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1 THE COURT: Technology. A piece of sponge.

2 THE WITNESS: Now you won't hear me breathe anymore.

3 Yeah.

4 Hello? Much better.

5 BY MS. KARINSHAK:

6 Q. Now, do you remember my question? Can you say under oath
7 that here and without hesitation, that there was never an instance
8 where you shipped notes to the wrong investor and/or lost notes
9 with respect to Taylor, Bean & Whitaker?

10 A. I cannot say that without hesitation, because I'm sure we did
11 every once in a while, but by and large, our group was very good.

12 Q. Well, by and large, you're trying to do your job, correct?

13 A. Yes.

14 Q. And you're, and you're the head, and you're the head of the
15 division, and you're trying to do a good job for your, for your
16 company but also for your clients, correct?

17 A. Yes.

18 Q. And are you aware that part of this prosecution is about the
19 finding that some of Taylor, Bean & Whitaker notes, there's just
20 not enough notes, correct?

21 A. Correct.

22 Q. And have you tried to help the government figure out which
23 notes with respect to Taylor, Bean & Whitaker may or may not have
24 been lost?

25 A. They were not lost.

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1 Q. As part of your cooperation, though, have you gone down and
2 reviewed all those records to be absolutely certain that you can
3 say that without hesitation and here under oath before the jury?

4 A. I have not helped them, but I can honestly under oath tell
5 you that they were not lost. They were never given to us.

6 Q. Well, what about you said there might have been a wrong
7 investor? Isn't that a possibility?

8 A. No.

9 Q. Did you go down and double-check with the government as part
10 of your cooperation to see if any of the notes went to the wrong
11 investor?

12 A. No. I wasn't -- first of all, after I left, I wasn't allowed
13 to go back, but secondly, your point is misleading, because we
14 didn't get the notes to begin with. They weren't sent to the
15 wrong investor. We never got them.

16 Q. I understand that's your testimony, ma'am, but I'm just
17 trying to clarify.

18 A. Okay.

19 Q. You haven't been down there with the government to
20 double-check each and every one of those things, have you?

21 A. No, I have not.

22 Q. You haven't been able to re-access the bank, right?

23 A. No, I have not.

24 Q. You were gone, and you've been gone, correct?

25 A. Yes, I have.

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1 Q. And, in fact, you admitted here in this document and when you
2 met with your employees that your operation looked like some
3 teenager's bedroom, correct?

4 A. It was probably in 2006, but, you know, I don't think we were
5 talking about Taylor Bean, but yes, I did say that.

6 Q. So at some point in your operation, it would be fair to say
7 it looked like a teenager's bedroom. Otherwise, you wouldn't have
8 gone through this, correct?

9 A. I was making a point because normally I joke around and have
10 fun, and for me to say this mean was pretty shocking to my staff,
11 and so, you know, it was for effect, but we do have a very -- we
12 had a very good operational staff.

13 Q. I understand, ma'am, but when you answer the questions, would
14 you please say "yes" or "no" first? And then you can --

15 A. Okay. Would you please repeat your question?

16 THE COURT: I think this whole line of questioning is a
17 little off.

18 MS. KARINSHAK: Okay.

19 THE COURT: Let's move on.

20 BY MS. KARINSHAK:

21 Q. All right. Ms. Kissick, you have a master's degree, correct?

22 A. Yes.

23 Q. And what is that in?

24 A. Management and marketing.

25 Q. Okay. And do you have an undergraduate degree?

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1 A. Yes.

2 Q. And what is that in?

3 A. English.

4 Q. And I meant to ask you, I apologize, where was your master's
5 degree from?

6 A. Miami University.

7 Q. And is that in Ohio?

8 A. Yes.

9 Q. Okay. And your undergraduate degree is from where?

10 THE COURT: Now, what's the relevance of that?

11 MS. KARINSHAK: Your Honor, I'm just trying to build it.

12 THE COURT: Well, let's just move this along.

13 MS. KARINSHAK: All right.

14 Q. Now, how many years in banking -- how many years of banking
15 experience do you have?

16 A. I started a training program in '86, in the fall of '86, and
17 I started lending, doing banks to -- loans to small banks in '87.

18 Q. And your first 11 years in the banking industry were with
19 SunTrust, correct?

20 A. Correct.

21 Q. Then you had 11 years with Colonial Bank, correct?

22 A. Correct.

23 Q. So that's a total of 22 years in banking, correct?

24 A. Correct.

25 MS. KARINSHAK: Could you please show her Defendant

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1 Exhibits 185 through 188?

2 THE COURT: Are they not in our notebook?

3 MS. KARINSHAK: I just was handed these, Your Honor.

4 THE COURT: All right. Well, by my count, I think we've
5 been at it two hours. I went past the normal break time. My
6 jurors are letting me know that.

7 MS. KARINSHAK: Oh, I'm sorry.

8 THE COURT: So let's take a break this afternoon until
9 10 after.

10 (Recess from 3:55 p.m., until 4:10 p.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: Mr. Stokes, or Mr. Connolly, I understand
5 you want to release a witness?

6 MR. ROGOW: We do, Your Honor. Mr. Barofsky had been
7 subpoenaed. He has a trip that he wants to go on. We are going
8 to release him with a stipulation from the Government that the
9 subpoenas that he signed to Colonial, the SIG TARP report to
10 Congress, and Mr. Barofsky's resignation letter to President Obama
11 memoranda all are authentic, and the copies we have we will then
12 be able to introduce without having Mr. Barofsky here.

13 THE COURT: All right. The Government is comfortable
14 with that stipulation?

15 MR. CONNOLLY: Yes. We aren't challenging the
16 authenticity. We may have objection as to relevance, but we won't
17 challenge the authenticity of those documents.

18 THE COURT: All right. Then the subpoena is now
19 quashed, it's over, and Mr. Barofsky may go on with his life.

20 MR. ROGOW: Thank you, Your Honor.

21 MR. CONNOLLY: Thank you, Your Honor.

22 THE COURT: All right, let's continue, please.

23 BY MS. KARINSHAK: (Continuing)

24 Q. Now, I believe Ms. Kissick, you have Defendant's Exhibits
25 185, 186, and 187 and 188?

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1 A. Yes.

2 MS. KARINSHAK: And we moved those in. Are those in
3 evidence.

4 MR. STOKES: No objection, Your Honor.

5 THE COURT: All right, they are in.

6 (Defendant's Exh. Nos. 185, 186, 187 and 188 were received in
7 evidence)

8 BY MS. KARINSHAK: (Continuing)

9 Q. Okay. And 185, 186, Ms. Kissick, 185 shows that that is your
10 office and it has your title on the door there, correct?

11 A. Correct.

12 Q. And moving to 186, is that an accurate picture of your
13 office?

14 A. Yes.

15 Q. 187 as well?

16 A. Yes.

17 Q. And it shows some of your memorabilia as well as some of your
18 pictures in your office?

19 A. Yes.

20 Q. 188?

21 A. Yes.

22 Q. Now, could you please show the witness Defendant's Exhibits
23 251B and C.

24 MR. STOKES: I am sorry, Your Honor, again no objection.

25 THE COURT: All right, they are in.

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1 (Defendant's Exh. Nos. 251B and 251C were received in
2 evidence)

3 BY MS. KARINSHAK: (Continuing)

4 Q. Ms. Kissick, does Defendant's Exhibit 251B, is that your
5 organizational chart for the Mortgage Warehouse Lending Division?

6 A. Yes.

7 Q. And it shows you as the senior vice-president and the
8 director of the division, correct?

9 A. Yes.

10 THE COURT: I will tell you, if the jury can read that,
11 their eyes are a whole lot better than mine. That's a terrible
12 exhibit.

13 Q. Your Honor, unfortunately, we don't have a better one, I
14 apologize.

15 And moving to 251C, that's a little bit better, but it
16 doesn't show all the people, is that correct?

17 A. This is for a different area within our department.

18 Q. Okay. Which area is that for?

19 A. Document custody.

20 Q. Okay. And the first one, 251B, shows pretty much everyone in
21 your organization and how they report to you, correct?

22 A. It doesn't show doc custody. It just shows, I don't think,
23 it just shows the funding side and the pay-down side and the
24 lenders.

25 Q. Okay. So, between 251B and C, it shows all the people over

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1 which you had control and authority, correct?

2 A. Yes.

3 Q. And so, we would need both pages to actually show the
4 fullness of your responsibilities at the Mortgage Warehouse
5 Lending Division, correct?

6 A. Correct.

7 Q. And approximately how many employees is that that you
8 supervised?

9 A. I don't know if the temps are on here, but we had about 118
10 people.

11 Q. And I believe you said you had at least 100 customers,
12 correct?

13 A. Yes.

14 Q. And what was the amount in assets that you had in 2008?

15 A. 2008? Probably 5 billion. About 5 billion.

16 Q. And talking about your division, I believe you had testified
17 that you met Mr. Farkas when you were employed at SunTrust,
18 correct?

19 A. Correct.

20 Q. And your relationship with Mr. Farkas, it was only a
21 professional relationship, correct?

22 A. I liked him.

23 Q. So--

24 A. Except for, you know, a couple times in 2002. No, kidding.
25 We had-- He was always very nice.

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1 Q. But you weren't intimate with Mr. Farkas, correct?

2 A. No, no, no, no.

3 Q. And you testified you didn't get any kickbacks from Mr.
4 Farkas?

5 A. Okay, please, moment here.

6 Q. I'm sorry?

7 A. Nothing. No, nothing.

8 Q. No kickbacks, correct?

9 A. Nothing.

10 Q. And no gifts?

11 A. No. Well, he gave me a birthday gift occasionally. I had
12 surgery, sent flowers.

13 Q. Okay. And that was because of your professional
14 relationship?

15 A. Yes.

16 Q. And your working relationship, correct?

17 A. Right.

18 Q. And you had been working with Mr. Farkas since about
19 September 1999?

20 A. At Colonial, but before that I was at SunTrust.

21 Q. And how long had you worked with him at SunTrust?

22 A. Actually just a few months before I left.

23 Q. And would it be fair to say you brought him over as a
24 customer when you went to Colonial Bank?

25 A. It was about a year later, a little about over a year later.

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1 Q. And would it be fair to say you brought TBW over as a
2 customer because that would be good for you as the head of the
3 Mortgage Warehouse Lending Division, correct?

4 A. Well, it would be good for my department, correct.

5 Q. Would it be fair to say to TBW had been profitable every year
6 since it's since inception you had been dealing with them?

7 A. Yes.

8 Q. And TBW was in fact your largest customer, correct?

9 A. They definitely grew into being our largest customer.

10 Q. Now, would it be fair to say that when you are working with a
11 warehouse line, the more you have, the more you lend, the more
12 money you make as you turn it?

13 A. Yes.

14 Q. And what does that mean, as you turn it? What does that
15 mean?

16 A. Collateral goes through the line, you close, and then you are
17 able to close new loans.

18 Q. So, it's based on a lot of volume, correct?

19 A. Correct.

20 Q. So, the more you move, the more you make?

21 A. Correct.

22 Q. And didn't you also previously say in sworn testimony that
23 you can't view the line like a finite building loan that you have
24 to pay back. It's a good thing to raise the debt ceiling to allow
25 TBW to grow, which also helps pay back your investment?

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1 A. I'm sure I did say that. I don't remember saying that, but
2 that sounds correct.

3 Q. That is something that would be true, correct?

4 A. Yes.

5 Q. And isn't it true that you received audited financial
6 statements from TBW annually?

7 A. Yes.

8 Q. Did you also receive monthly unaudited financial statements
9 from TBW?

10 A. Yes.

11 Q. Now, we have been talking about PINs quite a bit. And could
12 you put up Government's Exhibit 1-13, please. Or actually show
13 that to the witness.

14 MR. STOKES: No objection, Your Honor.

15 THE COURT: Then it's in.

16 (Government's Exh. No. 1-13 was received in evidence)

17 MS. KARINSHAK: It is Government's Exhibit, I'm sorry,
18 Government's Exhibit 1-13.

19 BY MS. KARINSHAK: (Continuing)

20 Q. And in Government's Exhibit 1-13, that's written on your
21 Colonial Bank e-mail, isn't it?

22 A. Yes.

23 Q. And it's not written from a PIN, correct?

24 A. Correct.

25 Q. And the bank has e-mail or actually has software to search

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1 key e-mails for terms, isn't that right?

2 A. I assume so, yes. I didn't know at the time.

3 Q. Okay. So, when you are talking about going to prison, you're
4 kidding, correct? It's on your company e-mail?

5 A. I was joking, but there was some truth to it.

6 Q. And when did you actually get a BlackBerry?

7 A. 2004, '05 maybe.

8 Q. So, prior to that would you have e-mailed business, if you
9 were working on business from your home, would you have used your
10 home computer?

11 A. I would have used the Colonial line if the VPN worked, but a
12 lot of times it didn't work, so that's when I used hotmail.

13 Q. That's when you used your hotmail account?

14 A. Yes.

15 Q. So, for example, if you are e-mailing from hotmail, it's not
16 that you are necessarily hiding anything, it's that you're
17 e-mailing from home rather than being able to access--

18 A. The VPN, I couldn't get on.

19 Q. Isn't it true that the banking industry that you are in is
20 highly regulated?

21 A. Yes.

22 Q. I believe we talked about, but your bank was regulated by
23 whom?

24 A. At the end it was regulated by the State of Alabama and the
25 FDIC.

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1 Q. And in the course of your relationship with Taylor Bean &
2 Whitaker, you had mentioned these Mortgage Warehouse Loan
3 Committee meetings where you discussed your relationships with
4 different borrowers, correct?

5 A. Correct.

6 Q. And sometimes there would be business brought before those
7 meetings as to what you wanted to do with particular customers,
8 correct?

9 A. Correct.

10 Q. And who would typically attend these meetings?

11 A. The Warehouse Committee meetings were Kamal, Kamal Hosein,
12 Mary Lou Bathen, myself, Caryn Cope, Amy Nunnelley. I can't
13 remember.

14 Q. Okay. But those are all higher-ups in the organization,
15 correct?

16 A. Kamal is, yes, and Caryn Cope is.

17 Q. What about Mary Lou Bathen?

18 A. She was in Montgomery, I think she was my equal level.

19 Q. Could you please give Ms. Kissick Defendant's Exhibit 202.

20 THE COURT: Any objection?

21 MR. STOKES: Judge, I am not sure what the relevance of
22 this is. This appears to be related to some unrelated company.

23 MS. KARINSHAK: Actually, if you look to the fourth
24 page, Taylor Bean & Whitaker is listed.

25 MR. STOKES: No objection, Your Honor.

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

2 (Defendant's Exh. No. 202 was received in evidence)

3 BY MS. KARINSHAK: (Continuing)

4 Q. Now, we were just talking about the Mortgage Warehouse Loan
5 Committee meetings, Ms. Kissick. And isn't it true that
6 Defendant's Exhibit 202 is just an example of one of those type of
7 meetings that was held December 3, 2007?

8 A. Yes, correct.

9 Q. And then turn to the fourth page, that would be where it says
10 ratifications and it listed the borrower, Taylor Bean & Whitaker
11 Mortgage Corporation, correct?

12 A. Correct.

13 Q. And this is a ratification that has Rodney Lewis as the
14 officer, correct?

15 A. Correct.

16 Q. And it's a renewal and modification of your relationship with
17 Taylor Bean & Whitaker at that time, correct?

18 A. Yes.

19 Q. And it talks about renewing and decreasing different lines,
20 and it talks about the number and type of sublimits, correct?

21 A. Yes.

22 Q. And it also talks about the rates and fees that are being
23 paid with respect to conforming, wet, nonconforming, repurchase
24 and aged loans, correct?

25 A. Correct.

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1 Q. And so, what is a LIBOR rate?

2 A. It's an index, the London Interbank Offered Rate. I wouldn't
3 know what it is right now, but it was what we priced off of.

4 Q. You used that is the standard from which you set your
5 interest rates, correct?

6 A. Correct.

7 Q. And so, Taylor Bean & Whitaker would be paying the fees that
8 are listed here to your bank related to these different lines, the
9 conforming, wet, nonconforming, repurchase and aged loans, I
10 should say?

11 A. Correct.

12 Q. So, for example, for an aged loan, it would be 30-day LIBOR
13 plus 270 basis points?

14 A. Yes.

15 Q. And this is, you are bringing this business before the
16 committee for them to vote on this, correct?

17 A. The officer was, Rodney, yes.

18 Q. And so, this is being approved with respect to Taylor Bean &
19 Whitaker?

20 A. Correct.

21 Q. And it also on that next page, turning to the next page,
22 there is a conversation or listing of the collateral, correct?

23 A. Correct.

24 Q. And here it lists that there is a possessory ownership
25 interest in a residential first or second lien mortgage loan with

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1 a backup security interest in the event the courts reclassify the
2 transaction as a debt arrangement and a further security interest
3 in any ancillary mortgage collateral, correct?

4 A. Right.

5 Q. And then there is listed under number II a possessory
6 interest and gives more details on that. It also lists
7 cross-collateralization with TBW's permanent servicing portfolio
8 and other receivables from prior servicing sale holdbacks and
9 residuentials from securitizations, correct?

10 A. Residuals, yes, from securitizations.

11 Q. And what is important about the cross-collateralization?

12 A. I did that to cover any other facilities.

13 Q. I'm sorry?

14 A. I did that to protect the bank in case anything else happened
15 on any other facilities.

16 Q. Okay. And then under subsection III there is more collateral
17 listed here as well, correct?

18 A. Correct.

19 Q. And then additionally, listed additionally Colonial Bank has
20 100 percent of the common stock of the owner Lee B. Farkas, and I
21 believe it was 79.2 percent at that time, correct?

22 A. Yes.

23 Q. And then you also have a guarantor which says unlimited, Lee
24 B. Farkas, correct?

25 A. Yes.

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1 Q. And what does that mean, an unlimited guarantor?

2 A. We had our, the owners of the companies guarantee the lines
3 of credit.

4 Q. The owners of the companies guaranteed the lines of credit?

5 A. Yes.

6 Q. With their word, correct?

7 A. Right.

8 Q. Now, in addition, with respect to your relationship with
9 Taylor Bean & Whitaker, did you also have occasion to present
10 credit packages for approval?

11 A. Did I?

12 Q. You or someone on your behalf?

13 A. Yes.

14 Q. At Colonial Bank? All right, could you please hand
15 Defendant's Exhibit 204, please.

16 THE COURT: Any objection?

17 MR. STOKES: The Court's indulgence.

18 No objection, Your Honor.

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

20 (Defendant's Exh. No. 204 was received in evidence)

21 BY MS. KARINSHAK: (Continuing)

22 Q. Ms. Kissick, this would just be one of many credit packages
23 that would have gone for approval, but this one is dated
24 January 28, 2009, correct?

25 A. Correct.

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1 Q. And this is a credit package that shows an extension and
2 modification for Taylor Bean & Whitaker, correct?

3 A. Yes.

4 Q. And looking at page 2, it talks about the different
5 facilities, correct?

6 A. Correct.

7 Q. Overline, working capital line, retention of MSR, and
8 servicing advances, correct?

9 A. Correct.

10 Q. And down here on that same page it lists the collateral
11 again, we have two different types of collateral listed for these
12 lines, correct?

13 A. Yes.

14 Q. First being the possessory interest that we have already
15 talked about. And then for number II, the collateral assignment
16 of borrower's accounts and claims receivable, and all rights to
17 payments and reimbursements under its servicing agreements,
18 contracts and trust indentures related to the pledged receivables.
19 Pledge of the borrower's portfolio of residential mortgage
20 servicing rights purchased/retained under the facility and
21 assignment of all the borrower's rights to service loans,
22 including the right to receive prepayment penalties, if any, on
23 the servicing rights purchased, correct?

24 A. Correct.

25 Q. What does that mean?

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1 A. Can you repeat that? I am sorry.

2 Q. The number II part that I just read to you. What does that
3 mean for us? What kind of collateral?

4 A. Just repeat it, what you just said again. I'm sorry.

5 Q. Number II, I am looking at--

6 A. Collateral assignment of the borrower's accounts and claims
7 receivables?

8 Q. Yes.

9 A. We have an assignment of every account and receivable that
10 they have for anything dealing with the servicing.

11 Q. For anything to do with servicing?

12 A. Anything pertaining to the servicing under the working
13 capital line.

14 Q. Okay. And that's-- And then the number I part is the
15 collateral for the overline, correct, the subpart I?

16 A. Correct.

17 Q. Which is the possessory interest in the residential first or
18 second lien mortgage loan?

19 A. Correct.

20 Q. So, the collateral ties up to the facilities at the top of
21 the page such that the I goes to the overline and II goes to the
22 working capital line, is that right?

23 A. Yes.

24 Q. And then again it lists the common stock of the owner Lee B.
25 Farkas as well as a first lien position in the stock of Ocala

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1 Servicing, correct?

2 A. Correct.

3 Q. And then it says, all the facilities are cross-defaulted and
4 cross-collateralized, that's right?

5 A. Yes.

6 Q. And why is it important that something be cross-defaulted?

7 A. Because if you have a default on one, it triggers a default
8 on all of them.

9 Q. And that means you could, if one defaults, then you as a bank
10 can trigger it for all of them and get paid as to all of the
11 facilities, correct?

12 A. You could call them in default, correct.

13 Q. Call them all in default and get paid immediately, correct?

14 A. Correct.

15 Q. And then cross-collateralization, why is that important to
16 you?

17 A. Because we had the collateral for all the facilities being
18 available for all the facilities.

19 Q. So, the collateral for AOT would be available for the
20 collateral for COLB, correct?

21 A. Well, for these they are. I'd have to read the documents
22 again.

23 Q. Okay. But the point being that some of the collateral can be
24 used for each and every line, it's not just for one line, it can
25 be used for all the lines, correct?

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1 A. I had set it for the overline to be cross-collateralized to
2 protect us in case of any problems on any facility, including AOT
3 and COLB.

4 Q. All right. Ms. Kissick, the bottom line is would it be fair
5 to say that Colonial Bank for all practical purposes owned Taylor
6 Bean & Whitaker?

7 A. I don't really think that's a fair question to ask. I don't
8 know.

9 Q. Well, you have got the collateralization--

10 THE COURT: Well, if the witness doesn't know, she
11 doesn't know.

12 Q. And then again moving to page 3, you have got the personal
13 guarantee of Mr. Farkas as well, correct?

14 A. Yes.

15 Q. Then on page 6, or actually on page 5, let's look at that for
16 a moment. We have got reporting requirements for the borrower as
17 well as the guarantor, and then we have the conditions. And that
18 again lists the key man life insurance on Mr. Farkas remaining
19 assigned to the buyers/lenders. Which is you, Colonial Bank,
20 correct.

21 A. Correct.

22 Q. And those go over to the next page, there are several
23 conditions listed, 21 in all, correct?

24 A. Yes.

25 Q. And again, talks about pledging of the stock of TBW to

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1 Colonial Bank until all obligations are paid in full and in fact
2 Mr. Farkas' stock is currently being held in escrow by the law
3 firm Akerman Senterfitt, correct?

4 A. Yes.

5 Q. And that would be Mr. Vescovacci's firm, correct?

6 A. Yes.

7 Q. And moving down to number 17, number 17 shows the easy
8 payment plan, correct?

9 A. No. This was nothing to do with that. This was the
10 servicing working capital facility, and that was a payment that
11 one of the banks imposed in the servicing facility, I think it was
12 Sovereign Bank.

13 Q. And then on page 7 is the officer analysis which talks about
14 the reasons for the current request, correct?

15 A. Yes.

16 Q. And then in the third paragraph, it talks about that TBW has
17 made significant pay-downs to the syndicated credit relationship
18 over the first 90-day extension. And then it gives more reasons
19 about this request and that TBW is moving forward with the
20 ventures that will potentially lead to significant retirement of
21 the outstandings under the working capital facility, correct?

22 A. Yes.

23 Q. And the outstandings, what is that?

24 A. The amount that was outstanding.

25 Q. The amount that is due to Colonial Bank?

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1 A. Yes.

2 Q. So, this is showing that TBW is making progress towards
3 paying that off, right?

4 A. Right, but this is not-- The only part that is showing here
5 is the Colonial Bank portion. There was a lot of other portion
6 with other syndicate banks. This was just our portion.

7 Q. Okay. Well, we are focusing on the Colonial Bank portion,
8 correct? And then it talks about-- Well, actually strike that.

9 And then again on page 8 it talks about the borrower
10 description and competitive analysis, and this gives information
11 about TBW being a leading independent mortgage banking company
12 that's ranked seventh largest, it's the seventh largest
13 residential wholesaler based on volume, sixth largest issuer to
14 Freddie Mac, sixth largest issuer to Ginnie Mae MBS, top 20
15 servicer nationwide, 11ths largest servicer of Freddie Mac loans,
16 and the ninth largest servicer of Ginnie Mae loans, correct?

17 A. Yes.

18 Q. And then it talks about in that final paragraph that TBW has
19 achieved the status by originating and purchasing loans through
20 community bank and wholesale broker channels utilizing
21 sophisticated technology and emphasizing a high level of customer
22 service, correct?

23 A. Yes.

24 Q. And who puts together this credit package?

25 A. This was done by Rodney Lewis.

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1 Q. So, he is involved with your relationship with Taylor Bean &
2 Whitaker, correct?

3 A. Yes.

4 Q. Then moving to page 13. This again is talking about the MSR
5 portfolio at the top of the page. And it is showing the portfolio
6 characteristics held as collateral by the bank group, it has a
7 chart there, correct?

8 A. Yes.

9 Q. And so, again that is showing the collateral, correct?

10 A. Correct.

11 Q. And then moving further down under the second chart it says,
12 as a condition to the loan agreement, TBW is required to deliver
13 to the bank group an independent third-party valuation on the
14 market of the PSR, the market value of the MSR portfolio, correct?

15 A. Yes.

16 Q. And then it talks about how they are getting this value for
17 the MSR portfolio, correct?

18 A. Yes.

19 Q. And MSR stands for mortgage servicing rights?

20 A. Yes.

21 Q. And then at the bottom chart, the value that it is showing
22 here, that is the value of the MSR portfolio for the past four
23 fiscal years and the current interim, correct?

24 A. That is correct.

25 Q. And what is the value in fiscal year 2006?

Kissick - Cross

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1 A. 254,825,000.

2 Q. I am sorry, could you speak up, please.

3 A. 254,825,000.

4 Q. Then when you move over to 2008, what is the value?

5 A. The fiscal year value is 443,532.

6 Q. And that's in millions again?

7 A. Yes.

8 Q. And then you see a seven-month interim for November 30, 2008,
9 correct?

10 A. Yes.

11 Q. And what is that value?

12 A. 513,088,000.

13 Q. And then you see an eight-month interim ending in December of
14 2008, correct?

15 A. Correct. It is 480,061,000.

16 Q. And again, this is the value of the mortgage servicing rights
17 portfolio, correct?

18 A. Yes.

19 Q. And that's part of the collateral that Colonial Bank holds
20 with respect to your facilities with Taylor Bean & Whitaker,
21 correct?

22 A. Yes, it is. We have a second on a portion of it.

23 Q. I'm sorry?

24 A. We have a first on a portion of it and we have a second on a
25 portion of it.

Kissick - Cross

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1 Q. You had a first lien, you had a first on part of it and then
2 you had a second lien on part of it?

3 A. We had a second lien actually on all of it.

4 Q. And then looking at page 20, we have got a personal financial
5 statement analysis for Mr. Farkas. And again, this would be
6 collateral backing up your relationship with respect to these
7 facilities, correct?

8 A. Correct.

9 Q. And it lists his net worth on this chart, and it also
10 mentions how much he has in liquid assets and total liabilities,
11 correct?

12 A. Yes.

13 Q. And also gives a FICO score. And this is important to you
14 because of his personal guarantee, correct?

15 A. Yes.

16 Q. And it says there on the bottom paragraph, it's very unusual
17 to get any type of personal guarantee on a credit of this size and
18 nature. Although Farkas provides little, if any, financial
19 strength as a guarantor, this provides more of a moral and ethical
20 guarantee against fraud or misrepresentation by the company
21 because all of his net worth is tied up in TBW, correct?

22 A. Yes.

23 Q. So, all of his net worth is tied up in TBW, and all of the
24 value in TBW or at least 79.2 percent is promised as collateral to
25 your bank, is that right?

Kissick - Cross

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1 A. Correct.

2 Q. And then again on this page it mentions that there will be
3 third party audits by MDI who is going to perform independent
4 audits of TBW's operations during October 2008 and that MDI has
5 performed several reviews of TBW for Colonial Bank in prior years?

6 That's correct, that MDI did that for you, correct.

7 A. Yes.

8 Q. And these independent audits, these were people who came from
9 the outside, correct?

10 A. Right.

11 Q. And they came and reviewed TBW's operations and reported to
12 you?

13 A. Right.

14 Q. And they would identify things that needed to be improved,
15 but isn't that true that TBW always got a clean bill of health
16 from MDI?

17 A. Yes.

18 Q. And then it says in conclusion, based on the extensive
19 relationship with TBW, the continued profitability and the short
20 term nature of the request, the proposed extension and
21 modifications are recommended, correct?

22 A. Correct.

23 Q. Now, we talked about the volume of the kind of business that
24 TBW and you were in as far as being a Mortgage Warehouse Lending
25 Division. And isn't that true that because of the type of

Kissick - Cross

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1 business that TBW was in, they would be expected to have some
2 amount of overdraft each month?

3 A. No.

4 Q. No? Isn't it true that Colonial Bank would set a ceiling of
5 the amount that could be overdrafted?

6 A. Please repeat that.

7 Q. Isn't it true that your bank would set a ceiling of the
8 amount that could be overdrafted by TBW?

9 A. That was for if they were over their line, not for
10 operational overdrafts.

11 Q. Now, isn't an overdraft similar to a bank giving someone like
12 a home equity line of credit? Would that be a fair analogy?

13 A. No, because a home equity line of credit would have a piece
14 of collateral. It's an unsecured, it's like a credit card,
15 unsecured line of credit.

16 Q. Okay. That would what you are saying, it would be more like
17 a credit card?

18 A. Yes.

19 Q. And to the extent there would have been any ceiling of what
20 you could go over on your limit, who would be approving that for
21 Mr. Farkas and TBW?

22 A. Are you talking about the Plan B information or just
23 anything-- There was an approval for an \$11 million overdraft
24 that we had in this package that we had senior loan committee
25 approve.

Kissick - Cross

1003

1 Q. Well, let me give you Defendant's Exhibit 213.

2 THE COURT: Mr. Stokes, any objection?

3 MR. STOKES: I am reviewing it. I don't believe so, but
4 it appears--

5 A. I know it wasn't written on September 10. It was printed out
6 on September 10 though because we were gone from the bank then.

7 THE COURT: Don't put it on the screen yet.

8 MR. STOKES: Your Honor--

9 THE COURT: We don't have a copy of it. I want to see a
10 copy of it before it goes up.

11 Mr. Stokes, does your's have writing on it?

12 MR. STOKES: It is not that it has writing. It just has
13 a date of September 10, 2009. So, it appears to have an incorrect
14 date. There are two copies of the document in our exhibit. We
15 can pass up a copy to the Court if you would like.

16 THE COURT: All right.

17 MR. STOKES: It doesn't have an exhibit number on it.

18 We don't have an objection to it, Your Honor.

19 THE COURT: Is the one you are looking at, Ms. Kissick,
20 does it have writing on it?

21 THE WITNESS: Well, let's see. No, mine do not.

22 THE COURT: Oh, all right. 213 is in.

23 (Defendant's Exh. No. 213 was received in evidence)

24 BY MS. KARINSHAK: (Continuing)

25 Q. Now, Ms. Kissick, you noted that the date was September 10,

Kissick - Cross

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1 2009. That would be an incorrect date, correct?

2 A. Definitely.

3 Q. And the correct date would be based on the context of this
4 document in 2006, correct?

5 A. Yes.

6 Q. But the purpose of this document is to show that there is an
7 approved overdraft for Taylor Bean & Whitaker, correct?

8 A. Correct.

9 Q. And this memo outlines the request to approve the rolling
10 overdraft for up to three business days at a time but for no more
11 than three times a month, correct?

12 A. Correct.

13 Q. And this is an example of approving an overdraft for Taylor
14 Bean & Whitaker that is done by the senior loan committee,
15 correct?

16 A. That is correct.

17 Q. And isn't it true that you had authority to approve
18 overdrafts yourself as the head of the Mortgage Warehouse Lending
19 Division in the amount of \$500,000, correct?

20 A. Yes.

21 Q. And then otherwise it would go to this loan committee for
22 approval?

23 A. Yes.

24 Q. And then I note at the bottom of this first page the
25 paragraph there that says, since Colonial Bank's syndicated

Kissick - Cross

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1 working capital line is fully funded and the current bank group
2 cannot support any additional increases, TBW is funding all of its
3 new servicing rights under the aforementioned 150 million credit
4 agreement with CDC IXIS, correct?

5 A. Yes.

6 Q. And the working capital line is fully funded. And basically
7 what is this telling us in that part of this document?

8 A. What this said was that they were overdrawn and we wanted
9 them to go about getting it corrected the proper way. So, I had
10 Rodney prepare an overdraft memo and get it approved because they
11 were going to have working capital availability at their other
12 lender, and we were just waiting for it to be completed.

13 Q. And again you talk about TBW is currently overdrawn at
14 Colonial Bank by three million. So, it would be fair to say that
15 the fact that they are overdrawn at this point is not a secret,
16 correct?

17 A. Well, this one is not, correct.

18 Q. Okay. On the second page that's actually as part of this
19 document, correct?

20 A. Correct.

21 Q. And on the bottom paragraph, the approval of this proposed
22 overdraft will enable Colonial Bank to aid TBW in their working
23 capital needs while the legal documentation for the \$35 million
24 take-out of Colonial Bank's outstandings is facilitated, correct?

25 A. Correct.

Kissick - Cross

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1 Q. And it says that TBW's financial strength and strong
2 collateral is the reason we want to have this overdraft
3 recommended, correct?

4 A. Correct.

5 Q. Now, moving to Defendant's Exhibit 215. You also received
6 compliance reports, correct, to Taylor Bean & Whitaker?

7 THE COURT: Is there any objection to 215?

8 MR. STOKES: No objection, Your Honor.

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

10 (Defendant's Exh. No. 215 was received in evidence)

11 BY MS. KARINSHAK: (Continuing)

12 Q. Ms. Kissick, looking at the bottom of that e-mail, you are
13 talking about I saw the compliance report.

14 So, it would be fair to say you got compliance reports
15 with respect to Taylor Bean & Whitaker?

16 A. Yes.

17 Q. And you saw the compliance report and you saw that there was
18 some aged loans over 120 days, and you brought that to the
19 attention of Mr. Farkas, correct?

20 A. Yes.

21 Q. And then he tells you, we got deals cooking, we're selling
22 all sorts of stuff and making progress, 300 million is a lot, but
23 not really in relation to our production. It is less than 1
24 percent of our annual production, correct?

25 A. Yes.

Kissick - Cross

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1 Q. So, and then in fact Mr. Farkas again at the top of that
2 e-mail, says, you know, if you think about it, we're doing 36
3 billion, with a B, per year in production. And so, 300 million is
4 less than 1 percent of that, and that's just not bad at all,
5 correct?

6 A. Well, he sent that to Desiree, I didn't get that, but--

7 Q. But that is shown on this document?

8 A. Yes, but the thing was is that all of his aged loans stayed
9 at Colonial and he wasn't doing 36 billion with us. And so, as
10 time went by, more loans stayed on the aged bucket and got more
11 attention.

12 I mean, he was doing a lot of production, there is no
13 doubt about that, it's just that the aged loans happened to stay
14 with Colonial.

15 Q. And I believe it was your testimony that Mr. Farkas
16 throughout this whole time was trying to work to pay Colonial
17 Bank, correct?

18 A. He did definitely was, yes.

19 Q. On and on he was working on that the whole time, correct?

20 A. Yes.

21 Q. And you both were working together?

22 A. Yes, we were.

23 Q. In this long-term relationship, correct?

24 A. Yes, we were.

25 Q. And this relationship, it would be fair to say it was based

Kissick - Cross

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1 on trust, that over time you had developed a strong trust with Mr.
2 Farkas, would that be fair to say?

3 A. Yes.

4 Q. And during the course of that relationship or that trust, you
5 made certain choices about whether to approve and to do certain
6 things with respect to that relationship?

7 A. Please go on further.

8 Q. I guess what I am trying to say is, you heard the saying life
9 is about choices?

10 A. Yeah.

11 Q. Well, in this relationship with Mr. Farkas you testified that
12 you made certain decisions, correct?

13 A. Yes.

14 Q. And you made those decisions as being a banker and someone
15 who is knowledgeable in the banking industry, correct?

16 A. Yes, I suppose so.

17 Q. And you did that knowing what you were doing because you are
18 a banker and you know what you are doing with respect to banking?

19 A. No, not all the time.

20 Q. But when you don't know, you consult with others, correct?

21 A. It depends upon the situation. I don't know really what
22 you're trying to get at, but--

23 Q. Well, in these banking documents we see over and over that
24 you are consulting with lawyers, correct?

25 A. Yes.

Kissick - Cross

1009

1 Q. You are consulting with auditors, correct?

2 A. Yes.

3 Q. You are consulting with third parties who are coming in to
4 evaluate the relationship with Taylor Bean & Whitaker, correct?

5 A. Yes.

6 Q. And there is lots of different people who are giving you
7 advice with respect to your relationship with your, your
8 relationship with Taylor Bean & Whitaker, correct?

9 A. Correct.

10 Q. And as to all those facilities you had established with
11 Taylor Bean & Whitaker, you got consultation from experts, for
12 lack of a better word, from lawyers and the people putting those
13 documents together, correct?

14 A. Yes.

15 Q. So, to the extent you didn't know what to do, you went to
16 those people for advice, correct?

17 A. Yes.

18 Q. Okay. Now let's go to Defendant's Exhibit 205.

19 MR. STOKES: No objection, Your Honor.

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

21 (Defendant's Exh. No. 205 was received in evidence)

22 BY MS. KARINSHAK: (Continuing)

23 Q. Now, is Defendant's Exhibit 205 an audit confirmation dated
24 July 11, 2008, which you would have signed?

25 A. Yes.

Kissick - Cross

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1 Q. Is that your signature on the second page?

2 A. Yes.

3 Q. Now, you understood that this document was going to outside
4 auditors Deloitte & Touche, correct?

5 A. Yes.

6 Q. And that it would be important for this to be correct?

7 A. I did understand that, but they were incorrect on AOT.

8 THE COURT: Ms. Kissick, I know it has been a long day,
9 but you are going to have to stay closer to that microphone.

10 THE WITNESS: I am sorry, what?

11 BY MS. KARINSHAK: (Continuing)

12 Q. Could you repeat your answer.

13 A. I said, yes, I understood that. And it was correct except
14 for AOT.

15 Q. But you signed it as being true and accurate?

16 A. Yes.

17 Q. And you knew it was essential to Taylor Bean & Whitaker
18 having good and accurate financial statements, correct?

19 A. Yes.

20 Q. And you still signed this, you just said that there is
21 something incorrect on there, but you still signed it?

22 A. Well, they were aware of it as well.

23 Q. I'm sorry, you signed it?

24 A. I did sign it, yes.

25 Q. And isn't it true that you showed all the lines were

Kissick - Cross

1011

1 adequately collateralized, the warehouse line, the overline,
2 working capital, on this document?

3 A. Yes.

4 Q. And it also shows that your group was paid \$216 million in
5 interest in the previous 12 months alone, correct, in that
6 category of cash paid for interest?

7 A. That's what it looks like, yes.

8 Q. Is that what the document says?

9 A. Yes.

10 Q. And Taylor Bean & Whitaker was Colonial Bank's most
11 profitable relationship, correct?

12 A. Yes.

13 Q. And here it shows you are getting 216, almost \$217 million in
14 interest, correct?

15 A. Correct.

16 Q. And then it also shows that there is some unpaid interest
17 which will be due, which is 13 million and some change, correct?

18 A. Yes.

19 Q. This also shows that these lines are collateralized and
20 making money, in fact some of them are overcollateralized and have
21 more than enough money, correct?

22 A. Yes.

23 Q. All right, moving to Defendant's Exhibit 560.

24 THE COURT: Any objection?

25 MR. STOKES: No objection, Your Honor.

Kissick - Cross

1012

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

2 (Defendant's Exh. No. 560 was received in evidence)

3 BY MS. KARINSHAK: (Continuing)

4 Q. Ms. Kissick, this is another audit confirmation dated June 5,
5 2009, correct?

6 A. Correct.

7 Q. Now, again, it's showing the different facilities and the
8 interest rates that are being paid by Taylor Bean & Whitaker,
9 correct?

10 A. Excuse me, I only have one page.

11 THE COURT: That's all we have as well.

12 Do you have two pages?

13 MR. STOKES: I have two, Your Honor.

14 BY MS. KARINSHAK: (Continuing)

15 Q. Let's just work on the first page.

16 A. That's not the one I have though.

17 Q. Sorry?

18 A. I don't have the first page.

19 Q. Oh, you don't have the first page. 560, is there a defense--
20 You don't have a defense 560?

21 A. No, I only have one page.

22 THE COURT: You only have the last page?

23 THE WITNESS: Yes.

24 MS. KARINSHAK: Okay. We will come back to that, Your
25 Honor.

Kissick - Cross

1013

1 THE COURT: Well, no, here, here.

2 Go ahead, ask your question.

3 BY MS. KARINSHAK: (Continuing)

4 Q. Moving to 561, please.

5 THE COURT: I'm sorry, are you using 560 or not? She
6 has got the first page.

7 MS. KARINSHAK: Oh, I am sorry, I thought we didn't have
8 the first page.

9 THE COURT: We gave her ours.

10 MS. KARINSHAK: Okay. Let's go back then.

11 BY MS. KARINSHAK: (Continuing)

12 Q. Ms. Kissick, you have both pages?

13 A. Yes.

14 Q. All right. Going to the first page of Defendant's
15 Exhibit 560. That is again showing the audit confirmation for
16 June 5, 2009, correct?

17 A. Yes.

18 Q. And again, here I want to focus on what are your interest
19 rates on the different lines. For example, what is the interest
20 rate Taylor Bean & Whitaker is paying on COLB?

21 It is 4.5 to 5.65 percent, correct?

22 A. Yes.

23 Q. And on the AOT, the interest rate being paid by Taylor Bean &
24 Whitaker is 5.23 to 5.5 percent, correct?

25 A. Correct.

Kissick - Cross

1014

1 Q. And the interest on the overline is actually the highest
2 interest, which is 6.5 percent, correct?

3 A. Correct.

4 Q. And what is the interest rate on the loans that are being
5 swept?

6 A. What?

7 Q. When you were talking about sweeping before, the loans that
8 are being swept, are you getting an interest rate paid on those
9 loans?

10 A. We weren't sweeping loans then.

11 Q. Prior when you were sweeping loans, not during this time
12 period, but when you testified that prior you had been sweeping
13 loans, what was the interest rate that Taylor Bean & Whitaker was
14 paying to you on those loans?

15 A. Six years before? Whatever the prevailing rate was.

16 Q. Do you have an estimation of what the prevailing rate would
17 have been?

18 A. No, I don't know. And I never saw this because I was on
19 medical leave. So, I never saw this at the bank.

20 Q. Well, isn't it true that Taylor Bean & Whitaker paid between
21 20 and \$30 million per month in interest during the years of 2007,
22 2008 and 2009?

23 A. Yes.

24 Q. And that would be on that easy payment plan they were paying
25 you, correct?

Kissick - Cross

1015

1 A. No. That was on all the facilities they had with us.

2 Q. Okay. And then were they also making payments under the easy
3 payment plan?

4 A. Of like 50,000 to \$100,000 a day.

5 Q. 50 to 100,000 per day on the easy payment plan?

6 A. Correct.

7 Q. And that's in addition to the interest they are already
8 paying, correct?

9 A. Correct.

10 Q. And so, in this relationship you are making lots of money
11 with respect to the interest that is being paid, correct?

12 A. But that easy payment plan wasn't interest. That was
13 principal that they never had, I mean that we never had.

14 Q. But as to the facilities and these loans that we were just
15 looking at, you are getting paid 20 to \$30 million a month of
16 interest during 2007, '8, '9, right?

17 A. Right, but they also had a lot of loans outstanding, so it
18 wasn't like it was out of market.

19 Q. No, I am not saying it was out of market, I am just saying
20 you got paid interest on--

21 A. We did get paid interest.

22 Q. Okay. And it was 20 to \$30 million a month, right?

23 A. Yes, it was.

24 Q. Moving to Defendant's Exhibit 561.

25 Now, Defendant's Exhibit--

Kissick - Cross

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1 THE COURT: Is there an objection to this one?

2 MS. KARINSHAK: Sorry.

3 MR. STOKES: Judge, no objection if the witness can
4 identify it.

5 THE COURT: All right, let's see if there is a
6 foundation for this.

7 BY MS. KARINSHAK: (Continuing)

8 Q. Ms. Kissick, do you recognize Defendant's Exhibit 561?

9 A. I did not-- I was in the hospital. So, I mean, I know what
10 this is, this is a standard balance confirmation.

11 MR. STOKES: We don't have an objection.

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

13 (Defendant's Exh. No. 561 was received in evidence)

14 BY MS. KARINSHAK: (Continuing)

15 Q. Okay, looking at the standard balance confirmation, isn't
16 this showing the account name, account number, interest rate and
17 balance with respect to these different bank accounts that Taylor
18 Bean held at your bank?

19 A. Yes. It looks like they are all escrow accounts.

20 Q. And it is showing the balances on the far right with respect
21 to all of those accounts, correct?

22 A. Correct.

23 Q. So, there is a Ginnie Mae principal and interest account, a
24 Ginnie Mae taxes and interest account, and then they are all
25 listed there on the left-hand side, correct?

Kissick - Cross

1017

1 A. Correct.

2 Q. And in the exceptions or comments, there is a statement that
3 all the balances are correct?

4 A. That is true.

5 Q. All right. Defendant's Exhibit 552.

6 MR. STOKES: No objection, Your Honor.

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

8 (Defendant's Exh. No. 552 was received in evidence)

9 BY MS. KARINSHAK: (Continuing)

10 Q. Ms. Kissick, at the bottom of this e-mail chain it appears to
11 be from you to Rodney Lewis on June 20, 2009. Do you see that?

12 A. Yes.

13 Q. And basically you are talking to Mr. Lewis in PINs, correct?

14 A. Yes.

15 Q. And Mr. Lewis isn't part of this conspiracy that you have
16 alleged that you are in, is he?

17 A. No.

18 Q. But you are communicating with him in a PIN?

19 A. Yes.

20 Q. All right. And then up to the top of, I am going to skip the
21 middle of that e-mail, but at the top, read that for us, please.

22 A. It can't wait until Tuesday. It may not have enough time for
23 Deloitte to finish the audit. I have a doctor's appointment on 9
24 at Monday, but if it's then, Mary Lou will be on it with you.

25 Jeff Cavender said that from what he heard it is ridiculous. And

Kissick - Cross

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1 he specifically mentioned wet funds. I asked Jeff to have the
2 independent counsel e-mail the questions to David Byrne. All
3 parties believe this will be promptly resolved. I think Deloitte
4 was freaking outing about nothing. But I was worried that if you
5 didn't appear cooperative, they may think something was up, which
6 is not the case at all. I can see if David will be on the call
7 too. I think we were trying to downplay it like it was just a
8 formality and not some horrible thing.

9 Q. And so, this is relating to when Deloitte & Touche at the
10 very end found what they considered to be an irregularity?

11 A. Well, it was supposed to be COLB wet funds, is what we were
12 told. And we didn't think there was anything wrong with COLB wet
13 funds.

14 Q. I am sorry, who told you COLB wet funds?

15 A. Lee did originally.

16 Q. Okay. But basically Deloitte is there auditing. And you
17 talk about Jeff Cavender who is the lawyer for Taylor Bean &
18 Whitaker, correct?

19 A. Yes, Jeff Cavender contacted David Byrne. And David Byrne
20 contacted me. And they wanted to talk to Rodney specifically
21 because of a comment that Rodney made to somebody at Taylor Bean.

22 Q. A comment that he made to somebody at Taylor Bean & Whitaker
23 is what started this?

24 A. That's what I was told, yes.

25 Q. Okay.

Kissick - Cross

1019

1 A. Started them wanting to talk to him.

2 Q. Okay. And who is David Byrne?

3 A. He was Colonial Bank's general counsel, in-house.

4 Q. So, this is basically again lawyers who are being involved in
5 reviewing what's going on with Deloitte & Touche and the audit,
6 correct?

7 A. Yes.

8 Q. And Mr. Cavender, who is the general counsel, states that
9 it's ridiculous and he specifically mentioned wet funds, correct?

10 A. Yes.

11 Q. And you say, this is you talking, that they are freaking out
12 about nothing, correct?

13 A. Well, we thought COLB was fine and in perfect shape.

14 Q. But you are saying they are freaking out about nothing,
15 that's your statement, correct?

16 A. Yes.

17 Q. And so, you didn't think anything was wrong, correct?

18 A. Not about COLB, no.

19 Q. And then let's go to Defendant's Exhibit 210.

20 MR. STOKES: No objection, Your Honor.

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

22 (Defendant's Exh. No. 210 was received in evidence)

23 BY MS. KARINSHAK: (Continuing)

24 Q. Now, this e-mail, looking at the top of the e-mail is talking
25 about the fact that the bank hired Ernst & Young in May to do a

Kissick - Cross

1020

1 complete forensic review of all FF accounts and transactions.

2 What is an FF account?

3 A. I don't know. I forget. Fed funds. I don't know.

4 Q. Just so we are clear for the record, I am looking at the
5 e-mail from you to Lee B. Farkas on July 22, 2009.

6 Do you see that?

7 A. Yes, and I just forgot what the term is. So, sorry.

8 Q. And could you read, we just said here that it says FYI,
9 because of SIG TARP. What does that mean?

10 A. Because of the subpoena that we got.

11 Q. Okay. You got a subpoena from SIG TARP?

12 A. Yes.

13 Q. And which you probably shouldn't know.

14 A. But he already did too.

15 Q. I am sorry?

16 A. He knew as well because they got one too.

17 Q. Okay. So, you are telling him that you got subpoenaed by SIG
18 TARP, you are giving him a heads-up then, correct?

19 A. No, no, no. I was actually telling him that we hired E&Y.
20 He knew we had SIG TARP, he had SIG TARP, it was mutually
21 discussed between Kamal, Sumeet, everybody else. This is about
22 what he should know is that we hired E&Y previously.

23 Q. So, you are telling him even though he shouldn't know that
24 you hired Ernst & Young?

25 A. I am saying he probably shouldn't know, yeah.

Kissick - Cross

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1 Q. Okay. But you all chose to hire the, the bank hire, that
2 would be Colonial Bank?

3 A. Right.

4 Q. Hired Ernst & Young in May to do a complete review of the FF
5 accounts and transactions. You for two years and everybody else
6 for one year. Found nothing. Correct?

7 A. Right.

8 Q. And then you opine that I think the OCC whispered in
9 Deloitte's ear to try and screw us all.

10 A. That was the gossip that was going around the bank, yes.

11 Q. Okay. Because Ernst & Young didn't find anything, correct?

12 A. No.

13 Q. And then you get a response back, maybe? At the top, the top
14 e-mail?

15 A. Yeah.

16 Q. Is that-- Who is that a response from?

17 A. Lee.

18 Q. Defense Exhibit 206, please. I would like to turn to some of
19 the facilities we have been talking about and their individual
20 financial status just for context of where we're going.

21 MR. STOKES: No objection, Your Honor.

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

23 (Defendant's Exh. No. 206 was received in evidence.

24 BY MS. KARINSHAK: (Continuing)

25 Q. Do you have Defendant's Exhibit 206, Ms. Kissick?

Kissick - Cross

1022

1 A. Yes.

2 Q. I would like you to look at this e-mail chain from the bottom
3 half where it appears to be from you to Brent Hicks, Kamal Hosein,
4 and you have copied Chris Best, David Rogers and Sarah Moore?

5 A. It is actually from Brent to us.

6 Q. That's at the bottom. I was actually skipping above that.
7 But you are correct.

8 A. Okay.

9 Q. I wanted to highlight the response that you gave to Mr. Hicks
10 and Mr. Hosein, do you see that one?

11 A. Yes.

12 Q. Friday, April 10, 2009 at 5:49 p.m.

13 A. Yes.

14 Q. And what is this regarding?

15 A. The overline.

16 Q. And it says, regarding TBW transactions after the capital
17 injection, correct?

18 A. Yes.

19 Q. What do you say to Brent there?

20 A. Brent, we also have the overline, which is very much
21 overcollateralized. Is that what you were referencing.

22 Q. Doesn't this e-mail show the overline was over
23 overcollateralized in April of 2009?

24 A. Well, it's been collateralized since 2002.

25 Q. But in this instance you are talking about it is very much

Kissick - Cross

1023

1 collateralized, correct?

2 A. In relation to what is outstanding actually on the overline,
3 yes.

4 Q. So, it is overcollateralized, and that would mean that it
5 would be able to be used for another facility, correct, because
6 you have got extra collateralization there?

7 A. Yes.

8 Q. And that's important because of the cross-collateralization
9 you just told the jury about. When you have extra collateral on
10 one line, it could be valid collateral to be used on another
11 facility, correct?

12 A. Yes.

13 Q. And that's why you have cross-collateralization in your
14 governing documents so that you can use this collateral as
15 necessary, correct?

16 A. Well, yes, that's why it was set up that way, but it was set
17 up that way because we were put in a situation-- Nobody else had
18 an overline in the whole bank, only Taylor Bean. And I started it
19 2002 to protect the bank because of the situation that occurred.

20 And so, it was overcollateralized. And no matter what,
21 it still wasn't in the right bucket or whatever.

22 So, we did have, we did have extra collateral and we did
23 have all of this, but it wasn't on AOT. It was all in the
24 overline.

25 Q. But you have cross-collateralization such that it can be used

Kissick - Cross

1024

1 for the other buckets, correct?

2 A. Yes.

3 Q. So, it could be used for the other facilities, correct?

4 A. Yes.

5 Q. Okay. And that's why you set it up that way,

6 cross-collateralization to protect the bank and all the different

7 facilities that you are operating, correct?

8 A. Yes.

9 Q. Okay, let's go to Defendant's 211, please.

10 THE COURT: Any objection?

11 MR. STOKES: No objection, Your Honor.

12 THE COURT: Okay, it's in.

13 (Defendant's Exh. No. 211 was received in evidence.

14 BY MS. KARINSHAK: (Continuing)

15 Q. All right. Would you please read the start of that e-mail

16 chain on Defendant's Exhibit 211.

17 A. I called Teresa and reminded her that we do not track loan

18 level on AOT and COLB, and if that's what your official records

19 show as 3/31, so be it. It changes all of the time. However for

20 6/30 there are significant assets that you've repurchased with

21 cash from Freddie and Ginnie, which instead of being slotted,

22 listed on overline at zero, need to be slotted to AOT.

23 Q. I am sorry, who is this e-mail from?

24 A. It was from me to Lee.

25 Q. And what is the date?

Kissick - Cross

1025

1 A. July 26.

2 Q. Of 2009, correct?

3 A. Yes.

4 Q. And here you are telling Mr. Farkas that you called Teresa.
5 Who is Teresa?

6 A. She is operations supervisor over at Taylor Bean's
7 relationship.

8 Q. Okay. And what is her name?

9 A. Teresa Kelly.

10 Q. And you called her and reminded her, we do not track loan
11 level on AOT and COLB, correct?

12 A. Well, we don't track loan level on AOT. So, I don't know why
13 I put the COLB in.

14 Q. But you listed COLB in this e-mail?

15 A. Yes, and I don't know why.

16 Q. Okay. And if that's what your official records show as 3/31,
17 so be it.

18 What are you referring to as the official records?

19 A. Whatever he was saying was their total of loans. And I think
20 I was more focussed on getting the loans that were on the overline
21 into the right trades in AOT.

22 Q. And you said it changes all the time. What do you mean by
23 that, it changes all the time?

24 A. Well, they are COLB loans. I mean, they are new loans, new
25 production. And the dollar, the loan data changes all the time.

Kissick - Cross

1026

1 Q. The loan what?

2 A. The loans change all the time.

3 Q. Because they are moving through the different facilities,
4 correct?

5 A. Yeah, they get paid off.

6 Q. I am sorry?

7 A. The COLB loans get paid off.

8 Q. Okay. So, as they get paid off, then it makes room for
9 another loan?

10 A. Right.

11 Q. To come to that bucket?

12 A. Right.

13 Q. Okay. However, for 6/30 there are significant assets that
14 you've repurchased with cash from Freddie and Ginnie which,
15 instead of being listed on overline at zero.

16 What does that mean, being listed on overline at zero.

17 A. We are always put the loans on overline for reporting
18 purposes. So, we would hope that they would see them and put them
19 in trades and get them out and sell them.

20 But because we were having our FDIC exam, I wanted them
21 to be, I wanted the hole to be fixed on AOT. And I wanted them to
22 be done the right way.

23 Q. You said they are listed at zero. Do they have no value?

24 A. No, no, we had no money against them on the overline. They
25 just were listed.

Kissick - Cross

1027

1 Q. So, those are valid loans that are listed on the overline
2 that need to go over to AOT, is that what you're saying?

3 A. I wanted them to move over to AOT. But they weren't in
4 trades or anything. That was just to fill the hole.

5 Q. But what you are saying is they are on the overline at zero,
6 but we can move them over to AOT?

7 A. That's what I wanted to do, yes.

8 Q. And you say here you have repurchased them with cash from
9 Freddie and Ginnie. And so now they have a value and they could
10 be moved into a different bucket, correct?

11 A. Correct.

12 Q. So even though it says zero, that doesn't mean it doesn't
13 have a value?

14 A. Correct.

15 Q. Now, let's move to Defendant's Exhibit 209.

16 MR. STOKES: No objection, Your Honor.

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

18 (Defendant's Exh. No. 209 was received in evidence)

19 BY MS. KARINSHAK: (Continuing)

20 Q. And we will just leave that in the record talking about
21 Defendant's Exhibit 20-- One moment please, Judge.

22 Okay, we are going to-- Now, looking at Defendant's
23 Exhibit 209, this is the day of the raid, correct, August 3, 2009,
24 that's the day of the FBI raid?

25 A. Yes.

Kissick - Cross

1028

1 Q. And for years you had been moving collateral between these
2 different facilities that we have talked about, correct?

3 A. I didn't hear you. I am sorry.

4 Q. Would it fair to say that for years you had been moving
5 collateral between these different facilities, the different
6 buckets, correct?

7 A. No, we didn't move it unless we had direction from Taylor
8 Bean from going from COLB to AOT.

9 Q. But within the operating documents and agreements that you
10 are operating under, you were moving collateral between the
11 different facilities, correct?

12 A. As far as from COLB to AOT?

13 Q. I'm talking about looking at all the facilities as a whole.

14 A. If they were, if we were requested to, we would, but we
15 wouldn't just move them to move them. If they aged out, we would
16 move them into the right bucket, but we didn't just move them to
17 move them.

18 Q. And looking at this e-mail, wouldn't it fair to say that some
19 of the loans were being moved and the collateral was being moved
20 because Mr. Hosein wanted facilities to look a certain way,
21 correct? You had talked about that in your testimony.

22 A. Of this particular one?

23 Q. I'm just talking about in general.

24 A. In general we were trying to get our balances down and all
25 the trades to look good for the FDIC, yes.

Kissick - Cross

1029

1 Q. And. Mr. Hosein, your boss, had wanted these facilities to
2 look a certain way, correct?

3 A. Yes.

4 Q. And you did this for Mr. Hosein because you believed
5 everything was fully collateralized and cross-collateralized and
6 had all those protections we have talked about already, correct?

7 A. Well, this was-- I knew about the hole in AOT and I didn't
8 want the hole to be discovered. And so that was my, that was the
9 real thing I was trying to look for, which I said earlier.

10 Q. Could you clarify that, please.

11 A. This e-mail or this PIN was trying to get the loans to get
12 everything fixed. Because the loans on the overline were on the
13 overline and they weren't on AOT, and I didn't want the hole to be
14 discovered on AOT.

15 Q. But you had, Mr. Hosein knew or had complained about private
16 label versus agency labels, correct?

17 A. Yes.

18 Q. And you had labeled them a certain way to make him happy,
19 isn't that right?

20 A. We labeled them as a result of his, I don't know what word to
21 say-- No, not under his direction, no, that was not done. It was
22 to have him calm down, but it was not at his direction.

23 Q. To have him calm down because you had mislabeled them on the
24 lines, correct?

25 A. He did not know that we had mislabeled them.

Kissick - Cross

1030

1 Q. But you had mislabeled them on the lines, correct?

2 A. I personally did not, no, but I knew about them, yes.

3 Q. But you ordered them to be labeled a certain way, private
4 label versus agency, correct?

5 A. No. We received that information from Taylor Bean.

6 Q. You received information as to how to label them?

7 A. Yes. I have no idea how to label a pool of loans.

8 Q. You have no idea how to label individual loans?

9 A. No. I haven't reviewed collateral in like 25 years. I
10 wouldn't even know.

11 Q. Is that what you-- You are saying that Mr. Hosein didn't
12 know about the labels, you did that yourself to make the lines
13 look better, correct?

14 A. No. I said earlier that we were talking about it. And it
15 was Lee and Desiree and Teresa and I. And Lee said, let me think
16 about it for a little bit. And he came back with this idea and we
17 accepted it because we didn't know what else to do because Kamal's
18 request was impossible. Nobody was buying private label loans.
19 There was no way they could be sold.

20 And so, a portion of those loans we changed to agency to
21 just stop the harassment factor because there was no way they
22 could be sold, period.

23 Q. Harassment factor from whom?

24 A. OCC to Kamal. Kamal to us.

25 Q. So, you were doing that to satisfy your boss Kamal then,

Kissick - Cross

1031

1 correct?

2 A. Well, no, he didn't say change them to agency.

3 Q. I am not saying that he told you that. I'm saying you want
4 to appear competent and you are putting those labels on there a
5 certain way to satisfy him that the line is as it should be,
6 correct?

7 A. No. We were deceiving him.

8 Q. But you are doing that to make it all look better, correct?

9 A. Yes.

10 Q. And you are the banker in charge of those lines, correct?

11 A. Yes.

12 Q. And you are the head of the Mortgage Warehouse Lending
13 Division responsible for how those are allocated and slotted,
14 correct?

15 A. No, I don't slot them or allocate them. I am the one that
16 receives the information. I have no idea.

17 Q. You have no idea as to what?

18 A. I manage the department. I don't know how to do a mortgage
19 loan if my life depended on it.

20 Q. But you are responsible for the folks who do that, you are
21 the boss?

22 A. Our customers are the ones who slot the loans and move them
23 over. Not my department. My department reviews the collateral,
24 that's it. We are not mortgage people.

25 Q. But what I am trying to say is in those agencies and

Kissick - Cross

1032

1 facilities when Kamal Hosein, your boss, is looking at them, you
2 want them to look a certain way to make him happy, right?

3 A. He never looked at the loans either. He looked at the
4 reports. And we wanted them to show agency to just get the
5 harassment factor down.

6 And we could not get rid of the loans, there was no way.
7 So we, we went ahead and agreed to accept them that way even
8 though we knew they were not right.

9 Q. Well, isn't it true when you first met with the FBI, you told
10 them that you had made the decision about that labeling?

11 A. I don't think so.

12 Q. Would your memorandum of interview help you refresh your
13 recollection as to that statement?

14 A. Sure.

15 Q. Would you pass Defendant's Exhibit 235, please. If you could
16 please look on the second page of that document.

17 Actually, I am sorry, it would be the third page.

18 THE COURT: There is nothing in there.

19 MR. STOKES: The Court's indulgence.

20 THE WITNESS: I have nothing in my exhibit.

21 THE COURT: Well, it's almost 5:30, and this is when
22 things start to fall apart, when we lose exhibits. So, I think at
23 this point I am going to let the jury go home. You have had a
24 long week, ladies and gentlemen.

25 Now, you have tomorrow off, so you can go to work.

Kissick - Cross

1033

1 Those of you who may be government employees, I think you still
2 have jobs for tomorrow. Again, I haven't heard what has happened.
3 But as I said, don't worry, the courthouse will be open Monday,
4 and we will start at 9:30 on Monday.

5 I appreciate again quite seriously how much attention
6 you have been paying to the case and your promptness, so I
7 appreciate that.

8 Again, please avoid any media coverage, any discussions
9 about the case. Do not talk to each other. Don't e-mail each
10 other about the case. Just go home and have a good restful
11 weekend. Leave your notes, your notebooks here, we will have them
12 back to you first thing Monday morning.

13 And I think I will keep the counsel here for a couple of
14 minutes, but you all are free to go. Have a good weekend, ladies
15 and gentlemen.

16 NOTE: At this point the jury leaves the courtroom;
17 whereupon the case continues as follows:

18 JURY OUT

19 Ms. Kissick, you need to be back here at 9:30 Monday
20 morning. You can go now.

21 NOTE: The witness stood down.

22 THE COURT: Actually, Ms. Kissick, just for the record,
23 you are not to discuss your testimony with anyone or read anything
24 about the case. All right.

25 THE WITNESS: Or let anyone read anything to me.

Kissick - Cross

1034

1 MR. STOKES: Judge, before Ms. Kissick leaves, can I
2 just-- We do need to speak to Ms. Kissick before she leaves
3 because I believe she has a flight scheduled tonight. And as I
4 understand it, the government regulations, I don't think that we
5 can, the Government will fly her back. So, I think we need her to
6 stay for the weekend.

7 THE COURT: On those logistical things--

8 MR. STOKES: I apologize, so I think we may need to talk
9 to her to work out those logistics, that's what I was told just
10 recently. So, she is obviously learning this for the first time.
11 So, the Government will need to deal with her for that nature.

12 THE COURT: You might want to wait out in the hall and
13 they will talk to you for a moment or two out there.

14 NOTE: The witness leaves the courtroom.

15 THE COURT: Are there going to be any other logistical
16 problems, Mr. Stokes, that you are aware of if there is a
17 shutdown?

18 MR. STOKES: I am sorry, I didn't hear you.

19 THE COURT: Are there going to be any other logistical
20 problems that you can envision because of the shutdown with your
21 other witnesses?

22 MR. STOKES: Your Honor, I don't believe so. I have
23 been told that for the Fraud Section at least that the trial team
24 will be essential. And so, I will verify and let the Court know
25 tomorrow if there is going to be any problems with the shutdown,

Kissick - Cross

1035

1 but we believe we are not going to have a problem with the Fraud
2 Section. And we are handling a significant amount of the travel
3 arrangements. I can't speak for the U.S. Attorney's Office
4 though.

5 THE COURT: All right. We have a docket tomorrow
6 morning. So, you can't leave your papers as they are on the
7 tables.

8 I can give you space in the corner and working with Mr.
9 Wood, we can give you space in the witness rooms. We can lock
10 those, can't we, Mr. Wood? Can we lock the witness rooms?

11 THE MARSHAL: Yes.

12 THE COURT: So, you don't have to cart everything back
13 to your offices. You may need a few minutes this evening to clean
14 things up. All right. And that means you may need a little extra
15 time Monday morning to get everything back in place. All right.

16 MR. STOKES: Yes.

17 THE COURT: Anything else before we recess?

18 MR. STOKES: Your Honor, I would just, I think just from
19 a timing standpoint, I think we are, you know-- We've really made
20 a lot of headway here. I think Ms. Karinshak is nearly finished
21 here. And so, assuming that Ms. Kissick ends early on Monday, I
22 think we are going to move through a number of witnesses very
23 quickly next week.

24 THE COURT: I would expect that.

25 MR. STOKES: Yes.

Kissick - Cross

1036

1 THE COURT: I was considering giving you a cutoff.
2 Because the cross has been so long and it is unpredictable, I am
3 not quite going to do that. You did move it along today. The
4 direct case went quite well, so we will not yet give you a
5 deadline.

6 MR. STOKES: I would even point out, Your Honor, that I
7 believe the cross has been about one-and-a-half times the direct
8 at this point. So, we are, the Government is moving this along as
9 quickly as we can.

10 THE COURT: I am keeping track of that. There is a
11 great benefit to brevity.

12 I think, Mr. Cummings, you got the award for the
13 shortest cross, and it was probably the most effective too.

14 In any case, we are going to definitely hold court on
15 Friday next week. I think I mentioned that earlier, but I am not
16 yet sure what time we are going to start because I am going
17 rearrange some docket things Friday morning, but definitely plan
18 on that. And make sure your witnesses are scheduled for that.

19 MR. STOKES: Yes. And, Your Honor, we may, we will
20 speak to the defense, but we may be filing a motion. They
21 provided expert notice, we want the talk to the defense first
22 about that, but there are a number of issues in there.

23 So, would it make the most sense to put that on the
24 docket for next Friday.

25 THE COURT: No, no, we will take it up early morning

Kissick - Cross

1037

1 hours some day next week. I don't want to delay things any more
2 than we absolutely have to. All right.

3 MR. STOKES: And, Your Honor, we also had requested and
4 the Court had ordered the defense to turn over summary charts by
5 Tuesday. We have not received anything. I don't know if--

6 THE COURT: Then I assume there are none.

7 MR. STOKES: I assume that's right.

8 MR. KUGLAR: You got everything.

9 MR. STOKES: So, we got-- The expert notice is what we
10 received then.

11 MR. KUGLAR: Yes.

12 THE COURT: You got the expert notice. I thought you
13 were complaining about the summary charts.

14 MR. STOKES: Yes, I was asking about the summary charts.
15 We did not receive any summary charts.

16 MR. KUGLAR: All the charts referenced therein were
17 attached--

18 THE COURT: All right, you all sort that out. If there
19 was a ministerial error, no problem. If in fact they don't yet
20 exist, there is a problem.

21 All right. And if it is a real emergency, we could do
22 it tomorrow morning on the criminal docket. So, otherwise some
23 morning next week before trial.

24 MR. STOKES: Yes, Your Honor.

25 THE COURT: We will recess court for the day.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 1:10cr200
	.	
vs.	.	Alexandria, Virginia
	.	April 11, 2011
LEE BENTLEY FARKAS,	.	2:05 p.m.
	.	
Defendant.	.	
	.	
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TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

VOLUME 5 - 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 1190 - 1349)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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11 ALSO PRESENT:

JENNIFER GINDIN
LISA PORTER
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I N D E X

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WITNESSES ON BEHALF OF
THE GOVERNMENT:

Philip Theis	1194	1203		
Kimberly Kogut	1205	1212		
John F. Welch	1213	1233		
Special Agent Scott Turner	1248	1279		
Samuel W. Herren, Jr.	1290	1295		
Maureen Emig	1300	1316	1320	1322
Paul Allen	1324			

EXHIBITS

MARKED RECEIVED

GOVERNMENT'S:

No. 1-271				1197
1-278B				1208
1-278C				1202
19-4				1256
19-12				1260
19-19				1267
19-33				1264
19-34				1263
19-51				1268
19-53				1270
19-55				1271
19-57				1273
19-58A				1293
19-58B				1293
19-58C				1293
19-58E				1292
19-71A				1219
19-74				1226

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EXHIBITS (Cont'd.)

MARKED

RECEIVED

GOVERNMENT'S:

No. 19-78	1255
19-84	1229
19-86A	1229
19-94	1231
19-95	1218
19-104A	1226
19-104B	1226
19-104C	1215
19-104D	1215
19-105	1274
19-124	1251
20-1	1306
22-125	1329

Theis - Direct

1194

1 A F T E R N O O N S E S S I O N

2 (Defendant and Jury present.)

3 MR. ZINK: Your Honor, the government will call Philip
4 Theis.

5 THE COURT: All right.

6 PHILIP THEIS, GOVERNMENT'S WITNESS, AFFIRMED

7 DIRECT EXAMINATION

8 BY MR. ZINK:

9 Q. Mr. Theis, would you please introduce yourself to the jury?

10 A. Sure. My name is Philip Theis.

11 Q. And are you currently employed?

12 A. Yes.

13 Q. And where are you employed?

14 A. Freddie Mac.

15 Q. And how long have you been employed there?

16 A. Seven years.

17 Q. Mr. Theis, very briefly, can you explain to the jury what
18 Freddie Mac is?

19 A. Sure. Freddie Mac is a company that works with banks and
20 other lenders primarily buying mortgage loans.

21 Q. And once it buys a loan, typically what will it do?

22 A. It will either retain that loan or it will securitize it.

23 Q. And, Mr. Theis, what is it that you specifically do at
24 Freddie Mac on a day-to-day basis?

25 A. I manage a team that works with lenders that want to sell

Theis - Direct

1195

1 loans to us to make sure they use our sales systems appropriately
2 and efficiently.

3 Q. And these sales systems, can you talk generally about them?
4 What are they?

5 A. The one we use primarily is called the selling system, and
6 it's a --

7 THE COURT: Called the what?

8 THE WITNESS: I'm sorry, the selling system.

9 THE COURT: S-e-l-l-i-n-g, selling?

10 THE WITNESS: Yes.

11 THE COURT: All right.

12 THE WITNESS: It's a web-based application where
13 customers can access it, enter loan data, contract data, and sell
14 loans to us.

15 BY MR. ZINK:

16 Q. And does it create records of certain transactions between
17 TBW and entities that it purchases loans from?

18 A. Yes.

19 Q. Mr. Theis, do you know the company Taylor, Bean & Whitaker,
20 or TBW?

21 A. Yes.

22 Q. What do you know about TBW?

23 A. They used to sell loans to us.

24 Q. So Freddie Mac would acquire loans from TBW?

25 A. Yes.

Theis - Direct

1196

1 Q. And did Freddie Mac also securitize loans it acquired from
2 TBW?

3 A. Yes.

4 Q. And can you walk us through just an example of how that
5 process might happen?

6 A. Securitization?

7 Q. Yes, sir.

8 A. Sure. Securitization, unlike a cash sale, so when a banker
9 or lender wants to sell loans to us, they can either sell it to us
10 for cash or security. If they're selling it to us for cash, if
11 they've got a loan, let's say, \$100,000 worth of a mortgage, they
12 can sell it to us. When we buy it, we'll give them \$100,000.

13 On a security transaction, instead of giving them the
14 cash back for that loan, what we've purchased, we'll give them a
15 security, and what that really entitled them to is the ongoing
16 cash stream from that loan. So as homeowners make their mortgage
17 payments, whoever owns that security owns the rights to those
18 payments over time.

19 Q. And so once Freddie Mac gives the security to TBW, who owns
20 the loans?

21 A. Freddie Mac.

22 Q. And what can TBW do with the security?

23 A. They can retain it or sell all or a portion of it.

24 Q. And do you know if TBW actually entered into these types of
25 transactions with Freddie Mac?

Theis - Direct

1197

1 A. Yes, we did enter security transactions.

2 Q. And how do you know that?

3 A. I've reviewed some contracts that were security contracts.

4 Q. I'd like to show you one of those. I'd like to show you
5 what's been marked as Government Exhibit 1-271.

6 MR. ROGOW: No objection.

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

8 (Government's Exhibit No. 1-271 was received in
9 evidence.)

10 BY MR. ZINK:

11 Q. Mr. Theis, do you recognize this document?

12 A. Yes.

13 Q. What is it?

14 A. It's a Form 15A settlement summary.

15 Q. And just generally speaking, what is a Form 15A?

16 THE COURT: Hold on a second. The screen is not
17 correct. Let's get that fixed.

18 MR. ZINK: We can continue, Your Honor.

19 THE COURT: All right.

20 BY MR. ZINK:

21 Q. Generally speaking, what is a Form 15A?

22 A. Sure. It's a summary of that settlement for a particular
23 security.

24 Q. Okay. I'd like to look at specific detail in this document.
25 There's a line that says "Contract Number." Do you see that?

Theis - Direct

1198

1 A. Yes.

2 Q. What does a contract number mean?

3 A. A contract number is a Freddie Mac-issued identifier that's
4 sort of, it's an ID for this particular transaction.

5 Q. Now, there are certain loans underneath that contract?

6 A. Yes.

7 Q. And on the 15A, would the loans be identified somewhere?

8 A. Yes.

9 Q. I'd ask you just to identify the contract number on the
10 screen right to your left, Mr. Theis.

11 A. 30847697.

12 Q. And is this a unique number?

13 A. Yes.

14 Q. And how do you know it's unique?

15 A. The system that produced it is designed to generate unique
16 identifiers for each contract.

17 Q. So once a transaction happens, that number can't be reused?

18 A. That's correct.

19 Q. What if a transaction doesn't happen? Can that number be
20 reused?

21 A. No.

22 Q. So it represents a transaction for a given point in time?

23 A. That's correct.

24 Q. I'd like you to also take a look at the contract settlement
25 date. Do you see that?

Theis - Direct

1199

1 A. Yes.

2 Q. What does that mean?

3 A. That's the date that we acquire loans and issue the security
4 in this case.

5 Q. Right under that is "Contract Amount." Do you see that
6 number?

7 A. Yes.

8 Q. What does that mean?

9 A. That's the amount that we issued the security for.

10 Q. And so in this case, how much was the security?

11 A. \$25,496,321.

12 Q. Does that also mean the loans are worth that much?

13 A. That represents the outstanding principal of those loans.

14 Q. And how about "Participation Percent"? Do you see that term?

15 A. Yes.

16 Q. And what does that mean?

17 A. That's the percentage of the loans underneath the security
18 that we now own.

19 Q. Okay. And right above "Contract Detail," you'll see "Seller
20 Detail." Do you see the "Seller Name"?

21 A. Yes.

22 Q. And who is the seller here?

23 A. Taylor, Bean & Whitaker Mortgage Corporation.

24 Q. Okay. And, Mr. Theis, just generally speaking, what does
25 this document tell you?

Theis - Direct

1200

1 A. This tells me that we settled a contract with Taylor, Bean &
2 Whitaker on July 15 of 2009.

3 Q. What's the contract called?

4 A. The contract number is 30847697.

5 Q. Okay. For how much?

6 A. \$25,496,321.

7 Q. And at that point in time, did you own all the loans
8 underneath that contract?

9 A. Yes.

10 Q. And after that date, July 15, could that contract number be
11 reused?

12 A. No.

13 Q. Mr. Theis, I'd like to show you what's been marked as
14 Government's Exhibit 1-278.

15 Your Honor, I believe it's already in evidence.

16 THE COURT: It is.

17 MR. ROGOW: All right. It's already in.

18 BY MR. ZINK:

19 Q. Mr. Theis, prior to coming into court, did the government
20 show you this document?

21 A. Yes.

22 Q. Before that time, had you ever seen this document before?

23 A. No.

24 Q. I'd like you to take a look at the top. Right next to
25 "Custom Account," can you read for the jury what that says,

Theis - Direct

1201

1 please?

2 A. Sure. It's all caps, "TBW-AOTG-AOT."

3 Q. And do you know what that means?

4 A. No.

5 Q. Okay. Can you please turn the page -- or go to the last page
6 of the document? See if you can locate a date at the bottom of
7 the document.

8 A. Okay.

9 Q. Do you see it?

10 A. Yes.

11 Q. Can you read for the jury what that date is?

12 A. August 3, 2009.

13 Q. Mr. Theis, looking at this document, do you recognize
14 anything on it that is familiar, any information that's familiar?

15 A. Yes.

16 Q. What do you recognize?

17 A. On the first page, in the left-hand column, the number
18 starting with 30, with the exception of the one with a -1 at the
19 end are Freddie Mac contract numbers.

20 Q. I'd like to show you what's been marked as Government Exhibit
21 1-278C.

22 THE COURT: Is that in evidence yet?

23 MR. ZINK: It is not, Your Honor.

24 THE COURT: It is not?

25 MR. ZINK: It is not.

Theis - Direct

1202

1 MR. ROGOW: No objection.

2 THE COURT: All right, it's in now.

3 (Government's Exhibit No. 1-278C was received in
4 evidence.)

5 BY MR. ZINK:

6 Q. Mr. Theis, do you recognize this document?

7 A. Yes.

8 Q. And how do you recognize it?

9 A. I've initialed it at the bottom. This is the one that I've
10 reviewed prior to coming here.

11 Q. And can you identify once again for the jury the contract
12 numbers which you say are Freddie Mac's?

13 A. Sure. It's the highlighted ones on the left-hand column,
14 starting with 30, with the exception of the one with the -1 at the
15 end.

16 Q. So how many are there?

17 A. Twenty.

18 Q. And how do you know for sure that these 20 numbers are, in
19 fact, Freddie contract numbers?

20 A. I've reviewed Form 15A's in our systems to verify them.

21 Q. The Form 15A's, those are the document we just reviewed
22 previously?

23 A. The settlement summary, that's right.

24 Q. And how can you be sure those documents are accurate?

25 A. I pulled them up in the system myself.

Theis - Cross

1203

1 Q. And did you verify that those securities existed?

2 A. Yes.

3 Q. And that payments were being made on those loans?

4 A. Yes.

5 Q. Mr. Theis, prior to coming into court, were you also able to
6 identify the settlement date for all 20 of these contract numbers?

7 A. Yes.

8 Q. And once again, for the jury, what is the settlement date?

9 A. That's the date we issued the security and took possession of
10 the loans.

11 Q. So that's the day that Freddie Mac owns the loans and the
12 security is issued?

13 A. That's correct.

14 Q. Once again, I'd like you to look at the last page of the
15 document, the date. Prior to coming into court, were you able to
16 determine if the settlement dates occurred before, on, or after
17 the date listed on this document?

18 A. All 20 contracts settled prior to August 3, 2009.

19 Q. And so as a practical matter, what does that mean, Mr. Theis?

20 A. That means we owned the loans prior to August 3, 2009.

21 Q. And could these contract numbers be reused?

22 A. No.

23 MR. ZINK: Pass the witness, Your Honor.

24 THE COURT: All right. Cross-examination?

25 CROSS-EXAMINATION

Theis - Cross

1204

1 MR. ROGOW:

2 Q. Mr. Theis, do you know who owned the bonds on the settlement
3 date?

4 A. No.

5 Q. All this data that we see, how is that data accumulated for
6 the purpose of recordkeeping at Freddie Mac?

7 A. It's contained in our data warehouse.

8 Q. And how is it accumulated in the data warehouse? In other
9 words, who, who puts it in?

10 A. Originally, the lenders we do business with will enter data
11 in that selling system, and then those -- that data is sent
12 downstream to the data warehouse.

13 Q. What kinds of checks and balances do you have to check on the
14 information that's put in by the lenders and then what Freddie Mac
15 does with it when it gets it?

16 A. To check the data that customers put in the selling system,
17 we do run some completeness checks to make sure that the, the data
18 is all there that we need. We also then run through a note
19 certification process, so we verify that the loans we're buying
20 have sort of the notes that homeowners sign at the closing table
21 behind them, that that matches the loan data.

22 Q. And do you do this for all of the loans that you process?

23 A. All loans need to be certified prior to settlement.

24 Q. And who specifically does this?

25 A. Note custodians we work with.

Kogut - Direct

1205

1 Q. Are there any instances where there are mix-ups or bad
2 numbers on the data?

3 A. I'm not sure what you mean by "bad numbers."

4 Q. Well, in other words, numbers that don't jive with what you
5 have or what you think you should have?

6 A. Occasionally, mistakes are made, yeah.

7 MR. ROGOW: Okay. Nothing further, Your Honor.

8 THE COURT: Any redirect?

9 MR. ZINK: No, Your Honor.

10 THE COURT: Does anybody plan to call Mr. Theis again in
11 the course of the trial?

12 MR. ZINK: The United States does not.

13 MR. ROGOW: No, Your Honor.

14 THE COURT: All right. Then, sir, you're excused as a
15 witness. That means you can now stay in the courthouse and watch
16 the proceedings, or you may leave, but you're not to discuss
17 anything you hear in court through your testimony or otherwise
18 with any witness who has not yet testified. Thank you.

19 (Witness excused.)

20 THE COURT: Your next witness?

21 MR. STOKES: The government calls Kim Kogut.

22 THE COURT: All right.

23 KIMBERLY KOGUT, GOVERNMENT'S WITNESS, AFFIRMED

24 DIRECT EXAMINATION

25 BY MR. STOKES:

Kogut - Direct

1206

1 Q. Good afternoon. Would you please introduce yourself to the
2 jury.

3 A. Hi. My name is Kimberly Kogut.

4 Q. And, Ms. Kogut, where do you work?

5 A. For Bank of America.

6 Q. Where are you based?

7 A. In Charlotte, North Carolina.

8 Q. How long have you been with Bank of America?

9 A. For seven years.

10 Q. And what do you do for Bank of America?

11 A. I'm an operations manager.

12 Q. What division of Bank of America do you work in?

13 A. In the Global Mortgages Division.

14 Q. Just very briefly describe what the Global Mortgages Division
15 does.

16 A. They buy and sell mortgages.

17 Q. Now, have you heard of a mortgage lending company by the name
18 of Taylor, Bean & Whitaker?

19 A. Yes.

20 Q. And how do you know of Taylor, Bean & Whitaker?

21 A. They were a client of Bank of America.

22 Q. Did Taylor, Bean & Whitaker use a facility at Bank of America
23 called the EPF facility?

24 A. Yes.

25 Q. And what does EPF stand for?

Kogut - Direct

1207

1 A. Early purchase facility.

2 Q. Would you just very briefly describe what this early purchase
3 facility was?

4 A. It's a, a financing vehicle where the mortgage originator --
5 Bank of America would buy pools of loans from the mortgage
6 originator, but it's a financing facility.

7 Q. And by a mortgage originator, do you mean TBW?

8 A. Yes.

9 Q. And would Bank of America buy a participation interest in the
10 pool of loans?

11 A. Yes.

12 Q. Now, what would be the purpose of purchasing that
13 participation interest? What would happen with that pool of
14 loans?

15 A. They would purchase them to be securitized.

16 Q. And turned into what?

17 A. A security, a bond.

18 Q. A mortgage-backed security?

19 A. Mortgage-backed security, yes.

20 Q. And, Ms. Kogut, Bank of America's purchasing the pool of
21 loans once they're securitized, who purchased those securities?

22 A. Another division of Bank of America.

23 Q. And what was that division called?

24 A. Bank of America Securities.

25 Q. And, Ms. Kogut, in your position, did you obtain information

Kogut - Direct

1208

1 from Bank of America about various mortgage-backed securities that
2 it purchased in the summer of 2009?

3 A. Yes.

4 Q. And if you would take a look at Government Exhibit 1-278B?

5 THE COURT: Any objection?

6 MR. ROGOW: "B" as in boy?

7 MR. STOKES: "B" as in boy.

8 THE COURT: 278B. It's in.

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

11 BY MR. STOKES:

12 Q. Do you have that in front of you?

13 A. Yes.

14 Q. Okay. Now, Ms. Kogut, did you prior to coming into court
15 review this document?

16 A. Yes.

17 Q. And did you place the highlighting or work with others to
18 place the highlighting on this document?

19 A. Yes.

20 Q. And, Ms. Kogut, if you'd look at the upper left-hand corner
21 of the document?

22 A. Okay.

23 Q. Do you see the words there "Loan Pipeline Report - Active AOT
24 Loans"?

25 A. Yes, I do.

Kogut - Direct

1209

1 Q. Do you know what that means?

2 A. No, I'm not familiar with that.

3 Q. Do you see below that where it says "TBW - Taylor, Bean &
4 Whitaker Mortgage Corp."?

5 A. I do.

6 Q. And if you'd look at the second page, do you see in the
7 bottom left-hand corner of that document, do you see where it says
8 "Run By"?

9 A. Yes.

10 Q. And what is at the end of that string of words?

11 A. "Colonial Bank."

12 Q. And what is the date on that second page at the bottom?

13 A. It's August 3, 2009.

14 Q. Okay. Now, Ms. Kogut, what did you do -- what did you review
15 at, if you could just generally describe, at Bank of America prior
16 to your marking this document up?

17 A. I looked at this document and compared it to other bank
18 records used on the early purchase facility.

19 Q. And when you looked at bank records, were you looking for
20 particular pool numbers?

21 A. Yes.

22 Q. If -- would you please look at the left-hand column, the
23 first column on this document? Do you see numbers on that column
24 that you recognize?

25 A. I do.

Kogut - Direct

1210

1 Q. And what are those numbers?

2 A. All of the ones that are highlighted are the ones I
3 recognize.

4 Q. Okay. Are those pool numbers that you recognize?

5 A. Yes.

6 Q. And what is a pool number?

7 A. A pool number is an -- it identifies the pool of loans to be
8 securitized.

9 Q. And what is your understanding as to where that number comes
10 from?

11 A. It comes from the agency that issues that pool.

12 Q. And so the loan -- the pool numbers you see starting with the
13 3, what is your understanding as to where those pool numbers come
14 from?

15 A. I believe those are the Freddie Mac.

16 Q. And what about the pool numbers starting with a 7?

17 A. Those are the Ginnie Mae series.

18 Q. And what is your understanding as to whether or not those
19 numbers are unique?

20 A. They are unique.

21 Q. And why do you understand that they are unique? What is the
22 purpose of them being unique?

23 A. It identifies that pool that's to be securitized, so it would
24 be similar to like your Social Security number. It wouldn't be
25 duplicated.

Kogut - Direct

1211

1 Q. Are you able to track that number through records at Bank of
2 America?

3 A. Yes.

4 Q. Now, Ms. Kogut, to the extent that a pool number is
5 highlighted, what does that indicate?

6 A. Those were pools that were purchased by Bank of America.

7 Q. Were they pools that were turned into mortgage-backed
8 securities?

9 A. Yes.

10 Q. And who owned the mortgage-backed securities?

11 A. The Bank of America Securities Division.

12 Q. Now, if you would take a look at the second-to-last column of
13 numbers, the set of dates on this document?

14 A. Okay.

15 Q. And I want you to assume for purposes of this document those
16 are settlement dates.

17 A. Okay.

18 Q. Did you compare those dates with settlement dates for the
19 mortgage-backed securities that Bank of America Securities owned?

20 A. Yes.

21 Q. And what did you find?

22 A. These dates were after the dates that we had settled our
23 mortgage-backed securities.

24 Q. To the extent that Bank of America owns a mortgage-backed
25 security, what is your understanding as to whether the pool of

Kogut - Cross

1212

1 loans backing that security can be sold again?

2 A. They cannot be sold again.

3 MR. STOKES: The Court's indulgence?

4 No further questions.

5 THE COURT: All right. Cross-examination?

6 CROSS-EXAMINATION

7 BY MR. ROGOW:

8 Q. Ms. Kogut as the operations manager, how many people work
9 under your supervision?

10 A. Seven.

11 Q. And what do they do?

12 A. They support the mortgage-backed trading desk. We do cash
13 settlements. We update the loan positions that we record on
14 ledger.

15 Q. And are a lot of these things that they do done
16 electronically?

17 A. Yes.

18 Q. Inputted into computers?

19 A. Yes.

20 Q. All right. Do they ever make mistakes?

21 A. At times.

22 MR. ROGOW: Nothing further, Your Honor.

23 THE COURT: Any redirect?

24 MR. STOKES: None, Your Honor.

25 THE COURT: Does anybody anticipate calling this witness

Welch - Direct

1213

1 again?

2 MR. STOKES: Not the government.

3 THE COURT: Is the defense going to call Ms. Kogut
4 again?

5 MR. ROGOW: No.

6 THE COURT: All right, ma'am, then you're excused as a
7 witness. That means you can stay in court and watch the
8 proceedings, or you may leave, but you're not to discuss your
9 testimony or anything you see or hear in court with any witness
10 who has not yet testified. Thank you.

11 THE WITNESS: Okay. Thank you.

12 (Witness excused.)

13 THE COURT: All right, your next witness, Mr. Stokes?

14 MR. NATHANSON: Your Honor, the United States calls John
15 Welch.

16 THE COURT: Okay.

17 MR. NATHANSON: Your Honor, we have another set of
18 binders to pass up to the Court.

19 THE COURT: We'll have the witness affirmed first.

20 JOHN F. WELCH, GOVERNMENT'S WITNESS, AFFIRMED

21 DIRECT EXAMINATION

22 BY MR. NATHANSON:

23 Q. Good afternoon, Mr. Welch. Can you please tell us your first
24 name and spell your last name for the court reporter.

25 A. It's John F. Welch. The last name is spelled W-e-l-c-h.

Welch - Direct

1214

1 Q. And, Mr. Welch, where do you currently live?

2 A. Ocala, Florida.

3 Q. How long have you lived in Ocala, Florida?

4 A. Since 1970.

5 Q. And, Mr. Welch, how are you employed?

6 A. I'm an attorney, self-employed.

7 Q. And how long have you been an attorney, sir?

8 A. I've been an attorney for 43 years, some in Florida, some in
9 New York. I'm licensed in both states.

10 Q. Now, Mr. Welch, I want to ask you some questions today about
11 three different addresses in Ocala, Florida. The first one is
12 [REDACTED], in Ocala. Are you familiar with that address,
13 sir?

14 A. That is the address of my home place for 33 years. I bought
15 in 1970 and lived there. That's what I call the farm.

16 Q. The farm?

17 THE COURT: All right. Now, since that's a residence --

18 MR. NATHANSON: Yes, sir -- or yes, ma'am.

19 THE COURT: That's not supposed to be in the public
20 record. That street address will be stricken from the record, the
21 public record. Don't ask for home addresses unless it's
22 absolutely necessary for the case.

23 MR. NATHANSON: One moment, Your Honor.

24 Your Honor, that home address and also some additional
25 addresses that will be offered through Mr. Welch and another

Welch - Direct

1215

1 witness are directly relevant to matters in this case.

2 THE COURT: You can raise them, but they're not going to
3 be in the transcript that gets uploaded to the public system.

4 MR. NATHANSON: Yes, Your Honor.

5 THE COURT: I'm putting that in the record now to save
6 you trouble from having to read the transcripts for the
7 identifiers, all right?

8 MR. NATHANSON: Yes, Your Honor, thank you.

9 Q. With the assistance of the court security officer, I'd like
10 to pass you, Mr. Welch, what we've marked as Government Exhibits
11 19-104C and 19-104D.

12 THE COURT: Any objection?

13 MS. KARINSHAK: No objection, Your Honor.

14 (Government's Exhibit Nos. 19-104C and 19-104D were
15 received in evidence.)

16 MR. NATHANSON: And if we could put up first 104C,
17 please?

18 Q. Mr. Welch, do you recognize this picture?

19 A. 19-104C I do, yes, and --

20 Q. And what is this a picture of?

21 A. This is the home place at the farm, but it's been, it's been
22 changed since I left it. But that's what it -- that's it.

23 Q. Okay. And if we could put up 104D, please?

24 How about this one, sir? Do you recognize this?

25 A. Yes.

Welch - Direct

1216

1 Q. What is that?

2 A. That is the front entrance to the farm place.

3 Q. Now, Mr. Welch, do you still own this property?

4 A. No.

5 Q. When did you sell it?

6 A. I sold it October 31, 2003.

7 Q. And who purchased the property from you?

8 A. Mr. Lee Farkas.

9 Q. Now, in connection with the sale of this property to
10 Mr. Farkas, did you ever have an occasion to meet Mr. Farkas in
11 person?

12 A. Yes.

13 Q. Okay. Could you please describe that for the Court?

14 A. I received a call from, from someone setting up an
15 appointment to meet Mr. Farkas at the farm and -- at a certain
16 time. I went there, and he arrived. He drove up in a Porche, and
17 he was a little late, and he apologized for being late and said
18 that his, his jet was late taking off from the Keys, probably
19 about 15-20 minutes late.

20 In any event, I proceeded to -- I believe I gave him a
21 survey or a little drawing of the property, because it was, like,
22 21 acres, thereabouts, and proceeded to try to show him the
23 boundaries and show him the property. He indicated -- and
24 particularly the house. And he said, "No, that won't be
25 necessary. If you don't mind, I'll just walk the property," and

Welch - Direct

1217

1 so forth.

2 I said, "Well, all right. The house is empty. It's
3 unlocked. You can walk through it."

4 And he said, "Very well." He says, "I'll let you know
5 if I'm interested."

6 And that was about the extent of the conversation.
7 That's the one and only time I, I met Mr. Farkas.

8 Q. Now, Mr. Welch, did there come a time when you and Mr. Farkas
9 executed a contract regarding this property?

10 A. Yes. Shortly after that, I was contacted by, I believe, his
11 real estate agent, who presented me a contract and, and --
12 indicating there was a deposit of \$10,000, and Mr. Farkas's
13 signature was on it, and it was in accordance with the terms that
14 I had indicated to him was the purchase price.

15 Q. Mr. Welch, I'd like to pass you now what we've marked as
16 Government Exhibit 19-95.

17 THE COURT: Is there any objection to this exhibit?

18 MS. KARINSHAK: One moment, please, Your Honor.

19 THE WITNESS: Yes, I have it.

20 MR. NATHANSON: I apologize, Your Honor.

21 THE COURT: It's not in the notebooks.

22 MR. NATHANSON: I'm sorry, Your Honor, you said it's not
23 in the notebook?

24 THE COURT: Just ask the question. Let's keep moving.

25 MR. NATHANSON: Okay.

Welch - Direct

1218

1 MS. KARINSHAK: Your Honor, I'd like him to lay a
2 foundation for it.

3 MR. NATHANSON: Certainly.

4 THE COURT: Mr. Welch, take a look at that document. Do
5 you recognize it?

6 THE WITNESS: Yes, I do, Your Honor.

7 THE COURT: How is it that you recognize it?

8 THE WITNESS: Well, it is the contract that was
9 presented to me by Mr. Farkas's agent, and it bears my signature
10 as well as that of Mr. Farkas, I believe, at the end of the
11 document, and it is, it is the contract that we signed.

12 THE COURT: Is there any objection to that?

13 MS. KARINSHAK: No, Your Honor.

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

15 MR. NATHANSON: Thank you, Your Honor.

16 (Government's Exhibit No. 19-95 was received in
17 evidence.)

18 BY MR. NATHANSON:

19 Q. Mr. Welch, what was the total purchase price according to
20 this contract for the farm property that we've been talking about?

21 A. It was \$750,000 cash.

22 Q. Thank you. I'd next like to pass you, Mr. Welch, what we've
23 marked as Government's Exhibit 19-71A.

24 THE COURT: Any objection?

25 MS. KARINSHAK: Your Honor, I don't have it.

Welch - Direct

1219

1 THE WITNESS: Yes, sir.

2 BY MR. NATHANSON:

3 Q. Do you recognize this document, sir?

4 A. Yes, I do.

5 Q. What is it?

6 A. This is the warranty deed that I prepared to deed the
7 property to Mr. Farkas.

8 Q. And does your signature appear on page 2, Mr. Welch?

9 A. Yes, it is. It's at the end as the grantor.

10 MR. NATHANSON: Your Honor, we would move 19-71A into
11 evidence at this time.

12 THE COURT: Any objection?

13 MS. KARINSHAK: No objection, Your Honor.

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

15 (Government's Exhibit No. 19-71A was received in
16 evidence.)

17 BY MR. NATHANSON:

18 Q. Mr. Welch, what is the date of the deed?

19 A. Well, the recording date of the deed, I believe, is the 31st
20 of October --

21 THE COURT: I'm sorry, can you speak into the mic?

22 THE WITNESS: I'm sorry. The recording date is the 31st
23 of October 2003. I think the deed was dated the 30th of October,
24 2003.

25 BY MR. NATHANSON:

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1 Q. And what is the significance of this warranty deed?

2 A. It effectively conveys all of my interest, any interest I had
3 or title to the property to Mr. Farkas and warrants the title.

4 Q. And at the time of this transfer to Mr. Farkas, did you have
5 a mortgage on this property, what you've described as the farm?

6 A. I had a mortgage, yes, I did.

7 Q. Okay. And who is the bank that this mortgage was --

8 A. The SunTrust Bank.

9 Q. And what, if anything, happened to that mortgage upon the
10 sale of the property to Mr. Farkas?

11 A. It was paid off.

12 Q. Now, Mr. Welch, I'd next like to pass you what's marked as
13 Government's Exhibit 19-74.

14 A. Yes.

15 MS. KARINSHAK: Your Honor, if he could lay a
16 foundation, please?

17 THE COURT: All right.

18 MR. NATHANSON: Your Honor, this is a --

19 THE COURT: No, no, you don't lay it. The witness does.

20 MR. NATHANSON: I understand it, Your Honor. I don't
21 believe Mr. Welch is qualified to lay a foundation for this. This
22 is a TBW business record that is subject to a business record
23 stipulation with the defense.

24 THE COURT: Do you have a -- all right, do you agree
25 that there's a stipulation as to TBW documents?

Welch - Direct

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1 MS. KARINSHAK: Your Honor, I believe so if
2 Mr. Nathanson tells me so.

3 MR. NATHANSON: One moment, Your Honor.

4 MS. KARINSHAK: One moment, Judge.

5 MR. NATHANSON: Your Honor, may we approach, please?

6 THE COURT: Yes.

7 (Bench conference on the record.)

8 MR. NATHANSON: Judge, we at the defendant's request had
9 provided to the defense team 902(11) certifications for all of the
10 TBW business records that we intended to use, and they had
11 communicated to us by e-mail on multiple occasions that they would
12 agree to stipulate to the admissibility of all TBW business
13 records, and that's how things have been going up until now in the
14 case, Judge.

15 THE COURT: Well, I don't have a copy of the exhibit.

16 MR. NATHANSON: This is a promissory note that was
17 pulled off of the TBW system, and there's a TBW mortgage number.

18 THE COURT: Well, the heading of the e-mail address is
19 "Colonial Bank" up here. Are you contesting that this is an
20 authentic copy of a note held by TBW?

21 MS. KARINSHAK: Your Honor, my understanding, and I'll
22 let Mr. Cummings speak to this because he was handling the e-mails
23 regarding these documents, but it's our understanding an affidavit
24 was going to be supplied and that we would sign it once the
25 affidavit was supplied.

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1 MR. NATHANSON: That's not true, Your Honor. There was
2 never a discussion about an affidavit with respect to any of these
3 business records.

4 THE COURT: Well, whether it's a business record or not,
5 Mr. Welch's signature appears to be on this thing.

6 MR. NATHANSON: No, that's the whole point, Your Honor.
7 That's a forgery. These are all bogus loan documents that existed
8 in TBW and Colonial Bank's records.

9 Mr. Stokes reminds me --

10 MR. CUMMINGS: I can't remember seeing this document on
11 any schedule of TBW business documents. I'm not saying it wasn't.
12 I just don't remember seeing it, Your Honor.

13 THE COURT: There's a Bates stamp number.

14 MR. NATHANSON: We can certainly produce to the Court
15 the documents that were sent to Mr. Cummings and other defense
16 counsel that included this document. I mean, we can introduce
17 them through the 902(11) certs.

18 THE COURT: But -- so there is no signed stipulation at
19 this point, correct?

20 MR. NATHANSON: No. They only communicated to us via
21 e-mail, and we've obviously been receiving them until now.
22 There's been no objection to any business records from Colonial
23 Bank or TBW up until this point. The government believed we were
24 operating subject to the stipulation we had agreed to with the
25 defense team.

Welch - Direct

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1 THE COURT: I don't want to take the jury's time up with
2 a whole lot of this issue. Is there an issue about whether or not
3 this note came from the files of TBW?

4 MS. KARINSHAK: Your Honor, this is the first time I've
5 seen this document.

6 MR. CUMMINGS: This is the first time I've seen it, too.

7 THE COURT: All right.

8 MR. CUMMINGS: I don't mean to be difficult, but I just
9 don't recall if I've seen these before.

10 THE COURT: How many more of these are you going to use
11 with this witness?

12 MR. NATHANSON: With Mr. Welch, three of these, and
13 they're central to his testimony.

14 THE COURT: Are these the Farkas loans?

15 MR. NATHANSON: Yes, ma'am.

16 THE COURT: So at some point, do these notes appear in
17 the Colonial Bank records, too, as the security for the --

18 MR. NATHANSON: Yes, Judge. All of these end up at AOT.

19 THE COURT: If you have to bring a Colonial Bank person
20 back here, can you do that?

21 MR. NATHANSON: We certainly can, Your Honor, but we do
22 have the 902(11) certifications for all of these documents. We
23 seek to introduce them based simply on the 902(11) certs if
24 they're challenging authenticity of business records.

25 MR. CUMMINGS: I just never saw this, Your Honor.

Welch - Direct

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1 THE COURT: All right, you can argue during
2 cross-examination as to where these came from, and I'm going to
3 let them in at this point.

4 MR. NATHANSON: Thank you, Judge.

5 MS. KARINSHAK: And, Your Honor, we'd just object for
6 the record.

7 THE COURT: Yes.

8 (End of bench conference.)

9 MR. NATHANSON: May I proceed, Your Honor?

10 THE COURT: Yes, go ahead.

11 MR. NATHANSON: Thank you.

12 Q. Mr. Welch, do you have 19-74 in front of you there?

13 A. Yes, I do.

14 Q. Okay. What you've been passed is a note for the farm
15 property that we've been discussing. Have you seen this document
16 before?

17 A. Not until it was shown to me by someone from, I believe, the
18 U.S. Attorney's Office some month or so ago.

19 Q. And when you first saw this note, Mr. Welch, were you
20 surprised to see it?

21 A. I was very surprised.

22 Q. And why was that?

23 A. Because it, it's a fictitious document. It has a -- has my
24 name printed at the bottom and a signature, but it's not my
25 signature, and my name is usually, in all legal documents is