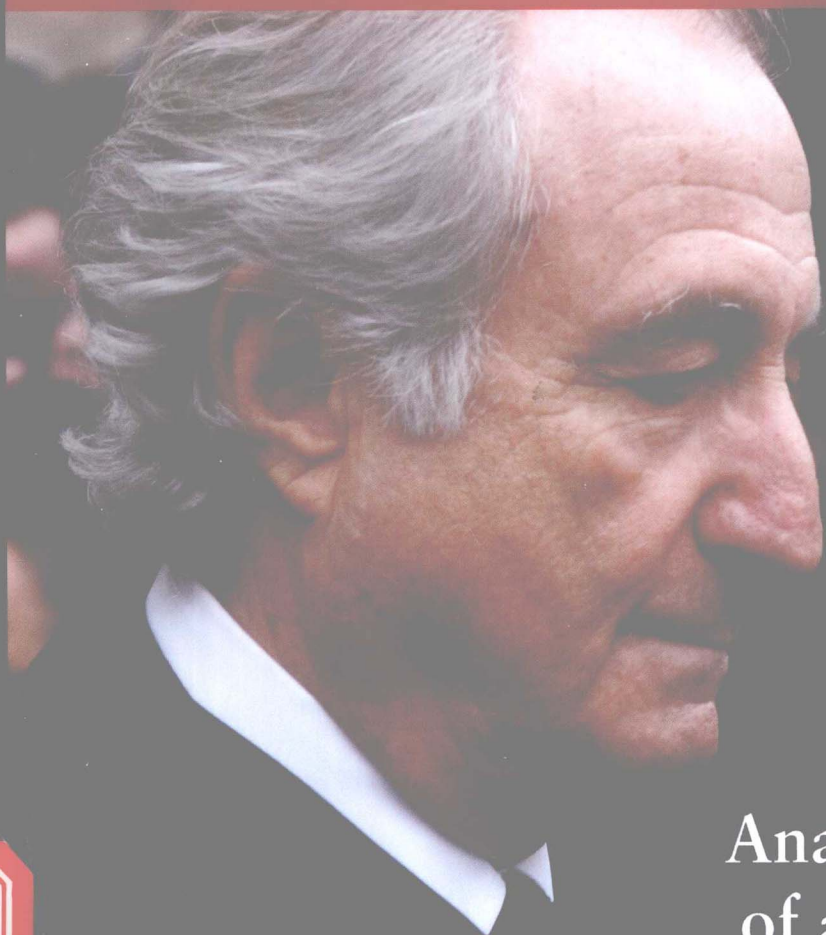


# BERNARD MADOFF

AND HIS ACCOMPLICES



Anatomy  
of a Con

LIONEL S. LEWIS

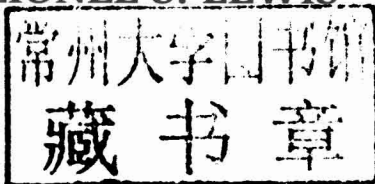
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LIONEL S. LEWIS



PRAEGER™

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Santa Barbara, California • Denver, Colorado

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#### Library of Congress Cataloging-in-Publication Data

Names: Lewis, Lionel S. (Lionel Stanley) author.

Title: Bernard Madoff and his accomplices : anatomy of a con / Lionel S. Lewis.

Description: Santa Barbara : Praeger, 2016. | Includes bibliographical references and index.

Identifiers: LCCN 2015038749 | ISBN 9781440841934 (hardback) | ISBN 9781440841941 (ebook)

Subjects: LCSH: Madoff, Bernard L. | Swindlers and swindling—United States. | Investment advisors—Corrupt practices—United States. | Ponzi schemes—United States. | Bernard L. Madoff Investment Securities, LLC. | BISAC: BUSINESS & ECONOMICS / Finance. | BUSINESS & ECONOMICS / Personal Finance / Money Management. | BUSINESS & ECONOMICS / Investments & Securities.

Classification: LCC HV6692.M33 L493 2016 | DDC 364.16/3092—dc23

LC record available at <http://lcn.loc.gov/2015038749>

ISBN: 978-1-4408-4193-4

EISBN: 978-1-4408-4194-1

20 19 18 17 16      1 2 3 4 5

This book is also available on the World Wide Web as an eBook.

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Praeger

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130 Cremona Drive, P.O. Box 1911

Santa Barbara, California 93116-1911

This book is printed on acid-free paper ∞

Manufactured in the United States of America

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**BERNARD MADOFF  
AND HIS  
ACCOMPLICES**

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## Acknowledgments

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I am grateful to the Hon. Barbara Howe, Erie County surrogate judge, and Curtis J. Mettlin, director of cancer control and epidemiology and chief of epidemiological research emeritus at Roswell Park Cancer Institute, for their innumerable intellectual and editorial suggestions. I am also grateful to the reference librarians—Nina Cascio, Joseph L. Gerken, and Marcia L. Zubrow—at the Charles B. Sears Law Library at the University at Buffalo and to Jay Deveau, Branch Librarian, Second Circuit, U.S. Courts Library, who provided valuable and timely assistance in finding a wide assortment of essential documents. Moreover, special thanks are due to Nicole M. Hayden, manager, Software and Computer Productivity Programs, Organizational Development & Training, and to Guangxu Xun, a student in the graduate program in the Department of Computer Science and Engineering, both at the University at Buffalo, for their assistance in preparing my manuscript for publication. Finally, it was a pleasure to work with Hilary Claggett, a senior editor at Praeger, who edited and guided *Bernard Madoff and His Accomplices: Anatomy of a Con* through publication.

Author's Note: Throughout the book, with the kind permission from the copyright holder Springer-Verlag GmbH, I draw on my essays on the Madoff con published in *Society* in 2013 and 2014 (50, numbers 3, 4, 5, and 6, and 51, number 1).

Williamsville, New York  
Fall, 2015

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## Introduction

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This book examines Bernard L. Madoff's oversized confidence game; it focuses on what went on behind the scene at his investment firm, Bernard L. Madoff Investment Securities (BLMIS), and on those who enabled his confidence game to succeed for as long as it did.

A confidence game is generally referred to as a con game, or simply a con. There are short cons and long cons. Much of the time, long cons are called big cons. A short con is a quick swindle that may take only minutes. Its aim is to defraud or steal from victims what they are carrying—money, a wallet, a purse, jewelry. A big con unfolds over a much longer period of time. The term *confidence game* possibly originated with situations in which victims were induced or lured to compete in a game of chance from which unknown to them the element of chance had for the most part been eliminated.<sup>1</sup>

In both short and big cons, one individual wins the confidence of another and exploits the trusting relationship to defraud or steal from him or her. The former is a confidence man (or con man), the individual who gains the confidence of others, and the latter is a victim, or in the argot of con men, a mark. The confidence man, the inside man, uses what are generally called outside men to help in his deception.<sup>2</sup> Outside men, the con man's confederates, help in small and big ways. Most are largely invisible working behind the scene, out of sight backstage, to keep the operation running smoothly. They are valued henchmen (accomplices), trusted and trusting. Because of what they do, other outside men are more conspicuous, as they first locate and then entice victims to get involved in a swindle. These outside men are the confidence man's skills or what in the argot are called ropers (those who bring victims and their money to a con game) and steerers

(those who pose as satisfied clients). Accomplices, ropers, and steerers are a con man's full complement. Accomplices and ropers are with rare exceptions indispensable to help a con man dupe his victims, and when there are no or too few steerers, they can also be used to bear witness to his cunning.<sup>3</sup>

One present-day short con (already practiced by the turn of the fifteenth century) is "Three-card Monte," in which a shill pretends to conspire with a mark to cheat a con man, the card dealer. In reality, the shill and the con man are working together to cheat the mark. At first, the mark is allowed to win, but then he is confused by the sleight of hand of the dealer and fairly quickly loses his or her money.

Most often short cons occur at top speed and also involve defrauding victims of modest amounts of money. However, the two elements are not always seen together in a con, and this is but one of four possible courses of a con. Long cons can unfold quickly or defraud victims of limited assets. Consequently, it is not always easy to delineate a short con from a long one, a con having a detailed and prolonged plan to defraud. Below is an example:

A close pal of [Wilson Mizner, the writer, entrepreneur, and celebrity confidence man] was a member of a San Francisco family that had gained enormous wealth in Nevada silver mines. Mizner took the young scion of the Comstock Lode to New Orleans; their mission was to clear out a poolroom with the help of inside racing information. What the young silver mining millionaire didn't know was that the poolroom, with the entire personnel, customers and all, had been organized by Mizner solely for the purpose of getting a slice of the silver millions. Mizner's net profit at the expense of his bosom friend was more than \$100,000, and in those simple days it lasted him more than a year.<sup>4</sup>

One present-day long con is a Ponzi scheme, an investment swindle in which high profits are promised and paid early with funds raised from later investors. In a Ponzi scheme, a dollar more for one victim means a dollar less for another victim. Big cons are not necessarily complicated, and generally Ponzi schemes are not elaborate, involving little more than taking money from new investors and giving it to the earlier investors.

The con man Bernard L. (Bernie) Madoff's business, Bernard L. Madoff Investment Securities (BLMIS),<sup>5</sup> was a protracted and massive



Ponzi scheme that lasted from perhaps as early as the 1960s or 1970s until December 2008 and cost investors in the range of more than \$17.3 billion up to \$18.5 billion.<sup>6</sup>

BLMIS was a Wall Street broker-dealer—that executed orders for stocks and securities on behalf of clients (a broker) and traded stocks and securities for its own accounts (a dealer)—involved in three businesses or activities: 1. the market making business, buying and selling stocks and securities for customers; 2. the proprietary trading business, buying and selling stocks and securities with company money; 3. investment advisory (IA) services, taking custody and managing customer assets. It was within the IA business where the Madoff con game took place.

The BLMIS IA business was a criminal enterprise, an organization set up or controlled for the explicit and sole purpose of executing criminal activity. When IA customers deposited funds to invest in their accounts, BLMIS would not invest the funds in shares of common stock and other securities of well-known corporations as customers had expected, but would deposit the funds in its bank account, and periodically provide customers with account statements showing that stocks and securities had been purchased with their deposits and that these were steadily growing in value. However, none of their money was ever invested by BLMIS. Still, when an IA customer requested some or all funds be returned, the amount was promptly withdrawn from the BLMIS bank account and the money returned. Other money was withdrawn from the bank account to support the lavish lifestyle of Madoff and his family (houses, cars and boats, jewelry, vacations, etc.), to pay confederates (outside men, ropers, steerers, and backstage accomplices) who were helping him con investors,<sup>7</sup> and to prop up the BLMIS market making and proprietary trading businesses that were not always profitable. In the BLMIS Ponzi scheme, every dollar received by an investor above the amount that the investor deposited was one dollar less for the investor to whom the money actually belonged.

After more than six years of investigation, it is still unclear when Madoff's con game began, how much money investors lost, and how many investors were involved. (According to a Complaint filed by the U.S. Attorney for the Southern District of New York, "As of on or about November 30, 2008, BLMIS had approximately 4800 IA client accounts." Looking at this question in another way, by the end of 2013, 16,519 claims had been filed for the return of assets [of which 2,517 had been allowed and 10,921 had been denied because they were third-party claims and not eligible for Securities Investor Protection Corporation (SIPC) insurance]).<sup>8</sup>

*Bernard Madoff and His Accomplices: Anatomy of a Con* is the study of a big con, specifically of what went on behind the scenes of a big con—of how backstage the con man and his accomplices, as well as ropers and steerers, kept a con game going. It is an examination of Madoff's con game, which first stole millions of dollars from American investors and then billions of dollars from investors from around the world—from Europe, Asia, South America, and the Middle East.

It is worth noting that in this book no attempt is made to ascertain the cause or causes of Madoff and his accomplices' criminal activity. The con was a crime, and crime is a legal category. The only thing that is alike in all crimes—white collar or street crime, confidence games or other frauds—is that they are all violations of law. As MacIver decades ago reminded us, “in that sense the only cause of crime as such is the law itself.”

What is a crime in one country is no crime in another; what is a crime at one time is no crime at another. The law is forever changing, adding new crimes to the catalogue and canceling former ones . . . . Since, then, crime varies with the law, the conditions that evoke it are equally variant.<sup>9</sup>

In a sense, con games violate a fundamental principle of human society, which makes them of particular interest to sociologists. Georg Simmel long ago reminded us: “The first condition of having to deal with somebody at all is to know with *whom* one has to deal. The fact that people usually introduce themselves to one another whenever they engage in a conversation of any length or meet on the same social level may strike one as an empty form; yet it is an adequate symbol of the mutual knowledge presupposed by every relationship.”<sup>10</sup> In a con game, victims do not know, they only think they know, with whom they are dealing. Because of this, a great deal can readily go amiss. Simmel adds: “Truthfulness and lie are of the most far-reaching significance for relations among men.”<sup>11</sup> Understanding this verity, Jonathan Swift's Lilliputians looked “upon fraud as a greater crime than theft, and therefore seldom fail[ed] to punish it with death; for they allege[d], that care and vigilance, with a very common understanding, may preserve a man's goods from thieves, but honesty has no defense against superior cunning.”

Moreover, Goffman has written, “perhaps the real crime of the confidence man is not that he takes money from his victims but that he

robs all of us of the belief that middle class manners and appearance can be sustained only by middle class people. A disabused professional can be cynically hostile to the service relation his clients expect him to extend to them; the confidence man is in a position to hold the whole 'legit' world in this contempt."<sup>12</sup>

In 1940, Maurer pointed out:

In addition to grift sense [the ability of a criminal to live by his wits], a con man must have a good deal of genuine acting ability. He must be able to make anyone like him, confide in him, and trust him. He must sense immediately what aspect of his personality will be most appealing to his victim then assume that pose and hold it consistently. If the mark is a wealthy farmer, he must assume those characteristics which he knows will arouse the farmer's confidence and friendship. He must be able to talk over the farmer's problems with sympathy and understanding . . . .

With business and professional men he reveals other facets of his multiple personalities and in a remarkably short time has established himself on a very friendly footing with them . . . .

Once the outside man has roped a mark, his work is just beginning . . . .[He] puts the mark in contact with the inside man and "ties him up." These steps are, in themselves, little dramas which must be enacted with great naturalness; one false move and the mark suspects that his new-found friend is not all that he seems. If he acts the part well, the mark suspects nothing, for the sequence of events is built up with most convincing logic and plausibility.<sup>13</sup>

A big con is a multi-act piece of theater, the outline of which is scripted by a con man. Before a con begins (before the acting begins) the inside man sets the stage for a performance. He gathers outside men and the props that will enhance success. The first act begins with a confidence man and his outside men finding one or more victims to bilk. In the middle are play-acting, performances, pretending, the utilization of props, and false representations. A successful last act ends by "cooling the marks out," the victims' acquiescing, accepting, or adjusting to the fact that their property is gone—that their money has been stolen and that they have been deceived and cheated.

To see a con game unfold is much like going to the theater. One notable difference, of course, is that the con game's audience does not know that it is part of the performance, in that victims have no

idea that they have descended into a world of make-believe. As Maurer put it, “big-time confidence games are in reality only carefully rehearsed plays in which every member in the cast *except the mark* knows his part perfectly.”<sup>14</sup>

For Madoff’s con game to succeed, it was simply necessary to find those—individuals or financial institutions—with money to invest in the stock market, and that hoped to make more from an investment with BLMIS than with what they believed they could earn elsewhere. To do this, Madoff had to gain the confidence of his investors. His props—all of the accoutrements of a Wall Street financier and a prosperous business—were first positioned, and he began by showing a record of consistent and above-average returns by BLMIS. He also had to show that investors could promptly redeem part or all of their money (both their principal and what was reported in their monthly, quarterly, or annual statements as earnings from their investments). If he failed on either count—finding money and keeping his clients satisfied—his con game would, as would be the case with any con game, quickly collapse.

On December 10, 2008, his two sons’ attorney reported to the U.S. Attorney’s office that he had told them “in substance, that his investment advisory (IA) business was a fraud, he was ‘finished’, he had ‘absolutely nothing’, ‘it’s all just one big lie.’ ” It might well be, as some Madoff-skeptics believe, that even this was part of Madoff’s performance. In any case, when two FBI agents went to his Manhattan apartment the next morning, Madoff acknowledged knowing why they were there. When told by one agent, “We’re here to find out if there’s an innocent explanation,” Madoff replied, “There is no innocent explanation.” According to the senior FBI agent’s deposition for the court, “Madoff further stated, in substance, that he ‘paid investors with money that wasn’t there’. Madoff also said that he was ‘broke’ and ‘insolvent’ and that he had decided that ‘he could not go on . . .’ ” He was immediately arrested, and on March 12, 2009, he pled guilty to 11 counts of securities fraud, investment advisor fraud, wire and mail fraud, money laundering, making false statements, perjury, filing false documents to the SEC (Securities and Exchange Commission), and theft from employee benefit funds. (See excerpts from the transcript of guilty plea proceedings, Appendix 1-A.) On June 29, 2009, he was sentenced to prison for 150 years.

From the beginning, Madoff needed associates in place to help him collect BLMIS investors’ money. These ropers readily handed the money over to him so that he could spread it to his family and friends,

backstage accomplices at BLMIS, ropers, and steerers who were working his con and, of course, to investors who closed their accounts or requested redemptions. Madoff's backstage accomplices were led by a number of long-term employees who over the years would become familiar with his business and could fabricate documents that would be used to convince his investors, regulators, and others that his fictitious investments were generating profits sufficient enough to minimize requests to close accounts or for redemptions, and to attract new clients and investments. These backstage accomplices were more vulnerable legally as they were involved in day-to-day activities that were clearly criminal. In the end, in fact, in addition to Madoff, 14 pled or were found guilty of an assortment of white collar crimes. And they were generally not enriched nearly as well as were ropers.<sup>15</sup> Madoff's steerers, his highly visible satisfied customers, were longtime male friends, all of whom were Jewish, as were many, but certainly not all, of his victims (as were many of the attorneys who worked to put him and his backstage accomplices in prison and to return the money to clients that he had stolen). After all, his business and his crime largely took place close to New York City, where the percentage of Jews is larger than in San Antonio or Seattle.

Madoff's Ponzi scheme was fairly straightforward. It was, of course, necessary for Madoff to improvise from time to time on the rare occasion when an investor, a journalist, a regulator, or a BLMIS employee not privy to the con asked questions, the full answers to which could quickly lay open what had the appearance of a winning investment strategy, but, was, in reality, nothing more than a lasting performance. This was a manageable problem, however, as Madoff was a practiced liar; he told lies and more lies, and the BLMIS business was immersed in a fog of deception not only through lying but also through distraction, dissimulation, concealment, and misdirection.<sup>16</sup>

As it was, Madoff was a fraud, his success fictitious. He was not a skilled or lucky investor; he was not able to guess correctly over half of the time which way stocks would move. He was at best an indifferent investor. His backstage accomplices at BLMIS and for the most part his ropers and steerers as well as his family were a collection of mediocre, materialistic, greedy, and unconscious individuals.<sup>17</sup>

Yet, Madoff was quadruply lucky as a con man. He was lucky that he could so readily find others to help him carry out his con. Mostly all that he had to do was to reward them sufficiently. He was lucky that late in the twentieth century there were so many people in America and around the world foolish or greedy or trusting enough not to

question why the returns he reported on his investments were almost uninterruptedly steady and above average. He was lucky that so many on Wall Street and its regulators had tunnel vision, that even with a number of clues, or red flags, they could not stumble on the fact that he was a con man, that it was artifice, that they were immersed in a fiction. He was finally lucky that by the time he was operating his con, the United States had moved well beyond a country guided by an ethic of production to a nation ruled by an ethic of consumption whereby millions of individuals no longer expected work to yield wealth. Wealth was just as likely to come from family and friends and social connections—an acquaintance or a neighbor, or the friend of an acquaintance or a neighbor, by a chance encounter, or even from a winning lottery ticket or an inside straight draw at a nearby casino. However one came upon it, wealth did not necessarily have to be earned, and whatever its origin, that it was there is all that was important, not how one came by it.<sup>18</sup>

As a result, for decade after decade, Madoff, this very ordinary man with a very ordinary family, with very ordinary relatives and friends, with very ordinary, although expensive, material tastes, fairly easily convinced those who could have readily stayed his con that he was simply a canny investor and that this was evident from his long-term success. However, after the economic downturn of 2007 had taken hold in Europe and the United States, BLMIS began to see more redemptions than new money invested, and Madoff was ultimately forced to confess his ruse. Like millions of poor and rich, laborers without savings and investors with a surplus of money to squander in a con game, around the world after the global recession began, Madoff's luck had run out.<sup>19</sup> In early December 2008, he confessed his crime to authorities, rather than try to flee, hide, commit suicide, or in some other way evade prison.

Madoff's con game did not end well not only for him but also, as is generally the case, for his victims. His victims were left with the Herculean task of trying to recover legitimate claims or a mightier task of trying to recover what had simply vanished or was not recoverable. Those charged with the fairly straightforward task of collecting what Madoff left washing around in the international financial world appeared to be markedly incompetent in completing the task. The legal process that followed BLMIS's collapse reminds one of the epic and never-ending fictional probate-dispute and parody, *Jarndyce and Jarndyce*.<sup>20</sup> This dénouement left many of his victims feeling outraged and bitter. They were angry at being cheated by Madoff, and

relentlessly badgered both regulators for not uncovering Madoff's con and the federal authorities for not promptly making them financially whole, an outcome they believed was both fair and deserved. Few were cooled out,<sup>21</sup> that is, convinced to quietly come to terms with their loss.

As it was pointed out in the first sentence of this Introduction, *Bernard Madoff and His Accomplices* looks behind the scene of Madoff's con; it is a tableau of how it operated. To date, the inquiries into Madoff's fraud by an army of attorneys and journalists have been trying to discover "where the bodies are buried." This book is an examination of "who buried the bodies" and "how they got buried." This seems the more interesting question, the answer to which will take us much closer to understanding the Madoff con game and perhaps other con games as well. To date, there are probably a dozen books, including my earlier one, which primarily looked at Madoff, his victims, and various aspects of his con game,<sup>22</sup> but none have focused on his organization, BLMIS, where his fraud began, was centered, and flourished.

The book describes what Madoff and his associates did to defraud money from BLMIS IA business clients. It begins with looking at how BLMIS's backstage white collar workers routinely, some knowingly and some unknowingly, went about mass-producing false records and documents; it continues with an examination of BLMIS ropers and roping operations (first hustling money largely from middle-class and upper-middle-class investors and steadily moving to those with great wealth); it also reviews accounts by former employees—Madoff's accomplices—detailing what they did and saw in their time at BLMIS.

Much of the material examining how the con game was able to last for decades was found in the court testimony of Madoff and his 14 accomplices who pled or were found guilty of various white collar felonies. What emerges is a tableau of how the con operated, how false records and documents were mass-produced, and how money laundering and other crimes became common practice. It quickly becomes apparent that Madoff's con was built on the deception by more than the 15 implicated in the crime.

Chapter 1 begins by examining five con games in order to isolate their common elements. Two are fiction and three are accounts from the annals of con games. What went on at BLMIS is generally what goes on in most con games: preparation, the introduction of props, play-acting, pretense, false representations, victims convinced that they have much to gain and little to lose, and unrelenting efforts to

deceive, disorient, and fool. As in a theatrical production, little in Madoff's world was what it seemed to be.

Chapter 2 focuses on the activities of a handful of BLMIS employees who were engaged backstage, hidden from business and government regulators and most investors, to further Madoff's crime. The work of these seven revolved around sustaining the pretense that stocks and securities were being bought and sold, that BLMIS was a profitable business. All of these fairly well-paid accomplices pled guilty to being involved in criminal activities, although only one acknowledged that he knew that his activities were furthering a Ponzi scheme. Regardless of how their attorneys scripted how they would describe their activities in a plea bargain, a culture surrounding their insular workplace developed over time. By 2008, these backstage employees were clearly part of a subculture that had evolved into a wholly criminal enterprise.

The voices of three individuals who worked at BLMIS are heard unfiltered in the following three chapters. The three, Enrica Cotellessa-Pitz, David L. Kugel, and Annette Bongiorno, were among the 15 BLMIS employees, including Bernard Madoff and his brother, Peter Madoff, found guilty of criminal involvement in the con. Deception is at the center of the world described in their accounts of life backstage at BLMIS. Clients, regulators, and other BLMIS employees (some other accomplices) are regularly and repeatedly deceived.

Chapter 6 once again examines the world of make-believe that continued for decades behind the scenes at BLMIS. A review of other con games shows that pretending, misrepresenting, and dissembling are hardly unique to what went on backstage at BLMIS, where Madoff's accomplices, whose work was to deceive, were, like his defrauded clients, often themselves victims of deception.

Chapter 7 looks at how ropers and Madoff worked together to lure new money into his con game. Attention is primarily on four individuals or organizations: first, what began as an accounting firm and evolved into a network of reliable ropers for BLMIS, Avellino & Bienes (A&B); second, Madoff's in-house roping operation, Cohmad Securities; third, Robert M. Jaffe, a well-connected golfer with a low handicap, above-average looks, and a very average IQ whose father-in-law made hundreds of millions of dollars (only some of which had to return after Madoff's con collapsed) investing with Madoff; and fourth, J. Ezra Merkin, a prominent figure among wealthy New York Jews who, like the Puritans, believed wealth placed one close to God.



The key to Madoff's success here, what greatly increased a steady stream of new money to his con game, was simply the greed and naïveté of both his ropers and investors. Madoff generously rewarded the former for their efforts at helping him defraud the latter.

Ropers and roping are again the subjects of Chapter 8. Using an array of documents, the international money-collecting activities of a U.S.-based investment company, the Fairfield Greenwich Group (FGG), and of the international financier Sonja Kohn are reviewed. Although over the years FGG collected approximately \$7 billion for Madoff to invest, its executives were almost totally in the dark about what happened to the money after it was directly passed to BLMIS. Madoff was single-mindedly determined to steal as much money from FGG as he could, while the FGG executives appear to be unimaginably dull or perhaps practiced and gifted falsifiers, a combination that greatly enhanced his success as a con man. The case of Kohn shows that there seemed to be almost no limits to what Madoff was willing to pay ropers to keep them engaged finding victims for his con game. Kohn's experience with Madoff shows that being a roper in a con game could be as lucrative as being an inside man, and with a significantly diminished risk of ending up in prison for 150 years.<sup>23</sup>

Big cons increase their chances of success if they have steerers, those who the con game has readily enriched. Steerers serve as exemplars of what may be in the offing for others enticed into the con. Three investors, among many, who used their BLMIS IA accounts to greatly increase their wealth—Jeffrey Picower, Norman F. Levy, and Stanley Chais—are at the center of Chapter 9. The knowledge of the existence of but a single steerer by clients and potential clients of BLMIS promoted its fortunes.

Chapter 10 describes how JPMorgan Chase Bank assisted Madoff's con to succeed for many decades. By, for example, turning a blind eye to BLMIS's money-laundering activities, a number of the bank's executives facilitated the continuation of Madoff's con. In a strict sense, the bank did not work for BLMIS, but it was as much at the center of the con as were backstage accomplices. Thus, the bank may not have assiduously laundered money for BLMIS, but year after year, its executives allowed money laundering—the purpose of much of it years after the Madoff con imploded is still for the most part unknown—to become a routine practice.

Chapter 11, "Revisiting the Crime Scene," considers how it was that BLMIS was so criminogenic, and how Madoff was able to keep his con game viable for as long as he did. The criminal subculture with