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1 evidence.)

2 BY MR. STOKES:

3 Q. Starting at the bottom, take a look at that, please. First,
4 is this an e-mail from you to Cathie Kissick, cc'ing the
5 defendant, Lee Farkas?

6 A. Yes.

7 Q. And the e-mail address you're using there says "gatorzone."
8 What is that?

9 A. That is an Internet e-mail address.

10 Q. Did you periodically use non-Colonial Bank e-mail to
11 communicate with Ms. Kissick and the defendant?

12 A. Yes.

13 Q. And why did you do that?

14 A. Cathie had asked me -- Cathie Kissick had asked me to use an
15 Internet e-mail that didn't go through the bank's servers to
16 discuss Plan B.

17 Q. Now, Ms. Kissick's e-mail address, do you recognize that?

18 A. Yes.

19 Q. What is that?

20 A. That was her first version of her BlackBerry at the time. It
21 was like a mobile e-mail device.

22 Q. So is that a work, a work device?

23 A. It was.

24 Q. So while you're not using the work e-mail, you're sending it
25 to Ms. Kissick on a work device?

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1 A. Yes.

2 Q. Okay. And what does the e-mail to Ms. Kissick and Mr. Farkas
3 state?

4 A. "We now have \$20,482,278.24 outstanding in LIP for B
5 advances, and we have no room on COLB."

6 Q. First, when you say something like "B advances," what are B
7 advances?

8 A. Plan B advances.

9 Q. And what is LIP?

10 A. Lip was an internal Colonial Bank account. It was the loans
11 in process account.

12 Q. Would the LIP account be used in connection with advances on
13 the COLB facility?

14 A. Yes.

15 Q. And when you say that we have no room on COLB, what is the
16 problem for why you have outstanding advances on LIP if there's no
17 room in COLB?

18 A. The money was advanced from the LIP accounts and -- instead
19 of being advanced from COLB so that it was just sitting in a
20 bank's GL account at the time.

21 Q. To the extent that you had to advance money on LIP when COLB
22 was full, what would happen once COLB had cleared some space so
23 you could put loans on the COLB facility?

24 A. Then the advance would be moved from the LIP account to the
25 COLB facility.

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1 Q. Okay. So would Plan B advances go through the LIP account
2 before hitting COLB?

3 A. Yes.

4 Q. Okay. If you would, read Ms. Kissick's response to you on
5 June 3.

6 A. "Is COLB totally full of Plan B, or are there some real loans
7 on there, too?"

8 Q. What was your response to Ms. Kissick?

9 A. "There are real loans on there, too. I think there is a
10 total of \$240 of B, and the rest are real."

11 Q. Let me stop you there. Did you consider Plan B loans to be
12 something other than real loans?

13 A. Yes.

14 Q. What did you consider them to be?

15 A. Not real. Fake loans.

16 Q. It says there's a total of 240 of B. What does that mean?

17 A. It means there was 240 million of Plan B loans on COLB.

18 Q. And the rest are real.

19 Do you recall at this time how much was on the COLB
20 facility at the time in total, how large the facility was?

21 A. No, I don't remember. The COLB facility grew over time, so I
22 don't remember the limit at this time period.

23 Q. Do you know whether \$240 million of Plan B or fake loans on
24 COLB was a significant portion of the COLB facility at that time?

25 A. It was most likely a significant portion at that time, yes.

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1 Q. Okay. Well, you then go on to say -- would you continue
2 reading, please?

3 A. "We have been leaving the B in LIP because they keep maxing
4 out COLB to fund their end-of-month volume. The LIP doubled while
5 I was on vacation last week. It went from 10 to 20 million in one
6 week."

7 Q. Ms. Kelly, would you act at times as a gatekeeper on the COLB
8 facility and the amount of Plan B that could be used?

9 A. I don't understand.

10 Q. Sure. In other words, at times would you, would you -- if
11 you were not in the office and you returned, would you
12 periodically find that more Plan B advances had gone through than
13 you had anticipated in the time that you were out?

14 A. Yes. I would always find out what had happened while I was
15 away from the office.

16 Q. Was this a significant increase, from 10 to 20 million in one
17 week?

18 A. Yes, it was. It was, you know, \$10 million in one week while
19 I was out.

20 Q. Now, Ms. Kelly, what is -- the e-mail then is sent by
21 Ms. Kissick to you and Mr. Farkas just a little bit later on June
22 3, 2004. What is -- what does she say?

23 A. "Lee, need to get this cleared up by the 14th. Have Desiree
24 focus on getting COLB cleaned up, and we need cash."

25 Q. Do you know what's happening on the 14th?

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1 A. No, I don't remember what was coming up on the 14th.

2 Q. And why would Desiree need to focus on getting COLB cleaned
3 up?

4 A. Getting COLB cleaned up, getting the aged loans that may be
5 taking line space up, to get those cleared out and sold.

6 Q. And Ms. Kissick's request for cash, was that a refrain that
7 was -- was that something that was frequently asked for?

8 A. Yes.

9 Q. What was the cash needed for?

10 A. To cover Plan B, to cover the hole.

11 Q. Now, by mid-2005, do you have any idea of how large Plan B on
12 COLB had grown?

13 A. Let's see. Mid-2005, it was over 300 million, but I don't
14 remember the exact amount.

15 Q. And that's your recollection?

16 A. Yeah.

17 Q. It was over 300 million?

18 And, Ms. Kelly, at that time, had you recorded -- up
19 until that time, had you been the one recording Plan B on
20 Colonial's books?

21 A. Yes.

22 Q. As it relates to the COLB facility, what was your
23 understanding as to whether the, the balances in the COLB facility
24 were reported on Colonial Bank's financial statements?

25 A. They were.

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1 Q. Did Colonial Bank have a parent company?

2 A. Yes.

3 Q. And what was that parent company?

4 A. Colonial BancGroup.

5 Q. And what was your understanding as to whether Colonial
6 BancGroup was a public company?

7 A. Yes, they were a publicly traded company.

8 Q. And did you know whether Colonial BancGroup needed to file
9 publicly with the Securities and Exchange Commission its financial
10 statements?

11 A. Yes, they did.

12 Q. And did you understand at this time that Colonial BancGroup,
13 its financial statements included these balances from the COLB
14 facility in those financial statements?

15 A. Yes, it did.

16 Q. At that time, Ms. Kelly, did you believe that the balances in
17 the COLB facility were accurate?

18 A. No.

19 Q. You did not believe that?

20 A. That they were -- I mean, what the -- they weren't accurate
21 because of the, the Plan B loans.

22 Q. Ms. Kelly, if you'd take a look at Government's Exhibit
23 1-602C we tried to look at yesterday?

24 Judge, there's a copy of that in the binders that we
25 provided to you with all of the exhibits. I don't know that it's

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1 in the shortened binder. I can simply provide you with my copy if
2 you don't have it there.

3 THE COURT: Well, let's just use it on the screen. I'll
4 look at it the same way the jury's going to look at it.

5 MR. CUMMINGS: I don't have a copy.

6 THE COURT: It's more important that Mr. Cummings have a
7 copy.

8 MR. STOKES: Mr. Cummings does have a copy of it, and I
9 will provide him my copy.

10 MR. CUMMINGS: I told you yesterday I didn't have a
11 copy.

12 MR. STOKES: We've actually confirmed with defense that
13 you have a copy.

14 MR. CUMMINGS: Well, you didn't confirm with me. That
15 would have been nice.

16 THE COURT: Wait, hold on a second. Is that it now?

17 MR. CUMMINGS: It is, Your Honor. Thank you.

18 THE COURT: All right. Any objection to 602?

19 MR. CUMMINGS: No objection.

20 THE COURT: All right, 602C is in.

21 (Government's Exhibit No. 1-602C was received in
22 evidence.)

23 BY MR. STOKES:

24 Q. Ms. Kelly, what is that document?

25 A. This is the Taylor Bean master advance account

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1 reconciliation, also known as the balance sheet.

2 Q. Now, we're talking about this a little out of place.

3 Yesterday when we were talking about this, were you tracking the
4 Plan B balances in -- on COLB?

5 A. Yes.

6 Q. And did you use these master reconciliations as one of the
7 ways that you were able to keep daily track of Plan B expenses?

8 A. Yes.

9 Q. And so -- first, this is -- what is this document? Is this a
10 balance sheet?

11 A. Yes.

12 Q. And what bank account is it a balance sheet for?

13 A. For the master advance account.

14 Q. Okay. And is this -- the master advance account, would you
15 please again just very briefly describe what this account was used
16 for?

17 A. This was the central bank account that was used for all the
18 Taylor Bean warehouse-related loan transactions.

19 Q. And did this account contain -- to the extent there was a
20 Plan B advance on COLB, where would that money -- what bank
21 account for Taylor Bean would that money be advanced to?

22 A. The master advance account.

23 Q. To the extent there was a Plan B advance, would you be able
24 to see that advance deposited into the master account?

25 A. Yes.

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1 Q. Would you then include it in your daily balance sheet of what
2 was being deposited and deducted or withdrawn from that bank
3 account?

4 A. Yes.

5 Q. And was this a way for you to keep track of all the
6 transactions in the master account?

7 A. Yes.

8 Q. Including the Plan B account --

9 A. Yes.

10 Q. -- transactions?

11 Okay. And if I can just quickly ask you -- do you see
12 that next to the descriptions in the far left-hand column, there
13 are pluses and minuses in parentheses?

14 A. Yes.

15 Q. What do those pluses and minuses indicate?

16 A. A minus would be a withdrawal from the account, and a plus
17 would be a deposit.

18 Q. Okay. Now, if you could go down to the center part of the
19 sheet? Do you see on here a Plan B advance listed?

20 A. Yes.

21 Q. Where do you see that listed?

22 A. Under the miscellaneous credits for \$3.6 million.

23 Q. Is that under miscellaneous credits, a plus sign, is that
24 where you would record Plan B advances?

25 A. Yes.

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1 Q. Would you indicate in the description field that it was a
2 Plan B advance?

3 A. No.

4 Q. What do you have written here?

5 A. "COLB advance."

6 Q. And to the extent that you were actually conducting a, there
7 was an advance on COLB for what we previously saw were real loans,
8 would that advance amount be included in this area of the master
9 reconciliation?

10 A. No.

11 Q. Would it be included in a different category?

12 A. Yes. It would be more at the top, under one of the advance
13 categories.

14 Q. Okay. And -- so would you record each of the Plan B deposits
15 into the master account on documents on these daily balance sheets
16 in the miscellaneous credits columns?

17 A. Yes.

18 Q. Now, Ms. Kelly, beginning in the 2004-2005 time frame --
19 well, up until the 2004-2005 time frame, how did you typically
20 communicate with the defendant?

21 A. Normally via phone calls, e-mail.

22 Q. Did there come a time when you began using a different type
23 of communication device with the defendant and others?

24 A. Yes.

25 Q. What was the different type of communication device?

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1 A. Using BlackBerry PIN messages.

2 Q. Do you know about when it was that you started using
3 BlackBerry PIN messages?

4 A. It would have been shortly after I got my BlackBerry, and
5 that was, I think, late 2004, sometime around there.

6 Q. What is a BlackBerry PIN?

7 A. A BlackBerry PIN is a message that goes, you can send from
8 BlackBerry user to another BlackBerry user, and it does not go
9 through the company e-mail server.

10 Q. Are those PINs traceable? What was your understanding as to
11 whether those PINs were traceable?

12 A. They, they were not.

13 Q. Could one go to the company servers and find a copy of the
14 BlackBerry PINs?

15 A. No.

16 Q. To the extent that you sent an e-mail by a BlackBerry, what
17 was your understanding as to whether that e-mail could be found in
18 the company servers?

19 A. It could be.

20 Q. And what was the reason for using these BlackBerry PINs?

21 A. To further hide any communication about Plan B and what was
22 really going on.

23 Q. How did you learn about BlackBerry PINs?

24 A. Cathie had -- Cathie Kissick had gotten her BlackBerry
25 several months before I did, and she actually had told me about

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1 how to communicate via PIN.

2 Q. Who did you communicate by PIN -- via PIN? Who did you
3 communicate with via PIN?

4 A. Oh, Cathie Kissick, Lee Farkas, several other people at
5 Taylor Bean. Desiree Brown.

6 Q. Would you communicate about Plan B by BlackBerry PIN?

7 A. Yes.

8 Q. Now, would you also use BlackBerry PINs at times to
9 communicate about just purely personal information?

10 A. Yes.

11 Q. So would you only exclusively use BlackBerry PINs for talking
12 about Plan B or the hole at Colonial Bank?

13 A. No.

14 Q. And did you continue at times to discuss things about Plan B
15 or the hole on company e-mail?

16 A. Yes.

17 Q. If you'd take a look at Government's Exhibit 22-9?

18 THE COURT: Any objection?

19 MR. CUMMINGS: One moment, Your Honor, please?

20 THE COURT: All right. It's a very short e-mail. Do
21 you have it?

22 MR. STOKES: I'll give him my copy, Your Honor. We have
23 provided defense with a list of all our exhibits for this witness,
24 but I understand they're still pulling them.

25 MR. CUMMINGS: You didn't provide everything.

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1 MR. STOKES: I gave it to Zahra. You were not in the
2 courtroom, Bill.

3 MR. CUMMINGS: I don't have an objection.

4 THE COURT: No objection?

5 MR. CUMMINGS: No.

6 THE COURT: All right, it's in.

7 (Government's Exhibit No. 22-9 was received in
8 evidence.)

9 BY MR. STOKES:

10 Q. What is that, Ms. Kelly?

11 A. It's an e-mail from Lee Farkas to me, "Lee's PIN #," and it
12 has the PIN number.

13 Q. Okay. So Mr. Farkas is providing you his PIN number here?

14 A. Yes.

15 Q. Where would you find that PIN number?

16 A. It was in the BlackBerry settings of the individual device.

17 Q. Did you continue to use PINs -- how long did you have your
18 work BlackBerry?

19 A. All the way up until 2009.

20 Q. Did you continue to use PIN messaging all the way through
21 August 2009?

22 A. Yes.

23 Q. Now, Ms. Kelly, in -- sometime in 2005, did Plan B change?

24 A. Yes.

25 Q. How did it change?

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1 A. It changed -- it moved from the COLB facility to the AOT
2 facility.

3 Q. What was the AOT facility?

4 A. The AOT facility was an assignment of trade facility that was
5 for the purchase of securities.

6 Q. And why did it change to the AOT facility?

7 A. The AOT facility was, only tracked the security, the pool
8 level -- or pool number instead of the individual loans, and it
9 was easier to, to track and keep up with Plan B on the AOT.

10 Q. Okay. And so on the COLB facility, to the extent that
11 Colonial Bank purchased a loan on the COLB facility, would that
12 loan be reflected on Colonial Bank's books, that particular loan?
13 Would that particular loan be reflected on Colonial's books?

14 A. Yes.

15 Q. To the extent that there's a purchase on the AOT facility,
16 would the particular loans underlying the pool of loans be
17 reflected on Colonial's books?

18 A. No.

19 Q. What would be reflected on Colonial's books?

20 A. Just the pool, the pool number, the pool identification
21 number.

22 Q. How many loans could be in a pool of loans?

23 A. It could be hundreds.

24 Q. And so why was it that this was easier to conduct Plan B on
25 the AOT facility?

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1 A. Instead of having to refresh hundreds of loans on COLB, there
2 may have only been a handful, small amount of pools on AOT.

3 Q. Who did the refreshing on COLB and AOT?

4 A. I did.

5 Q. So did it make it easier for you to administer Plan B?

6 A. Yes.

7 MR. STOKES: Your Honor, if I may, we have a chart that
8 we've shown defense counsel. This is the first part of the chart,
9 which we've already shown previously.

10 THE COURT: Is there any objection?

11 MR. CUMMINGS: No, Your Honor.

12 THE COURT: All right. And for purposes of the record,
13 this needs some kind of -- do you have a hard copy of this scheme?

14 MR. STOKES: We can provide this with an exhibit sticker
15 purely as a demonstrative and not move it into evidence, Your
16 Honor, for the record.

17 THE COURT: But for purposes of the record, one needs to
18 know what it is the witness is looking at.

19 MR. STOKES: Yes, Your Honor.

20 THE COURT: All right? So when you do that, have it
21 marked as this is the, what, third or fourth demonstrative that
22 Ms. Kelly has looked at?

23 MR. STOKES: This would be the third, yes.

24 THE COURT: All right. The other two that we looked at
25 yesterday, have them marked as Kelly Demonstrative 1, Kelly

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1 Demonstrative 2. This is Kelly Demonstrative 3, all right? We
2 need to get that done at the end of each day.

3 MR. STOKES: Yes.

4 THE COURT: I want them made part of the record. I want
5 defense counsel to initial them so there's no question that's what
6 was shown to the witness. All right?

7 MR. STOKES: Absolutely, Your Honor.

8 Q. Okay. Ms. Kelly, could you describe to us how an AOT
9 transaction should work where Colonial Bank is purchasing a pool
10 of loans from Taylor Bean?

11 A. The group of loans which is formed into a pool by Taylor Bean
12 is purchased by AOT and --

13 Q. If I may, before it's purchased by AOT, does Taylor Bean have
14 any communications with an investor in the, in the loans?

15 A. Yes. They have a, a commitment for an investor to purchase
16 that pool.

17 Q. And again, what type of investor would this be?

18 A. It would be an investor that buys securities. It could be an
19 agency or a private-type financial institution.

20 Q. So by agency, do you mean something like Freddie Mac?

21 A. Yes.

22 Q. And a private-type institution, could you just give an
23 example of one?

24 A. Like Credit Suisse First Boston.

25 Q. Is that a big bank?

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1 A. Yes.

2 Q. Okay. And so would Taylor Bean reach an agreement with an
3 investor about a security?

4 A. Yes.

5 Q. Just generally, what would that agreement be?

6 A. It would be a commitment for the investor to buy the pool,
7 the pool or the security at a specified price.

8 Q. And would that agreement be at some point in the future?

9 A. Yes.

10 Q. And approximately how far in the future would that agreement
11 be for Taylor Bean to deliver the security, a security to this
12 investor?

13 A. It normally would be within 30 days.

14 Q. And by security, is this a mortgage-backed security?

15 A. Yes.

16 Q. And just very briefly, what is a mortgage-backed security?

17 A. It is a security with mortgages.

18 Q. Okay. Backed by mortgage loans?

19 A. Backed by mortgage loans, yes.

20 Q. Okay. And so in order to create this mortgage-backed
21 security, what does, what does Taylor Bean do with Colonial Bank?

22 A. They -- Taylor Bean will deliver the, the individual mortgage
23 loans to Colonial Bank's Document Custody Group, and they will
24 review the files and certify the pool.

25 Q. Who will review the files?

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1 A. The Document Custody Group.

2 Q. And what does it mean that they certify the loans in the
3 pool?

4 A. They review the files to make sure that the documents are in
5 good order and, and match up the data of the documents to their
6 system.

7 Q. To the extent that this is going to be an agency security, do
8 they review the loans to determine whether they're eligible to be
9 in an agency security?

10 A. They actually -- yes, they review to make sure the loans that
11 are on their system match the pool of mortgages that they
12 received.

13 Q. Okay. Do they then do something called certifying the pool
14 of loans?

15 A. Yes.

16 Q. Once the certification is done, what happens?

17 A. At that point, the, the pool of loans is eligible to be
18 purchased by Colonial Bank on the AOT facility, so the -- AOT will
19 buy the pool of loans and give Taylor Bean the money.

20 Q. And why is it that Colonial Bank through the AOT facility is
21 purchasing this pool of loans for Taylor Bean?

22 A. It is another step in the warehouse process. It's a, a way
23 for them to free up the line space that the individual loans are
24 taking up.

25 Q. A way for who to?

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1 A. Taylor Bean.

2 Q. Okay. So do they want to during this process, perhaps 30-day
3 process, do they want to take these loans and get them off of
4 their lines and get them off of their books?

5 A. Yes.

6 Q. Now, after the pool of loans has been sold to Colonial Bank,
7 just to make this clear, how long is Colonial Bank typically going
8 to hold this pool of loans?

9 A. Normally about 30 days.

10 Q. When that pool of loans is sent over to Colonial Bank, is
11 there something called a trade assignment agreement that's
12 delivered with that pool of loans?

13 A. Yes.

14 Q. What is a trade assignment agreement?

15 A. It is a letter showing that there is a commitment for the
16 pool to be sold, and it assigns that commitment to Colonial Bank
17 until it is, in fact, sold.

18 Q. And in order for Colonial Bank to purchase a pool of loans on
19 AOT, does there have to be a trade assignment agreement?

20 A. Yes.

21 Q. And after Colonial Bank obtains this pool in the trade
22 assignment agreement, what happens?

23 A. The -- we hold onto -- Colonial Bank would hold onto the pool
24 until it's sold, and then the investor, once the investor does buy
25 it, money is sent to Colonial Bank to repay the pool.

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1 Q. So what is sold to the investor?

2 A. The, the pool, the security.

3 Q. And so once that security -- who does the delivering of that
4 security to the investor?

5 A. Taylor Bean.

6 Q. And once that security is delivered, what happens for
7 Colonial Bank?

8 A. Colonial Bank is repaid.

9 Q. And the money that it gets repaid, does that go into that
10 investor funding account that we spoke of earlier with sweeping?

11 A. Yes, it does.

12 Q. And what portion of that money typically would be Colonial
13 Bank's?

14 A. About 99 percent of the total value.

15 Q. And the remaining amount would belong to whom?

16 A. To Taylor Bean.

17 Q. Now, with the Plan B transaction, how does that differ from
18 what you just described?

19 A. With the Plan B, the, the pool of loans that is placed on the
20 AOT facility is a pool that has already been sold to another
21 investor.

22 Q. If that pool has already been sold to another investor, is
23 that pool available for Colonial Bank to actually buy?

24 A. No.

25 Q. And you see here on this graphic that there's an icon for a

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1 pool No. 123, pool mortgage loans in the Document Custody Group.

2 In Plan B, would the pool data that you would use reference a pool
3 already in existence?

4 A. Yes.

5 Q. And generally where would that pool that was in existence be
6 located?

7 A. The physical files would be located in the Document Custody
8 Group at Colonial Bank.

9 Q. And would that -- those physical files, the pool that
10 contains those physical files, who typically would that have been
11 sold to?

12 A. Normally one of the agencies. It would have been Freddie Mac
13 or Ginnie Mae.

14 Q. Okay. So an investor. Would an investor already have
15 owned -- would an investor already own that pool of loans?

16 A. Yes.

17 Q. Would Document Custody simply hold that pool of loans on
18 behalf of the investor?

19 A. Yes.

20 Q. Now, you mentioned that Taylor Bean would provide something
21 to AOT then. What exactly is it providing to Colonial Bank
22 through the AOT program?

23 A. We would receive the, the pool data for the pool that had
24 already been sold along with a trade assignment letter, and then
25 the, the advance of -- Colonial Bank would advance Taylor Bean the

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1 money.

2 Q. So would Taylor Bean get real money in this transaction?

3 A. Yes.

4 Q. The pool data that Colonial Bank got, what would Colonial
5 Bank get?

6 A. Just data.

7 Q. Did that data have any value?

8 A. No.

9 Q. Why not?

10 A. Because the pool had already been sold. There was nothing to
11 sell.

12 Q. The pool that was sold by Taylor Bean to Colonial Bank
13 through the AOT program, would it reference the loan -- the pool
14 that was sitting down -- would it reference a pool that had been
15 sitting down in Document Custody already?

16 A. Yes.

17 Q. And would the loans -- by referencing the pool of loans in
18 Document Custody, would Colonial Bank actually be able to
19 establish any ownership interest over those loans that were in
20 Document Custody?

21 A. No.

22 Q. Why not?

23 A. Because that group of loans, that pool of loans had already
24 been sold to someone else.

25 Q. So once these loans, these pools of loans were moved to AOT,

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1 what was supposed to happen with a pool of loans on AOT?

2 A. The pool of loans would be delivered into a security and sold
3 to an investor.

4 Q. Could that pool of loans on AOT be turned into a security?

5 A. No.

6 Q. Why not?

7 A. Because the pool had already been sold.

8 Q. And, and was there actually an investor out there identified
9 for this pool of loans?

10 A. No.

11 Q. For this, this Plan B transaction?

12 A. There was one identified on the letter, but it wasn't real.

13 Q. You mentioned this letter. Are you referring to the trade
14 assignment agreement?

15 A. Yes.

16 Q. Was there a problem with the trade assignment agreement?

17 A. It was, it was false.

18 Q. Why was it false?

19 A. Because the, the pool had already been sold, and there was no
20 commitment to be assigned at that point.

21 Q. Can a pool of loans be sold to two different, two different
22 companies?

23 A. No.

24 Q. Now, once the Plan B shifted from the COLB facility to, to
25 AOT, did the reasons for the Plan B advances continue to be the

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1 same as previously?

2 A. Yes.

3 Q. Have you heard of something called servicing advances?

4 A. Yes.

5 Q. What are servicing advances?

6 A. The servicing advances were advances that Taylor Bean held
7 escrow accounts for various investors that they were servicing
8 loans for, and at times they needed money to cover shortfalls in
9 those accounts.

10 Q. And in, in connection with its servicing responsibilities,
11 would Taylor Bean periodically have to advance money or remit
12 money to the investors in mortgage-backed securities?

13 A. Yes.

14 Q. And the monies that they were supposed to remit to these
15 investors, where did that -- where was that supposed to come from?

16 A. It was to come from the escrow accounts, the payments they
17 had received, Taylor Bean had received from borrowers.

18 Q. So in other words, was this borrowers' P&I, or principal and
19 interest money, the payments on their home mortgages?

20 A. Yes.

21 Q. And to the extent that, that Taylor Bean needed to do an
22 advance, what did that mean with regard to whether it had enough
23 money in its escrow accounts?

24 A. It meant there was a shortage in the escrow accounts, that
25 some borrowers had not made payments.

Kelly - Direct

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1 Q. What was your understanding as to whether or not Taylor Bean
2 would still have to make the payments to investors in the
3 mortgage-backed securities, whether the borrowers had made their
4 monthly payments?

5 A. They did have to still remit the payments even if the
6 borrower hadn't submitted it.

7 Q. If they needed to advance money, was there a period of time
8 during which Taylor Bean came to you and Ms. Kissick to obtain
9 that money?

10 A. Yes.

11 Q. And what would you do to get them this money?

12 A. Basically the same as a Plan B advance. We would advance the
13 money from AOT and deposit the money to Taylor Bean's master
14 account, and then at that point, it would be transferred to the
15 various escrow accounts that needed the money.

16 Q. You said this was like a Plan B account transaction. Was it
17 a Plan B transaction, or was it something different?

18 A. It was, I mean, it was inherently the same, but it was
19 slightly different, because we would get repaid on the servicing
20 advances.

21 Q. Okay. So on the front end, would Taylor Bean sell Colonial
22 Bank pools of loans?

23 A. Yes.

24 Q. Were those pools of loans real?

25 A. No.

Kelly - Direct

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1 Q. So were they Plan B pools of loans?

2 A. Yes.

3 Q. And would you record those in Colonial Bank's books?

4 A. Yes.

5 Q. How large were these types of advances?

6 A. They varied month to month, and they were normally -- in the
7 beginning, it was around 15 to 20 million dollars a month.

8 Q. Did that grow over time?

9 A. It did.

10 Q. Up to what amounts?

11 A. I think the highest was up to 30 or 40 million.

12 Q. And you mentioned that these advances would typically get
13 paid back to Colonial Bank?

14 A. Yes.

15 Q. How long would it typically take Taylor Bean to pay those
16 back?

17 A. With the Freddie Mac servicing advances, those would take
18 about 30 days, up to a little over 30 days to get fully repaid.

19 Q. Were there Ginnie Mae advances?

20 A. There were some Ginnie Mae advances.

21 Q. Would that take about the same time period?

22 A. Yes.

23 Q. And during that 30 days, would Colonial Bank hold Plan B
24 loans on its books?

25 A. Yes.

Kelly - Direct

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1 Q. Or I should say Plan B pools?

2 A. Yeah.

3 Q. On the AOT facility?

4 A. Yes.

5 Q. Would you have recorded those Plan B pools in Colonial Bank's
6 accounting records?

7 A. Yes.

8 Q. Were those Plan B pools during those 30 days real?

9 A. No.

10 Q. Now, you mentioned that Taylor Bean would often pay back
11 those types of advances. Were you also doing Plan B advances
12 during this time for things like negative pairoffs, payroll, and
13 other overdrafts?

14 A. Yes.

15 Q. Were you getting paid back for those Plan B advances?

16 A. No.

17 Q. During this time that you're using the AOT facility, who was
18 involved in these types of Plan B transactions from Colonial
19 Bank's end?

20 A. From the Colonial Bank side, it was myself and Cathie
21 Kissick.

22 Q. How about from Taylor Bean's side?

23 A. Lee Farkas and Desiree Brown.

24 Q. How would an AOT Plan B transaction come about?

25 A. Normally it would start with either a phone call from either

Kelly - Direct

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1 Desiree or sometimes Lee would call Cathie either the day of or
2 the day before if they knew something was going to -- that they
3 needed money for something.

4 Q. And what would happen on Colonial Bank's end?

5 A. Me and Cathie would normally resist and try to see if Taylor
6 Bean could cover their shortages elsewhere, and we would discuss
7 whether we were going to do it or not.

8 Q. Did you ultimately -- would you ultimately do them?

9 A. Yes.

10 Q. Why?

11 A. To avoid Taylor Bean potentially going out of business.

12 Q. And did you have that, the same concern during the AOT phase
13 of Plan B that you'd had previously with Taylor Bean going out of
14 business?

15 A. Yes.

16 Q. Now, Ms. Kelly, you mentioned that with -- you mentioned this
17 term "recycle" in the past. Would you recycle on AOT?

18 A. Yes.

19 Q. What was recycled?

20 A. The recycling was the old pool data as it became aged, close
21 to 30 days old. It would be removed and new loan -- or new pool
22 data would be added to the system.

23 Q. Was this done for these Plan B pools?

24 A. Yes.

25 Q. What was the purpose of recycling?

Kelly - Direct

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1 A. It was to make it look like the pools had, in fact, been
2 sold.

3 Q. Had they been sold?

4 A. No.

5 Q. On Colonial's books, would it appear that the pools had been
6 sold?

7 A. Yes.

8 Q. And why were you trying to make it appear that they had been
9 sold?

10 A. To further cover up the Plan B, to avoid it being exposed.

11 Q. Do you know if the defendant was aware of the recycling?

12 A. Yes.

13 Q. How do you know that?

14 A. When recycling was first discussed and as it changed forms
15 over the years, Lee would be involved in phone calls with me and
16 Cathie and Desiree.

17 Q. When you did the recycling, the methodology for recycling,
18 did that evolve over time?

19 A. Yes.

20 Q. And once a -- once the system was in place, who on Colonial
21 Bank's end would be responsible for just keeping the system going
22 on a day-to-day basis?

23 A. Myself.

24 Q. How about on Taylor Bean's end?

25 A. Desiree Brown.

Kelly - Direct

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1 Q. To the extent the system needed to change, who would you get
2 involved on Colonial Bank's end?

3 A. Cathie Kissick.

4 Q. And on Taylor Bean's end, who would get involved on its end
5 if the system needed to change?

6 A. Lee Farkas.

7 Q. To the extent there was a new advance for new money going out
8 the door of Colonial Bank for a Plan B pool, would you be able to
9 do that on your own?

10 A. No.

11 Q. Who would you have to get approval from?

12 A. Cathie Kissick.

13 Q. And to the extent that there's a new advance going out the
14 door for Plan B, who on Taylor Bean would typically be involved?

15 A. Desiree Brown and Lee Farkas.

16 Q. If you would take a look at Government's Exhibit 1-205?

17 THE COURT: Any objection?

18 MR. CUMMINGS: Sorry, Your Honor. No objection.

19 THE COURT: All right, it's in.

20 (Government's Exhibit No. 1-205 was received in
21 evidence.)

22 BY MR. STOKES:

23 Q. Okay. This is a somewhat longer e-mail, a two-page e-mail.
24 Is this an e-mail from the October 1, 2004 time frame?

25 A. Yes.

Kelly - Direct

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1 Q. And that was ultimately forwarded to you?

2 A. Yes.

3 Q. Okay. If you'd look at the second page of the e-mail?

4 Starting at the bottom of the page, do you see there's an e-mail
5 from Desiree Brown to Jeremy Collett?

6 A. Yes.

7 Q. From September 30?

8 A. Yes.

9 Q. Who's Jeremy Collett?

10 A. He was -- he worked in Taylor Bean's Secondary Marketing
11 Department. That department handled the formation of their
12 securities.

13 Q. And the subject is "Trades on AOT"?

14 A. Yes.

15 Q. And what does Desiree ask Jeremy?

16 A. "Jeremy, I need the AOT letters and the pool numbers and/or
17 loan level info for the following trade tickets on AOT."

18 Q. Now, do you recognize the, the pools that are identified
19 below that, the Ginnie Mae 30 and the Freddie Mac 30?

20 A. The -- I do recognize the second trade ticket number. It was
21 one that was used for Plan B advances.

22 Q. Okay. Let's look at that one. First, on the left-hand side
23 where it says "FHLMC," what are those initials or that acronym,
24 what does that represent?

25 A. Freddie Mac.

Kelly - Direct

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1 Q. And just up above it, "GNMA," what does that represent?

2 A. Ginnie Mae.

3 Q. Okay. So the Freddie Mac 30, you mentioned there's a trade
4 ticket number next to it. What is that trade ticket number?

5 A. That is an internal ticket number that Taylor Bean used.

6 Q. Is that a tracking number from Taylor Bean?

7 A. Yes.

8 Q. And you say you recognize that number?

9 A. Yes.

10 Q. Why do you recognize that number?

11 A. When AOT first started, we were using ticket numbers instead
12 of pool numbers, and there was a trade on AOT that was one number
13 off that did have loans on it, so that was used quite a bit, and
14 that's why I remember it was one number off.

15 Q. The amount next to it, the 11,988,000, what is that number?

16 A. That is the balance of the, the pool on AOT.

17 Q. And so you mentioned -- is this a, a pool that you recognize
18 as a Plan B pool?

19 A. Yes.

20 Q. Now, I just want to go back to the Freddie Mac, the number
21 next to it, 30. Do you know what the 30 next to it references?

22 A. It would reference the, like a 30-year note, 30-year
23 mortgage.

24 Q. To your knowledge, at this time -- sorry, let me ask it this
25 way: In September 2004, were you communicating with Jeremy

Kelly - Direct

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1 Collett about Plan B?

2 A. No.

3 Q. And do you know if others were communicating with Jeremy
4 Collett about Plan B?

5 A. I wasn't aware of anyone.

6 Q. At that time, were you careful about who you communicated
7 with about Plan B?

8 A. Yes.

9 Q. Now, you can see this e-mail chain going up, that there's a
10 response from a person named Nicole Ercolano at the top that
11 neither one of these were on the AOT line. They are regular SSTG
12 early funding. What does that mean, neither of these were on the
13 AOT line, first of all?

14 A. Nicole Ercolano, she actually would request the real AOT
15 requests at the time, and she's showing that they were never on
16 the line, meaning she never requested them.

17 Q. And who does Nicole Ercolano work for?

18 A. She was also in the Secondary Marketing Department at Taylor
19 Bean.

20 Q. And so to the extent there was a real AOT transaction taking
21 place, is that something that she would have information about?

22 A. Yes.

23 Q. To the extent there's a Plan B transaction, would she know
24 about that?

25 A. No.

Kelly - Direct

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1 Q. If you would, turn to the first page of that e-mail.

2 A. Yes.

3 Q. Does Desiree Brown forward this series of e-mails to you at
4 that point?

5 A. Yes.

6 Q. And what does she ask you?

7 A. "Teresa, do you have anything to state otherwise? We don't
8 show that these trades were put on AOT, and if that is the case, I
9 need to figure out how they ended up eating up the line space on
10 AOT."

11 Q. Okay. And what did you do in response to her e-mail?

12 A. I forwarded the e-mail chain to Lee Farkas and Cathie
13 Kissick.

14 Q. And what did you ask -- was it sent to Lee, cc'ing Cathie
15 Kissick?

16 A. Yes.

17 Q. What did you ask Lee Farkas?

18 A. "You need to talk to Desiree about these AOT advances that
19 were done to cover margin calls. She asked me about them, and I
20 told her to talk to you. Now it appears she has involved Nicole
21 and Jeremy."

22 Q. Let's go back first to the first sentence: "You need to talk
23 to Desiree about these AOT advances that were done to cover margin
24 calls." What does that mean?

25 A. Margin calls were money -- Taylor Bean owed another party

Kelly - Direct

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1 money, and so it would be a Plan B advance.

2 Q. And would a real AOT advance or transaction be used to cover
3 a margin call?

4 A. No.

5 Q. Why not?

6 A. Because there is no, no pool or security for a margin call.
7 It's just money that's due to another party.

8 Q. Well, to the extent that there is a real AOT advance, what
9 would the money for the advance on AOT be used for?

10 A. It would be used to repay the individual loans, underlying
11 loans of the pool.

12 Q. So to the extent that a pool of loans is being formed and
13 sold to AOT, would those loans have started out on another bank
14 line such as COLB?

15 A. Yes.

16 Q. And in moving those loans from, for example, the COLB line
17 into a pool onto AOT, would the COLB line have to be paid back --

18 A. Yes.

19 Q. -- for those loans?

20 A. Yes.

21 Q. And so with a real AOT advance, would the money from the
22 advance go to paying off the loan on the lines they started on?

23 A. Yes.

24 Q. Would there then be any money to do something like a margin
25 call -- I'm sorry, to pay off a margin call?

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1 A. No.

2 Q. And -- now, the rest of the -- at the end of the e-mail, you
3 say that it now appears she has involved Nicole and Jeremy. Why
4 do you say that?

5 A. Because she had forwarded the information to Nicole and
6 Jeremy.

7 Q. What were you concerned about her sending that information to
8 Nicole and Jeremy?

9 A. That they were Plan B pools and Nicole and Jeremy weren't
10 aware.

11 Q. And do you see the response -- do you see the statement
12 above, Mr. Farkas forwarding that e-mail to Desiree Brown?

13 A. Yes.

14 Q. Would you just read that line?

15 A. "Just forget about those AOT advances. Tell Jeremy and
16 Nicole it was a Colonial mistake."

17 Q. Now, Ms. Kelly, do you know whether this transaction was a
18 Colonial mistake?

19 A. No, it wasn't.

20 Q. Was it a Plan B transaction?

21 A. Yes.

22 Q. If you'd take a look at Government's Exhibit 1-219?

23 THE COURT: Any objection?

24 MR. CUMMINGS: No objection, Your Honor.

25 THE COURT: All right, it's in.

Kelly - Direct

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1 (Government's Exhibit No. 1-219 was received in
2 evidence.)

3 BY MR. STOKES:

4 Q. Okay. If you would turn to the second page of that e-mail?

5 A. Okay.

6 Q. Do you see there's an e-mail from Cathie Kissick to Lee
7 Farkas cc'ing you?

8 A. Yes. Or actually to me as well.

9 Q. I'm sorry, to you as well.

10 A. Yes.

11 Q. Sent on April 7, 2005?

12 A. Yes.

13 Q. What is the subject line?

14 A. "B securities, etc."

15 Q. And what are B securities?

16 A. Plan B.

17 Q. And what does Ms. Kissick say?

18 A. "We need to get together in the a.m. and make sure everything
19 on AOT is accounted for properly and in a download. I am
20 receiving differing info as to whether everything is accounted
21 for. When we make the switch to the new format, we have to have
22 everything ready. Also, our plight would be helped out a lot if
23 the Magnolia stuff would go to Bayview. Then we only have to
24 worry about B. A couple weeks ago, you told me it was going to
25 happen in a couple weeks. Any update?"

Kelly - Direct

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1 Q. Was the AOT format changing at this time in April of 2005?

2 A. Yes.

3 Q. How was it changing?

4 A. The way the pools were tracked and entered on the accounting
5 system at Colonial Bank was changing.

6 Q. And when Ms. Kissick writes to you and Mr. Farkas that she
7 wants to make sure everything on AOT is accounted for properly in
8 a download, what did you understand her to be saying?

9 A. That it looks -- looked like real pools.

10 Q. Were these Plan B pools on AOT real pools?

11 A. No.

12 Q. If you would take a look at your response to Ms. Kissick and
13 Mr. Farkas at the bottom of the first page, what do you tell them?

14 A. "I have received downloads for most of the B stuff, but the
15 dollar amount has been a moving target."

16 Q. What do you mean by you received downloads for most of the B
17 stuff?

18 A. I would have received, like, data on spreadsheets.

19 Q. And is that for Plan B stuff?

20 A. Yes.

21 Q. And what type of data would you have received on
22 spreadsheets?

23 A. It would have been the pool information, the pool number and
24 other information that was required on AOT.

25 Q. Continue reading, if you would.

Kelly - Direct

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1 A. "I cannot verify everything until the day to convert arrives.
2 Also, were we going to use WAMU pools that were not put on regular
3 AOT as B so we could recycle them?"

4 Q. What are you asking there?

5 A. The -- basically the mechanics of which pools were going to
6 be used to reflect the Plan B, and I was asking if, if we were
7 going to use pools that Taylor Bean had formed using their other
8 warehouse facility, Washington Mutual.

9 Q. Okay. Up until that time, had you been using different pools
10 of loans?

11 A. Up until this time, it was tracked by a trade ticket number,
12 so it wasn't a pool number. So that was the switch.

13 Q. So now are you using specific pool numbers?

14 A. Yes.

15 Q. And these are pools that have been sold to WAMU?

16 A. That -- well, they were sold to an end investor, but they
17 were formed with loans that were, Taylor Bean had financed through
18 their WAMU warehouse facility.

19 Q. And so would you and Ms. Kissick and Mr. Farkas identify
20 sources of pools such as from WAMU in order to do recycling?

21 A. Yes.

22 Q. If you would continue on, it states that the Magnolia stuff
23 is in no condition to convert. Just what is the Magnolia stuff?

24 A. The Magnolia stuff refers to the Magnolia security that was
25 placed on AOT prior to this, and it was a, supposed to be a

Kelly - Direct

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1 security that was going to be sold to a private investor, not
2 Ginnie Mae or Freddie Mac.

3 Q. Did that security, in fact, sell to private investors?

4 A. No.

5 Q. Did it have loans behind it?

6 A. Yes.

7 Q. Were there problems with any of those loans?

8 A. They were older loans. They were loans that could not be
9 sold to the agencies at the time.

10 Q. If you'd go up above to the next e-mail, Ms. Kissick to you
11 and Mr. Farkas, what does she respond?

12 A. "Yes, we definitely need to meet, and I really want the
13 Magnolia to go to Bayview, and that is the plan I had envisioned
14 for B."

15 Q. The plan that Ms. Kissick had envisioned for B is what?

16 A. Is the, using the WAMU pools that did not go through regular
17 AOT.

18 Q. Okay. And then at the top, do you see a response from
19 Mr. Farkas to Ms. Kissick and Ms. Brown?

20 A. Yes.

21 Q. What does it say?

22 A. "We will straighten it out."

23 Q. When you converted to a new system with AOT, did it -- was
24 it -- did it take some time to sort through the data and work
25 through data conversion issues?

Kelly - Direct

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1 A. Yes.

2 Q. In order to make that happen smoothly?

3 A. Yes.

4 Q. After you converted to the new system, was Plan B still on
5 AOT?

6 A. Yes.

7 Q. Did Plan B pools remain there for the next several years?

8 A. Yes.

9 Q. If you would take a look at Government's Exhibit 1-603A?

10 THE COURT: Any objection, Mr. Cummings?

11 MR. STOKES: 1-603A, B, and C -- I'm sorry, A, C, D, and
12 E.

13 THE COURT: Hold on a second. 1-603A?

14 MR. STOKES: C, D, and E.

15 THE COURT: All right.

16 MR. CUMMINGS: No objection.

17 THE COURT: All right, they're all four in.

18 (Government's Exhibit Nos. 1-603A, 1-603C, 1-603D, and
19 1-603E were received in evidence.)

20 BY MR. STOKES:

21 Q. Okay. If you would take a look at 1-603A?

22 A. Okay.

23 Q. And do you send Mr. Farkas an e-mail on Friday, November 19
24 of 2004, related to AOT?

25 A. Yes.

Kelly - Direct

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1 Q. And what is your e-mail to him?

2 A. "Did you send the AOT funding that you discussed with Cathie
3 the other day?"

4 Q. Now, to the extent that -- were you involved -- would you
5 communicate with Mr. Farkas on real AOT transactions?

6 A. No.

7 Q. Why not?

8 A. Because the process for that was very automatic, and it
9 didn't require his help, I guess.

10 Q. Would a real AOT transaction go through secondary markets as
11 well?

12 A. Yes.

13 Q. Is that a division within Taylor Bean?

14 A. Yes.

15 Q. And -- so to the extent that you're talking to Mr. Farkas or
16 e-mailing Mr. Farkas about an AOT transaction, does that suggest
17 to you what kind of transaction this is?

18 A. That it is a Plan B that he had discussed with Cathie
19 previously.

20 Q. And just for completeness, if you could read his response to
21 you above?

22 A. "No. I need some help. I was trying to talk with Cathie
23 this morning. I am with ten people at lunch. May I call you when
24 I get done here in a few minutes?"

25 Q. Okay. And approximately what time was that e-mail sent?

Kelly - Direct

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1 A. At 12:54 p.m.

2 Q. If you'd take a look at 1-603C? Do you specifically remember
3 whether you spoke with Mr. Farkas after that?

4 A. I don't remember specifically.

5 Q. Once you had received direction to do a Plan B transaction on
6 AOT, would you need to involve Cathie Kissick or Mr. Farkas in the
7 mechanics of carrying it out?

8 A. Once I received the information?

9 Q. Once you've been told to do a Plan B transaction, would you
10 need to communicate with Mr. Farkas or Ms. Kissick to carry out
11 the mechanical steps of doing the Plan B transaction?

12 A. No, not typically. As long as I was sent the required
13 documents, the data that we needed.

14 Q. On 1-603C, who are you e-mailing?

15 A. I am e-mailing Lynette Tischer and Sarbani Chandra.

16 Q. And who are those two individuals?

17 A. They work at Colonial Bank in the, in the paydown area. They
18 handle the funds received for loan sales from -- for Taylor Bean.

19 Q. Okay. And the subject line is "AOT #2"?

20 A. Yes.

21 Q. And what is that in reference to?

22 A. That just tells them that would have been the second AOT
23 advance process that day.

24 Q. So this is an AOT advance process you're telling them about?

25 A. Yes.

Kelly - Direct

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1 Q. And what do you tell them?

2 A. "There will not be a paydown associated with this one."

3 Q. What does that mean?

4 A. That means there are no loans that need to be paid down with
5 this transaction.

6 Q. If there are no loans that are going to be paid down with the
7 transaction, what does that indicate?

8 A. It indicates that this is a Plan B pool.

9 Q. If you'd take a look at the second page of that document? Is
10 this what's called an AOT schedule?

11 A. Yes.

12 Q. And does this show the -- is this the type of data that you
13 would receive in order to do a Plan B transaction on AOT?

14 A. Yes.

15 Q. And we'll come back to these schedules in a bit, so I'm not
16 going to spend much time on this right now, but I just want to
17 first have you point out what was the amount of value of this Plan
18 B pool?

19 A. The, the amount the bank paid for this pool?

20 Q. Sure.

21 A. Okay. It was --

22 Q. What was the value of this pool of loans?

23 A. It is \$5,938,771.81.

24 Q. That's the amount the bank advanced to Taylor Bean?

25 A. Yes.

Kelly - Direct

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1 Q. And is this a Freddie Mac -- does it identify by the contract
2 number that this is a Freddie Mac --

3 A. Yes.

4 Q. -- Plan B pool?

5 A. Yes. It references that it's a Freddie Mac 30 pool.

6 Q. If you would take a look at 1-603D? Is this an e-mail chain
7 that Desiree Brown forwards to you on November 19?

8 A. Yes.

9 Q. And what is attached to this e-mail from Ms. Brown?

10 A. The attachment is the trade assignment agreement, the trade
11 letter.

12 Q. Okay. So we talked about this earlier. In an AOT
13 transaction, would Colonial Bank have to receive a trade
14 assignment agreement?

15 A. Yes.

16 Q. And let's look at the middle portion of the agreement. Does
17 that reflect the data or the specifics about this particular
18 security that's being created?

19 A. Yes.

20 Q. So, for example, does this indicate that there's a trade date
21 of November 19, 2004?

22 A. Yes.

23 Q. And what is that date?

24 A. That is the date that, that Colonial Bank is purchasing a
25 pool.

Kelly - Direct

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1 Q. And what is the settlement date?

2 A. The expected date that the pool will be sold.

3 Q. And does it also identify the value of this security, the
4 5,963,000?

5 A. Yes, the par amount of the security.

6 Q. And who is this trade agreement signed by? Whose signature
7 is on this page?

8 A. Lee Farkas.

9 Q. And do you know if Mr. Farkas actually signed this document?

10 A. No, I do not.

11 Q. And who is the agreement with? In other words, who is this
12 security to be delivered to?

13 A. The, the security is to be delivered to the -- the dealer is
14 Mesirow Financial, Inc.

15 Q. Now, do you recognize that name, Mesirow Financial, Inc.?

16 A. It was a -- the name was used on most if not all the Plan B
17 advance letters, the trade letters.

18 Q. So to the extent that you were doing a Plan B transaction,
19 would you have trade assignment agreements that would reflect
20 Mesirow as the dealer?

21 A. Yes.

22 Q. In this instance, is Mesirow actually buying this pool of
23 loans?

24 A. No.

25 Q. What is the purpose of this document?

Kelly - Direct

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1 A. To make it look like it is a real transaction.

2 Q. Is it to make it as well look like Mesirow is actually going
3 to buy this security on January 15 of 2005?

4 A. Yes.

5 Q. Was that transaction actually going to happen?

6 A. No.

7 Q. Was this document kept in Colonial Bank's records?

8 A. Yes.

9 Q. Would this document be made available to auditors or
10 regulators if they should ask to look at a particular transaction
11 on AOT?

12 A. Yes.

13 Q. What was the purpose of having these false trade assignment
14 agreements in your records then?

15 A. To make it look like it was real.

16 Q. Now, Ms. Kelly, you mentioned that you used something
17 called -- that you kept track of Plan B advances that hit the
18 master account at Colonial Bank.

19 A. Yes.

20 Q. Would you do that with your daily balance sheet?

21 A. Yes.

22 Q. That was your master -- your reconciliation in other words of
23 the master advance account?

24 A. Yes.

25 Q. If you could take a look at 1-603E? We saw one of these

Kelly - Direct

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1 documents before. Just a second.

2 Does this document identify the Plan B advance that was
3 done on November 19, 2004?

4 A. Yes.

5 Q. And what is that amount? Where is it located?

6 A. It is in the first miscellaneous credit field for 5.9
7 million, and it's, the description is "Advance AOT 11/19/04."

8 Q. So it has a plus sign in the miscellaneous credits. What
9 does that mean?

10 A. That means the money was deposited to the account.

11 Q. So does that mean that Taylor Bean is getting \$5,938,000?

12 A. Yes.

13 Q. And you have written next to it AOT advance November 19,
14 2004.

15 A. Yes.

16 Q. To the extent there was a real AOT advance, would a real AOT
17 advance actually be deposited into Taylor Bean's master account?

18 A. No.

19 Q. Where would Plan B advances be deposited?

20 A. To the master advance account.

21 Q. Are you -- were you able to identify and track Plan B
22 advances on AOT by looking to your master advance balance sheets
23 or reconciliations?

24 A. Yes.

25 Q. Now, Ms. Kelly, you previously told us how during the

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1 sweeping phase and Plan B and COLB, how there had been discussions
2 with the defendant and Ms. Kissick about filling the Plan B hole.
3 Did those discussions continue during this phase while Plan B is
4 on AOT?

5 A. Yes.

6 Q. And did the defendant ever talk about obtaining financing
7 and -- from some other source to pay off Plan B?

8 A. Yes.

9 Q. Did he talk about that periodically?

10 A. Yes.

11 Q. Did he make any particular promises to pay off -- pay down
12 Plan B with money he obtained from lines of credit?

13 A. Through their mortgage servicing rights, I was told several
14 times that once the financing was available for those, that we
15 would get money to help pay it down.

16 Q. Did the defendant, in fact, provide money?

17 A. At times.

18 Q. At times?

19 A. Yes.

20 Q. What was the largest amount of money that he provided from
21 the financing done of his mortgage servicing rights that you can
22 recall?

23 A. That I recall, it was either 40 or 60 million dollars shortly
24 after they had a deal close.

25 Q. And how much had he promised to deliver? Had he promised

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1 that amount or more?

2 A. No. At that time, we were promised around 100 million.

3 Q. And so he delivers 40 to 60 million. How big was the hole at
4 that time on AOT?

5 A. During that time, it was -- I mean, I don't remember exactly,
6 but it was --

7 Q. Do you have a rough idea of how big the hole was?

8 A. It was probably over 400 million at that time.

9 Q. And so was this amount applied to the hole?

10 A. Yes.

11 Q. Did the defendant attempt to provide money at other times to
12 pay down the hole on AOT?

13 A. Yes.

14 Q. Did he, in fact, pay down the hole on AOT?

15 A. Not the entire hole.

16 Q. What was the -- once you moved to AOT, the AOT -- Plan B on
17 AOT, what was the smallest that the hole got?

18 A. I just remember what it was kind of later in the process, and
19 it was smaller than its high, and that was around 500 million.
20 So, I mean, it changed a lot.

21 Q. Okay. Well, what was the largest size of the hole that you
22 can recall?

23 A. Over 600 million.

24 Q. And by August of 2009, how large was the hole?

25 A. About 500 million.

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1 Q. So in other words, it had been paid down some from the \$600
2 million number down to 500 million?

3 A. Yes.

4 Q. Now, in order to pay this down, were you using things such as
5 the easy payment plan?

6 A. Yes.

7 Q. And do you recall how much the easy payment plan was by
8 the -- by 2008 and 2009?

9 A. It was either 100,000 a day or just slightly higher.

10 Q. And, Ms. Kelly, when did you and Ms. Kissick stop doing new
11 advances of Plan B money on AOT?

12 A. It was in -- July of 2008 was the last Plan B advance.

13 Q. Why did you stop doing Plan B advances in July of 2008?

14 A. The -- Cathie just said, "That's it. We're done. We're not
15 doing it anymore."

16 Q. Was there something that precipitated that?

17 A. There -- in July of 2008, there was a, a request for a Plan B
18 advance related to their servicing accounts, and I was actually
19 out of the office and called to go back in to do the Plan B
20 advance.

21 Q. Was that frustrating to you?

22 A. Yes.

23 Q. Were you upset about that?

24 A. Yes.

25 Q. Did you talk to Ms. Kissick about that?

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1 A. Yes.

2 Q. And do you know if Ms. Kissick talked to the defendant about
3 that?

4 A. I don't remember if she spoke to him immediately about it.

5 Q. Well, do you know if she talked to him about doing Plan B
6 advances anymore?

7 A. Within the next couple weeks, it was made clear that we were
8 not going to be doing Plan B advances. Cathie had told Lee and
9 also Desiree Brown.

10 Q. Were you a party to those conversations?

11 A. I do remember when she told Desiree.

12 Q. And going forward, did you, in fact, do any more Plan B
13 advances?

14 A. Not new advances, no.

15 Q. So by new advance, do you mean new Plan B money being given
16 to Taylor Bean for new pools -- new Plan B pools of loans?

17 A. Correct.

18 Q. Did the recycling continue?

19 A. Yes.

20 Q. And how long did the recycling continue?

21 A. Up until August of 2009.

22 Q. And what was the purpose of continuing the recycling until
23 2009?

24 A. To continue making it look like the, the pools had been sold
25 and new pools were being added so the, the hole wouldn't be

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1 discovered.

2 Q. Well, after you stopped doing new Plan B advances, did the
3 Plan B hole still remain on AOT?

4 A. Yes.

5 Q. And so did you periodically have to put new pools on there,
6 new Plan B pools on AOT to replace old Plan B pools of loans?

7 A. Yes.

8 Q. And when that was done, would you enter that information into
9 Colonial's books?

10 A. Yes.

11 Q. Now, Ms. Kelly, from the time you first learned of the
12 overdraft in, I think you said, early 2002 up until your last day
13 at Colonial Bank -- and when was that?

14 A. My last day at Colonial Bank was August 5, 2009.

15 Q. So from early 2002 through August 5 --

16 A. Oh, I'm sorry, it was August 7.

17 Q. Okay.

18 A. First week of August.

19 Q. Do you know the time?

20 From early 2002 to sometime in the first week of August
21 of 2009, did Taylor Bean or the defendant ever pay off its
22 overdraft or its hole at Colonial Bank?

23 A. No.

24 Q. Did Mr. Farkas make repeated promises during that time that
25 he would pay it off?

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1 A. Yes.

2 Q. Did he ever pay it off?

3 A. No.

4 Q. If you would take a look at Government's Exhibit 1-278?

5 THE COURT: Any objection?

6 MR. CUMMINGS: That was not on the list, Your Honor.

7 THE COURT: Is there any objection?

8 MR. CUMMINGS: No objection.

9 THE COURT: All right, it's in.

10 (Government's Exhibit No. 1-278 was received in
11 evidence.)

12 MR. CUMMINGS: It's out of order on the list.

13 MR. STOKES: Just to be clear, Your Honor, I've provided
14 them a list of our exhibits. It's a little difficult to follow,
15 but I put the exhibits in the order that I'm using them.

16 THE COURT: All right. That's, that's why it's
17 confusing. They should be --

18 MR. STOKES: I understand.

19 MR. CUMMINGS: That's not the order you're using them.

20 THE COURT: It's best to put them in straight numerical
21 order.

22 MR. STOKES: I will walk over and show him which ones if
23 necessary.

24 THE COURT: All right, let's move this along.

25 MR. CUMMINGS: It's confusing.

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1 BY MR. STOKES:

2 Q. Ms. Kelly, what is Government's Exhibit 1-278?

3 A. This is an AOT pipeline report that was run on August, August
4 3, 2009.

5 Q. What is an AOT pipeline report?

6 A. It is a listing of all the active AOT, all the active pools
7 or securities on AOT.

8 Q. And what is this report generated from?

9 A. From the bank's accounting system. We used a system called
10 Promerit.

11 Q. Would this reflect the pools that were listed in Colonial
12 Bank's records as assets or pools of loans that it had purchased
13 on the AOT facility as of August 3, 2009?

14 A. Yes.

15 Q. And would this simply reflect the pools it was holding at
16 that particular time?

17 A. Yes.

18 Q. If you'd turn to the second page of that document -- I'm
19 sorry, the third page, at the bottom, the final two lines?

20 A. Um-hum.

21 Q. Does that indicate the value of all the pools held on AOT at
22 that time?

23 A. Yes.

24 Q. And what was the amount listed in Colonial's books at that
25 time as to how much it held in AOT pools?

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1 A. \$1,474,329,016.79.

2 Q. And so if somebody in management in Montgomery wanted to know
3 how -- what the value was of all the assets that Colonial Bank
4 owned on, on the AOT facility, is this the type of document that
5 they would look at?

6 A. Yes.

7 Q. Is this the type of document an auditor or bank regulator
8 would look at?

9 A. Yes.

10 Q. Now, if you'd go back to the first page of this document? Do
11 you see that there are two columns of dates provided on that
12 document?

13 A. Yes.

14 Q. And -- actually, I'm sorry, if you could -- actually, let's
15 start with the first column. What is the first column listing?

16 A. The first column is the pool, pool number or trade
17 identification number.

18 Q. So is that the, sort of the serial number, so to speak, for
19 the pool of loans?

20 A. Yes.

21 Q. And are you able to identify by those numbers whether they're
22 Ginnie Mae or Freddie Mac or private securities?

23 A. Yes.

24 Q. So the numbers that are listed at the top that begin with the
25 3 series, what, what numbers -- what do those numbers indicate?

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1 A. Those are Freddie Mac pool numbers.

2 Q. And you know that why?

3 A. That was the standard convention for the way Freddie Mac
4 issued its pool numbers.

5 Q. So you're familiar from that time that Freddie Mac pool
6 numbers began with a 308 or similar number?

7 A. Yes.

8 Q. And then the numbers that begin with a 7?

9 A. Those are Ginnie Mae pool numbers.

10 Q. Okay. And then if you would turn to the last page of the
11 document again? The numbers that begin with letters at the bottom
12 of that page, what do those indicate?

13 A. Those are the private issue securities.

14 Q. So those are -- are those pools that are being put into
15 securities for private companies?

16 A. Right.

17 Q. Without an agency guaranty such as a Ginnie Mae or Freddie
18 guaranty?

19 A. Yes.

20 Q. And if we go back to the first page of that document, do you
21 see the, the list of numbers in the middle under the title "Loan
22 Inception?"

23 A. Yes.

24 Q. Is that the value of those -- individual value of those
25 pools?

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1 A. Yes. That's the current balance that Colonial Bank had
2 purchased the pool for.

3 Q. Okay. And if we could go to the two columns of dates? Okay.
4 What do those two columns indicate?

5 A. The first column is the date Colonial purchased the pool, and
6 the second column is the anticipated date that the security is to
7 be sold.

8 Q. So the first date, for example, at the very top line,
9 6/24/2009, what is that date?

10 A. That is the date Colonial Bank purchased that, that
11 individual, that particular pool.

12 Q. Is that the date it went on the AOT facility?

13 A. Yes.

14 Q. And the second date, the 7/27/2009?

15 A. That was the date that the pool would be sold.

16 Q. Is that the date the security would be delivered to this end
17 investor, whoever it would be?

18 A. Yes.

19 Q. Now, if we could pull back out on the document?

20 Do you notice the column headers? Do the column headers
21 line up with the data that we've just described?

22 A. No, it does not.

23 Q. Okay. So would you please identify the column header that
24 should be located -- I'm sorry, let me restart the question. Is
25 that a formatting issue with this document?

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1 A. Yeah. It was exported to an Excel report, so it's just the
2 way the system would export reports.

3 Q. And over time, did you come to understand what column headers
4 would actually go with which columns?

5 A. Yes.

6 Q. Okay. And so which column header goes with the column
7 identifying the value of each of these individual pools of loans?

8 A. That is the purchase price.

9 Q. Okay. And what column header would go over the date for the
10 date that the pool of loans went onto AOT?

11 A. The loan inception.

12 Q. Okay. So the loan inception is currently written over the
13 value of the pool. You're saying that header should be over the
14 date, the 6/24/2009 date?

15 A. Yes.

16 Q. And what is the column header that should go over the second
17 column of dates, the date the security would be delivered to
18 investors?

19 A. The settlement date.

20 Q. Now, the next column header next to settlement date is
21 something called settlement age?

22 A. Yes.

23 Q. And what is settlement age?

24 A. The settlement age was a calculation of the number of days
25 until the security was set to be sold.

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1 Q. And is this the final column of numbers starting with that
2 -7, is that the, the age of those pools?

3 A. Yes.

4 Q. And so what does a -7 reflect?

5 A. Mean it's seven days past the settlement date.

6 Q. If you would take a look at Government's Exhibit 1-278D?

7 A. Did you say B?

8 THE COURT SECURITY OFFICER: Did you say B or D?

9 MR. STOKES: D as in David.

10 THE COURT SECURITY OFFICER: D.

11 THE COURT: Any objection, Mr. Cummings?

12 MR. CUMMINGS: No objection.

13 THE COURT: All right, it's in.

14 (Government's Exhibit No. 1-278D was received in
15 evidence.)

16 BY MR. STOKES:

17 Q. Ms. Kelly, what is this document?

18 A. This is the AOT pipeline report. Also, it was also run on
19 August 3.

20 Q. Okay. Is this the same pipeline report that we just looked
21 at?

22 A. Yes.

23 Q. And prior to coming into court today, did you mark up this
24 pipeline report?

25 A. Yes.

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1 Q. And did you place green highlighting on this document?

2 A. Yes, I did.

3 Q. And what does that green highlighting indicate?

4 A. It indicate which of the pools that were on AOT as of August
5 3 were Plan B pools.

6 Q. So you were able to go through records and identify which of
7 these pools were, were Plan B?

8 A. Yes.

9 Q. What types of records did you use to do that?

10 A. I used a loan level export file also from August 3, and that
11 was the main report I used.

12 Q. And was this loan level expert report, is that a list of all
13 the loans that were assigned to pools on the AOT facility?

14 A. Yes.

15 Q. Would that identify which one of these pools a particular
16 loan went into?

17 A. Yes.

18 Q. And how were you able to tell whether a pool that's
19 identified on this pipeline report, whether or not it was Plan B
20 or not?

21 A. If the pool number did not exist on the loan level export,
22 then it was a Plan B pool, meaning it had no loans assigned to it.

23 Q. Is that what a Plan B pool is? It has no loans assigned to
24 it?

25 A. Yes.

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1 Q. And can a security be formed out of a pool that actually has
2 no loans?

3 A. Yes.

4 Q. And is this -- was that methodology what you would use while
5 you were working at Colonial Bank to be able to identify which
6 pools were Plan B pools?

7 A. Yes.

8 THE COURT: All right, Mr. Stokes, it's time for our
9 mid-morning break. We'll recess today until quarter after since
10 the lunch break is going to be a bit on the early side.

11 (Recess from 11:00 a.m., until 11:15 a.m.)

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1 NOTE: The case continues in the presence of the
2 defendant and the jury as follows:

3 JURY IN

4 THE COURT: All right, Mr. Stokes.

5 MR. STOKES: Thank you, Your Honor.

6 BY MR. STOKES: (Continuing)

7 Q. Now, Ms. Kelly, in addition to Plan B pools on the AOT
8 facility, were there other types of pools that Colonial Bank and
9 Taylor Bean would recycle?

10 A. Yes.

11 Q. What were those pools?

12 A. Those were, we referred to them as the crap pools.

13 Q. Crap pools?

14 A. Yes, c-r-a-p.

15 Q. Why did you refer to them as crap pools?

16 A. They were pools that contained various aged loans or loans
17 that could not be immediately sold at the time by Taylor Bean.

18 Q. And to the extent they could not be immediately sold, what
19 was done with them?

20 A. They were placed on AOT to make, and made to look like an
21 agency pool that could be sold. And ultimately those were
22 recycled as well.

23 Q. And by making them look like an agency pool, would you please
24 pull up again Government's Exhibit 1-278D.

25 THE COURT: It's already in evidence.

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1 Q. I think she may have it.

2 A. I still have that.

3 Q. Do you see that on the screen?

4 A. Yes.

5 Q. Do you see these, you had mentioned before that the 3 series
6 numbers are for Freddie?

7 A. Yes.

8 Q. And the 7 series numbers are for Ginnie?

9 A. Yes.

10 Q. To the extent that those pools are not highlighted, what does
11 that indicate?

12 A. Those would be the crap pools.

13 Q. Did you have any legitimate agency pools on AOT in August of
14 2009?

15 A. No.

16 Q. So, to the extent that it's a crap pool, are there loans
17 assigned to it?

18 A. Yes, there are underlying loans assigned.

19 Q. And are those loans eligible to be in agency pools?

20 A. No.

21 Q. Were there valid or real trade assignment agreements for the
22 delivery of these pools into a security to be sold to an investor?

23 A. No.

24 Q. Why could these pools not-- I'm sorry.

25 Were these pools valid agency pools?

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1 A. No, they were not.

2 Q. Why not?

3 A. Because the underlying loans on them were not agency eligible
4 and the-- And that's why.

5 Q. And why were they then converted to agency eligible pools or
6 they were placed in agency eligible pools?

7 A. To avoid scrutiny from upper bank management.

8 Q. So, in other words, was that done to hide them?

9 A. Yes.

10 Q. The loans?

11 A. Yes.

12 Q. Why would that avoid scrutiny?

13 A. The amount of-- If upper bank management knew the amount of
14 aged loans that Taylor Bean actually had with us, then it could,
15 it could terminate their relationship with the bank.

16 Q. Well, were agency pools given a different level of scrutiny
17 than what are called these private label transactions or these
18 private label pools?

19 A. Yes.

20 Q. Why?

21 A. They are less scrutinized than the private label pools
22 because they have an agency, Freddie Mac or Ginnie Mae, backing
23 them up.

24 Q. Why would that matter?

25 A. There is less risk to the bank.

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1 Q. Would agency, were agency pools more likely to settle and the
2 sale to actually go through than a private label security?

3 A. Yes.

4 Q. Were they less risky?

5 A. Yes.

6 Q. And so, by placing these nonagency loans in these agency
7 pools, what were you and others trying to do?

8 A. Hide the amount of aged nonagency eligible loans that were
9 actually being warehoused with us.

10 Q. Who knew about these agency pools that contained nonagency
11 loans in them?

12 A. Cathie Kissick, Lee Farkas and Desiree Brown.

13 Q. Would you periodically have conversations with the defendant
14 about these agency pools that were not real agency pools?

15 A. On occasion, yes.

16 Q. Did you have conversations with him when you first created
17 them?

18 A. Yes.

19 Q. Do you recall those conversations?

20 A. Not specific conversations. It was just more in general of
21 the data that I would need to make the conversion happen in the
22 system, in the bank system.

23 Q. From private label to agency?

24 A. Yes.

25 Q. Now, Ms. Kelly, let's talk about the types of loans that can

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1 actually back up a pool of loans on the AOT facility.

2 What was your understanding of the types of loans that
3 should be backing up pools of loans on AOT?

4 A. Can you clarify?

5 Q. Sure. What types of loans did you think were eligible to be
6 on AOT, just in general?

7 A. In general, it was a loan that could be sold in the security
8 it was, it was delivered to us in.

9 Q. But did it have to be a performing loan?

10 A. Typically, yes, they were performing loans. I did hear about
11 nonperforming securities.

12 Q. On AOT?

13 A. I don't remember if those were placed on AOT, but I have
14 heard that term throughout the course of business at the bank.

15 Q. What is a performing loan?

16 A. A performing loan?

17 Q. Yes.

18 A. It is a loan that the borrower is current on their payments.

19 Q. Now, what was your understanding as to whether REO could be
20 on AOT?

21 A. No, it was not allowed.

22 Q. Why do you say that?

23 A. It was just, an REO loan is a real estate owned loan. It
24 means there is no loan there anymore, it's when the borrower goes
25 through foreclosure and it gets ultimately evicted from the house,

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1 the mortgage company takes the property.

2 Q. What happens with the loan?

3 A. The loan becomes null and void. The ownership of the
4 physical property is now with the mortgage company.

5 Q. So, in other words, was the AOT facility for loans as opposed
6 to real estate?

7 A. Yes.

8 Q. So, REO is just real estate?

9 A. Yes.

10 Q. What about loans that had been paid off by borrowers?

11 THE COURT: All right, now that is becoming repetitive.
12 We've heard about loans that have been paid off before.

13 MR. STOKES: Your Honor, if I may--

14 THE COURT: I may let this witness testify, but I am
15 warning you, we are not going to have another one come in and do
16 the same thing. I am sure the jury has heard it. And I don't
17 want the jury to get overloaded with repetitive information. All
18 right?

19 MR. STOKES: Sure.

20 THE COURT: All right.

21 MR. STOKES: Your Honor, I think there will be a
22 substantial amount of evidence about this topic area at trial.

23 THE COURT: We have already had a significant amount of
24 evidence about this. I mean, in terms of what the terms mean and
25 whether they are eligible or not to be on the bank's records.

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1 That has already been testified to.

2 So, I am putting you on notice, the repetition has to
3 stop.

4 MR. STOKES: Yes.

5 BY MR. STOKES: (Continuing)

6 Q. So, Ms. Kelly, these loans that have been paid off by
7 borrowers, what was your understanding as to whether they could be
8 on AOT?

9 A. No, they could not.

10 Q. Did you periodically learn whether loans that had been paid
11 off by borrowers were on AOT?

12 A. Yes.

13 Q. What would happen when you found that information out?

14 A. The individual loan would have to be removed from AOT, and
15 Taylor Bean would have to give Colonial Bank the money back for
16 that loan.

17 Q. Were these loans called paid in full?

18 A. Yes.

19 Q. So, to-- And where would you learn the information whether a
20 loan was paid ii full?

21 A. Taylor Bean would have to notify me.

22 Q. And to the extent a loan, has been put on AOT, would that
23 reflect whether Colonial Bank had advanced money to Taylor Bean
24 for that loan?

25 A. Yes, it would mean there was money given to Taylor Bean.

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1 Q. So, to the extent that a paid in full loan was identified,
2 what would Taylor Bean have to do?

3 A. They would have to repay Colonial Bank that amount of money.

4 Q. And so, to the extent that you were alerted that a loan was
5 paid in full, would you take that off of AOT?

6 A. Yes.

7 Q. How about if it was identified to you that a loan was
8 extinguished and now was just, there was just property, it was
9 REO, what would you do?

10 A. That would remain on AOT just as a place holder as I called
11 it, just as-- There was still an asset there, it just couldn't be
12 immediately sold as is.

13 Q. What about loans that had been charged off by banks?

14 A. Charged off loans, if I was notified, those would be removed
15 from AOT.

16 Q. And if you were notified by Taylor Bean, would they have to
17 pay back Colonial Bank for those loans?

18 A. Yes.

19 Q. How about loans that had already been sold to somebody else,
20 could they be on AOT?

21 A. No.

22 Q. Were you alerted to loans that had been sold off of AOT?

23 A. On occasion.

24 Q. And what would you do then?

25 A. Taylor Bean would have to repay Colonial Bank for that loan.

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1 Q. And would you keep track of all this information in a
2 database?

3 A. Yes.

4 Q. Who had access to this database?

5 A. I did, and a few of my team members had access to it as well.

6 Q. Would you periodically update your database?

7 A. Yes.

8 Q. What sort of information would you put in your database?

9 A. The pool number, the contract number of the trade that did
10 have loans assigned to it, and then the individual loans that were
11 assigned to that pool number.

12 Q. In your database, would you identify loans that were in a
13 paid in full status or a paid down or charged off status?

14 A. Yes.

15 Q. Would you identify loans that were active?

16 A. Yes.

17 Q. Would you identify loans that were REO?

18 A. Yes.

19 Q. Would you then in your database identify what pool those
20 loans were assigned to?

21 A. Yes.

22 Q. And to the extent that they are paid in full, would you
23 assign them to any of the pools?

24 A. They would have a pool number assigned in the database, but
25 they wouldn't be counted as a valid collateral backing up that

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1 particular pool because they had been paid off.

2 Q. Did you share this database with auditors?

3 A. No.

4 Q. With Colonial Bank management in Montgomery?

5 A. No.

6 Q. Did you provide that database to the Government?

7 A. Yes.

8 Q. Now, Ms. Kelly, in addition to the loans that we have just
9 discussed that actually were on AOT, did you periodically learn of
10 loans that were associated with the defendant?

11 A. Yes.

12 Q. Did you have a name for those?

13 A. The loans in Lee's name would be the, just the Farkas loans.

14 Q. And did you have a name for loans that you believed might be
15 associated with friends of Mr. Farkas?

16 A. Yes.

17 Q. What were those?

18 A. The friend of Lee loans.

19 Q. And if you would take a look at Government's Exhibit 19-6,
20 please.

21 THE COURT: Is there any objection, Mr. Cummings?

22 MR. CUMMINGS: If I could take a moment, Your Honor. It
23 is going to take a moment for us to find it, Your Honor.

24 THE COURT: I don't know why defense counsel wasn't
25 given the notebook the same way the Court was.

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1 MR. STOKES: Your Honor, to be clear, we have provided
2 defense counsel all of our exhibits--

3 THE COURT: That doesn't help. This is, there is so
4 much here, the large books are almost unusable physically, it
5 takes too long to open them to get to a page. You have given the
6 Court a fairly workable way of doing it, and I think from here on
7 out you need to make a duplicate set for defense counsel. Because
8 it is taking too long. They have to have the exhibit in front of
9 them before they can honestly address the issues.

10 MR. STOKES: Your Honor, we have provided them a list of
11 the exhibits as well for them to pull them in advance.

12 So, we are working with them. We are not sure why it is
13 taking them so long, but we will continue to work with them.

14 THE COURT: Well, this has to stop and it needs to get
15 fixed up over the break.

16 19-6, is there any objection, Mr. Cummings?

17 MR. CUMMINGS: No, Your Honor.

18 THE COURT: All right it's in.

19 (Government's Exh. No. 19-6 was received in evidence)

20 BY MR. STOKES: (Continuing)

21 Q. Now, Ms. Kelly, did you periodically in your review of the
22 loans on the AOT facility identify loans that had problems with
23 them and have discussions with people at Taylor Bean as to what
24 those problems were?

25 A. Yes, there were times. And it wasn't just isolated to the

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1 AOT facility. It would be any of their lines of credit with
2 Colonial Bank, we would monitor document exceptions.

3 Q. Would you, for example, find issues where loans did not have
4 mortgages associated with them?

5 A. Yes.

6 Q. What is a mortgage?

7 A. A mortgage is a deed of trust securing a lien against the
8 property.

9 Q. And to the extent that a loan does not have a mortgage
10 associated with it, why was that a problem?

11 A. That there may potentially not be a valid lien against the
12 property for the loan.

13 Q. And if you found a loan that did not have a mortgage attached
14 to it, would you be able to get a copy of that mortgage typically
15 from Taylor Bean?

16 A. Yes.

17 Q. Why is that?

18 A. Taylor Bean used a pretty sophisticated imaging system for
19 all their documents, their loan closing documents. And if we did
20 need a mortgage, we typically would get it within one or two days.

21 Q. Would it be an easy process to get a copy of the mortgage?

22 A. Yes, they could just e-mail a PDF copy to us.

23 Q. Would there be times where it might take longer?

24 A. Yes.

25 Q. Would there be times where you couldn't get a copy of the

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1 mortgage?

2 A. Yes.

3 Q. Take a look at 19-6.

4 Is this an e-mail exchange between you and a woman by
5 the name of Melissa Long about a series of loans where you are
6 looking for mortgages?

7 A. Yes.

8 Q. Who is Melissa Long?

9 A. Melissa Long was the head of Taylor Bean's post-closing
10 department or one of the upper managers over there.

11 Q. Okay. If you would look at page 2 in the middle of the
12 exhibit. Do you see an e-mail from you to Melissa Long, Cathie
13 Kissick and Lee Farkas?

14 A. Yes.

15 Q. And what do you say in that e-mail?

16 A. We need to know why you do not have mortgages on file for
17 these loans.

18 Q. Does that then list the loan numbers?

19 A. Yes.

20 Q. And this mtg, is that mortgage, is that an abbreviation for
21 mortgage?

22 A. Yes, it is.

23 Q. Why are you cc'g Lee Farkas in this?

24 A. Because in my past experience if post-closing at Taylor Bean
25 was dodging my questions about a missing mortgage, then normally

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1 it was a friend of Lee loan.

2 Q. And what did that mean to you then, why they may be dodging
3 this?

4 A. That there may be issues with the loan.

5 Q. If you would -- And that e-mail was sent on June 21. Do you
6 continue to have a series of e-mails with Melissa Long trying to
7 obtain those mortgages?

8 A. Yes.

9 Q. Does she provide them to you?

10 A. No, we I don't believe ever got them.

11 Q. Okay. What is your, would you please read your e-mail to Ms.
12 Kissick on June 23 at the top of the first page.

13 A. They refuse to answer me on these loans. I was reviewing the
14 exception report for warehouse, and these borrowers have multiple
15 loans all with aged exceptions on the warehouse line too. There
16 are four more loans for the Chisholm borrower and two for Welch.
17 It seems a little suspicious that they are dodging my questions
18 about these loans.

19 Q. If you would take a look at Government's Exhibit 19-2.

20 THE COURT: Any objection?

21 MR. CUMMINGS: No objection.

22 THE COURT: All right, it's in.

23 (Government's Exh. No. 19-2 was received in evidence)

24 BY MR. STOKES: (Continuing)

25 Q. And what is 19-2?

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1 A. This is an e-mail to Lee Farkas, cc'g Cathie Kissick
2 regarding the Welch and Chisholm loans.

3 Q. Okay. And were those the loans you were just referring to in
4 the other e-mail?

5 A. Yes.

6 Q. And what's the date on this e-mail?

7 A. On this e-mail it is July 1, 2004.

8 Q. Okay. Do you see the e-mail from you to Lee Farkas cc'g
9 Cathie Kissick in the middle?

10 A. Yes.

11 Q. Why are you sending this to Lee Farkas at this point?

12 A. Because Taylor Bean's post-closing would not provide the
13 documents, nor would they answer my questions about the status of
14 where the documents were.

15 Q. And at that time did you believe that there was a connection
16 between Lee Farkas and those mortgage loans?

17 A. Yes.

18 Q. Do you recall if you actually ever received those mortgages
19 for those mortgage loans?

20 A. I do not recall if we did ever receive them.

21 Q. Take a look at Government's Exhibit 19-10.

22 MR. CUMMINGS: No objection, Your Honor.

23 THE COURT: All right, it's in.

24 (Government's Exh. No. 19-10 was received in evidence)

25 BY MR. STOKES: (Continuing)

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1 Q. And what is 19-10?

2 A. An e-mail from me to Lee Farkas on July 2, 2004.

3 Q. Okay. If you would look at the second page of the e-mail,
4 the e-mail exchange there.

5 Do you send Lee Farkas an e-mail on July 2 cc'g Cathie
6 Kissick about some loans called the Dragani loans?

7 A. Yes.

8 Q. And what do you say to him?

9 A. What is the deal with those loans. We have four of them on
10 our line and they are, they all are missing mortgages. Before I
11 start bothering post-closing, can you tell me if you know anything
12 about these.

13 Q. To be clear, post-closing, is that a department within Taylor
14 Bean?

15 A. Yes.

16 Q. And what does the defendant respond to you?

17 A. I don't recognize the names offhand. Do you have numbers.

18 Q. Did you then provide him those numbers?

19 A. Yes.

20 Q. Those are the loan numbers?

21 A. Yes, there are four numbers.

22 Q. What does the defendant then respond to you?

23 A. Those are mine too. Darn. I will find the stuff you need.

24 Q. Okay. And do you then continue on having conversation about
25 other issues unrelated to this in this e-mail?

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1 A. Yes.

2 Q. If you would take a look at Government's Exhibit 19-67.

3 MR. CUMMINGS: No objection, Your Honor.

4 THE COURT: All right, it's in.

5 (Government's Exh. No. 19-67 was received in evidence)

6 BY MR. STOKES: (Continuing)

7 Q. Is that an e-mail from December 21, 2006?

8 A. Yes.

9 Q. From you to Desiree Brown, Cathie Kissick and Rachel Jones in
10 the first instance?

11 A. Yes.

12 Q. What is the subject?

13 A. Murla loans.

14 Q. What does the e-mail say?

15 A. Here are the loan numbers for the Sean Murla loans. That was
16 the various loan numbers.

17 Q. Are there one, two, three, four, five, six different loans
18 identified there?

19 A. Yes.

20 Q. What do you say after that?

21 A. According to the schedule received with the collateral today,
22 these loans are coded in your system with the last name of
23 Woodpecker. The files did not contain mortgages. The checks for
24 these loans were made payable to TBW. All checks for loan
25 closings must be made payable to a closing attorney or a title

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1 company. These loans are being paid down from the warehouse line
2 today.

3 Q. First, who was Sean Murla?

4 A. Sean Murla at the time was dating Lee.

5 Q. Do you know if he worked at TBW?

6 A. I had heard he did work there, but I don't know what he did.

7 Q. And why are you reaching out to the defendant about loans
8 related to Sean Murla?

9 A. I'm sorry, I couldn't hear--

10 Q. Why are you reaching out to the defendant about loans for
11 Sean Murla?

12 A. He's not on this e-mail.

13 Q. I'm sorry, you are right, this is an e-mail between you and
14 Desiree Brown?

15 A. Right.

16 Q. So, why are you communicating with Desiree Brown about these
17 loans related to Sean Murla?

18 A. To let her know that the money was being taken, withdrawn
19 from their master account to cover the pay-down. Prior to this
20 e-mail being sent, there were conversations with Lee Farkas and
21 Desiree Brown about the loans.

22 Q. You say in your e-mail that these files do not contain
23 mortgages. You have already explained why that's a problem.

24 A. Yes.

25 Q. Is that a red flag to you?

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1 A. Yes. And they all have the same borrower name.

2 Q. Was it unusual to see the same borrower name with loan
3 numbers in close sequence?

4 A. Yes.

5 Q. Now, you then say, these checks, the checks for these loans
6 were made table to TBW.

7 Was that a problem?

8 A. Yes, it was.

9 Q. Why is that a problem?

10 A. Because the checks for loan closings had to be submitted
11 directly to a title company or closing attorney to ensure that the
12 closing was done properly.

13 Q. So, in other words, if somebody is buying a house, where
14 would the money from the mortgage company be delivered to?

15 A. A title company.

16 Q. What was your concern about having this money being delivered
17 directly to TBW?

18 A. That there was no closing that actually took place.

19 Q. Now, if you would take a look at the top of the first page.

20 Do you have a back and forth with Rachel Jones about
21 these loans and where the information is for them in this e-mail
22 exchange?

23 A. In the--

24 Q. Just through the e-mail.

25 A. Yes.

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1 Q. And who is Rachel Jones?

2 A. She was a team member at the time.

3 Q. At Colonial Bank?

4 A. At Colonial Bank, yes.

5 Q. What do you tell Rachel Jones about these loans? Would you
6 read the first e-mail.

7 A. You should know them by now. That is how they operate. They
8 are good for a while and then they always sneak something in
9 there. Let me know if you see anything that looks out of the
10 ordinary. Cathie told Lee not to do it again, but that is like
11 telling a three-year old not to do something.

12 Q. Had you had previous problems with the defendant with loans
13 associated with him where you didn't have mortgages?

14 A. What was the last part of the question? I couldn't hear.

15 Q. Where you didn't have mortgages for those loans?

16 A. Yes.

17 Q. If you would take a look at-- Ms. Kissick, moving on to a
18 new area.

19 THE COURT: Ms. Kelly.

20 Q. I am sorry, Ms. Kelly, moving on to a new area.

21 Did you know at the time that you were placing the
22 information in Colonial's books about Plan B and the crap pools,
23 that that information was false?

24 A. Yes.

25 Q. Would you periodically obtain requests from Montgomery for

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1 information about what was on AOT?

2 A. Yes.

3 Q. Would you periodically obtain requests from Montgomery about
4 the balances on COLB and AOT?

5 A. Yes.

6 Q. Would you take a look at Government's Exhibit 1-411.

7 MR. CUMMINGS: No objection, Your Honor.

8 THE COURT: All right, it's in.

9 (Government's Exh. No. 1-411 was received in evidence)

10 BY MR. STOKES: (Continuing)

11 Q. And what is this e-mail?

12 A. This e-mail is confirming the quarter end balances to
13 Colonial Bank's accounting department in Montgomery, Alabama.

14 Q. Why would they come to you at quarter end to have you confirm
15 the balances?

16 A. They needed it for quarterly reports that they would file.

17 Q. Would those be called the 10-Qs that were filed?

18 A. Yes.

19 Q. If you look at the top of the e-mail, what do you tell Jason
20 Scruggs?

21 A. As of 3/31/08 the outstanding balance on AOT included various
22 agency pools, FHLMC and GNMA and one--

23 Q. FHLMC, is that Freddie Mac?

24 A. That is Freddie Mac. And the other one is Ginnie Mae. And
25 one private label security.

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1 And then I give him the balances of the pools and let
2 him know that we have possession of the collateral for both
3 private, for both the private label and agency securities.

4 Q. Okay. So, for the agency pools, you identify a balance of
5 1.26, roughly \$1.269 billion, is that right?

6 A. Yes.

7 Q. And private label, roughly \$338 million?

8 A. 336, yes.

9 Q. 336. And you say on there that you do have the collateral
10 for both the private label and agency securities?

11 A. Yes.

12 Q. Is that accurate?

13 A. No.

14 Q. What is collateral?

15 A. Collateral--

16 Q. What would collateral be?

17 A. The collateral is the original notes for the loans in the
18 securities.

19 Q. At that time did you have Plan B pools on AOT?

20 A. Yes.

21 Q. Were they in the agency category?

22 A. Yes.

23 Q. And did you have any loans at all associated with those?

24 A. No.

25 Q. Now, Ms. Kelly, if you would take a look at exhibits-- And,

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1 Judge, I am going to go through a series of exhibits in this area.
2 I have talked to the defense counsel about these, I don't know if
3 he has them in front of him, but we are going to provide to move
4 through some of these fairly quickly.

5 THE COURT: All right. What are the numbers?

6 MR. STOKES: The first set is 7-2, 7-3, 7-4, 7-5, and
7 7-6.

8 THE COURT: All right, Mr. Cummings, do you have them?

9 MR. CUMMINGS: I have the 7 series, Your Honor, 7-2
10 through--

11 THE COURT: 7-2 through 7-6.

12 MR. CUMMINGS: I only have through 7-3, Your Honor.

13 THE COURT: 2, 3, 4, 5 and 6. There should be five,
14 five exhibits.

15 MR. STOKES: The Court's indulgence.

16 BY MR. STOKES: (Continuing)

17 Q. Okay, Ms. Kelly, this set of documents, do you have them in
18 front of you?

19 A. Yes.

20 Q. And have you reviewed those prior to coming into court?

21 A. Yes.

22 Q. Take a look at 7-2.

23 THE COURT: Is there any objection to any of these, Mr.
24 Cummings?

25 MR. CUMMINGS: No, Your Honor.

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1 THE COURT: All right, they are all in.

2 (Government's Exh. Nos. 7-2, 7-3, 7-4, 7-5 and 7-6 were
3 received in evidence)

4 BY MR. STOKES: (Continuing)

5 Q. What is Government's Exhibit 7-2?

6 A. It is an e-mail from Taylor Bean to me for an AOT recycle
7 request.

8 Q. And this is an e-mail requesting a recycle you say. Is this
9 on the AOT facility?

10 A. Yes.

11 Q. How do you know that this is a recycle?

12 A. Just by the way it was requested. The format, the wire
13 request going to Ocala Funding, OF collateral was Ocala Funding.
14 And that was the manner we did the recycling at the time.

15 Q. Okay. Would you take a look at the second page of the
16 document. Included with that document are there a series of trade
17 assignment agreements as we see here?

18 A. Yes.

19 Q. Were they all Mesirow-related trade assignment agreements?

20 A. Yes. Mesirow Financial is listed as the dealer/buyer on all
21 the trade assignments.

22 Q. What was the name of the dealer that you would use for your
23 recycling?

24 A. Mesirow Financial.

25 Q. And to be clear, would you recycle legitimate pools on AOT?

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1 A. No.

2 Q. And what was the purpose of the recycling?

3 A. To show that the, to make it look like the pool had been
4 sold.

5 Q. Now, were there two legs to a recycle transaction?

6 A. Yes.

7 Q. What was the first leg of a recycle transaction?

8 A. The first leg was the request to me to initiate a wire, money
9 leaving the bank from Colonial to Ocala Funding, and subsequently
10 Colonial Bank purchasing a set of pools.

11 Q. Okay. So, the first leg was Colonial Bank buying, purporting
12 to buy pools of loans?

13 A. Yes.

14 Q. In that first leg was there any actual purchase of pools of
15 loans?

16 A. No.

17 Q. What was in the second leg, what would happen in the second
18 leg?

19 A. In the second leg, the amount that was previously sent out of
20 the bank would then be returned to the Colonial Bank Taylor Bean
21 investor funding account, and the old pools would be removed, paid
22 down from the system.

23 Q. Were there any pools in one of these recycles in that second
24 leg actually being purchased off of AOT?

25 A. No.

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1 Q. And so, the document that we're looking at now, is this part
2 of the first or second leg of the transaction?

3 A. This is the first.

4 Q. Okay. And in addition to the trade assignment agreements,
5 would you also receive an AOT schedule?

6 A. Yes.

7 Q. Okay. Is that the format that you would receive the data in
8 for a recycle?

9 A. Yes.

10 Q. Would you receive the data in a similar format for a real AOT
11 transaction?

12 A. Yes.

13 Q. Why did you use the same format for real transactions and
14 recycles?

15 A. To make it look like it was a real transaction.

16 Q. Let's walk through this briefly so we understand what each of
17 these columns are. The first column says Agency or Private. What
18 is that to indicate?

19 A. That is the type of security, whether it's an agency pool,
20 meaning Freddie Mac or Ginnie Mae, or a private issue security.

21 Q. The next column is Contract Type. What does that indicate?

22 A. That indicates the type of the contract being sold.
23 Typically for agency, that would be who was buying it.

24 Q. Okay. And here what does it list as the agency that is
25 buying these?

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1 A. Ginnie Mae, Ginnie Mae II.

2 Q. So, would this indicate that Colonial Bank is buying a pool
3 of loans that are to be ultimately guaranteed by Ginnie Mae?

4 A. Yes.

5 Q. What is the Contract Number?

6 A. The contract number is the pool number.

7 Q. And is that the serial number, identifier number for each
8 pool of loans?

9 A. Yes.

10 Q. What is your understanding of where that number came from?

11 A. The pool number was issued by the agencies for agency
12 securities.

13 Q. Would that pool number, what was your understanding as to
14 whether that pool number was a unique number?

15 A. It was unique.

16 Q. What was that pool number used for?

17 A. It was used to track, track and certify the pool of loans.

18 Q. And then the Certified UPB-- I am sorry, the Coupon column,
19 what is the coupon?

20 A. That is the interest rate of the pool.

21 Q. What is the Certified UPB?

22 A. That is the total dollar amount of all the mortgage loans in
23 that pool.

24 Q. And so, would this schedule include pricing information such
25 as included under the column WAP?

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1 A. Yes.

2 Q. Is that one of the numbers used to determine what the price
3 to Colonial Bank would be for a pool of loans?

4 A. Yes.

5 Q. And under the Warehouse Bank column, does that indicate CB
6 for Colonial Bank as the bank holding the pool of loans?

7 A. Yes.

8 Q. What is the Issue Date?

9 A. The issue date is the date that the AOT request was going on
10 to AOT.

11 Q. What about the Proposed Settle Date?

12 A. That was the anticipated date the pool would be sold.

13 Q. And what is the Ticket Number?

14 A. That is the internal Taylor Bean identification number for
15 the pool.

16 Q. Now, you mentioned that this set of pools, this is a recycle.
17 How do you actually know that?

18 A. During this time period we were just doing recycles. And it
19 also, the wire request is going to Ocala Funding on the first part
20 of the transaction, and the contracts that are listed on the
21 schedule are Ginnie Mae pool numbers. And Ocala Funding did not
22 allow Ginnie Mae pools.

23 Q. So, here it indicates you are sending out, is that roughly
24 \$71 million?

25 A. Yes.

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1 Q. And you are sending it to Ocala Funding?

2 A. Yes.

3 Q. For Ginnie Mae pools?

4 A. Yes.

5 Q. And did Ocala Funding have loans on it that were eligible for
6 Ginnie Mae?

7 A. No.

8 Q. What was Ocala Funding?

9 A. Ocala Funding was another financing line that Taylor Bean
10 used.

11 Q. Was it an entity controlled by Taylor Bean?

12 A. Yes.

13 Q. So, were you sending money in the first leg of the
14 transaction essentially to Taylor Bean?

15 A. Yes.

16 Q. Now, prior to coming into court, did you review documents to
17 determine whether or not those Ginnie Mae pools, whether those
18 Ginnie Mae pools are Plan B or crap pools?

19 A. Yes, I did.

20 Q. And do you recall whether these particular pools are crap or
21 Plan B pools?

22 A. I don't remember exactly on these group of pools.

23 Q. Prior to coming to court, did you prepare a spreadsheet of
24 your review of data related to these pools?

25 A. Yes.

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1 Q. Is there a lot of data that you had to look at?

2 A. Yes.

3 Q. A lot of numbers that you had to add up?

4 A. Yes.

5 Q. And so, did you calculate those in advance on a spreadsheet?

6 A. Yes, I did.

7 MR. STOKES: Your Honor, we would like to refresh the
8 witness' recollection with a spreadsheet we provided to counsel
9 yesterday.

10 THE COURT: Any objection?

11 MR. CUMMINGS: No, Your Honor.

12 THE COURT: All right.

13 MR. STOKES: If he needs another copy, I have one here.

14 THE COURT: What's the number on this? Mr. Stokes, is
15 there a number?

16 MR. STOKES: It is not. This is purely for refreshing
17 the witness' recollection. We can mark it if you would like.

18 THE COURT: Let's see how much it refreshes. Go ahead.

19 BY MR. STOKES: (Continuing)

20 Q. If you would take a look at the third page of the document.
21 Do you see in the column Count 7?

22 A. Yes.

23 Q. If you would take a look at that. Are you able now to recall
24 whether or not these pools after you examined them, whether or not
25 you found they were Plan B or crap pools of loans?

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1 A. Yes. They were all Plan B loans for this transaction.

2 Q. When you say Plan B loans--

3 A. I meant pools, yes.

4 Q. And, Ms. Kelly, did you also review something called a
5 funding allocation report in connection with these pools of loans?

6 A. Yes.

7 Q. What is a funding allocation report?

8 A. It is a report listing all the advances and payments that
9 were done to the AOT line over the course of its existence.

10 Q. And would that report indicate whether or not this
11 transaction was put into Colonial Bank's books?

12 A. Yes, it would show that the transaction did go into the
13 accounting system for the bank's books.

14 Q. And did these pools, this apparent purchase of pools, was
15 that entered into Colonial's book as a purchase of assets?

16 A. Yes.

17 Q. As a purchase of assets for roughly \$71 million?

18 A. Yes.

19 Q. Now, if you would take a look at Government's Exhibit 7-3.

20 Do you have that before you?

21 A. Yes.

22 Q. And what is that document?

23 A. This is an e-mail confirmation from me to Taylor Bean that
24 the AOT request has been processed and the wires for the first leg
25 of the transaction were submitted and sent.

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1 MR. STOKES: Your Honor, at this time I would like to
2 read a stipulation between the parties.

3 THE COURT: All right.

4 MR. STOKES: Your Honor, the parties stipulate-- The
5 Court's indulgence.

6 Your Honor, the parties reach a stipulation that on
7 July 6, 2009, a wire payment of \$31,933,110.73 was sent from
8 Colonial Bank to the Federal Reserve Bank system. Then from the
9 Federal Reserve Bank of Richmond, Virginia to LaSalle Bank.

10 Again, Your Honor, I don't know that we need this, but
11 we would like you to take judicial notice that Richmond is in the
12 Eastern District of Virginia?

13 THE COURT: That's fine. What's the stipulation number?

14 MR. STOKES: This is Government's Exhibit 21-2. Which
15 we would move into evidence, Your Honor. There is a stipulation
16 for each set of documents that we are going to give. I can read
17 each one of them at the appropriate time if you would like.

18 THE COURT: At the appropriate time. All right, 21-2 is
19 in.

20 (Government's Exh. No. 21-2 was received in evidence)

21 BY MR. STOKES: (Continuing)

22 Q. Ms. Kelly, does your exhibit, does Exhibit 7-3 indicate that
23 you sent a wire on July 6, 2009, including a wire for
24 \$31,933,110.73?

25 A. Yes.

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1 Q. If you would take a look at Government's Exhibit 7-4 and 7-5.

2 Do you have that in front of you?

3 A. Yes.

4 Q. What is 7-4?

5 A. It is an e-mail from Taylor Bean with a, what was called a
6 C-wire Excel spreadsheet for the pay-down of an AOT pool.

7 Q. And what is a C-wire?

8 A. A C-wire was just short for Colonial wire. Meaning the wire
9 had come into, been deposited to the investor funding account for
10 Taylor Bean.

11 Q. And does that document indicate what pools of loans are being
12 purchased?

13 A. Yes.

14 Q. From Colonial Bank and who is purchasing them?

15 A. It shows the wire had come from Ocala Funding, LaSalle Bank
16 which was collateral agent for Ocala Funding, and they were buying
17 one Ginnie Mae pool.

18 Q. Did Ocala Funding buy Ginnie Mae pools?

19 A. No.

20 Q. Does that tell you what this payment relates to?

21 A. Yes, it relates to a recycle.

22 Q. What is 7-5?

23 A. 7-5 is the same thing as 7-6, it's also a C-wire for the sale
24 of two pools on AOT.

25 Q. And does that indicate who was purchasing those pools from

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1 Colonial Bank?

2 A. Yes. It shows the wire came from LaSalle Bank as collateral
3 agent for Ocala Funding, and they were buying two Ginnie Mae
4 pools.

5 Q. What does that indicate to you if LaSalle Bank, if this
6 document purports that LaSalle Bank is buying pools from Ginnie
7 Mae?

8 A. That it is a recycle request, and they are actually not
9 buying any pools.

10 Q. Are these-- And you say that because--

11 A. Because with a recycle, it was just to refresh the data on
12 the bank's system to make it look like those pools had been sold.

13 Q. Okay. And now, Ms. Kelly, prior to coming into court did you
14 total up the numbers for the amount of money that was being
15 advanced by Colonial Bank to buy pools and the amount of money
16 that was coming back into Colonial Bank to pay down pools?

17 A. Yes.

18 Q. And what were those numbers for those two sets of
19 transactions we just looked at?

20 A. I don't remember the exact numbers.

21 Q. Would the spreadsheet you prepared refresh your memory?

22 A. Yes.

23 Q. Take a look at that at Count 7.

24 Does it refresh your memory as to what the amount was
25 that was being advanced, approximately?

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1 A. Yes, it was 71.4 million.

2 Q. And how about the amount that was coming back into Colonial
3 Bank for this pay-down?

4 A. It was also 71.4 million, approximately.

5 Q. Now, were the numbers exact?

6 A. No, they were not.

7 Q. What was the difference between the numbers?

8 A. The difference was about 24,000.

9 Q. Doing a recycle, would the numbers always match of what was
10 going out and what was coming in?

11 A. No.

12 Q. Why not?

13 A. That was part of the recycle scheme, was to make sure the
14 numbers did not match exactly to avoid possible detection from
15 other departments that may monitor wire activity.

16 Q. Ms. Kelly, would you take a look at Government's Exhibit 2-2,
17 3, 6, 7 and 10.

18 THE COURT: Run those again, 2-2, 3--

19 MR. STOKES: 2-3, 2-6, 2-7 and 2-10.

20 THE COURT: All right. Are there any objections to
21 those five exhibits?

22 MR. CUMMINGS: No objection, Your Honor.

23 THE COURT: All right, they are all in.

24 (Government's Exh. Nos. 2-2, 2-3, 2-6, 2-7 and 2-10 were
25 received in evidence)

Kelly - Direct

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1 BY MR. STOKES: (Continuing)

2 Q. Ms. Kelly, do you recognize all those documents?

3 A. Yes.

4 Q. Are those documents you reviewed prior to coming into court?

5 A. Yes.

6 Q. And what do you know those documents to be related to?

7 A. This was also an AOT, refresh request for AOT.

8 Q. Was this an AOT refresh from November 18, 2008?

9 A. November 19.

10 Q. I'm sorry, November 19, 2008?

11 A. Yes.

12 Q. And prior to coming into court, were you able to determine
13 whether or not the pools related, the pools related to this were
14 Plan B pools or crap pools?

15 A. Yes, I did review documents to determine that.

16 Q. Do you recall what you found prior to coming into court,
17 whether these were Plan B or crap pools?

18 A. I do not remember specifically with these pools.

19 Q. Take a look at your spreadsheet. Do you see on the first
20 page under Count 2?

21 A. Yes.

22 Q. Does it identify whether these are Plan B or crap pools?

23 A. Yes. And I determined that these were all Plan B pools.

24 Q. And, Ms. Kelly, did you send out a wire in connection with
25 this set of pools?

Kelly - Direct

528

1 A. Yes.

2 MR. STOKES: Your Honor, again, the parties reached a
3 stipulation that-- This is part of Government's Exhibit 21-2.
4 That on November 19, 2008, a wire payment of \$76,603,100 was sent
5 from Colonial Bank to the Federal Reserve Bank system. Then from
6 the Federal Reserve Bank of Richmond, Virginia to LaSalle Bank and
7 received on Bank of America servers on Richmond, Virginia.

8 THE COURT: All right.

9 BY MR. STOKES: (Continuing)

10 Q. Ms. Kelly, did you also verify whether or not these pools of
11 loans had been entered into Colonial Bank's accounting records?

12 A. Yes.

13 Q. Did you also determine whether or not there was a pay-down
14 for related pools?

15 A. Yes.

16 Q. Now, did you periodically do something with recycling where
17 you used money from a bank called Bank of New York?

18 A. Yes.

19 Q. Was that known by an acronym of BoNY?

20 A. Yes, that's correct.

21 Q. Is that B-o-N-Y?

22 A. Yes.

23 Q. And would you periodically use money from BoNY for a recycle?

24 A. Yes.

25 Q. How?

Kelly - Direct

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1 A. The money from BoNY was actually for legitimate agency pool
2 settlements. So, the money that would come in from BoNY would be
3 applied to the old AOT pools that did need to be refreshed. And
4 then new AOT pools would be advanced for Plan B or the crap, and
5 then that money would then be sent to where the BoNY wire should
6 have gone.

7 Q. So, was this a variation on how Colonial Bank did the
8 recycling?

9 A. Yes.

10 Q. If you would take a look at Exhibits 3-5, 3-4, 3-6, and 3-9.

11 MR. CUMMINGS: No objection, Your Honor.

12 THE COURT: All right, they are all in.

13 (Government's Exh. Nos. 3-4, 3-5, 3-6, and 3-9 were received
14 in evidence)

15 BY MR. STOKES: (Continuing)

16 Q. And what do you know those documents to represent?

17 A. The documents relate to an AOT recycle request from
18 January 6, 2009.

19 Q. And included with that do you, just as we saw the one set
20 that we walked through, do you have a request of an AOT schedule
21 in Government's Exhibit 3-5?

22 A. Yes.

23 Q. Government's Exhibit 3-4, do you have the trade assignment
24 agreements that accompany that?

25 A. Yes.

Kelly - Direct

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1 Q. And then do you have your wire that was sent in Government's
2 Exhibit 3-6?

3 A. Yes.

4 Q. And the trade assignment agreements, would they have been
5 legitimate trade assignment agreements?

6 A. No.

7 Q. Do you know who was the dealer on all those trade assignment
8 agreements?

9 A. Yes, on these it was Mesirow Financial.

10 Q. Was it Mesirow Financial for all the documents you reviewed
11 in connection with your testimony?

12 A. Yes.

13 MR. STOKES: And, Your Honor, we have a stipulation with
14 regard to this count. That on January 6, the parties agree that
15 on January 6, 2009, a wire payment of \$66,400,000 was sent from
16 Colonial Bank to the Federal Reserve Bank system. Then from the
17 Federal Reserve Bank of Richmond, Virginia to LaSalle Bank and
18 received on Bank of America servers in Richmond, Virginia.

19 THE COURT: All right. And that's also part of 21-2?

20 MR. STOKES: That's correct, Your Honor.

21 BY MR. STOKES: (Continuing)

22 Q. Ms. Kelly, if you would take a look at Government's Exhibits
23 4-2, 4-3, 4-4. I'm sorry, before I move on to those, I forgot to
24 ask you.

25 Do you know with those exhibits in the 3 series, whether

Kelly - Direct

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1 those were Plan B or crap pools?

2 A. I did review them before coming to court, but I don't
3 remember the exact--

4 Q. If you could take a look at your spreadsheet again to see if
5 you can refresh your memory.

6 A. Okay. And those were, all three were Plan B pools.

7 Q. And did you confirm that all three of those pools had been
8 entered into Colonial Bank's accounting records?

9 A. Yes, they had been.

10 Q. If you would take a look at, as I started, 4-2, 4-3, 4-4,
11 4-7, 4-9 and 4-12.

12 THE COURT: Mr. Cummings, any objection to 4-2, 4-3--

13 MR. CUMMINGS: No, Your Honor.

14 THE COURT: All right, they are all in.

15 (Government's Exh. Nos. 4-2, 4-3, 4-4, 4-7, 4-9 and 4-12 were
16 received in evidence)

17 BY MR. STOKES: (Continuing)

18 Q. Ms. Kelly, what do those documents represent?

19 A. These documents relate to an AOT recycle request on May 29,
20 2009.

21 Q. And how do you know that this is a recycle?

22 A. Based on the information provided within the e-mail and how
23 it was requested.

24 Q. Was money being sent to Ocala Funding for Ginnie Mae pools?

25 A. Yes, it was.

Kelly - Direct

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1 Q. And were the trade assignment agreements in connection with
2 this transaction also Mesirow trade assignment agreements?

3 A. Yes, they all were.

4 Q. And did you send out a wire for approximately \$154 million in
5 connection with that transaction?

6 A. Yes.

7 MR. STOKES: And, Your Honor, from Government's
8 Exhibit 21-2, the parties agree that on May 29, 2009, a wire
9 payment of \$154,927,380.54 was sent from Colonial Bank to the
10 Federal Reserve Bank. Then from the Federal Reserve Bank of
11 Richmond, Virginia to LaSalle Bank, and received on Bank of
12 America servers in Richmond, Virginia.

13 THE COURT: All right.

14 BY MR. STOKES: (Continuing)

15 Q. And, Ms. Kelly, did the amounts that were sent out, that
16 approximate amount, was it returned to Colonial Bank?

17 A. Yes, it was.

18 Q. Did you review C-wires, those e-mails containing the wires
19 back into Colonial Bank?

20 A. Yes.

21 Q. Is that Exhibit 4-7, 4-9 and 4-10?

22 THE COURT: You didn't mention 4-10 before.

23 MR. STOKES: Didn't I? I'm sorry, Your Honor, I left
24 that out.

25 THE COURT: I had 4-2, 3, 4, 7, 9 and 12.

Kelly - Direct

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1 MR. STOKES: I apologize, I left out 4-10. We should
2 include 4-10.

3 THE COURT: All right, Mr. Cummings, any objection to 10
4 being added?

5 MR. CUMMINGS: No, Your Honor, but I had the same
6 problem as earlier.

7 THE COURT: All right, they are all in, the 4 series is
8 in.

9 (Government's Exh. No. 4-10 was received in evidence)

10 A. Yes, I had reviewed those.

11 BY MR. STOKES: (Continuing)

12 Q. Is 4-7, 9 and 10, are those C-wires?

13 A. Yes, they are.

14 Q. And C-wires, what do they reflect?

15 A. They reflect money coming into Colonial Bank for pools that
16 were sold.

17 Q. And were these, was this money coming in from Ocala Funding
18 for Ginnie Mae pools?

19 A. Yes.

20 Q. Did Ocala Funding buy Ginnie Mae pools?

21 A. They did not.

22 Q. Now, in viewing this transaction, were you able to determine
23 whether or not the pools of loans listed in Count 4 included any
24 Plan B pools or crap pools?

25 A. I did review all the pools. I don't remember the exact

Kelly - Direct

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1 breakdown.

2 Q. Were there a lot of pools included in this transaction?

3 A. Yes.

4 Q. If you would take a look at your spreadsheet. See if that
5 refreshes your memory.

6 A. Okay.

7 Q. What do you recall?

8 A. There was a mix of both crap and Plan B pools that were
9 recycled in this request.

10 Q. So, would crap pools and Plan B pools be recycled together at
11 times?

12 A. Yes.

13 Q. And do you recall the approximate size of the total
14 transactions that were recycled that day for Plan B and crap?

15 A. It was approximately 638 million.

16 Q. And approximately how much money then was returned back to
17 Colonial Bank?

18 A. I would have to look at the spreadsheet.

19 Q. Take a look at the spreadsheet.

20 A. Okay. And that was also approximately 638 million.

21 Q. And what was the difference between those two sets of
22 transactions?

23 A. The difference was about \$26,000.

24 Q. And again, what would the reason be for this difference?

25 A. To ensure the detection of the money going in and out of the

Kelly - Direct

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1 bank wasn't, wasn't detected by another department.

2 Q. Did you also verify that these transactions were reflected in
3 Colonial Bank's accounting records?

4 A. Yes.

5 MR. STOKES: Your Honor, the parties have reached a
6 stipulation as well for this in 21-2, Government's Exhibit 21-2.
7 And that is that-- I'm sorry, I think I have already read this
8 stipulation related to this one.

9 THE COURT: Yes, you did.

10 MR. STOKES: Yes.

11 BY MR. STOKES: (Continuing)

12 Q. If you would take a look at Government's Exhibits 5-2, 3, 4,
13 5, 6 and 8.

14 MR. CUMMINGS: No objection, Your Honor.

15 THE COURT: All right, they are all in.

16 (Government's Exh. Nos. 5-2, 5-3, 5-4, 5-5, 5-6 and 5-8 were
17 received in evidence)

18 BY MR. STOKES: (Continuing)

19 Q. Do you recall reviewing these documents prior to coming into
20 court?

21 A. Yes.

22 Q. And what do these documents reflect?

23 A. They reflect an AOT recycle request from June 18, 2009.

24 Q. And how do you know that this is a recycle?

25 A. The wire going out on the first leg of the transaction for

Kelly - Direct

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1 \$46 million and change is going to Ocala Funding, and it is to
2 purchase Ginnie Mae pools.

3 Q. And is 5-2 the AOT schedule?

4 A. Yes, it is.

5 Q. Is 5-3 the trade assignment agreements?

6 A. Yes.

7 Q. Are those all Mesirow?

8 A. Yes.

9 Q. Trade assignment agreements?

10 A. Yes.

11 Q. And is Exhibit 5-4 the confirmation of the wire that you sent
12 out?

13 A. Yes.

14 MR. STOKES: And, Your Honor, the parties have reached a
15 stipulation in 21-2 that on June 18, 2009, a wire payment of
16 \$46,081,431.04 was sent from Colonial Bank to the Federal Reserve
17 Bank system. Then from the Federal Reserve Bank of Richmond,
18 Virginia to LaSalle Bank, and received on Bank of America servers
19 in Richmond, Virginia.

20 THE COURT: All right.

21 BY MR. STOKES: (Continuing)

22 Q. Are Government's Exhibit 5-5 and 5-6 copies of C-wires?

23 A. Yes.

24 Q. Do those relate to the second leg of the transaction?

25 A. Yes.

Kelly - Direct

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1 Q. And do those reflect payments back to Colonial Bank for
2 Ginnie Mae pools?

3 A. Yes.

4 Q. And do those documents purport that Ocala Funding is buying
5 these Ginnie Mae pools from Colonial Bank?

6 A. Yes.

7 Q. And in total, how much money was sent out in connection with
8 this transaction from Colonial Bank to Ocala Funding?

9 A. Approximately \$46 million.

10 Q. And approximately how much came back to Colonial Bank in this
11 transaction?

12 A. Approximately 46 million.

13 Q. Again, was there a difference between the moneys that went
14 out and the moneys that came in?

15 A. Yes, there was.

16 Q. Now, Ms. Kelly, did you also confirm, did you determine
17 whether or not the pools contained in this transaction were Plan B
18 or crap pools?

19 A. Yes.

20 Q. Do you recall offhand what they were?

21 A. I don't remember offhand what the different categories were
22 for this request.

23 Q. If you would please take a look at the spreadsheet, see if
24 that refreshes your memory.

25 A. Okay.

Kelly - Direct

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1 Q. And what do you recall that these pools contained?

2 A. The new pools were mainly crap pools and one Plan B pool.

3 Q. Did you also confirm whether or not these pools of loans,
4 these transactions were recorded in Colonial's accounting system?

5 A. Yes.

6 Q. If you would take a look at Government's Exhibits 6-2, 3, 4,
7 5, 6, 7, 8, 9, 11 and 15.

8 THE COURT: Run those again. 2, 3, 4, 5, 6, 7--

9 MR. STOKES: 8 and 9.

10 THE COURT: 8, 9, 11.

11 MR. STOKES: 11 and 15.

12 MR. CUMMINGS: I am running out of room here.

13 THE COURT: You could have just said 2 through 9.

14 MR. STOKES: I am sure. I will say it now for the
15 record, 6-2 through 6-9 and 11 and 15.

16 THE COURT: Thank you. 6-2 through 9 and then 6-11 and
17 6-15. And there is no objection, right, Mr. Cummings?

18 MR. CUMMINGS: No objection, Your Honor.

19 THE COURT: All right, they are all in.

20 (Government's Exh. Nos. 6-2, 6-3, 6-4, 6-5, 6-6, 6-7, 6-8,
21 6-9, 6-11 and 6-15 were received in evidence)

22 BY MR. STOKES: (Continuing)

23 Q. So, Ms. Kelly, for each of these sets of document you are
24 looking at, are these the same types of documents for each of
25 these transactions that are sent back and forth between Colonial

Kelly - Direct

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1 Bank and TBW?

2 A. Yes.

3 Q. And so, what do you see there for, with this transaction?

4 A. That it is an AOT recycle request from June 30, 2009.

5 Q. And do Government's Exhibits 6-2 and 6-3 contain AOT
6 schedules and trade assignment agreements?

7 A. Yes.

8 Q. The trade assignment agreements, are they from Mesirow?

9 A. Yes, they are.

10 Q. And the AOT schedules, are these for Ginnie Mae pools,
11 including Ginnie Mae pools to be purchased by Ocala Funding?

12 A. Yes.

13 Q. And were you able to confirm whether or not that was a
14 recycle?

15 A. It is a recycle request, yes.

16 Q. And is Government's Exhibit 6-15 a copy of the wire that was
17 prepared and sent out?

18 I am sorry, the information supporting the wire that was
19 sent out?

20 A. Yes.

21 MR. STOKES: The parties have reached a stipulation on
22 this as well, Your Honor. That on June 30, 2009, a wire payment
23 of \$59,655,985.97 was sent from Colonial Bank to the Federal
24 Reserve Bank system. Then from the Federal Reserve Bank of
25 Richmond, Virginia to LaSalle Bank.

Kelly - Direct

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1 THE COURT: All right.

2 BY MR. STOKES: (Continuing)

3 Q. And, Ms. Kelly, did you also confirm any pay-downs, any
4 return of money to Colonial Bank that day?

5 A. Yes.

6 Q. Are the C-wires located in Exhibits 6-4, 5, 6, 7, 8 and 9.

7 A. I don't have 7, 6-7.

8 Yes, they are.

9 Q. And do these reflect purchases of Ginnie Mae pools by Ocala
10 Funding?

11 A. Yes.

12 Q. And in total, how much was advanced out in connection with
13 these transactions?

14 A. Let's see here.

15 Q. Do you recall offhand?

16 A. I don't remember exactly.

17 Q. Would you take a look at your spreadsheet then.

18 A. Yes.

19 Q. Does that refresh your memory? Was it roughly 59--

20 A. One piece of the transaction was approximately 59 million.

21 Q. Was it approximately 246 million?

22 A. For the total for the day, yes.

23 Q. And were the pay-downs approximately the same amount?

24 A. Yes.

25 Q. And was there a difference between the two sets of numbers?

Kelly - Direct

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1 A. Yes, a small difference between all the activity for the day.

2 Q. And, Ms. Kelly, did you confirm whether or not these pools of
3 loans that were recycled, whether they contained any Plan B or
4 crap pools?

5 A. Yes, I did verify the requests.

6 Q. And do you recall what they were?

7 A. I don't remember exactly, but I will look at the spreadsheet.

8 The group that I verified were all Plan B pools.

9 THE COURT: All right, Mr. Stokes, we are going to have
10 to break for the lunch recess. We will be back at 1:30 and
11 continue this at that time.

12 MR. STOKES: Your Honor, if I can ask just one last
13 question and then we will be done with this set of exhibits.

14 THE COURT: Go ahead. To wrap this up. All right.

15 BY MR. STOKES: (Continuing)

16 Q. Ms. Kelly, were these also imported into Colonial's
17 accounting system?

18 A. Yes, they were.

19 Q. You confirmed that?

20 A. I did.

21 THE COURT: All right. Recess court until 1:30.

22

23 NOTE: The morning portion of the case on April 6, 2011,
24 is concluded.

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CERTIFICATE OF THE REPORTERS

We certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

/s/
Anneliese J. Thomson

/s/
Norman B. Linnell

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 1:10cr200
	.	
vs.	.	Alexandria, Virginia
	.	April 7, 2011
LEE BENTLEY FARKAS,	.	2:05 p.m.
	.	
Defendant.	.	
	.	
.	

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

VOLUME 4 - P.M.

APPEARANCES:

FOR THE GOVERNMENT:	CHARLES F. CONNOLLY, AUSA PAUL J. NATHANSON, AUSA United States Attorney's Office 2100 Jamieson Avenue Alexandria, VA 22314 and PATRICK F. STOKES, ESQ. ROBERT ZINK, ESQ. United States Department of Justice Criminal Division, Fraud Section 1400 New York Avenue, N.W. Washington, D.C. 20005
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FOR THE DEFENDANT:	WILLIAM B. CUMMINGS, ESQ. William B. Cummings, P.C. P.O. Box 1177 Alexandria, VA 22313
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(APPEARANCES CONT'D. ON FOLLOWING PAGE)

(Pages 887 - 1038)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES: (Cont'd.)

2 FOR THE DEFENDANT:

BRUCE S. ROGOW, ESQ.
Bruce S. Rogow, PA
500 East Broward Boulevard
Suite 1930
Fort Lauderdale, FL 33394
and
CRAIG KUGLAR, ESQ.
Law Office of Craig Kuglar, LLC
1130 Piedmont Avenue, Suite 913
Atlanta, GA 30309
and
ZAHRA S. KARINSHAK, ESQ.
Krevolin & Horst
1201 West Peachtree Street
One Atlantic Center, Suite 3250
Atlanta, GA 30309

11 ALSO PRESENT:

JENNIFER GINDIN
LISA PORTER
SA SCOTT TURNER
JUDSON VAUGHN

14 OFFICIAL COURT REPORTERS:

ANNELIESE J. THOMSON, RDR, CRR
NORMAN B. LINNELL, RMR, FCRR
U.S. District Court, Fifth Floor
401 Courthouse Square
Alexandria, VA 22314
(703)299-8595

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EXHIBITS (Cont'd.)

	<u>RECEIVED</u>	<u>WITHDRAWN</u>
<u>DEFENDANT'S:</u>		
No. 215	1006	
251B	981	
251C	981	
251D	947	
551	910	
552	1017	
560	1012	
561	1016	

Kissick - Direct

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1 A F T E R N O O N S E S S I O N

2 (Defendant and Jury present.)

3 CATHIE KISSICK, GOVERNMENT'S WITNESS, PREVIOUSLY AFFIRMED, RESUMED

4 D I R E C T E X A M I N A T I O N (C o n t ' d .)

5 BY MR. STOKES:

6 Q. Ms. Kissick, I believe we left off talking about PINs, and
7 would you please tell us what a PIN is?

8 A. It's a peer-to-peer communication between a BlackBerry and a
9 BlackBerry. It doesn't go through the server.

10 Q. And did you communicate with the defendant and Teresa Kelly
11 and Desiree Brown at times through PINs?

12 A. Yes.

13 Q. And why did you do so?

14 A. Because they didn't go through the bank server.

15 Q. What types of information did you communicate through PINs
16 with those individuals?

17 A. Plan B.

18 Q. Would you also have other private or personal matter
19 communications on your, on your BlackBerry through PINs?

20 A. Yes.

21 Q. Now, Ms. Kissick, can you take a look at Government's Exhibit
22 1-262?

23 M S . K A R I N S H A K : N o o b j e c t i o n , Y o u r H o n o r .

24 T H E C O U R T : A l l r i g h t , i t ' s i n .

25 (Government ' s E x h i b i t N o . 1 - 2 6 2 w a s r e c e i v e d i n

Kissick - Direct

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1 evidence.)

2 BY MR. STOKES:

3 Q. When the, when the government agents met with you on July 31
4 and then after that, did you provide the government agents some of
5 your PINs?

6 A. I provided them all of my PINs.

7 Q. Well, had you over the years been PIN-ing with the
8 defendants?

9 A. Yes. I provided them all the PINs that were in my
10 BlackBerry.

11 Q. Okay. So you didn't have all of your PINs over the years
12 preserved?

13 A. No.

14 Q. So whatever you had in your BlackBerry in other words you
15 provided?

16 A. Yes.

17 Q. Okay. So if you'd look at 1-262, do you see, what is it --
18 is this one of the PINs?

19 A. Yes.

20 Q. Okay. And so does it look like just a normal e-mail or a
21 text message?

22 A. Yes.

23 Q. When you receive it on your BlackBerry?

24 A. Yes.

25 Q. Okay. And so this is from you to Lee Farkas on July 23,

Kissick - Direct

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1 2009?

2 A. Yes.

3 Q. Was this prior to you meeting with the, the agents and
4 talking to them?

5 A. Yes, it was.

6 Q. Okay. And so what do you say to him?

7 A. "Any way with some deposits that you could move some of the
8 AOT in question to Platinum and we can be done with it?"

9 Q. And what does Lee Farkas respond to you?

10 A. "Yes."

11 Q. What are you talking about there?

12 A. We had to get down half a billion dollars in assets,
13 Colonial, and if we let him move some of his deposits over, could
14 he move some of the, I think it was the agency, agency loans that
15 were mislabeled over there?

16 Q. So that's the AOT in question are the -- are these the fake
17 agency trades with loans behind them?

18 A. Yes.

19 Q. Now, Ms. Kissick, on July -- do you recall on July 25 of 2009
20 having a telephone conversation with the defendant or having some
21 conversations with the defendant and Teresa Kelly about a, a disk
22 of data?

23 A. Yes.

24 Q. And what, what was this disk of data? What did you
25 understand the disk of data to be that you were talking about?

Kissick - Direct

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1 A. Originally, I thought it was supposed to be the list of loans
2 to show that everything fit and we could get AOT to be in proper
3 order with private label trades.

4 Q. Now, Ms. Kissick, where was this list supposed to come from?

5 A. Taylor Bean.

6 Q. And how did you, how did you come into possession of it?

7 A. Well, I actually never possessed it, but Lee Farkas was going
8 to drive it down to Orlando.

9 Q. Do you know if he did?

10 A. He did.

11 Q. And who did he provide it to?

12 A. Teresa Kelly.

13 Q. And so what did you say that you thought it was going to be?

14 A. We thought it was supposed to be -- we were getting ready for
15 our FDIC exam, and we thought it was the list of loans that we had
16 so we could put all the trades in proper order on AOT.

17 Q. Now, let me be clear about this: You thought that these were
18 going to be loans --

19 A. As of July -- as of the time frame we were in right then.

20 Q. The list of loans that you were provided, did you think that
21 those were loans that were already listed on AOT?

22 A. It was to fill the hole.

23 Q. Okay. So these are loans to fill the hole.

24 A. Yes.

25 Q. And why were you trying to fill that hole at that moment?

Kissick - Direct

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1 A. Because we had FDIC coming in the following week.

2 Q. Now, did, did you talk to Ms. Kelly about that, that list of
3 loans the defendant provided her?

4 A. Yes.

5 Q. And then did you talk to the defendant?

6 A. Yes.

7 Q. And what did you come to understand that list of loans
8 actually was?

9 A. It was as of their March 31 fiscal year end.

10 Q. So in other words, was this data related to filling the hole
11 for you at Colonial Bank?

12 A. No.

13 Q. And so why -- did you -- did the defendant explain to you why
14 he was providing you data for March 31?

15 A. He had said just to kind of hold on to it.

16 Q. Do you know why he was giving you, though, this data -- or
17 why he was giving Colonial Bank this data?

18 A. No.

19 Q. Do you know what purpose it was supposed to serve for Taylor
20 Bean?

21 A. It was his fiscal year end information.

22 Q. Do you know if there was anything going on at Taylor Bean --

23 A. He was trying to get his audit done, but there was -- there
24 were problems.

25 Q. Did you talk to him about his audit?

Kissick - Direct

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1 A. Yes.

2 Q. Okay. And so did he explain to you what he -- what these
3 auditors were doing at Taylor Bean with regard to AOT?

4 A. No. At first, he told me that there was a problem on COLB
5 with wet loans, and then later on, he said there was an issue with
6 REO on AOT, and they were just trying to reconcile their assets.

7 Q. Well, did you have Teresa take a look at those loans that he
8 provided you?

9 A. Yes, we did.

10 Q. Okay. Did those loans match Colonial Bank's records for AOT
11 from March 31?

12 A. No.

13 Q. Were those loans that were on this list representing loans as
14 of March 31, were they actually eligible to be on AOT as of March
15 31?

16 A. No, I don't -- no.

17 Q. Why not?

18 A. Because we showed them being shipped off to somebody else.

19 Q. Had they already been sold to another bank?

20 A. Bank of America.

21 Q. Now, Ms. Kissick, after you met with the FBI, did you then go
22 to Ohio?

23 A. Yes.

24 Q. And did you return before the, before you left the bank
25 permanently? Did you return to the bank after you went to Ohio?

Kissick - Direct

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1 A. No.

2 Q. And, Ms. Kissick, while you were in Ohio, did you continue to
3 have communications with people at the bank?

4 A. Yes.

5 Q. And with Mr. Farkas?

6 A. Yes.

7 Q. Ms. Brown?

8 A. No. I didn't talk to her again.

9 Q. Well, did you communicate by PIN or e-mail after that, do you
10 recall?

11 A. To Desiree?

12 Q. Yes.

13 A. No. We couldn't find her.

14 Q. Okay. If you'd take a look at Government's Exhibit 1-264?

15 MS. KARINSHAK: No objection, Judge.

16 THE COURT: All right, it's in.

17 (Government's Exhibit No. 1-264 was received in
18 evidence.)

19 BY MR. STOKES:

20 Q. Okay. Ms. Kissick, what is 1-264?

21 A. "Please have Mike get the info to Teresa" --

22 Q. Is that an e-mail?

23 A. It's an e-mail, yes.

24 Q. And is that from August 4, 2009?

25 A. Yes.

Kissick - Direct

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1 Q. And is that an e-mail from you to Lee Farkas?

2 A. Yes.

3 Q. Now, had there been a search warrant at Colonial Bank prior
4 to this?

5 A. Yes.

6 Q. On what date?

7 A. I think the day before.

8 Q. And how about at TBW, do you know? Were you aware of whether
9 there was a search warrant? Had a search warrant been executed at
10 TBW?

11 A. I think it was the day before as well.

12 Q. Okay. And so what do you tell Lee Farkas?

13 A. "Please have Mike get the info to Teresa ASAP. Thanks."

14 Q. What info are you trying to get the defendant to send to --
15 I'm sorry, are you trying to get, have the defendant have provide
16 Mike to Teresa?

17 A. Well, this was after I heard that they got terminated by HUD,
18 and so I wanted to get the list of loans, because I knew they were
19 going to go down after that.

20 Q. What list of loans?

21 A. The list of loans that he had promised me forever.

22 Q. List of loans for what facility?

23 A. The AOT.

24 Q. Okay. So are you trying to fill the hole still after the
25 search warrant?

Kissick - Direct

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1 A. At this point, I'm trying to get the loans, period.

2 Q. Are you trying to fill the hole at that point, Ms. Kissick?

3 A. Yes, I guess.

4 Q. Well, did you have a hole at that point?

5 A. Yes, on the facility.

6 Q. And did you try to get a set of loans to take care of that
7 hole?

8 A. At this point when I saw HUD, I was trying -- I knew that
9 they were going to be in big trouble, so I was just trying to get
10 loans. Earlier, I had tried to get loans the day before, Monday,
11 to fill the hole.

12 Q. Okay. Now we're on Tuesday. You're still trying to get a
13 list of loans to fill -- are you trying to get a list of loans to
14 fill that hole, Ms. Kissick? Were you going to take those loans
15 and use them for something else?

16 A. It was for a different reason. It was because they were
17 going to be -- they got terminated by HUD.

18 Q. Were those loans going to be used on another facility?

19 A. They were just going to be used to protect us.

20 Q. Were they going to be put on AOT?

21 A. I guess. I'm not sure.

22 Q. Well, the question is whether you were going to -- were you
23 seeking these loans to put them on AOT?

24 A. That was, that was not my intent then at all, because I just
25 heard they were going down. I wanted to just get the loans,

Kissick - Direct

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1 period. The day before, I was trying to get loans, but once the,
2 the, everything changed, then I was just trying to grab
3 collateral.

4 Q. For whom?

5 A. For Colonial.

6 Q. And why were you trying to grab collateral for Colonial?

7 A. Because we would be in a loss position.

8 Q. Why would you be in a loss position?

9 A. Because we had a hole.

10 Q. Now, Ms. Kissick, had Mr. -- Special Agent Scott Turner
11 talked to you prior to this date about trying to obtain any
12 collateral for the bank?

13 A. He said, he said, "Don't do something that would be out of
14 the ordinary, but run business as ordinary."

15 Q. Did he tell you not to change anything on AOT?

16 A. Yes.

17 Q. And, Ms. Kissick, in the course of your cooperation -- or
18 after you met with the government, did the government -- on July
19 31, did the government ask you to forward various PINs that you
20 had had previously with Mr. Farkas?

21 A. Yes.

22 Q. And did you send some of those PINs to Mr. Turner?

23 A. I did, yes.

24 Q. And did you provide explanations for some of those PINs?

25 A. Some of them, yes.

Kissick - Direct

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1 Q. And in those explanations you provided to the government,
2 were you completely truthful about what the discussions were in
3 those PINs?

4 A. No, I was not.

5 Q. Did you -- in those PINs that you forwarded to the
6 government, did you tell Mr. -- Special Agent Turner that, that
7 the only problem was that there were these fake agency trades with
8 actual loans behind them?

9 A. Yes.

10 Q. These aged loans?

11 A. Yes.

12 Q. Did you describe it as an aged loan problem?

13 A. Yes.

14 Q. Did you tell Mr. Turner that there was Plan B pools on AOT at
15 that time?

16 A. No.

17 Q. Why didn't you?

18 A. I was scared, very scared.

19 Q. Were you trying to minimize your role in the scheme at that
20 point?

21 A. I guess, yes.

22 Q. Were you trying to protect yourself?

23 A. Yes.

24 Q. Now, Ms. Kissick, while you were out of town in Ohio and --
25 but were still in communication with folks from the bank, did you

Kissick - Direct

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1 receive any reports of any problems on the COLB facility at
2 Colonial Bank?

3 A. I did, yes.

4 Q. And what did you learn, just in general?

5 A. I learned that there had been some double-pledging with the
6 Ocala Funding facility.

7 Q. What was the Ocala Funding facility?

8 A. It was a financing vehicle that was owned by Taylor Bean and
9 funded by two other banks.

10 Q. And who controlled Ocala Funding?

11 A. Taylor Bean.

12 Q. And what was the double-pledging problem you've learned of?

13 A. That loans that we had on our books were also on Ocala
14 Funding's books.

15 Q. Approximately how much in value?

16 A. Over a billion.

17 Q. How much?

18 A. Over a billion.

19 Q. Is that a billion with a "B"?

20 A. With a "B," yes.

21 Q. And, Ms. Kissick, is there a problem with double-pledging?

22 A. Yes, there is.

23 Q. What's the problem with double-pledging?

24 A. Only one has value.

25 Q. Only one --

Kissick - Direct

903

1 A. Only one entity will actually have value.

2 Q. So in other words, can a loan be owned by both Colonial
3 Banks -- Colonial Bank and Ocala Funding at the same time?

4 A. No.

5 Q. Now, Ms. Kissick, did you know prior to that of any problems
6 on Ocala Funding?

7 A. No.

8 Q. Or on COLB related to Ocala Funding?

9 A. No.

10 Q. Did you try to reach out to the defendant to find out what
11 was happening?

12 A. Yes. We tried to get a conference call with him with Sumeet
13 Wadhera from Deutsche Bank and tried to do a conference call to
14 figure out hopefully it was just a horrible clerical error or
15 something.

16 Q. And if you'd take a look at Government's Exhibit 22-32 and
17 22-33?

18 Do you have 22-32 in front --

19 THE COURT: Is there an objection to either of those?

20 MS. KARINSHAK: One moment, Judge.

21 No objection, Your Honor.

22 THE COURT: All right, they're both in.

23 (Government's Exhibit Nos. 22-32 and 22-33 were received
24 in evidence.)

25 BY MR. STOKES:

Kissick - Direct

904

1 Q. Ms. Kissick, take a look at 22-32.

2 A. Um-hum.

3 Q. And is that -- do you see, is this another PIN?

4 A. Yes.

5 Q. And did you forward this to Special Agent Scott Turner?

6 A. I did.

7 Q. On August 5, 2009, at approximately 3:00 p.m., did you PIN
8 Lee Farkas, Desiree Brown, and Donna Skuhrovec?

9 A. Yes.

10 Q. Okay. And so earlier I asked you just for clarification
11 whether you'd had any communications with Desiree Brown after, I
12 believe, August 3. Does this appear to be a communication with
13 her after this point?

14 A. Well, I e-mailed -- we PIN'd her, but we never heard from
15 her.

16 Q. I understand. So in other words, you reached out to her?

17 A. Yeah.

18 Q. Okay. So what does that, what does that PIN say?

19 A. "I need one of you to call me immediately regarding COLB and
20 Ocala Funding. Now. My cell is 407-399-6162."

21 Q. Was this around the time that you learned of the
22 double-pledging?

23 A. Yes.

24 Q. Why were you reaching out to them?

25 A. To find out what the heck was going on.

Kissick - Direct

905

1 Q. Would you take a look at 22-33? Is this another PIN?

2 A. Yes.

3 Q. Another PIN that you forwarded to Scott Turner?

4 A. Yes.

5 Q. And is this a PIN you sent to Desiree Brown on August 6, in
6 the morning?

7 A. Yes.

8 Q. And what do you say in this PIN?

9 A. "I do not know what's going on, but you need to come in and
10 help us all figure it out. There's a major disconnect between
11 Ocala Funding and COLB. You have got to help solve the issue."

12 Q. At that point in time, did you know what the issue was?
13 Other than that there was apparent double-pledging, did you know
14 how it happened?

15 A. No.

16 Q. Did you ever get a call back from Desiree Brown?

17 A. No.

18 Q. Did you ever get a call back or a communication from the
19 defendant about this double-pledging?

20 A. No. We tried to have a conference call with him, but we
21 never -- it never happened.

22 Q. Did he ever respond to your PIN?

23 A. I don't remember.

24 Q. Now, Ms. Kissick, after this, did you hire an attorney?

25 A. Not until I got home.

Kissick - Direct

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1 Q. Once you got back to Orlando after this time period sometime
2 in early August, did you hire an attorney?

3 A. Yes.

4 Q. And at that time, did you agree to meet with the prosecutors?

5 A. Yes.

6 Q. And in your meetings with -- and agents?

7 A. Yes.

8 Q. And did you meet with the government numerous times over the
9 next year and a half?

10 A. Yes.

11 Q. Reviewed documents?

12 A. Yes.

13 Q. Explained various transactions and the business relationship
14 between Colonial Bank and TBW?

15 A. Yes.

16 Q. And did you discuss your role in this scheme?

17 A. Yes.

18 Q. And, Ms. Kissick, were you fully truthful at all times?

19 A. Not at all times, no.

20 Q. At the beginning, were you -- did you continue to minimize
21 your role in the scheme?

22 A. Yes.

23 Q. And why were you doing that?

24 A. I was scared, and I was trying to protect myself.

25 Q. Ms. Kissick, did you ultimately plead guilty?

Kissick - Direct

907

1 A. Yes.

2 Q. When did you plead guilty?

3 A. In March.

4 Q. And when is your sentencing?

5 A. June 17.

6 Q. And how much time are you facing a potential sentence?

7 A. Up to 30 years.

8 Q. And, Ms. Kissick, what was your salary at Colonial Bank?

9 A. It ended up being 260,000 or 268.

10 Q. That was in the end?

11 A. Um-hum.

12 Q. And did you receive a bonus?

13 A. Sometimes.

14 Q. And how much in bonus would you receive?

15 A. 90,000, 100,000 sometimes, zero.

16 Q. It depended on the year?

17 A. Yeah.

18 Q. It depended on the business?

19 A. Um-hum.

20 Q. And did you -- and you were the head of the division
21 receiving that amount of money?

22 A. Yes.

23 Q. Now, Ms. Kissick, did you receive any payments from
24 Mr. Farkas for doing Plan B?

25 A. No.

Kissick - Direct

908

1 Q. Did he pay you any kickbacks?

2 A. No.

3 Q. Did he fly you any -- take you on any vacations?

4 A. No.

5 Q. Did he fly you on his jet?

6 A. I went on his jet with him on a couple trips, business trips.

7 Q. Did he ever let you use your jet -- his jet for personal
8 purposes?

9 A. No.

10 Q. Did he give you any free mortgages?

11 A. No.

12 Q. Did you receive anything of particular value from him in
13 connection with Plan B?

14 A. No.

15 MR. STOKES: The Court's indulgence?

16 THE COURT: Yes, sir.

17 MR. STOKES: No further questions at this time, Your
18 Honor.

19 THE COURT: All right. Cross-examination?

20 MS. KARINSHAK: Your Honor, the podium was moved when I
21 came back from lunch and I would ask that it be moved back so I
22 can have access to my documents.

23 THE COURT: It can't be moved very much because of the
24 wires.

25 Mr. Wood?

Kissick - Cross

909

1 Don't you do it.

2 THE COURT SECURITY OFFICER: Which way do you want it?

3 MS. KARINSHAK: Just right back where it was.

4 MR. STOKES: Your Honor, we may need to approach.

5 Mr. Wood has explained to us why he had moved the podium before.

6 THE COURT: It's been fixed now. There's no problem.

7 MR. STOKES: Okay.

8 MR. KARINSHAK: Actually, Your Honor, we didn't move it
9 at all. I was going to put it up a little bit more. Maybe
10 halfway.

11 THE COURT: The jurors have to be able to see the
12 witness, all right?

13 MS. KARINSHAK: Okay.

14 THE COURT: You'll have to work it out.

15 CROSS-EXAMINATION

16 BY MS. KARINSHAK:

17 Q. Good afternoon, Ms. Kissick. How are you today?

18 A. Fine.

19 Q. And my name is Zahra Karinshak. I represent Mr. Farkas. And
20 we haven't met before today, have we?

21 A. No.

22 Q. And I'm sorry, could you please speak up?

23 A. No.

24 Q. And we haven't talked on the phone?

25 A. No.

Kissick - Cross

910

1 Q. And I don't believe we've ever even seen each other, correct?

2 A. Correct.

3 Q. Now, Ms. Kissick, we're going to go through some documents,
4 and I wanted to provide you a highlighter, because we're going to
5 try to highlight it on the screen, but we might also need you to
6 highlight some of those documents. I'd like to show you what's
7 been marked as Defendant's Exhibit 551.

8 MR. STOKES: No objection, Your Honor.

9 THE COURT: All right, it's in.

10 (Defendant's Exhibit No. 551 was received in evidence.)

11 THE COURT: I assume you're moving it in?

12 MS. KARINSHAK: Yes, Your Honor, I am.

13 Q. Now, if you could please look at Defendant's Exhibit 551,
14 Ms. Kissick, could you please tell us who is this message from?

15 A. Milton Vescovacci.

16 Q. And who is Mr. Vescovacci?

17 A. He's Colonial's counsel.

18 Q. So he's Colonial Bank's lawyer?

19 A. Yes.

20 Q. And did you deal with him quite frequently in your dealings
21 there at Colonial Bank?

22 A. Yes, I did.

23 Q. And who is this message to?

24 A. To me, to Rodney Lewis, and to Tamara Stidham, who was
25 in-house counsel for Colonial.

Kissick - Cross

911

1 Q. So Ms. Stidham, Ms. Stidham is in-house counsel?

2 A. Yes.

3 Q. And who is Mr. Lewis?

4 A. He was the account manager for Taylor Bean for us at
5 Colonial.

6 Q. Okay. Is he above or below you in your order?

7 A. Below.

8 Q. Sorry?

9 A. Below me. He reported me.

10 Q. He reported to you?

11 A. Yes.

12 Q. Okay. Now, looking at this e-mail, the date is August 7,
13 2009, correct?

14 A. Correct.

15 Q. And it's showing that -- and I'm looking at the
16 e-mail, "Attached is a draft notice of default for the overline
17 facility," and then it goes into what the collateral for the
18 overline facility is, correct?

19 A. Yes.

20 Q. Could you please read what the collateral for the overline
21 facility is?

22 A. "The collateral includes among other things, mortgage loans
23 notes, REO property, accounts, servicing contracts, servicing
24 receivables, takeout commitment, hedging instruments, TBW shares,
25 a life insurance policy, and a second lien on the Natixis MSRs and

Kissick - Cross

912

1 a cross-second security on the servicing facility collateral, and
2 proceeds of the foregoing."

3 Q. So this is all collateral for one facility, that being the
4 overline facility, correct?

5 A. Yes.

6 Q. And this is an entire menu of the collateral from your lawyer
7 to you with respect to this facility, correct?

8 A. Yes.

9 Q. And you had looked at the documents with respect to the
10 overline facility, and you knew that you had all kinds of
11 collateral with respect to that facility, correct?

12 A. Correct.

13 Q. And all the collateral you just read for the jury is valid
14 collateral for that overline facility, correct?

15 A. I'm sorry, what?

16 Q. All of that collateral that you just read for the jury,
17 that's all valid collateral for the overline facility, correct?

18 A. Yes.

19 Q. And you had mentioned mortgage loan notes as one of those
20 things, but there are several others listed as well, such as REO
21 property, accounts, servicing contracts, correct?

22 A. Yes.

23 Q. So if I were to evaluate my collateral just based on the
24 mortgage notes, then I wouldn't be accurately assessing the
25 collateral for the entire facility, would I?

Kissick - Cross

913

1 A. For the overline? No.

2 Q. So I wouldn't be doing it right if I just relied on the
3 notes, correct?

4 A. Right.

5 Q. Now, you mentioned a life insurance policy. Whose life
6 insurance policy is collateral for this facility?

7 A. Lee Farkas's.

8 Q. Mr. Farkas's?

9 A. Yes.

10 Q. And do you recall the value of that life insurance policy?

11 A. The portion we had was \$2 million.

12 Q. So a \$2 million life insurance policy?

13 A. Um-hum.

14 THE COURT: Please say "yes" or "no."

15 THE WITNESS: Yes. I'm sorry.

16 BY MS. KARINSHAK:

17 Q. So if Mr. Farkas were to die, your bank would get \$2 million?

18 A. Yes.

19 Q. And you mentioned a second lien on the Natixis MSRs, correct?

20 A. Right.

21 Q. And the MSR is the mortgage servicing right, I believe,
22 correct?

23 A. Yes.

24 Q. And it's true and it's totally allowed that two entities can
25 have interest in MSRs, correct?

Kissick - Cross

914

1 A. Right. We had a second lien behind Natixis.

2 Q. Right. But it's okay to do that. You can have someone with
3 a first lien and someone with a second lien and maybe even someone
4 with a third lien, correct?

5 A. Yes.

6 Q. All right. Now, isn't it true that to understand each of
7 these facilities that we've all been talking about, you really
8 need to understand the governing documents as to those facilities?

9 A. Yes.

10 Q. And weren't you involved in drafting, working on these
11 documents that govern each of these facilities?

12 A. Yes.

13 Q. Okay. So let's take a look at a couple of those.

14 Could you please pass Defense Exhibit 1 to Ms. Kissick?

15 Do you have Defense Exhibit 1, Ms. Kissick?

16 A. Yes.

17 MR. STOKES: No objection, Your Honor.

18 THE COURT: All right, then it's in.

19 (Defendant's Exhibit No. 1 was received in evidence.)

20 BY MS. KARINSHAK:

21 Q. Okay. Now, Ms. Kissick this is the mortgage loan
22 participation sale agreement for the AOT agency securities,
23 correct?

24 A. Yes, it is.

25 Q. And I'm sorry, I cannot hear you.

Kissick - Cross

915

1 A. Yes, it is.

2 Q. And -- so this document, this big, thick document --

3 MR. STOKES: Your Honor, if I may, this document appears
4 to be marked up. It doesn't appear to be clean copy.

5 THE COURT: All right, let me see.

6 MS. KARINSHAK: Let me double-check.

7 THE COURT: It certainly is marked up. Is there a clean
8 copy?

9 MS. KARINSHAK: Your Honor, one of my folks just went to
10 look.

11 THE COURT: All right. Well, temporarily we'll let this
12 in, but I expect a clean copy to replace it.

13 MS. KARINSHAK: Yes, Your Honor. We will, we will get
14 that.

15 Q. All right. Defense Exhibit 1 is the AOT program - agency
16 securities document, correct?

17 A. Correct.

18 Q. And the purchaser listed here is Colonial Bank?

19 A. Yes.

20 Q. And Taylor, Bean & Whitaker Mortgage Corporation is listed as
21 the seller?

22 A. Yes.

23 Q. And it's dated April 30, 2007, correct?

24 A. Correct.

25 Q. And that would be the effective date of this version of the

Kissick - Cross

916

1 document?

2 A. Yes.

3 Q. And isn't it true you would have prior versions? This would
4 be one of the versions that you would have been using as of April
5 30, 2007, correct?

6 A. Yes.

7 Q. Okay. And flipping to the third page of that document, the
8 Recitals, and going down to the third recital, it says
9 here, "Whereas, seller acknowledges that it will use its
10 commercially reasonable efforts to cause each mortgage pool
11 purchased hereunder as evidenced by a participation certificate to
12 be converted into an agency security relating to such mortgage
13 pool, such agency security to be backed by and to relate to the
14 mortgage loans. In furtherance thereof, seller agrees to use its
15 commercially reasonable efforts to cause the related agency
16 security to be issued and delivered on or before the settlement
17 date under the terms and conditions provided herein."

18 Correct?

19 A. Yes.

20 Q. And so that means that Taylor, Bean & Whitaker is supposed to
21 use commercially reasonable efforts to meet requirements of this
22 agreement, correct?

23 A. Correct.

24 Q. And use commercially reasonable efforts to -- with respect to
25 the mortgage pools, correct?

Kissick - Cross

917

1 A. Correct.

2 Q. Now, moving to the next page, page No. 2, I'd like to focus
3 on the definition of "collateral," and it says that the definition
4 of collateral is actually found in section 7(d) of this agreement,
5 correct?

6 A. Yes.

7 Q. And so let's move to section 7(d) for the definition of
8 "collateral." That's on page 16.

9 THE COURT: 7(d) as in David.

10 MS. KARINSHAK: Yes, ma'am, 7(d) as in David.

11 THE WITNESS: What page was that on?

12 BY MS. KARINSHAK:

13 Q. On page 16.

14 A. Okay.

15 Q. Down at the bottom, section (d). And this is the definition
16 of "collateral," correct, with respect to this -- with respect to
17 this facility?

18 MR. STOKES: Judge, this is -- they've got a marked-up
19 document of this.

20 MR. KUGLAR: Their Government's Exhibit 22-2A is the
21 same document.

22 MS. KARINSHAK: If you could please substitute that out,
23 please? It's Government's Exhibit 22-2A. It's the same document.

24 THE COURT: 22-2A.

25 MS. KARINSHAK: Yes, ma'am.

Kissick - Cross

918

1 THE COURT: All right, that's the one that's going to go
2 into evidence instead of this one.

3 MS. KARINSHAK: Yes, Your Honor. If we could replace
4 that for Defendant's Exhibit No. 1, that would be great.

5 (Government's Exhibit No. 22-2A was received in
6 evidence; Defendant's Exhibit No. 1 was withdrawn.)

7 THE COURT: I'm just going to mark out Defense 1. The
8 record will show it going in as Government 22-2A.

9 THE WITNESS: We don't have that one.

10 THE COURT SECURITY OFFICER: The document only says 22.
11 No 2A.

12 THE WITNESS: It's not the same one.

13 MS. KARINSHAK: 22-2A. If not, we have one right here.

14 This is 22-2A.

15 Q. Okay. So looking at 22-2A, we're looking at the definition
16 of "collateral," which is section 7(d) on page 16. Ms. Kissick,
17 do you have that?

18 A. 7(b)?

19 Q. 7(d) as in dog.

20 A. Yes, here it is.

21 Q. Now, could you please read for us the definition of
22 "collateral"?

23 A. "In order to secure the prompt payment in full of each
24 repurchase price as and when due hereunder, and the prompt payment
25 and performance by the seller of each of its other obligations

Kissick - Cross

919

1 under this agreement, the seller hereby pledges, assigns and
2 delivers to purchaser, and grants to purchaser a security interest
3 in, all of the seller's right, title and interest in (i) each
4 mortgage loan, including, without limitation, the indebtedness,
5 promissory note or notes, collateral security, the end investor
6 commitment and all other documents and instruments evidencing,
7 securing or otherwise related to each such mortgage loan, together
8 with all of the rights, privileges and remedies applicable
9 thereto, its right to service such mortgage loans hereunder
10 (including, without limitation, pursuant to Section 8), (iii) all
11 proceeds thereof, and (iv) all payment streams received in
12 connection with any of the foregoing (collectively, the
13 collateral)."

14 Q. So basically, the four little subparts, (i), (ii) and (iii)
15 and (iv), list the collateral with respect to this facility,
16 correct.

17 A. Correct.

18 Q. And so again, if I'm just looking at the mortgage loans with
19 respect to the AOT program agency securities, then I'm not looking
20 at all the collateral, correct? If I just focus on the mortgage
21 loan, which is (i), and I don't include (ii), (iii) and (iv), then
22 I'm not including everything in the collateral, correct?

23 A. Well, it's a part of the mortgage loan, because the mortgage
24 loan has the servicing rights attached to it.

25 Q. So if I just take the loan itself, just the mortgage loan

Kissick - Cross

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1 part, am I including everything, like the value, the number on the
2 loan? Like, if I have a \$100,000 loan, if I just include my
3 \$100,000 loan and I don't take into account servicing rights and
4 the other things listed here in this document, then I haven't
5 considered everything as part of my collateral, have I?

6 A. Correct.

7 Q. Okay. And if we could move to page 5, there's another
8 definition I'd like you to read for the jury, and that's the
9 definition of a "qualified substitute mortgage."

10 A. "Qualified substitute mortgage loan: Shall mean a mortgage
11 loan (i) that, when aggregated with other qualified substitute
12 mortgage loans being substituted on such transfer date, has an
13 outstanding principal loan balance, after application of all
14 payments of principal due and received during or prior to the
15 month of substitution, equal to the outstanding principal loan
16 balance of the mortgage loan being substituted on the related
17 transfer date and (ii) that complies, as of the related transfer
18 date, with each of the representations and warranties made by
19 seller concerning the mortgage loan contained in this agreement."

20 Q. And so that's the definition of a qualified substitute
21 mortgage loan with respect to this document, correct?

22 A. Correct.

23 Q. And that definition mentioned some seller promises, so
24 looking at page 20 of this document, subsection (b) talks about
25 what the seller is hereby representing and warranting, correct?

Kissick - Cross

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1 A. Yes.

2 Q. And flipping over to 21, (viii), which is an 8, what is one
3 of the promises that the seller is making to you, and that being
4 Taylor, Bean & Whitaker, under this document?

5 A. The part starting "As to both the mortgage pool"?

6 Q. No, the part starting "None of the mortgage loans."

7 A. What page?

8 Q. You're on page 21. It's about, oh, a little lower than --

9 A. Oh, okay, (viii). "None of the mortgage loans are
10 counterfeit, fraudulent, forged, fictitious, or nonexistent or
11 have been pledged or assigned to any third party."

12 Q. Okay. So that's one of the promises that the seller is
13 making, correct?

14 A. Correct.

15 Q. That they're not going to have counterfeit, fraudulent,
16 forged, fictitious, or nonexistent nor any that have been pledged
17 or assigned to any third party, which would be third-party loans,
18 correct?

19 A. Correct.

20 Q. All right. Now, moving to the next page, page 22, it appears
21 that there's something that happens if the seller uses these
22 counterfeit, fraudulent, forged, fictitious, or nonexistent
23 documents -- mortgage loans, correct, looking at (d) on page 22?

24 A. Do you want me to read it?

25 Q. Yes, please.

Kissick - Cross

922

1 A. Okay.

2 Q. Just the, let's see, the first sentence.

3 A. "In the event any of seller's representations or warranties
4 set forth in Sections 9(a), (b) and (c) are breached or determined
5 by either party not to be accurate (each a breach), if such breach
6 can be cured by action of seller, seller may attempt to cure such
7 breach, including, but not limited to, by replacing the mortgage
8 loans which are subject to and adversely affected by such breach
9 (the deficient mortgage loans) with one or more qualified
10 substitute mortgage loans to the extent permitted under the
11 applicable agency guide."

12 Q. So in common English then, if there's a loan that's messed up
13 for the reasons we just read, then this document clearly allows
14 for qualified substitute mortgage loans, correct?

15 A. Correct.

16 Q. And you already gave us the definition for that, right?

17 A. Yes.

18 Q. So this document contemplated that there might be problems
19 with loans and what to do with those, correct?

20 A. Correct.

21 Q. And this document would have been written, I assume, with
22 counsel based on the wording that we've been going through,
23 correct?

24 A. Correct.

25 Q. And you were involved in helping draft this document,

Kissick - Cross

923

1 correct?

2 A. I reviewed it, yes.

3 Q. With Mr. -- which lawyer would have helped with this
4 document, if you recall?

5 A. Milton Vescovacci. Milton Vescovacci.

6 Q. And what law firm was he with again?

7 A. He was with Akerman Senterfitt.

8 Q. So where is that law firm located?

9 A. He was in Miami.

10 Q. Miami.

11 A. Um-hum.

12 Q. And does he have folks working with him as well that are
13 helping with these documents?

14 A. Yes.

15 Q. And so is there a -- would it be fair to say there's a team
16 of lawyers putting together this document for you?

17 A. I don't know.

18 Q. You only interacted with Mr. Vescovacci?

19 A. Yes.

20 Q. Okay. But at least Mr. Vescovacci is helping you with
21 drafting these documents and helping you to understand these
22 documents, correct?

23 A. Yes.

24 Q. Now, let's look at the bottom of page 22, and starting that
25 last sentence, "It is understood," could you read that, please?

Kissick - Cross

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1 A. "It is understood and agreed that the obligations of seller
2 set forth in this section 9 to cure (by replacement or otherwise)
3 or repurchase a deficient mortgage loan or an early payment
4 default loan and to indemnify purchaser as provided in this
5 section 9 constitute the sole remedies of purchaser respecting a
6 breach of the representations and warranties made by seller
7 hereunder."

8 Q. So basically, this is saying that -- the part you read about
9 curing the breach is supposed to be the sole remedy of the
10 purchaser, which would be Colonial Bank, regarding a breach of any
11 of these representations or promises that the seller, that being
12 Taylor, Bean & Whitaker, would have made, correct?

13 A. Right.

14 Q. And then let's move to page 27, please, section 19(a). Have
15 you got that section?

16 A. Yes.

17 Q. Okay. Could you please read, it says, "Seller hereby
18 acknowledges that," and I just want you to read (a). I don't want
19 you to go into the others.

20 A. "Seller has been advised by counsel in the negotiation,
21 execution and delivery of this agreement, the custodial agreement,
22 the clearing agreement and every document to be executed by seller
23 pursuant to this agreement."

24 Q. And so this is basically saying that Taylor, Bean & Whitaker,
25 the seller, has been advised by counsel in the negotiation,

Kissick - Cross

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1 execution, and delivery of this agreement, the custodial
2 agreement, the clearing agreement, and every document to be
3 executed by the seller pursuant to this agreement, correct?

4 A. Yes.

5 Q. Well, basically, the lawyers have advised the seller as well
6 as you, the purchaser, for this AOT program agency securities
7 agreement?

8 A. Our attorney did not advise Taylor, Bean & Whitaker.

9 Q. Well, it's in here that the seller acknowledges that,
10 correct?

11 A. Advised by his own counsel, not our counsel.

12 Q. Okay. But your counsel would have been in these meetings,
13 correct?

14 A. With their counsel as well.

15 Q. Yes. Wouldn't they have all been together talking about
16 these documents?

17 A. If we had an attorney and they had an attorney, they would
18 both have attorneys there.

19 Q. Okay. And you just said Taylor, Bean & Whitaker had an
20 attorney, correct?

21 A. Yes.

22 Q. And who was that?

23 A. I don't remember.

24 Q. Would it be Jeff Cavender?

25 A. Oh, yeah, possibly.

Kissick - Cross

926

1 Q. Do you remember Jeff Cavender?

2 A. Yes.

3 Q. Okay. So we've got Taylor, Bean & Whitaker, Jeff Cavender,
4 and we've got Mr. Vescovacci from your law firm?

5 A. Yes.

6 Q. And we've got an acknowledgement here by the seller that he's
7 been advised by counsel -- or actually, the TBW has been advised
8 by counsel in the negotiation, execution, and delivery of this
9 document, correct?

10 A. Correct.

11 Q. Now I'd like to move to Defense Exhibit 2. And do you have
12 that, ma'am?

13 A. Yes.

14 Q. And what is -- I'm sorry.

15 MR. STOKES: No objection, Your Honor.

16 THE COURT: All right, that's in.

17 (Defendant's Exhibit No. 2 was received in evidence.)

18 BY MS. KARINSHAK:

19 Q. What is Defense Exhibit 2?

20 A. It's the AOT program for home loan trades.

21 Q. And is it also for whole loan trades and private issue
22 securities?

23 A. Yes.

24 Q. Okay. And so we have a separate agreement here. This is a
25 different AOT program, correct? This is a different facility?

Kissick - Cross

927

1 A. Correct.

2 Q. And it's for whole loan trades and private issue securities,
3 correct?

4 A. Yes.

5 Q. And again the same purchaser, Colonial Bank?

6 A. Yes.

7 Q. And again the same seller, Taylor, Bean & Whitaker?

8 A. Yes.

9 Q. Again the same date, April 30, 2007, correct?

10 A. Yes.

11 Q. All right. And again looking to the recitals, which is the
12 first full page after the table of contents, did you find that?

13 A. Yes.

14 Q. Okay. Again, that recital in the third paragraph, is that
15 the same recital that was in the first document that you've
16 already read to the jury?

17 A. Yes, it is.

18 Q. Okay. So we won't read that again, but it's the same,
19 correct?

20 A. Yes.

21 Q. Okay. Then moving to page 5, we have the same definition of
22 "qualified substitute mortgage loan," correct?

23 A. Yes.

24 Q. And that's the same one you already read to the jury,
25 correct?

Kissick - Cross

928

1 A. Yes, it is.

2 Q. All right, let's move over to page 18.

3 Have you found that?

4 A. Yes.

5 Q. Page 18, (d), towards the middle of the page?

6 A. Do you want me to read it?

7 Q. Yes. Yes, please.

8 A. "In order to secure the prompt payment in full of each
9 repurchase price as and when due hereunder, and the prompt payment
10 and performance by the seller of each of its other obligations
11 under this agreement, the seller hereby pledges, assigns and
12 delivers to purchaser, and grants to purchaser a security interest
13 in, all of the seller's right, title and interest in each mortgage
14 loan, including, without limitation, the indebtedness, promissory
15 note or notes, collateral security, the end investor commitment
16 and all other documents and instruments evidencing, securing or
17 otherwise related to each such mortgage loan, together with all of
18 the rights, privileges and remedies applicable thereto, its right
19 to service such mortgage loans hereunder (including, without
20 limitation, pursuant to section 8), all proceeds thereof, and all
21 payment streams received in connection with any of the foregoing."

22 Q. So again, this is collectively the collateral, correct?

23 A. Yes.

24 Q. So again, section (d) on page 18 tells you the collateral
25 with respect to the second facility, that being AOT whole loan

Kissick - Cross

929

1 trades and private issue securities, correct?

2 A. Correct.

3 Q. And again, the collateral here has more than just the
4 mortgage loan itself, correct?

5 A. Correct.

6 Q. It's got the right to service the loan?

7 A. Yes.

8 Q. The proceeds thereof?

9 A. Yes.

10 Q. And all payment streams received in connection with any of
11 the foregoing?

12 A. Yes.

13 Q. And what kind of payment stream would, would be associated
14 with a mortgage loan?

15 A. The servicing rights.

16 Q. So that's the servicing rights, okay.

17 And also, I think you had mentioned that you had
18 additional collateral. We mentioned Mr. Farkas's life insurance
19 policy of \$2 million. Did you also have collateral that was his
20 TBW stock?

21 A. Yes.

22 Q. And was that with respect to both of these agreements?

23 A. No. It was only on the overline.

24 Q. That was only on the overline.

25 And how much stock did you have? What was the value of

Kissick - Cross

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1 Mr. Farkas's stock in TBW?

2 A. I don't know. It was 79 percent, I think, of the company,
3 but I don't know.

4 Q. Okay. So 79 percent of the shares of Taylor, Bean &
5 Whitaker. Whatever value Taylor, Bean & Whitaker had, you had 79
6 percent of that as collateral, correct?

7 A. Correct.

8 Q. Now, again we move to page 23, and I think we have the same
9 promise about, looking up there, the same promise about none of
10 the mortgage loans or counterfeit, fraudulent, forged, fictitious,
11 or nonexistent or have been pledged or assigned to any third
12 party, correct?

13 A. Right.

14 Q. And then moving to the bottom again, we have that same
15 subsection (d) talking about if there's a breach, correct?

16 A. Yes.

17 Q. And again, if there's a breach, there is a specific
18 allocation to have qualified substitute mortgages loan --
19 qualified substitute mortgage loans to be used, correct?

20 A. Correct.

21 Q. And again, this document contemplated what would happen if
22 there were problematic mortgage loans, correct?

23 A. Correct.

24 Q. And this document was also drafted by lawyers, correct?

25 A. Yes.

Kissick - Cross

931

1 Q. And you were involved in that, correct?

2 A. Correct.

3 Q. And I believe you mentioned Mr. Vescovacci, was he involved
4 in this document as well?

5 A. Yes.

6 Q. And what about Mr. Cavender on behalf of Taylor, Bean &
7 Whitaker?

8 A. I'm sure he reviewed it.

9 Q. Okay. And then were there any other lawyers involved when
10 you were drafting these documents?

11 A. I don't think so.

12 Q. Okay. And if you could please speak up?

13 A. I don't think so. Sorry.

14 Q. Now, again looking at the same page, there's language in,
15 let's see, the first -- the second paragraph, it's a smaller
16 paragraph, we've got the -- we're still on page 24. "In addition
17 to such repurchase obligations"?

18 A. Do you want me to read that?

19 Q. I'm just talking about the last sentence of that paragraph.

20 A. "It is understood and agreed that the obligations of seller
21 set forth in this section 9 to cure (by replacement or otherwise)
22 or repurchase a deficient mortgage loan or an early payment
23 default loan and to identify purchaser as provided in this section
24 9 constitute the sole remedies of purchaser respecting a breach of
25 the representations and warranties made by seller hereunder."

Kissick - Cross

932

1 Q. Okay. So this document also has the same language about the
2 sole remedies under this document -- under this facility and its
3 controlling documents, correct?

4 A. Yes.

5 Q. So the AOT program with respect to whole loan trades and
6 private issue securities, that governing document, essentially
7 operates the same as the, the agreement with respect to the AOT
8 program agency securities, correct?

9 A. Correct.

10 Q. And again on page 29, there's the same acknowledgement by
11 seller with respect to being advised by counsel, correct?

12 A. Correct.

13 Q. Okay. I'd now like to move to Defense Exhibit No. 3.

14 THE COURT: Any objection?

15 MR. STOKES: Your Honor, let me point out this isn't a
16 signed agreement, so if I could just talk with counsel for a
17 moment to find out what this is?

18 THE COURT: Go ahead. Go ahead.

19 (Discussion between counsel off the record.)

20 MR. STOKES: No objection, Your Honor.

21 THE COURT: All right, so it's in.

22 (Defendant's Exhibit No. 3 was received in evidence.)

23 BY MS. KARINSHAK:

24 Q. Okay. Ms. Kissick, what document is Defense Exhibit No. 3?

25 A. The second amendment to the fourth amended and restated

Kissick - Cross

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1 security agreement.

2 Q. And the date of this agreement is January 29, 2009, correct?

3 A. Correct.

4 Q. And it's between Taylor, Bean & Whitaker, which is called the
5 debtor -- correct?

6 A. Correct.

7 Q. And it's with Colonial Bank, the secured party, correct?

8 A. Yes.

9 Q. And these are documents for the overline facility, correct?

10 A. I'm assuming so, yes.

11 Q. Well, I don't want you to assume, ma'am. Can you --

12 A. Well, I've just seen it for the first time in a long time
13 so --

14 Q. Okay. Can you please just look at that?

15 A. It is.

16 Q. I'm sorry?

17 A. It is, I believe, the -- it is the overline facility.

18 Q. And just the title of this, the Second Amendment to the
19 Fourth Amended and Restated Security Agreement, that's the name,
20 right?

21 A. Yes.

22 Q. And that sounds like this agreement goes through lots of
23 amendments and lots of restatements and more amendments, correct?

24 A. Yes.

25 Q. And I assume that that means lawyers are involved every time

Kissick - Cross

934

1 you change this document, correct?

2 A. Yes.

3 Q. And you've got to re-sign another one?

4 A. Yes.

5 Q. And then re-sign another one?

6 A. Yes.

7 Q. Okay. And when this one being the second amendment to the
8 fourth amended, there's probably been lots of versions, correct?

9 A. Yes.

10 Q. And lawyers would have been involved in all of those
11 versions, correct?

12 A. Yes.

13 Q. And would you have been involved in putting together these
14 documents?

15 A. Initially I was, but not after the first year or two.

16 Q. Okay. You weren't involved after the first year or two?

17 A. Well, I was not the account manager.

18 Q. Okay. You weren't the account manager. What were you?

19 A. The department head. So I didn't read it until later.

20 Q. But at some point as the head honcho --

21 A. I just made sure that what was approved got in here.

22 Q. I'm sorry?

23 A. I made sure that what was approved was put in the document.

24 Q. Okay. So you're double-checking that the lawyers did what
25 you wanted them to do, correct?

Kissick - Cross

935

1 A. Correct.

2 Q. And even though some of these document are not signed, these
3 appear to be the documents that you were operating under given the
4 dates that are put forth in these documents?

5 A. Yes.

6 Q. And you would have kept these documents in your files there
7 at Colonial Bank, right?

8 A. Yes.

9 Q. Because you'd want to know what the operating agreement says
10 for all of these different facilities, correct?

11 A. Yes.

12 Q. And, in fact, given that you worked with all of these
13 facilities so much as a banker, you would want to have these there
14 so you can get in there and figure out what is allowed with
15 respect to each facility, correct?

16 A. Correct.

17 Q. All right, let's move to Defense Exhibit No. 5.

18 MR. STOKES: No objection, Your Honor.

19 THE COURT: All right, it's in.

20 (Defendant's Exhibit No. 5 was received in evidence.)

21 BY MS. KARINSHAK:

22 Q. And again, we're just going to highlight some sections of
23 this document, Ms. Kissick. Do you have that in front of you?

24 A. Yes.

25 Q. So what document is Defense Exhibit No. 5?

Kissick - Cross

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1 A. Amended and restated loan participation sale agreement, but
2 it's between Taylor Bean and Seaside National Bank, with Colonial
3 just acting as collateral agent.

4 Q. Okay. But you're on there, correct?

5 A. Right.

6 Q. You're in this document?

7 A. Correct.

8 Q. Okay. So you're a party to this document then, correct?

9 A. Correct.

10 Q. Okay. And this is the COLB wet and dry mortgage loans
11 program?

12 A. Yes.

13 Q. And this is amended and restated loan participation sale
14 agreement, correct?

15 A. Yes.

16 Q. So it's been amended and restated at least one time; would
17 that be a fair assumption?

18 A. Yes.

19 Q. Okay. And again, this document would be revised as many
20 times as necessary given the evolving relationships in this
21 contract?

22 A. Actually, no. These do not -- because it was two sale
23 concerns, they didn't get revised very often unless there was an
24 accounting issue.

25 Q. Okay. So this document doesn't get -- excuse me, Defense

Kissick - Cross

937

1 Exhibit 5 doesn't get revised as much as the other defense
2 Exhibits 1, 2, and 3 that we've already gone through?

3 A. No. AOT and COLB do not get revised often at all unless
4 there's an accounting issue, but the overline and any other loan
5 facility could get revised.

6 Q. The overline and any other loan facility could get revised?

7 A. Right.

8 Q. And what is any other loan facility?

9 A. The warehouse line that we had.

10 Q. Anything else?

11 A. Working capital line.

12 Q. Anything else?

13 A. I don't think so.

14 Q. And are those all facilities that you have with respect to
15 this relationship with Taylor, Bean & Whitaker?

16 A. Yes.

17 Q. I'm sorry?

18 A. Yes.

19 Q. So those all are, are part of the working facilities that
20 you -- and agreements you have with Taylor, Bean & Whitaker?

21 A. Yes.

22 Q. And what is the date on Defense Exhibit No. 5?

23 A. December 10, 2008.

24 Q. And again, is this a document that would have been drafted by
25 lawyers, and would you have consulted with those lawyers in

Kissick - Cross

938

1 drafting this document?

2 A. Well, this was actually for another bank to provide the funds
3 for them.

4 Q. Um-hum.

5 A. So we just acted on our role as agent. The other bank had to
6 be the one talking to the law firm.

7 Q. So as agent, you don't get any lawyers involved in this
8 document?

9 A. It was just handling the administration of the collateral,
10 and because of the sale, because of the true sale conditions,
11 there's, there's no deviation, so we did what we did.

12 Q. But don't you have a lawyer look at it?

13 A. Well, he -- our lawyer drafted it.

14 Q. That's what I was trying to get to.

15 A. Okay.

16 Q. Thank you. So your lawyer drafted it?

17 A. Yes.

18 Q. And who's your lawyer drafting this document?

19 A. Milton Vescovacci.

20 Q. Okay. And would you have been involved at all -- when
21 Mr. Vescovacci is drafting this document, would you have been
22 involved at all in talking to him about what requirements need to
23 be met in this document?

24 A. Well, he's the one that drafted the document. I mean, he
25 followed the true sale guidelines so --

Kissick - Cross

939

1 Q. Did you discuss the true sale guidelines with him?

2 A. He would know actually better than me.

3 Q. But did you talk to him at all?

4 A. I'm sure I did.

5 Q. Okay. Because again, as the head of the division, you want
6 to make sure these documents are correct, right?

7 A. Yes.

8 Q. Okay. And you want to make sure to guard the facilities and
9 guard the interests of Colonial Bank at all times, correct?

10 A. Correct.

11 Q. Because that's part of your duties as the director of the
12 division?

13 A. Correct.

14 MS. KARINSHAK: Okay. Could you hand up Defendant's
15 Exhibit 251, please, sir? And I'm sorry, if you could hand up
16 251A, B, C, and D. So we've got 251 and then 251A, B, C, and D.

17 THE COURT: Any objections?

18 MR. STOKES: Judge, I promise I won't take long to
19 review this much, but I just don't even know what this is.

20 No objection, Your Honor.

21 THE COURT: All right, they're all in.

22 BY MS. KARINSHAK:

23 Q. Now, I've shown you Defense Exhibit 251 for the purpose of
24 having the entire document, but what we're really going to focus
25 on, Ms. Kissick, is a smaller part of this big document.

Kissick - Cross

940

1 A. Okay.

2 Q. Okay. I want you to specifically look at 251D, which is the
3 procedure manual.

4 THE COURT: Just so there's some context for this,
5 Ms. Kissick, what is 251?

6 THE WITNESS: It looks like a summary of my whole
7 department.

8 THE COURT: Have you ever seen it before?

9 THE WITNESS: No. I mean, at work I did, but not --

10 THE COURT: But the document itself, have you seen the
11 document before?

12 THE WITNESS: No.

13 THE COURT: Look at the, look at the second or third
14 page of 251. The bottom of the corner has a Bates stamp number
15 ending in 245. Have you ever seen that document?

16 THE WITNESS: I'm sorry, look at which one?

17 THE COURT: Why don't you look at what appears to be the
18 title.

19 THE WITNESS: "Colonial Bank Mortgage Warehouse Lending
20 Division Table of Contents."

21 THE COURT: No, next page.

22 THE WITNESS: "State of Alabama Audit."

23 THE COURT: Have you seen that before?

24 THE WITNESS: No. I think it was put together by
25 Montgomery.

Kissick - Cross

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1 MR. STOKES: Your Honor, this was described to us as a
2 policy manual by defense counsel. This does appear to be
3 something completely different. It is an audit of the bank. We
4 do object to the admission of this, unless this witness, it's
5 relevant to this.

6 THE COURT: I don't see how 251 is relevant if this
7 witness has never seen it.

8 MS. KARINSHAK: Your Honor, I was just trying to give
9 the context from which the document came from. I don't need all
10 of the 251, so if you'd like to take that out, that would be fine.
11 I wanted to have the policy manual that was within this audit.

12 THE COURT: I understand, all right. 251 is out.

13 All right, so we're looking at 251D, as in David?

14 MS. KARINSHAK: Yes, ma'am. I'd like 251D, B, and A,
15 which are all part of this procedures manual.

16 THE COURT: Which one are you starting with? Which
17 subsection are you starting with?

18 MS. KARINSHAK: Your Honor, I'm starting with the
19 procedures manual at 251D, which was at tab 13.

20 Q. Do you have that, Ms. Kissick?

21 A. Yes.

22 Q. Now --

23 MR. STOKES: Again, Your Honor, we're going to -- until
24 a foundation is laid, we do object. We just don't know if the
25 witness has ever seen this or what this is.

Kissick - Cross

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1 THE COURT: All right. There has to be a foundation
2 laid.

3 Ms. Kissick, do you recognize this document?

4 THE WITNESS: Yes. I haven't seen them in several
5 years, but yes, I have seen them.

6 THE COURT: All right. When you say "them," what are
7 you looking at right now?

8 THE WITNESS: There's a couple things. There's new
9 business guidelines, and then there's a generic manual that we had
10 that we would prepare for each client, but it would be modified
11 depending on the client.

12 BY MS. KARINSHAK:

13 Q. Looking back at the table of contents to 251, doesn't it say
14 at tab 13 that this is the mortgage warehouse lending procedures
15 manual, and this, 251D starts at tab 13?

16 THE WITNESS: I gave away 251.

17 251 was prepared by folks in Montgomery for an exam, and
18 I don't really know what they sent in it, because I never saw it.
19 So they got this from my staff, and this is, like, our generic
20 manual.

21 Q. I understand. But you have a procedure manual for your
22 division, correct?

23 A. Correct.

24 Q. And that's what I'm trying to get to.

25 A. Okay.

Kissick - Cross

943

1 Q. You have a procedure manual for running your division,
2 correct?

3 A. Well, we have a lot. This is the one that we gave our
4 clients.

5 Q. I understand.

6 THE COURT: Wait, wait. I want this to be clear.
7 You're looking at just D right now?

8 THE WITNESS: Yes.

9 THE COURT: All right. And you're saying that D is what
10 you give to clients?

11 THE WITNESS: Yes.

12 THE COURT: And the entire D. There are a whole bunch
13 of documents.

14 THE WITNESS: No, we do not give them -- the
15 underwriting guidelines were our underwriting guidelines, and that
16 did not go to clients. The part that says "Prepared For Colonial
17 Bank Clients" is just the generic, and then we would customize it
18 and bind it and, you know, send it to clients.

19 THE COURT: What concerns me is I don't know what we're
20 talking about, because my D, what I'm looking at has a whole bunch
21 of different things in it, and from Mr. Stokes' body language, I
22 think his is the same.

23 MR. STOKES: We have no idea what this is.

24 THE COURT: All right. Let's look at Bates numbers.
25 There are tiny little numbers.

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1 In a case with a lot of documents, ladies and gentlemen,
2 in order for the lawyers to keep track of many pages, they have a
3 stamping system, now I think it's done by computer. It's called
4 Bates, B-a-t-e-s, and then there are a whole bunch of numbers, and
5 in the bottom right-hand corner, there's a whole bunch of little
6 numbers, and what I'm looking at right now, looking at Exhibit D,
7 is it starts, I'm going to go with the last four numbers of the
8 Bates stamp, 8430.

9 Is that what you have, Mr. Stokes, so we're looking at
10 the same thing?

11 MR. STOKES: Yes, Your Honor, we do have that --

12 THE COURT: And that's what you've got.

13 MR. STOKES: -- as the second page of the document, the
14 first substantive page.

15 MS. KARINSHAK: Yes, Your Honor. Your Honor, I want to
16 double-check it with my other copy. Mine does not have Bates, but
17 I have one right here.

18 THE COURT: Well, the first page has a 13 on it.

19 MS. KARINSHAK: Yes, ma'am. That's why I cited back to
20 the table of contents for 13.

21 THE COURT: All right. Then it goes, I mean, the format
22 appears to be pretty much the same up through -37, 8437, and then
23 starting on 8438, there's something that says "Prepared for
24 Colonial Bank Clients, July 25, 2008."

25 Now, is that what you're saying, that those papers are

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1 the ones that are given to clients?

2 THE WITNESS: This was given to clients.

3 These were not given to clients, the guidelines.

4 THE COURT: Don't do "this" and "that." The guidelines
5 are, okay, are the first set of numbers I talked about.

6 THE WITNESS: Correct.

7 THE COURT: All right. And then is all the rest of that
8 exhibit -- just so we're clear as to what we're talking about
9 here, is all the rest of that exhibit given to clients? The
10 client package appears to begin at 8438.

11 THE WITNESS: No the part ending -- starting with 8460
12 is not. Let me see what else.

13 THE COURT: And 8460 has the title "Underwriting
14 Process." So you're saying that would not go to a client.

15 THE WITNESS: Correct. I think this middle section did,
16 though, starting with 8438 --

17 THE COURT: All right.

18 THE WITNESS: -- and ending with 8459.

19 THE COURT: There appear to be three different groupings
20 within this exhibit. Now, which of the three groupings are you
21 focusing this testimony --

22 MS. KARINSHAK: Your Honor, I'm trying to focus on the
23 fact that this was within the bigger procedural manual that was
24 used by the Mortgage Warehouse Lending Division, but there are
25 parts of this -- it's basically a procedural manual by which this

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1 division has been run, and some of these documents may have been
2 given to clients of that division. It's just part of that bigger
3 document.

4 THE COURT: Is the bigger document you're talking about
5 what you're calling tab 13?

6 MS. KARINSHAK: Yes, ma'am.

7 THE COURT: All right. Ms. Kissick, then as I think I
8 understand, the question is is it your understanding that this
9 entire package, with the underwriting business and the information
10 for clients, was that plus these guidelines usually kept together
11 as one --

12 THE WITNESS: Absolutely not. These were never given to
13 clients, the guidelines.

14 THE COURT: But for employees, for example, if you were
15 training a new person in your division, would this packet be given
16 to them?

17 THE WITNESS: No. The guidelines were for underwriting,
18 and the, and the procedural manual was mostly for operations.

19 THE COURT: All right. The proper exhibit, in my view,
20 ought to be then just the procedures.

21 MS. KARINSHAK: Your Honor, that's fine.

22 THE COURT: Is that all right? All right, so we're
23 going to remove from this exhibit -- I assume then the government
24 has no objection?

25 MR. STOKES: We don't, Your Honor, no.

Kissick - Cross

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1 THE COURT: All right. So this exhibit would stop at
2 8437, all right? So 8430 to 8437, those seven sheets, that's the
3 guidelines you're talking about.

4 MS. KARINSHAK: We're taking those out, right, Your
5 Honor?

6 THE COURT: Well, that's going to be your Exhibit 251D,
7 and the rest of it is not proper to be part of that exhibit.

8 (Defendant's Exhibit No. 251D was received in evidence.)

9 THE COURT: All right, then ask your questions about
10 that.

11 MS. KARINSHAK: All right. Your Honor --

12 THE COURT: After all that, are there questions about
13 the exhibit?

14 MS. KARINSHAK: Yes, Your Honor.

15 THE COURT: All right.

16 MS. KARINSHAK: I'm understanding that you are not
17 including 8438 to 8459?

18 THE COURT: Not at this point.

19 MS. KARINSHAK: Okay.

20 THE COURT: If you lay a foundation, that's different,
21 but, I mean --

22 BY MS. KARINSHAK:

23 Q. All right, I'd like to show you 8438, the Bates labels again,
24 to 8459?

25 A. Okay. I have them.

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1 Q. Do you recognize that document?

2 A. Yes.

3 Q. And I believe you said this was something you gave to, it
4 even says "Prepared for Colonial Bank Clients," correct?

5 A. Correct.

6 Q. And it's dated July 25, 2008?

7 A. Correct.

8 Q. And do you recognize this document?

9 A. Yes. This was the, the generic version of our procedures
10 manual.

11 Q. Generic version of what?

12 A. Procedures manual.

13 Q. Okay. So you have a procedures manual as a Mortgage
14 Warehouse Lending Division, and you also have a section that you
15 hand out to clients, this section here.

16 A. Yes, yes.

17 Q. Okay. Now, looking to page 8439, we have the general
18 operating overview, correct?

19 A. Yes.

20 Q. And could you please read the last bullet on that page for
21 the jury?

22 A. "This procedures manual provides a general description of the
23 operating procedures for a mortgage warehouse lending customer of
24 Colonial Bank. This procedures manual is subject to change at any
25 time, at the sole and absolute discretion of Colonial Bank,

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1 without prior notice to the mortgage company. Colonial Bank will,
2 promptly after making any such change(s) to this procedural
3 manual, provide to the mortgage company a copy of any such
4 change(s). Furthermore, Colonial Bank reserves the right to waive
5 or modify any of the requirements set forth herein, on a
6 case-by-case basis."

7 Q. And so I want to focus on that last sentence: "Furthermore,
8 Colonial Bank reserves the right to waive or modify any of the
9 requirements set forth herein, on a case-by-case basis." That
10 sentence, who is the person who can waive or modify the
11 requirements?

12 A. The operations managers or myself.

13 Q. Okay. And who were the operations managers?

14 A. Joyce Shultz and -- well, actually, Joyce Shultz and Michelle
15 Carroll.

16 Q. Okay. And so could Ms. Kelly waive these, these
17 requirements?

18 A. No.

19 Q. So you or Joyce Shultz or -- the other lady's name was?

20 A. Michelle Carroll.

21 Q. Okay. So you-all are the three that can waive or modify
22 requirement that are set forth in this document, and you do it on
23 a case-by-case basis, correct?

24 A. Yes.

25 Q. And you give this out to clients so clients know what to

Kissick - Cross

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1 expect when they're dealing with your division, correct?

2 A. Correct.

3 Q. And that would apply to your day-to-day work operations with
4 companies like Taylor, Bean & Whitaker, correct?

5 A. Correct.

6 Q. And again, if you wanted to make some exceptions to the rules
7 you've put in here, you can do it on a case-by-case basis, because
8 you're the head of the division?

9 A. Correct.

10 MS. KARINSHAK: And is this in evidence, Your Honor?

11 THE COURT: Not the way it's been done, no. Is this all
12 you're using from tab 13?

13 MS. KARINSHAK: This is from tab 13, yes, ma'am.

14 THE COURT: This is all that you are using from tab 13?

15 MS. KARINSHAK: Yes, ma'am.

16 THE COURT: All right. This then is 251D, all right?

17 Not the rest of it. Let's not burden the jury with any more
18 documents --

19 MS. KARINSHAK: Yes, ma'am. I'd like to get it focused
20 to the key documents.

21 MR. STOKES: Exhibit 251D?

22 THE COURT: Just -- yeah. And the underwriting process
23 is not part of this exhibit at this point.

24 MS. KARINSHAK: Your Honor, my understanding is it's
25 8438 through 8459. That's what I have connected as 251D.

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1 THE COURT: That is -- D as in David?

2 MS. KARINSHAK: D as in David, yes, ma'am.

3 THE COURT: That's it.

4 MS. KARINSHAK: Thank you, Judge.

5 THE COURT: Now, you had also mentioned A, B, and C.

6 Are you still pushing -- putting those forward or not?

7 MS. KARINSHAK: I'm going to come back to those.

8 THE COURT: All right. They're not in at this point
9 then.

10 BY MS. KARINSHAK:

11 Q. Now, we just talked about the procedure manual that went out
12 to customers and talked about that you could do, you could do
13 exceptions on a case-by-case basis, and in this case in your
14 relationship with Taylor, Bean & Whitaker, you did waive or modify
15 requirements during the course of your relationship, correct?

16 A. Correct.

17 Q. And in fact, you could go -- you had the ability to go around
18 these documents by getting approval not only from yourself, but
19 you could take it to your higher ups, correct?

20 A. Correct.

21 Q. So would it be fair to say that if someone didn't review that
22 policy manual with respect to how you dealt with customers, they
23 may not understand what you as the head of the division had
24 authority to do?

25 A. Please repeat that. I don't understand what you're asking

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1 me.

2 Q. What I'm trying to say is that if someone didn't read that
3 manual and understand how you established your relationship to
4 your clients, they may not understand your authorities or how your
5 relationships worked with your customers, correct?

6 A. Well, this was actually given to operational people for
7 operational to send in loans and our wire cutoff times and
8 everything else. So, I mean, those were the things we waived,
9 like a wire cutoff time.

10 Q. Okay. But if I didn't read that document, as a person coming
11 in who doesn't know anything about your division, if I don't read
12 that document and go through this, I wouldn't necessarily
13 understand what your authorities were or how your company worked
14 with respect to those relationships, correct?

15 A. Correct.

16 Q. All right. Now, let's look at this, Defendant's Exhibit 212,
17 please.

18 MR. STOKES: No objection, Your Honor.

19 THE COURT: All right.

20 (Defendant's Exhibit No. 212 was received in evidence.)

21 BY MS. KARINSHAK:

22 Q. Now, Ms. Kissick, do you recognize this document? It's an
23 e-mail --

24 A. It's an e-mail. I don't recognize it, but, I mean, it's our
25 e-mails.

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1 Q. It is your e-mails?

2 A. Um-hum.

3 Q. And your name is actually on the e-mail that's in the middle
4 of the page there. Do you see the one dated April 25, 2006, at
5 11:05 a.m.?

6 A. Yes.

7 Q. And what is the subject?

8 A. "Send me the COLB plus request on the big loan" --

9 THE COURT: Whoa, whoa, whoa. Slow down, please.

10 THE WITNESS: "Send me the COLB plus request on the big
11 loan, and I will do that one today."

12 BY MS. KARINSHAK:

13 Q. I'm sorry, ma'am, I was asking about the subject of the
14 e-mail.

15 A. Oh. "Aged warehouse loans."

16 Q. Okay. So "WH" stands for warehouse?

17 A. Correct.

18 Q. You just read for us, "Send me the COLB plus request on the
19 big loan, and I will do that one today," correct?

20 A. Correct.

21 Q. And move up the next e-mail in that chain. Would you please
22 tell us who that's from and to?

23 A. From Desiree to Teresa.

24 Q. And just for the record, could you use their whole names?

25 A. From Desiree Brown to Teresa Carrier.

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1 Q. And the date?

2 A. April 25.

3 Q. And the subject again?

4 A. "Re: Aged warehouse loans."

5 Q. And this response was what?

6 A. I thought over 120 days weren't eligible for COLB plus."

7 Q. I'm sorry, ma'am, now, you're a little bit too close. It's
8 kind of --

9 A. Sorry. "I thought over 120 days weren't eligible for COLB
10 plus."

11 Q. Okay. And just to make sure we have the record straight, the
12 e-mail that was sent to you was from -- I'm sorry, the e-mail you
13 read previously was from Teresa Carrier to Desiree Brown, copy
14 you, April 25, 2006, where we said, "Send me the COLB plus request
15 on the big loan, and I will do that one today," and then Ms. Brown
16 writes back, "I thought over 120 days weren't eligible for COLB
17 plus?"

18 And then what is the response above that?

19 A. "We can do it upon approval."

20 Q. And it was from whom?

21 A. Teresa to Desiree.

22 Q. And, I'm sorry, use their full names.

23 A. Teresa Carrier to Desiree Brown.

24 Q. Now, is this e-mail referring to the fact that you can change
25 some of the rules with respect to these facilities with approval?

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1 A. This would have to be done above me.

2 Q. Okay. But you can get it done even with approval above you?

3 A. Yes.

4 Q. Sorry?

5 A. Yes.

6 Q. And who would be the approving authority on this request for
7 the COLB plus?

8 A. Well, I don't know. I think it might have been Kamal at that
9 time.

10 Q. Kamal who?

11 A. I think Kamal was my boss then.

12 Q. I'm sorry?

13 A. Kamal Hosein.

14 Q. Kamal Hosein? And who is he?

15 A. He was the treasurer.

16 Q. And he was your boss?

17 A. Yes.

18 Q. And was he your boss the whole time you were at the Mortgage
19 Warehouse Lending Division?

20 A. No.

21 Q. Who was your first boss?

22 A. Art Barksdale.

23 Q. Okay. And how long were you working with Art Barksdale?

24 From what date to what date?

25 A. I don't remember when it ended. August of '98 until I don't

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1 remember when I switched.

2 Q. How long do you think you worked with Mr. Hosein?

3 A. A couple years, three maybe.

4 Q. A couple years from the date of the shutdown or --

5 A. I don't know. Maybe three years.

6 Q. Three years before August 2009?

7 A. I don't really -- I don't know. I'd have to go back and, and
8 look. I don't know.

9 Q. Okay. But you think you worked with him for about three
10 years?

11 A. Yes, I guess. I don't, I don't remember to be honest with
12 you. I really don't.

13 Q. But at some point, he was your direct supervisor, correct?

14 MR. STOKES: Your Honor, I think --

15 THE WITNESS: Yes.

16 MR. STOKES: -- she's answered this question five times
17 now.

18 THE COURT: This has been established. Let's move on.

19 BY MS. KARINSHAK:

20 Q. Now, let's go to the next document, which is Defendant's
21 Exhibit 203.

22 THE COURT: Is there an objection, Mr. Stokes?

23 MR. STOKES: There's not, Your Honor.

24 THE COURT: There is not.

25 MR. STOKES: Yes.

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1 THE COURT: All right, it's in.

2 (Defendant's Exhibit No. 203 was received in evidence.)

3 BY MS. KARINSHAK:

4 Q. Now, looking at Defendant's Exhibit 203, again, this is an
5 e-mail chain, and I wanted to focus on looking kind of above the
6 middle of the page, Ms. Kissick. Who is this e-mail from?

7 A. From Milton Vescovacci to me.

8 Q. Okay. And what is the date?

9 A. August 5.

10 Q. Of what -- of what year?

11 A. '09.

12 Q. 2009?

13 A. Yes.

14 Q. All right. And what is the subject?

15 A. "Worst case."

16 Q. And could you please read the contents of the e-mail for the
17 jury, please?

18 A. "Please confirm if the list below of all facilities that
19 Colonial Bank has with TBW is correct. The facilities that I am
20 aware of are as follows: Wet and dry COLB with Colonial;
21 construction COLB with Colonial; overline facility with
22 Colonial" --

23 Q. I mean, could you read the numbers and go a little bit
24 slower?

25 A. Okay. "No. 1, wet and dry COLB with Colonial; No. 2,

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1 construction COLB with Colonial; No. 3, overline facility with
2 Colonial; No. 4, AOT (agency securities) facility with Colonial;
3 No. 5, AOT (private securities and whole loans) facility with
4 Colonial; co-purchaser -- No. 6, co-purchaser COLB with Seaside
5 and Colonial; No. 7, co-purchaser AOT with USAmeribank and
6 Colonial; and No. 8, co-purchaser AOT with Cole Taylor Bank and
7 Colonial."

8 Q. Okay. So those are eight different facilities that are
9 listed in this e-mail?

10 A. Correct.

11 Q. And Mr. Vescovacci again is your lawyer, correct?

12 A. Correct.

13 Q. And this is the attorney you had talked about who's been
14 consulting with you related to agreements for each of these
15 facilities, correct?

16 A. Correct.

17 Q. So we have eight different facilities in the relationship
18 between Colonial Bank and Taylor, Bean & Whitaker, correct?

19 A. Correct.

20 Q. And each of these would have their own agreements and
21 operating rules, correct?

22 A. Well, actually the COLB are all exactly the same, and the AOT
23 are the same. The only one that's different is the overline
24 because of the true sale.

25 Q. Okay. But those separate groups have operating agreements,

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1 correct?

2 A. They all have different operating agreements, but they all
3 are the same language.

4 Q. Well, the same language, we reviewed the governing agreements
5 here earlier, correct?

6 A. Correct.

7 Q. And not all of them were the same, but there were two that
8 were the same, right, the AOT --

9 A. Well, the AOTs are all the same, and the COLBs are the same.

10 Q. Exactly. So the AOTs are the same, the COLBs are the same,
11 and then you have the overline, correct?

12 A. Correct.

13 Q. Okay. So there's three big sets of rules, correct?

14 A. Correct.

15 Q. And to understand the facilities and how those facilities
16 worked, you would have to understand those governing documents,
17 correct?

18 A. Yes.

19 MS. KARINSHAK: Okay. And, Your Honor, I'd like to do a
20 demonstrative at this time.

21 THE COURT: Have you shown it to the government?

22 MS. KARINSHAK: Yes, Your Honor.

23 THE COURT: Any objection, Mr. Stokes?

24 MR. STOKES: I don't know if I have a copy of this or
25 not, Your Honor.

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1 MS. KARINSHAK: Here's another one.

2 MR. STOKES: No, no objection. I'm not sure what it is
3 exactly, but --

4 THE COURT: All right.

5 MR. STOKES: Your Honor, if I may, we may object as we
6 go on. This is a representation of something that actually
7 doesn't exist, but we're not sure what it is, but we're happy to
8 proceed and then --

9 THE COURT: It looks like it's a bunch of buckets.

10 MS. KARINSHAK: Yes, ma'am.

11 THE COURT: All right, go ahead.

12 BY MS. KARINSHAK:

13 Q. Now, Ms. Kissick, looking at these, these buckets represent
14 the different agreements that are -- the different facilities that
15 you have with Taylor, Bean & Whitaker, correct?

16 A. Correct.

17 Q. And the mortgage loans will proceed from one bucket to the
18 other, mortgage notes would go from one bucket to another bucket,
19 depending on how -- the rules of each bucket, correct, the aging
20 of the loans and they can only be in certain buckets at certain
21 times, correct?

22 A. Yes, correct.

23 Q. Okay. And so according to the rules of the different
24 buckets, a mortgage loan may or may not be able to be in that
25 bucket and may get moved to another bucket, correct?

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1 A. Yes.

2 Q. And so in your relationship with Taylor, Bean & Whitaker,
3 with the volume of notes that are coming through, there's
4 potentially a lot of moving of mortgage notes between all these
5 buckets, correct?

6 MR. STOKES: Your Honor, I'm just going to object
7 because they're showing graphics on this. One, we don't know what
8 the graphics are, and witness hasn't even agreed that this is, in
9 fact, what happened, and they're showing the mortgage loans moving
10 between buckets and shuffling.

11 MS. KARINSHAK: Your Honor --

12 THE COURT: It's also a, creating an invisible record
13 for any further purposes for this record. I don't think it's very
14 helpful. This is a simplistic enough concept that can be done
15 with words, so let's take this off the screen, and go ahead.

16 BY MS. KARINSHAK:

17 Q. Ms. Kissick, you talked about the loans would be moving
18 between different buckets, different facilities based on the rules
19 for those facilities, correct?

20 A. Yes.

21 Q. And each of those facilities has their own set of rules that
22 you're following while these loans are moving between all those
23 different facilities, correct?

24 A. Well, actually, they're only supposed to go -- they aren't
25 supposed to move all around. They're supposed to go to COLB and

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1 get funded or go to AOT and get funded, and we ended up putting
2 them on overline when they didn't meet the requirements of anybody
3 else.

4 Q. I'm sorry, when they didn't --

5 A. When they aged out, sorry. Now I'm talking too loud.

6 Q. But you'd have to keep track of each of those as what can
7 stay on COLB for too long before it goes to AOT before it goes to
8 overline, correct?

9 A. We do keep track of it on our paperwork, yes.

10 THE COURT: Well, an individual mortgage, if I had a
11 mortgage, individual one, that could be on the COLB, correct?

12 THE WITNESS: Correct.

13 THE COURT: All right. It wouldn't be on the AOT unless
14 it were part of a pool?

15 THE WITNESS: Correct.

16 THE COURT: And you don't get the mortgage that's in a
17 pool. You get the pool papers.

18 THE WITNESS: We get the papers, and the mortgages go
19 down to Document Custody.

20 THE COURT: Right.

21 THE WITNESS: But just the paperwork moves.

22 BY MS. KARINSHAK:

23 Q. Now, would it be fair to -- let me establish your -- when did
24 your relationship begin with Taylor, Bean & Whitaker? I believe
25 you said 1998?

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1 A. Right. I started banking him at SunTrust in 1998.

2 Q. And then when did he come -- did he come over -- Taylor, Bean
3 & Whitaker came over to Colonial in about September of 1999?

4 A. Yes.

5 Q. Would that be right?

6 And -- so from 1999 through August of 2009, would it be
7 fair to say that Taylor, Bean & Whitaker had grown exponentially
8 over that time?

9 A. Yes.

10 Q. And it had a very high volume?

11 A. Yes.

12 Q. And isn't it true that a lot of the tracking of those
13 mortgage loans with respect to that volume is done electronically?

14 A. Yes.

15 Q. So that people aren't even touching the documents, the loans?
16 They're coming in electronically and being sorted; is that right?

17 A. No, we always would touch the loans.

18 Q. Because that's the collateral that's in the safe, correct?

19 A. Well, that's the collateral that comes in first that perfects
20 our interest, and then when the security is created, then it goes
21 to the vault downstairs in custody.

22 Q. So that's actually touched, but other documents are not
23 necessarily?

24 A. Correct.

25 Q. And some of those loans, the information gets sorted by

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1 specific data such as something's Fannie Mae eligible, and you can
2 run a query to figure out which documents are Fannie Mae eligible,
3 correct?

4 A. Correct.

5 Q. And so there's a lot of recordkeeping going on to keep track
6 of the, what can be in each of the facilities and, indeed, what is
7 in each of the facilities?

8 A. Right.

9 Q. Now, isn't it true that, that data integrity was an issue for
10 Colonial Bank with respect to these tracking of loans and the data
11 with respect to those loans?

12 A. On Colonial's part?

13 Q. Yes.

14 A. No.

15 Q. Okay. Well, what about on Taylor, Bean & Whitaker's part?

16 A. Definitely.

17 Q. Okay. When you say "definitely," what do you mean by that?

18 A. Their systems didn't seem to talk to one another.

19 Q. Their systems over at Taylor, Bean & Whitaker?

20 A. Yes.

21 Q. Didn't talk amongst themselves?

22 A. Yes.

23 Q. And Colonial Bank didn't ever have any data problems, you're
24 saying --

25 A. On our, on our collateral monitoring system, no. We were --

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1 it was fine. And we actually were sometimes the point of record
2 that Taylor Bean used.

3 Q. You mean point of record, they'd reach out to you and say,
4 hey, we need to check our data versus yours?

5 A. Yes.

6 Q. And how often did that happen?

7 A. All the time.

8 Q. Okay. So would it be fair to say there was a big data
9 integrity issue over at Taylor, Bean & Whitaker?

10 A. Yes. That was an ongoing issue.

11 Q. And did you also in the course of your relationship with
12 Taylor, Bean & Whitaker and Mr. Farkas specifically make
13 recommendations to him about the fact that they're growing so much
14 that they needed more help?

15 A. Yes.

16 Q. And did you also say, "You know, you might need to add more
17 depth to your bench"?

18 A. Yes.

19 Q. And what do you mean when you say, "I'd like you to add more
20 depth to your bench"?

21 A. He couldn't be the only person working at the company.

22 Q. So you're saying he can't be the only one. What do you mean
23 when you recommend to him to get depth to the bench?

24 A. To add more experienced people. He's growing quickly, and he
25 couldn't be the only one there working.

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1 Q. And in response to your suggestion that there be more depth
2 to the bench, wasn't a CFO brought on board, Mr. DeArmas?

3 A. I think he'd already been there. He was just hired after --
4 he was just made CFO when Ray Crocker left.

5 Q. Ray Crocker left?

6 A. Yeah. I tried to get him to hire over people.

7 Q. Who did you try -- you tried to get who to hire over people?

8 A. I given him names like, I'm sorry, Frank Plenskofski. I
9 can't even begin to spell it for you. Sorry.

10 Q. Who is Frank Plenskofski?

11 A. Everybody called him Franky P. He's very well known in the
12 industry.

13 I was trying to get somebody -- he was growing fast. I
14 was trying to get a CFO, you know.

15 Q. Okay. So you wanted a different CFO then?

16 A. Yes.

17 Q. You didn't like Mr. DeArmas?

18 A. No, it wasn't that. He was becoming a big company. He
19 needed people with more strengths, more skill sets.

20 Q. So you didn't think Mr. DeArmas was strong enough to stay on
21 the team; is that correct?

22 A. I could never really understand what he was telling me half
23 the time, so I guess that would be a fair assessment.

24 Q. You couldn't understand what he was telling you?

25 A. Correct.

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1 Q. What does that mean?

2 A. I don't know what he was -- I didn't know what he was talking
3 about when he was answering questions for us.

4 Q. So you would send a query to Mr. DeArmas, and he'd send
5 something back that you just didn't understand?

6 A. It was -- yes, it was mumbo -- it was -- it didn't make
7 sense. It was just like I was talking with a very learned person,
8 and it didn't make any sense, but I didn't know what he was
9 talking about half the time so --

10 Q. Mr. DeArmas, wasn't he a certified public accountant?

11 A. Yes. And I'm not, and that can be part of it. I don't know.
12 But I did not know what he was talking about half the time, so --

13 Q. But he was the chief financial officer for Taylor, Bean &
14 Whitaker?

15 A. Yes.

16 Q. And did you also make a recommendation that I believe
17 Mr. Farkas followed, and that would be the CEO, Mr. Paul Allen?

18 A. Actually, he hired Paul because he had just been cut off by
19 Fannie Mae, and Freddie Mac loved Paul Allen, and I remember him
20 telling me, "Don't blow it with Paul," because they needed him to
21 keep Freddie happy. So I didn't, I didn't even know who Paul
22 Allen was. They introduced me to Paul Allen.

23 Q. Had you heard of Paul Allen?

24 A. No.

25 Q. Okay. But I misunderstood something you said here. You said

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1 "they told me." Who is "they"?

2 A. Lee.

3 Q. Okay. So Lee told you he's hiring Mr. Paul Allen because he
4 wants to maintain a relationship with the --

5 A. No. He had been cut off by Fannie Mae. Freddie Mac loved
6 Paul Allen, and they wanted -- Taylor Bean needed Paul Allen there
7 to kind of grease the wheels with Freddie Mac, because that was
8 their only lifeblood.

9 Q. And Mr. Paul Allen had a great relationship then with Freddie
10 Mac, correct?

11 A. That's what I was told, yes.

12 Q. And so to keep good relationships up, Taylor, Bean &
13 Whitaker, Mr. Farkas hired and brought on Mr. Paul Allen to be the
14 CEO, correct?

15 A. Correct.

16 Q. And Mr. Paul Allen, do you know anything about his education
17 as far as does he have a degree?

18 A. I'm assuming he does, yes. I don't know. I don't remember
19 that much. He's very learned; I do know that.

20 Q. Does he have a degree from the London School of Economics?

21 A. I don't know.

22 Q. Now, Ms. Kissick, would you agree that in the business you're
23 in of this, that it's a fast-moving business and mistakes can be
24 made, and you can even have sloppy work?

25 A. Yes.

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1 Q. Even among your own employees?

2 A. Yes.

3 MS. KARINSHAK: Please show her Defense Exhibit 207.

4 MR. STOKES: No objection.

5 THE COURT: All right, it's in.

6 (Defendant's Exhibit No. 207 was received in evidence.)

7 BY MS. KARINSHAK:

8 Q. Ms. Kissick, does Defense Exhibit 207, does that show what
9 appears to be some notes you -- or tell me what that is actually,
10 Defense 207.

11 A. Well, I'm curious as to how you got this, because this was
12 kind of my narrative that I made for a department talk that I was
13 giving when we had a bunch of temporaries and they were not
14 understanding the right, the privilege they had of having a nice
15 job, and they were being a little spoiled, so I kind of gave them
16 a talk.

17 Q. Well, if you notice, it's got a DOJ Bates label there, so it
18 would have come from the DOJ, correct?

19 A. I guess so, yes.

20 Q. Sorry?

21 A. I guess so.

22 Q. Okay. Now, I want you to look at this memorandum of the talk
23 you're giving to your employees about -- first you say on the
24 first page, sub-point 1, what do you say?

25 A. I'm sorry, what was that?

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1 Q. On that first, you have a 1 with a parentheses. Could you
2 please tell us -- actually, start at the very beginning. "I have
3 called you all to this meeting." Please tell us what that is.
4 Read that first sentence.

5 A. "I have called you all to this meeting because I need to go
6 over a few things with you. I have struggled with what to say and
7 how to say it for the past several days. I thought, I can give
8 each of you a flow chart and an org. chart and go over what we do
9 and how we do it so everyone will know exactly what their role is
10 and how what you do or don't do affects the big picture."

11 Keep going?

12 Q. Yes.

13 A. "I could be all sweetness and light, 'cause you know what a
14 softy I am, and we may do that when we're done, but in the end, I
15 have decided to say a couple of things very bluntly to you, and if
16 you are rolling your eyes as if this will not pertain to you,
17 well, then it probably does pertain to you, so you'd better listen
18 up."

19 Q. What do you say at subparagraph 1?

20 A. "Working at Colonial Bank in mortgage warehouse lending is a
21 privilege, not a right. You don't realize how great you have it.
22 Do you know that Colonial pays for the parking of all its
23 employees (which includes our I-placement employees)? That's \$80
24 per month per employee every month of the year. Most downtown
25 employers" --

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1 Q. Stop. Go to the third paragraph, "I hear all sorts," and
2 read that part, please.

3 A. "I hear all sorts of grumbling via the grapevine: Oh, my
4 supervisor is so mean. She makes us e-mail her when we leave.
5 Oh, my supervisor never pays attention to us, or my supervisor
6 micromanages us. Oh, it's so unfair. I-placement employees
7 didn't get bonuses, wah, wah, wah. Well, here's the deal. If you
8 don't like working here, leave."

9 Q. And an i-placement employee is what?

10 A. Temps.

11 Q. Okay.

12 A. Temp to perm.

13 Q. And so I-placement --

14 MR. STOKES: Your Honor, I'm just going to object. I'm
15 not sure of the relevance of this document.

16 THE COURT: I was wondering the same --

17 MS. KARINSHAK: Your Honor, I'm getting to the.

18 THE COURT: Get to it then.

19 BY MS. KARINSHAK:

20 Q. Let's get to "sloppy work" in that letter, please.

21 A. Where is this?

22 Q. It's on page 3 of this. Do you see the section "Sloppy
23 Work"?

24 A. "Sloppy Work," yes. "Did you know that the overdraft report
25 goes to Credit Admin every day in Montgomery and is shown to our

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1 auditors? Did you know that over 60 percent of MWL overdrafts are
2 due to analyst errors? How'd you like it if you got your
3 MasterCard bill and there were mistakes on it monthly and that
4 every six out of ten charges on it were due to some clerk not
5 doing his/her job? These mistakes take more work to unwind than
6 just a simple credit ticket. Account Analysis has to also be
7 notified, because there is a prime plus 2 percent charge for
8 overdrafts. Additionally, it looks bad within the rest of the
9 bank. Credit in Montgomery reviews them, and it makes our credit
10 officers wonder if the customer has a problem. We don't always
11 tell them" --

12 THE COURT: Slow down, please.

13 THE WITNESS: I'm sorry. "We don't always tell them
14 it's Operations' fault, because then it will look like we don't
15 hire competent employees. People think their little typos or
16 transpositions don't matter, but they do."

17 BY MS. KARINSHAK:

18 Q. And then the last paragraph please? Actually, let's just go
19 to the last sentence -- well, there's a sentence that starts,
20 "How'd you like to sign your life away on a mortgage?" Read that
21 to end, please.

22 A. "How'd you like to sign your life away on a mortgage and then
23 possibly have to go in and re-sign all of the docs because your
24 mortgage company's bank lost the note? First, I'd think I was
25 being scammed; and secondly, it doesn't look good to our customer.

Kissick - Cross

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1 Banks are supposed to be sound and secure and not a black hole
2 pit, like some teenager's bedroom."

3 Q. Now, you wouldn't have been writing this -- you gave, you
4 gave a speech as to this, correct? This is what you told the
5 employees?

6 A. Right.

7 Q. Okay. You wouldn't have been writing all of this and saying
8 all of this -- I mean, you took the trouble to write it down to
9 make sure you said everything you needed to say, correct?

10 A. Um-hum.

11 Q. You wouldn't have been writing this had your group not been
12 shipping notes to the wrong investor as well as losing notes,
13 correct?

14 A. Well, that didn't really apply to Taylor Bean, because we
15 didn't have to ship notes to an investor. We took them downstairs
16 to custody. This happened to a couple of customers in particular,
17 and it really rattled me, because it was good customers, and it
18 was temporaries that were doing it, and that's why I decided
19 enough was enough.

20 Q. Now, can you say without hesitation that there was no error
21 with shipping notes to the wrong investor or losing notes with
22 respect to Taylor, Bean & Whitaker?

23 THE COURT SECURITY OFFICER: The Court's indulgence?

24 THE WITNESS: Sorry, I don't know what I'm doing.

25 Breathing, I guess. There you go.