't know. I can't recall her.

24 Q. Do you understand her to be providing
12:39:26 25 you legal advice in Exhibit RZ-30?

12:39:30 1 MR. WARD: Objection.

2 MR. CERESNEY: And -- and I
3 don't -- before you answer that, you
4 should at least look through it more than
12:39:40 5 you would otherwise.

6 A. I did not understand her to be giving
7 legal advice to us at this time, no.

8 Q. And do you see how Ms. [REDACTED] e-mail
9 references a generic slide deck that she had been
12:40:30 10 using to make continuing legal education credit
11 presentations?

12 A. I see that.

13 Q. Okay. And is that slide deck what is
14 attached to her e-mail in Exhibit 30?

12:40:44 15 MR. WARD: Objection.

16 A. I see that. It looks from the comments
17 here, she says "I really enjoyed your historical
18 perspective on the [REDACTED] call." I gave a
19 presentation to the [REDACTED] team -- or [REDACTED]
12:41:00 20 hosted on the evolution of blockchain and crypto
21 as a use -- as a tool for payments. I recall
22 that. It looks like she was looking for some of
23 the content I developed that was, like, payment
24 focused.

12:41:18 25 Q. And -- and she's sending you a -- a

12:41:20 1 presentation attached to her e-mail, correct?

2 A. Yeah. She sent me one of her
3 presentations, yeah.

4 Q. And I want to refer you to the page of
12:41:34 5 the presentation ending in 2247. That page
6 contains a public statement by the then-chair of
7 the SEC, Mary Jo White?

8 A. I see that.

9 Q. And Mary Jo White was telling Congress
12:42:22 10 certain virtual currencies could be subject to SEC
11 regulation?

12 MR. WARD: Object to the form.

13 A. I see the -- the quote there. In this
14 e-mail exchange -- I don't even think I read this
12:42:35 15 attachment. I didn't ask for it. She's just
16 voluntarily sending it to me as a -- I believe
17 like a pitch to become her client. It wasn't
18 requested. I didn't use it.

19 Q. Did you read it?

12:42:46 20 A. No. I don't recall reading it.

21 Q. Okay. And then I just want to refer you
22 to the next page on the exhibit.

23 Were you aware that by 2015 the SEC had
24 brought enforcement actions involving investments
12:43:11 25 related to bitcoin?

12:43:15 1 A. I can't recall.

2 Q. If Ripple wanted to see what type of
3 cases the SEC was bringing, would that information
4 have been publicly available to Ripple?

12:43:34 5 MR. WARD: Object to the form.

6 A. If Ripple wanted to see what type of
7 cases the SEC was bringing? It would be an SEC
8 press release, I'd assume.

9 Q. Did you ever review the SEC website?

12:43:49 10 A. They were not part of my scope of work.
11 That was the legal team. No. I did -- yes, I did
12 review the SEC website to learn about the issue --

13 Q. What issue --

14 A. -- learn about classification of digital
12:44:06 15 assets, but that was not my scope of work or
16 responsibility.

17 Q. And when did you review the SEC website
18 to learn about the SEC's classification of digital
19 assets?

12:44:24 20 A. I can't recall the first time I looked
21 at it or the frequency. I recall reading the DAO
22 report when that came out. That's what I recall.

23 MR. HANAUER: Thirty-one.

24 (Whereupon, exhibit is presented
12:45:12 25 and marked SEC Zagone Exhibit RZ-31 for

12:45:12 1 identification.)

2 MR. HANAUER: I tendered the
3 witness a document labeled as Exhibit
4 RZ-31 with a Bates number -- beginning
12:45:25 5 with a Bates number ending in 8880.

6 BY MR. HANAUER:

7 Q. And is Exhibit 31 a copy of an e-mail
8 chain ending with an e-mail from you to
9 Ms. O'Gorman on January 3rd, 2017?

12:45:48 10 A. Correct.

11 Q. And I want to refer you to the -- the
12 second e-mail in the chain, the one from
13 Ms. O'Gorman, where she writes "Note: We will
14 also need to add XRP as not a security to the Q1
12:46:14 15 priorities (more of a January 2017 priority)."

16 A. I see that.

17 Q. What did you understand her to be
18 referring to?

19 A. Let me take a look.

12:47:01 20 (Pause)

21 A. So I'm asking -- she's asking for my
22 priorities for the year -- the quarter, I'm sorry.
23 And she's noting that we need to add XRP as not a
24 security to those priorities.

12:47:14 25 Q. Okay. And if you could explain that,

12:47:16 1 what that would mean as to how that's one of your
2 priorities?

3 A. To assist legal in their analysis of the
4 issue.

12:47:27 5 Q. And was that one of your priorities in
6 2017, January of 2017?

7 A. It says "correct" on the security
8 issues, so, yes, it was incorporated into the
9 priorities.

12:47:48 10 Q. And beyond working with legal on the
11 issue, was it also one of your priorities to work
12 with other departments at Ripple to give them
13 guidance on how to talk about XRP with the goal of
14 having XRP not be classified as a security?

12:48:11 15 MR. HECKER: Objection to form.

16 A. We -- my role there was sometimes
17 developing collateral for assisting [REDACTED] or
18 [REDACTED] in building collateral, the general
19 counsels. At times that was shared with others at
12:48:31 20 Ripple to educate them on the background of XRP,
21 how the XRP ledger works, and the company's view
22 on how it should be classified.

23 Q. What do you mean -- you mentioned
24 collateral with the legal department?

12:48:48 25 A. I mean like a paper or presentations,

12:48:51 1 some reference material.

2 Q. Okay.

3 MR. HANAUER: Could we go to...

4 Q. Oh. What efforts did you make in 20 --
12:49:16 5 in Q1 -- in the first quarter of 2017 on this
6 issue of whether XRP was classified as a security?

7 MR. HECKER: Objection to form.

8 A. I can't recall in that quarter what we
9 -- what we were doing -- or what I was doing.

12:49:54 10 Q. How would -- what was your understanding
11 of how you would have met that priority? How
12 would you have satisfied it?

13 MR. WARD: Object to the form.

14 A. Assist -- assist legal in what they
12:50:05 15 needed assistance with. Building the collateral
16 or -- yeah. My role there was building
17 collateral, sales -- or the sales deck, a
18 presentation, or content summarizing the work
19 legal had done.

12:50:20 20 Q. Why did it matter to Ripple whether XRP
21 was classified as a security?

22 MR. HECKER: Objection to form.

23 MR. CERESNEY: And -- and on
24 this, I just want to caution you not to
12:50:32 25 share information you gathered from legal.

12:50:41 1 A. We -- we didn't believe it was a
2 security.

3 Q. But, I guess, what -- what's the
4 significance to Ripple whether XRP's classified as
12:50:54 5 a security or not?

6 MR. HECKER: Objection to form.

7 A. The -- the implications of it -- I'm not
8 a securities expert, so I -- I don't know.

9 Q. Did you have any understanding of what
12:51:08 10 it would mean for Ripple if the -- if the SEC
11 classified XRP as a security?

12 MR. WARD: Objection.

13 MR. CERESNEY: Objection.

14 And -- and to the extent that
12:51:19 15 your understanding comes from discussion
16 with counsel, I'll instruct you not to
17 disclose that information.

18 THE WITNESS: Okay.

19 A. My understanding came from discussions
12:51:31 20 with counsel.

21 Q. Did you have any understanding that
22 didn't come from discussions with counsel?

23 A. No.

24 (Whereupon, exhibit is presented
12:52:07 25 and marked SEC Zagone Exhibit RZ-9 for

12:52:07 1 identification.)

2 MR. HANAUER: I tendered the
3 witness a document marked as Exhibit RZ-9
4 with a Bates number ending in 3291.

12:52:24 5 BY MR. HANAUER:

6 Q. Is Exhibit RZ-9 a copy of an e-mail you
7 sent to Ms. O'Gorman and Mr. Vias on March 9th,
8 2017?

9 A. Correct.

12:52:35 10 Q. And you are forwarding them an article
11 from the American Banker?

12 A. That's correct.

13 Q. And the article talked about whether
14 certain digital assets should be classified as
12:52:58 15 securities?

16 MR. WARD: Object to the form.

17 A. The article -- "Are Crypto 'Tokens'
18 Securities by Another Name?" is the title. I
19 assume it's around how to classify crypto tokens.

12:53:18 20 THE REPORTER: Repeat. Repeat.

21 THE WITNESS: Repeat my answer?

22 THE REPORTER: Yes, please.

23 A. The title of the article is "Are Crypto
24 'Tokens' Securities by Another Name?" So I assume
12:53:26 25 it's around the classification of crypto tokens.

12:53:33 1 Q. And in sharing the article with
2 Ms. O'Gorman and Mr. Vias, you're telling them
3 that the article discusses whether Ethereum is a
4 security or not?

12:53:48 5 MR. WARD: Object to the form.

6 A. From the e-mail, it looks like the
7 article was focused on Ethereum.

8 Q. And you're telling Ms. O'Gorman and
9 Mr. Vias is -- is whether Ethereum is a security
12:54:08 10 or not hinges on several factors, including how
11 it's discussed when being sold?

12 MR. WARD: Object to the form.

13 A. Correct, I say that.

14 Q. What was your understanding of those
12:54:23 15 factors that determined whether a digital asset
16 was a security?

17 MR. CERESNEY: And, again, here,
18 just to caution you not to share
19 information that you obtained through
12:54:33 20 discussions with counsel.

21 A. My understanding of the securities issue
22 came from discussions with counsel.

23 Q. Any other sources?

24 A. News articles, I guess.

12:54:51 25 Q. What did you learn from the news

12:54:52 1 articles?

2 MR. CERESNEY: To the extent you
3 can answer it --

4 A. Yeah, I -- I can't recall.

12:55:05 5 Q. Then you tell them "XRP is materially
6 different from Ethereum"?

7 A. Yes.

8 Q. How is XRP materially different from
9 Ethereum?

12:55:19 10 A. In the -- how the platforms confirm
11 transactions is different. One uses proof of
12 stake; the other uses proof of work.

13 Q. How else were they materially different?

14 A. Ethereum has some features where you can
12:55:36 15 create a smart contract on Ethereum, which XRP
16 ledger does not. So the technical features are
17 different.

18 Q. So did the -- based on your
19 understanding, did -- did the differences between
12:55:53 20 Ethereum and XRP, did it make Ethereum more like a
21 security or XRP more like a security?

22 MR. HECKER: Objection to form,
23 foundation.

24 A. I'm not qualified to say either way.

12:56:08 25 Q. And then you write at the end of that

12:56:09 1 second paragraph, "It does highlight the fact that
2 what we say and how we describe it is important"?

3 A. Uh-huh.

4 Q. What do you mean by that?

12:56:20 5 MR. WARD: Object to the form.

6 A. To ensure we're describing it
7 accurately.

8 Q. Describing what?

9 A. Our product and XRP.

12:56:36 10 Q. And why is that important?

11 A. To make sure the market has an accurate
12 understanding of XRP versus Ripple and the
13 difference between those two, the company and the
14 software.

12:56:51 15 Q. Was how Ripple described XRP important
16 to the issue of whether XRP was classified as a
17 security?

18 MR. CERESNEY: Object to the
19 form.

12:57:10 20 A. My work there was to ensure we were
21 describing it accurately. That Ripple was
22 describing itself and XRP accurately. To the
23 degree it factored into is it a security or not
24 wasn't a -- was a guidance from legal.

12:57:32 25 Q. And in the third paragraph you write

12:57:35 1 "Antoinette and I want to host a roundtable with
2 the XRP team to discuss this issue in detail"?

3 A. Uh-huh.

4 Q. What's the "XRP team" that you're
12:57:46 5 referencing there?

6 A. I used XRP pretty broadly to capture
7 xRapid. So XRP team here would have been the
8 xRapid team, so the product team, and the -- the
9 teams that were supporting that product, be it
12:58:11 10 sales, ops, communications.

11 Q. And you write "We want to arm the team
12 with an understanding of this issue for both XRP
13 and Ethereum"?

14 A. Uh-huh.

12:58:29 15 Q. What steps did you take to arm the team?

16 A. We -- we made a presentation or
17 collateral, as we talked about previously, that
18 outlined XRP, particularly --

19 MR. CERESNEY: Let me just
12:58:46 20 caution you. You can talk at a high level
21 about the topic of the collateral.

22 THE WITNESS: Okay.

23 MR. CERESNEY: But I wouldn't --
24 but please don't go beyond that because
12:58:55 25 we've claimed privilege on that collateral

12:58:57 1 as being influenced by discussions with
2 counsel.

3 THE WITNESS: True.

4 A. So this -- this was -- I'm recalling
12:59:04 5 things now. So This was an output of the Q1 2017
6 objectives. The -- this is the work with legal on
7 summarizing their work into collateral. We -- the
8 collateral we built compared ICOs -- it was really
9 more about ICOs than -- ICOs versus Ripple, how
12:59:29 10 they're different.

11 Q. Did -- did this roundtable with the XRP
12 team take place?

13 A. It did.

14 Q. When?

12:59:41 15 A. 2017. In 2017. After this e-mail.

16 Q. Who participated in the roundtable?

17 A. The roundtable was led by [REDACTED]. I
18 assisted with the collateral in presenting some
19 points on the call. The participants included XRP
01:00:05 20 markets teams or the markets team, the xRapid
21 product team, and communications.

22 Q. And as of early March 2000 teen (sic),
23 had Ripple been accurately describing XRP in its
24 public communications with the market?

01:00:37 25 A. Generally, I felt so, yes.

01:00:41 1 Q. Then what was the need for the -- the
2 roundtable?

3 A. We had an in -- we had a growing team.
4 This is the time when we had many new hires coming
01:00:51 5 onboard, particularly on the product and the comms
6 team. So we wanted to ensure they had adequate
7 background on how -- what the company was, how the
8 products work.

9 And we note -- specifically we noted
01:01:06 10 there was incorrect articles in the media that
11 often conflated Ripple and XRP incorrectly. And
12 we wanted to make sure that the comms team
13 understood what was correct and what was incorrect
14 so they weren't inadvertently repeating something
01:01:20 15 that was wrong.

16 MR. HANAUER: Exhibit 45.

17 I'm going to do one more exhibit
18 on this topic and then get to lunch.

19 MR. CERESNEY: Is that okay?

01:01:38 20 THE WITNESS: Definitely.

21 (Whereupon, exhibit is presented
22 and marked SEC Zagone Exhibit RZ-45 for
23 identification.)

24 MR. HANAUER: I tendered the
01:01:57 25 witness an exhibit labeled RZ-45,

01:02:02 1 beginning with a Bates number ending in
2 3483.

3 BY MR. HANAUER:

4 Q. And you're not -- I don't believe you're
01:02:18 5 on -- a recipient of this e-mail, but I want to
6 refer you to the third -- second page of the
7 exhibit, the one ending in 3483 (sic).

8 A. Uh-huh.

9 Q. And do you see how there's a reference
01:02:38 10 at the very bottom to an "XRP team discussion,
11 ICOs, securities and commodities analysis"?

12 MR. HECKER: Sorry. And just to
13 be clear it's Bates 3484.

14 MR. HANAUER: Thank you. Thank
01:02:51 15 you, Counsel. I haven't had my lunchtime
16 coffee.

17 MR. CERESNEY: No worries.

18 BY MR. HANAUER:

19 Q. This XRP team discussion, is that the
01:03:00 20 one that you just talked about when we were
21 discussing Exhibit 9?

22 A. That's correct, yes.

23 Q. And is that the one that Ms. [REDACTED]
24 attended?

01:03:09 25 A. Yes.

01:03:11 1 Q. And then going to the very top of
2 Exhibit 45, the first e-mail there, it says "Ryan
3 put together a strong deck that summarizes the key
4 points."

01:03:28 5 A. Uh-huh.

6 Q. Is -- do you understand that deck to be
7 the collateral you referenced that you prepared
8 for Ms. [REDACTED]?

9 A. Correct.

01:03:43 10 MR. HANAUER: Okay. Let's go off
11 the record.

12 THE VIDEOGRAPHER: Okay. Going
13 off the record at 1:03.

14 (Whereupon, a luncheon recess
01:03:51 15 was taken.)
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01:03:52 1 A F T E R N O O N S E S S I O N
2 THE VIDEOGRAPHER: Back on the
3 record at 1:40 p.m.

4 Go ahead.

01:40:21 5 (Whereupon, exhibit is presented
6 and marked SEC Zagone Exhibit RZ-18 for
7 identification.)

8 MR. HANAUER: I just tendered the
9 witness a document labeled as Exhibit
01:40:27 10 RZ-18 starting with a Bates number ending
11 in 3070.

12 BY MR. HANAUER:

13 Q. And Exhibit RZ-18, a copy of an e-mail
14 sent from [REDACTED] to Mr. Vias, copying you
01:40:50 15 and others, dated April 6, 2018?

16 A. That's correct.

17 Q. And who is Mr. [REDACTED]?

18 A. Mr. [REDACTED] is a counsel at Ripple.

19 Q. And some of the recipients of his e-mail
01:41:08 20 are from [REDACTED].

21 What -- what is that?

22 A. [REDACTED] was a relationship that our markets
23 team maintained. I'm not certain what they do.

24 Q. And do you see how attached to the
01:41:31 25 e-mail to [REDACTED] is what appears to be a letter to

01:41:41 1 the United Kingdom Financial Conduct Authority?

2 A. I can't tell who the letter is for
3 actually, who the letter is to.

4 Q. Right, because that's redacted. But
01:42:13 5 let's start off looking at the attachments line of
6 the e-mail on Exhibit RZ-18.

7 A. Ah, okay. I'm sorry. I see it. UK
8 FCA.

9 MR. HECKER: Just for the record,
01:42:27 10 it looks like there's two attachments:
11 One is "letter(redacted).pdf" and the
12 other is "UK FCA comment letter."

13 Are you representing that the --
14 this attachment is the second attachment?

01:42:44 15 MR. HANAUER: Well, that's a good
16 point. Let's try and clear that up.

17 BY MR. HANAUER:

18 Q. Do you have an understanding of what
19 this letter is that's attached to Mr. [REDACTED]
01:43:00 20 e-mail?

21 MR. WARD: Objection.

22 A. Briefly looking at it, no, I don't.

23 Q. Have you ever seen a letter like that
24 before?

01:43:20 25 A. I do not recall seeing that before.

01:43:22 1 Q. Okay. So I want to ask you some
2 questions about -- about the letter.

3 Can you go to page ending in 072,
4 please? Do you see the section that says "Digital
01:43:46 5 Assets and SEC Guidance"?

6 MR. CERESNEY: Again, Ben, just
7 for the record, the letter appears to
8 be -- it's got page 1 of the letter and
9 then it appears to skip to page 8 and then
01:43:57 10 page 9. So this looks like an excerpt.

11 MR. HANAUER: Right. And I can
12 represent this is exactly how -- you can
13 see from the Bates labeling this is
14 exactly how it was produced to us from --
01:44:07 15 from Ripple.

16 MR. CERESNEY: Yeah. I just want
17 the witness to understand that it's an
18 excerpt.

19 MR. HANAUER: Yes, of course.

01:44:12 20 MR. WARD: And I'll also just
21 note for the record, again, there appears
22 to be another attachment that appears to
23 go along with this.

24 A. So this does not look like the letter to
01:44:25 25 the FCA.

01:44:25 1 Q. Okay. What was the letter to the FCA?

2 A. I can't recall without having seen it.

3 Q. Were -- were you involved in writing the
4 letter -- writing a letter to the FCA in July

01:44:34 5 2017?

6 A. I -- I could have been, but not seeing
7 the letter, I don't know.

8 Q. Okay. So do you see on page 3072 where
9 it says -- you know, that paragraph "Digital
01:44:55 10 Assets and SEC Guidance"?

11 A. Yes.

12 Q. Do -- do you see the reference to a case
13 called SEC v. W.J. Howey Company?

14 A. I see that, yes.

01:45:12 15 Q. Were you aware when you worked at Ripple
16 that the Supreme Court's decision in SEC v. Howey
17 provided a test for determining whether a
18 financial instrument is a security under federal
19 law?

01:45:26 20 MR. CERESNEY: Objection to form.

21 I think that -- it's actually not a test
22 for whether a financial instrument is a
23 security. It's a test for whether the
24 financial instrument is an investment
01:45:35 25 contract under federal law.

01:45:35 1 THE REPORTER: I can't hear you,
2 sir.

3 MR. CERESNEY: It's a test not
4 for whether it's a security but whether a
01:45:42 5 financial instrument is an investment
6 contract under federal law. I assume that
7 your question -- request means the same --
8 similar question, but I want for the
9 record to be clear.

01:45:54 10 BY MR. HANAUER:

11 Q. You can -- you can answer it if you
12 understand.

13 A. I'm aware of Howey.

14 Q. And are you -- when you worked at Rip --
01:46:07 15 when you worked at Ripple, you were aware of
16 Howey, correct?

17 A. Correct. Yes.

18 Q. And when you worked at Ripple, were you
19 aware that the SEC could use the Howey test to
01:46:20 20 determine whether XRP was a security or not?

21 MR. CERESNEY: Objection.

22 And instruct you not to reveal
23 anything about discussions with counsel.
24 So if the only source of information to
01:46:36 25 answer the question is discussions with

01:46:37 1 counsel, then I instruct you not to
2 answer.

3 A. My awareness of Howey came from -- came
4 from counsel.

01:46:48 5 Q. You had mentioned you had read the Dow
6 report?

7 A. The Dow report? Yes, I read the Dow
8 report.

9 Q. And the Dow report contained a
01:46:57 10 discussion of Howey?

11 A. I can't recall what was in that report.

12 Q. Were you aware that the Dow report
13 described certain factors that the SEC considered
14 when determining whether a digital asset is a
01:47:16 15 security?

16 A. I -- I haven't looked at it since I read
17 it. And it's been many years, so I can't recall.

18 Q. Do you remember when you read it while
19 working at Ripple?

01:47:27 20 A. I think I read it when it came out.

21 Q. And that was in July 2017?

22 A. That's the date that it was published.
23 I remember it coming out and it was pretty big
24 news. We read it.

01:47:47 25 Q. And after reading the Dow report, you

01:47:48 1 were aware that the SEC determined that the
2 digital asset described in that report was a
3 security?

4 MR. CERESNEY: Objection to form.

01:47:56 5 A. I can't recall. I read it, but the DAO
6 report was -- DAO is very different from the XRP.

7 Q. And that's based on your own
8 understanding or something you learned from
9 counsel?

01:48:15 10 A. In my -- in my own understanding, very
11 high level understanding of the DAO.

12 Q. Okay. So how -- how is the DAO token
13 different from XRP excluding what you've learned
14 from counsel?

01:48:29 15 A. From my own understanding, XRP wasn't
16 created or didn't run as an organization, this
17 autonomous organization. It was a payment -- we
18 were using it as a payments tool. It's different
19 than the DAO, which was set up as an organization.

01:48:55 20 Q. And when you read the Dow report, were
21 you aware that the SEC could eventually determine
22 that XRP was a security?

23 A. That was not my understanding when
24 reading the DAO report.

01:49:19 25 Q. I'm not asking your understanding of --

01:49:22 1 that you believed the SEC would determine XRP was
2 a security. I guess, were you aware that the SEC
3 could eventually come to that determination?

4 MR. HECKER: Objection; asked and
01:49:35 5 answered.

6 A. Could the SEC examine XRP?
7 Hypothetically, yeah, they could.

8 Q. And going to the -- the bottom of page
9 072 of Exhibit 18, do you see how it references "a
01:50:12 10 legal memorandum from a reputable law firm that
11 supports a finding that XRP is not a security
12 under U.S. law"?

13 A. I see that, yes.

14 Q. Do you have an understanding of what
01:50:25 15 that's referring to?

16 A. Because we got -- our legal team got
17 counsel to examine if XRP is a security and they
18 found that it was not.

19 Q. And have you seen any -- have you seen
01:50:43 20 such a memorandum?

21 A. No, I saw -- from what I recall, I saw
22 summary points of the memorandum, but not the
23 actual memorandum.

24 Q. Do you know what law firm provided that
01:51:05 25 memorandum to Ripple?

01:51:07 1 A. No.

2 (Whereupon, exhibit is presented
3 and marked SEC Zagone Exhibit RZ-15 for
4 identification.)

01:51:50 5 MR. HANAUER: And I tendered the
6 witness an exhibit labeled RZ-15, which
7 begins with a Bates number ending in 47 --
8 or, I'm sorry, ending in 47977.

9 BY MR. HANAUER:

01:52:09 10 Q. And is Exhibit RZ-15 a copy of an e-mail
11 chain ending with an e-mail you sent on October
12 26th, 2017?

13 A. That's correct, yes.

14 Q. And then the next -- do -- do you see
01:52:28 15 the -- there's an e-mail in Exhibit RZ-15 from a
16 [REDACTED] at HiTBTC.com?

17 A. Yes, I see that.

18 Q. What was HitBTC?

19 A. I don't know. It looks like this was
01:52:47 20 forwarded to me from the markets team.

21 Q. Do you see there's a reference to
22 listing XRP on -- the words of the e-mail are "our
23 exchange"?

24 A. Okay. Yep.

01:53:13 25 Q. Does this refresh your recollection

01:53:15 1 whether HI -- HitBTC was a digital asset exchange?

2 A. It would seem so from the wording here,
3 but I -- I don't recall who HitBTC is.

4 Q. And did you -- do you see that H --
01:53:32 5 HitBTC was telling Ripple that it would not list
6 financial instruments classified as securities on
7 its exchange?

8 A. Yes, I see that.

9 Q. And do you see that HitBTC wanted Ripple
01:53:46 10 to certify that XRP could not be classified as a
11 security by the SEC?

12 A. Yes, I see that.

13 Q. And you suggest forwarding this inquiry
14 to Ms. O'Gorman and Ms. [REDACTED]?

01:54:03 15 A. That's correct.

16 Q. How did Ripple end up responding to
17 HitBTC?

18 A. I don't know.

19 Q. Did Ripple certify to HitBTC that XRP
01:54:19 20 could not be classified as a security by the SEC?

21 MR. HECKER: Objection;
22 foundation.

23 A. I don't know how we responded. I
24 directed it to [REDACTED], the general counsel -- I'm
01:54:31 25 sorry, legal team, and to Antoinette O'Gorman, the

01:54:38 1 compliance officer.

2 Q. Do you have an understanding whether
3 HitBTC ultimately allowed Ripple to list XRP on
4 its exchange?

01:54:45 5 A. I don't know.

6 Q. Do you know if Ripple eventually listed
7 XRP on HitBTC exchange?

8 A. I don't know. I can't recall HitBTC.

9 Q. Were there other exchanges that told
01:55:00 10 Ripple that the exchange could not list XRP if XRP
11 could be classified as a security?

12 A. Not that I recall coming to me. There
13 could have been others that came to the markets
14 team.

01:55:17 15 Q. Are you aware of any?

16 A. Not that I recall. Not that came to me.

17 Q. When was Ripple first able to get XRP
18 listed on a major United States exchange?

19 MR. CERESNEY: Objection; form.

01:55:34 20 A. What -- what would you consider major?

21 Q. Well, okay. When was Ripple first able
22 to get XRP listed on a United States digital asset
23 exchange?

24 MR. HECKER: Same objection.

01:55:50 25 MR. CERESNEY: The question was

01:55:51 1 when Ripple was able to get it listed --
2 is that the question? -- or when XRP was
3 listed on a major exchange?

4 MR. HANAUER: That's fair.

01:55:58 5 BY MR. HANAUER:

6 Q. When -- when was XRP first listed on a
7 United States digital asset exchange?

8 A. First that I became aware of a listing
9 was Bitstamp. I'm not sure if that was the Europe
01:56:23 10 or the U.S. subsidiary of Bitstamp. That was the
11 first one and that was in my early days at Ripple
12 in 2014, 2015.

13 Q. And you don't know whether -- when --
14 when was -- when did XRP first get listed on a
01:56:41 15 U.S. exchange, U.S. based exchange?

16 A. Bitstamp could have been a U.S.
17 exchange.

18 MR. HANAUER: Seventeen.

19 (Whereupon, exhibit is presented
01:57:06 20 and marked SEC Zagone Exhibit RZ-17 for
21 identification.)

22 BY MR. HANAUER:

23 Q. And -- and before you look at that
24 document, a couple minutes ago you were telling me
01:57:28 25 about -- I asked you about a law firm memo and you

01:57:30 1 said you had received a summary of that memorandum
2 but not the memorandum itself.

3 A. I recall receiving bullet points that
4 summarized the memorandum, but I don't recall
01:57:40 5 receiving the memorandum.

6 Q. Do you know who else at Ripple received
7 those bullet points?

8 A. I -- I don't.

9 MR. HANAUER: So I tendered the
01:57:58 10 witness a document labeled RZ-17,
11 beginning with the Bates number ending in
12 1610.

13 Q. And is Exhibit RZ-17 a copy of an e-mail
14 chain ending with an e-mail you sent dated April
01:58:18 15 5th, 2018?

16 A. That's correct, yes.

17 Q. And do you see how the -- the e-mail
18 chain begins with Mr. [REDACTED] forwarding you an
19 article he had received from the MIT Tech Review?

01:59:01 20 A. I can't tell if I received this from
21 [REDACTED] or if I was copied in from [REDACTED].

22 Q. But at -- but at some point, you -- in
23 the chain, you received an MIT Technology Review?

24 A. That's correct. At some point I -- I
01:59:16 25 received this.

01:59:22 1 Q. And I refer you to the page of the
2 exhibit, the third page of the exhibit, the one
3 with the Bates number ending in 612.

4 Do you see the paragraph that says --
01:59:40 5 begins "Also, hold on, is XRP a security?"

6 A. I see that, yes.

7 Q. And after that it says "So far, Ripple
8 has failed to land its token, called XRP, on a
9 major U.S. exchange"?

01:59:54 10 A. I see that statement.

11 Q. Was that statement accurate in April of
12 2018?

13 A. I'm not certain. I can't recall
14 when there was broader listings. I would say the
02:00:12 15 statement's inaccurate because they're saying that
16 Ripple failed to do this, but for me, the
17 exchanges that I was aware of, you can openly list
18 XRP. You don't have to come to Ripple.

19 Q. But Ripple did -- I think you had talked
02:00:25 20 earlier about how -- how Ripple made efforts to
21 get XRP listed on exchanges?

22 MR. HECKER: Objection to form.

23 A. Ripple made efforts to ensure --
24 Ripple's work was focused on ensuring we had
02:00:47 25 enough liquidity to operate xRapid in a country.

02:00:55 1 That ties back to the earlier slide we looked at
2 with the stair steps.

3 So that could -- yeah, the work we were
4 doing was around ensuring there's a liquidity
02:01:14 5 ecosystem to support there's xRapid. We had
6 enough liquidity to make an xRapid payment.

7 Q. Right. And one of the things Ripple did
8 in its efforts to create more liquidity was to
9 attempt to get XRP listed on more exchanges?

02:01:35 10 A. For -- for countries that I recall, it
11 was already listed. So the work that we were
12 doing was connecting xRapid to that exchange where
13 it was listed already so that the exchange could
14 process an xRapid instruction and pay out. I'm
02:01:53 15 not -- XRP was pretty openly listed in many
16 countries because there was already a regulatory
17 framework in place, particularly the ones we were
18 looking at: Philippines, Mexico, UK.

19 Q. In 2018, was Ripple openly listed on
02:02:11 20 United States exchanges?

21 MR. CERESNEY: Objection; asked
22 and answered.

23 A. I believe so, yes.

24 Q. So did you disagree with the article's
02:02:27 25 contention that Ripple had failed to land its --

02:02:29 1 had failed to land XRP on a major U.S. exchange?

2 A. I -- I do disagree with that. I bought
3 it from -- previous to this on a -- on a U.S.
4 exchange.

02:02:44 5 Q. Which one?

6 A. I bought on -- I had an account on
7 Bitstamp and I bought through Binan -- not
8 Binance. [REDACTED].

9 Q. When was that?

02:02:57 10 A. 2017.

11 Q. And do you see how the article mentions
12 the SEC is still trying to determine which
13 cryptocurrencies meet the definition of a security
14 and which do not?

02:03:17 15 A. I see that, yes.

16 Q. And in April 2018 were you aware that
17 the SEC could eventually determine to consider XRP
18 as a security?

19 A. I wasn't in a place to really judge what
02:03:35 20 risk we had with the SEC. That was -- that was on
21 legal to decide. It was ultimately legal.

22 Q. But you understood there was some risk
23 the SEC could eventually determine that the XRP
24 was a security?

02:03:51 25 MR. HECKER: Object. Objection

02:03:54 1 to form.

2 MR. CERESNEY: And also instruct
3 the witness to answer separate and apart
4 from discussions with counsel.

02:04:08 5 A. I -- I understood our company's position
6 was we felt it was not a security.

7 Is there a hypothetical risk in there
8 that SEC could? I -- I wouldn't be able to say.
9 I don't know. I did not know enough to have an
02:04:28 10 informed view on that.

11 Q. Did the SEC ever tell Ripple that XRP
12 was not a security?

13 A. I never communicated with the SEC.

14 MR. WARD: Objection to form.

02:04:41 15 Q. Were you aware of anyone from the SEC
16 telling that to anyone at Ripple?

17 A. I wasn't aware.

18 Q. And then going to the first page of
19 Exhibit 17, in your e-mail you write "The silence
02:05:08 20 from the company has created a void that others
21 are filling with whatever info they can find."

22 A. Uh-huh.

23 Q. "I've raised to marcomm the need for a
24 brief paper (two to three pages) that gives a
02:05:24 25 high-level summary of XRP's history and

02:05:26 1 classification. I feel we need to put a stake in
2 the ground. Currently there is not one, resulting
3 in a lot of incorrect info."

4 A. I see that, yes.

02:05:45 5 Q. So are you writing that Ripple needs to
6 do a better job conveying the message that XRP is
7 not a security?

8 MR. HECKER: Objection to form.

9 A. I'm writing that the company had not
02:05:58 10 been -- not engaged publicly on history of XRP and
11 its classification. And I felt we needed to
12 because the market was starting to create
13 incorrect information about that. So incorrect
14 information on how XRP worked, a conflation
02:06:14 15 between XRP and Ripple. We saw a lot of incorrect
16 press reports and I thought the -- my view was the
17 company should be more proactive and leaning
18 forward to address that.

19 Q. Any of these issues related to XRP's
02:06:30 20 classification as a security?

21 A. Its history and how it worked and I put
22 in here a classification.

23 Q. Did marcomm -- what is marcomm?

24 A. Marcomm was shorthand for the marketing
02:06:54 25 and communications team.

02:06:55 1 Q. And did marcomm ever produce a -- a
2 paper that gave a high-level summary of XRP's
3 history and classification?

4 A. I don't recall them producing a paper,
02:07:08 5 but they did become more -- more vocal on our
6 views.

7 Q. And why did it matter to Ripple what the
8 market thought about XRP as it related to the
9 issue of whether XRP was a security or not?

02:07:30 10 MR. HECKER: Objection to form.

11 A. Yeah, it mattered to me because the --
12 there was incorrect press reports coming about,
13 which -- and I saw a risk that there's more
14 incorrect information, the less likely a bank
02:07:46 15 would accurately understand what we were trying to
16 do, how the product worked, and engage with us.

17 So I was interested in correcting what
18 we saw as incorrect reports to ensure we had
19 accurate information in the public.

02:08:02 20 Q. Why were banks interested in the
21 classification issue of XRP being classified as a
22 security or not?

23 A. If they were going to use a product --
24 if a bank was going to use a product that --
02:08:19 25 xRapid -- that leverages XRP, in my view they

02:08:22 1 would do their due diligence on that technology to
2 ensure that it met all the regulatory
3 requirements, et cetera. Banks want to know the
4 rules of the road before they use that tech --

02:08:32 5 THE REPORTER: Repeat the last
6 part.

7 THE WITNESS: I'm going too fast.
8 Sorry. Sorry.

9 A. The -- a bank would want to ensure that
02:08:36 10 they know the rules of the road before they engage
11 that technology.

12 So it was important to me that they had
13 accurate information.

14 Q. And -- and I -- why would it be
02:08:49 15 important to a bank whether XRP was classified as
16 a security or not?

17 A. For me, it was important to a bank to
18 accurately understand what they were using, the
19 technology they were using, under their -- under
02:09:02 20 their due diligence policy.

21 Q. So did marcomm end up preparing that
22 two- to three-page paper you were discussing in
23 Exhibit 17?

24 A. I can't recall if we produced a paper,
02:09:20 25 but we did become more vocal on our view.

02:09:43 1 Q. The law firm memorandum I had asked you
2 about, about XRP's classification as a security,
3 did Ripple ever share that memorandum with a bank?

4 MR. HECKER: Objection;
02:09:54 5 foundation.

6 A. I don't know.

7 Q. Did you ever share it with the bank?

8 A. I don't recall ever sharing it with a
9 bank.

02:10:35 10 (Whereupon, exhibit is presented
11 and marked SEC Zagone Exhibit RZ-36 for
12 identification.)

13 MR. HANAUER: I've tendered the
14 witness --

02:10:57 15 MR. HECKER: Sorry, just give me
16 one second. The documents are not
17 sequentially numbered. Is that intended?
18 I want to make sure. It goes from 728 to
19 393.

02:11:10 20 MR. HANAUER: Can we go off the
21 record?

22 THE VIDEOGRAPHER: Going off the
23 record at 2:11.

24 (Pause)

02:12:29 25 THE VIDEOGRAPHER: We are back on

02:12:30 1 the record, 2:12.

2 BY MR. HANAUER:

3 Q. So is Exhibit 36, RZ-36, an e-mail you
4 and others received from [REDACTED] on May 12th,
02:12:50 5 2018?

6 A. Yes, that's correct.

7 Q. And who is Ms. [REDACTED]?

8 A. Ms. [REDACTED] worked in the communications
9 team.

02:12:59 10 Q. Was she part of the marcomm team?

11 A. Exactly.

12 Q. And do you see she's writing about
13 Blockchain Week New York City?

14 A. Yes.

02:13:11 15 Q. What was Blockchain Week New York City?

16 A. Blockchain Week New York City was an
17 event that spanned a week based here in New York
18 where there were events around blockchain and
19 crypto that Ripple participated in.

02:13:24 20 Q. Who were the -- some of the types of
21 people that attended the event?

22 A. What time was this? This was 2018.

23 From what I recall, these types of events -- I

24 don't recall this one specifically, but Blockchain

02:13:47 25 Week New York typically skews more towards the

02:13:52 1 bank crowds and banks' consultants, developers
2 building on blockchain and crypto technology.

3 Q. Did members of the press attend these
4 events?

02:14:03 5 A. Sometimes they did, yes.

6 Q. Did regulators attend events like this?

7 A. Potentially, yes. I can't recall for
8 this specific one if there were or not. For --
9 for many of these types of conferences or events,
02:14:22 10 they were open to regulators.

11 Q. So do you see how in Ms. [REDACTED] e-mail,
12 she says "In case you missed our kickoff, remember
13 we have three goals in mind for events this week."

14 Did you attend the kickoff that she was
02:14:46 15 referring to?

16 A. I don't believe I did, no.

17 Q. And do you see the first bullet point or
18 the first goal Ms. [REDACTED] references is to "Further
19 clarify the distinction between Ripple and XRP"?

02:15:00 20 A. Yes, I see that.

21 Q. And why was -- what is your
22 understanding of why that was a goal of Ripple?

23 A. To ensure that -- to ensure more
24 accuracy in the market. What I recall seeing at
02:15:13 25 this time were either press reports or, more

02:15:17 1 broadly, it was like commentators on Twitter.
2 Crypto Twitter was kind of a growing thing that
3 were incorrectly talking around the technology.
4 It was Ripple, but also some other assets, too.

02:15:30 5 So there was an effort across the industry to
6 better inform people on the assets and how they
7 worked, including what Ripple was doing here.

8 Q. So why was it important to Ripple that
9 the distinction between Ripple and XRP be
02:15:48 10 clarified?

11 MR. HECKER: Objection to form.

12 You can answer.

13 A. It was important for us to clarify
14 Ripple and XRP so people had an accurate
02:15:56 15 understanding. So they knew -- they knew Ripple
16 and our products and they -- there was a
17 differentiation between XRP, that open-source
18 platform. Particularly at a time when there was
19 other development happening on XRP and other
02:16:09 20 platforms. A variety of use cases starting to
21 form in 2018, starting to see the industry expand.

22 Q. Did it relate to the security
23 classification issue?

24 A. From what I recall from this, it's more
02:16:25 25 about just being accurate, ensuring that the

02:16:27 1 market understood XRP versus Ripple.

2 Q. Was there a market perception that XRP
3 and Ripple were synonymous?

4 MR. HECKER: Objection to form.

02:16:47 5 A. I think back in that day, I did feel
6 that there was confusion in the market on Ripple
7 versus XRP and the difference between the two.

8 Q. And what was your understanding of how
9 that impacted the classification issue?

02:17:08 10 MR. HECKER: Objection.

11 Q. Security classification issue.

12 MR. CERESNEY: Same objection.

13 You'd have to exclude from your
14 understanding information you got from
02:17:18 15 counsel.

16 A. My approach to this, and even raising it
17 previously, it was more around ensuring that the
18 market accurately understood our products. I
19 didn't -- I felt the need to ensure people knew
02:17:32 20 who we were, Ripple, we're a software company,
21 versus XRP, the technology we use in our product.
22 It was just like ensuring that they accurately
23 understood what -- what they were talking about.

24 I -- I grew concerned and -- and
02:17:49 25 frustrated when there was just incorrect press

02:17:52 1 reports conflating XRP and Ripple that hindered
2 our ability to sell to banks. They just didn't
3 understand what we were doing.

4 Q. I guess why did that -- why did that
02:18:05 5 make a difference?

6 MR. WARD: Objection to form.

7 A. Our goal was to build a payment network.
8 And if a bank couldn't understand what we were
9 doing or how the product worked, that wouldn't
02:18:17 10 enable sales or new partners.

11 Q. And -- and I see where you're coming
12 from there, but I guess in -- in explaining to a
13 bank how xRapid worked or xCurrent worked, why is
14 it important for the bank to know that Ripple is
02:18:33 15 different than XRP?

16 MR. HECKER: Objection to form.

17 MR. WARD: Objection.

18 MR. CERESNEY: Asked and answered
19 a few times.

02:18:39 20 THE WITNESS: Answer?

21 MR. HECKER: You can answer.

22 A. Going through a vendor due diligence
23 review with a bank, they wanted to know exactly
24 what they're working with, how that technology
02:18:52 25 works, what their risks are, particularly around

02:18:57 1 operational resiliency and cyber security. XRP is
2 one piece of the product. They want to -- that's
3 a key part of that discussion.

4 So this is all -- my work here and the
02:19:09 5 approach here was all around ensuring the bank and
6 the market had an accurate understanding of this
7 technology.

8 Q. And then I want to -- do you see how at
9 the bottom of the first page of Ms. [REDACTED]
02:19:24 10 e-mail, there's a section called "Important
11 Reminders"?

12 A. I see that.

13 Q. Then if can you flip to the second page,
14 please.

02:19:37 15 You see how Ms. [REDACTED] is asking the
16 e-mail recipients to study key messages to Fast
17 Facts and FAQs?

18 A. Yes, I see that.

19 Q. And there's a link to a document?

02:19:53 20 A. I see that.

21 Q. And then on the page beginning -- or
22 with the Bates number ending in 5393.

23 A. Yep.

24 Q. Is that the key messages, FAQs and Fast
02:20:12 25 Facts that Ms. [REDACTED] is referring to?

02:20:14 1 A. It appears so, yes.

2 MR. HECKER: Objection.

3 MR. WARD: Objection.

4 MR. CERESNEY: Just for the
02:20:17 5 record, Ben, we produced this document
6 from Google Docs. I can't necessarily
7 represent that it was the exact version
8 that was linked. We think it's the
9 document, but it could be -- I mean, it
02:20:28 10 says updated May 8th, so, yeah, it's the
11 right time frame, but we can't represent
12 it's exactly that version.

13 MR. HANAUER: Okay.

14 BY MR. HANAUER:

02:20:39 15 Q. To the best of your understanding,
16 the -- the key messages, FAQ and Fast Facts
17 document is the one that was linked to Ms. [REDACTED]
18 e-mail?

19 A. The titles are the same from the
02:20:49 20 documents in the link, so it looks like it's the
21 same.

22 Q. Who prepared the key messages, FAQs and
23 Fast Facts documents?

24 A. This looks like it was prepared by our
02:21:13 25 marketing team. The marketing team served as

02:21:18 1 the -- they synthesized news across the
2 organization.

3 Q. And the key messages, FAQ, Fast Fact
4 document, that contains the messaging that Ripple
02:21:32 5 wanted to convey to the attendees at Blockchain
6 Week?

7 A. That's what it appears from the e-mail.

8 Q. And do you see the section that says
9 "What are your products"?

02:21:50 10 A. Yes, I see that.

11 Q. And it lists xCurrent, xRapid and xVia?

12 A. Uh-huh.

13 Q. So of those three products, was xRapid
14 the only one that used XRP?

02:22:15 15 A. I believe so. I forgot about xVia until
16 seeing this. But xRapid was the one that was
17 predominantly focused on XRP.

18 Q. How did xVia use XRP?

19 A. I forgot about xVia until I had saw this
02:22:30 20 just now. So I don't know if it did or not. I
21 know xRapid was the one predominantly focused on
22 XRP.

23 Q. And then do you see how the second
24 bullet point under xRapid, it says "Pilot tests
02:22:48 25 are ongoing with [REDACTED], MoneyGram" and

02:22:51 1 some other companies?

2 A. Yes, I see that.

3 Q. In May 2018 had Ripple deployed xRapid
4 for commercial use or was it still in pilot
02:23:02 5 testing phase?

6 MR. HECKER: Objection to form.

7 A. This doc says they're in pilot testing
8 as of May 2018.

9 Q. And then can you go to page 5395? You
02:23:40 10 see the section that says "Who Uses XRP Today?"

11 A. Yes, I see that.

12 Q. And the first bullet point says "Several
13 financial institutions are piloting XRP as a
14 liquidity solution"?

02:23:55 15 A. Yes, I see that.

16 Q. That refers to xRapid?

17 A. Yes.

18 Q. And then in parentheses, it says
19 "(important to note: The product is still in
02:24:07 20 beta)"?

21 A. Yes.

22 Q. What did that mean, that xRapid was
23 "still in beta"?

24 A. Beta is a version of the software that
02:24:16 25 you use for testing and piloting before a full

02:24:20 1 launch. So this is -- in our evolution of the
2 product, beta would be sort of like final test
3 version before the alpha version, which alpha is
4 full launch.

02:24:34 5 Q. And do you see on the page before that
6 at the bottom, the question -- or the section "How
7 Does Ripple Make Money?"

8 A. Uh-huh.

9 Q. And there are two bullet points. One
02:24:50 10 talks about software sales and one talks about XRP
11 sales?

12 A. Yes.

13 Q. In May 2018 did Ripple generate revenues
14 other than by selling software and selling XRP?

02:25:06 15 A. Other than by selling software and XRP?
16 Not that I'm aware of.

17 Q. In May '18, May 2018, were Ripple's
18 software sales revenues sufficient to pay for its
19 expenses and operating costs?

02:25:24 20 MR. WARD: Objection to form.

21 A. I don't have any certain information on
22 that to be able to say yes or no.

23 Q. How did Ripple's software sales revenues
24 compare to its XRP sales revenues in May 2018?

02:25:52 25 MR. HECKER: Objection;

02:25:53 1 foundation, asked and answered.

2 A. I don't know what the software sales
3 number totaled to be able to make a comparison.

4 Q. Do you have any general understanding?

02:26:03 5 MR. HECKER: Same objections.

6 A. I don't know what the software and sales
7 revenue was.

8 Q. Can you go to page 5398, please? Do you
9 see the section that says "SEC/Security
02:26:37 10 Conversation"?

11 A. Yes, I do.

12 Q. And then there's some -- some bullet
13 points under that?

14 A. Yes, I see that.

02:26:45 15 Q. Why was it important for Ripple to
16 include this SEC/security conversation section in
17 its briefing materials for Blockchain Week NYC?

18 MR. HECKER: Objection;
19 foundation.

02:27:02 20 A. Given the media reports that we saw
21 circulating at the time, some we -- we previously
22 saw, people were asking the company about it.
23 This is going to be a public -- public conference
24 that employees are attending. So we put -- the
02:27:21 25 marketing team insert a section here to give the

02:27:25 1 employees attending the event some guidance on how
2 to respond to that accurately.

3 Q. Respond to the issue about whether the
4 XRP is a security?

02:27:36 5 A. To respond to questions that someone
6 might ask about X -- XRP's classification.

7 Q. And do you see that the first bullet
8 point in that section says "Ultimately, this will
9 be up to the SEC to decide"?

02:27:54 10 A. Yes, I see it.

11 Q. And that's the message Ripple wanted to
12 give to market participants?

13 A. That -- that's the first talking point
14 here.

02:28:03 15 Q. And Ripple understood that the SEC could
16 ultimately determine that it did consider XRP to
17 be a security?

18 MR. HECKER: Objection;
19 foundation.

02:28:24 20 A. I can't speak for what marketing or --
21 or legal or whoever wrote this ultimately
22 understood. Here we're saying it's up to the SEC
23 to decide. They're the regulator.

24 Q. And you shared that understanding,
02:28:35 25 right?

02:28:36 1 MR. HECKER: Same objections.

2 A. I was following the guidance that was
3 received in the document. I'm -- I'm not a
4 securities expert, so I followed legal's advice.

02:28:51 5 Q. Well, this document is not from legal,
6 correct? It's from marketing?

7 A. Yes, from my understanding. So my
8 understanding was informed by legal, that they got
9 it from legal.

02:29:16 10 Q. And do you see the second bullet point
11 where it says "It's making headlines in recent
12 weeks, but it's not a new question"?

13 A. Yes, I see that.

14 Q. What's your understanding of what Ripple
02:29:29 15 marketing was trying to convey there?

16 A. It looks like "it's" is referring to the
17 classification of XRP.

18 Q. In May 2018 were you aware that
19 Ripple -- or let me start over.

02:29:54 20 In May of 2018, were you aware that the
21 SEC's enforcement division had begun an
22 investigation into Ripple?

23 MR. CERESNEY: Objection; form.

24 A. I became aware that the SEC engaged
02:30:07 25 Ripple at the time that I got --

02:30:09 1 MR. CERESNEY: Actually, hold on
2 a second. Are you aware of this
3 information other than through discussions
4 with counsel?

02:30:14 5 THE WITNESS: No.

6 MR. TENREIRO: Andrew, can I just
7 clarify something on the record because
8 this has come up twice today. So are you
9 going to instruct him not to answer if
02:30:27 10 counsel just relayed information, for
11 example, "the SEC said to me," and pass
12 that along? Is that -- that the
13 instruction?

14 MR. CERESNEY: I'm going to
02:30:33 15 instruct him not to answer on discussions
16 with counsel. That's what I'm instructing
17 him on.

18 MR. TENREIRO: Okay. Including
19 if it's just passing on information?

02:30:40 20 MR. CERESNEY: I'm not going
21 to -- I'm going to instruct him not to
22 convey discussions with counsel.

23 MR. TENREIRO: Okay. Thank you.

24 A. I got that notification from counsel, so
02:30:52 25 that's...

02:30:55 1 MR. HANAUER: And I'm not trying
2 to get into substance here.

3 Q. At some point couns -- Ripple's counsel
4 advised you there was an SEC investigation into
02:31:04 5 Ripple?

6 A. At some point, yes.

7 Q. When did you first learn that?

8 A. I learned that when I received a
9 document hold request, a document hold order.

02:31:33 10 Q. Do you have any approximation of when
11 that occurred?

12 A. I believe that was in 2018.

13 Q. Did you have any responsibilities
14 related to the SEC investigation?

02:31:51 15 A. No.

16 Q. And once you became aware that the SEC's
17 enforcement division was investigating Ripple in
18 2018, were you aware that that investigation could
19 ultimately result in an enforcement action against
02:32:12 20 Ripple?

21 MR. CERESNEY: Yeah, I'm going to
22 instruct the witness to only answer that
23 question with information he received from
24 somebody other than counsel.

02:32:22 25 A. I have no other information.

02:32:26 1 Q. Just taking a step back from this case,
2 this -- this lawsuit, this investigation --

3 A. Uh-huh.

4 Q. -- are you aware that the SEC's
02:32:37 5 enforcement division conducts nonpublic
6 investigations?

7 A. Yes.

8 MR. CERESNEY: Objection.

9 A. I did know.

02:32:49 10 Q. And are you aware that at the
11 conclusions of those investigations, the SEC's
12 enforcement division can recommend to the SEC to
13 take enforcement action?

14 A. Generally speaking, yes.

02:33:18 15 Q. Beyond your conversations with counsel,
16 who else -- beyond things you learned from your
17 counsel, who else at Ripple was aware of the SEC
18 investigation?

19 A. Oh, I -- you would have to ask our legal
02:33:36 20 team. They were notified.

21 Q. Did you --

22 A. I don't know.

23 Q. Did you ever talk about the
24 investigation with any other Ripple employees?

02:33:46 25 A. I didn't -- I didn't ask who they were

02:33:48 1 informing about the case.

2 Q. Different question.

3 Did you ever discuss the fact that there
4 was an SEC investigation with other Ripple
02:33:58 5 employees?

6 A. Yes.

7 Q. Who?

8 A. Primarily legal. I was reporting in to
9 legal in this time. So that was my team.

02:34:17 10 Q. What do you mean, you were reporting in
11 to legal?

12 A. The org structure, at this point I had
13 moved from reporting to Antoinette to reporting to
14 the general counsel.

02:34:31 15 Q. What -- when did that take place?

16 A. After Antoinette left.

17 Q. And when did she leave?

18 A. I believe she left in 2018.

19 Q. Did you ever discuss the investigation
02:34:45 20 with -- the SEC's investigation with
21 Mr. Garlinghouse?

22 A. Not the investigation specifically, no.

23 Q. Did you ever discuss the SEC's
24 investigation with Mr. Larsen?

02:35:02 25 A. No.

02:35:07 1 Q. And going back to Exhibit 36, that same
2 page we were looking at, 5398 (sic), do you see
3 the bullet point, "Is Ripple buying XRP's way onto
4 exchanges?

02:35:27 5 A. Yes, I see that point.

6 Q. And what's your understanding of what
7 that talking point is about?

8 A. There was talk in the general market
9 about ICOs and coins paying exchanges to list
02:35:45 10 them. And so this is a question targeted or
11 aiming at Ripple saying did Ripple buy XRP's way
12 onto an exchange.

13 Q. And did Ripple pay exchanges to list
14 XRP?

02:36:00 15 A. Not that I'm aware of, no.

16 Q. Is there a bullet point here that says
17 Ripple is not paying exchanges to list XRP?

18 A. There's not a bullet in this document at
19 this time, no.

02:36:38 20 Q. Did Ripple provide incentives to ex --
21 to exchanges to list X -- to list XRP?

22 MR. HECKER: Objection to form;
23 foundation.

24 A. I don't know.

02:36:59 25 MR. HANAUER: We've been going

02:36:59 1 about an hour. Do you mind taking a
2 five-minute break?

3 THE WITNESS: Sure.

4 THE VIDEOGRAPHER: Going off the
02:37:04 5 record at 2:37.

6 (Whereupon, a recess is taken.)

7 THE VIDEOGRAPHER: Okay. Back on
8 the record at 2:49.

9 BY MR. HANAUER:

02:49:46 10 Q. So, Mr. Zagone, before we went off the
11 record, do you remember us talking about in the --
12 the talking points you and other Ripple employees
13 got in -- in advance of the Blockchain Week New
14 York?

02:50:00 15 A. I do.

16 Q. And do you remember we were talking
17 about one of the talking points was on the SEC
18 security classification issue, the bullet point
19 was "Ultimately, it would be up to the SEC to
02:50:15 20 decide"?

21 A. I do.

22 Q. Did you ever convey that message when
23 you were speaking publicly about Ripple or XR --
24 XRP?

02:50:26 25 A. I could have, yes. It's possible that I

02:50:28 1 did.

2 Q. How often did you convey that message?

3 MR. WARD: Objection.

4 A. I -- I spoke publicly maybe 20 times a
02:50:43 5 year, 20, 30 times a year, using our company
6 talking points, so that it's possible that I used
7 that talking point in a public speech.

8 Q. How often did -- when you were speaking
9 publicly about Ripple and XRP did the SEC
02:51:04 10 securities classification issue come up?

11 A. It was not a frequent question I was
12 asked on my panels, given the focus of my panels
13 were typically around payment infrastructure. So
14 much more around payment focus.

02:51:29 15 So it wouldn't -- wasn't frequently. If
16 it came up, I would be discussing Ripple's view,
17 to be held by Ripple that it was not a security.

18 Q. And you also conveyed the message that
19 ultimately it would be up to the SEC to decide?

02:51:45 20 MR. WARD: Objection.

21 A. I could have given it's in our -- it was
22 in our talking point guide here.

23 Q. So did you -- the -- the talking points
24 that were sent in advance of the Blockchain New
02:52:11 25 York event in May of 2018 --

02:52:12 1 A. Uh-huh.

2 Q. -- did you use those talking points or
3 study them in advance of your public speaking
4 about Ripple or XRP?

02:52:24 5 MR. HECKER: Objection to form.

6 A. I didn't speak at this event, I don't
7 recall. I don't believe I spoke at this event. I
8 was just attending. So I -- I would -- I would
9 have reviewed these talking points ahead of
02:52:40 10 attending the event.

11 Q. And I guess my question is beyond the
12 Blockchain New York City -- Blockchain Week New
13 York City --

14 A. Uh-huh.

02:52:47 15 Q. -- did you consult these talking points
16 in advance of your other public speaking
17 engagements?

18 MR. HECKER: And -- and just so
19 the record's clear, do you mean this May
02:52:55 20 '18 version of the document?

21 MR. HANAUER: Correct.

22 A. I don't know if I referenced this
23 document in -- outside of this Blockchain Week.

24 Q. Did you have a -- like a standard or a
02:53:11 25 form talking points that you used before your

02:53:14 1 speaking engagements?

2 A. Before a speaking engagement, our
3 marcomm team would provide, like, a backgrounder
4 on the event. It generally had FAQs similar to
02:53:27 5 this, context on the event and who the other
6 panelists were.

7 Q. And the talking points you would receive
8 by marcomm in advance of your public speaking
9 events, did those talking points also include a
02:53:43 10 section about the SEC security classification
11 issue?

12 A. It -- it would have depended if we
13 expected that topic to come up or not.

14 Q. And I take it that if Ripple expected
02:53:58 15 the securities classification issue to come up,
16 your talking points would include a section
17 similar to what was in the -- the May Blockchain
18 Week talking points?

19 MR. HECKER: Objection to form.

02:54:13 20 A. It would have been a -- if we expected
21 the topic to come up, there would have been a
22 section on talking points around it. To the
23 degree they matched these talking points or not, I
24 don't know. It depended on the time.

02:54:25 25 Q. Were they often similar?

02:54:32 1 MR. CERESNEY: Objection; form.

2 A. They were often similar.

3 (Whereupon, exhibit is presented
4 and marked SEC Zagone Exhibit RZ-37 for
02:54:50 5 identification.)

6 MR. HANAUER: I'm tendering the
7 witness a document that's been labeled
8 Exhibit RZ-37, beginning with the Bates
9 number ending 5781.

02:55:08 10 BY MR. HANAUER:

11 Q. And is Exhibit 37 a copy of an e-mail
12 you received from [REDACTED] on June 5th,
13 2018?

14 A. That's correct, yes.

02:55:18 15 Q. And Ms. [REDACTED] she worked at [REDACTED]
16 [REDACTED]?

17 A. Yes. That's right.

18 Q. And do you see the subject line, "Ripple
19 media tracking" and then there's the date?

02:55:32 20 A. Yes.

21 Q. Did [REDACTED] frequently provide
22 media-tracking e-mails to Ripple personnel?

23 A. Generally every morning we would receive
24 one.

02:55:47 25 Q. And who besides you at Ripple would --

02:55:50 1 did you understand received these media-tracking
2 e-mails from [REDACTED]?

3 A. I understood that the public
4 spokespeople received these e-mails and that if
02:56:02 5 you -- if you wanted to receive it, you could
6 request it. It was more open than just the
7 spokespeople.

8 THE REPORTER: Repeat that. I'm
9 sorry.

02:56:10 10 A. It was more open than just the
11 spokespeople.

12 Q. Do you have an understanding whether
13 Mr. Garlinghouse received the media-tracking
14 e-mails from [REDACTED]?

02:56:17 15 MR. HECKER: Objection.

16 A. I don't know.

17 Q. Did you consider him a public
18 spokesperson for Ripple?

19 A. Yes.

02:56:22 20 Q. And do you see the first paragraph of
21 Ms. [REDACTED] e-mail? She writes "Additionally,
22 the SEC appointed a senior advisor for digital
23 assets and innovation in an effort to better
24 regulate the market?

02:56:47 25 A. Yes, I see that.

02:56:56 1 Q. And do you see on the page ending in
2 783, after the heading "Crypto Chief"?

3 A. Yes, I see it.

4 Q. And -- and there's a -- a paragraph
02:57:12 5 about Valerie Szczepanik?

6 A. Yes.

7 Q. And did you have any interactions with
8 Ms. Szczepanik?

9 A. No.

02:57:23 10 Q. What was your understanding of her
11 position at the SEC?

12 A. That she would be leading an effort to
13 explore digital assets within the SEC.

14 Q. Are you aware of anyone with Ripple ever
02:57:44 15 communicating with Ms. Szczepanik?

16 A. I believe people from Ripple spoke with
17 Ms. Szczepanik, yes.

18 Q. And who was that?

19 A. I imagine now that I can -- our legal
02:58:08 20 team would have. It's my understanding our legal
21 team.

22 Q. Anyone else?

23 A. Not that I know for certain.

24 Q. And whoever at Ripple communicated with
02:58:30 25 Ms. Szczepanik, did they ever -- are you aware of

02:58:33 1 them ever asking her whether the SEC considered
2 XRP a security?

3 MR. CERESNEY: Let me just
4 instruct you not to discuss discussions
02:58:43 5 you may have had with counsel.

6 A. I would have only learned that through
7 counsel.

8 Q. Did Ripple have the opportunity, if it
9 wanted to, to ask Ms. Szczepanik whether the SEC
02:59:05 10 considered XRP to be a security?

11 MR. WARD: Objection.

12 MR. CERESNEY: Same -- same
13 instruction. If you -- if you know about
14 what happened in the meetings with
02:59:13 15 counsel, same instructions.

16 A. Yeah, I don't know.

17 Q. And then can I ask you to take a look at
18 the first page of Exhibit 37?

19 A. Uh-huh.

02:59:28 20 Q. Do you see the heading "Ripple
21 Representatives"?

22 A. Yes.

23 Q. And then there's a reference to a class
24 action lawsuit?

02:59:49 25 A. Yes, I see that.

02:59:50 1 Q. When was Ripple first sued for allegedly
2 violating the federal securities laws?

3 MR. WARD: Objection.

4 A. Just looking at the date of this e-mail
03:00:05 5 and who's representing us, I conclude it was in
6 2018.

7 Q. And did you have an understanding of how
8 the result in that lawsuit could impact the SEC
9 securities classification issue?

03:00:25 10 MR. HECKER: Objection;
11 foundation and same instruction about your
12 understanding about the legal consequences
13 of the civil litigation or the SEC
14 investigation.

03:00:39 15 A. I didn't. At this point, my role was
16 focused on xRapid and our bank clients. This --
17 these are issues handled by our legal team.

18 Q. Did you have any involvement in the
19 private class action litigation?

03:00:52 20 A. No.

21 (Whereupon, exhibit is presented
22 and marked SEC Zagone Exhibit RZ-38 for
23 identification.)

24 MR. HANAUER: I just tendered the
03:02:01 25 witness a document labeled as Exhibit

03:02:02 1 RZ-38, beginning with a Bates number
2 ending in 5756.

3 Excuse me.

4 BY MR. HANAUER:

03:02:16 5 Q. And is Exhibit 38 a copy of an e-mail
6 you received from Ms. [REDACTED] on June 8th, 2018?

7 A. Yes, it is.

8 Q. And do you see Ms. [REDACTED] is advising
9 Ripple that it faces a second lawsuit regarding

03:03:01 10 XRP?

11 A. Something you said?

12 THE WITNESS: Are we okay to go?

13 MR. HECKER: Yeah, go ahead.

14 THE WITNESS: Okay.

03:03:19 15 A. I see [REDACTED] sharing a news clipping
16 about another lawsuit that was filed against XR --
17 against Ripple.

18 Q. And do you see in that same paragraph,
19 Ms. [REDACTED] writes "Widespread doubt surrounding
03:03:45 20 cryptocurrency regulation has hindered trading, as
21 lawmakers prepare to crack down on the space"?

22 A. I see that.

23 Q. Was Ripple expecting a crackdown in the
24 digital asset space by the SEC in June 2018?

03:04:12 25 MR. WARD: Objection to form.

03:04:22 1 A. Can you repeat the question, please?

2 Q. Yeah.

3 In June 2018 was Ripple expecting or
4 anticipating a crackdown in the digital asset
03:04:33 5 space by the SEC?

6 MR. WARD: Same objection.

7 A. I wouldn't have used the term
8 "crackdown" in the space. There was uncertainty
9 in the market on what the regulatory framework for
03:04:47 10 digital assets was in the U.S. There was --
11 especially compared to other countries. Other
12 countries had explicitly named the classification
13 and the assets that fell into each. We -- we
14 hadn't seen that done yet in the U.S.

03:05:03 15 So at this point, in the U.S., companies
16 were coming to their own opinion, but it wasn't
17 opinions that were from a regulatory agency that
18 we saw happening in other -- other countries.

19 Q. So in other countries outside the United
03:05:21 20 States, regulators were stating that XRP was not a
21 security in their jurisdictions?

22 A. That's correct, yes.

23 Q. Did any regulators ever state that in
24 the United States as it related to XRP?

03:05:40 25 A. XRP was given a classification in some

03:05:46 1 cases on what it was -- what it was viewed by
2 different regulators. The FinCEN settlement
3 referring to it as currency, though we had not
4 seen explicit guidance from the SEC.

03:05:59 5 Q. And did the FinCEN settlement mention
6 the SEC?

7 A. I don't recall.

8 Q. Was the SEC a party to the FinCEN
9 settlement?

03:06:08 10 A. It was not part of the FinCEN
11 settlement.

12 Q. Did you have an understanding of whether
13 SEC public statements were reducing trading
14 volumes in XRP?

03:06:42 15 A. I didn't have an understanding to be
16 able to say if that was accurate or not.

17 MR. HANAUER: Thirty-nine.

18 (Whereupon, exhibit is presented
19 and marked SEC Zagone Exhibit RZ-39 for
03:07:06 20 identification.)

21 MR. HANAUER: So I'm tendering
22 the witness a document labeled Exhibit
23 RZ-39, beginning with a Bates number
24 ending in 9079 (sic).

03:07:47 25 BY MR. HANAUER:

03:07:48 1 Q. And is Exhibit RZ-39 a copy of an e-mail
2 chain ending with an e-mail from [REDACTED] to
3 you on June 13th, 2018?

4 A. That's correct, yes.

03:08:03 5 Q. Who is Mr. [REDACTED]?

6 A. [REDACTED] was head of our public
7 relations team.

8 Q. And can I refer you to the second page
9 of Exhibit 39, a June 13th, 2018 e-mail from [REDACTED]

03:08:28 10 [REDACTED]?

11 A. Okay.

12 Q. I hope -- I hope I'm saying her name
13 right. But who is Ms. or Mr. [REDACTED]?

14 A. Ms. [REDACTED] was our delegate to manage
03:08:42 15 our work with our Japanese joint venture.

16 Q. And do you see how she's writing about
17 an individual named [REDACTED]?

18 A. Yes.

19 Q. Who is [REDACTED]?

03:08:59 20 A. [REDACTED] is [REDACTED], he worked for
21 me. He was head of our regulatory relations in
22 Asia-Pacific.

23 Q. He reported to you?

24 A. That's correct.

03:09:10 25 Q. And it looks like he was speaking on a

03:09:14 1 panel in Japan?

2 A. Give me a second to -- to review.

3 (Pause)

4 A. Okay.

03:10:51 5 Q. So is [REDACTED] -- am I saying that right,

6 [REDACTED]?

7 A. [REDACTED] (pronunciation).

8 Q. [REDACTED].

9 [REDACTED] was going to be calling in to a --

03:11:02 10 a meeting with Japan's -- what's FSA?

11 A. FSA is the regulator in -- the financial
12 services regulator in Japan.

13 Q. And it looks like the FSA was going to
14 be having a meeting in June 2018?

03:11:19 15 A. They held a conference on crypto assets.

16 Q. And [REDACTED] was going to be calling in to
17 that meeting to speak on Ripple's behalf?

18 A. Correct.

19 Q. And why was he speaking on that panel?

03:11:37 20 A. I can't recall why. I assume we had
21 been invited to speak and he took it.

22 Q. And Ms. [REDACTED] is advising --
23 advising you and [REDACTED] that Gary Gensler was going
24 to be speaking on the panel?

03:11:59 25 A. That's correct, yes.

03:12:00 1 Q. And at the time, Mr. Gensler was a
2 professor at MIT that studied digital assets?

3 A. That's correct.

4 Q. And this is the same Gary Gensler that's
03:12:13 5 currently the chairman of the SEC?

6 A. That's correct.

7 Q. And Ms. [REDACTED] is advising you and
8 Sagar that Mr. Gensler could be speaking about XRP
9 and Ripple?

03:12:33 10 A. That's correct.

11 Q. And Ms. [REDACTED] is actually sharing
12 with you and [REDACTED] a slide she understands
13 Mr. Gensler would present at the meeting?

14 A. That's right.

03:12:54 15 Q. And it was -- did you understand in June
16 2018 that Mr. Gensler had voiced his opinion that
17 XRP was a security subject to SEC regulation?

18 A. Yes, I had seen Gensler speak publicly
19 before on that view.

03:13:11 20 Q. And you heard him state his belief that
21 XRP was a security?

22 A. I read an article that he was quoted in
23 citing that when he joined MIT Media Labs.

24 Q. Have you ever attended any presentations
03:13:32 25 by Mr. -- where Mr. Gensler spoke?

03:13:43 1 A. I don't believe so.

2 Q. So on the second page of Exhibit 39, you
3 write "[REDACTED]" and I prepped today in anticipation
4 of Gensler being anti-Ripple"?

03:13:56 5 A. Uh-huh. Yes.

6 Q. So you helped [REDACTED] prepare to address
7 any statements Mr. Gensler would make about XRP
8 being a security?

9 A. I prepped [REDACTED] on correcting points
03:14:18 10 that we had seen Mr. Gensler use before that we
11 felt were inaccurate.

12 Q. What did you tell [REDACTED]?

13 A. I can't recall specifics aside from
14 noting that we knew Gary was, in this language
03:14:40 15 here, "anti-Ripple." We had seen an article that
16 he -- that he was featured in when he joined MIT
17 Media Labs that was critical of Ripple.

18 So we knew the tone -- my -- my prep
19 with [REDACTED] was the tone of this is going to be
03:15:00 20 unfriendly to the Ripple position. That's context
21 to help him prep so he's not blindsided by it.

22 Q. And did you give him talking points
23 similar to the ones you -- you received in advance
24 of speaking engagements?

03:15:17 25 MR. HECKER: Objection to form.

03:15:22 1 A. No, I didn't. That's why on -- on this
2 e-mail, I ask the marcomm team to share those
3 points with [REDACTED].

4 Q. And then further up in the -- the e-mail
03:15:32 5 chain, or actually the first e-mail in the -- or
6 the top e-mail in Exhibit 39, Mr. [REDACTED]
7 actually does e-mail talking points to [REDACTED].

8 A. Yes.

9 Q. And these talking points are similar to
03:15:50 10 the ones that were sent out in advance of the
11 Blockchain New York Week meeting in May 2018?

12 MR. HECKER: Objection to form.

13 A. They look similar.

14 Q. And for the SEC classification issue,
03:16:16 15 the first bullet point that was sent to Sagar was
16 "Ultimately, this will be up to the SEC to
17 decide"?

18 A. That's correct.

19 Q. And that was messaging that you wanted
03:16:31 20 Sagar to convey at the conference?

21 MR. HECKER: Objection to form.

22 A. That's messaging that our marketing team
23 provided to [REDACTED].

24 Q. And did you agree with that messaging?

03:16:42 25 A. I was relying on the messaging from our

03:16:44 1 company.

2 Q. What's the Fortune article referenced in
3 Exhibit 39?

4 A. Could you point me to where that is?

03:16:59 5 Q. Yeah. So it's actually in --

6 A. Oh, I see the top one.

7 Q. -- in two places. It first appeared --
8 I first see it on the second page where you're
9 actually writing about prepping [REDACTED] on how best
03:17:10 10 to address Mr. Gensler and the Fortune article.

11 A. I -- I can't recall. That might be the
12 article that Gary Gensler is featured in about
13 joining the MIT Media Lab where he was negative
14 about Ripple.

03:17:38 15 I also see "Fortune" at the top of the
16 chain here.

17 MR. HANAUER: Forty.

18 (Whereupon, exhibit is presented
19 and marked SEC Zagone Exhibit RZ-40 for
03:17:46 20 identification.)

21 MR. HANAUER: I'm tendering the
22 witness a document that's been labeled
23 Exhibit RZ-40 beginning with a Bates
24 number ending in 7079.

03:18:13 25 BY MR. HANAUER:

03:18:26 1 Q. Is Exhibit RZ-40 a copy of an e-mail
2 chain ending in an e-mail Monica Long sent to
3 [REDACTED], copying you and others, dated June 16th,
4 2018? Actually, strike that.

03:18:46 5 Exhibit RZ-40, that's a copy of an
6 e-mail [REDACTED] sent to Ms. Long, copying you and
7 others, dated June 16th, 2018?

8 A. Yes, that's correct.

9 Q. And first I just want to ask you about
03:19:08 10 the second e-mail in the chain on Exhibit 40.

11 A. Uh-huh.

12 Q. And that's Ms. Long providing additional
13 talking points that [REDACTED] should use going into
14 the Japan panel that [REDACTED] was speaking on?

03:19:29 15 A. Give me one moment.

16 (Pause)

17 A. Okay. Could you repeat the question,
18 please?

19 Q. So for the second e-mail in the chain on
03:20:46 20 Exhibit RZ-40, Ms. Long is providing [REDACTED]
21 additional talking points that he should use at
22 the Japanese regulatory presentation where [REDACTED]
23 and Mr. Gensler would be speaking.

24 A. That looks like it, yes.

03:21:07 25 Q. And then the top e-mail on Exhibit 40,

03:21:11 1 Sagar is actually briefing other folks at Ripple
2 about the Japanese regulatory panel presentation
3 he did with Mr. Gensler?

4 A. That's correct.

03:21:25 5 Q. And [REDACTED] wrote that on that -- at that
6 panel, Mr. Gensler expressed his belief that XRP
7 was a security?

8 A. Yes. He expressed -- Mr. Gensler
9 expressed a view that XRP and Ether were
03:21:45 10 securities.

11 THE REPORTER: That XRP? I can't
12 hear you.

13 A. And Ether were securities.

14 Q. And where does [REDACTED] write that
03:22:16 15 Mr. Gensler spoke about Ether being a security?

16 A. Mr. Gensler had previously made a public
17 view that XRP and Ether were a security before
18 this conference. [REDACTED] here notes that [REDACTED]
19 reminded the audience that Mr. Gensler's initial
03:22:46 20 view of Ether had since been proven wrong by the
21 SEC.

22 Q. So did [REDACTED] write anywhere that at the
23 presentation, Mr. Gensler said Ether was a
24 security?

03:23:03 25 A. He doesn't write that here, but

03:23:05 1 Mr. Gensler had been public about that before the
2 speech.

3 Q. Okay. And [REDACTED] wrote that after
4 Mr. Gensler talked, [REDACTED] conveyed to the Japanese
03:23:22 5 regulatory panel that only the SEC could decide
6 whether XRP was a security?

7 A. [REDACTED] e-mail says that he rebutted
8 Gensler's view and stressed that only the U.S. SEC
9 could decide whether XRP or any other digital
03:23:42 10 asset was a security.

11 Q. And that was a talking point that Ripple
12 wanted its public spokespeople to convey?

13 A. That was a talking point from the
14 communications guide.

03:24:14 15 MR. HANAUER: Forty-one.

16 (Whereupon, exhibit is presented
17 and marked SEC Zagone Exhibit RZ-41 for
18 identification.)

19 MR. HANAUER: So I tendered the
03:24:40 20 witness a document labeled Exhibit RZ-41,
21 which begins with a Bates number ending in
22 3272.

23 BY MR. HANAUER:

24 Q. Is Exhibit RZ-41 a copy of an e-mail
03:25:00 25 chain ending with an e-mail Mr. [REDACTED] sent to you on

03:25:08 1 October 17th, 2018?

2 A. That's correct, yes. 2018.

3 Q. 2018.

4 A. Uh-huh.

03:25:18 5 Q. Thank you.

6 And the second e-mail in Exhibit -- from
7 the top in Exhibit RZ-41 is an e-mail that you
8 wrote to Mr. [REDACTED] on October 16th of 2018?

9 A. Yep.

03:25:34 10 Q. And Mr. [REDACTED] was going to be having
11 breakfast the next day with the new head of
12 Britain's Financial Conduct Authority?

13 A. That's correct.

14 Q. And you were trying to provide Mr. [REDACTED]
03:25:54 15 with some information he should know in advance of
16 that meeting?

17 A. That's right.

18 Q. And I want to refer you on the second
19 page of Exhibit 41, the last bullet point. You
03:26:19 20 start by talking about the security classification
21 issue in the United Kingdom?

22 A. Yes.

23 Q. And then at the end you write "In the
24 U.S., the rules require interpretation, so there's
03:26:32 25 uncertainty on the treatment today"?

03:26:35 1 A. Yes.

2 Q. What were you referring to there?

3 A. In the UK, the UK regulator, the FCA,
4 had specifically said XRP is not a security by
03:26:45 5 their definition of a security. The U.S.
6 regulators, the SEC, had not made an explicit
7 statement. So I was saying that there's some
8 interpretation that's needed. The companies
9 themselves would have to figure out if a digital
03:27:00 10 asset was a security or not since it's not
11 explicit to them.

12 Q. And as of October 2018, had the SEC made
13 any statements about XRP?

14 A. Not that I'm aware.

03:27:24 15 Q. Did Ripple take any steps to obtain
16 clarity from the SEC on the issue of XRP's
17 classification as a security?

18 MR. WARD: Objection.

19 MR. CERESNEY: Objection. Both
03:27:36 20 asked and answered and I think to the
21 extent he has any information about that
22 topic, it would come from counsel.

23 A. I have nothing further to add.

24 Q. So independent of what you -- your
03:27:54 25 communications with counsel, do you have any

03:27:55 1 understanding of whether -- what Ripple did to
2 obtain clarity from the SEC on the issue of XRP
3 classifications?

4 MR. HECKER: Same objection.

03:28:07 5 A. That topic was owned by the legal team,
6 not me.

7 MR. HANAUER: Exhibit 42.

8 (Whereupon, exhibit is presented
9 and marked SEC Zagone Exhibit RZ-42 for
03:28:46 10 identification.)

11 MR. HANAUER: I tendered the
12 witness a document labeled as Exhibit
13 RZ-42, which begins with a Bates number
14 ending in 5225.

03:29:34 15 BY MR. HANAUER:

16 Q. And is Exhibit RZ-42 a copy of an e-mail
17 chain ending with an e-mail from [REDACTED]
18 to Mr. Garlinghouse, copying you, on November 3rd,
19 2018?

03:29:49 20 A. Yes, that's right.

21 Q. And I want to refer you to the third
22 page of Exhibit 42.

23 Do you see how there's an e-mail from
24 [REDACTED] at [REDACTED] to you?

03:30:16 25 A. Yes.

03:30:20 1 Q. And she's referencing a panel discussion
2 at Georgetown University?

3 A. That's right.

4 Q. And did you speak on a panel at
03:30:29 5 Georgetown University in November 2018?

6 A. I did.

7 Q. And who was Ms. [REDACTED]?

8 A. She was a reporter from [REDACTED].

9 Q. How did you know her?

03:30:45 10 A. Just from around the industry. She was
11 writing about crypto and blockchain.

12 Q. Had you previously given interviews to
13 her?

14 A. Yes.

03:30:56 15 Q. And Ms. [REDACTED] was advising you that
16 Mr. Hinman was supposed to speak at the Georgetown
17 panel before you were supposed to speak?

18 A. That's right.

19 Q. And did you understand that Mr. Hinman
03:31:11 20 was the director of the SEC's Division of
21 Corporation Finance?

22 A. I did.

23 Q. And Ms. [REDACTED] writes "Everyone's
24 waiting on an SEC pronouncement" regard -- "Re:
03:31:28 25 Classification of XRP"?

03:31:30 1 A. Yep, I see that.

2 Q. Was Ripple expecting a pronouncement
3 from Mr. Hinman at the November Georgetown event?

4 A. Not that I was aware of. I forwarded it
03:31:48 5 to our head of communications and Brad for more
6 context.

7 Q. And who was the head of communications?

8 A. [REDACTED].

9 Q. And in November 2018, were you aware
03:32:07 10 that earlier in the year, Mr. Hinman had given a
11 speech where he stated his belief that Ether was
12 not currently being offered or sold as a security?

13 A. I was, yes.

14 Q. Had you read the speech?

03:32:23 15 A. Yes.

16 Q. Did you attend the speech when it was
17 given?

18 A. No.

19 Q. In Mr. Hinman's speech I just referred
03:32:33 20 to, did he mention XRP?

21 A. Not that I recall.

22 Q. So I want to now refer you to the second
23 page of Exhibit 42.

24 A. Uh-huh.

03:32:49 25 Q. And it looks like Mr. Garlinghouse is

03:32:53 1 giving you some guidance regarding the Georgetown
2 panel?

3 A. Yes.

4 Q. And he's instructing you not to engage
03:33:04 5 Mr. Hinman directly?

6 A. Yes, I see that.

7 Q. And he's -- Mr. Garlinghouse is
8 instructing you to use Ripple's most up-to-date
9 talking points?

03:33:18 10 A. Yes.

11 Q. And did those talking points contain a
12 section on the SEC securities classification
13 issue?

14 A. I assume they did. I don't have a copy
03:33:36 15 of this.

16 Q. And we -- remember, we had looked at a
17 few previous talking points and e-mails where it
18 contains guidance from Ripple for Ripple
19 spokespersons to say it's up to the SEC to decide
03:33:54 20 whether XRP is a security?

21 A. That's correct.

22 Q. And it looks like Mr. Garlinghouse is
23 now advising you on November 2nd, 2018, not to use
24 that talking point anymore?

03:34:09 25 A. Yes, I see that.

03:34:12 1 Q. Do you have an understanding of why
2 Mr. Garlinghouse wanted you to not use that
3 talking point at the panel Mr. Hinman was going to
4 be speaking on?

03:34:23 5 MR. WARD: Objection to form.

6 A. I don't have the full context of why
7 he's giving that instruction.

8 Q. Did you have an -- any understanding?

9 A. No.

03:34:35 10 Q. Did you agree with him?

11 A. I followed the instructions I got.

12 Q. Well, did you think it was a good
13 instruction not to use the talking point about the
14 SEC ultimately deciding?

03:34:50 15 MR. HECKER: Objection to form.

16 A. I didn't have the context or -- or
17 expertise to say if that was good or not, so I was
18 just trusting what I was getting from leadership.

19 Q. Then if you can go to the first page of
03:35:14 20 Exhibit 42, please? And do you see how in the
21 November 3rd, 2018, 11:43 a.m. e-mail, Ms. [REDACTED]
22 writes about the possibility of having an attendee
23 at the conference directly asking Mr. Hinman
24 whether he considered XRP to be a security?

03:35:51 25 A. Yes, I see that.

03:35:56 1 Q. And then you respond by telling her that
2 Ripple is going to have a consultant from [REDACTED]
3 [REDACTED] at the event?

4 A. Yes.

03:36:05 5 Q. What was [REDACTED]?

6 A. [REDACTED] is a consulting firm focused
7 on FinTech based in D.C.

8 Q. And what were they doing at the
9 Georgetown conference?

03:36:20 10 A. I -- I assume attending it given the
11 Georgetown conference was about FinTech. It was
12 relevant to them and their other clients.

13 Q. And you said you ended up attending the
14 conference, right?

03:36:36 15 A. I -- I spoke at this one, yeah.

16 Q. And was it like a panel discussion where
17 a group of presenters were up on stage or was it
18 like more of a seriatim, speech after speech?

19 A. It was in a lecture hall, multiple
03:36:48 20 stories, and there was a -- a panel or a dais at
21 the front. Hinman spoke at a podium and then my
22 panel was four chairs, four or five chairs, on the
23 panel.

24 Q. You were up on the podium, too?

03:37:02 25 A. Up on the platform, yeah.

03:37:04 1 Q. On the platform.

2 And did -- was there opportunity for
3 attendees at the panel to ask questions of the
4 speakers?

03:37:15 5 A. There was for my session.

6 Q. What about Mr. Hinman's?

7 A. I can't recall. I was back stage. I
8 saw part of him and -- and then I went back stage
9 to prep for my panel. So I only saw the opening
03:37:27 10 bit of his.

11 Q. Oh, so you were not on the same panel as
12 his?

13 A. No. Hinman gave a speech and then after
14 his speech, I was on a panel.

03:37:35 15 Q. Okay. Did you end up speaking with
16 Mr. Hinman at the conference or at the panel?

17 A. I did not.

18 Q. And did anyone ask -- well, Mr. Hinman's
19 speech at the conference, did he address XRP?

03:37:57 20 A. I don't believe he did. I was back
21 stage prepping with my panel, so I didn't hear his
22 speech as he was giving it.

23 Q. Did anyone ever tell you that Mr. Hinman
24 mentioned XRP at the Georgetown conference?

03:38:09 25 A. No.

03:38:09 1 Q. And did any -- did this lobby -- I'm
2 sorry.

3 Did this consultant from [REDACTED], did
4 they ask the question of Mr. Hinman whether he
03:38:24 5 considered XRP to be a security?

6 A. I don't think we said actually engaged
7 [REDACTED] to ask that question and I don't believe
8 they did.

9 Q. And given all of this uncertainty about
03:38:42 10 the SEC's approach to XRP, why didn't either you
11 or Ripple's consultant ask Mr. Hinman at the
12 conference?

13 MR. HECKER: Objection to form.

14 A. I -- I don't know if Hinman was even
03:38:52 15 taking questions that day. My panel took
16 questions. I don't know about his. His was a
17 speech, formal keynote speech, so I don't know if
18 he took questions or not.

19 Q. Did you ever try and, like, seek him out
03:39:04 20 while you guys were both at the facility?

21 A. No. I was back stage in the green room.
22 I gave my speech and then left the event.

23 Q. Did anyone from Ripple ever ask
24 Mr. Hinman whether he considered XRP to be a
03:39:23 25 security?

03:39:24 1 MR. HECKER: Objection to form.
2 MR. CERESNEY: And also --
3 MR. HECKER: Same instruction
4 regarding discussions with counsel.
03:39:31 5 A. Outside of counsel, did anyone ever?
6 I -- I don't know. Not that I was aware.
7 Q. Were you ever on any other panels or
8 meetings where you were there and Mr. Hinman was
9 there?
03:40:00 10 A. Not that I remember.
11 Q. Have you ever met him personally?
12 A. No.
13 MR. HANAUER: Five.
14 (Whereupon, exhibit is presented
03:40:53 15 and marked SEC Zagone Exhibit RZ-5 for
16 identification.)
17 MR. HANAUER: I've tendered the
18 witness a document labeled Exhibit RZ-5,
19 beginning with a Bates number ending in
03:41:01 20 0623.
21 BY MR. HANAUER:
22 Q. Is Exhibit RZ-5 a copy of an e-mail
23 chain ending in an e-mail you sent to [REDACTED]
24 [REDACTED] on January 25th, 2017?
03:41:19 25 A. That's right.

03:41:24 1 Q. And who is Mr. [REDACTED]?

2 A. Mr. [REDACTED] was on the business
3 development team.

4 Q. At Ripple?

03:41:29 5 A. At Ripple.

6 Q. And do you see Mr. [REDACTED] writes you in
7 the second e-mail from the top of the chain, "Have
8 any central banks said we would be comfortable
9 with digital assets if they were used for XYZ
03:41:50 10 transactions?"

11 A. I see that, yes.

12 Q. And then you write -- respond
13 "Unfortunately, no. In fact, several regulators
14 have said we are fine with everything except XRP"?

03:42:04 15 A. I see that.

16 Q. And who were the regulators that told
17 you that they were fine with everything except
18 XRP?

19 A. Yeah. So the context of this discussion
03:42:16 20 is around Ripple being approved as a vendor,
21 Ripple and our products being approved as a vendor
22 for the financial institutions to use. So our
23 bank clients.

24 The -- in 2017 the com -- we only did
03:42:34 25 that type of regulatory engagement for a

03:42:37 1 commercial deal. So, like, when a bank was
2 signing up to integrate and use one of our
3 products.

4 By this time in 2017, January 2017, the
03:42:45 5 focus of that engagement was xCurrent, the
6 connectivity solution that does not use XRP. So
7 the regulatory engagement for approvals had all
8 been on xCurrent, not xRapid at this point.

9 That's -- given that, that's why it says
03:43:03 10 we have not had approval on XRP, meaning xRapid.

11 Q. Oh, so when you're referring to XRP in
12 the first sentence on Exhibit 5, when you write
13 "XRP," you -- you wanted that term to mean xRapid?

14 A. Yeah. I used XRP in shorthand or
03:43:26 15 generally here to talk about the liquidity
16 solution since we didn't really have a name for it
17 aside from -- Project Xenon was the code name we
18 used for the trial with the banks. And then we
19 had a variety of other names we used. So I was
03:43:42 20 short-handing to say XRP meaning xRapid.

21 Q. And who were the regulators that had
22 told -- conveyed to Ripple that they were fine
23 with everything except for xRapid?

24 A. At this point, we would have engaged --
03:44:09 25 2017. We would have engaged Spain, Mexico, U.S.,

03:44:19 1 Japan, and UK, roughly in that regard, around
2 using X -- a bank using xCurrent, the connectivity
3 solution.

4 So I'm saying in this e-mail, xCurrent
03:44:34 5 regulators have been fine with. We hadn't
6 introduced xRapid with -- which uses XRP into
7 those conversations, so we don't have a -- a
8 definitive, like, thumbs up from a regulator that
9 a bank can use that yet. We hadn't brought that
03:44:46 10 into the discussion.

11 Q. Did any regulators ever tell -- tell
12 Ripple that they were not okay with XRP, the
13 digital asset, as opposed to XRP meaning xRapid?

14 A. No. So this is, like, the -- the
03:45:11 15 context of this was very specific to xRapid
16 approved as a vendor to a financial institution.

17 Q. Did any regulators ever express concerns
18 to Ripple about XRP, the digital asset?

19 A. Not that I'm aware.

03:45:35 20 Q. What was --

21 A. What was the questions? For me to say
22 there were "concerns," I would -- wouldn't use
23 that word.

24 Q. What was Xenon?

03:45:54 25 A. Xenon was a -- one of the pilots that we

03:45:56 1 ran with financial institutions using XRP and
2 xRapid. So that was -- we had maybe 10 or 12
3 banks that were piloting what became xRapid.

4 Q. And tell me about the regulatory
03:46:09 5 uncertainties that came out of that pilot program.

6 A. So when -- an output of the project was
7 a list of areas to further invest in. One was
8 around regulatory uncertainties. That covered, as
9 I recall, things around the ability for a bank to
03:46:34 10 use a crypto asset, a virtual currency, within a
11 payment flow. That was a primary one that our
12 takeaway was, like, is this okay to -- for a bank
13 to use, meaning things around disaster recovery,
14 financial stability, operational resiliency.
03:46:54 15 Your -- your typical vendor questions.

16 Q. And was the lack of regulatory approval
17 the reasons that -- the reason that banks did not
18 want to adopt xRapid?

19 MR. HECKER: Objection to form.

03:47:20 20 A. That's not how I would describe it.
21 We -- we ran a pilot to learn. One of the
22 learnings we had was we need to get more clear on
23 what risk regulators see when they use this type
24 of technology and how we mitigate those risks
03:47:35 25 within the solution. So that was one of the

03:47:37 1 places we -- it was a lesson from that -- that
2 work.

3 Q. And did any United States regulators
4 ever express a -- a view to Ripple on xRapid?

03:47:55 5 A. Yes.

6 Q. Could you tell me about that?

7 MR. HECKER: And, sorry, just the
8 same caveat we've been giving you to the
9 extent the discussion is involving
03:48:04 10 counsel.

11 A. We briefed the OCC annually, the OCC
12 being one of the banking regulators. We briefed
13 them annually from 2017 or 2018 through the end of
14 my time there on both xCurrent and xRapid. So
03:48:25 15 there was a -- general education meetings. This
16 is -- the pilots are running, this is what we're
17 learning.

18 So there was a series of those meetings.
19 We had similar meetings with the Federal Reserve
03:48:36 20 that were more educational in context.

21 The second type of work we did around
22 xRapid was client specific. So in the last nine
23 months of my time at Ripple, I worked on a deal
24 with MoneyGram. MoneyGram was using xRapid. My
03:48:55 25 head of the public announcement, part of my role

03:48:59 1 was to brief MoneyGram's regulators ahead of time,
2 introducing Ripple as a vendor to MoneyGram,
3 letting them know what the product would be, what
4 the flow of funds would be, and to show that we
03:49:11 5 were proactively thinking around mitigating risk
6 in the arrangement.

7 We briefed the Texas, New York, and I
8 believe California regulators. We -- I also
9 briefed the Conference of State Bank Supervisors.
03:49:33 10 The feedback from those -- those briefings was
11 that they had no issues and that we were clear to
12 proceed.

13 Q. And did the SEC ever give Ripple a clear
14 to proceed message?

03:49:53 15 A. The focus of this was around vendor due
16 diligence for the bank, for MoneyGram, the
17 financial institution. So we were focused on
18 the -- MoneyGram's financial regulators.

19 Q. Right. And I -- I just want to make a
03:50:07 20 clear record on this. You had listed some
21 regulators that had given Ripple the, I think your
22 words were, "clear to proceed" on xRapid.

23 Did the SEC ever give such a message or
24 approval Ripple regarding xRapid?

03:50:25 25 MR. HECKER: Objection to form,

03:50:26 1 foundation.

2 MR. CERESNEY: Objection.

3 A. I wasn't aware of any guidance from the
4 SEC to Ripple.

03:50:42 5 MR. HANAUER: Eleven.

6 MR. HECKER: Can we take a --

7 THE WITNESS: I'm okay.

8 MR. CERESNEY: You good? You
9 know what? Why don't we take five

03:51:13 10 minutes?

11 MR. HANAUER: Okay.

12 MR. CERESNEY: Off the record.

13 THE VIDEOGRAPHER: Going off the
14 record, 3:51.

03:51:17 15 (Whereupon, a recess is taken.)

16 THE VIDEOGRAPHER: Okay. We're
17 back on the record at 4:03.

18 (Whereupon, exhibit is presented
19 and marked SEC Zagone Exhibit RZ-11 for
04:03:35 20 identification.)

21 BY MR. HANAUER:

22 Q. Mr. Zagone, do you have Exhibit 11 in
23 front of you?

24 A. I do.

04:03:44 25 Q. And Exhibit 11 is a copy of an e-mail

04:03:47 1 that you sent to various Ripple personnel on May
2 5th, 2017?

3 A. That's right.

4 Q. And -- and the folks you were e-mailing,
04:04:01 5 was that Ripple's senior leadership?

6 A. Yes, it was.

7 Q. And you attached to your -- your e-mail
8 a document called "XRP Overview for Regulators"?

9 A. Yes.

04:04:22 10 Q. Okay. And that's one of the documents
11 we've looked at earlier today?

12 A. Yes.

13 Q. And you write in your e-mail at the top
14 of Exhibit 11, under the -- after the "XRP" in
04:04:38 15 bold, "I've been busy driving XRP use case
16 discussions. The narrative in the attached white
17 paper is working very well (except in the United
18 States)."

19 What did you mean when you wrote that
04:04:55 20 you were "busy driving XRP use case discussions"?

21 A. The use case of how digital assets could
22 be used to connect fiat currencies more
23 efficiently.

24 Q. And when you talk about XRP there, are
04:05:19 25 you using that interchangeably with the product

04:05:22 1 that would become xRapid?

2 A. Correct, yes.

3 Q. And what did you mean when you wrote
4 "The narrative in the attached white paper is
04:05:36 5 working very well (except in the U.S.)"?

6 A. I can't recall that, what my logic was
7 there.

8 THE WITNESS: Do you need me to
9 repeat that?

04:06:00 10 THE REPORTER: No.

11 A. I can't recall that and I don't --
12 there's not much context around it.

13 Q. Who were you -- well, first of all, why
14 were you presenting use case discussions to the
04:06:19 15 United -- in the United States?

16 A. So this is early 2017. The -- this was
17 still an early day for crypto, particularly as it
18 was being adopted in institutional use cases.

19 So we -- we had a lot of effort -- I'd
04:06:43 20 say most of the market conversations, including
21 the regulatory conversations, were focused on the
22 consumer use of crypto. It can be used instead of
23 the U.S. dollar or fiat currencies. So consumers
24 using, say, bitcoin to buy their coffee. We
04:07:03 25 wanted to ensure that one con -- the market

04:07:14 1 understood there were other use cases beyond
2 replacing fiat currencies, specifically Ripple's
3 XRP to connect fiat currencies more efficiently
4 and that regulation reflected that.

04:07:34 5 Q. And were -- in May 2017 were you having
6 difficulty communicating those use cases in the
7 United States?

8 MR. WARD: Objection to form.

9 A. According to this e-mail, I was.

04:07:56 10 Q. And who were you presenting those use
11 case discussions to in the United States?

12 A. I can't tell if the clarification,
13 except in the U.S., if that was client-driven
14 to -- to banks or if that was meant to regulators.
04:08:19 15 I -- I can't recall.

16 Q. Did you consider regulators to be your
17 clients?

18 A. We did have some central banks that also
19 served as regulators that were our clients, yes.

04:08:39 20 Q. Were U.S. banks Ripple's clients?

21 A. U.S. banks were Ripple's clients, yes.

22 Q. What U.S. banks were Ripple's clients?

23 A. We had relationships with [REDACTED]
24 [REDACTED] who served on our global payments steering
04:09:08 25 group. That was the largest of our U.S. bank

04:09:14 1 clients. We also had an engagement with [REDACTED]. I
2 also worked with [REDACTED], U.S.

3 Q. And what products or services did Ripple
4 sell to these U.S. banks?

04:09:34 5 A. Is this specific to the 2017 time frame
6 or -- or more broadly?

7 Q. More broadly.

8 A. So we sold -- and I have to say I would
9 add MoneyGram to that list as well. That came
04:09:43 10 later.

11 We were working with those -- all those
12 clients on xCurrent and xRapid.

13 Q. And did Ripple ever sell xCurrent to --
14 to a U.S. bank -- or, I'm sorry. Did Ripple ever
04:09:57 15 sell xRapid to a U.S. bank?

16 A. We sold xRapid, our largest partner for
17 xRapid was MoneyGram. Not a bank, but a financial
18 institution.

19 Q. So which banks did Ripple sell xRapid to
04:10:13 20 in the United States?

21 A. When I was leaving -- in my time at
22 Ripple, first in connectivity, which that was the
23 primary problem for banks. We talked about that
24 earlier today. So we sold them xCurrent first so
04:10:29 25 they could have connectivity. After they

04:10:32 1 optimized that, they can add xRapid for liquidity.

2 MoneyGram and -- and money transmitters
3 don't have a connectivity problem, so they
4 basically fast track straight to the liquidity

04:10:44 5 solution, xRapid. So that's why there's a
6 differentiation in how we deployed our product to
7 be at a bank versus a nonbank.

8 Q. So I just -- are money transmitters
9 banks?

04:10:55 10 A. No. They're financial institutions.

11 Q. So what banks did Ripple sell xRapid to?

12 A. In my time there, we had not sold xRapid
13 to banks yet. They were still deploying the
14 xCurrent solution, which is the prerequisite.

04:11:46 15 (Whereupon, exhibit is presented
16 and marked SEC Zagone Exhibit RZ-16 for
17 identification.)

18 MR. HANAUER: I've tendered the
19 witness a document labeled Exhibit RZ-16,
04:11:50 20 beginning with the Bates number ending in
21 1049.

22 BY MR. HANAUER:

23 Q. What is Exhibit 16?

24 A. This is a regulatory -- a strategy plan
04:12:22 25 for my division at Ripple.

04:12:26 1 Q. Did you -- what was your role in
2 preparing it?

3 A. I created the steps.

4 Q. And what does "GTM countries" mean?

04:12:36 5 A. GTM stands for go to market. So that's
6 where we were targeting launching our products.

7 Q. And can I refer you to page 1058?

8 What -- what do these tables represent?

9 A. These tables are a click-through showing
04:13:19 10 a timeline of our regulatory engagement for our
11 two products, xCurrent, and here XRP I'm
12 short-handing for xRapid.

13 Q. Okay. So on these tables in Exhibit 16,
14 XRP meant xRapid?

04:13:38 15 A. Correct.

16 Q. And when you refer to engagement status,
17 that means regulatory engagement status?

18 A. Yes.

19 Q. And for the United States, what
04:13:56 20 regulators were being covered by this -- what
21 would be referred to in this -- these tables?

22 A. So for the U.S. -- I can't really tell
23 the colors we used here.

24 So this was focused on enabling a bank
04:14:18 25 or financial institution to go in to leverage our

04:14:23 1 product.

2 So the regulators that we would speak to
3 were the bank provincial regulators, so Federal
4 Reserve, FDIC, OCC, and the States.

04:14:38 5 Q. And so let's look at the January 1, 2016
6 engagement status.

7 A. Uh-huh.

8 Q. For USA XRP, which of -- I think it's
9 not the -- the lighter shade of the three options,
04:15:05 10 but which of the two darker shades do you think is
11 reflected on that table for USA XRP?

12 A. It's the far right color indicating we
13 either had limited engagement or that jurisdiction
14 has a negative view.

04:15:20 15 Q. And what was -- what did that mean for
16 the USA as of January 1st, 2016?

17 A. That we had limited engagement. We --
18 in 2016 we hadn't engaged fully on the xRapid
19 product as we were still in development of that.

04:15:39 20 That was pretty much true of all the countries.

21 Q. And then let's look at page 1059.

22 And can I -- why -- why were you using
23 XRP as shorthand for xRapid in these and other
24 documents?

04:16:11 25 A. We didn't -- the name evolved over time

04:16:14 1 and it kept switching. So we had called it
2 initially Liquidity Solution, moved to xRapid, it
3 was rebranded to On-Demand Liquidity, or ODL. It
4 was evolving, and the product wasn't final. We
04:16:32 5 were still, particularly in 2016 -- what does this
6 go through? 2019? It was still evolving in here
7 so to -- whereas xCurrent was a little more
8 standard. I just used shorthand.

9 Q. Okay. So let's look at the 2017 table.
04:16:57 10 What's the engagement status for the
11 United States for XRP?

12 A. It's moved to the middle color. I
13 believe it was a yellow. That indicates we've
14 done some initial engagement but more is needed.

04:17:12 15 Q. I apologize.

16 A. So that yellow color indicates we've
17 done initial engagement, more is needed. We have
18 not had a client approved to use that product in
19 the jurisdiction yet.

04:17:33 20 Q. And let's look at the next page, 1060.
21 Again I'll ask you about the table "USA XRP."
22 What was the engagement status?

23 A. Unchanged.

24 Q. And then the next page, 1061?

04:17:58 25 A. For XRP or xRapid, again, unchanged.

04:18:01 1 Q. Still no -- why was it that the goal was
2 not to -- was -- why was it that there was not a
3 goal to have xRapid approved in the United States
4 as of January 1st, 2019?

04:18:20 5 A. We were working with MoneyGram in that
6 time period to integrate the product, to -- for --
7 by the way I color coded this, I wouldn't move it
8 to green until we had a client that was ready to
9 go with the product and we had engaged with the
04:18:39 10 regulator for approval.

11 As of January 1, 2019, we were -- we
12 were still -- we were working with MoneyGram on
13 the details of the deal, but we hadn't gone to the
14 regulator yet.

04:18:52 15 Q. No regulatory approval yet?

16 A. Correct.

17 Q. And for MoneyGram, who was the reg --
18 who were -- who were the regulators that Ripple
19 was seeking approval from?

04:19:04 20 A. We were targeting -- it would be
21 MoneyGram's regulators, which MoneyGram is
22 regulated by the States. So the 50 State
23 regulators. The State banking regulators.

24 Q. Did the reg -- did -- Exhibit 16, did
04:19:36 25 that in any way refer or was intended to refer to

04:19:40 1 the SEC and its discussion of regulators?

2 MR. CERESNEY: The whole exhibit?

3 MR. HANAUER: The whole exhibit,
4 correct. Actually, you know, let me

04:19:59 5 clarify that. I don't need you to --

6 MR. CERESNEY: Yeah, it's a
7 long --

8 MR. HANAUER: -- read -- I don't
9 want you to have to look at the whole
04:20:04 10 exhibit.

11 BY MR. HANAUER:

12 Q. The tables we talked about on pages 1058
13 through 1061, when you were speaking about
14 regulatory engagement, did these tables refer in
04:20:18 15 any way to the Ripple's regulatory engagement
16 efforts with the SEC?

17 A. No.

18 MR. HANAUER: Twenty-one.

19 (Whereupon, exhibit is presented
04:20:46 20 and marked SEC Zagone Exhibit RZ-21 for
21 identification.)

22 MR. HECKER: Thanks.

23 MR. HANAUER: I tendered the
24 witness a document labeled Exhibit RZ-21
04:21:04 25 with a Bates number ending in 6451.

04:21:16 1 BY MR. HANAUER:

2 Q. And is Exhibit 21 a copy of an e-mail
3 you sent to Monica Long, [REDACTED], and [REDACTED]
4 [REDACTED] on August 8th, 2018?

04:21:29 5 A. That's right, yes.

6 Q. And who is [REDACTED]?

7 A. I don't know [REDACTED]. He appears to
8 work at [REDACTED], which was a -- I believe a
9 consulting firm that our -- a consulting firm or a
04:21:43 10 PR firm that our communications team used.

11 Q. What's this discussion about a political
12 inter -- Politico interview with [REDACTED]?

13 A. It looks like the story was about the
14 risk of 51 percent attack against bitcoin. That's
04:22:48 15 an attack where a majority of the mining power
16 take over the control of bitcoin.

17 Q. And who is [REDACTED]?

18 A. [REDACTED] was the -- I believe his
19 title is executive director of [REDACTED], which
04:23:09 20 is a think tank in D.C.

21 Q. And do you see right -- "[REDACTED], who
22 we're trying to court, is a public spokesperson"?
23 Why -- why was Ripple trying to court Mr. [REDACTED] as
24 a public spokesperson?

04:23:44 25 A. So [REDACTED] was seen as -- [REDACTED] and [REDACTED]

04:23:46 1 [REDACTED] were seen as thoughtful voice in the policy
2 circles in D.C. on a variety of issues. They were
3 one of the first to speak publicly on policy
4 issues back in 2014/2015.

04:24:03 5 Q. What -- what message did you want
6 Mr. [REDACTED] to convey publicly?

7 A. Up until this point, [REDACTED] had not
8 spoken about XRP. So we were working with [REDACTED]
9 [REDACTED] to integrate XRP into their -- into their
04:24:22 10 research network.

11 Q. And then do you see in the
12 second-to-last paragraph, you write "Our approach
13 has been to show that BTC, ETH and XRP are very
14 similar"? What are you referring to there?

04:25:03 15 A. It appears that around the -- I'm
16 speaking that they're very similar in a state of
17 decentralization. In that conversation,
18 decentralization is often brought up. That
19 they're -- their BTC, ETH and XRP are all
04:25:17 20 decentralized assets.

21 Q. And this was a -- a message that Ripple
22 was trying to convey to the public?

23 A. Ripple was trying to convey a message
24 that -- not that we were trying. Ripple was
04:25:35 25 stating that XRP is decentralized, much like Eth

04:25:39 1 and bitcoin.

2 Q. And why was Ripple stating that
3 publicly?

4 A. There's often -- not often, but at times
04:25:48 5 there was, like, incorrect press reports saying
6 that XRP was a centralized digital asset. That
7 was incorrect. So we made efforts to ensure that
8 that was corrected.

9 Q. And what was the significance of whether
04:26:06 10 XRP was centralized or decentralized?

11 A. The -- there's an interest in the crypto
12 community for the assets that they decide to build
13 on, the open source community. There's an
14 emphasis on decentralization. So that was
04:26:31 15 important for us to show -- for Ripple to clarify
16 that Ripple does not control the XRP ledger.

17 And then secondly, the more technical
18 terms around the vendor due diligence
19 conversations, conversations around operational
04:26:49 20 resiliency and business continuity specific to a
21 new type of platform that is decentralized. That
22 was related to the xRapid conversations.

23 Q. How did the centralization --
24 centralization versus decentralization, how did
04:27:11 25 that relate to the XRP security classification

04:27:14 1 issue?

2 MR. CERESNEY: Objection; form.

3 A. From what I recall, that was a piece
4 of -- we're exploring -- we're comparing bitcoin,
04:27:53 5 Eth and XRP. Decentralization was a factor for
6 the Eth decision and we're exploring a similar
7 parallel with XRP.

8 Q. And when you say "the Eth decision," do
9 you mean Mr. Hinman's speech in 2018?

04:28:16 10 A. Yes.

11 Q. And when you write in Exhibit 21 "Our
12 approach has been to show that BTC, ETH and XRP
13 are very similar," that's the approach with the
14 SEC arguing for the same classification?

04:28:36 15 A. Right.

16 Q. And was Ripple trying to convey to the
17 SEC in August 2018 that bitcoin, Ether, and XRP
18 are very similar?

19 A. I wasn't involved in the SEC
04:28:54 20 discussions, so I'm not sure what the company was
21 trying to convey. The Hinman speech was the
22 guidance that the market had, so we were building
23 off of that.

24 Q. Well, you wrote about Ripple's approach
04:29:08 25 with the SEC.

04:29:11 1 A. That was my understanding from counsel
2 of what the approach taken there was.

3 Q. Did you have any understanding of the
4 approach taken with the SEC independent of your
04:29:21 5 communications with counsel?

6 A. No.

7 MR. HANAUER: Mr. Ceresney, are
8 you instructing the witness not to answer
9 questions about communications with
04:29:31 10 counsel regarding the approach Ripple was
11 taking with the SEC in August of 2018?

12 MR. CERESNEY: Yes.

13 (Whereupon, exhibit is presented
14 and marked SEC Zagone Exhibit RZ-22 for
04:30:16 15 identification.)

16 MR. HANAUER: And I just tendered
17 the witness a document labeled RZ --
18 Exhibit RZ-22, which has a Bates number
19 ending in 1296.

04:30:25 20 BY MR. HANAUER:

21 Q. And is Exhibit RZ-22 a copy of an e-mail
22 and attachment you sent to Mr. Garlinghouse on
23 August 16th, 2018?

24 A. That's right.

04:31:14 25 Q. And do you see your e-mail refers to a

04:31:15 1 "Ripple and XRP one-pager handout used on the
2 Hill"?

3 A. I do.

4 Q. And are you referring to the document
04:31:25 5 attached to your e-mail?

6 A. Yes.

7 Q. And what did you mean by "handout used
8 on the Hill"?

9 A. We were having -- I was having meetings
04:31:38 10 on Capitol Hill with House and Senate members and
11 their staff educating them on the future of
12 payments. This was a handout that summarized our
13 points.

14 Q. And in your meetings with members of
04:32:04 15 Congress and their staff, you were trying to
16 convey the message that XRP should not be
17 considered a security?

18 A. No. We were conveying a message that
19 this technology is the future of payments and it's
04:32:38 20 incumbent upon America to lead on that to remain a
21 global leader in finance.

22 Q. So why are you writing that the
23 one-pager highlights why XRP should not be
24 considered a security?

04:32:54 25 A. The meetings we had on the Hill were

04:32:56 1 about America's leadership in blockchain.

2 Q. Were any of those meetings about
3 proposed legislation that would exclude XRP from
4 the federal -- the application of the federal
04:33:18 5 securities laws?

6 A. From my memory and in rereading the text
7 here, the focus was on America's leadership by
8 resolving uncertainty of the -- regulatory
9 uncertainty.

04:33:34 10 Q. Right.

11 And resolving regula -- and resolving
12 regulatory uncertainty, you're speaking about the
13 SEC XRP classification issue?

14 A. Yes, that's -- that was one piece of
04:33:45 15 uncertainty.

16 Q. And you want -- when you met with
17 members of Congress and their staff, you wanted to
18 convey Ripple's message that XRP should not be
19 subject to the federal securities laws?

04:34:01 20 A. The outreach we did on the Hill was,
21 like, educational in nature. So this is
22 blockchain. It's important for our leadership,
23 particularly our national security, as this would
24 be future infrastructure for global payments. We
04:34:13 25 wanted that to be American led. So it was very

04:34:17 1 educational at the background of XRP and that we
2 need a -- a view, an American view, which we
3 thought global -- from a countrywide policy
4 perspective, that should be led by Congress to
04:34:30 5 chart out how America can be a leadership -- be a
6 leader on blockchain and crypto.

7 Q. But the -- the result Ripple wanted was
8 for Congress to pass a law that excluded XRP from
9 the SEC's jurisdiction, right?

04:34:48 10 A. The -- the result we wanted was America
11 to be a leader on this technology. American
12 leadership on blockchain. That encompasses -- or
13 the focus of that is policy that enables that
14 technology to grow. So we -- we -- we look back
04:35:08 15 to the early days of the internet. That was led
16 by -- the growth of the internet was led by a
17 public policy view from Congress and the President
18 at the time. And we saw other countries putting
19 forth -- putting forth, like, holistic frameworks
04:35:23 20 for how they could be competitive on the future of
21 payments, particularly UK and Singapore. And we
22 wanted America to be a part of that conversation.

23 Q. Ripple wanted Congress to pass a law
24 that excluded XRP from the SEC's jurisdiction?

04:35:43 25 MR. CERESNEY: Objection.

04:35:43 1 A. No, those are your words. So we wanted
2 America to lead on crypto and blockchain. It's
3 the future infrastructure of our financial system.
4 We wanted America to be a leader there.

04:35:53 5 Q. Okay. And you -- you wanted Congress to
6 resolve regulatory uncertainty regarding XRP?

7 A. We wanted Congress to create -- to point
8 the compass in the direction of where the U.S.
9 needed to go on blockchain and crypto assets. So
04:36:10 10 creating a north star for the U.S. broadly
11 supports this technology. We see it as a future
12 of our economy. Very similar to the framework
13 that President Clinton put forth for the internet.

14 Q. Did Ripple want Congress to pass any
04:36:32 15 laws related to the XRP securities classification
16 issue?

17 A. That was not the focus of our Hill
18 engagement.

19 Q. So what are you writing about to
04:36:49 20 Mr. Garlinghouse about the handout you used on
21 Capitol Hill highlighting why XRP should not be
22 considered a security?

23 A. I -- I see the handout here and I see
24 that -- I see where I write that, highlighting why
04:37:07 25 XRP should not be considered a security. That was

04:37:09 1 not the focus of the handout nor the focus of
2 our -- our conversations. The -- how XRP -- XRP
3 would be treated by the SEC was a much more
4 in-depth discussions than the level of
04:37:22 5 conversations we were having.

6 Q. And who did you meet with from Congress?

7 A. These were Hill staffers for different
8 members of the financial services and Senate
9 banking committee.

04:37:35 10 Q. Did you ever meet with any of the
11 senators or congressmen yourself?

12 A. Some, yes.

13 Q. Who?

14 A. Senator Cotton, Senator Sinema,
04:37:59 15 Representative Sherman. There's a couple more in
16 there. I can't recall their names.

17 Q. And in any of your meetings with
18 senators, representatives, or their staffs, did
19 you convey the message that XRP should not be
04:38:26 20 considered a security subject to SEC regulation?

21 A. That was not the focus of these
22 conversations. They were -- no. They were very
23 high level around ensuring American leadership on
24 blockchain.

04:38:41 25 Q. And I'm not asking you about the focus.

04:38:43 1 I'm just asking if you ever conveyed to a senator,
2 a U.S. representative, or any of their staffs that
3 Ripple should not be considered a security subject
4 to SEC regulation?

04:38:56 5 MR. HECKER: Objection; asked and
6 answered.

7 A. Not that I recall. That's much more
8 detail than the high-level conversations we were
9 having.

04:39:19 10 Q. Did Ripple employ lobbyists to attempt
11 to convince the SEC to decide that XRP was not a
12 security?

13 A. Ripple employed lobbyists to engage on
14 Hill issues, bills that would come up. In my
04:39:41 15 awareness, they were focused on the Hill.

16 Q. Did Ripple employ lobbyists to attempt
17 to convince Congress to decide that XRP was not a
18 security and not subject to SEC jurisdiction?

19 A. The work we did on the Hill and the work
04:40:01 20 we did with our lobbyists was -- was educational.
21 What is XRP? What's the potential for the
22 technology? It wasn't -- it was high level and
23 educational unless there was a bill that was
24 related to Ripple, which we would engage directly
04:40:21 25 on that bill.

04:40:22 1 Q. Okay. And what bills related to Ripple
2 or XRP did Ripple employ lobbyists for?

3 A. We employed a lobbyist, the primary one
4 that I recall was a -- with the Senate banking
04:40:40 5 committee who had proposed AML rules for
6 cryptocurrency to ensure terrorist financing and
7 money laundering did not occur through the
8 technology. We engaged with the Senate on that
9 bill.

04:40:51 10 Q. Did Ripple employ lobbyists related to
11 the XRP securities classification issue?

12 A. There was a bill that came out from the
13 House, from Representative Davidson. We -- I
14 can't recall if we deployed a lobbyist to engage
04:41:16 15 with Davidson or not.

16 Q. And what was that?

17 A. The bill was a crypto framework. It was
18 a bill that called for more clear classification
19 of digital assets in the U.S.

04:41:31 20 Q. And was that bill from Congressman
21 Davidson to exempt -- would that bill have
22 exempted digital assets from regulation by the
23 SEC?

24 A. I -- I can't recall. And there were --
04:41:43 25 there were a variety of versions of that bill.

04:41:50 1 Q. Did Ripple ever employ a lobbyist to
2 argue or to try and convince Congress to pass a
3 bill that would have excluded digital assets from
4 the SEC's jurisdiction?

04:42:11 5 A. Not that I recall.

6 Q. Did Ripple ever try to get -- did Ripple
7 ever make efforts to convince legislators to
8 influence the SEC?

9 MR. HECKER: Objection to form.

04:42:46 10 A. Not that I was aware of.

11 Q. Did you have an understanding of whether
12 Mr. Garlinghouse was involved with Ripple's
13 lobbying efforts?

14 A. Mr. Garlinghouse attended meetings with
04:43:11 15 me in D.C. They were educational meetings on
16 Ripple and XRP. And Mr. Garlinghouse had his own
17 meetings as well.

18 Q. And did you attend meetings where
19 Mr. Garlinghouse and Mr. -- and lobbyists were
04:43:28 20 present?

21 A. I attended some meetings with
22 Mr. Garlinghouse, yes.

23 Q. And lobbyists?

24 A. I believe so, yes.

04:43:41 25 Q. And was the XRP securities

04:43:45 1 classification ever discussed at those meetings?

2 A. I can't recall.

3 Q. So the one-pager attached to Exhibit --
4 as part of Exhibit 22, did you prepare that
04:44:15 5 document?

6 A. I contributed to parts of it, but I
7 didn't prepare the full document.

8 Q. Who else was involved in its
9 preparation?

04:44:28 10 A. We had a communications team -- a
11 communications firm that -- and a consulting firm
12 that we were working with.

13 Q. Do you know what the names of those
14 firms were?

04:44:38 15 A. The communications firm would be who we
16 were working with marcomm and their teams, so
17 taking those talking points.

18 Q. Was that [REDACTED]?

19 A. I'm not sure who we were working with at
04:44:50 20 that time. [REDACTED] was one that we worked with. So
21 some of these are just like facts around XRP that
22 I would have gotten from marcomm.

23 And then the other firm would be [REDACTED].

24 Q. And what was [REDACTED]?

04:45:09 25 A. They were a strategy consulting firm in

04:45:11 1 D.C.

2 MR. HANAUER: Twenty-three.

3 (Whereupon, exhibit is presented
4 and marked SEC Zagone Exhibit RZ-23 for
04:45:28 5 identification.)

6 MR. HECKER: Thanks.

7 MR. HANAUER: And I tendered the
8 witness Exhibit RZ -- or a document
9 labeled Exhibit RZ-23, beginning with a
04:45:56 10 Bates number ending in 1104.

11 BY MR. HANAUER:

12 Q. And Exhibit RZ-23, is that an e-mail and
13 attachment you sent Mr. Garlinghouse on September
14 4th, 2018?

04:46:13 15 A. That's correct.

16 Q. And in your e-mail to Mr. Garlinghouse,
17 you reference a list of meetings for a trip to
18 D.C. September 25th to September 26th?

19 A. Yes.

04:46:39 20 Q. And that was a trip Mr. Garlinghouse was
21 making to Washington, D.C. to meet with various
22 government officials?

23 A. That's correct.

24 Q. Did you attend that trip?

04:46:57 25 A. I can't recall. I was in -- back and

04:47:04 1 forth to D.C. quite a bit in that time frame.

2 Q. And it looks like there's also a trip
3 scheduled for September 18th?

4 A. That's what it looks like, yes.

04:47:23 5 Q. And did the -- well, I'll start, did the
6 September 18th trip take place?

7 A. I can't recall.

8 Q. What about the September 25th trip?

9 A. I believe that did. That did happen.

04:47:38 10 Q. Okay. What was the purpose of
11 Mr. Garlinghouse's trip to D.C. in September --
12 September 25th/26th, 2018?

13 MR. WARD: Objection to form.

14 A. We -- Brad was also engaging on the
04:47:58 15 theme of educating policymakers on the potential
16 for blockchain and crypto and positioning America
17 to be a leader on this technology.

18 Q. And then do you see the -- the
19 attachment in Exhibit 23, the priorities for the
04:48:16 20 meetings?

21 A. Yes, I see that.

22 Q. Did you prepare that document?

23 A. I did not. I don't believe I did.

24 Q. And this document contains a list of
04:48:34 25 meetings that Mr. Garlinghouse should prioritize

04:48:37 1 while in Washington, D.C.?

2 A. Correct.

3 Q. And then do you see that the SEC is
4 referenced in Meetings No. 1, 2, 3, 6 and 7?

04:49:13 5 A. Yes, I see that.

6 Q. Why was Ripple prioritizing these
7 meetings relating to the SEC?

8 MR. CERESNEY: Objection. There
9 are references to the SEC in a number of
04:49:35 10 these meetings. I don't think it's
11 accurate to say that the meetings relate
12 to the SEC. A number of them, for
13 example, mention the SEC attending.

14 MR. HANAUER: Using the term
04:49:43 15 "related" broadly.

16 MR. CERESNEY: Objection to the
17 creative use of the term "related."

18 A. Can you repeat the question?

19 Q. Sure.

04:50:04 20 Why was Ripple prioritizing all these
21 meetings where there's a reference to the SEC?

22 A. I wouldn't say that we were prioritizing
23 these meetings. Several of these references are
24 just that someone from the SEC will be there
04:50:18 25 alongside other attendees, number one.

04:50:24 1 Number two, similar. It's listing out
2 the Financial Stability Oversight Council, which
3 the SEC is a member. These aren't meetings
4 targeted at the SEC. They're with other agencies
04:50:38 5 or groups.

6 Q. But what's -- what's the significance of
7 the SEC being mentioned in all these meetings?

8 A. We're giving Brad a -- I'm giving --
9 whoever wrote this and that I passed onto Brad is
04:50:51 10 giving him a heads-up of where the SEC will be
11 there. This is in 2018, September. I believe the
12 SEC has reached out to Ripple at this point or is
13 engaged in conversation. So I'm giving him
14 awareness.

04:51:09 15 Q. And at this point in time, September of
16 2018, Ripple was still trying to convince the SEC
17 to decide that XRP was not a security?

18 A. In this time, Ripple and SEC were in
19 conversation. I wasn't part of those
04:51:27 20 conversations.

21 Q. All right. But you had an understanding
22 that Ripple wanted -- in late 2018 Ripple was
23 trying to convince the SEC that XRP should not be
24 deemed a security?

04:51:44 25 A. I don't know the nature of those

04:51:45 1 conversations, if we were trying to convince them
2 or if they were more educational in background and
3 scope.

4 Q. What's the goal of those meetings?
04:51:52 5 What -- what could possibly be the goal of
6 Ripple's meetings with the SEC?

7 MR. HECKER: Object. Objection
8 to form; argumentative, foundation. His
9 understanding of the meetings it sounds
04:52:02 10 from prior testimony came from counsel, so
11 I'm not sure how he can answer that
12 question.

13 Q. I guess what's your -- what's your --
14 what was your understanding of what Ripple was
04:52:19 15 trying to accomplish in relations to the SEC in
16 late 2018?

17 MR. HECKER: Again, to the extent
18 that your understanding, general
19 understanding of that, is not coming from
04:52:30 20 Ripple's lawyers.

21 A. I understood outside of Ripple's lawyers
22 we were educating the SEC on XRP, its background,
23 and Ripple the company.

24 Q. As the director of Ripple's regulatory
04:52:43 25 relations, what did you want to accomplish

04:52:49 1 vis-a-vis the SEC?

2 A. So the SEC was an issue owned by our
3 legal team. I was primary point for our clients
4 and their approval by their regulators to use our
04:53:00 5 products.

6 Q. So let's look at Meeting No. 4,
7 "Davidson Cryptocurrency Roundtable." And it says
8 that the objective of the meeting is to "help
9 shape the bill with suggestions that would keep
04:53:23 10 Ripple outside security classification."

11 A. That's No. 4 you're referring to?

12 Q. Yes.

13 A. Yes. There was a bill introduced by
14 Representative Maloney that would classify all
04:53:41 15 digital currencies as securities. Representative
16 Davidson was planning a counter bill that would,
17 here I say more -- or this document says "have a
18 more pragmatic approach."

19 Q. Did Ripple --

04:54:02 20 A. So this was about crypto in general, the
21 broad market.

22 Q. Right.

23 But do you see the part -- the
24 objective, "help shape the bills with suggestions
04:54:14 25 that would help keep Ripple outside security

04:54:17 1 classification"?

2 A. Yes, I see that.

3 Q. And was one of the Ripple's goals at the
4 time for Congress to pass legislation that would
04:54:27 5 result in XRP not being classified as a security?

6 MR. HECKER: Objection to form.

7 MR. WARD: Objection.

8 MR. CERESNEY: You can answer.

9 A. Yeah. The scope of this meeting,
04:54:40 10 Maloney put forth a bill that would classify the
11 whole industry as securities.

12 Q. Okay. And did Ripple want that bill to
13 pass?

14 A. No.

04:54:46 15 Q. Did Ripple make any efforts to prevent
16 that bill from passing?

17 A. We attended this roundtable.

18 Q. And were you going to advocate -- at the
19 roundtable was Ripple going to advocate for or
04:54:55 20 against Representative Maloney's bill?

21 MR. HECKER: Objection.

22 A. We were advocating --

23 MR. HECKER: Objection to form.

24 You can answer.

04:55:03 25 A. We were advocating for, as it says here,

04:55:06 1 "a more pragmatic approach" than classifying the
2 whole industry as a security.

3 Q. So Ripple was opposing Representative
4 Maloney's bill, right?

04:55:18 5 A. Correct.

6 Q. And Ripple was supporting Representative
7 Davidson's bill that would have exempted digital
8 assets from the federal securities laws?

9 MR. WARD: Objection. Misstates
04:55:37 10 the document.

11 A. Yeah. Davidson's bill called for, as he
12 put here, a more pragmatic approach to securities
13 classification. The bill had several different
14 versions and was -- was edited substantially over
04:55:51 15 the time of its existence.

16 The -- it called for a review to ensure
17 a more practical and pragmatic approach than
18 classifying the whole industry as a security.

19 Q. So I want to focus on the objective
04:56:04 20 piece.

21 A. Uh-huh.

22 Q. Was an objective of Ripple's that
23 Congress passed a law that would keep XRP from
24 being classified as a security?

04:56:12 25 MR. HECKER: Same objections.

04:56:18 1 A. The objective here was to push back on a
2 bill that would classify the whole industry,
3 including Ripple -- or including XRP, as a
4 security.

04:56:33 5 Q. I get that, but I'm asking about the --
6 the counter bill that would exempt digital assets
7 from the federal securities laws.

8 Did Ripple support such a bill?

9 A. I don't believe Davidson's --

04:56:42 10 MR. HECKER: Hang on.

11 Objection; mischaracterizes the
12 document; asked and answered.

13 But you can answer again.

14 A. I don't believe Davidson's bill exempted
04:56:54 15 assets from being securities. I believe
16 Davidson's bill called for a more pragmatic
17 approach than classifying the whole industry as a
18 security.

19 MR. HANAUER: Twenty-four.

04:57:35 20 (Whereupon, exhibit is presented
21 and marked SEC Zagone Exhibit RZ-24 for
22 identification.)

23 MR. HANAUER: And Exhib -- I
24 tendered the witness a document labeled
04:57:51 25 Exhibit RZ-24 with a Bates number ending

04:57:54 1 in 6857.

2 BY MR. HANAUER:

3 Q. Is Exhibit 24 a copy of an e-mail chain
4 ending with an e-mail you sent Mr. Garlinghouse on
04:58:07 5 October 18th, 2018?

6 A. Correct.

7 Q. And do you see how in the second e-mail
8 of Exhibit 24, Mr. Garlinghouse writes "We have
9 decided that as a next step in our goal to have
04:58:25 10 the SEC proactively say something, that we should
11 get meetings with each of them"?

12 A. Yes, I see that.

13 Q. What did you understand Mr. Garlinghouse
14 to mean by "our goal to have the SEC proactively
04:58:40 15 say something"?

16 A. What I understand that line to mean was
17 have the SEC come forth and clarify the
18 classification of XRP. Proactively say something
19 about XRP's classification.

04:58:59 20 Q. And it was Ripple's goal to have the SEC
21 say that XRP was not a security, right?

22 A. Our view was that it's not a security.

23 Q. And Ripple's goal was to have the SEC
24 say that?

04:59:17 25 A. Brad's note just says our goal was "to

04:59:19 1 have the SEC proactively say something."

2 Q. Did you talk -- ever talk to
3 Mr. Garlinghouse about what he wanted the SEC to
4 say?

04:59:34 5 A. I did not have that conversation with
6 Brad on that, no. The conversa -- the context
7 here was that there was open uncertainty, there's
8 broad uncertainty in the market. We had our view;
9 but as we had noted in previous documents, we were
04:59:54 10 looking for the SEC or a formal regulator to
11 provide clarity.

12 Q. And so the SEC could have provided
13 clarity on the issue by either saying it
14 considered XRP a security or it did not consider
05:00:07 15 XRP a security, is that right?

16 A. Those would be the two options.

17 Q. And Ripple wanted the SEC to come out
18 and say it considered XRP not to be a security?

19 MR. WARD: Objection.

05:00:25 20 A. In this e-mail it says "our goal is to
21 have the SEC say something."

22 Q. Right.

23 And you had just said there were two
24 options on what the SEC could say: Either SE --
05:00:37 25 either XRP is a security or XRP's not a security.

05:00:40 1 Which one did Ripple want the SEC to
2 say?

3 A. From the context of this e-mail, it was
4 --

05:00:47 5 MR. WARD: Objection.

6 You can answer.

7 THE WITNESS: Okay.

8 A. From the context of this e-mail, it
9 looks like Brad is pushing -- he's decided that
05:01:02 10 the goal is to have the SEC say something to
11 remove the uncertainty.

12 Q. Right. And -- and I'm not trying to be
13 difficult here, but you just said there were two
14 things the SEC could have said to provide
05:01:13 15 certainty: XRP's a security or XRP is not a
16 security.

17 So based on what you just said, which of
18 those options did you want the SEC to go with?

19 A. The e-mail is quite clear.

05:01:26 20 MR. WARD: Objection.

21 A. It says "to say something." It doesn't
22 indicate a preference.

23 Q. Did you understand Ripple had a
24 preference between those two options?

05:01:38 25 A. We had a company view that it was not a

05:01:40 1 security.

2 Q. And Ripple was trying to secure meetings
3 with the SEC Commissioners with the goal of having
4 the SEC state that XRP is not a security.

05:01:52 5 A. That's not what the e-mail says.

6 MR. WARD: Objection. I mean,
7 how many times can the same question be
8 asked?

9 MR. HANAUER: Counsel, I'm not
05:01:58 10 asking him to read the e-mail. I'm asking
11 him to state his view as a witness.

12 A. This is an e-mail from Brad.

13 Q. Right.

14 A. That's a question for Brad, what he
05:02:09 15 meant by this context, what he meant by his
16 e-mail.

17 Q. I'm just trying to take this in parts.
18 You can even put the e-mail down. How about that?

19 In late 2018 was there certainty with
05:02:28 20 how the SEC viewed XRP?

21 A. Not to my awareness.

22 Q. Was there uncertainty with how the SEC
23 viewed XRP?

24 A. I believe so, yes.

05:02:41 25 Q. And the XR -- the SEC could have

05:02:47 1 provided certainty about XRP by making a statement
2 that XRP was a security or XRP wasn't a security?

3 A. Those would be the options.

4 Q. And did -- I think you just said Ripple
05:03:01 5 preferred the option of having the SEC say that
6 XRP was not a security?

7 A. We had a belief that XRP was not a
8 security.

9 Q. And Ripple wanted the SEC to say that
05:03:13 10 XRP was not a security?

11 MR. WARD: Objection.

12 A. I'm looking at this e-mail and it just
13 says "say something."

14 Q. Put -- put the e-mail down. Okay? And
05:03:24 15 I'm sorry I raised my voice but I don't want to
16 tether you to the e-mail. I'm just asking you
17 general questions from your perspective as
18 Ripple's director of regulatory relations.

19 A. Yeah. Our review was that XRP was not
05:03:36 20 --

21 MR. WARD: Hold on. I -- I
22 object to that question.

23 You can answer.

24 A. The company's view was that XRP is not a
05:03:48 25 security. We shared education broadly on the Hill

05:03:52 1 and with other policymakers, think tanks, about
2 XRP and our view.

3 The SEC is an independent organization.
4 It can create -- or it will make its own views.

05:04:10 5 Q. And which view did Ripple want the SEC
6 to publicly announce, that Ripple -- that XRP was
7 a security or XRP was not a security?

8 MR. WARD: Objection.

9 A. We held a view that it was not a
05:04:24 10 security. That was a view based off of work with
11 counsel, outside counsel providing guidance.
12 That's what we thought was accurate and that's
13 what we worked on. We would have -- we would have
14 looked for the SEC to validate that view.

05:04:44 15 Q. And that's why Ripple was trying to
16 secure meetings with the SEC commissioners in late
17 2018?

18 MR. WARD: Objection.

19 A. I can't say -- I can't make that
05:04:58 20 extension, no. The meetings are directly related
21 to this e-mail from Brad saying he wants the SEC
22 to say something. So to remove the uncertainty in
23 the market. The SEC had already made actions
24 toward bitcoin, toward Eth, and the DAO. We were
05:05:21 25 looking for a similar certainty as those other

05:05:25 1 assets.

2 Q. And Ripple was looking -- Ripple's wish,
3 Ripple's desire, was that the SEC would provide
4 certainty by saying that XRP was not a security?

05:05:38 5 MR. HECKER: Objection; asked and
6 answered --

7 MR. WARD: Objection.

8 MR. HECKER: -- multiple times
9 now.

05:05:43 10 A. Yeah, I've already answered this. We
11 were looking for certainty. The e-mail says we
12 wanted to work with the members, with the
13 commissioners, to proactively say something, much
14 like they did for XRP -- I mean, for Eth, bitcoin,
05:06:02 15 and the DAO, to remove the uncertainty. This
16 doesn't indicate any direction of which we were
17 wishing the SEC to go.

18 Q. All right. And did you -- but I'm just
19 asking, did you have an understanding of which
05:06:18 20 direction Ripple was trying to get the SEC to go?

21 A. I was not involved in those discussions
22 or those meetings.

23 Q. Did you have any understanding of which
24 direction Ripple was trying to get the SEC to go
05:06:29 25 on on the securities classification issue?

05:06:33 1 MR. WARD: Objection.

2 A. I understood our view as a company. I
3 understood from this e-mail context that we wanted
4 the SEC to say something. That was all I
05:06:43 5 understood.

6 Q. Okay.

7 MR. CERESNEY: Should we take our
8 last break? We've been going about an
9 hour. We have kind of less than an hour
05:06:55 10 left.

11 MR. HANAUER: Sure. Can I finish
12 with this document?

13 MR. HECKER: Sure.

14 MR. HANAUER: Thanks.

05:07:00 15 BY MR. HANAUER:

16 Q. And so in its efforts to get the SEC to
17 proactively say something about XRP, Ripple tried
18 to secure meetings between Mr. Garlinghouse and
19 the SEC commissioners?

05:07:14 20 MR. HECKER: Objection to form.

21 A. Correct.

22 Q. And it looks like Mr. Garlinghouse had
23 already had a meeting with Mr. Clayton as of
24 October 2018?

05:07:34 25 A. That's what it appears, yes.

05:07:36 1 Q. Did you attend that meeting?

2 A. No.

3 Q. And did Mr. Garlinghouse convey to you
4 anything that Mr. Clayton told him at that
05:07:46 5 meeting?

6 MR. HECKER: Outside the presence
7 of counsel.

8 A. No.

9 Q. Did Ripple --

05:07:55 10 MR. TENREIRO: Wait, wait, wait.
11 Sorry. If -- if Garlinghouse just repeats
12 what Clayton told them and just because
13 there's a lawyer there you're asserting
14 privilege and not letting him answer?

05:08:03 15 MR. HECKER: I'm saying -- I'm
16 saying -- well, it's the company's
17 privilege, but you're obviously going to
18 be able to ask Mr. Garlinghouse about his
19 discussion with Commissioner Clayton.

05:08:11 20 Asking this witness, who only learned
21 about any of this through counsel, would
22 be -- would be a privilege issue. So
23 yeah.

24 MR. TENREIRO: Oh, I didn't
05:08:17 25 realize he only learned of it through

05:08:17 1 counsel. We were asking --

2 MR. HECKER: I said -- my
3 objection was outside the presence of
4 counsel. If he did, he can answer. If
05:08:23 5 not, that's -- that's the problem.

6 MR. CERESNEY: I -- I think his
7 answer suggested that he didn't get a
8 report. So if you want to just ask him
9 that question, we might be able to move
05:08:31 10 past this issue.

11 MR. HANAUER: Yeah. Let's just
12 clear that up.

13 THE WITNESS: I did not get a
14 report from Brad from what his meeting
05:08:37 15 with Clayton was.

16 MR. HANAUER: Thanks.

17 MR. CERESNEY: Well, you do need
18 to have asked that question.

19 BY MR. HANAUER:

05:08:44 20 Q. Did Mr. Garlinghouse secure meetings
21 with the other SEC Commissioners?

22 A. There was an attempt to. I don't know
23 if those meetings happened or not.

24 Q. Do you know of any meetings other than
05:09:02 25 Clayton that Mr. Garlinghouse had with SEC

05:09:09 1 commissioners?

2 A. I know we were targeting Peirce and
3 Roisman. I don't know if we -- if he had those
4 meetings.

05:09:19 5 Q. Okay.

6 A. I can't recall.

7 MR. HANAUER: All right. Let's
8 take a break.

9 THE VIDEOGRAPHER: All right.

05:09:23 10 Going off the record, 5:09.

11 (Whereupon, a recess is taken.)

12 THE VIDEOGRAPHER: Okay. Back on
13 the record, 5:24.

14 (Whereupon, exhibit is presented

05:24:53 15 and marked SEC Zagone Exhibit RZ-43

16 for identification.)

17 BY MR. HANAUER:

18 Q. Mr. Zagone, before we went off the
19 record, I asked you whether Mr. Garlinghouse had

05:25:00 20 the opportunity to meet with any of the SEC
21 commissioners other than Chair Clayton and I think
22 you said you didn't recall?

23 A. Correct.

24 Q. I tender you an exhibit that's been

05:25:19 25 marked as -- or a document that's been labeled as

05:25:22 1 Exhibit RZ-43 with a Bates number ending in 3237.

2 And is Exhibit 43 an e-mail you wrote to
3 Mr. Garlinghouse on December 21st, 2018?

4 A. Yes, I see that.

05:25:42 5 Q. And do you see the second bullet point,
6 you reference "Commissioner Jackson, the last
7 remaining commissioner to meet"?

8 A. I see that.

9 Q. Does that refresh your recollection
05:25:56 10 whether Ripple had met with other SEC
11 commissioners?

12 A. That does.

13 Q. So, in fact, Ripple had met with
14 Chairman Clayton, it did meet with Chairman -- or
05:26:10 15 Commissioner Roisman?

16 A. I can't recall specifically which ones
17 did or didn't happen. From this e-mail it looks
18 like some meetings did happen.

19 Q. So as of December 21st, 2018, Ripple had
05:26:28 20 met with four SEC commissioners?

21 A. I'm not certain how many.

22 Q. Well, you write "the last remaining
23 commissioner to meet."

24 MR. HECKER: Objection to form;
05:26:41 25 argumentative. Foundation.

05:26:43 1 A. There was a series of meetings -- from
2 this, it looks like the last commissioner to meet,
3 Rob Jackson. If that meant there were four
4 others, then there were four others. I'm not
05:26:55 5 certain.

6 Q. Yeah. Counsel advised me the number was
7 fluid during the time so...

8 A. Okay.

9 Q. Did -- did you attend -- did Ripple ever
05:27:06 10 secure a meeting with Commissioner Jackson?

11 A. I can't recall.

12 Q. So the meeting with the other
13 commissioners referenced in Exhibit 43, did you
14 attend those meetings?

05:27:19 15 A. No.

16 Q. It's your understanding Mr. Garlinghouse
17 met with the commissioners?

18 A. That would be my understanding from
19 seeing this, yeah.

05:27:28 20 Q. And did Mr. Garlinghouse convey to you
21 what the commissioners said to him during those
22 meetings?

23 A. He did not.

24 Q. And was it your understanding that once
05:27:54 25 the Chair and at least two other commissioners had

05:27:59 1 decided to vote together on a particular issue,
2 the two members -- the two Commissioners in the
3 minority could not prevent the commission from
4 taking action on that particular issue?

05:28:13 5 MR. HECKER: Objection to form;
6 foundation.

7 A. Yes, I can see that. I'm not a
8 securities expert or an SEC expert. That's -- I
9 wasn't leading this engagement. It was led by
05:28:27 10 others in our legal team who were. My work was
11 with our clients, our banking clients.

12 Q. But you understood that the -- the SEC
13 commissioners would vote on whether to take action
14 on specific issues, right?

05:28:43 15 A. If there was an action brought to the
16 commissioners, they would vote. If there's five
17 commissioners, it would be three to two, yeah.

18 Q. Right. And it was your understanding
19 that once three commissioners had decided to vote
05:28:55 20 a particular way, the two commissioners who didn't
21 vote that way could not prevent the SEC from
22 taking action?

23 MR. HECKER: Objection to form.

24 A. That's how I understand.

05:29:11 25 Q. And before the -- so in the period

05:29:15 1 between when Mr. Garlinghouse met with the SEC
2 commissioners and the SEC filing this lawsuit, did
3 the SEC make any announcements regarding XRP?

4 A. Not that I'm aware of.

05:29:37 5 Q. And what was your understanding of the
6 fact that Ripple had attempted to convince every
7 member of the SEC that XRP was not a security, yet
8 the SEC never made a pronouncement about XRP?

9 MR. WARD: Objection --

05:29:57 10 MR. CERESNEY: Objection to
11 form --

12 MR. WARD: -- form and
13 foundation.

14 MR. CERESNEY: -- and foundation.

05:30:00 15 I mean, there's built into your question,
16 Ben, a bunch of assumptions about those
17 discussions.

18 Are you asking him to assume all
19 the things in your answer -- in your
05:30:12 20 question?

21 BY MR. HANAUER:

22 Q. If you understand the question, you can
23 answer it.

24 A. I understood that Brad was meeting with
05:30:18 25 commissioners. I did not have a view or an

05:30:22 1 understanding of what the -- the outcome he was
2 seeking with that or an opinion on the fact that
3 they had not spoken out.

4 In many meetings these were
05:30:33 5 educational -- educational discussions. So this
6 is who we are. This is what we're doing.

7 Q. And at the time of these meetings, you
8 understood that -- that Ripple was actually being
9 investigated by the SEC's Division of Enforcement?

05:30:48 10 A. Yes, I understood that.

11 Q. And you understood that even after these
12 meetings that Mr. Garlinghouse had with the SEC
13 commissioners, the SEC could ultimately decide
14 that it considered XRP to be a security?

05:31:08 15 A. Yes, I understood that as a possibility.

16 Q. And were you also aware -- were you
17 aware that there was going to be a presidential
18 election in 2020?

19 MR. HECKER: We can stipulate to
05:31:23 20 that.

21 MR. HANAUER: Just trying to lay
22 some foundation, Counsel.

23 MR. CERESNEY: Although some
24 might prefer that there not be one.

05:31:33 25 MR. TENREIRO: Okay.

05:31:36 1 BY MR. HANAUER:

2 Q. So did you know that whoever won the
3 2020 presidential election would have the ability
4 to choose a new SEC chairperson?

05:31:50 5 A. Yes.

6 Q. And you knew that depending on who won
7 the 2020 presidential election, whoever was the
8 president at that point could choose a SEC chair
9 who held the view that XRP was a security?

05:32:06 10 MR. HECKER: Objection to form;
11 calls for speculation.

12 You can answer.

13 A. That -- that was, like -- that's a
14 stretch that was not -- that I don't recall going
05:32:21 15 through my mind at the time. Particularly in that
16 period, I was on my way out.

17 Q. After Mr. Garlinghouse's meetings with
18 the commissioners, did you have a belief on
19 whether the XR -- the SEC would make a statement
05:32:45 20 regarding XRP's classification as a security?

21 MR. WARD: Objection to form.

22 MR. CERESNEY: Well, he's already
23 said he didn't know what happened at those
24 meetings. So are you asking him -- I
05:32:57 25 don't understand. Like, is it just a

05:32:58 1 timing thing? After those meetings did he
2 think that? Because he doesn't have any
3 idea what happened at those meetings.
4 He's already testified to that.

05:33:04 5 A. Brad keep -- Brad keeps to himself.
6 He -- I did not get a readout on those meetings or
7 the other meetings that he took solo in D.C.

8 MR. HANAUER: Twenty-five.

9 (Whereupon, exhibit is presented
05:33:37 10 and marked SEC Zagone Exhibit RZ-25 for
11 identification.)

12 MR. HANAUER: I tendered the
13 witness a document labeled as Exhibit
14 RZ-25, starting with a Bates number ending
05:33:56 15 3297.

16 BY MR. HANAUER:

17 Q. Is Exhibit 25 a copy of an e-mail chain
18 ending with an e-mail from you to [REDACTED]
19 on January 7th, 2019?

05:34:12 20 A. It is.

21 Q. And who is Ms. [REDACTED]?

22 A. Ms. [REDACTED] works in our
23 communications team or Ripple's communication
24 team.

05:34:24 25 Q. And it looks like she's asking you to

05:34:33 1 make a tweet.

2 (Pause)

3 A. Okay. I've read it.

4 [REDACTED], or Ms. [REDACTED], shares a
05:35:50 5 potential tweet that says something if I feel
6 comfortable tweeting, I can, but if I'm on the
7 fence, it's not a must-do.

8 Q. And she's advising you that the -- I
9 guess the article you're tweeting about is
05:36:04 10 critical of the SEC?

11 A. She says "The piece is fairly critical
12 of the SEC, so defer to your judgment."

13 Q. And you respond to her by saying "We are
14 being very cautious to not say anything that would
05:36:20 15 appear critical of the SEC right now"?

16 A. Yes, I say that.

17 Q. And why did Ripple want to not appear
18 critical of the SEC in January 2019?

19 MR. HECKER: Objection to form.

05:36:34 20 A. We haven't -- Ripple has an ongoing
21 discussion with the SEC regarding the
22 investigation. So I felt it would be professional
23 not to openly criticize the SEC on social media
24 during that time.

05:36:54 25 Q. And do you see at the very top of

05:36:55 1 your -- at the top of Exhibit 25, you write about
2 a bipartisan bill that was introduced that would
3 exempt crypto from the SEC?

4 A. I see that, yes.

05:37:06 5 Q. And you're writing about a bill that
6 would have exempted digital assets from SEC
7 regulations?

8 A. Yes, I see that.

9 Q. And did Ripple support that bill?

05:37:21 10 A. It says we chose to stay silent on it.

11 Q. Different -- different question.
12 Did -- did Ripple want that bill to
13 pass?

14 A. I can't recall the bill. Did we want a
05:37:42 15 bill like that to pass? I believe it was a
16 follow-up to the Maloney bill which classified
17 everything as a security, and this is one of the
18 follow-up bills that was in response to that.

19 We didn't take a view on it. We stayed
05:37:56 20 silent on it. As I say, we're still silent on it.

21 We -- I would have preferred that
22 approach to policy than an approach that called
23 everything a security.

24 Q. Did Ripple ever comment on that bill?

05:38:12 25 A. I can't recall. There was a variety of

05:38:14 1 bills floating around at the time. Some were
2 introduced. Some were just draft.

3 MR. HANAUER: Twenty-seven.

4 (Whereupon, exhibit is presented
05:38:31 5 and marked SEC Zagone Exhibit RZ-27 for
6 identification.)

7 MR. HANAUER: I've tendered the
8 witness a document labeled Exhibit RZ-27,
9 starting with a Bates number ending in
05:39:01 10 3073.

11 BY MR. HANAUER:

12 Q. Once you've had a chance to review it,
13 I'll ask you, what is Exhibit 27?

14 A. It's a -- it's a document identifying
05:39:53 15 areas that the regulatory relations team could
16 collaborate with the marketing team for additional
17 support.

18 Q. Did you prepare it?

19 A. I don't recall this document. It -- I
05:40:13 20 don't recall the document. It would have come
21 from me if it came from the regulatory relations
22 team.

23 Q. And do you know when this document was
24 from?

05:40:28 25 A. No, I don't. I don't -- I don't see a

05:40:29 1 date on it.

2 Q. And I didn't either, but do you see the
3 second page of the document where it talks about
4 key targets?

05:40:46 5 A. I see that.

6 Q. And do see Senator Sinema?

7 A. Yes, I see that.

8 Q. It's my understanding that she didn't
9 become a Senator until 2019.

05:41:00 10 A. Correct.

11 Q. So can we infer that this document,
12 RZ-27, is from sometime in 2019?

13 A. That's a fair assumption, yeah.

14 Q. And so do you see this -- this table on
05:41:15 15 the first page of Exhibit 27? And do you see
16 the -- the box that says "United" -- in the
17 "United States" row, in the Y column, it says
18 "Support government relations efforts on
19 classification of XRP"?

05:41:43 20 A. I see that.

21 Q. What's that describing?

22 A. How we can work with marcomm --
23 regulations and marcomm can work together for U.S.

24 Q. To do what?

05:42:01 25 A. To engage a democrat champion.

05:42:05 1 Q. To do what?

2 A. It says here for "holding back efforts
3 to engage the SEC."

4 Q. And what did the -- in 2019 what did
05:42:15 5 Ripple want to do in regards to the SEC?

6 A. We have our open discussions and we have
7 our -- the investigation with the SEC and Brad's
8 meetings. So this would be aligning with that
9 activity.

05:42:30 10 Q. Still trying to convey to the SEC that
11 XRP should not be classified as a security?

12 MR. WARD: Objection to form.

13 A. At this point, in 2019, discussions
14 are fair -- are becoming more mature between the
05:42:50 15 SEC and -- and Ripple. They had been talking for
16 sometime. This would be supporting that effort to
17 engage with the SEC.

18 Q. And, again, in 2019, Ripple was still
19 trying to convince the SEC to decide that XRP is
05:43:06 20 not a security?

21 MR. WARD: Objection to form.

22 A. I know the company's view was XRP is not
23 a security. I wasn't involved in any of the
24 meetings with SEC or with the commissioners, so I
05:43:17 25 can't say, like, what the context of that

05:43:19 1 conversation was. If they were pushing that or
2 not, I don't know.

3 Q. The -- do you see where it says a unite
4 -- the second bullet point on the whole -- or the
05:43:30 5 first bullet point on the whole document, "United
6 States: Support regulatory clarity of XRP with
7 the SEC"?

8 A. I see that, yeah.

9 Q. And what's the regulatory clarity with
05:43:43 10 the SEC that Ripple was trying to obtain?

11 A. How XRP would be classified.

12 Q. And then do you see on the next page,
13 page 2, it says "Goal: Drive bipartisan pressure
14 on policymakers to ensure a positive
05:44:10 15 classification of XRP"?

16 A. I see that.

17 Q. And what was the positive classification
18 of XRP that Ripple had as its goal?

19 A. So the company had a view that XRP was
05:44:22 20 not a security. We viewed that as accurate.
21 There was also -- I talked about here, there were
22 several bills floating around that would classify
23 the whole industry in one way or another, security
24 or not.

05:44:37 25 The engagement in the U.S. was to drive

05:44:40 1 what we saw as positive or accurate classification
2 of XRP.

3 Q. And then the next bullet point "We are
4 well positioned among republicans, but lack
05:44:54 5 democrat champions, limiting pressure on the SEC."

6 A. I see that.

7 Q. What's that about in terms of putting
8 pressure on the SEC?

9 A. To provide clarity on XRP.

05:45:09 10 Q. Was Ripple attempting to pressure the
11 SEC?

12 A. We were looking for clarity from the
13 SEC. I can't characterize the -- the context of
14 the conversations with the SEC. I wasn't involved
05:45:25 15 in a single one.

16 Q. And then under "Tactics," Ripple was
17 recommending to place articles in various
18 publications to support its position that XRP was
19 not a security?

05:46:04 20 A. We were targeting publications to place
21 articles to elevate digital assets on the priority
22 list for democrats. So driving awareness.

23 Q. And Ripple wanted to put these
24 publications -- or place articles in publications
05:46:27 25 in Illinois, Arizona, California, Washington, D.C.

05:46:31 1 and New Jersey?

2 A. Those were the targeted individuals
3 there that we were looking with to -- to focus in
4 on in that messaging, particularly messaging
05:46:46 5 around the financial inclusion benefits of
6 lowering the cost of remittances. We thought
7 that -- that messaging would resonate well with
8 the democrats that were serving on the financial
9 services committee.

05:47:01 10 Q. So the key states, those were associated
11 with congressmen and women from those states?

12 A. Correct. There was a risk at this time
13 that crypto would become a -- a partisan issue,
14 which we did not -- Ripple did not see it that
05:47:23 15 way. There were other industry trade groups that
16 also do not see it that way. We wanted to ensure
17 that it was a more bipartisan issue, the ability
18 for crypto and blockchain to be used in payments.

19 Q. When -- did -- did Ripple employ any
05:47:44 20 other tactics to influence congressmen other than
21 the ones identified on the second page of Exhibit
22 27?

23 A. Aside from targeted publications? Is
24 that what you're asking?

05:48:11 25 Q. Correct.

05:48:12 1 A. We engaged on the Hill. The company
2 did -- attended or hosted members of Congress for
3 fundraisers, the standard stuff you would see from
4 a -- from a lobbying effort.

05:48:33 5 Q. And at the time you left employment
6 with -- with Ripple, was Ripple still making
7 efforts to try to get the X -- the SEC to make a
8 statement regarding XRP's classification?

9 MR. HECKER: Objection to form.

05:48:46 10 You can answer.

11 A. At the time that I left the company,
12 Ripple was still engaging with the SEC. The
13 context or the -- the context of those
14 conversations, I don't know about.

05:49:02 15 Q. At the time you left Ripple, had the SEC
16 made any announcements about whether or not it
17 considered XRP to be a security?

18 A. No. Not that I'm aware of.

19 MR. HANAUER: One moment to

05:49:19 20 confer with my counsel.

21 (Pause)

22 (Whereupon, exhibit is presented
23 and marked SEC Zagone Exhibit RZ-46 for
24 identification.)

05:50:03 25 MR. HANAUER: I just tendered the

05:50:04 1 witness a document labeled RZ-46 with a
2 Bates number ending in -- I think it's
3 356.

4 BY MR. HANAUER:

05:50:26 5 Q. And is Exhibit RZ-46 a text exchange
6 between you and Mr. Garlinghouse?

7 A. It is.

8 Q. And which texts are from you and which
9 texts are from Mr. Garlinghouse?

05:50:47 10 A. The text on the left at the top is from
11 Mr. Garlinghouse. The two texts on the right, in
12 the lighter color, are from me.

13 Q. And when Mr. Garlinghouse writes about
14 "getting the congressional letter sent to the
05:51:05 15 SEC," what did you understand him to be referring
16 to?

17 A. We were engaged with Senator Cotton to
18 write a letter or write more than one letter. One
19 letter was to the Federal Reserve.

05:51:38 20 The second letter here was to the SEC.

21 Q. And what -- what was in that letter?

22 A. The draft letter was around supporting
23 America's competitiveness, international
24 competitiveness, with blockchain and crypto
05:52:02 25 assets.

05:52:03 1 Q. Did it have anything to do with the XRP
2 securities classification issue?

3 A. The letter did talk about creating
4 clarity for crypto assets. I can't recall if the
05:52:16 5 letter specifically said XRP or not.

6 Q. And then the -- the bottom text talks
7 about the "Senate letter prepped to be sent next
8 week by Cotton and Van Hollen. Both will raise it
9 to Clayton in his Senate hearing on December
05:52:40 10 11th."

11 A. Yes.

12 Q. What's that about?

13 A. The -- that refers to the letter that we
14 were drafting with Cotton and -- and this was a
05:52:48 15 bipartisan one with Van Hollen. We were going
16 back and forth with the -- Ripple and our
17 lobbyists were going back and forth with the --
18 Cotton and Van Hollen's offices around wording.

19 There was also a hearing coming up
05:53:06 20 December 11th that we were -- had provided some
21 questions to Cotton and Van Hollen to ask during
22 that hearing.

23 Q. And why did you think that Senators
24 Cotton and Van Hollen would be asking specific
05:53:25 25 questions to Mr. Clayton at the Senate hearing?

05:53:29 1 A. Cotton had taken an interest in national
2 security and America's leadership in
3 infrastructure which was keenly aligned with or
4 closely aligned with Ripple's own view.

05:53:42 5 Van Hollen was a -- we were engaged with
6 Van Hollen I believe on the financial -- the
7 financial inclusion aspects of these technologies,
8 so lowering the cost of remittances, both of which
9 we saw as advantages for the U.S. economy. We
05:53:57 10 wanted to -- a key part of this was repeating
11 clarity from the SEC. So removing uncertainty.
12 It was the position to raise that with Clayton
13 during that Senate hearing.

14 Q. How did you know what the senators were
05:54:11 15 going to ask Mr. Clayton at his Senate hearing?

16 MR. HECKER: Objection to form.

17 A. It's common for lobbyists to provide
18 background information to the offices and to
19 provide potential questions to ask.

05:54:22 20 Q. So that information about the questions
21 that the senators would ask, that was conveyed to
22 you by Ripple's lobbyists?

23 MR. HECKER: Objection to form.

24 You can answer.

05:54:34 25 A. Ripple's lobbyists would inform us of an

05:54:37 1 upcoming hearing, the types of content that would
2 be covered, and potential questions that we should
3 propose to those offices for -- to be asked during
4 the hearing.

05:54:58 5 MR. HANAUER: That's all the
6 questions we have. Before we go off, I
7 just want to put on the record that the
8 SEC reserves its rights to move to compel
9 on issues where Ripple asserted privilege,
05:55:16 10 and also reserves its rights to seek a
11 30(b)(6) witness on the issues where
12 counsel instructed the witness not to
13 share what he learned about what --
14 Ripple's interactions with the SEC and
05:55:34 15 other third parties.

16 MR. CERESNEY: So those are both
17 privilege issues because the latter was
18 also a privilege issue.

19 MR. HANAUER: And I'm not trying
05:55:45 20 to argue it. I just wanted to put a
21 statement about our reservation of rights
22 on those two issues while we were still on
23 the record.

24 MR. CERESNEY: Okay. But -- but
05:55:52 25 just for the record, on the privilege

05:55:55 1 issue, the judge has already denied your
2 request for -- to pierce the privilege
3 here. And so there -- therefore, I don't
4 see a basis for -- nothing the witness has
05:56:04 5 said today provides any additional basis
6 for you to pierce the privilege. I don't
7 know that you're suggesting that, but I
8 don't see anything more.

9 On a 30(b)(6) witness, the
05:56:14 10 objections today were not -- on the issue
11 that you just cited, were not because the
12 witness didn't necessarily have
13 knowledge. It was because the
14 information he had was as a result of
05:56:25 15 discussions with counsel. So it's the
16 same privilege issue as the initial -- as
17 the first issue you raised.

18 So I just want that clear. It's
19 not a separate 30(b)(6) witness issue.

05:56:36 20 MR. HANAUER: Okay. And that's
21 the position you take.

22 MR. CERESNEY: And from our
23 perspective, you've had the opportunity to
24 fully question him on these issues and
05:56:43 25 there's no basis for 30(b)(6).

05:56:45 1 Okay. If you give us two
2 minutes, we'll convene and then come
3 back. I will have at least one set of
4 questions.

05:56:54 5 THE VIDEOGRAPHER: Going off the
6 record at 5:56.

7 (Whereupon, a recess is taken.)

8 THE VIDEOGRAPHER: Okay. Back on
9 the record, 6:07.

06:07:21 10 CROSS-EXAMINATION

11 BY MR. CERESNEY:

12 Q. Great. I just have a few questions for
13 you, Mr. Zagone.

14 First, in his final questioning of you,
06:07:29 15 Mr. Hanauer asked you about Exhibit RZ-46 and a
16 text message exchange between you and
17 Mr. Garlinghouse.

18 And this text message exchange
19 referenced letters that had been prepped for
06:07:43 20 Senator Cotton and Van Hollen.

21 One question: Did -- did those letters
22 ever get sent as far as you know?

23 A. No.

24 Q. So, in other words, no letter, as far as
06:07:55 25 you know, was sent from these senators to Chair

06:08:00 1 Clayton?

2 A. As far as I know, no letters were sent.

3 Q. And as for the hearing that occurred

4 which is referenced here, the December 11th

06:08:10 5 hearing when Chair Clayton was to testify before

6 the Senate, what is your understanding as to

7 whether any questions were asked during that

8 hearing based upon any -- were any questions asked

9 at that hearing which Ripple's lobbyists had

06:08:32 10 discussed with the staff prior?

11 MR. HANAUER: Objection.

12 Objection to form.

13 A. Ripple's lobbyists had proposed

14 questions for that hearing, but to the best of my

06:08:42 15 knowledge, none of them were asked.

16 MR. CERESNEY: Okay. I want to,

17 then, show you what we'll mark as -- why

18 don't we mark it as Ripple Exhibit 1,

19 RZ -- Ripple RZ-1?

06:08:58 20 MR. HANAUER: How about RZ-47?

21 There's nothing after that.

22 MR. CERESNEY: Okay. All right,

23 we'll do RZ-47. We'll mark it as RZ-47.

24 And so if we can distribute that.

06:09:27 25 THE REPORTER: Exhibit RZ-47.

06:09:28 1 (Whereupon, exhibit is presented
2 and marked SEC Zagone Exhibit RZ-47 for
3 identification.)

4 MR. CERESNEY: Did you give one
06:09:39 5 to Mr. Hanauer? Did you give one to
6 Mr. Hanauer?

7 MR. TENREIRO: Oh.

8 MR. HANAUER: Thank you.

9 MR. TENREIRO: Take as many as
06:09:42 10 you want.

11 BY MR. CERESNEY:

12 Q. Mr. Zagone, take a look at this. This
13 is an e-mail dated January 19th, 2017. It's from
14 you to Antoinette O'Gorman, Bates number RPLI_SEC
06:09:58 15 0921020 to 1029. I'll ask you to just take a look
16 at that e-mail and tell me whether you recognize
17 this exchange with Ms. O'Gorman.

18 (Pause)

19 A. Okay. I've reviewed it.

06:10:46 20 Q. Okay. I'm not really -- I'm not going
21 to focus really on the e-mail exchange except to
22 reference paragraph 3 where there's a reference to
23 a March 9th, 2016 response to the Department of
24 Financial Services, the New York Department of
06:11:07 25 Financial Services.

06:11:08 1 Actually, just by way of background,
2 what was Ripple's engagement with the Department
3 of Financial Services during this period in 2017?

4 A. We were -- Ripple was applying -- let me
06:11:20 5 restate that.

6 XRP II, LLC, a subsidiary of Ripple, was
7 replying -- or applying to the New York DFS for a
8 virtual currency license.

9 Q. And was that application in 2016? Is
06:11:34 10 that when the application process occurred?

11 A. Correct.

12 Q. Did Ripple actually ultimately obtain
13 that BitLicense?

14 A. Yes.

06:11:45 15 Q. And what is a BitLicense -- what did it
16 allow Ripple -- XRP II -- actually, let me just
17 rephrase the last question.

18 Did XRP II obtain that BitLicense
19 eventually?

06:11:55 20 A. Yes.

21 Q. And what did the BitLicense allow XRP II
22 to do in New York State?

23 A. To sell virtual currency.

24 Q. So I want to just direct you to
06:12:05 25 paragraph 3 here which references a March 9th,

06:12:08 1 2016 response to the DFS.

2 Do you see that?

3 A. I see that, yes.

4 Q. And there were three attachments to this
06:12:20 5 e-mail and I want to direct your attention to the
6 attachment that is Bates stamped number 9211025,
7 which appears to be a March 9th, 2016 letter to
8 the DFS.

9 Do you see that?

06:12:35 10 A. I see that.

11 Q. And the letter appears to have been
12 written by a lawyer -- lawyer named [REDACTED]
13 from [REDACTED].

14 Who is [REDACTED]?

06:12:45 15 A. [REDACTED] was Ripple's outside
16 counsel that was assisting us with XRP II's
17 BitLicense.

18 Q. Okay. And the first sentence of that
19 letter says "This is in response to your letter of
06:12:56 20 February 12th, 2016 to Ryan Zagone."

21 Do you see that?

22 A. I see that, yes.

23 Q. And just for completeness, if you look
24 at the first attachment to this e-mail, which is
06:13:10 25 Bates number 9211022, does that appear to be the

06:13:15 1 letter from February 12th, 2016, from the
2 Department of Financial Services to you?

3 A. That does, yes.

4 Q. Okay. So this response dated March 9th,
06:13:26 5 2016, was in response to an original letter to
6 you?

7 A. Yes.

8 Q. Did you participate in drafting this
9 letter, March 9th letter, to the DFS?

06:13:40 10 A. Yes. I collected information internally
11 at Ripple and provided it to [REDACTED] to
12 draft into a letter.

13 Q. And did you review this letter before it
14 was submitted?

06:13:51 15 A. Yes.

16 Q. Okay. I want to direct your attention
17 to page 2 of the letter and I want to focus on
18 Section D of that letter and, in particular, the
19 second paragraph of Section D. And I'll just read
06:14:13 20 what it says there. It says "XRP II and Ripple
21 consider XRP a digital asset, not a currency. XRP
22 is used within Ripple as a security mechanism and
23 a liquidity tool. XRP is not intended to be used
24 as a currency."

06:14:26 25 Do you see that?

06:14:27 1 A. I see that, yes.

2 Q. What was your understanding of the
3 meaning of this portion of the letter?

4 A. Here we were describing how Ripple --

06:14:37 5 MR. HANAUER: Excuse me. Excuse
6 me.

7 Objection. Are you instructing
8 him to decouple what he learned from
9 counsel in providing that answer?

06:14:47 10 MR. CERESNEY: No. I'm asking him
11 for the meaning of the letter that was
12 responding to a letter to him that the DFS
13 wrote and that he reviewed before it was
14 submitted. So I'm asking him what the
06:15:00 15 letter means in his understanding.

16 MR. HANAUER: And I would just
17 note for the same ques -- type of
18 questions, you were objecting on -- on
19 privilege grounds when I was asking him.

06:15:07 20 MR. CERESNEY: No, I wasn't. I
21 beg to differ. You were asking different
22 types of questions.

23 MR. HANAUER: We'll -- we'll let
24 the record speak for itself.

06:15:14 25 MR. CERESNEY: You can. I'm

06:15:14 1 asking him for his interpretation of a
2 letter that he reviewed in response to a
3 letter that was written to him by the DFS.

4 BY MR. CERESNEY:

06:15:23 5 Q. You can go ahead, Mr. Zagone.

6 A. This letter -- this was a time when --
7 so here we're talking about Ripple's use -- like
8 the use case of XRP within our product. We're not
9 using it -- Ripple's not using XRP as a currency,
06:15:40 10 like to buy your coffee with, but as a tool to
11 connect currencies more efficiently.

12 In 2016 the key topic in the market was
13 bitcoin is used as a currency replacing the U.S.
14 dollar, and here we're making the point that
06:15:56 15 Ripple's use of XRP is not to replace the U.S.
16 dollar, but to connect the U.S. dollar to other
17 currencies more efficiently.

18 Q. Were you -- were you intend -- was this
19 letter intended, as far as you understood this
06:16:07 20 letter, to respond to -- to address the legal
21 classification of XRP as a currency?

22 A. No. This was about its use case.

23 Q. And is this about XRP II's use case
24 of -- or Ripple's use case of XRP?

06:16:30 25 A. Yes, this was about how Ripple was using

06:16:32 1 XRP in our product.

2 Q. And just as a -- as a general matter,
3 are you aware of other XRP holders who had used
4 XRP as a currency during this period?

06:16:47 5 A. Yes. Out -- outside of Ripple's use of
6 XRP, there were people, individuals, using XRP as
7 a currency. It is an open-source technology. You
8 could access it on an exchange and use it however
9 you'd like. So as a currency.

06:17:09 10 MR. CERESNEY: Okay. I think
11 that is all we have. No further
12 questions.

13 MR. HANAUER: No redirect.

14 THE VIDEOGRAPHER: Anyone else?
06:17:15 15 That's it?

16 Okay. All right. This
17 concludes the video deposition of Ryan
18 Zagone. The time is 6:17 and we're going
19 off the record.

06:17:24 20 (Whereupon, the deposition
21 concluded at 6:17 p.m.)

22

23

24

25

1 STATE OF NEW YORK)

2) ss:

3 COUNTY OF NEW YORK)

4 I hereby certify that the witness in the
5 foregoing deposition, RYAN ZAGONE was by me duly sworn
6 to testify to the truth, the whole truth and nothing but
7 the truth, in the within-entitled cause; that said
8 deposition was taken at the time and place herein named;
9 and that the deposition is a true record of the
10 witness's testimony as reported by me, a duly certified
11 shorthand reporter and a disinterested person, and was
12 thereafter transcribed into typewriting by computer.

13 I further certify that I am not interested in
14 the outcome of the said action, nor connected with nor
15 related to any of the parties in said action, nor to
16 their respective counsel.

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand this 22nd day of July, 2021.

19 Reading and Signing was:

20 ___ requested ___ waived X not requested.

21
22 
23 -----

24 BRIDGET LOMBARDOZZI, CSR, RMR, CRR
25