

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF HAWAII

3 UNITED STATES OF AMERICA,) CR 17-00101 LEK
 4)
 Plaintiff,) Honolulu, Hawaii
 5) February 10, 2020
 vs.)
 6) JURY TRIAL - DAY 5
 (1) ANTHONY T. WILLIAMS,)
 7)
 Defendant.)
 8 _____)

9
 10 TRANSCRIPT OF TRIAL PROCEEDINGS
 BEFORE THE HONORABLE LESLIE E. KOBAYASHI
 11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 For the Government: KENNETH M. SORENSON, AUSA
 GREGG PARIS YATES, AUSA
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15 Also Present: MEGAN CRAWLEY, FBI Special Agent

16 For the Defendant (1) ANTHONY T. WILLIAMS, *Pro Se*
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24 Proceedings recorded by electronic sound recording; transcript
 25 produced with computer-aided transcription (CAT).

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1 MONDAY, FEBRUARY 10, 2020 8:40 A.M.

2 (Open court out of the presence of the jury.)

3 THE COURTROOM MANAGER: Criminal No. 17-00101 LEK,
4 United States of America versus Anthony T. Williams.

5 This case has been called for a further jury trial, day
6 5.

7 Counsel, please make your appearances for the record.

8 MR. SORENSON: Good morning, Your Honor.

9 Assistant United States Attorneys Ken Sorenson and Gregg
10 Yates here for the United States. We have Special Agent Megan
11 Crawley with us.

12 THE COURT: Good morning to all of you.

13 Mr. Williams.

14 THE DEFENDANT: Good morning.

15 Private attorney general Anthony Williams appearing sui
16 juris.

17 MR. ISAACSON: Good morning, Your Honor.

18 Lars Isaacson with Ms. Beecher and Ms. Yeung. I want to
19 apologize. We had trouble getting out of the building.

20 THE COURT: You were kidnapped by the elevator, I
21 understand.

22 MR. ISAACSON: Well, what happens is -- well, sorry,
23 Your Honor.

24 THE COURT: Okay. I understand Mr. Williams has a
25 matter he'd like to raise before we bring in the jury?

1 THE DEFENDANT: Yes. I just received something
2 Friday from the Court regarding the juror that had a concern
3 about her daughter and stuff like that. And the document that
4 I got said I didn't object, which I did. I objected that I
5 felt like she couldn't be fair because of her -- so I got
6 something that said no parties objected to it, which I did, and
7 so I wanted to make sure that reflected that I did object to
8 her still being on the jury because I felt like she cannot be
9 impartial with her preconceived ideas and she, you know, very
10 emotional about thinking her daughter's going to be joining
11 some company that's fraudulent or whatever.

12 The second issue was I want to object to Megan Crawley
13 still being able to sit through the trial when she was a
14 witness in the trial.

15 THE COURT: All right. Your objections are noted
16 for the record. Court's -- I think the transcript with regard
17 to the juror will speak for itself.

18 And then with regard to Ms. Crawley, or Agent Crawley, I
19 already ruled with regard to that, but I'll have, of course,
20 your objections noted for the record.

21 Anything else before we bring in the jury?

22 THE DEFENDANT: No. That'd be all.

23 THE COURT: All right. So I believe the last
24 witness that we had on the stand --

25 MR. YATES: Mary Jean Castillo.

1 THE COURT: Yes. So if we could bring her on the
2 stand and then I will direct Ms. Elkington to go get the jury.

3 All right. Very good. We're in recess.

4 (A recess was taken.)

5 (Open court in the presence of the jury.)

6 THE COURTROOM MANAGER: This is Criminal
7 No. 17-00101 LEK, United States of America versus Anthony T.
8 Williams.

9 The case is called for further jury trial, day 5.
10 Counsel, please make your appearances.

11 MR. SORENSON: Good morning, Your Honor.

12 Assistant U.S. Attorneys Ken Sorenson and Gregg Yates here
13 for the United States. We have FBI Special Agent Megan Crawley
14 with us.

15 THE COURT: Good morning to all of you.
16 Mr. Williams.

17 THE DEFENDANT: Good morning.
18 Private attorney general Anthony Williams.

19 MR. ISAACSON: Good morning, Your Honor.
20 Lars Isaacson, standby counsel, with Ms. Beecher here at
21 counsel table.

22 THE COURT: All right. Good morning to all of you.
23 And good morning and welcome back, ladies and gentlemen of
24 the jury. We have Ms. Castillo on the stand. Because of her
25 crutches and her recent surgery on her leg, I'm asking her just

1 to remain seated so she doesn't have to keep getting up and
2 down.

3 I believe your witness, Mr. Yates.

4 MR. SORENSON: Yes, Your Honor.

5 THE COURT: And I just remind, Ms. Castillo, you're
6 still under oath. All right.

7 MR. YATES: Thank you, Your Honor.

8 **MARY JEAN CASTILLO, PREVIOUSLY SWORN, RESUMED THE STAND**

9 DIRECT EXAMINATION RESUMED

10 BY MR. YATES:

11 Q Ms. Castillo, before our weekend break, I believe
12 you had testified that Anthony Williams had given you a job; is
13 that correct?

14 A Yes, correct.

15 Q What was the name of the entity or company that you
16 understood you were working for?

17 A Common Law Office of America.

18 Q Okay. And did Common Law Office of America work
19 closely with another of Anthony Williams's entities or
20 companies?

21 A I believe.

22 Q And what was the name of that other company?

23 A Mortgage Enterprise, Inc.

24 Q Okay. In your time working for Anthony Williams,
25 how many people did you know were working for Anthony Williams

1 as either a employee or contractor for CLOA or MEI?

2 A At least I could recall about six or more.

3 Q Now, I'm going to show you a document on your
4 screen. This won't go in front of the jury just yet.

5 A Can I use my glasses?

6 Q Yes, please, you may use your eyeglasses. Do you
7 recognize what's been marked as Exhibit 303?

8 A Yes.

9 Q Okay. You can look at a full version of that in the
10 binder in front of you if you turn to Exhibit 303.

11 I'll ask you to turn to the pages of Exhibit 303.

12 A Yes.

13 Q Okay. Now, did you send this email that's been
14 marked as Exhibit 303 in an attachment to Anthony Williams on
15 August 8, 2013?

16 A Yes.

17 Q Okay. And then you forwarded this email and the
18 attachment to your own attorney to give to investigators later;
19 is that correct?

20 A Correct.

21 Q And the attachments are all MEI documents; is that
22 right?

23 A Yes.

24 Q And Anthony Williams wrote those MEI documents,
25 correct?

1 A Right.

2 Q And you made -- Anthony Williams asked you to make a
3 revision and send it back to him?

4 A Yes.

5 Q And you made that revision at his request; is that
6 correct?

7 A Yes.

8 Q And he accepted and adopted these documents?

9 A Yes.

10 MR. YATES: Okay. Your Honor, at this time I would
11 move to admit Exhibit 303.

12 THE COURT: Any objections?

13 THE DEFENDANT: No objection.

14 THE COURT: Received.

15 (Exhibit 303 received into evidence.)

16 MR. YATES: May I publish, Your Honor?

17 THE COURT: You may.

18 Q (BY MR. YATES:) So I'm going to turn to the second
19 page of Exhibit 303. And now that the jury can see these
20 documents, it appears that Exhibit 303 -- well, please explain
21 to the jury what Exhibit 303 is and what the attachments are.

22 A The Exhibit 303 are all the application packet for
23 people that want to -- interested in reducing their loan.

24 Q Okay. So who created the attachments to
25 Exhibit 303?

1 A Anthony Williams.

2 Q Okay. So I'm going to turn to the third page of
3 Exhibit 303, put it on the screen. And this document is
4 entitled Homeowner Service Guarantee Agreement. Do you see
5 that?

6 A Yes.

7 Q And who wrote the language and the representations
8 in this third page?

9 A Hmm, Anthony.

10 Q Who was it that was supposed to receive this
11 application packet?

12 A The people that's interested in reducing their
13 mortgage.

14 Q Would that be all MEI applicants?

15 A Yes.

16 Q I'm going to turn back to the first -- or I should
17 say the second page of Exhibit 303. This page seems to ask for
18 some specific information about an applicant's mortgage. Do
19 you see that?

20 A Yes, correct.

21 Q Now, what did Anthony Williams and MEI do with this
22 information that was filled out in Exhibit 303?

23 A We take the data from this page to -- to be used for
24 all other communication documents, like power of attorney, to
25 create the mortgage, to create the loan.

1 Q Okay. And how soon after you received this
2 application packet and the information that's on page 2 of
3 Exhibit 303 did MEI or CLOA create these MEI mortgages and the
4 UCC documents?

5 A Depending on the processor and depending on all the
6 information that's supplied by the applicants, if everything's
7 correct and there's no missing information, we can prepare
8 everything within one week.

9 Q Okay. So the MEI mortgage and the UCC were prepared
10 within one week?

11 A Yes.

12 Q Thank you. Now, I'm going to ask you to turn to
13 Exhibit 305 in the binder in front of you. And once again the
14 jury won't be able to see this until we talk about it.

15 Do you have it in front of you?

16 A Yes.

17 Q Okay. So please look through Exhibit 305 and tell
18 me when you're done.

19 A Okay.

20 Q Do you recognize Exhibit 305?

21 A I do.

22 Q Okay. And is Exhibit 305 an email that you sent to
23 Anthony Williams that you later forwarded to your own attorney
24 to give to investigators?

25 A Yes.

1 Q Okay. And the attachments are all MEI documents,
2 correct?

3 A Correct.

4 Q And you wrote those attachments -- or the
5 attachment?

6 A This is more the flowchart and I did
7 process -- description of the process of how I understand the
8 process.

9 Q And you asked Anthony Williams to review and approve
10 and adopt those documents, correct?

11 A Yes, based on the email.

12 Q Okay. And did Anthony Williams approve and adopt
13 these documents?

14 A Yes.

15 MR. YATES: Okay. Your Honor, at this time we move
16 to admit Exhibit 305.

17 THE COURT: Any objections?

18 THE DEFENDANT: No objection.

19 THE COURT: Received.

20 (Exhibit 305 received into evidence.)

21 Q (BY MR. YATES:) So I'm going to turn your
22 attention, Ms. Castillo, to the second page of Exhibit 305.
23 And can you please explain to the jury what it is that they're
24 looking at on the second page --

25 THE COURT: They're not looking at anything.

1 MR. YATES: Oh, excuse me. May I publish, Your
2 Honor?

3 THE COURT: Yes, you may.

4 MR. YATES: Thank you.

5 THE WITNESS: I explain what it is?

6 MR. YATES: Yes. Once it's up, please explain to
7 the jury what they're looking at Exhibit --

8 THE WITNESS: They're looking at the descriptive
9 application process from the start to the end. This is how I
10 understand the process is. I did a flowchart and then I
11 translated it into a descriptive where I understand it better.

12 Q (BY MR. YATES:) I'm going to turn to the next page
13 after that, which it looks to be part 2, the recordation
14 process. You see that?

15 A Yes.

16 Q Okay. And on the recordation process there's a
17 reference to at number 7 a power of attorney, a mortgage, and a
18 UCC. Do you see that?

19 A Yes.

20 Q And I believe you just testified that your office
21 could turn that around within one week of the application,
22 correct?

23 A Preparing everything on just the paperwork -- just
24 the processing, yes. But if you have to apply for the UCC, it
25 could -- as long as everything is complete.

1 Q Okay. But your office could turn that around in how
2 long?

3 A Anywhere between one week to two weeks.

4 Q Okay.

5 A Yeah.

6 Q Thank you. Now, have you prior to your work with
7 the CLOA heard of the term private attorney general?

8 A No.

9 Q At a certain point -- well, let me withdraw that.
10 What legal training did you have before joining
11 CLOA?

12 A I don't.

13 Q Any legal education?

14 A No.

15 Q And what legal training did you receive after you
16 joined CLOA?

17 A I didn't have.

18 Q And you understand that foreclosure is a legal
19 process?

20 A Yes.

21 Q I'm going to ask you to turn your attention to
22 Exhibit 306. And do you recognize Exhibit 306?

23 A Yes, it's affirmation and oath of office.

24 Q Okay. And did you sign Exhibit 306?

25 A I did.

1 Q And is 306 a true and correct copy of a document
2 that you signed on or before looks like September 5th, 2013?

3 A Yes.

4 MR. YATES: Your Honor, at this time I move to admit
5 Exhibit 306.

6 THE COURT: Any objection?

7 THE DEFENDANT: No objection.

8 THE COURT: Received.

9 (Exhibit 306 received into evidence.)

10 MR. YATES: May I publish, Your Honor?

11 THE COURT: You may.

12 Q (BY MR. YATES:) Can you please explain to the jury
13 what it is that they are looking at at Exhibit 306?

14 A This is the affirmation of office for private
15 attorney general that was prepared by Mr. Williams.

16 Q And did Mr. Williams give you this document to sign?

17 A Yes.

18 Q What do you understand -- what did Mr. -- move to
19 withdraw that.

20 What did Mr. Williams tell you this document allowed
21 you to do?

22 A That you'll be officially a private attorney general
23 appointed by him.

24 Q And what does that mean?

25 A You can -- you're pretty much -- you protect the

1 interest of the public. But on my own personal understanding
2 is I would be allowed to process all those applications like
3 what we talked earlier.

4 Q Okay. Did you understand that you had any ability
5 to go to court?

6 A Yeah, but I don't.

7 Q Now, I believe you testified that you had also been
8 an MEI client or one of your significant others was an MEI
9 client?

10 A Yes.

11 Q And who was that?

12 A Jeffrey Teixeira, which -- my boyfriend, and I'm
13 planning to do my own after that.

14 Q How far did your boyfriend get in the MEI process?

15 A We went almost 90 percent. I created the UCC and
16 all those documents.

17 Q Okay. And how long did your boyfriend remain in the
18 MEI process?

19 A August, September, October -- about two
20 months-and-a-half.

21 Q And what did Anthony Williams tell your boyfriend
22 about what to do with his existing mortgage prior to --

23 THE DEFENDANT: Objection. Hearsay.

24 THE COURT: Mr. Yates? Well, you're asking for
25 what? Mr. Williams --

1 MR. YATES: Right. It's a party admission.

2 THE COURT: Correct. All right. So overruled.

3 It's an exception to the hearsay rule.

4 Okay. Go ahead.

5 THE WITNESS: Not to pay the current mortgage.

6 Q (BY MR. YATES:) Okay. And what did your boyfriend
7 do in response to Mr. Williams's advice?

8 A Well, he didn't pay for about over two months.

9 Q Okay. And what happened then?

10 A He gets scared 'cause he doesn't want his credit to
11 go down. He's really worried about his credit go down because
12 the banks kept sending him a letter.

13 Q So when he got scared, what did he do?

14 A We fight a lot about it, and I said, "I don't want
15 to have this on my conscience, so you just continue to pay if
16 you feel more comfortable." So he did continue to pay.

17 Q Why did Anthony Williams -- why -- let me withdraw
18 that.

19 Why do you understand your boyfriend needed to stop
20 paying on his current mortgage?

21 THE DEFENDANT: Objection. Speculation.

22 MR. YATES: She worked at the company.

23 THE COURT: Right. You're asking for her
24 understanding --

25 MR. YATES: Correct.

1 THE COURT: -- for the reason?

2 THE WITNESS: My own --

3 THE COURT: Wait. Sorry. Overruled on that basis.

4 So you can only talk about your understanding.

5 THE WITNESS: Sorry. Yes, my own personal
6 understanding is that it wouldn't matter if you pay or not
7 anyway because we're going to transfer that mortgage to
8 Mortgage Enterprise to a different company.

9 Q (BY MR. YATES:) And that was part of the MEI
10 process as you understood it, correct?

11 A Yes.

12 Q And how long were you working at CLOA?

13 A About two months-and-a-half or less than three
14 months.

15 MR. YATES: Thank you, Your Honor. I have no
16 further questions on direct.

17 THE COURT: All right.

18 MR. ISAACSON: Your Honor?

19 THE COURT: Yes.

20 MR. ISAACSON: I believe that there may be reference
21 to a transcript. I have copies for the Court and all the
22 parties. May I distribute those?

23 THE COURT: You may. Has it been given to the
24 government?

25 MR. ISAACSON: I gave copies to them.

1 THE COURT: No. Before has it been given to the
2 government?

3 MR. YATES: We have a copy in discovery. I believe
4 that's what he's referring to.

5 THE COURT: All right. Very good.

6 MR. ISAACSON: I have copies for the witness and for
7 the Court?

8 THE COURT: Yes, please.

9 MR. ISAACSON: Thank you.

10 CROSS-EXAMINATION

11 BY THE DEFENDANT:

12 Q Ms. Castillo?

13 A Hi.

14 Q When did you meet me? What year?

15 A 2013.

16 Q Do you remember about what month?

17 A Probably towards the end of July.

18 Q End of July?

19 A I can't recall the date.

20 THE DEFENDANT: And can I get the Government
21 Exhibit 305, please, be published?

22 THE COURT: All right. You may publish.

23 Q (BY THE DEFENDANT:) Now, Ms. Castillo, the events
24 that we're talking about happened in 2013, so about seven years
25 ago, correct?

1 A Yes.

2 Q So there's some things you probably don't remember
3 the exact dates and times and lengths that things were
4 processed; is that correct?

5 A No.

6 Q On page 2 of the application, okay, he questioned
7 you about the process, when the client filled out the process,
8 that if everything was filled out, that it took about a week to
9 process? You remember answering that it took about a week?

10 A Yeah, just the paper processing.

11 Q Well, he asked you about filing the mortgage. He
12 said after the paperwork was processed, then it would take
13 about a week to create the mortgage and file the mortgage.

14 MR. YATES: Objection. Mischaracterizes the
15 question and the testimony.

16 THE COURT: Overruled.

17 THE WITNESS: My understanding of just processing
18 the paper, not -- not getting the approval from any other
19 bureaus, so just processing, you know, filling up the forms,
20 special power of attorney, UCC can be done in 15 minutes
21 online, things like that.

22 Q (BY THE DEFENDANT:) Okay. Now, do you
23 remember -- okay. On page 2 this is the application process.
24 Now, do you remember how extensive the process was, all the
25 paperwork that were involved?

1 A Yeah.

2 Q And do you remember doing a mortgage process
3 checklist when you listed the pages that I had supplied to you
4 of the documentation of everything that I did? Do you remember
5 creating a page like that?

6 A Uh-huh.

7 Q Would it refresh your memory if I showed you a copy
8 of that process list?

9 A Yes.

10 THE DEFENDANT: Defense Exhibit 2065, page 3. I
11 want to show this to her.

12 THE WITNESS: Is this from this binder?

13 THE COURT: All right. The document's in front of
14 the witness.

15 Okay. Do you have a question for the witness?

16 Q (BY THE DEFENDANT:) You see that process list,
17 Ms. Castillo?

18 A Yes.

19 Q And about how many steps is on that process list
20 sheet?

21 MR. YATES: Objection, Your Honor. This document is
22 not in evidence.

23 THE COURT: Right. So...

24 THE DEFENDANT: I'd like to enter it into evidence.

25 THE COURT: All right. Any objection?

1 MR. YATES: Yes, Your Honor. There's no foundation.

2 THE DEFENDANT: She's the one that actually created
3 the process --

4 THE COURT: So you have to ask her that question.

5 Q (BY THE DEFENDANT:) Ms. Castillo, do you remember
6 doing this process sheet so you could understand the process in
7 order to draft the other form that you drafted?

8 A I remember seeing the Protocol Response and Rep.
9 Responsibly, but I didn't really kind of linger too much on
10 this one 'cause I did make my own understanding of the process.

11 Q That's correct.

12 A I did the flowchart, if you remember.

13 Q Right. But you do remember that mortgage
14 process --

15 A Yeah, I saw this, yeah.

16 THE DEFENDANT: Right. So I would like to enter
17 that into evidence.

18 MR. YATES: Objection, Your Honor. She just said
19 she's seen it. She didn't say she created it.

20 THE COURT: Right. Did you create this document,
21 Ms. Castillo, the one that's in front of you?

22 THE WITNESS: No. This is from him.

23 THE COURT: Okay.

24 THE DEFENDANT: No --

25 THE COURT: So -- all right. So the objection's

1 sustained.

2 So you have to -- for it to come in, you have to either
3 bring somebody who helped create it --

4 THE DEFENDANT: Well, let me ask her this way.

5 THE COURT: Okay. Go ahead.

6 Q (BY THE DEFENDANT:) When I created the mortgage
7 process list, do you see on the right side it says page 2,
8 page 8, page 3? You see that on the side?

9 A Uh-huh.

10 THE COURT: You have to answer yes or no.

11 THE WITNESS: Yes.

12 Q (BY THE DEFENDANT:) Okay. Do you remember doing
13 those page numbers on that checklist so you could do the --
14 revise the process application form?

15 A Yes.

16 THE DEFENDANT: Okay. Now, I would like to enter it
17 into evidence.

18 THE COURT: Okay. So let me just clarify.

19 So, Ms. Castillo, you helped Mr. Williams create this
20 document?

21 THE WITNESS: I didn't. This is from him.

22 THE COURT: Okay.

23 THE WITNESS: This is what he supplies.

24 THE COURT: All right. So what did you do, if
25 anything, that is reflected on this document?

1 THE WITNESS: Well, filled up No. 1, the
2 application. Then you got to collect the initial fee.

3 THE COURT: So did you write those things down?

4 THE WITNESS: I did not.

5 THE COURT: Okay. So what we're trying to find out
6 is what you did, if anything -- and you may not have -- that
7 contributed to this document being created. Is this something
8 that was given to you or is this something that you helped
9 write?

10 THE WITNESS: It was given to me. It was already
11 created.

12 THE COURT: Okay.

13 THE DEFENDANT: Right. So I -- that's what I want
14 her to show on the side she put the page numbers so she could
15 put this -- create this flowchart for her. It's my document
16 and have the page number. She did that so she could do this,
17 make it more easier for her, that's why she put the page
18 numbers --

19 THE COURT: She said she didn't help create this at
20 all, that you gave this to her.

21 THE DEFENDANT: Right, I gave her the document --

22 THE COURT: I'm not in a discussion with you. I'm
23 saying this is what her testimony is thus far, so I can't
24 receive it into evidence. So you might want to confer with
25 Mr. Isaacson.

1 THE DEFENDANT: Okay.

2 Q (BY THE DEFENDANT:) Ms. Castillo, do you recognize
3 this as a form that you used to create the document on that --

4 A This is a checklist that was provided, yes.

5 Q And you used this checklist to create the process
6 application flowchart?

7 A Yeah, just step-by-step process.

8 Q Right. So you did use this document to create this
9 one?

10 A Chronological order.

11 Q Right. Okay. Now, can you --

12 A Wait. Can I say something? Based on this that you
13 had given me, I translated it into my own understanding that
14 was presented earlier by the prosecutor, and that's how I made
15 my own description.

16 THE COURT: Okay. So you used that --

17 THE WITNESS: This.

18 THE COURT: -- to create --

19 THE WITNESS: The flowchart.

20 THE COURT: -- Exhibit 305?

21 THE WITNESS: Yes.

22 THE COURT: Okay. All right. On that basis, I'll
23 receive it into evidence.

24 THE DEFENDANT: Okay.

25 THE COURT: All right.

1 (Exhibit 2065 received into evidence.)

2 THE COURT: So you want to publish?

3 THE DEFENDANT: Yes, I want to publish.

4 THE COURT: Okay. You may publish.

5 Q (BY THE DEFENDANT:) Now, everything on this process
6 list sheet, Ms. Castillo, did you actually see the documents
7 that would have to be filed and sent for each step?

8 A You created all the templates.

9 Q Right. So you saw --

10 A Most of them, yes.

11 Q Right. So you did see all the templates and all the
12 documents that would have to be filed to the different agencies
13 and things like that, correct?

14 A Yes. You have all the templates.

15 Q Okay. Now, on the application, Exhibit 303 -- can I
16 get Exhibit 303 back up?

17 Now, you worked directly with me, correct,
18 Ms. Castillo?

19 A Yes.

20 Q And so you got to see me interact with the clients
21 that would come to the office and things likes that, correct?

22 A The clients that was there, yeah.

23 Q Right. So you saw me interact with the clients, and
24 if they had any questions, I would answer their questions,
25 things like that, correct?

1 A Yes.

2 Q Okay. Now, when you first met me, did I show you
3 documentation and proof of what my process does?

4 A Partial, yes.

5 Q So you saw some documents where I had a client and
6 they had a mortgage and I had that mortgage --

7 MR. YATES: Objection. Testifying.

8 THE DEFENDANT: I'm asking a question.

9 THE COURT: All right. So ask -- overruled. Okay.

10 Q (BY THE DEFENDANT:) So did you see a document that
11 I presented to you of a client that I had that had a mortgage
12 and I had that mortgage deleted off of their credit report?

13 A Yes.

14 Q Okay. And so I also showed you other documentation
15 of things that I did for other clients that were in the
16 mainland that did their mortgages and I fought their
17 foreclosures, correct?

18 A Yes.

19 Q Okay. Now, when you would see me and we would write
20 up a client and they would fill out the application, would they
21 have to sign the whole application and whatever
22 representative --

23 MR. YATES: Objection. Hearsay.

24 THE DEFENDANT: -- would also have to sign?

25 THE COURT: I'm sorry. What's the objection?

1 MR. YATES: Objection. Hearsay.

2 THE COURT: So overruled.

3 Do you have the witness -- I mean, do you have the
4 question before you?

5 THE WITNESS: Okay. So can you repeat it again,
6 please?

7 Q (BY THE DEFENDANT:) When the client would fill out
8 the application, would they have to fill the whole application
9 out, sign it, and whatever rep signed them up would also have
10 to sign it?

11 A You have to sign?

12 Q Right. Like, whoever signed the person up, whatever
13 rep, they would also have to sign with the client, correct?

14 A Yes.

15 Q Okay.

16 A Some of the paperwork.

17 Q Okay. Now, can you turn to page 13 of that
18 Exhibit 303? It's actually -- they got it on 12 and 13.

19 THE COURT: It's not published. Did you want the
20 jury to see this?

21 THE DEFENDANT: Yes, I'd like to publish it.

22 THE COURT: All right. You may.

23 Q (BY THE DEFENDANT:) Can you see where it says
24 Foreclosure Disclosure?

25 A Hmm, it starts Terms and Conditions.

1 Q Yes. Well, they got it at the top -- part of the
2 page 6 and the top of page 7.

3 A Okay.

4 Q And it says Term and Condition. Now, most of the
5 clients that came to the office, Ms. Castillo, were most of
6 those people in foreclosure?

7 A The one that I have referred to you, Jeffrey is not
8 in foreclosure. Some of them are.

9 Q Okay. Let's talk about your boyfriend Jeffrey.
10 Now, when you signed up, he wasn't in foreclosure, correct?

11 A He wasn't. He's not.

12 Q Right. And so do you remember why I couldn't finish
13 his process?

14 A He supposed to be behind with his payment.

15 Q What I'm saying, do you remember why I couldn't
16 finish? Do you remember me getting incarcerated in
17 September 2013?

18 A Yes.

19 Q Okay. And do you remember what I was falsely
20 charged with?

21 A Yes.

22 Q And what was that charge?

23 A Nothing to do with Common Law Office.

24 Q No. Do you remember when you visit me at OCCC, what
25 they blasted my name over the newspaper? Do you remember what

1 the charges were?

2 A Not hundred percent, but it's about sex assault or
3 something.

4 Q Right. So you remember it was rape and child
5 molestation that I was falsely charged with?

6 A Yes.

7 Q Okay. Now, do you remember coming to my extradition
8 hearing for to be extradited back to the state of Georgia that
9 the FBI had charged me with? Do you remember that? Remember
10 being present at the extradition hearing?

11 A Could you say what date is that? What month?

12 Q It was -- it was about September 18th or 19th, 2013.
13 Do you remember that?

14 A I could recall I went to one of your hearing, yes.

15 Q Okay.

16 A But I'm not sure if that's one.

17 Q That was the hearing. So at this hearing were you
18 at the part of the hearing to where the FBI tried to fake my
19 fingerprints? Were you at that hearing?

20 A Yes, that's the hearing.

21 Q Okay. And after they denied my extradition and I
22 was at OCCC, did you come to visit me on several occasions?

23 A As you requested.

24 Q Right. And so when you came to visit me, did I tell
25 you about, you know, making sure that the bills were being

1 paid, make sure that the reps that was owed be paid and things
2 like that? Did we discuss that?

3 A Yes.

4 Q Okay. And so at that time did I had just get
5 custody of my 11-year-old son?

6 A Yes. I was taking care of him for a while.

7 Q Right. Because I was incarcerated, correct?

8 A Yes.

9 Q Okay. And so after I was incarcerated, there was a
10 kind of like a little tumult in the organization; it was
11 kind -- it got chaotic after I went to jail, correct?

12 A Yes.

13 Q And some of the people started doing things that
14 weren't authorized, correct?

15 A Yes.

16 Q And when you came to visit me, I told you that you
17 were probably the only one I could trust because I saw that you
18 was a woman of integrity and honesty; is that correct?

19 A Yes.

20 Q And so I put you over the account, put you over the
21 operation while I was incarcerated, correct?

22 A Yes.

23 Q And then you had to resign because of what some of
24 the other employees was putting out lies and rumors and things
25 like that, correct?

1 A Yeah.

2 Q Okay. And one of the things -- one of the rumors
3 they put out was -- was it that I placed you over the account
4 because I had a relationship with you?

5 A Yes.

6 Q And was that true, Ms. Castillo?

7 A No.

8 Q Okay. Had I ever been improper with you?

9 A No.

10 Q Have I ever disrespected you in any type of way?

11 A No.

12 Q Did I always show myself professional and as a
13 gentleman around you and around others you saw me with?

14 A Yes, otherwise I wouldn't work for you.

15 Q Right. And so after I got illegally incarcerated,
16 after you started visiting me, do you remember me telling you
17 not to come visit me no more because they going to try to
18 slander your name?

19 A Hmm, yeah.

20 Q And so I did that to make sure that they didn't try
21 to slander your name the way they did with mine in the
22 newspaper with this false charge.

23 Now, when the application -- I want to go back to
24 the application, the page on the foreclosure disclosure. Can
25 you read the term and condition that everyone had to sign?

1 A Should I read it?

2 Q Yes, ma'am.

3 A The entire thing?

4 Q Yes, term and condition, yes, ma'am.

5 A (Reading:) "This contract agreement is predicated
6 upon pre-foreclosure status and pre-judicial" --

7 THE COURT: All right. I'm sorry. I'm not
8 going -- it's in evidence, so if there's something that you'd
9 like her to --

10 THE DEFENDANT: Well, it's specific because what he
11 had asked her about the --

12 THE COURT: No, no. So ask her a question about it,
13 but she's not going to sit here and read it into evidence. If
14 you want to make it larger, 'cause it is rather small.

15 THE DEFENDANT: I need to make it larger.

16 THE COURT: Okay. So that you can ask her about
17 certain parts of it. Can we enlarge it?

18 THE DEFENDANT: Yeah, 'cause I don't know how to
19 enlarge it.

20 THE COURT: All right. What part of this did you
21 want to ask her a question --

22 THE DEFENDANT: Well, I'ma ask on the whole thing
23 'cause this is the basis of the contract.

24 Q (BY THE DEFENDANT:) Now, based on the foreclosure
25 disclosure that every client had to sign, the guarantee that he

1 previously showed you was predicated on, one, the client not
2 being in foreclosure; is that correct? That was the homeowner
3 guarantee was if they weren't in foreclosure or pre-foreclosure
4 or going into foreclosure; is that correct?

5 A Yeah.

6 Q And on this contract, it stated that the only
7 guarantee that Common Law Office of America makes is that we
8 will execute our judiciary duties to the best of our abilities,
9 correct?

10 A Yes.

11 Q Okay. So the actual guarantee was only for people
12 that weren't in foreclosure, nearing foreclosure, or had any,
13 you know, thing about being in foreclosure or any jeopardy of
14 being in foreclosure, correct?

15 A Yeah.

16 Q Okay. Now -- and everybody had to sign this
17 application and this form, or the application, right?

18 A Yes.

19 Q Okay. Now, earlier last week the government said
20 that I didn't give any refunds to anyone that asked for a
21 refund. Do you remember --

22 MR. YATES: Objection. Out of scope.

23 THE COURT: This is part of his -- I'm also allowing
24 him to do his direct, so overruled.

25 Go ahead.

1 Q (BY THE DEFENDANT:) Do you remember me approving
2 you to refund a Dr. McGaff application fee because after I got
3 locked up, a lot of people got -- they panicked and they didn't
4 want nobody else to do the process unless it was me? Do you
5 remember that?

6 A What's his name?

7 Q It's a female, Dr. Jade McGaff?

8 A From another island?

9 Q Yeah, she was from the Big Island.

10 A How much was that?

11 Q It was like \$500. Do you remember that?

12 A Yes.

13 THE DEFENDANT: Okay. I'd like to put in
14 exhibit -- Defense Exhibit 2144. And I'd like to publish it?

15 THE COURT: Okay. Any objection to the court
16 receiving this into evidence?

17 MR. YATES: One moment, Your Honor. I haven't seen
18 the document yet. Can we have the number read again, please?

19 THE DEFENDANT: Exhibit 2144, No. 1, 00001.

20 THE COURT: Is it on your screen?

21 MR. YATES: We don't have that document in our
22 binders, Your Honor.

23 THE COURT: Okay. Move on to another document then
24 until you get it to them.

25 THE DEFENDANT: Can I get Government Exhibit 304?

1 Q (BY THE DEFENDANT:) Can you see that document,
2 Ms. Castillo?

3 A Yes.

4 Q And are you familiar with this document, the
5 qualified written request, QWR?

6 A Yeah.

7 Q Okay. Is this a normal document that was sent on
8 behalf of clients?

9 MR. YATES: Objection, Your Honor. This document's
10 not in evidence.

11 THE COURT: Right. I think he's trying to lay the
12 foundation.

13 THE DEFENDANT: This is the government's exhibit
14 also. It's not my exhibit.

15 THE COURT: Yes. Well, it's an exhibit and so it's
16 not in evidence, so if you can ask her about it. So she said,
17 "Yeah." So what's your next question?

18 Q (BY THE DEFENDANT:) Okay. So this is the document
19 that every client would be drafted for to send to the mortgage
20 company or whoever the bank was that did the alleged loan,
21 correct?

22 A Yes, correct.

23 Q And do you remember how long it usually took for the
24 bank to respond or if they ever responded to the qualified
25 written request?

1 A It takes a long time for them to respond or they
2 don't respond at all.

3 Q Right. And so if the -- can you turn to page --
4 page 15 of the exhibit?

5 And I'd like to publish so the jury can see it?

6 MR. YATES: Objection, Your Honor. It's clear that
7 the defendant is not laying a foundation for this document.
8 He's asking about the substance of it and this document is not
9 in evidence and there's no evidence that Ms. Castillo was
10 involved in the drafting of this document or relied upon it in
11 any way.

12 THE COURT: All right. So it's not in evidence, so
13 we can't publish it.

14 Q (BY THE DEFENDANT:) Okay. Ms. Castillo, is the
15 qualified written request -- when you worked with me, did you
16 regularly send this letter out on behalf of clients?

17 A Yes, with the template, just put their name.

18 Q Right. So you sent a lot of qualified written
19 request on behalf of clients, correct?

20 THE COURT: That's what she just said. Ask the next
21 question. What are you trying to do with this document? You
22 want to receive it into evidence?

23 THE DEFENDANT: Yes, I want to receive it in
24 evidence.

25 THE COURT: All right. So she said she's familiar

1 with it, that first page. Is she familiar with the whole
2 document?

3 Q (BY THE DEFENDANT:) Are you familiar with the whole
4 document, Ms. Castillo?

5 A Yes.

6 THE COURT: So this was sent in the regular course
7 of business while you were working for Mr. Williams? What's
8 your answer?

9 THE WITNESS: Yes. There's a template, so it's easy
10 to prepare this.

11 THE COURT: All right. And would you prepare this
12 and send it out?

13 THE WITNESS: I prepared some of them.

14 THE COURT: All right. And does this look the same
15 or similar condition as the ones that you sent out?

16 THE WITNESS: This is from the government --

17 THE COURT: No, no, the one that's in front of you,
18 that document. Does it look the same as the ones that you
19 would send out on behalf of Mr. --

20 THE WITNESS: Yes, it is.

21 THE COURT: All right. So I'll receive it into
22 evidence.

23 (Exhibit 304 received into evidence.)

24 THE COURT: What page do you want to publish?

25 THE DEFENDANT: I want to publish the whole

1 document, but right now page 15.

2 THE COURT: So you may publish. All right. So
3 page 1 is now before the jury.

4 THE DEFENDANT: Page 15.

5 Q (BY THE DEFENDANT:) Okay. Ms. Castillo, do you see
6 where it says, "Default provisions under this qualified written
7 request"?

8 A Yes.

9 Q And in that default provision, was there a
10 stipulation that if the bank or the mortgage company didn't
11 respond in the allotted time, then that would grant the
12 homeowner the right to rescind the contract and have like a UCC
13 or any type of financing statement or mortgage filed on behalf
14 of the client?

15 A Can you point out what portion this paper it is?

16 Q Page -- paragraph No. 4.

17 THE COURT: There is no paragraph numbered 4 on that
18 page that --

19 THE DEFENDANT: Well, the next page.

20 THE COURT: No. Then you have to point it out to
21 her.

22 THE DEFENDANT: Page 16, I'm sorry.

23 THE WITNESS: Page 16?

24 THE DEFENDANT: Yeah. Number 4 and number 6.

25 THE WITNESS: Okay. Are we looking -- this is

1 page 14 of 17 that you have.

2 THE DEFENDANT: Well, here are page 16. It's
3 paragraph 4 and paragraph 6.

4 THE COURT: Okay. If you look at the screen, I
5 believe -- you want her to look at paragraph numbered 4 and 6?

6 THE DEFENDANT: And 6, right.

7 THE COURT: Okay.

8 THE WITNESS: Number 4?

9 THE COURT: And 6.

10 THE WITNESS: Number 4 is something to do with
11 filing of UCC.

12 Q (BY THE DEFENDANT:) Yes. Number 4 and number
13 6 -- paragraph 4, yes. Did you read paragraph 4 and
14 paragraph 6?

15 THE COURT: Read them to yourself and then he's
16 going to ask you a question.

17 THE WITNESS: Okay. I read it.

18 Q (BY THE DEFENDANT:) Okay. So according to the
19 qualified written request, paragraph 4 and 6, does it allow for
20 a UCC financing statement to be filed if the bank did not
21 answer?

22 MR. YATES: Objection. Document speaks for itself.

23 THE COURT: All right. Overruled.

24 THE WITNESS: There's --

25 THE COURT: What's your understanding of 4 and 6,

1 paragraphs 4 and 6? What's your understanding?

2 THE WITNESS: It just -- you can file the UCC on
3 Number 4 and the loan number could be set-off because of
4 wrongful registration. It didn't specify the timeline or the
5 dates or how long you give them.

6 Q (BY THE DEFENDANT:) Right. In the QWR -- 'cause we
7 can't go into it -- but do you remember it was approximately
8 60-day time limit for the bank to respond? Do you
9 remember -- do you kind of remember the time frame?

10 A I know you said some dates, but I can't recall.

11 Q Okay. And now would the QWR have to be sent in all
12 cases to every client's bank or mortgage company?

13 A Yes.

14 Q Okay. So every client, once the QWR was sent to the
15 client and the bank didn't respond, then was that when the
16 mortgage documents would be created?

17 A Yes.

18 Q Okay. Now, who did I have you send actual copies of
19 the qualified written request to? Do you remember?

20 A I did one for Candara which is right here in the
21 exhibit.

22 Q Do you remember the agencies I would have you send
23 copies of the QWR to?

24 A Agencies?

25 Q Yes.

1 A Aside from the bank or where the mortgage is?

2 Q Uh-huh. Those are page 18 of the QWR.

3 A Federal Trade Commission, Office of Housing
4 Enterprise, Office of RESPA.

5 Q Okay.

6 A So it's there on the page 17.

7 Q Okay. And so you would send copies to those
8 governmental agencies?

9 A Yes.

10 Q Okay. And do you remember I would have you also
11 send documents of what we sent on behalf of clients to the
12 Department of Justice and the FBI?

13 A It's not on here.

14 Q But do you remember me --

15 A I recall you said that, but I can't remember if I
16 did that.

17 Q Okay. Do you remember why you asked me why did I do
18 that, why did I send copies to the Department of Justice and
19 FBI? Do you remember asking me why I did that?

20 A To let them know that --

21 THE COURT: Do you remember asking him that?

22 THE WITNESS: Yes.

23 THE COURT: Do you remember? Yes. Okay.

24 Next question.

25 Q (BY THE DEFENDANT:) Okay. And do you remember what

1 my response was and what I told you why I sent everything that
2 I do to the Department of Justice and FBI?

3 A I can't completely remember. It's been a while.

4 Q Okay. Do you remember me telling you that 'cause I
5 had nothing to hide? Do you now remember?

6 MR. YATES: Objection. Testifying.

7 THE COURT: Overruled.

8 Do you remember him telling you that?

9 THE WITNESS: I can't remember your answer. I'm so
10 sorry.

11 Q (BY THE DEFENDANT:) If I showed you a deposition,
12 would that refresh your memory?

13 THE COURT: If he showed you your prior testimony in
14 a deposition on that same topic of what he told you, would that
15 help you remember?

16 THE WITNESS: Yes.

17 THE COURT: Okay. What page do you want her to take
18 a look at?

19 THE DEFENDANT: Okay. Let me find it. It's a
20 really big deposition.

21 THE COURT: Okay. Give you another minute and if
22 you can't find it, then we'll go to the next topic you want to
23 question her on and you can come back to this after you find
24 it --

25 THE DEFENDANT: Okay.

1 THE COURT: -- in the break.

2 THE WITNESS: Can I help him?

3 THE COURT: No. Okay. Why don't you go to another
4 area then and then you can find it during the break.

5 Q (BY THE DEFENDANT:) Okay. When you did the
6 previous deposition, Ms. Castillo, and you were questioned,
7 "Would you consider this process fraud?" do you remember your
8 answer?

9 A I was questioned on Friday?

10 Q No. That was the deposition. You had did a
11 deposition and the attorney had asked you, "Would you consider
12 my process fraud?" Do you remember what your answer was?

13 A When did this deposition happen? What date did I
14 have this?

15 Q June -- June 22nd, 2015, was I think Myles Breiner.
16 Your attorney was Myles Breiner.

17 A I can't recall everything I said in this deposition,
18 sorry.

19 Q Okay. Can you turn to page 83 of the deposition?

20 THE COURT: Do you have a line you'd like her to
21 take a look at?

22 THE DEFENDANT: Yeah, it's 1, 2, 3 -- well, the
23 question's on the fourth line and her answer's on the fifth
24 line.

25 THE COURT: So if you take a look at page 83, lines

1 4 through 8. You can take a look at that, read it to yourself
2 and let us know if that refreshes your recollection.

3 Okay. Have you had a chance to read it?

4 THE WITNESS: Yes.

5 THE COURT: All right. Does that refresh your
6 recollection that you gave that answer?

7 THE WITNESS: Yes.

8 THE COURT: All right. Next question.

9 Q (BY THE DEFENDANT:) And what was the answer that
10 you gave, Ms. Castillo?

11 A I said, "I wouldn't say it's a fraud."

12 Q Thank you. And when I would show you -- before I
13 hired you I showed you an extensive amount of documents,
14 correct, that I had did on behalf of clients and things like
15 that and proof of my process, correct?

16 A Yes, from the mainland.

17 Q Right, from the mainland. And do you remember one
18 of them was that I had to get the mortgage approved before I
19 could have it filed, you know? Do you remember that?

20 A Yes.

21 THE DEFENDANT: Okay. Can I enter in
22 exhibit -- Defense Exhibit 2080?

23 MR. YATES: I'm sorry. Could we get a page number,
24 Your Honor?

25 THE DEFENDANT: Page No. 91.

1 MR. YATES: Okay. We do object to this exhibit on
2 numerous grounds. Primarily I guess at the outset we'll note
3 that Defense Exhibit 2080 appears to be a 203-page document,
4 all of which -- or which comprise numerous unrelated documents
5 which don't appear to have any connection or relationship to
6 one another.

7 THE COURT: He hasn't asked for it to be admitted
8 yet.

9 MR. YATES: Yes, Your Honor.

10 THE COURT: Okay. Ask your question.

11 Q (BY THE DEFENDANT:) Ms. Castillo, do you remember
12 this one of the forms from the Anti-Predatory Lending Database
13 that gave my company a certificate of exemption?

14 A Can you show --

15 THE COURT: Well, first of all, you got to ask if
16 she's ever seen it before.

17 Q (BY THE DEFENDANT:) Do you remember seeing this
18 document?

19 A If you show me the exact document, then I can
20 confirm.

21 THE COURT: Yes, he's showing you the document. Is
22 that the document? Have you seen that document ever before?

23 THE WITNESS: Yes.

24 THE COURT: Okay. All right. So she's seen it
25 before. All right.

1 Q (BY THE DEFENDANT:) Was that one of the documents I
2 showed you to prove that my mortgage had already been
3 scrutinized, my company had been scrutinized, and that's why I
4 went through the Anti-Predatory Lending Database?

5 A Yes.

6 THE DEFENDANT: Okay. I'd like to admit this into
7 evidence.

8 THE COURT: Okay. So your objection?

9 MR. YATES: Well, numerous. As I stated before,
10 Exhibit 2080 appears to be a 280 -- excuse me -- 203-page
11 document comprising numerous unrelated documents that bear no
12 relationship to one another. The particular document
13 referenced by Mr. Williams, which is 2080-91 does not have a
14 proper foundation. It appears that Ms. Castillo has only
15 testified that she's seen this document and that Mr. Williams
16 has referred to this document in a previous conversation with
17 her.

18 THE COURT: All right. So this page, the -- can
19 come into evidence, but nothing else can.

20 THE DEFENDANT: Okay.

21 THE COURT: 'Cause she hasn't said -- you know,
22 testified about any other page.

23 THE DEFENDANT: Right.

24 THE COURT: So what page number is this of
25 Document 2080?

1 THE DEFENDANT: It's 91.

2 THE COURT: All right. So page 91 can come into
3 evidence, but the rest, the objection is sustained.

4 THE DEFENDANT: Okay.

5 THE COURT: All right. What's your next question?

6 (Exhibit 2080-91 received into evidence.)

7 Q (BY THE DEFENDANT:) And on the document, who
8 does -- what company is it listed that has the exemption? It
9 says, "Lender." What company name is that?

10 THE COURT: Well, she doesn't know that there's an
11 exemption. She's just seen that.

12 THE DEFENDANT: Well --

13 THE COURT: You can ask her what's listed on it.

14 Q (BY THE DEFENDANT:) Okay. What is the name of this
15 form?

16 A Certificate of Exemption.

17 Q Okay. And what's the name of the company that's
18 listed on there as the lender?

19 A Mortgage Enterprise Investments.

20 Q And am I the owner of Mortgage Enterprise
21 Investments? Am I the owner?

22 A Then, I don't know then. But now it's different
23 story. So back then I didn't know if you own it.

24 Q You didn't know I owned Mortgage Enterprise
25 Investments?

1 A Uh-huh.

2 Q What position did you think I had in Mortgage
3 Enterprise Investments?

4 THE COURT: Wait. What time are we talking about?

5 THE DEFENDANT: '13.

6 THE COURT: In 2013.

7 THE WITNESS: Back when I was working I was more
8 focussed on the CLOA.

9 Q (BY THE DEFENDANT:) Right. Common Law Office of
10 America we did the legal side. But the mortgage, like the MEI
11 application, the Mortgage Enterprise Investment application --

12 THE COURT: Wait, wait. What time frame? Are you
13 asking at the time that this document was created --

14 THE DEFENDANT: Yes.

15 THE COURT: -- if you were -- well, it's dated
16 before 2013, or it has a date.

17 THE DEFENDANT: Well, it's 2012 --

18 THE COURT: So in 2012 did you know whether or not
19 Mr. Williams owned Mortgage Enterprise Investments?

20 THE WITNESS: No.

21 THE COURT: Okay.

22 THE DEFENDANT: Well, she didn't --

23 THE COURT: She didn't know in 2012, so ask her
24 another question.

25 Q (BY THE DEFENDANT:) Well, in 2013 when you met me,

1 did you know that I was the owner of Common Law Office of
2 America and Mortgage Enterprise Investments?

3 A No.

4 Q You didn't know I was the owner of either one of
5 them?

6 A Only on the later part.

7 Q When did you find out that I was the owner?

8 A Months later.

9 Q How did you find out I was the owner?

10 A From the people that worked for you. I asked them.

11 Q Okay. So you don't remember me telling you that I
12 was the CEO and owner and my mom was the CFO?

13 A I don't recall.

14 Q You don't recall?

15 On the -- can we publish the exhibit -- the refund
16 exhibit I just had?

17 MR. ISAACSON: One moment, Your Honor, if I may.

18 THE COURT: Sure, you may.

19 THE DEFENDANT: The exhibit I had just put up with
20 the refund exhibit. I can't find it.

21 MR. ISAACSON: Mr. Williams.

22 THE DEFENDANT: They say they didn't have the 2144.

23 MR. ISAACSON: Your Honor, may I interject for just
24 a moment?

25 THE COURT: Yes.

1 MR. ISAACSON: There's an issue about production of
2 an exhibit. Would this be a good time to take a quick break
3 just --

4 THE COURT: Yeah, why don't we take an early recess
5 so give you an opportunity to get organized.

6 All right. So ladies and gentlemen, we're going to take
7 our first morning recess for 15 minutes. If you would leave
8 your iPads and your note pads behind, and of course, don't
9 discuss the case with anyone or allow anyone to discuss it with
10 you. Don't research or investigate the witnesses or issues in
11 any way, and of course don't go on any social media about the
12 trial.

13 Please rise for the jury. They're on a 15-minute recess
14 as are we.

15 (A recess was taken.)

16 (Open court in the presence of the jury.)

17 THE COURT: The record will reflect the presence of
18 our ladies and gentlemen of the jury, counsel, Mr. Williams.

19 Mr. Williams, your witness. Ms. Castillo's on the stand.

20 Q (BY THE DEFENDANT:) Ms. Castillo, earlier the
21 prosecutor had questioned you about the private attorney
22 general oath that I had you sign, correct?

23 A Yes.

24 Q And when I told you what a private attorney general
25 is and the duty, what did I explain to you what a private

1 attorney general is?

2 A To protect the interest of the public.

3 Q Right. Did I tell you that a private attorney
4 general is licensed by the Hawaii bar?

5 A No.

6 Q Okay. Did I tell any clients in your presence that
7 I was a licensed attorney or that I was a member of the bar?

8 A No.

9 Q Do you remember signing an attorney in fact
10 acceptance form?

11 A Yes.

12 Q Okay. Do you remember what that form was for and
13 why I had you sign that form?

14 A As power of attorney.

15 Q No, that's different. If I showed you, would it
16 refresh your memory?

17 A Yes.

18 THE DEFENDANT: Government Exhibit 302, please.

19 Q (BY THE DEFENDANT:) Can you see it?

20 Can you highlight the wording? Can I --

21 THE COURT: Do you want it highlighted?

22 THE DEFENDANT: Make it bigger.

23 THE COURT: Yeah.

24 THE DEFENDANT: So I could --

25 THE COURT: Did you want it published?

1 THE DEFENDANT: Yes.

2 MR. YATES: I don't believe this is in evidence,
3 Your Honor.

4 THE COURT: 302?

5 THE DEFENDANT: 302. Is that in evidence?

6 THE COURTROOM MANAGER: It is not.

7 THE COURT: It is not in evidence, okay.

8 MR. SORENSON: Your Honor, we'll stipulate this in.

9 THE COURT: You stipulate?

10 MR. SORENSON: Yeah.

11 THE COURT: Okay. Received.

12 (Exhibit 302 received into evidence.)

13 THE COURT: Do you wish to publish?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. You may publish.

16 Q (BY THE DEFENDANT:) Okay. Ms. Castillo, is that
17 your signature?

18 A Yes.

19 Q And you've already read the contents of the document
20 that you signed already?

21 A Yes.

22 Q Okay. Now, does it say that you're not a bar
23 attorney?

24 A Yes.

25 Q Does it say that you do not hold a bar card?

1 A Yes.

2 Q And that you don't have any license or certification
3 from the bar association?

4 A Yes.

5 Q And does it state that you will always act with
6 integrity and honesty and not defraud the company or the
7 American people?

8 A Yes.

9 Q And was this a form that I had the other employees
10 also sign?

11 A Yes.

12 Q Okay. Now, on the application, do you remember --
13 because some of the reps that I had hired were overcharging
14 people and collecting money without giving them receipt, like
15 collecting cash? Do you remember that?

16 A Yes.

17 Q Okay. And do you remember that you had to -- I had
18 you make a form to put on top of the application because of
19 some of the things that they were doing?

20 A Yes.

21 THE DEFENDANT: Okay. And I'd like to show her
22 this, Exhibit 2070, page 10.

23 THE COURT: Is that in evidence?

24 THE DEFENDANT: Not yet.

25 THE COURT: Okay. So we're going to put that

1 document in front of you, Ms. Castillo.

2 THE DEFENDANT: It's actually 2070-10 and -11.

3 Q (BY THE DEFENDANT:) Do you remember me having you
4 draft this cover letter for all the applications, Ms. Castillo?

5 A Where's the cover letter?

6 Q It says -- it's the top cover of Client's
7 Application. Can you see it?

8 A Yes. You created this and it's already in template.

9 Q All right. And so this had to be placed on every
10 application because of what some of the other reps that I had
11 to fire were doing?

12 A Yeah.

13 Q Okay. And so if anyone was being overcharged, I had
14 put on this cover letter that they need to call my office
15 immediately, correct?

16 A Yes.

17 Q Okay. And on the next page, can you see that?

18 A Blurry.

19 Q Can you see it now?

20 A Yes.

21 Q And were those instructions to the homeowner to
22 notify them of what document that we would need in order to
23 begin their process?

24 MR. YATES: Objection, Your Honor. These documents
25 are not in evidence.

1 THE COURT: Correct. So he's asking her questions
2 about it, if she's familiar with it.

3 THE WITNESS: Yeah.

4 THE COURT: So what's your objection?

5 MR. YATES: Your Honor, it appeared that Anthony
6 Williams was asking the defendant to verify facts about the
7 documents -- rather, the witness to verify facts about the
8 document, to testify off of the document when the document was
9 not in evidence.

10 THE COURT: So I don't see what the legal -- what's
11 your legal objection? Is it hearsay? Is it not relevant?

12 MR. YATES: It's not in evidence and there's no
13 foundation for her to testify to this document.

14 THE COURT: Well, she said she's familiar with the
15 document. This is a document that she used when she was
16 communicating to clients. So overruled.

17 All right. What's your next question?

18 Q (BY THE DEFENDANT:) Okay. So once the client would
19 give -- get this document, they would have to provide all the
20 documents in order for us to begin the process, correct?

21 A Yes.

22 Q Now, were there instances where some of the reps
23 weren't getting all the proper documentation?

24 A Yeah.

25 Q Okay. And are you familiar with some of those

1 former employees? Do you recognize Edna Franco?

2 A Yes.

3 Q And you familiar with Henry Malinay?

4 A Yes.

5 Q And also are you familiar with Rowena Valdez?

6 A Yes.

7 THE DEFENDANT: Okay. I'd like to move this
8 document into evidence.

9 THE COURT: All right. Any objection?

10 MR. YATES: Yes, Your Honor. This -- all that
11 Mr. Williams has established is that he's given this document
12 to the witness and that the witness has used this. But this
13 appears to be the defendant's own documents and the defendant's
14 own statements which is hearsay as to him.

15 THE COURT: All right. Sustained.

16 THE DEFENDANT: Well, this is the document that she
17 would -- all of 'em would put on top of the application. This
18 is that she would -- you know, when she signed somebody up, you
19 have to put this, so --

20 THE COURT: I understand, but she didn't indicate
21 that she created the document, that she had any input into the
22 document. So -- or you can establish that it was commonly
23 routinely used --

24 THE DEFENDANT: Right.

25 THE COURT: -- in the course of the business, which

1 you haven't done that, so that's why he's objected.

2 Q (BY THE DEFENDANT:) Ms. Castillo, is this form
3 commonly used and put on every application after I found out
4 what some of the reps was doing? Was this a normal procedure
5 to make sure that this cover page was placed on all
6 applications?

7 A Yes.

8 THE DEFENDANT: Okay. I would like to move it into
9 evidence.

10 THE COURT: All right. Any objection?

11 MR. YATES: Nothing further, Your Honor.

12 THE COURT: All right. Received.

13 (Exhibit 2070 received into evidence.)

14 Q (BY THE DEFENDANT:) Now, do you remember doing this
15 format for this letter, Ms. Castillo, based on my mortgage
16 process checklist?

17 A Doing this format?

18 Q Yes.

19 A This is already printed when you gave it to us, so
20 it's just -- I didn't type it.

21 Q You don't remember drafting this based on the
22 checklist that I had given you?

23 A Can I see the bottom? I can't recall, but --

24 THE DEFENDANT: Okay. I want to put up Defense
25 Exhibit 2144 'cause we didn't get to that one.

1 Q (BY THE DEFENDANT:) And do you recognize this
2 document, Ms. Castillo?

3 A Yes.

4 Q And what is this document?

5 A Refund to Jade McGaff.

6 Q Okay. And whose bank account did this refund come
7 through?

8 A Coming from mine, personal company account.

9 Q All right. And do you remember why you had to pay
10 it from your personal account at that time?

11 A I remember the lady was upset. She wants her
12 money -- her refund back.

13 Q Right. What I'm saying, do you remember why you had
14 to take it out of your account instead of the MEI account?

15 A When the memo said, "Reimbursement approved by
16 Barbara."

17 Q Correct. Right. So my mother was going to
18 reimburse you money that you refunded to this client that
19 wanted a refund 'cause I had got incarcerated, correct?

20 A Yes.

21 Q Okay. And the date was -- what's the date on the
22 refund?

23 A October 14, 2013.

24 Q And that was approximately a month after I had got
25 illegally incarcerated, correct?

1 A Yes.

2 Q Okay. And do you know a woman named Rosy Thomas?

3 A Yes.

4 Q Okay. Who is Ms. Thomas?

5 A She was a friend of mine and a client.

6 THE DEFENDANT: Okay. Oh, can I enter this into

7 evidence? I'm sorry.

8 THE COURT: Any objection?

9 MR. YATES: No objection.

10 THE COURT: All right. Received.

11 (Exhibit 2144 received into evidence.)

12 Q (BY THE DEFENDANT:) I'm sorry. Who was Ms. Rosy

13 Thomas?

14 A She's a friend and a client for CLOA.

15 Q So she became a client of mine. And do you remember

16 some of the things I assisted her with?

17 A Yes.

18 Q What was some of the things?

19 A IRS.

20 Q IRS. Did she tell you what I did for her when the

21 IRS came harassing her? Do you remember?

22 A I don't recall. I know you wrote a letter.

23 Q Okay. Do you remember speaking with her after I

24 wrote the letter and what she said after when I wrote the

25 letter what happened?

1 A I can't remember.

2 Q Can't remember. Do you remember that I assisted her
3 with her foreclosure?

4 A Yes, that was the application for.

5 Q Okay. And was it for her and also her mother's
6 house?

7 A Yes.

8 Q Okay. And do you remember when she signed up, like,
9 what year?

10 A 2013.

11 Q 2013? And have you spoken to her lately?

12 A Not in years.

13 Q So how long has it been since you had any contact
14 with her?

15 A Over a year.

16 Q Over a year? So the last time you talked to her,
17 did she notify you that I still have her in her home with the
18 documents that I filed on her behalf?

19 A I don't recall she mention.

20 Q You don't recall that she mentioned that to you?

21 A It's been a while.

22 Q Okay. So, Ms. Castillo, did I work long hours to
23 assist my clients?

24 A Yes.

25 Q Give me approximately how late did sometimes I would

1 usually be in the office working.

2 A Past midnight.

3 Q Past midnight. And was there times that you had to
4 literally get me out the office just to take a break?

5 A Yes.

6 Q And why did you want to do that?

7 A You worked too long and I'm tired. I want to go
8 home.

9 Q So when I would work on clients' files, did
10 I -- would I show up to court for clients that would have a
11 court hearing?

12 A Yes.

13 Q Okay. Did you see any of the videos that I would
14 post when I could go to the court and assist some of my
15 clients?

16 A Yes.

17 Q Did you see any of the videos when I had to stop a
18 sheriff from kicking out some clients of their property?

19 A Yes.

20 Q Okay. Do you remember filing a cease and desist
21 letters as the normal routine practice of the Common Law Office
22 of America on behalf of clients?

23 A I remember.

24 Q A cease and desist letter? And do you remember us
25 filing FDCPA which is the Federal Debt Collection Practice Act

1 letter also?

2 A Yes.

3 Q Do you remember what the laws were that I put in
4 that letter regarding debt collector calling after we've
5 notified them to cease and desist? Do you remember that?

6 A Vaguely.

7 Q Okay. Do you remember that one of the provisions of
8 the FDCPA and the TCPA is that if after you've notified them
9 and they call you again, that they would be fined a thousand
10 dollars per violation? Do you remember that?

11 A Yes.

12 Q Okay. And that's -- that was one of the letters
13 that we routinely sent when we would get a client and mail
14 letters out to their lenders and banks, correct?

15 A Yes.

16 Q Okay. Now is the process a small process or is it a
17 lot of work to do a client's paperwork?

18 A A lot of work.

19 Q And do you remember when I had to fire the people
20 that were doing the wrong things that we had added workload
21 because I had to have you do a lot of things that they were
22 supposed to do?

23 A Yes.

24 Q Okay. And so it put a undue burden, more paperwork
25 than normal would have to do, but we had to do it in order to

1 save these people from foreclosure, correct?

2 A Yes.

3 Q Okay. Ms. Castillo, your time with me, you had a
4 deposition. You had testified that you felt that I was a very
5 spiritual man; is that correct?

6 A Yes.

7 Q And you understood that I believed in the Bible
8 wholeheartedly, correct?

9 A Yes.

10 Q And I also knew that you believed in the Bible
11 wholeheartedly, correct?

12 A Yes.

13 Q And is that the principals that I built my company
14 around that you saw how I conducted my business and myself?

15 A Yes.

16 THE DEFENDANT: All right. Thank you. I have no
17 more questions.

18 THE COURT: Any redirect?

19 MR. YATES: Yes, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. YATES:

22 Q Now, Ms. Castillo, you were asked in the defendant's
23 examination about the length of time that it took for you to
24 process certain MEI documents. Do you recall that?

25 A Yes.

1 Q But you also testified that to prepare certain
2 documents, like the UCC form and the MEI mortgage, you could
3 prepare that within one or two weeks of the application,
4 correct?

5 A Yes.

6 Q Okay. And is the distinction there that you
7 prepared the MEI mortgage and the UCC, but they weren't filed
8 right away; is that correct?

9 A Yes. My understanding is just the preparation. The
10 filing is a different story.

11 Q Okay. Now, you were also asked by the defendant
12 that -- about certain documents that you had seen that he had
13 shown you that convinced you that his program worked. Do you
14 remember that testimony?

15 A Yes.

16 Q Okay. And, in fact, you were deposed about that
17 subject; is that right?

18 A Yes.

19 Q And Mr. Williams asked you about a statement you
20 made in your deposition that you didn't think that MEI was
21 fraudulent as a result of the documents that you saw that he
22 had shown you from the mainland; is that right?

23 A Yes, because of that document.

24 Q Okay.

25 A It was taken out of credit bureaus.

1 Q But in particular, you were shown document
2 No. 2080-91 which appeared to be from the Illinois
3 Anti-Predatory Lending Database. Do you recall that?

4 A Yes.

5 MR. YATES: I'm going to put that up on the screen
6 if you don't mind. One moment.

7 May I have Exhibit 2080-91 published, Your Honor?

8 THE COURT: You may.

9 MR. YATES: How do I put that on the screen? Oh.

10 THE COURTROOM MANAGER: It is.

11 MR. YATES: It is? Okay.

12 Q (BY MR. YATES:) Now, Ms. Castillo -- Ms. Castillo,
13 do you recognize this document as the document that
14 Mr. Williams was just asking you about?

15 A Yes.

16 Q Okay. Now -- now, had you heard of the Illinois
17 Anti-Predatory Lending Database program before Mr. Williams
18 showed you this form?

19 A No.

20 Q Had you heard of the Illinois Anti-Predatory Lending
21 Database?

22 A No.

23 Q And when you testified in your deposition that you
24 didn't think MEI was fraudulent, that was based in part on your
25 understanding that MEI was filing its UCC and MEI mortgages

1 with the Bureau of Conveyances, correct?

2 A Yes.

3 Q Okay. The Hawaii Bureau of Conveyances, correct?

4 A Yes.

5 Q And at that time you understand or you understood
6 that the Hawaii Bureau of Conveyances would verify if a
7 document was fraudulent or not, correct?

8 THE DEFENDANT: Objection. That's leading.

9 THE COURT: So now he's kind of doing cross to your
10 direct. So overruled.

11 Do you have the question before you?

12 THE WITNESS: The Bureau of Conveyances would
13 verify?

14 Q (BY MR. YATES:) Yes. Was that your understanding
15 when you testified before when you said that you thought MEI
16 was not fraudulent because you understood that MEI was filing
17 its documents with the Hawaii Bureau of Conveyances?

18 A Correct.

19 Q Do you remember saying that?

20 A Yes.

21 Q Okay. So you believed that the Hawaii Bureau of
22 Conveyances was verifying that the documents were not
23 fraudulent?

24 A Yes.

25 Q Okay.

1 A That was my understanding.

2 Q Okay. And so if you understood that the Hawaii
3 Bureau of Conveyances didn't actually verify whether a document
4 was fraudulent and they didn't check, would that change your
5 opinion?

6 A Yes.

7 Q Okay. And so turning back to this Illinois
8 Anti-Predatory Lending Database program, if you understood that
9 this program also did not verify whether a document was
10 fraudulent, would that change your opinion as to whether this
11 is --

12 THE DEFENDANT: Objection. That's speculation.

13 MR. YATES: I'm asking about the basis of her
14 belief, Your Honor.

15 THE COURT: All right. Overruled.

16 All right. Do you have the question before you?

17 THE WITNESS: Repeat the question, please?

18 Q (BY MR. YATES:) Sure. So if you understood that
19 the Illinois Anti-Predatory Lending Database program also did
20 not verify whether a document was fraudulent or not, would that
21 change your opinion as to whether this document shows that the
22 MEI program was legitimate or fraudulent?

23 A Yes.

24 Q And, Ms. Castillo, do you know who prepared this
25 document, Exhibit 2080-91?

1 A I don't.

2 Q So you wouldn't know if Exhibit 2080-91 was itself a
3 fraudulent document, correct?

4 A Yes.

5 Q Okay. And to be very clear with your last response,
6 you don't know that Exhibit 2080-91 is itself a fraudulent
7 document or a authentic document, correct?

8 A Yes.

9 Q Okay. And if it was a fraudulent document, then
10 that would not make you believe that MEI itself was a credible
11 company, correct?

12 A Yes.

13 Q Okay. Now, you also testified just now that you
14 heard Anthony Williams say that you -- I'll withdraw that.

15 Anthony Williams asked you -- the defendant asked
16 you whether he had ever told you that he was a licensed bar
17 attorney; is that correct?

18 A Yes.

19 Q Okay. Did you recall the defendant, Anthony
20 Williams, ever explaining that he had no training in the law?

21 A I don't recall.

22 Q Okay. Did he ever tell you that he had no education
23 in the law?

24 A I don't recall.

25 Q Okay. Did you ever hear the defendant disclose to

1 his clients that he was not an attorney?

2 A Yes.

3 Q Okay. Now, you just testified regarding a refund
4 check that was sent to a Dr. McGaff. Do you recall that?

5 A Yes.

6 Q And I believe you just testified that she had asked
7 for a refund because she was upset?

8 A Yes.

9 Q Why was Dr. McGaff upset?

10 A I don't recall.

11 THE DEFENDANT: It's hearsay. Objection.

12 THE COURT: Overruled. She talked about her
13 personal knowledge.

14 Next question.

15 MR. YATES: Okay. Your Honor, may I publish
16 Exhibit 304?

17 THE COURT: You may.

18 Q (BY MR. YATES:) Now, Ms. Castillo, you testified
19 for a bit regarding this Exhibit 304 document. Do you recall
20 that?

21 A Yes.

22 Q And in particular, you were asked about some
23 language that appears on page 15 and 16 of this document. Do
24 you recall that testimony? I believe it was paragraph 4 and
25 paragraph 6.

1 A Yes.

2 Q So who wrote Exhibit 304?

3 A Mr. Williams.

4 Q Okay. And when Mr. Williams in Exhibit 304 says
5 that he can file a UCC document after a certain period of time,
6 I believe you testified 60 days, what is that based on?

7 A If the bank -- if the bank, they didn't respond.

8 Q Okay. And do you know if there is any legal basis
9 or were you ever told of any legal basis?

10 THE DEFENDANT: Objection. She's not an attorney.
11 She don't know legal.

12 MR. YATES: She was represented to be a private
13 attorney general which the defendant himself has held out to
14 be -- to have counseling authority.

15 THE COURT: All right. Overruled.

16 Q (BY MR. YATES:) Let me ask that question again.
17 Ms. Castillo, what is the basis upon which the defendant can
18 file a UCC or take any action after 60 days if there's no
19 response from the bank?

20 A Basis of UCC? It's filing a lien.

21 Q Okay. And you understood that Mr. Williams had
22 explained that after 60 days, if the bank did not respond to
23 this letter, that he could file a lien on someone's property;
24 is that right?

25 A Yes.

1 Q Okay. And did you understand that there was some
2 legal basis for that?

3 A No.

4 Q Okay. Now, in the defendant's examination of you,
5 he made numerous representations to a period during which he
6 had been incarcerated. Do you recall those questions?

7 A Yes.

8 Q Now, Mr. Williams in those examination questions
9 represented that he was falsely accused. Do you recall that?

10 A Yes.

11 Q Okay. And he also represented that the FBI had
12 procured fake fingerprints. Do you recall that question?

13 A Yes.

14 Q Okay. Do you have any understanding of the basis of
15 Mr. Williams's representation in his question that he was
16 falsely accused?

17 A I don't.

18 Q You do not? Is that correct?

19 A Can you repeat your question again?

20 Q Yes. Do you have any basis for understanding that
21 Mr. Williams was falsely accused?

22 A He said it before that he was falsely accused.

23 Q Okay. So your understanding was based on what he
24 told you, correct?

25 A Yes.

1 Q Okay. And as to his representation that the FBI had
2 procured fake fingerprints from him, what is -- what is your
3 understanding based on, if any?

4 A It's been a while, so I don't recall.

5 Q Okay. Do you have --

6 A From him saying that it's fake fingerprints.

7 Q Okay. So your understanding comes from what
8 Mr. Williams told you?

9 A Yes.

10 Q Okay. So you were not adopting Mr. Williams's
11 representation that he was illegally incarcerated; is that
12 correct?

13 A He was incarcerated for molestation.

14 Q Okay. But I believe that the question suggested
15 that it was an illegal incarceration. Do you recall the
16 question?

17 A Yes.

18 Q Okay. And I just wanted to clarify that you were
19 not adopting Mr. Williams's characterization of the
20 incarceration or the accusation as illegal; is that correct?

21 A Yes.

22 Q Okay. You're not adopting it, correct?

23 A Yes, I'm not adopting it.

24 Q Okay. Now, you were also asked by Mr. Williams that
25 he was performing some assistance services for your friend Rosy

1 Thomas. Do you recall that testimony?

2 A Yes.

3 Q And I believe you had testified that he was
4 providing IRS assistance -- or assistance with responding to
5 the IRS; is that correct?

6 A Yes.

7 Q Did Anthony Williams indicate to you that the
8 government could legitimately collect taxes?

9 A Can you repeat it again?

10 Q Yeah. Has -- did Anthony Williams ever tell you
11 that the government could legitimately collect taxes or
12 alternatively whether the government could not?

13 THE DEFENDANT: This is beyond the scope.

14 MR. YATES: He asked about the IRS assistance.

15 THE COURT: All right. Overruled.

16 THE WITNESS: No.

17 Q (BY MR. YATES:) Okay. What do you remember
18 Mr. Williams ever telling you about the IRS's ability to
19 collect taxes?

20 A I can't recall.

21 Q Okay. Did he ever represent to you that the
22 government was not legitimate?

23 A No.

24 Q Did he ever represent to you that the American
25 government, United States government, was actually a

1 corporation and not a government?

2 A He said that it's a corporation.

3 Q Okay. And did he say that the United States
4 corporation that is not a government could collect taxes or
5 could not?

6 A They could collect taxes.

7 Q Okay. Is that what he said?

8 A Yes.

9 Q You also testified that you remember Anthony
10 Williams working long hours on the MEI and CLOA business,
11 correct?

12 A Yes.

13 Q And you recall that Mr. Anthony Williams was working
14 those long hours in late 2013; is that correct?

15 A Yes.

16 Q Okay. And that was to keep the MEI scheme going,
17 correct?

18 A Yes.

19 Q And that was to keep as much homeowner money coming
20 in --

21 THE DEFENDANT: Objection.

22 THE COURT: Yes, what's your objection?

23 THE DEFENDANT: He characterizes a scheme and it's
24 not a scheme.

25 THE COURT: All right. Fair enough. Sustained.

1 Q (BY MR. YATES:) And he -- Anthony Williams worked
2 long hours to keep the homeowner money coming in?

3 A To keep the business, yes.

4 MR. YATES: No further questions, Your Honor.

5 THE DEFENDANT: I need to --

6 THE COURT: Do you have any questions, Mr. Williams?

7 THE DEFENDANT: Judge Kobayashi?

8 THE COURT: Yes.

9 THE DEFENDANT: I got one document and I would like
10 to present one document based on what he said and --

11 THE COURT: All right. Do you have more questions
12 for her?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Okay.

15 RE CROSS-EXAMINATION

16 BY THE DEFENDANT:

17 Q Now, Ms. Castillo, I don't think you understood the
18 questioning that he questioned, so I'm going to really break it
19 down in layman's terms so you really understand what he was
20 trying to ask you.

21 Now, when I got illegally incarcerated in 2013 for
22 rape and child molestation, did the charges get dismissed
23 against me?

24 A Sorry, I don't recall.

25 Q You don't recall? Do you recall me coming back to

1 Hawaii after I was incarcerated?

2 A What year is that?

3 Q 2014, the next year.

4 A Yes, you came back.

5 Q Right. So I was incarcerated for -- wrongfully
6 incarcerated for child molestation and rape which carries life
7 in prison, so --

8 THE COURT: Well, I'm sorry, I'm not going to have
9 you state that because that's a complete misrepresentation
10 about the sentence. Okay. So you need to rephrase.

11 Q (BY THE DEFENDANT:) Okay. Well, since I was facing
12 a sentence of life in prison if I got convicted --

13 THE COURT: Well, she doesn't know that. Do you
14 know what sentence he was facing if he got convicted?

15 THE WITNESS: I don't recall.

16 THE COURT: Okay. So you can't ask her that
17 question. Ask another question.

18 Q (BY THE DEFENDANT:) But I did come back after my
19 illegal incarceration, right?

20 A Yes.

21 Q Okay. So if I came out of jail from the illegal
22 incarceration, that mean I wasn't convicted of rape and child
23 molestation. You did understand that, correct?

24 A I wasn't there when you had the judgment, so I can't
25 answer.

1 Q Okay. Now, do you remember he characterized about I
2 told you that the fingerprints was fake? Do you remember that?

3 A Yes.

4 Q Now, remember earlier I asked you because you were
5 actually at the extradition hearing? You remember that?

6 A Yes.

7 Q Now, when the expert -- the fingerprint expert --

8 THE COURT: Okay. So she can't testify about what
9 somebody else said in court. All right?

10 THE DEFENDANT: Well, I mean, she was actually at
11 the hearing 'cause he made it appear like I told her that --

12 THE COURT: Okay. So anyway, so you can ask her
13 what she bases -- well, first of all, she said she doesn't
14 remember, so what are you asking her? What -- does she have a
15 belief whether or not you were wrongfully -- or you're talking
16 about the fingerprints?

17 THE DEFENDANT: Right, because --

18 THE COURT: What do you know about the fingerprints?
19 Do you know anything about the fingerprints that he's eluding
20 to?

21 THE WITNESS: It's been a long time. So I know the
22 fingerprints came up as a topic. I can't recall exactly
23 what --

24 THE COURT: Okay.

25 THE WITNESS: -- the issue is now.

1 THE COURT: Okay. So she doesn't remember. Do you
2 have something that would refresh her recollection?

3 THE DEFENDANT: Only the video, but we don't have
4 that cued yet, where I can actually show the extradition
5 hearing video where the FBI tried to fake my fingerprints.

6 THE COURT: So ask her what she remembers about the
7 extradition hearing.

8 Q (BY THE DEFENDANT:) Okay. What do you remember the
9 fingerprint expert had testified at this hearing, if you
10 remember anything?

11 A Sorry, it's really been a long time.

12 Q I do understand.

13 A I don't want to guess.

14 Q Well, if you can't recall, just say you can't
15 recall.

16 A I can't recall.

17 Q Okay. Now, earlier he said that the document that
18 he showed you, he said you didn't know that whether it was
19 fraudulent or whether I made it or anything like that, correct?
20 The certificate of exemption from the Anti-Predatory Lending
21 Database?

22 A Yes.

23 Q Okay. Now, did you do any research to see if I
24 recreated a fake document?

25 A No.

1 Q Okay. Now, you had stated earlier that I had showed
2 you a credit report regarding a client of mine in the mainland
3 that I got his mortgage deleted, correct?

4 A Yes.

5 MR. YATES: Objection. Out of scope.

6 THE COURT: All right. Overruled.

7 All right. So what -- ask your next question.

8 Q (BY THE DEFENDANT:) If I showed you a copy of that
9 credit report, would you recognize it?

10 A Yes.

11 Q Can you see that document?

12 A Yes.

13 Q And that was one of the documents that convinced you
14 that what I was telling you was actually the truth?

15 A Yes.

16 THE DEFENDANT: Okay. I'd like to publish this in
17 and enter it into evidence.

18 MR. YATES: Objection. And I'm going to note that
19 because this is out of scope of my cross, I'm going to ask that
20 I be allowed to redirect.

21 THE COURT: Well, first, what's your objection to
22 the document?

23 MR. YATES: That it's improper refreshment of
24 recollection, and that --

25 THE COURT: Well, you can refresh with anything, but

1 he's asking to put it into evidence. Do you admit that he
2 should put it into evidence or you objecting?

3 MR. YATES: Object, Your Honor.

4 THE COURT: What is your basis?

5 MR. YATES: The defendant[sic] has not testified
6 that she has created this document or that she relied on this
7 document in any way.

8 THE COURT: Sustained. All right. I'm not
9 receiving it into evidence.

10 THE DEFENDANT: This is one of the documents
11 that --

12 THE COURT: She didn't create it.

13 THE DEFENDANT: No, no, she --

14 THE COURT: She didn't use it. She was shown it and
15 she doesn't know if it's true or somebody typed it up and made
16 it all up. So that's why we have these rules of evidence.

17 All right. So if you can lay a foundation through
18 somebody else, then it can come in, but she can't put it into
19 evidence.

20 All right. What's your next question?

21 Q (BY THE DEFENDANT:) So, Ms. Castillo, so the whole
22 time that you worked with me, did I have -- did you see any
23 indication that I only worked just for people to pay me or was
24 I passionate about really helping people and saving people and
25 keeping people in their homes?

1 A Yes.

2 Q And so just you working with me, you saw the
3 sincerity that I worked with and how I took care of all of my
4 clients?

5 A Yes.

6 Q Now, did I ever dodge clients? Like, when clients
7 called, did I say I'm not in the office or did I not answer the
8 call, did I not answer emails, or did any client that wanted to
9 see me, I made my[sic] available even to be there at 1:00,
10 2 o'clock in the morning?

11 A You hold your schedule, but what I see is you answer
12 calls.

13 Q Right. What I'm saying but did I make myself
14 available even at 12:00 and 1:00 at night for those clients
15 that couldn't make the daytime hours? Did I make myself
16 available to all those clients to stay in the office late just
17 in case they needed to come by and see me if they had any
18 questions or I needed to take care of anything for them?

19 A You meet with them at night, yes.

20 THE DEFENDANT: Okay. Got no more questions.

21 THE COURT: All right. Do you have any -- no.

22 All right. So you're excused as a witness, Ms. Castillo.
23 Please don't discuss your testimony with anyone until after the
24 trial is over. Thank you.

25 THE WITNESS: All right.

1 THE COURT: Please be very careful getting down.

2 Thank you.

3 All right. Your next witness, Mr. Sorenson.

4 MR. SORENSON: Yes, Your Honor. We call Simon
5 Klevansky to the stand.

6 THE COURT: All right.

7 MR. SORENSON: Your Honor, we have a witness binder
8 for him. We'll pass it up.

9 THE COURT: Thank you. Please come forward,
10 Mr. Klevansky.

11 **SIMON KLEVANSKY, GOVERNMENT'S WITNESS, WAS SWORN**

12 THE COURTROOM MANAGER: Thank you. Please be
13 seated.

14 State your name and spell your last name for the record.

15 THE WITNESS: Simon Klevansky, K-l-e-v, as in
16 Victor, -a-n-s-k-y.

17 THE COURT: Your witness.

18 MR. SORENSON: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. SORENSON:

21 Q Good morning, Mr. Klevansky.

22 A Good morning.

23 Q Mr. Klevansky, are you employed?

24 A I am self-employed. I'm a member of the firm.

25 Q And what is your occupation?

1 A I'm an attorney.

2 Q Sorry?

3 A I am an attorney.

4 Q Okay. Attorney at law?

5 A Yes.

6 Q And where do you practice law?

7 A In Honolulu.

8 Q And how long have you practiced law in Honolulu?

9 A 38 years, I think.

10 Q And what type of practice do you have?

11 A Debtor/creditor practice concentrating in bankruptcy

12 and insolvency issues, mortgages.

13 Q And I'm going to ask you a little bit about your

14 education. I assume you went to college?

15 A I did.

16 Q Okay. Where'd you go to college?

17 A University of Pennsylvania.

18 Q Okay. Did you get a degree?

19 A Yes.

20 Q And what was that degree in?

21 A Bachelor of Arts.

22 Q And did you subsequently go to law school?

23 A I did.

24 Q And where did you go to law school?

25 A Stanford University Law School.

1 Q Okay. In law school, if you could just tell the
2 jury, how long is a law school program?

3 A Three years.

4 Q And did you attend all three years?

5 A I did.

6 Q Did you graduate?

7 A I did.

8 Q With honors?

9 A Well, with a juris doctorate degree.

10 Q You don't have to answer that.

11 And once you graduated from law school, did you take
12 a bar exam?

13 A Actually I've taken three bar exams, but in
14 different states.

15 Q All right. If you could, just describe what bar
16 exams you've taken.

17 A I took the California bar exam in 1977 and passed in
18 that year, admitted in the beginning of -- to the bar in 1978.

19 I took the Washington state bar exam in 1978 and I
20 passed and was admitted to the bar of the state of Washington.
21 I'm no longer active in the bar in Washington or California.

22 In 1982 I relocated to Hawaii, took the bar exam and
23 passed it.

24 Q Okay. So the bar exam, is that a test that's
25 necessary to be taken before you can be licensed as an

1 attorney?

2 A Yes.

3 Q And indeed, were you licensed in all three of those
4 states you mentioned: California, Washington, and Hawaii?

5 A I was. As I indicated, my license is inactive in
6 the other two states, but it remains active in the state of
7 Hawaii.

8 Q Are you currently licensed in Hawaii?

9 A Yes.

10 Q And in order to practice law, is it necessary for
11 you to be licensed here in Hawaii?

12 A Yes.

13 Q Now, do you appear in federal court at all in the
14 context of your work?

15 A Yes.

16 Q What type of appearances do you make in federal
17 court?

18 A Well, I appear regularly in bankruptcy court, I
19 would say frequently in the United States district courts, such
20 as this court, and also from time to time in the state courts
21 of the state of Hawaii.

22 Q And you're qualified to practice in all three of
23 those venues; is that correct?

24 A Yes.

25 Q And bankruptcy court, let's ask about that. What do

1 do you in bankruptcy court?

2 A Well, in bankruptcy court I -- when you say what you
3 do, I do a variety of things. In bankruptcy court I represent
4 frequently trustees. When an individual files a bankruptcy,
5 what's called a Chapter 7, they turn over the assets to a
6 trustee. Trustee examines the assets, liquidates them.
7 Frequently, if there are claims that are part of the bankruptcy
8 estate, it's the trustee's task to evaluate those claims, you
9 know, to assess their values and prosecute them if they are
10 claims that should be prosecuted, occasionally settle them.

11 And so we -- you know, we handle the liquidation of
12 assets. That could mean sale of property and other things. It
13 could also mean litigation of claims in the bankruptcy court.
14 I think that probably is a general description of what we do in
15 the bankruptcy court.

16 Q So in the context of your practice, have you become
17 familiar with the laws, the state and federal laws, to the
18 degree there are any, with respect to creditors and debtor
19 relationships?

20 A Yes.

21 Q How so?

22 A Well, primarily their credit relationships are
23 matters of state law. There's certain overlays of the
24 Bankruptcy Code, but primarily they're state laws. But the
25 federal courts, the bankruptcy court, and the United States

1 district courts enforce those state laws when the matters are
2 before the bankruptcy court, and those include the creditor
3 relationships, creditor/debtor relationships between the
4 debtors in bankruptcy and creditors who claim interests
5 in -- in assets in the estate or who claim creditor claims
6 against the estate.

7 Q Now, have you become familiar with concepts like
8 liens and mortgages?

9 A Yes.

10 Q And are they part of your everyday practice?

11 A They are part of my everyday practice.

12 Q What about the concepts of priority between
13 creditors and their relationship with the debtor as to that
14 priority?

15 A That's intrinsic to the valuation of the claims that
16 are made and, in effect, who may get paid first out of the
17 moneys that are in a bankruptcy estate.

18 Q And is this the kind of work you've been doing for
19 the last 35 years?

20 A 38 years, but, yes.

21 Q 38 years? And as far as priorities go when it comes
22 to creditor/debtor relationships, why are priorities important?

23 A Well, as I indicated, they measure whether a
24 particular creditor has a right to certain of the assets that
25 are available notwithstanding the claims of other -- of other

1 creditors, and when they have those rights, it -- they measure
2 whether their rights --

3 THE DEFENDANT: I would like to object --

4 THE COURT: Okay. I'm sorry. Yes, your objection?

5 THE DEFENDANT: He hasn't been qualified as an
6 expert on this subject.

7 THE COURT: Right.

8 MR. SORENSON: We're getting --

9 THE COURT: He's getting the foundation for that, so
10 it's overruled.

11 All right. Next question.

12 Q (BY MR. SORENSON:) Okay. So when it comes to
13 priorities and the way that's worked out, have you become
14 familiar with the Bureau of Conveyances here in Hawaii?

15 A Yes.

16 Q How so?

17 A Well, generally speaking, mortgages, which are
18 grants of interest, security interests in real property, are
19 recorded in the Bureau of Conveyances. Financing statements,
20 which are -- which are notices of interest in personal property
21 like desks, chairs, television sets, those kind of things, are
22 recorded in the Bureau of Conveyances. And judgments, if
23 there's a money judgment that is obtained by a creditor or in
24 some cases by a trustee, those money judgments are recorded in
25 the Bureau of Conveyances. So that's a regular part of our

1 tasks.

2 Q Now, in conducting your business as a
3 debtor/creditor attorney, do you deal with the Bureau of
4 Conveyances from time to time?

5 A Yes.

6 Q And have you become familiar with their filing
7 processes and the procedures that they follow?

8 A Yeah. They're pretty straightforward. I mean, you
9 go in and file the document and you get assigned a number and
10 it's, in effect, first in time is first in right. That is the
11 basic procedure followed by the Bureau of Conveyances.

12 Q What about financing statements under the Uniform
13 Commercial Code? Have you become familiar with the Uniform
14 Commercial Code?

15 A Yes.

16 Q How so?

17 A Well, financing statements --

18 THE COURT: So you're going to qualify him or not?
19 'Cause I'm not going to allow him to talk about all these
20 documents --

21 MR. SORENSON: Well, I'm just asking how he became
22 familiar, Your Honor, so I can lay a foundation for his
23 testimony about the Uniform Commercial Code later.

24 THE COURT: All right. So through his practice.

25 Okay. Ask another question. He's giving you this whole

1 opinions and how these things are done and the filing and first
2 in line is first in time. So I'm not going to allow him to
3 testify any more until you either qualify him and ask him
4 questions on his opinions --

5 MR. SORENSON: Well, if the Court believes I've laid
6 a proper foundation for his knowledge of the Uniform Commercial
7 Code, I think we're finished, Your Honor. I can go ahead and
8 move to qualify him.

9 THE COURT: All right. Move to qualify him.

10 MR. SORENSON: We move to qualify him as an expert
11 in debtor/creditor law.

12 THE COURT: All right. Any questions? Do you want
13 to voir dire?

14 MR. ISAACSON: One more second.

15 THE COURT: Yeah.

16 THE DEFENDANT: Yeah, I want to challenge his
17 expert. I want to voir dire him according to his knowledge of
18 the UCC.

19 THE COURT: All right.

20 MR. SORENSON: You want to come up?

21 VOIR DIRE EXAMINATION

22 BY THE DEFENDANT:

23 Q Sir, your name was Mr. Klevansky?

24 A Yes, sir.

25 Q Okay. And you say you're an expert in UCC law?

1 A I didn't say I was an expert. I answered questions.

2 Q So you're admitting you're not an expert?

3 A No, I just wasn't asked whether I was an expert.

4 THE COURT: He's going to be offered as an expert.

5 What questions do you have about his qualifications?

6 Q (BY THE DEFENDANT:) Well, so are you saying you are
7 an expert?

8 THE COURT: No, it's up to me to determine whether
9 he's an expert, okay? So ask him questions going to his
10 qualification.

11 Q (BY THE DEFENDANT:) Okay. Under the Uniform
12 Commercial Code, do you know what 1-103-6 states?

13 A Not from memory I do not.

14 Q Okay. Are you familiar with UCC 1-308?

15 A Not from memory. If you -- I -- I looked at the
16 various sections of the codes regularly, but I can't tell you
17 I've memorized them.

18 Q Okay. In regards to the filing of liens, do you
19 know what UCC code governs that, what statute?

20 A Which particular provision?

21 Q For UCC liens.

22 A For UCC for the filing of them? No, I cannot tell
23 you which provision of the code does that.

24 Q Are you familiar with UCC 9-311 in regards to
25 negotiable instruments --

1 A I was going to say section Chapter 9 of the code
2 deals with the different instruments and personal property, but
3 I can't -- I can't recite to you what that says. If you want
4 me to look at it, I can do so.

5 Q What is the relation with the UCC code with the
6 common law?

7 A Well, the UCC is an -- a statutory overlay that's
8 been adopted in the -- in I think most if not all of the
9 states, and the -- so it doesn't displace the common law to the
10 extent there are common law adoptions that apply to interests.

11 Q So the UCC code is applicable in all 50 states which
12 is governed by the common law?

13 A I'm not certain whether it's applicable in
14 Louisiana. I'm not certain of that. But it's -- in the great
15 majority of states, the states have adopted a version of the
16 UCC.

17 Q Okay. And how would one perfect a UCC lien
18 according to Uniform Commercial Code?

19 THE COURT: You can't ask him opinions or to
20 interpret it. You're asking him about his qualifications. So
21 are you accepting him then as an expert in the UCC --

22 THE DEFENDANT: No, I'm not.

23 THE COURT: All right. So what questions do you
24 want to ask him about his qualifications? The government's
25 asked me to find that he is an expert and to allow him to give

1 expert opinions about debtor/creditor law including UCC, liens,
2 mortgages. So you could ask him questions now that show that
3 he's not qualified, for instance, he didn't go to law school or
4 he doesn't know the law or he hasn't practiced law.

5 Q (BY THE DEFENDANT:) Okay. So when you went to law
6 school, was one of your curriculum to be an expert in UCC law?

7 A No.

8 Q So what type of training in UCC law did you obtain
9 during your law school education?

10 A I would say that you learn the general law and
11 probably -- remember, this is some 40 some years ago -- I
12 received a general introduction in contract and securities law,
13 but I would sort of include an introduction to the UCC. But I
14 can't say that we got a -- you know, a course in UCC law in
15 years ago -- in that many years ago.

16 Q So you didn't specialize in your law school
17 education in UCC law?

18 A That's correct.

19 THE DEFENDANT: Okay. That's all the questions I
20 have.

21 THE COURT: All right. Thank you.

22 All right. So, Mr. Sorenson, all right, so the court is
23 accepting Mr. Klevansky as an expert in law, specifically
24 debtor/creditor, UCC, liens, and mortgages.

25 So the jury is instructed that he will be able to give

1 opinion testimony as an expert in that field.

2 Mr. Sorenson.

3 MR. SORENSON: Thank you, Your Honor.

4 DIRECT EXAMINATION RESUMED

5 BY MR. SORENSON:

6 Q Okay. So if we can go back to the Uniform
7 Commercial Code that I think you've indicated was a model
8 statute of some type; is that correct?

9 A Yes, the UCC code generally was prepared as a model
10 statute by a committee of I think law professors and has been
11 adopted with minor variations in the different states that have
12 adopted it as part of their -- of the state law. So we have a
13 version of the UCC code here adopted in the state of Hawaii.

14 Q Okay. And does the Uniform Commercial Code or at
15 least as it is adopted in Hawaii come up from time to time in
16 your practice?

17 A Comes up regularly.

18 Q Okay. How so?

19 A Parties may claim a security interest in personal
20 property or accounts receivable, that sort of thing, in assets
21 of the bankruptcy estate. We will then examine the -- what has
22 been filed and what agreements relate to what has been filed to
23 determine whether they have a valid lien or do not have a valid
24 lien that they have claimed.

25 So it's part of our -- what I'd call our due

1 diligence on behalf of a trustee when claims are made against a
2 bankruptcy estate that a creditor claims to be secured.

3 Q Now, what does the Uniform Commercial Code address?

4 A Well, the Uniform Commercial Code broadly stated
5 addresses a variety of matters. As far as security interests,
6 it addresses security interests in goods, that is, in personal
7 property, as I said, chairs, tables, television sets, those
8 sorts of things.

9 There are other sections or chapters of the UCC that
10 govern the sale of goods, you know, sale of a box of tomatoes,
11 or, you know, other sort of things in commercial transactions.

12 There's others that govern the accounts, you know,
13 receivable and the way those may be secured.

14 So there are a variety of sections that deal with
15 different matters that may come up in commerce.

16 Q Does the Uniform Commercial Code, or at least as
17 it's adopted here in Hawaii, address rights from real estate?

18 A No.

19 Q And does it primarily, if not exclusively, address
20 rights in goods?

21 A Yes. What I've called personal property, that is
22 goods.

23 Q And real estate is what?

24 A Well, real estate is what's called real property as
25 opposed to personal property, and so that includes, you know,

1 land, a house, or other building on land, that sort of thing.

2 Q So when you file a Uniform Commercial Code financing
3 statement, is it possible that that would affect land?

4 A No, not legally.

5 Q Okay. And what is a financing statement?

6 A A financing statement is a notice to the world that
7 the -- that someone has -- that there is outside of the
8 financing statement what's called a security agreement whereby
9 the secured party, let's call it the borrower most typically --
10 when a borrower has agreed to give the secured party, the
11 lender, an interest in goods and perhaps in accounts or
12 something like that. And typically as a result of in advance
13 of moneys or it may be that the secured party has sold the
14 goods and taken a security interest back; say, if you buy a
15 television on time, you know, on a time payment plan, you'll
16 sign a security agreement and the secured party will file a
17 financing statement to let the world know that it has a
18 security interest in the television set.

19 Q So when you have a security interest in something,
20 what does that mean?

21 A It means that if the -- if the goods are sold, that
22 you get paid first, if it's a first interest in the property.
23 And if the secured party is not paid, you know, the debt that
24 is owed, that the secured party may have rights to, in effect,
25 repossess the property or sell the property through a judicial

1 proceeding if a court orders -- authorizes them to do so.

2 Q So if I have a business and I want to buy a bunch of
3 desks and chairs --

4 A Yes.

5 Q -- and you loan me the money to buy those items, can
6 I grant you a security interest in that stuff?

7 A I'm sorry. Repeat -- you have purchased it and I
8 have lent you the money?

9 Q Yes.

10 A That's right, I can take a security interest. You
11 can grant me a security interest in the desks and chairs, and I
12 will then file a financing statement showing that -- saying
13 that you have granted me that interest under security
14 agreement.

15 Q Are you the creditor then in that relationship?

16 A I am the creditor.

17 Q And what am I?

18 A You're the debtor or borrower.

19 Q And if I don't pay you back, do you have any
20 remedies?

21 A I have remedies under some provisions that are
22 self-held remedies. More typically, you go to court and you
23 ask the court for what's called a writ of possession or a writ
24 of attachment or something of that sort so you can go in and
25 repossess the properties.

1 Q Based on your security interest?

2 A Based on the security agreement.

3 Q Okay. Now, let me ask you about real estate and
4 mortgages. What is a mortgage?

5 A Mortgage is -- I will call it parallel or comparable
6 in that it's a security -- it reflects a security interest. In
7 that case, if a borrower -- if you go to the bank to borrow
8 money to buy your house -- that's how typically most people
9 wind up having a mortgage placed on a house -- you borrow money
10 to buy the house, then the buyer, the person who comes to own
11 the property, will sign a mortgage granting the lender a
12 security interest, a mortgage, a lien upon the house for the
13 amount that they have borrowed and whatever interest may accrue
14 on that. And they will -- and then the mortgagee, that is, the
15 lender, will record the mortgage. In that case there's a
16 single document. There's no separate security agreement or
17 financing statement in the case of a mortgage. You sign the
18 mortgage, the bank, you know -- or the escrow on behalf of the
19 bank -- excuse me -- files the mortgage to effect the lien
20 against other creditors who may come thereafter.

21 Q Is that filed at the Bureau of Conveyances?

22 A Generally speaking for most property in the state of
23 Hawaii.

24 Q And so if creditors or debtors or anybody's
25 interested in determining the priorities or the interests in a

1 particular piece of real estate, would they go to the Bureau of
2 Conveyances?

3 A Absolutely.

4 Q Now, in the relationship you've just described, if I
5 am a debtor, if I'm a buyer of a house and you're a bank or a
6 lender, and I come to you and I ask for money, like, let's say
7 \$500,000 to buy a house, and you approve that and you loan me
8 money, do we have any agreement between us about how it gets
9 paid back?

10 A Yeah. Typically the loan itself is reflected in a
11 promissory note and typically -- well, that's a short answer to
12 your question. The loan states the obligation to repay.

13 Q Okay. So I'm going to borrow \$500,000 from you,
14 correct?

15 A Correct.

16 Q And our note is going to say that; is that true?

17 A Yes.

18 Q And it's going to set the terms of my repayment to
19 you?

20 A Yes.

21 Q Okay. And generally speaking, when it comes to real
22 estate, is there a length of time that I have to pay you back?

23 A Well, there always is a length of time. The most
24 common mortgages, the most common notes for houses in the state
25 of Hawaii are 30-year loans, although you can get a 15-year

1 loan for residential property as well.

2 Q And so you've talked about the concept of a
3 mortgage. Is there something I grant to you to make sure you
4 get paid back?

5 A Absolutely. You give me a mortgage on the property.

6 Q Okay. And then when it comes to the person that's
7 the grantor in the mortgage, who is that?

8 A That's the homeowner, the borrower that grants a
9 mortgage to the lender.

10 Q And who is the mortgagee?

11 A That's the borrower.

12 Q Okay. And have you heard of the term servicer, like
13 a loan servicer?

14 A A servicer is someone, an agency, a company, that
15 basically monitors the collection process, turns over the funds
16 to the lender. You know, in local mortgages, if you go to Bank
17 of Hawaii, let's say, or First Hawaiian Bank, typically they
18 will service their own mortgages. I mean, you just borrow the
19 money, you give them a mortgage, and you pay the bank every
20 month.

21 If you borrow from a mainland lender, you know, in
22 New York or San Francisco, wherever it is, a big bank there,
23 they may have a separate company that service -- that acts as
24 servicer to the mortgage and that, you know, sends you notices
25 and that sort of thing.

1 Q Now, as my lending company, mortgage
2 company -- let's call you mortgage company A for lack of a
3 better term, is it possible for you to then sell or assign your
4 mortgage interest to somebody else?

5 A Yes.

6 Q And do you generally see that happening?

7 A Yes.

8 Q Do mortgage agreements take into account that they
9 may be assigned?

10 A Yes.

11 Q All right. And is that normal and regular in the
12 course of the mortgage business?

13 A Yes.

14 Q Does that assignment require, in your understanding,
15 the agreement of me, the debtor, to have my mortgage assigned?

16 A No.

17 MR. SORENSON: Okay. So I want to direct your
18 attention over to an exhibit, Your Honor, that is in evidence,
19 Exhibit 200.

20 We're going to ask to have the witness look at that.

21 THE WITNESS: Is that in this volume?

22 THE COURT: It should be in the binder.

23 MR. SORENSON: Just open that binder up; it should
24 magically appear.

25 Your Honor, may we publish this document?

1 THE COURT: You may. So you can either look on the
2 screen or --

3 THE WITNESS: Oh, I understand. Thank you, Your
4 Honor.

5 Q (BY MR. SORENSON:) Okay. Mr. Klevansky, as you
6 look at this document, can you at least tell us what it appears
7 to be?

8 A This is Exhibit 200, counsel?

9 Q Yes.

10 A Okay.

11 Q And what is it?

12 A Well, it's titled A UCC Financing Statement.

13 Q Okay. And does this look like a typical financing
14 statement, at least as far as the form goes?

15 A Uhm, yes.

16 Q And have you seen this document before?

17 A Yes. I believe you showed me a copy of it.

18 Q All right. And this purports to be a financing
19 statement addressing property interests of a Julita Ascuncion;
20 is that correct?

21 A Yes.

22 Q And a Miguel Ascuncion?

23 A Yes.

24 Q Now, I'm going to blow up this middle part here and
25 ask you based on your training and experience, do you see

1 anything unusual about this particular financing statement?

2 A It is unusual in that the secured party is also the
3 debtor in the case of Julita Asuncion.

4 Q Now, does it make sense that the secured party and
5 the debtor are the same person?

6 A Generally not. Generally the secured party will be
7 the third-party lender.

8 Q Have you ever seen a situation where the debtor and
9 the creditor were the same parties in a financing statement?

10 A Uhm, I can't say I've never seen it 'cause I've been
11 practicing for quite a number of years. But generally I do not
12 see that.

13 Q When you say generally you have not seen it, do you
14 have any recollection --

15 A I have no recollection of seeing that.

16 Q Okay. All right. I'm going to -- well, let me just
17 look at this for a moment with you. It states that the
18 individual's last name under the debtors are Miguel Asuncion
19 and Julita Asuncion; is that correct?

20 A Uhm, yes.

21 Q All right. Now, let's go to this area right down
22 here. All right. It states at the top here, "All of debtors'
23 assets, real estate, land, home, and personal property, and all
24 of debtors' rights in said assets, real estate including
25 description of the land referred to in this guarantee, is

1 situated in the State of Hawaii."

2 Do you see that term?

3 A Yes.

4 Q Now, this financing statement purports to address an
5 interest in real estate. Do you see that?

6 A I do see that.

7 Q Do UCC financing statements affect interest in real
8 estate?

9 A No.

10 Q So if this document purports to affect an interest
11 in real estate, it would not do that; is that fair to say?

12 A It will not do that, that's correct.

13 Q And as we move on down in the document, it states
14 that this -- "These interests are described in a particular
15 security agreement."

16 Do you see that?

17 A I'm sorry. Could you repeat the question?

18 Q Yes. Do you see where, "The interests," it's
19 stated, "described fully in security agreement number" -- and
20 it gives a long number for a security agreement -- do you see
21 that, "Dated the 4th" --

22 A Oh, I see that.

23 Q -- "of the 9th month of the Year of our Lord 2013"?

24 A Yes.

25 Q Okay. Does this purport to identify a security

1 agreement where interests are set forth?

2 A It purports to do so.

3 Q What's that?

4 A Yeah, it purports to do so.

5 Q Okay. And as we look at the next line down,

6 "Inquiring parties may consult directly with the debtors," do
7 you see that?

8 A I see that.

9 Q Now, when it comes to financing statements, is it
10 unusual to have parties connect with the debtors with respect
11 to the interest in the property?

12 A Yes.

13 Q Who would be the normal party that would be the
14 holder of the security agreement and the place where creditors
15 might inquire?

16 A You would consult -- if I were a -- if a borrower
17 came to me for a new loan and I looked on title and I saw
18 security financing statements and I wanted to find out whether
19 they -- what was actually owed and would be owed ahead of my
20 loan, I would want to confer with the -- with the secured
21 party, not the debtor, to confirm how much is owed ahead of any
22 lien that I might acquire.

23 Q Now, do you see here where it states, "Adjustment of
24 this filing is in accord," and it recites particular UCC
25 provisions, "and also a House Joint Resolution dated 1933"? Do

1 you see that?

2 A I see that.

3 Q Is there anything in this House Joint Resolution, to
4 your knowledge, that would have anything to do with this
5 particular secured interest in a financing statement?

6 A No.

7 Q We also see, "Secured party accepts debtors'
8 signature in accord with UCC 1-201(39)."

9 Do you see that?

10 A I see that.

11 Q Did you see any signature at all associated with
12 this document?

13 A No. This is not a -- there's no signature on the
14 document.

15 Q It also states at the bottom here, "Any mortgage
16 under Exhibit A are discharged."

17 Do you see that?

18 A I see that.

19 Q Okay. Now, I'm going to go down here a little
20 lower, blow this up. Okay. Do you see where it states, "This
21 mortgage will be discharged in accordance with UCC 1-201(39)
22 and 1-308?"

23 A I see that.

24 Q Can this UCC financing statement extinguish the
25 third party interest of any prior mortgage holder in this

1 case --

2 A No.

3 Q -- in this document?

4 A No.

5 Q If someone was told that this UCC financing
6 statement would render their mortgage null and void, would that
7 be true?

8 A It would be false.

9 Q And why would it be false?

10 A Well, because the only way to render another party's
11 mortgage void is have that party agree to release the mortgage
12 or by some procedure have a -- you know, if a court determines
13 it for some reason that other mortgage is -- should be void or
14 discharged.

15 But -- but you cannot, by yourself, render somebody
16 else's mortgage to be void or discharged.

17 Q And if you're going to do that, would a UCC
18 financing statement be the way to do it?

19 A No.

20 Q All right. I'm going to direct your attention now
21 to Exhibit 201. Have you seen 201?

22 A Uhm, I believe so, yes.

23 Q Okay. Take a moment to look at it.

24 Your Honor, this exhibit's in evidence. We're going
25 to ask to publish it?

1 THE COURT: You may.

2 Q (BY MR. SORENSON:) Okay. As we look at this
3 document, it states "mortgage" there in the middle of the
4 document. Do you see that?

5 A I see that.

6 Q And you've had occasion to look at this particular
7 mortgage; is that true?

8 A Yes.

9 Q And did you note anything unusual about this
10 document?

11 A Well, here again, it appears to make the secured
12 party or the mortgagee the same as the -- by nomination, if you
13 will, as the borrower or mortgagor.

14 Q All right. I'm going to direct your attention to
15 this middle part here. Apologize if this is a little tedious,
16 but this language is something I want to ask you about.

17 All right. At the top it states, "This
18 mortgage" -- and it indicates it's a security instrument -- "is
19 made on 17th day of June, 2015. The grantor is Miguel and
20 Julita Asuncion, legal persons/fictions."

21 Do you see that?

22 A Yes.

23 Q And down right below that it says "borrower."

24 A Yes.

25 Q Do you see that? Now, first off, have you -- have

1 you seen the term fictions used in a mortgage before?

2 A No.

3 Q Do you have any idea what that could mean?

4 A No. I mean, I know the term, but I don't know what
5 it means in this context.

6 Q Have you ever seen it in the context of a mortgage
7 before?

8 A No.

9 Q Next line states, "The servicer mortgagee is
10 Mortgage Enterprise Investments." Do you see that?

11 A Yes.

12 Q And it gives an address for the business.

13 A Yes.

14 Q Do you see that?

15 A Yes, I see that.

16 Q And it states next, "The trustee is Federal Mortgage
17 American Trust." Did you see that?

18 A I see that.

19 Q Okay. So let's figure out our dynamic here as we
20 start to look at these parties. We've got the Asuncions; is
21 that correct? And they are the grantor and borrower here; is
22 that fair to say?

23 A Correct.

24 Q And when you're a borrower, does that intimate to
25 you that some money has been lent?

1 A Yes.

2 Q And is that what happens in a mortgage, that money
3 is lent?

4 A That's correct.

5 Q And so you have a borrower and you have a lender; is
6 that correct?

7 A That's right.

8 Q And would the lender be the same person as the
9 creditor?

10 A Yes.

11 Q Okay. And the trustee listed as Federal Mortgage
12 American Trust, do you see that?

13 A I see that.

14 Q Okay. And what would the role of the trustee be?

15 A Well, generally speaking, in Hawaii mortgages we
16 don't have trustees; that in other states where they don't use
17 the term mortgage, they use the term deed of trust or trust
18 deed, and in those jurisdictions in those states the procedure
19 for foreclosure of a mortgage, if there's been a default, is
20 that the trustee under the deed of trust, in effect, operates
21 to sell the property.

22 So it is -- I -- when the term trustee is used in a
23 mortgage, I suspect it's -- it's something which is copied from
24 another jurisdiction. We just generally don't have what are
25 called deeds of trust here.

1 Q Is it fair to say that the trustee would be kind of
2 a neutral and detached third party between the creditor or the
3 lender who would take care of defaults?

4 A That's correct.

5 Q Okay.

6 A It's fair to say.

7 Q Now, the next line down here refers to the
8 secured-party creditor. Do you see that?

9 A I see that.

10 Q Okay. So the secured-party creditors and the
11 beneficiaries are, well, once again the Asuncions. Do you see
12 that?

13 A I see that.

14 Q "Solely as nominee for secured-party creditors as
15 herein defined, and secured-party creditor successor and
16 assigned have an exclusive and superior lien on this mortgage."
17 Do you see that?

18 A I see that.

19 Q Okay. So we have the secured-party creditors. In
20 your mortgage parlance, the secured party creditor is who?

21 A Be the lender.

22 Q Okay. The lender or the mortgagee?

23 A The lender, the mortgagee, that's right.

24 Q And the -- so then is it true here then that the
25 Asuncions are both described as the borrowers and the lenders?

1 A By nomination. They use the term "as nominee." But
2 yes, they appear to be both.

3 Q Okay. All right. I'm going to direct your
4 attention down a little lower here.

5 A Print is kind of small on that one on the screen.

6 Q Yes, it is. Apologize.

7 Okay. Now here we have the term "secured-party
8 creditors." Do you see that?

9 A I see that.

10 Q States here they're "organized and existing under
11 the common laws of the Constitution of the United States."
12 Do you see that?

13 A I see that.

14 Q And so the secured-party creditors we know from up
15 above they're the Asuncions, right?

16 A It appears that way.

17 Q And this document says that they're organized and
18 existing under the common laws of the Constitution; is that
19 fair to say?

20 A Well, that's what it says.

21 Q Okay. And the next line down, "This mortgage
22 replaces and makes null and void the original mortgage
23 instrument" -- and it gives a number -- {recorded in the state
24 of Hawaii Bureau of Conveyances and any other instrument
25 preceding this document." Do you see that?

1 A I see that.

2 Q So then this document, sir, does it purport to
3 release any prior mortgages?

4 A It purports to release this identified mortgage.

5 Q Okay. And if this identified mortgage happened to
6 be their existing mortgage with a legitimate lender, is it this
7 document's intent or effort to release that mortgage?

8 A It would appear to be so.

9 Q And would it be legally effective in doing so?

10 A It would have no effect to do so.

11 Q Why not?

12 A Because, as I indicated, the only way to get a
13 mortgage by a third party released is either to get that third
14 party voluntarily to release their mortgage -- most typically
15 to pay off the loan -- or if you have some basis to argue
16 there's a problem with a mortgage and/or the lender refuses to
17 release it, then you can go to a court and seek to have it
18 done. But absent a voluntary release by the prior mortgagee or
19 a court order, you cannot cause a third party's mortgage to be
20 released.

21 Q So is what's going on here is the Asuncions as the
22 guarantors or the borrowers and as the secured-party creditors,
23 the lenders, are they essentially trying to release their own
24 mortgage here?

25 A You mean the mortgage of a prior lender?

1 Q Yes.

2 A If it's an independent lender, a third-party lender,
3 they appear to be declaring that they're doing so.

4 Q Okay. Now, if somebody told the Asuncions or any
5 borrower under this particular situation that this document
6 would release their existing mortgages, would that be true?

7 A It would not be true. It would be false.

8 Q All right. I'm going to take you down to the next
9 page. All right. This states that the borrower owes the
10 secured-party creditors the principal sum of \$436,000. Do you
11 see that?

12 A I see that.

13 Q All right. And so we know from the page before the
14 borrower is who?

15 A The borrower is or are the Asuncions.

16 Q Who are the secured-party creditors?

17 A By this nomination, also the Asuncions.

18 Q So they owe themselves \$436,000; is that correct?

19 A That's what it says.

20 Q And it states, "This debt is evidenced by a UCC
21 financing statement dated June 17th, 2015." Do you see that?

22 A I see that.

23 Q And it states that that document provides a superior
24 lien to the secured-party creditors. Is that true?

25 A The UCC financing statement does not provide a lien

1 at all as to -- well, as to real estate. As to whether it
2 evidences the debt, you would have to look at that financing
3 statement, assuming that such a debt exists.

4 Q Right. Now, down toward the bottom it states, "For
5 this purpose, borrower irrevocably" -- excuse me -- "grants and
6 conveys to the trustee in trust with power of sale the
7 following described property." So the borrower here is giving
8 this trustee that we've seen, Federal Mortgage
9 Americans -- American Trust, the right to sell the property if
10 there's a default.

11 A I see that.

12 Q Okay. Is that correct?

13 A That's what it says.

14 Q And it has a description, "See Exhibit A attached."
15 Do you see that?

16 A I see that.

17 Q And would that then be their property or at least
18 the property that's pledged, addressed at 94-378 Ha'a'a Street,
19 Waipahu?

20 A I don't see an address on Exhibit A, but I presume
21 that that's what's described here.

22 Q Right. Now, I'm going to ask you does this document
23 make any legal sense to you whatsoever?

24 A Uhm, not really. I mean, it depends on a lot of
25 things. There's no -- there's no utility, no meaningful

1 utility to grant a mortgage -- for a homeowner to grant a
2 mortgage to themselves. It would not stand in the way of
3 a -- first of all, it wouldn't void any prior mortgage to a
4 third-party lender. And secondly, it would not stand in the
5 way of a subsequent judgment creditor or lender because since
6 the secured party is the same as the -- as the securing party
7 or the pledging party or the mortgagor, they would have the
8 ability to set it aside themselves.

9 So no conventional creditor would ever agree to give
10 their borrower the power to set aside the mortgage.

11 Q Mr. Klevansky, I just asked you the question does
12 this document make any legal sense whatsoever?

13 A No.

14 Q Okay. Would you call it nonsensical?

15 A Yes.

16 Q Let me direct your attention to the last page of
17 this document, at least the signature page. Do you see the
18 page, "By signing below, borrower accepts and agrees to the
19 terms"?

20 A I see that.

21 Q Okay. And so we have the signatures there of what
22 purports to be Miguel Asuncion and Julita Asuncion. Do you see
23 that?

24 A I see that.

25 Q Okay. And they're listed as borrower here; is that

1 correct?

2 A Yes.

3 Q Okay. And they're granting again to themselves
4 secured-party creditors, the trustee, all the rights that are
5 listed out in this document; is that fair to say?

6 A Yes.

7 Q Down at the bottom it says, "Secured party accepts
8 debtor's signature in accordance with the UCC." Do you see
9 that?

10 A I see that.

11 Q Does the Uniform Commercial Code affect in any way
12 the interest of real estate in this case?

13 A No.

14 MR. SORENSON: Your Honor, may I have a moment?

15 THE COURT: You may.

16 MR. SORENSON: Your Honor, that's all the questions
17 I have. Thank you.

18 THE COURT: All right. Mr. Williams,
19 cross-examination?

20 MR. ISAACSON: Is it time for a break? I don't know
21 if you -- one moment, Your Honor.

22 THE COURT: I'm sorry? Did you --

23 MR. ISAACSON: I was going to ask him a question.

24 THE COURT: Oh, you may, uh-huh. Did you ask if it
25 was time for recess?

1 MR. ISAACSON: I did mutter that, Your Honor. I
2 didn't want to --

3 THE COURT: Actually in looking at the time, we have
4 been going for about an hour and 15 minutes, so we could take a
5 recess now or --

6 MR. ISAACSON: I don't.

7 THE DEFENDANT: Take a recess.

8 THE COURT: So you think you have longer than
9 15 minutes of questions?

10 THE DEFENDANT: Yeah.

11 THE COURT: Okay. Then why don't we take a recess
12 now.

13 All right. Ladies and gentlemen of the jury, if you would
14 please leave your iPads and your notebooks in your seats. And
15 of course, don't discuss the case with anyone or allow anyone
16 to discuss it with you or do any investigation.

17 Please rise for the jury. We'll have a 15-minute recess.

18 (A recess was taken.)

19 (Open court out of the presence of the jury.)

20 THE COURT: And record will reflect that the jury's
21 not present. Present are counsel, Mr. Williams, and the
22 witness is on the stand.

23 Any issues we need to take up before we bring in the jury?

24 MR. SORENSON: Not from us, Your Honor.

25 THE COURT: All right. There being none,

1 Ms. Elkington, if you would go get the jury. We're in recess
2 until they appear.

3 (A recess was taken.)

4 (Open court in the presence of the jury.)

5 THE COURT: All right. Let the record reflect the
6 presence of the ladies and gentlemen of the jury, counsel, and
7 Mr. Williams. The witness is on the stand.

8 Mr. Williams, do you have any questions?

9 THE DEFENDANT: Can I pull up exhibit I think it's
10 200? Yeah, Section 4.

11 CROSS-EXAMINATION

12 BY THE DEFENDANT:

13 Q Now, Mr. Klevansky, he questioned about the language
14 that I have in this Section 4 on this UCC lien, and he
15 cherry-picked and had you read about the secure party accepts
16 debtor's signature, correct?

17 A Yes. I'm looking at that language in here, but he
18 did ask me that question.

19 Q Right. Okay. Now, I want to take you -- go up a
20 little bit where it says how -- State of Hawaii County of Oahu
21 City of Waipahu, that line, and the next line it says,
22 "Hereafter arising and wherever located describe fully a
23 security agreement No. JFA-07161956-SA."

24 Do you see that?

25 A I see that, sir.

1 Q Have you read that security agreement?

2 A No, I have not.

3 Q Did the prosecution show you a copy of that security

4 agreement?

5 A Not that I can recall.

6 Q Okay. So you didn't see that that's what the

7 signature was of the debtor and the secured-party creditor was

8 actually on in that section that just referencing that actual

9 security document?

10 A I don't know what was on that security agreement.

11 Q Okay. So you didn't see the document?

12 A Not that I can recall.

13 Q Okay. And so you said you been an attorney for how

14 many years?

15 A I've been an attorney for 42 years, I think.

16 Q Okay. So you do understand what contract law is,

17 right?

18 A I think so, reasonably so.

19 Q Okay. And so what constitutes a contract?

20 A Well, the classic definition is an offer by one

21 party, an acceptance by another with certain terms as to what

22 is being agreed to.

23 Q Okay. So if you and I entered into a contract, say,

24 for a certain amount of services rendered and we sign a

25 contract, would you have to sign that if it's a contract

1 between you and I? Would you have to sign?

2 A In most cases, yes.

3 Q Would I have to sign if I'm a party to the contract?

4 A In most cases, yes.

5 Q Okay. So what case would you -- two parties that's
6 in agreement in a contract where one party wouldn't sign?

7 A Well, if -- I mean, there are different doctrines
8 that can apply, you know, when there can be oral agreements
9 under certain terms or if you offer something to me and in
10 exchange for some, in your example, services and I provide
11 those services to you in reliance on your agreement, your
12 signature agreeing to pay me for that, that would be a
13 circumstance where, you know, only one person has actually
14 signed, but the other person has actually performed in reliance
15 on the promise of the first person to sign. That'd be an
16 example where you would have an agreement in effect without
17 both parties actually signing the agreement.

18 Q Okay. So who would govern that contract? The
19 person that signed it or the person that didn't sign?

20 A Well, the terms of the contract would govern. I'm
21 not sure what you mean by who would govern it. The terms of
22 the contract, if I offered -- if I offered you a hundred
23 dollars in exchange for your giving me -- providing me a desk
24 and a chair and you give me that desk and chair, then you have
25 performed and I probably owe you a hundred dollars.

1 So when you say would who govern it, the agreement
2 would be an exchange of a hundred dollars for a desk and chair.

3 Q So -- so I could draft a contract, say, between you
4 and I, and say I draft the contract and say, "Mr. Klevansky is
5 going to pay me a thousand dollars a month," and I sign it,
6 you're bound by that contract even though you didn't agree to
7 it?

8 A No.

9 Q But you just said one party can sign a contract. I
10 just made up a contract and I'm just the only one signing it.
11 But if I put your name in there without your signature, are you
12 bound by that contract?

13 A No.

14 Q Okay. So -- and the mortgage document that he
15 showed you on the typical mortgage that a homeowner signs, does
16 any of the bank representative or the mortgage company
17 representative, do they ever sign anywhere on any of the
18 mortgage documents, on the mortgage, or on the note?

19 A Sometimes they do and sometimes they don't. But
20 typically on the mortgage, there are terms that whereby the
21 mortgagee, the lender, agrees that on repayment of the
22 mortgage, they will release it, and that, of course, is in
23 effect a promise made by the mortgagee, by the lender, that the
24 mortgagee has to comply with, so in that case you would want
25 the mortgagee to sign.

1 But the mortgagor always has to sign a mortgage and
2 the consideration, what makes it a -- in effect, a -- part of
3 the agreement in that case is that the lender has actually lent
4 the money. Using the government's counsel example of the
5 \$500,000 loan, if the lender lends you \$500 -- \$500,000 and you
6 give a mortgage in return to secure repayment of that, you are
7 bound by that if, in fact, I've lent you \$500,000.

8 Q So if that's a contract, why don't the mortgage
9 company ever sign on the mortgage document?

10 A Well, the mortgage is a conveyance by the mortgagor.
11 The mortgagor, the borrower, is agreeing that, you know -- the
12 mortgagor is saying, "I have received" -- "I am receiving" --
13 "I have received \$500,000" by that example that we used. "In
14 return for receipt of that \$500,000, I am agreeing that I am
15 giving the mortgagee, the lender, a lien on my house as
16 security for me promising to repay the \$500,000."

17 Q Okay. You had testified earlier that the mortgage
18 is filed in the Bureau of Conveyance, correct?

19 A The mortgage generally is recorded in the Bureau of
20 Conveyances.

21 Q And when someone signs a mortgage is there another
22 document they sign in conjunction with the mortgage?

23 A Typically if the mortgage secures a loan, there has
24 been a promissory note signed also by the borrower.

25 Q Okay. Now, you said the promissory note. So if the

1 mortgage is signed in the county and is documented where you
2 can look it up, is the mortgage -- is the note also filed in
3 the county records?

4 A No, generally not.

5 Q Why is it not filed?

6 A Well, it's not required to be filed. I mean, the
7 short answer is there's no requirement that you -- that you
8 file the note.

9 The mortgage -- the purpose of filing the mortgage
10 is to give other parties, a buyer for the house or another
11 lender -- to give that person notice that somebody is ahead of
12 them on the house; that if they buy it, you know, they have to
13 know that somebody has to pay off that \$500,000 loan or they
14 can't get clear title to the property.

15 So that the reason you file a mortgage for real
16 property is to give notice to people that there is a lien
17 against the property and somebody has to be paid, whatever the
18 amount is, if they're going to get title or another prior lien
19 on the property.

20 The note does not have to be signed -- filed to give
21 notice to the world. That's -- I guess that's the answer.

22 Q Okay. So what is the purpose of the note then?

23 A The note is evidence that you owe the lender the
24 money and it provides the terms upon which you must repay that
25 loan or your promise to repay that loan. It includes typically

1 the amount -- again, I use the example of \$500,000 -- and it
2 usually includes -- should include the interest rate, you know,
3 3-and-a-half percent, 4-and-a-half percent, 5 percent, whatever
4 it is, and it usually indicates number of years in which it has
5 to be repaid. Usually it -- the loan -- the term is amortized,
6 that is, you're paying off the principal at the same time you
7 pay off the interest -- you pay the interest. But sometimes it
8 could be an interest-only loan with what they call a balloon at
9 the end where you only pay interest for a certain number of
10 years, then you have to pay in one single payment the balance.

11 So there are all those kinds of terms that it
12 provides. It also typically will indicate what constitutes a
13 default, that is, what is a failure to pay, you know, that if
14 you don't pay -- let's say if it requires monthly payments
15 beginning the 1st of the month, it may say that if you haven't
16 paid by the 5th of the month, then you therefore have to pay a
17 penalty of \$25 or whatever it is. There's a number of
18 different terms that are in the note.

19 So if the question is what's the purpose of the
20 note, it's not only to reflect that the borrower owes the
21 money, but to describe the terms under which the borrower has
22 to repay the loan and the consequences if they don't.

23 Q Is the promissory note a negotiable instrument
24 according to UCC?

25 A Generally speaking, yes.

1 Q And what is a negotiable instrument?

2 A Negotiable instrument is an instrument that the
3 holder can convey to another person and that other person by
4 virtue of the assignment or conveyance of the instrument, that
5 other person is entitled to enforce it.

6 So if you make a note to me for a hundred dollars
7 and it simply says, "I will pay you a hundred dollars in one
8 year from today," then I can assign that hundred dollar note to
9 my borrower or some other third party and he can go and collect
10 that money. And the assignment is called negotiation of the
11 note.

12 Q Okay. Is the Federal Reserve note what we
13 constitute as money in the United States, is that a negotiable
14 instrument?

15 A Well, it is legal tender. Usually you don't -- they
16 describe that as a negotiable instrument. In the old days, I
17 mean, conceptually, you know, the concept is the government is
18 agreeing that if you present it to them, they'll pay you for
19 it. But in currency, you just -- it is -- it is -- it can be
20 used to pay any debts because it is recognized currency of the
21 United States.

22 Q But it is a promissory note, though, correct?

23 A I would not describe it as a promissory note
24 conventionally. I would describe it as money.

25 Q Okay. Is anywhere on that document does it say

1 money or does it say Federal Reserve note?

2 A I -- you'd have to show -- it's been a while since I
3 studied a dollar bill. I'm not trying to be facetious.

4 MR. SORENSON: Your Honor, objection. I don't think
5 we qualified him on U.S. currency.

6 THE DEFENDANT: Well, it's UCC.

7 MR. SORENSON: It's beyond his expertise.

8 THE COURT: All right. So overruled, and then you
9 can ask the next question.

10 THE DEFENDANT: Well, it's according to the UCC.

11 Q (BY THE DEFENDANT:) Now, you said that a typical
12 mortgage is usually 30 years and you've seen some that are
13 probably about 15 years, correct?

14 A That's -- for residential mortgages, that's the
15 case.

16 Q Okay. So in your experience, have you seen where
17 someone takes out a mortgage and it's satisfied and released
18 within just one month?

19 A Generally no.

20 Q What about six months?

21 A We talking about a residential mortgage?

22 Q Talking about a residential mortgage.

23 A No.

24 Q What about one year?

25 A Well, there's another species of mortgage that we

1 tend to refer to as a equity line or HELOC where it's really a
2 different species of loan, and they can be callable or
3 renewable on an annual basis.

4 But your conventional first mortgage that you would
5 use to buy your house would be a -- typically a 30-year or a
6 15-year loan that's -- mortgage. That's different from you go
7 to American Savings and you say, "I need an extra line of
8 credit for -- to pay for home improvements." They have some
9 different terms.

10 Q Okay. Now, you had said earlier -- you answered
11 earlier that the UCC does not affect real estate; is that
12 correct?

13 A Generally speaking that's correct. That's not what
14 it's intended to do.

15 Q Okay. So if it doesn't affect the real estate, then
16 why would someone have to have it removed in order for them to
17 be able to sell their real estate once someone filed a UCC lien
18 on it?

19 A Well, first of all, you assume that they would have
20 to have that done, and I don't know that that's correct. But I
21 would say that if you file a UCC -- a financing statement, as I
22 testified, it does not create a lien on real property. But I
23 would -- I would say it creates noise, that is to say, if you
24 go to a bank and -- and you want to -- or you're trying to sell
25 your house and the new lender or the title company goes and

1 says, "Well, there's a lot of these things that are filed on
2 this property or filed in your name. We want to make sure that
3 it doesn't have any effect." So regardless of whether it
4 actually has a legal effect, a title company may say, "We want
5 these things out of the way because the new lender wants a
6 clean title on the house."

7 So if you ask whether it has a legal effect, no.
8 Does it -- does it create, you know, as I say, noise, you know,
9 or a nuisance in the event of somebody seeking to refinance a
10 property or get a new mortgage on the property or sell the
11 property, I think that it would get the new lender's a
12 attention and you may want to get that off.

13 Q Well, the reason why I asked that because we had a
14 witness testify before that the UCC that you saw that I filed
15 on behalf of my clients, her Realtor told her that she couldn't
16 sell her house because the UCC lien was on there. She also got
17 an attorney and the attorney confirmed to her that you can't
18 sell your house because there's a UCC lien on it.

19 So based on what you said, the Realtor and the
20 attorney that told her that were wrong?

21 A Well, remember what I said more precisely. You
22 know, it does not have a legal effect of creating a true lien
23 on the property, but it will create noise or nuisance against
24 title. And a new lender in the real world, in the practical
25 exchange of properties or your practical attempt to get a

1 refinance, will say, We want this kind of cleaned off 'cause we
2 don't want an argument about it later. That doesn't mean they
3 would lose the argument. They just don't want to have the
4 argument.

5 So when you -- when you deal with these
6 transactions, you don't want to see something that is going to
7 create noise or nuisance on the -- on title.

8 Q Okay. Now, they -- now the prosecutor showed you a
9 copy of the mortgage that I usually file on behalf of my
10 clients.

11 Now, you stated that you've never seen a mortgage
12 with that type of language and you had said that it was -- the
13 term you used was nonsensical; is that correct?

14 A Yes.

15 Q Okay. So if you was to find out that that mortgage
16 has been filed for 15 years in over 9 states and never was
17 termed as nonsensical, or fraudulent, would you be surprised?

18 A Uhm, I might well be surprised. It all depends on
19 what -- you know, how it was filed and whether -- who
20 challenged it and the circumstances.

21 Q Okay.

22 A You know, in my years of practice, I don't get
23 surprised all that often any more.

24 Q Okay. Did the prosecutors notify you that this
25 particular mortgage that they showed you was actually

1 scrutinized by several district attorneys in multiple states?

2 Did they notify you of that?

3 MR. SORENSON: Objection. That assumes facts not in
4 evidence.

5 THE COURT: Sustained. Ask another question. I'm
6 not going to let him answer that question.

7 Q (BY THE DEFENDANT:) Did the prosecutor show you the
8 video of me getting the mortgage approved by the district
9 attorney's office?

10 A I have not seen any videos that I can recall.

11 Q Okay. Did the prosecutors show you a certificate of
12 exemption that my company received from the anti -- Illinois
13 Anti-Predatory Lending Database?

14 A I have not seen such a document.

15 Q Do you -- have you heard of a certificate of
16 exemption that's given to a mortgage company so their mortgages
17 can be filed?

18 A Not by that name. I don't know what function that
19 it serves.

20 Q Are you familiar with any state that before
21 mortgages can be filed, it has to be scrutinized through a
22 certain agency? Are you familiar with any other state that
23 does anything similar to that?

24 A I am not.

25 Q So if you was to find out that there are certain

1 states before you can file mortgages, before they are filed,
2 they have to be scrutinized by this governmental agency to look
3 for fraudulent language or make sure the company's not
4 fraudulent, and then they scrutinize it and give you that
5 certificate of exemption saying that the mortgage is not
6 fraudulent, now would you agree that the mortgage is actually
7 valid because it went through the scrutinization of the
8 attorneys of that governmental agency?

9 A Well, there's two questions there. One is would it
10 have any effect on a recording here in Hawaii, and the answer
11 is no, it would have no effect on -- you know, it would not
12 make such a mortgage enforceable in the state of Hawaii because
13 that's not -- there is no such, you know, procedure as you've
14 described here.

15 As to what may be the case in mortgages that people
16 file in other states, I don't practice law in those states, so
17 I don't have an opinion of that, by what is necessary to file a
18 mortgage in the state of Illinois for instance.

19 Q Okay. So in the state of Hawaii is there a
20 governmental agency that I can present my mortgage document to
21 that they're going to scrutinize it for any fraudulent
22 language, scrutinizing my mortgage company before it's filed in
23 the Bureau of Conveyance? Is there any such agency in Hawaii?

24 A The practical answer is no. I mean, you are
25 presenting any document that you intend to file in the Bureau

1 of Conveyances, you are presenting it over-the-counter to the
2 Bureau of Conveyances. But they are not intended to scrutinize
3 and expected to scrutinize a document and pass judgment as to
4 whether it is by itself enforceable. They generally will
5 accept it and file it and leave it to the parties to determine
6 whether it's enforceable at a later date or the courts if it
7 should come before a court.

8 Q Right. So what I'm asking you now is that if Hawaii
9 doesn't require that but other states does, and so this same
10 mortgage document that's filed in other states have been
11 approved for filing, would I not be right in thinking that it
12 would be approved for filing for here since there is no state
13 agency that would scrutinize it and say that it's not?

14 A No, you would be wrong.

15 Q So why would I be wrong?

16 A Because it is not the procedure that is required to
17 create a valid mortgage in the state of Hawaii.

18 Q Right. So -- so then it can't say that the mortgage
19 is not valid because there's no agency that says it's not in
20 the state of Hawaii, correct?

21 A I'm sorry. You have a double or triple negative.
22 Could you repeat your question for me?

23 Q Well, since there's not a agency in Hawaii like
24 there is in Illinois and other states that I have offices in
25 that actually has to scrutinize the mortgage before its filed

1 so I don't have to go through the same scrutinization here that
2 I would have to do in other states, so when I come to Hawaii
3 and I want to file a mortgage, I don't have to get it
4 scrutinized or approved by the district attorney here like I
5 would the other states?

6 THE COURT: Okay. Is your question do you have to
7 get it scrutinized by a district attorney here in Hawaii?

8 THE DEFENDANT: Right, to get it filed here, a
9 Hawaii mortgage.

10 THE WITNESS: You do not have to get it scrutinized
11 in order to file it, but the filing of it does not make it a
12 valid mortgage.

13 Q (BY THE DEFENDANT:) Does the filing of it make it a
14 fraudulent mortgage?

15 A It depends on whether, in fact, it's a fraudulent
16 mortgage.

17 Q But the mortgage has already been scrutinized in
18 other states and says it's not.

19 THE COURT: So enough with the other states. Just
20 ask him a question about Hawaii 'cause he's not being offered
21 as an expert in these other states. So ask him with regard to
22 Hawaii. He can't assume anything with other states.

23 Oh, is your question if you had it approved in other
24 states, does that mean it can be used in Hawaii?

25 THE DEFENDANT: Correct.

1 THE COURT: Okay. So that's his question. If he's
2 gotten it approved in other states, does that mean then it's a
3 valid document to file in Hawaii?

4 THE WITNESS: It does not mean that it is an
5 enforceable mortgage in the state of Hawaii.

6 Q (BY THE DEFENDANT:) No, I said is it valid?

7 A No, it's not valid. I mean, whether or not it is
8 valid depends upon it -- whether intrinsically it is a valid
9 mortgage, you know, not whether or not some other state or some
10 other agency elsewhere has found that acceptable. That has
11 nothing to do with whether it is a valid mortgage here in
12 Hawaii.

13 Q Now, what law in the state of Hawaii that says a
14 homeowner cannot file their own mortgage or a UCC lien on their
15 own property? What statute says that?

16 A There is no statute that says you can't file a
17 document.

18 Q Okay. Now, we just talked about contracts. Now, in
19 contract law, if there is fraud in any of the documents, does
20 fraud vitiates the contract? Does it void the contract if you
21 find out it is fraudulent?

22 A Yes. I would say the answer generally is yes,
23 there -- if you get into the doctrines, you have to talk about
24 fraud in the inducement versus fraud in the fact which are two
25 different things. If it is -- if you have convinced somebody

1 to sign something by -- fraudulently, but they have actually
2 signed it, then it is not void but it is voidable, that is, it
3 can be set aside, but it is not void.

4 If you -- if they don't know what they're signing,
5 that is, you cover up the rest of the document and have them
6 just sign a blank space and they don't actually know what
7 they're signing, that's called fraud in the fact and it is void
8 and meaningless from the beginning.

9 But the other is if there's fraudulent inducement
10 under law, then it will be set aside, but it is not -- it is
11 not void at the outset.

12 Q So if the mortgage company or the bank commits fraud
13 against the homeowner and that fraud is exposed, and the fraud
14 that's in the mortgage documents were fraudulent documents that
15 were put in by the mortgage company, would that void the
16 contract?

17 A Going back to what I said, if the borrower knows
18 that they are signing a mortgage, then the mortgage is still
19 enforceable if the homeowner, if the borrower, then can prove
20 in a court that it is -- that they were defrauded, they were a
21 victim of fraud in entering into the mortgage, then the court
22 can set aside the mortgage. The borrower can't themselves say,
23 "I was defrauded. The mortgage is not enforceable."

24 That is -- in that instance -- does that answer your
25 question, sir?

1 Q Yeah. Let me ask you this question. So if we go to
2 court, which I often do for my clients, and say I filed a first
3 request for answers and admissions and I filed this to the bank
4 attorneys, and one of the questions that I ask on the answers
5 and admissions is, "Did you loan my client any lawful money?"
6 and the answer is, "No," by the bank, they answered, "No," now,
7 once they answered no, they never loaned my client money, is
8 that a reason to void the contract because the whole contract
9 was based upon them saying they loaned my client money?

10 A Does the question -- is the question is whether the
11 contract -- if you in the judicial proceeding --

12 Q Yes, sir.

13 A -- persuade the Court that the mortgage was -- that
14 your client, as you put it, was defrauded in entering the
15 mortgage, in granting the mortgage, and was never lent any
16 money and therefore had no debt --

17 Q Correct.

18 A -- and the Court then sets aside the mortgage, then
19 the mortgage has been set aside.

20 Q So that would make the mortgage void, correct?

21 A The court's order would make the mortgage void.

22 Q Well, even the bank's answer because remember, the
23 mortgage document is that they loaned the client money, but
24 under oath they testified that, no, they never loaned them any
25 money.

1 Now, you've been in the mortgage industry for how
2 long --

3 THE COURT: Wait. What's the question you want to
4 ask him? You have like three things in there.

5 What do you want to ask him?

6 Q (BY THE DEFENDANT:) If the mortgage company
7 admitted on the record in a judicial proceeding and put it into
8 writing that they never loaned the client any money, is that
9 cause to void the contract?

10 A If the mortgage was granted in exchange for a loan,
11 but the loan had never been made or the -- or had been
12 completely repaid, then that would generally, I would think, be
13 cause to expunge or cancel the mortgage. The Court would have
14 to make that ruling. The borrower cannot do so unilaterally.

15 Q Okay. Now, are you familiar with administrative
16 law, like in the common law where you can file 'cause you're
17 versed in credit -- credit and debt and things like that,
18 correct?

19 A Two parts to that question. You know, I don't
20 consider myself an expert in administrative law, and
21 administrative law deals with a whole variety of administrative
22 procedures and agencies. So I have some familiarity with it,
23 but I don't hold myself out as an expert in administrative law.

24 Q Okay. So in a debt situation with a creditor and a
25 debtor that I deal with with my clients, if I send a validation

1 of debt letter, you're familiar with the laws regarding if I
2 send a lender, "Hey, I want you to validate this debt for my
3 client," are you familiar with the time frame that they have to
4 validate the debt and if they don't validate the debt, that the
5 debt is discharged?

6 A I'm not familiar --

7 THE COURT: Wait. I'm sorry. There's like three
8 questions there. So what question do you want him to ask?

9 Q (BY THE DEFENDANT:) Are you familiar with the
10 validation of debt laws under the Real Estate Settlement
11 Procedures Act?

12 A I am not particularly familiar with those.

13 Q Are you familiar with the Truth in Lending Act and
14 its procedures?

15 A Somewhat, though it's been some years since I looked
16 at the Truth in Lending Act.

17 Q Okay. And are you familiar with the Fair Debt
18 Collection Practices Act?

19 A I am somewhat familiar with it, but again, it's been
20 some years since I've looked at the Fair Debt Collection
21 Practices Act.

22 Q Okay. So if you kind of study a little bit, so do
23 you understand that in the Fair Debt Collection Practices Act,
24 once a debtor disputes a debt, that whoever the creditor is
25 have 30 days to validate that debt? Are you familiar with

1 that?

2 A I can't confirm that or deny it. I don't know the
3 answer to that.

4 Q Okay. So you really not versed in your Fair Debt
5 Collection Practice Act then?

6 A Apparently not. That's not --

7 Q Okay.

8 A -- I don't hold myself as being so.

9 Q Well, let me ask you this question. If you verify
10 that, which you can easily verify -- if you verify the Fair
11 Debt Collection Practice Act and that under that statute it
12 states that if a creditor --

13 THE COURT: Okay. So what's the question you have
14 about it? I'm not going to have you state law to him.

15 THE DEFENDANT: I'm not going to --

16 THE COURT: Okay. So he said he's generally
17 familiar with it --

18 THE DEFENDANT: Right.

19 THE COURT: -- but he didn't know that specifics.

20 THE DEFENDANT: Right.

21 THE COURT: What is it that you want --

22 THE DEFENDANT: So I'm asking him if he reads the
23 actual statute 'cause he said he don't know it --

24 THE COURT: Right.

25 DEFENDANT WILLIAMS: -- so if he reads it and it

1 actually says that, which it does, that in 30 days they have to
2 validate the debt --

3 THE COURT: Okay. So he doesn't know this, all
4 right? So if you want to have him look at the statute, you can
5 do that. But I'm not going to have you represent what the law
6 is 'cause that's sort of testifying by you.

7 So what is the question you want to ask him about the Fair
8 Debt Collection Act? He says he has general familiarity, but
9 he doesn't know the specifics. Now you're asking him about a
10 specific part.

11 THE DEFENDANT: Okay.

12 Q (BY THE DEFENDANT:) In debt validation, you do
13 understand about debt validation, correct. If someone disputes
14 a debt?

15 A Well, I understand that one may dispute a debt. I
16 don't know that there is a specific doctrine of debt validation
17 to which you're referring. So I'm not entirely sure
18 what -- what you're asking.

19 I -- I believe that a borrower is entitled to have
20 confirmed what the outstanding liability is to his lender. If
21 that's what you're asking, I believe that a borrower is
22 entitled to go to the bank and say, "I want to -- I want to
23 know how much remains," and I know for most mortgages, you
24 know, residential mortgages, you get a statement every month
25 and it shows you how much the -- is owed on your principal and

1 how much is due this month on interest and that sort of thing
2 for most -- most home mortgages.

3 Q Well, I'm saying if the homeowner or the debtor
4 disputes the debt under the Fair Debt Collection Practices Act,
5 are you familiar with what the procedures that the creditor has
6 to take?

7 A I am not particularly familiar with the procedures
8 that a -- that have to be followed by either borrower or lender
9 under the Fair Debt Collection Practices Act in that
10 circumstance.

11 Q Okay. So as an attorney, if you, say, had a client
12 that owed you and you send them a letter and say, Hey, if you
13 don't respond to me in 30 days, I'ma get such, such, such, file
14 such, such, such against you, if they don't respond in those
15 30 days, do you have a right to execute the thing that you told
16 them that you were going to do in 30 days if they don't
17 respond?

18 A I suppose it depends on what you said you were going
19 to do in 30 days.

20 Q Well, that's --

21 A If you say -- look, as an attorney, I can write
22 somebody a letter and say If you don't respond in 30 days, I'll
23 file a lawsuit, I'll pursue my rights and remedies, you know,
24 and if they don't respond, I can -- there're certain things I
25 can do and certain things I can't do. Now, I can go file a

1 lawsuit, but I can't say, because you've not responded in
2 30 days, "I no longer" -- in the case of a loan, "I no longer
3 have any obligation to pay you," I don't think you can do that.
4 I would not recommend to at a client that they do that.

5 But if there's some particular statute that you
6 would like me to look at, I can look at it. But I -- I do not
7 know that you necessarily have a right to that remedy.

8 Q Well, in a court proceeding, say, in a court
9 proceeding, if a court issues a order and say, If you don't
10 respond within -- like you receive a summons, like you said, a
11 lawsuit, and they summoned me to court and the court gives me
12 30 days to respond and I don't respond, what other action is
13 taken against me since I didn't respond?

14 A If I commenced a lawsuit and you have 30 days to
15 respond and you do not respond, then I can file what's called
16 an entry of default. But the entry of default only indicates
17 that by my report to the court that you have not responded. To
18 seek that against you for the particular relief that I sought,
19 I would still have to go to the court by way of motion and
20 perhaps by way of judgment, in effect, trial or evidentiary
21 hearing, whatever the court determines to be appropriate, to
22 prove that my claim has merit. I simply couldn't say He's
23 defaulted, therefore, you know. You can't -- you can't enforce
24 your mortgage or you can't do this, you can't do that.
25 Generally I would have to go and prove to the court's

1 satisfaction that that remedy is justifiable.

2 Q And so -- and that's -- that's uniform in the law
3 that I would have to go to the court in order to get a judgment
4 against someone for payment or to eradicate, say, a debtor
5 anything, I would have to go through a court system and get a
6 judgment from a court?

7 A Generally, yes. I mean, again, I'm confining my
8 comments to the state of Hawaii, although I suspect it's true
9 in most other states as well.

10 Q So if the IRS wants to put a lien on your house and
11 you don't respond in 30 days, do they file with the court or do
12 they just come and take whatever they want after the allotted
13 time?

14 A Well, when you say "whatever they want," the IRS has
15 certain, you know, remedies that are statutory that most people
16 don't have.

17 Now, a notice of lien by the IRS can be, you know,
18 contested. It's a whole area of law by itself. But the
19 remedies that the -- that Congress has afforded to the IRS are
20 not the same remedies that are afforded to an average person.

21 So an average person, you can't -- you do not have
22 350 million people who can go file liens against one another,
23 you know, because of, you know, perceived grievances. The law
24 doesn't permit that.

25 The IRS has certain rights under federal law that I

1 have not been asked to comment on in this proceeding.

2 Q Okay. So is the IRS an agency of the government?

3 A It appears so.

4 Q Is that a yes?

5 A Yes.

6 Q I'm going to show you a document that's from the
7 National Archives and Records of Administration --

8 THE COURT: All right. Do you have an exhibit
9 number?

10 THE DEFENDANT: It's Defense Exhibit No. 2087.

11 MR. SORENSON: 2-0-8-7?

12 THE DEFENDANT: Yes.

13 THE WITNESS: Thank you.

14 Q (BY THE DEFENDANT:) While they're bringing that up,
15 I just want to ask you this question. Just because you haven't
16 seen --

17 THE COURT: I'm sorry. Mr. Sorenson's still looking
18 at the document. We'll give him a few minutes.

19 MR. SORENSON: It'll take a few moments.

20 THE DEFENDANT: That's why I was gonna ask him a
21 question while he looked that up.

22 THE COURT: No. He has a right to take a look at
23 the document to make sure that he understands it and if he
24 wants to lodge any objection. So if you could just hold on for
25 maybe about 30 seconds longer.

1 All right. Is there a particular page you want this
2 witness to look at or --

3 THE DEFENDANT: It's the first page and I want him
4 to look at the third page.

5 THE WITNESS: I'm sorry. The first page and what
6 other page?

7 THE DEFENDANT: And the third page. But I'ma need
8 you to at least look at the second page so you could see that
9 it's -- what court this is in.

10 THE COURT: So you want him to look at the first
11 three pages?

12 THE DEFENDANT: Right.

13 THE WITNESS: Okay.

14 THE COURT: If you could look at the first three
15 pages.

16 THE WITNESS: I'll take a moment to do that. Okay.
17 I've looked at the first three pages, sir.

18 Q (BY THE DEFENDANT:) Okay. And are you familiar
19 with the National Archives and Administration, what they do?

20 THE COURT: All right. So this is way afield of
21 anything they're offering Mr. Klevansky as an expert -- or you
22 have no objection to this line of questioning, Mr. Sorenson?

23 MR. SORENSON: Well, I'm waiting -- I don't know if
24 we're refreshing his recollection. I don't know if he's
25 seeking admission. This is multiple documents, appears to be

1 litigation commenced perhaps by Mr. Williams or others
2 involving a tax debt.

3 THE COURT: All right.

4 MR. SORENSON: There are just a lot of documents
5 here, a lot of information.

6 THE COURT: Okay. So you're not objecting? You're
7 not -- you don't find this not irrelevant?

8 MR. SORENSON: I find it nonrelevant, Your Honor,
9 and I do object.

10 THE COURT: Okay. So I'm not going to let you
11 pursue this 'cause this has nothing to do with what they're
12 offering him to be an expert in.

13 THE DEFENDANT: I mean, it is. He just --

14 THE COURT: No. He has not testified with regard to
15 the IRS or anything like that. You did ask him a series of
16 questions, they didn't object. I don't know why not, but they
17 didn't.

18 So, but it's not -- the IRS is not related to any of the
19 issues in this case or what he's been offered for. So you can
20 ask him another question, but I'm not going to let you offer
21 any questions with regard to this document 'cause it's way
22 afield.

23 THE DEFENDANT: Well, it's not because I wanted to
24 ask him because --

25 THE COURT: Well, I'll let you put it on the record

1 after the jury's out on their next recess, but I'm not going to
2 let you ask him questions on it right now because it's not
3 relevant. It'd be a waste of time for the jury.

4 Okay. So what's your next question? What would you like
5 to ask him?

6 Q (BY THE DEFENDANT:) A loan process for a bank, do
7 you know actually how the bank loans their money?

8 THE COURT: So we're talking about mortgages, right?

9 THE DEFENDANT: Right.

10 THE COURT: Not --

11 THE DEFENDANT: Talking about mortgages.

12 THE COURT: -- okay -- buying furniture? Okay.

13 THE WITNESS: Generally speaking, yes.

14 Q (BY THE DEFENDANT:) Okay. And does the bank
15 actually loan their money to the homeowner?

16 A Yes. Do you want me to -- well, I think the answer
17 is yes.

18 Q And what evidence have you seen that that's actually
19 true?

20 A Well, I mean, I've seen multiple instances of loans
21 made secured by mortgages. They're generally done through what
22 are called escrow procedures or escrow offices whereby -- and
23 I've seen the documentation of the funds being transferred
24 reflected in statements and accounts.

25 So I -- that's the evidence I've seen.

1 Q And so are you familiar what the bank does with the
2 note that the borrower signs?

3 A The note I think goes into a file. I mean, I don't
4 know what you mean by familiar with what they do with it.

5 Q Okay.

6 A The original note is of some importance, so they
7 typically preserve that.

8 Q Right. Okay. So they preserve it and they don't
9 file it in the county, right, or the Bureau?

10 A That's right. The note is not generally filed in
11 the Bureau of Conveyances.

12 Q Okay. And earlier I asked you was the promissory
13 note a negotiable instrument and you said yes, correct?

14 A Yes.

15 Q Okay. Now a negotiable instrument, was it
16 considered funds, correct?

17 A No, it's considered a negotiable instrument. Funds
18 are funds. I mean, they are moneys, you know, although I guess
19 in today's world they're transferred -- funds themselves are
20 transferred electronically. But I would not call the
21 promissory note funds.

22 Q Okay. Now, what would you call a document that has
23 Paid to the Order Of and someone's name on it and then a
24 signature? What would you call that type of document?

25 A Most frequently a check.

1 Q A check?

2 A I mean, that's -- if you write a check, that's
3 usually what it says.

4 Q Okay. What about a money order? Does it have Pay
5 to the Order on it?

6 A You know, it's been a while since I've looked at
7 money orders. That would be a -- it may well have that
8 language on it, but I'd have to look at the money order.

9 Q Okay. So you've seen that language on like a
10 personal check or on a business check?

11 A Yes.

12 Q What about like a traveler's check?

13 A There again, with today's credit cards most people
14 don't use traveler's checks, so it's been a number of years
15 since I've used traveler's checks, although I once did. It
16 may -- it may have that language on it as well.

17 Q But any time you see that Paid to the Order of, it
18 kind of tells you that that's a check for money or something on
19 that line?

20 A Yes.

21 Q Now, have you seen a promissory note that every
22 homeowner signs outside of their presence? The bank has a
23 stamp and they stamp the promissory note paid to the order of
24 themselves? Have you seen that on the note?

25 A You say pay to the order of themselves?

1 Q Yeah, paid to the order of the bank and they stamp
2 it on the note outside of the borrower's presence. Have you
3 ever seen that?

4 A I have generally not seen such stamps on a
5 promissory note.

6 Q Okay.

7 MR. ISAACSON: Just one moment, Your Honor.

8 THE COURT: Yes.

9 THE DEFENDANT: Need Exhibit 2080 and it's page 62,
10 63, and 64. Just let me know when you get to look over it.

11 THE WITNESS: I have the document in front of me.

12 THE DEFENDANT: And it's page 62, 63, and 64.

13 THE WITNESS: Okay. It may take me a while to -- is
14 there -- you see that code at the bottom? If you can --

15 THE DEFENDANT: Yes, the code at the bottom.

16 THE COURT: It's the small letters.

17 THE DEFENDANT: Small one.

18 THE WITNESS: I see. 63 and 64?

19 THE DEFENDANT: 62, 63, and 64, that's the whole
20 note.

21 THE WITNESS: Okay. I have those three pages in
22 front of me.

23 Q (BY THE DEFENDANT:) Okay. Now, is that a typical
24 note, how a note generally looks?

25 MR. SORENSON: Your Honor, objection. Again, no

1 foundation. This witness hasn't identified this document. He
2 doesn't know if it's real or what it is.

3 THE COURT: Right. So he's trying to ask him if
4 it's a typical note. So he can do that, except I don't see the
5 relevance of that note with regard to his testimony --

6 THE DEFENDANT: Well, I'm --

7 THE COURT: -- on the filing of mortgages --

8 THE DEFENDANT: Right. I mean --

9 THE COURT: -- in the state of Hawaii.

10 THE DEFENDANT: That's what I have to explain
11 because I have to show this so I can show him what really
12 happens with the note because, obviously, you don't know what
13 goes on with the note.

14 THE COURT: Okay. But it's not relevant to the
15 opinions that the government's offering him for. So I'm not
16 going to let you go into this area. I'll let -- at the next
17 break you can put your reasons on the record. All right?

18 Ask him another question in another area.

19 THE DEFENDANT: That's why I'm saying --

20 THE COURT: I understand and I'll give you an
21 opportunity when we take a recess. Do you have another area
22 that you'd like to question him on, or would you want to take a
23 recess now and we can take it up --

24 THE DEFENDANT: Yeah, we need to take a recess so we
25 can do that.

1 THE COURT: You rather do that?

2 THE DEFENDANT: Yes.

3 THE COURT: All right. Ladies and gentlemen of the
4 jury, if you would please put your iPads and your notebooks
5 down and we're going to take a -- probably anticipate a
6 20-minute recess so that we can address this issue.

7 So please rise for the jury. They're on a 20-minute
8 recess.

9 (Open court out of the presence of the jury.)

10 THE COURT: All right. You may be seated. The
11 record will reflect the jury's no longer present. Present is
12 the witness, counsel, and Mr. Williams.

13 All right. Mr. Williams, I believe there were two
14 documents that we were reserving for the recess. The first
15 document is Exhibit No. 2087, and the second was the one you
16 just had the witness review which was Exhibit 2080. Which
17 exhibit would you like to take up first?

18 THE DEFENDANT: The 2087, the IRS.

19 THE COURT: All right. So let the record reflect
20 2087 has the first sheet about the National Archives and
21 Records Administration, and the second page is the -- what
22 appears to be the first page of a filing by attorneys for the
23 United States of America in the District of Idaho. It was
24 filed in a matter known as *Diversified Metal Products, Inc. v.*
25 *T-Bow Co. Trust, Internal Revenue Service, and Steve Morgan,*

1 Civil No. 93-405.

2 All right. So what's your position with regard to this
3 document and why you need to inquire of this witness?

4 THE DEFENDANT: 'Cause I asked him was the IRS an
5 agency of the government and he said yes. This archive is a
6 U.S. District Court case where the IRS attorneys noted under
7 oath under the record that the IRS is not an agency of the U.S.
8 government.

9 THE COURT: All right. Any other reason why you
10 want to question this witness with regard to this document
11 identified at 2087?

12 THE DEFENDANT: Well, to show that just because
13 you've been -- went to law school and trained in a certain area
14 doesn't mean that you know everything or that there's some
15 things that you are unaware of that have actually transpired in
16 law which would seem outrageous or outlandish for some people,
17 but this is the archive, this is the actual record where the
18 IRS admitting no, we're not an agency of the government -- of
19 the U.S. government.

20 THE COURT: Okay. And how is that relevant to the
21 opinions that he's been offered to give in this case with
22 regard to creditor/debtor law involving, for instance,
23 mortgages and UCC financing statements?

24 THE DEFENDANT: Well, just showing that the
25 conventional opinion of how mortgages and notes work is not how

1 it really is. And see, this is what I was exposing, that,
2 listen, I know you all been doing this a long time all the
3 mortgages and stuff, but here's what the law states. Here's
4 what I've been actually doing in reality. Here's what I've
5 exposed.

6 And that's why I asked him, you know, have you ever seen a
7 note with the paid to the order stamp on it, because all the
8 banks without fail do the exact same thing. I got all my
9 clients -- you know, I get copies of all their mortgages and
10 all their notes from the bank. Every last one of them have
11 that paid to the order of to show that they use the note as the
12 actual funds. But they don't tell the borrower that they
13 actually use that as the funds to fund the loan. The bank
14 never loaned them a dime and that's what I was exposing.

15 THE COURT: Okay. So what does that have to do with
16 the Internal Revenue Service, though? You're saying because he
17 didn't know or because he believes the Internal Revenue Service
18 is an agency of the United States government --

19 THE DEFENDANT: Right, right. And he hasn't done
20 the research to actually see, no, they're not, by their own
21 admittance -- not by my admittance, by their own admittance.

22 THE COURT: So regardless of that, how does that
23 relate to mortgages, though? He didn't ever -- I mean, the
24 United States isn't offering him as an expert in anything that
25 involves the Internal Revenue service. You could ask him

1 questions about international treaties and Mr. Klevansky is a
2 very experienced and talented lawyer, but I'm assuming he's
3 going to tell you, I know generally about international treaty,
4 but that's not an area of law that I specialized in or that I
5 can -- I feel I can give an opinion in court.

6 So what I'm telling you is the IRS is a very separate
7 issue.

8 THE DEFENDANT: Right. Well, the reason why I'm
9 doing that because I need to show the jury that just because
10 someone has an opinion on something and they're termed as an
11 expert doesn't mean they know everything that they're saying or
12 they are aware that what they're saying is actually not the
13 truth. Because that's going to be vital when I show how the
14 mortgage documents are being filed by the banks and things like
15 that, and that's what I was exposing, and that's the reason why
16 my mortgage was drafted the way it was drafted so it wouldn't
17 be fraudulent.

18 THE COURT: Okay. Mr. Sorenson, do you have
19 anything you want to place on the record before I rule with
20 regard to the first document which is Exhibit 2087?

21 MR. SORENSON: Well, we agree with the Court's
22 assessment. It's completely nonrelevant. It appears he's
23 offering it to impeach the witness, but the witness hasn't
24 testified at all about any of the subject matters that are
25 contained in here and it's just a waste of time, Your Honor,

1 nonrelevant.

2 THE DEFENDANT: He said the IRS is an agency of the
3 government. He said that. He said yes, it's an agent of the
4 government. I'm showing that it's not.

5 THE COURT: Right. But so whether it is or not is
6 not relevant to the issues at hand. So the court is going to
7 sustain the objection and not permit you to question him with
8 regard to Exhibit 2087 because it's not relevant and what
9 limited relevance if any it may have is outweighed by possible
10 jury confusion and waste of time.

11 All right. Let's go to the next exhibit that you wanted
12 him to take a look at.

13 MR. ISAACSON: May I ask for a clarification?
14 That's just pages 1 to 3.

15 THE COURT: It's the entire document.

16 MR. ISAACSON: Oh.

17 THE COURT: It's the entire document. He didn't
18 indicate any other basis other than to show that it wasn't --
19 you know, has to do with the issue of IRS.

20 MR. ISAACSON: I thought it was just the first three
21 pages is all he was offering. I just want to make clear for
22 the record.

23 THE DEFENDANT: Yeah, it was just the first three.

24 THE COURT: To the extent that he's offering
25 Exhibit 2087, I will not permit it to be offered or be a line

1 of questioning for this witness on the basis I've stated.

2 All right. With regard to Exhibit 2080, what's your
3 proffer as to why this is relevant or why you should be able to
4 go into this area?

5 THE DEFENDANT: Well, because the government is
6 alleging that my mortgage and my note is fraudulent, and so
7 they have him as an expert to say, Well, this is how normal
8 mortgages and notes are filed, and what's the normal languages
9 in mortgages and notes. And I can show that what he is used to
10 is not what actually happens. It's not what the people see and
11 that's fraud. And that's where -- that's the reason why I had
12 to redo mortgage notes -- mortgage and notes because of what
13 the banks has done to homeowners.

14 THE COURT: All right. And Mr. Sorenson,
15 government's --

16 MR. SORENSON: On the basis of where in here in this
17 stack of what could be 250 documents there's anything relevant
18 to that?

19 THE DEFENDANT: It's the note.

20 THE COURT: Well, he's looking at page 62 which is
21 identified in the middle of the bottom page as 2080-000062 and
22 I think through and including is it -69 that you wanted or the
23 entire --

24 THE DEFENDANT: -62, -63, and -64, that's it.
25 That's just the note.

1 THE COURT: Just the note.

2 THE DEFENDANT: Yeah, it's just the note.

3 THE COURT: Just the note. So let me ask you guys
4 this. For the government, is it your position that he
5 filed -- that is, Mr. Williams -- filed mortgages or is it the
6 UCC financing statement that you folks are saying serves as the
7 basis of the fraud counts?

8 MR. SORENSON: Well, there's a lot for the basis of
9 fraud counts, but certainly the UCC financing statements
10 advising homeowners that their prior mortgages were being
11 extinguished, rendered null and void, but also the mortgages
12 that he filed did the same thing.

13 THE COURT: Okay. So the mortgages, and those
14 mortgages also had a note attached?

15 THE DEFENDANT: Yes.

16 MR. SORENSON: Well, the mortgages did have a note
17 attached.

18 THE COURT: Okay. And so you're offering this note
19 from a mortgage company --

20 THE DEFENDANT: Right.

21 THE COURT: -- to point out whatever the process
22 was --

23 THE DEFENDANT: Right.

24 THE COURT: -- that the mortgage companies did it
25 and you want to contrast that with how you did it?

1 THE DEFENDANT: Right.

2 THE COURT: Okay. So you're going to offer this,
3 not that Mr. Klevansky personally was involved or --

4 THE DEFENDANT: No.

5 THE COURT: -- but you want to ask his general --

6 THE DEFENDANT: Right.

7 THE COURT: -- understanding as to how the notes are
8 written --

9 THE DEFENDANT: Right.

10 THE COURT: -- and what they mean?

11 THE DEFENDANT: Right.

12 THE COURT: Okay. All right. So that's his
13 proffer, Mr. Sorenson. Do you have any objection?

14 MR. SORENSON: Well, again, Your Honor, we don't
15 know the authenticity of this. We don't know if anything's
16 been removed or taken out. I don't know if this is a complete
17 note document. I don't know what the parties are. If I could
18 have a few moments to look at it.

19 THE COURT: You may.

20 MR. SORENSON: It does appear --

21 THE DEFENDANT: I mean, if you want to, I can -- the
22 witnesses --

23 THE COURT: So I think the thing that he wants is on
24 page 64. There's a stamp Paid to the Order of.

25 THE DEFENDANT: Yes.

1 THE COURT: That's the point that you want to point
2 out.

3 MR. SORENSON: Well, and I think on that point, I
4 don't know the relevance of that. I don't know how in the
5 world -- is his argument that they didn't loan money because
6 that stamp's on there? Because certainly there's going to be
7 evidence that money was loaned because the house was probably
8 bought and certainly that would be our evidence. I don't know
9 how that is evidentiary for anything that matters.

10 THE COURT: Well, he asked him has he ever seen this
11 stamp on notes and is he aware that the bank doesn't actually
12 lend any money, that it's funded some other way -- I'm not
13 quite sure what, but -- and that's why he wants to show him
14 this note.

15 So I understand what your objections are in terms of
16 authentication. But in light of Mr. Klevansky's answer that
17 he's never seen the note with this kind of stamp on it, I'm
18 inclined to allow him to inquire or to pursue this line of
19 inquiry with regard to the stamp and, you know, Mr. Klevansky
20 can answer --

21 MR. SORENSON: I just think we're going down a
22 rabbit hole of how the stamp is relevant in any event, but --

23 THE COURT: Yeah. So I think -- I don't mean to
24 speak for you, Mr. Williams, but as I understand it, there's a
25 significance you attach to that stamp.

1 THE DEFENDANT: Yes.

2 THE COURT: And that you in filing your mortgage and
3 note do it different.

4 THE DEFENDANT: Yes.

5 THE COURT: And that's significant, you believe,
6 because that shows that yours is the valid mortgage.

7 THE DEFENDANT: That's correct.

8 THE COURT: And that goes to his defense. Okay. So
9 this is my ruling: I'm going to permit him to inquire on this
10 line of questioning. I am going to allow you to -- the court
11 will receive in evidence only a portion of this exhibit and
12 that's pages 62, 63, and 64 of 2080.

13 THE DEFENDANT: Okay.

14 THE COURT: And you can inquire and you can publish,
15 if you wish, with regard to that as to that issue. I'm not
16 going to put the whole --

17 THE DEFENDANT: Right.

18 THE COURT: -- exhibit in.

19 THE DEFENDANT: That one thing. The other witnesses
20 that had already testified, I also have their notes that has
21 that same stamp on there. Would it be better that I have
22 them -- theirs show too to show that it's not just one -- you
23 know, there's not one instance, that all the mortgages are like
24 that, every last one of them? Or is it just one suffice?

25 THE COURT: Well, it's up to you how you want to

1 present your case. So I'm not going to give you legal advice
2 at this point. It's up to you with regard to it.

3 But with regard to this witness, I will let you -- I will
4 receive into evidence Exhibit 2080, pages 62, 63, and 64.

5 (Exhibits received into evidence.)

6 THE DEFENDANT: Okay.

7 THE COURT: All right. And you can question this
8 witness on it.

9 THE DEFENDANT: Okay.

10 THE COURT: All right? All right. Are we ready to
11 have the jury come back, or do you folks need five minutes?

12 MR. SORENSON: No, we're ready.

13 THE DEFENDANT: I'm ready.

14 THE COURT: Mr. Isaacson, you want five minutes?

15 MR. ISAACSON: Yeah. Yes.

16 THE COURT: Okay. All right. So we're -- I'll have
17 a 5-minute recess then. I'm just going to take it on the
18 bench. No sense for me to go out and come back in.

19 (A recess was taken.)

20 (Open court in the presence of the jury.)

21 THE COURT: Let the record reflect the presence of
22 the ladies and gentlemen of the jury, counsel, Mr. Williams.
23 The witness is on the stand.

24 Your witness, Mr. Williams.

25 Q (BY THE DEFENDANT:) Okay. Mr. Klevansky, before we

1 went to break, I had questioned you on the notes and your
2 particular experience with the notes, and I had asked you had
3 you ever seen the paid to the order stamp that was stamped on
4 the note after the homeowner signed the note, and you had said
5 no, correct?

6 A Uh, yes. I think I had a different understanding of
7 your question, although the second question -- the question you
8 asked now being relevant as well.

9 I think the question as I recall that you asked me
10 is whether I had seen the stamp whereby the bank was saying
11 paid to the order of the bank, that is, paid to the order of
12 itself.

13 Q That's correct.

14 A And I said no. That was the answer I gave before
15 and I think that is still correct.

16 Q Okay. And --

17 A Now, but the second question you asked is with
18 whether -- well, do you want to ask a new question? I'm sorry.

19 Q Yeah. The document that you have before you,
20 Exhibit 2080, is that just the normal way, like the normal
21 language of a note that in your experience like the normal
22 language how a note is written and, you know, the basic
23 language of a note?

24 A I think it probably is. I haven't studied each of
25 the paragraphs, 2-and-a-half pages, but it looks like a normal

1 note to me.

2 Again, it's -- it looks like a note made in another
3 state and I don't -- I don't present myself as an expert in the
4 laws of other states. But it looks like a normal note.

5 Q Now, on page 3, can you see on page 3? Is it clear?

6 A Yeah, that's -- at the bottom it says page 64 of
7 this larger document.

8 Q And does it have stamp Paid to the Order on it?

9 A It does have a paid to the order of stamped.

10 THE DEFENDANT: Okay. I'd like to publish and move
11 into evidence?

12 THE COURT: All right. So it's received and you may
13 publish.

14 Q (BY THE DEFENDANT:) Now, you testified that you've
15 never seen this stamp placed on any notes that you've seen in
16 your career, correct?

17 A Well --

18 MR. SORENSON: Objection. That mischaracterizes the
19 testimony.

20 THE COURT: Okay. Overruled.

21 And then you can respond to the question.

22 THE WITNESS: Yeah. Remember what I was
23 saying -- that's why I wanted to clarify a moment ago, because
24 I said that the earlier question was Have you ever seen a stamp
25 that indicated the bank is, in effect, you know, paid to the

1 order of itself, and I said no and I -- that remains true.

2 That is not what is being done on this note.

3 This has a stamp that whereby the lender, which appears to
4 be somebody called MLD Mortgage, a New Jersey corporation, is
5 assigning the note to Bank of America. So I don't know whether
6 I would use the form Paid to the Order of to do an assignment,
7 but this appears not to be a paid to the order -- you know, a
8 bank saying, you know, I'm paying it to myself; it's actually
9 they're using that as a form of assignment of the note to
10 another bank that we talked about assignments a little earlier.

11 Q Now -- well, did you know who actually has the loan
12 on this particular note? Who was the actual mortgage company
13 on this note?

14 A Today? I have no idea as of today. You mean who
15 made the note? Who made the original loan?

16 Q Uh-huh.

17 A Well, if assuming this is accurate, it would appear
18 that the loan was made by an entity called MLB Mortgage, Inc.,
19 a New Jersey corporation. That's what it says. That's what it
20 says on the note back on the first page of the note and the
21 parties. It says the lender, means MLB Mortgage, Inc., a New
22 Jersey corporation. I don't know whether that's, you know --
23 that's what it appears on the note to be.

24 Q Does it say -- that's the first paid to the order
25 of. What about the second one on the second side? What does

1 it say paid to the order of?

2 A On the second page?

3 Q Well, no, just right next to it 'cause it's two
4 stamps.

5 A You mean the third page?

6 Q Yeah, on the third page it's two stamps.

7 A Well, the first stamp is crossed out, so I kind of
8 assumed it was an error; it was made and crossed out.

9 But the one that is actually signed is a paid to the
10 order, you know, without recourse to Bank of America, which
11 means in my reading of it -- again, I'm not -- don't profess to
12 know New Jersey or Illinois law -- but it looks to me like MLB
13 Mortgage made a loan to these -- to someone -- I'm looking for
14 the borrower -- and the -- and MLB Mortgage assigned it
15 to -- to Bank of America. It looks like the borrowers on the
16 third page here are Mr. -- I assume Mr. and Mrs. Hicks?

17 Q Right. But prior to me showing you this, you said
18 you never saw that stamp on any note before.

19 A Right. I said that I hadn't seen a -- the stamp or
20 the bank as assigning it to itself, and I remain that's true.
21 Whether you can use a paid to the order of as an instrument of
22 assignment to a third party bank, generally I wouldn't
23 recommend that form, but if the assignor or assignee, the two
24 banks between them, want to use that form, I don't know that
25 they can or can't under the applicable law to this note.

1 Q Have you seen this same stamp on any of the Hawaii
2 notes?

3 A I do not recall seeing this on the Hawaii notes, but
4 it may be that they use the form between two banks. I don't
5 know. If you want me to look at one, I can comment on it.

6 Q Okay. Are you familiar with what is called book
7 entry with the bank with the mortgage industry?

8 A Not familiar with the term book entry. That's the
9 question you asked.

10 Q What term are you familiar with in the banking
11 industry?

12 A Well, for a period of time, the banks were and may
13 still be in some level using, you know -- adopting a system
14 whereby they had their own central record keeping for the loans
15 that have been made, and they would record the assignments
16 between them in that registry that they had created among
17 themselves.

18 I have not heard the term book entry used for that.
19 It's possible that that's what you're referring to when you use
20 the term. I don't -- I don't know. But there is a system
21 which banks have adopted to do the exchange of notes between
22 them through that, you know, commercial registry system.

23 Q You're referring to a MERS?

24 A That's right.

25 Q And do you know what MERS stand for?

1 A I used to know. If you want to advise me --

2 Q Does Mortgage Electronic Registry System, Inc. --

3 A Well, there you go. It sounds accurate.

4 Q -- ring a bell?

5 Do you remember that MERS was actually sued for
6 fraud for the fraudulent assignment of mortgages in their
7 system? Do you remember that lawsuit that was filed against
8 them by the Attorney Generals?

9 A I do not recall that specific lawsuit. There have
10 been a variety of litigation involving MERS.

11 Q So you were aware of the litigation against MERS for
12 their fraudulent practices in having fraudulent assignment of
13 mortgages filed on homeowner's homes to steal their homes? You
14 are aware though?

15 A Could you repeat that question?

16 Q So you are aware of the litigation that has already
17 been filed against MERS and ruled against MERS in regards to
18 filing fraudulent assignment of mortgages?

19 A Okay. Regarding assignment of mortgages. I am
20 familiar -- excuse me -- I am aware that there has been
21 litigation involving MERS. I can't say I'm familiar with any
22 of the particular actions that have been filed.

23 Q What about the 50 -- all 50 states attorneys
24 general's lawsuits against Bank of America, Wells Fargo, JP
25 Morgan Chase for mortgage fraud and for anti-predatory lending?

1 You remember that \$25 billion lawsuit that got settled?

2 A I am not familiar with that particular lawsuit.

3 Q Are you familiar with the lawsuit that was filed by
4 the Attorney General here, David Louie in Hawaii, in 20- I
5 think -11 or -12 for 71 million that they won against the
6 mortgage companies and the banks?

7 A I am not familiar with the circumstances of any of
8 that particular litigation.

9 Q Now, are you familiar with the term robo-signers?

10 A I am familiar with the term.

11 Q And what is a robo-signer?

12 A Mortgages when originally made and recorded are
13 usually signed in an escrow office interregional and recorded
14 in Hawaii in the Bureau of Conveyances for regular system
15 property, and that creates the mortgage against the property.

16 They are generally assignable between lenders, and
17 in a certain number of cases it appears -- it's been alleged
18 and it appears that the -- that before attempting to enforce
19 mortgages, lenders -- the lender which, if you will, holds the
20 mortgage by the assignment or purports to hold the mortgage by
21 the assignment, if a -- are called a substitute lender. That
22 is to say, if you assign your mortgage, from looking at this
23 note here, from something called MLB Mortgage to Bank of
24 America and Bank of America then holds the mortgage or claims
25 to hold the mortgage and wants to enforce it, it -- it has to

1 show that it has acquired the mortgage, that there has been an
2 assignment to that mortgage if it is to go into court, this
3 court or a state court, to enforce that mortgage.

4 And to do that, to have that standing, you -- as
5 opposed to the original lender, which is the one that's
6 recorded in the Bureau of Conveyances, the assignee or second
7 lender -- the assignee is -- should show that it, in fact,
8 acquired the mortgage by a true assignment and it should show
9 if it claims that the mortgage is in default that it is in
10 default.

11 And because when they started doing these
12 assignments they tended to -- they tended to assign these
13 mortgages in bulk, that is to say, through the MERS system --

14 Q Right.

15 A -- they may assign a thousand mortgages all together
16 to a new lender or in parts to different lenders. And it is
17 alleged and there is -- appears to be evidence that the
18 assignee lenders would sign declarations, which are to be sworn
19 statements, reporting that they, in fact, truly are, you know,
20 an accurate assignee of that loan and that a certain
21 amount -- and then the loan is in default. To sign those, you
22 have to be, you know, an authorized officer of the bank who
23 claims to hold it and you should have done your what's called
24 due diligence. You should have reviewed the record to satisfy
25 yourself that it has been accurately, correctly assigned. And

1 it appeared that certain of the banks -- not all banks -- but
2 certain of the banks took a shortcut and just had somebody just
3 signing page after page after page when they had not done its
4 due diligence.

5 So I would say that the -- and that has been
6 referred to generally as robo-signing.

7 Q Right.

8 A Because they're kind of robotically signing them
9 without doing their homework, their work. It does not -- it
10 does not affect the original mortgage because, as I said, the
11 original mortgage was signed in original typically on a
12 one-by-one basis in an escrow office and recorded to the
13 Bureau. It tends to affect whether, if that has occurred --
14 whether the assignee bank, when it goes to court, can
15 demonstrate that it has the right to go to court and enforce
16 that mortgage against the borrower, whether it is really the
17 current owner of the mortgage.

18 That answer your question?

19 Q Yes. Now, when the document -- when the mortgage is
20 assigned and it's used, a robo-signer or a fraudulent signer,
21 does that make the assignment valid?

22 A Does it make it valid?

23 Q Right, the assignment if it was by a robo-signer
24 that forged a signature.

25 A Well, you're talking about the assignment or are you

1 talking about the declaration that it has been assigned?

2 Q Well, the actual --

3 A Because it's been -- I'm sorry, I didn't mean to
4 interrupt you. If it has been assigned by -- again, I'll look
5 at this example. If the -- if the -- on the third page
6 where -- where someone has signed -- has acted as a vice
7 president of the assigning bank, not the assignee -- as the
8 officer of MLB Mortgage Company and has done that assignment on
9 a individual basis, that assignment is valid.

10 The robo-signing, if the person who signs the
11 assignment document is authorized to do so for the bank that
12 holds the original mortgage, the assignment is valid and
13 it -- the mortgage is now entitled to the second owner, if you
14 will, of the mortgage.

15 Whether the -- when somebody -- when the new bank
16 goes to court, whether it has presented a valid declaration
17 showing the assignment -- and as I said, done its homework on
18 whether it is -- has been assigned and whether it is -- and
19 whether the homeowner's in default affects whether it is -- it
20 is entitled to a remedy from the court at that time. It
21 doesn't really affect whether the mortgage, the underlying
22 mortgage, or the assignment itself is valid.

23 Q Have you seen lawsuits that have been generated
24 because of a fraudulent assignment of mortgage?

25 A The area has been rife with lots of lawsuits. There

1 have been lots of lawsuits. And I have not participated in
2 those lawsuits particularly. So when you say have I seen
3 lawsuits, there have been -- I'm aware that there are lawsuits
4 about those procedures. I have seen circumstances where a
5 borrower in a foreclosure will contest whether the party doing
6 the foreclosure is, in fact, a true assignee, and whether the
7 signatures are true signatures. I have seen those occur on a
8 one -- one-by-one basis, if that's -- if that's a fair answer
9 to your question.

10 Q All right. Have you seen the *60 Minute* shows,
11 CBS -- CBS *60 Minute* show? They did a special on robo-signer.
12 Did you get to see that show that they actually did on that?

13 A I did not see the *60 Minute* piece on that.

14 Q Okay. Are you familiar with an attorney named Lynn
15 Szymoniak from Florida?

16 A I am not familiar with Mr. or Ms. Szymoniak.

17 Q And on the assignment of mortgages, are you familiar
18 with the well-known robo-signers like Bryan Bly, Crystal Moore,
19 Chris Jones? Are those names familiar to you?

20 A Those names by name are not familiar to me at all.

21 Q Okay. So on an assignment of mortgage, I'm just
22 giving you an example. Say for Bank of America, on one
23 assignment, Bryan Bly signs as the vice president of Bank of
24 America, and then two weeks later on another assignment of
25 mortgage, Bryan Bly signs as the president of Deutsch Bank, and

1 that's what we, you know, term as robo-signer 'cause he doesn't
2 work for both banks. He actually don't work for either one of
3 them, but he just signs as if he's a actual official for these
4 banks and that's what they were calling robo-signers.

5 THE COURT: Okay. So what's your question? He's
6 not familiar with this person. What's your question?

7 Q (BY THE DEFENDANT:) Oh, if that's the case and
8 there's someone that's not a part of the actual mortgage
9 company that are signing these assignment of mortgages in order
10 to foreclose on homeowners' homes, wouldn't this assignment of
11 mortgage be invalid and a cause for a lawsuit to be filed
12 against the foreclosing mortgage company that was assigned the
13 mortgage through that fraudulent document?

14 A If an owner of a mortgage, the bank that owns the
15 mortgage, makes an individual, an agent of that bank,
16 authorized to assign loans, assign mortgages, notes and
17 mortgages, and that person -- and therefore, the person is an
18 authorized agent, then that person can sign on behalf of the
19 bank. That has to do with, if you will, what's called the law
20 of agency, whether or not you're in fact an agent or not.

21 The -- and so it really has to do with whether the
22 assigner bank, the bank that is doing the assignment, has
23 authorized the person to act. If the -- if the bank has not
24 authorized someone to make an assignment for them and they do
25 so, then it's an ineffective assignment because they have no

1 right to do so on behalf of the bank that is making the
2 assignment.

3 If they are authorized, then to make that
4 assignment, then I would think that it is an authorized
5 effective assignment regardless of whether that person also
6 works for an assignee bank. But that really has to do with, as
7 I say, the law of agency, and is different from what I
8 described as a -- in effect, a representation to a bank that
9 you have reviewed the record and satisfied yourself that the
10 assignment has taken place, and that you have reviewed the
11 record and satisfied yourself that the person is in default.
12 That's where, you know, you -- you are making a false
13 representation to a court. Whether you are making a false
14 assignment or not has to do with whether the bank that is
15 making the assignment authorizes you to act as their agent for
16 that purpose.

17 Q Have you heard of a company called DocX out of
18 Atlanta, Georgia?

19 A No. Not by name, no.

20 Q Are you familiar with what they call document mills
21 or foreclosure mills?

22 A I am familiar with the term foreclosure mills.

23 Q And what is your experience with foreclosure mills?

24 A My experience with them?

25 Q Yes. Like, what do you mean about foreclosure mills

1 and what they actually do?

2 A The -- well, let me describe it this way. In the
3 old days when we used to -- and we're coming around to
4 that -- in the old days when a bank had to foreclose on a home
5 because there is a default, they would file an action here in
6 Hawaii typically in the circuit court and a bank officer would
7 testify or file a sworn declaration that this loan is made and
8 these payments were made and the party stopped paying and,
9 therefore, it's in default and the amount that is owed, and
10 that would be the basis for foreclosing.

11 At a certain point after the banks -- certain of the
12 banks decided that they wanted to use this internal registry
13 system, they also didn't want to pay as many lawyer fees. I
14 understand that desire, but that -- and so they -- they would
15 retain some law firms which would file foreclosures less
16 expensively than many law firms, conventional law firms
17 historically would charge for those foreclosures, and in doing
18 so, at least at the -- early on -- early on they -- some of the
19 law firms were not as careful to make sure that the party
20 signing the declaration to support the foreclosure had, in
21 fact, done their homework. This goes back to what I was
22 describing, that if you're going to stand up in court and seek
23 to foreclose --

24 Q Right?

25 A -- on the basis that you own the mortgage and that

1 it is in default, you have an obligation to review records and
2 satisfy yourself that that is the case. And the banks wanted
3 to save some money, and so they would retain counsel, they
4 would have parties signing the declarations, which had
5 not -- who had not done their homework, and they would have
6 some lawyers who were less careful about making sure that the
7 party whose declaration they're submitting had done their
8 homework, and they would just file foreclosures and they would
9 do it more cheap than conventional law firms historically did.
10 They're referred to sometimes as foreclosure mills.

11 Q Right. So are you familiar with that those
12 foreclosure mills, what they would do is hire just lay people
13 to just sign the documents to initiate the foreclosure? Are
14 you familiar with those?

15 A Well, I mean, generally speaking, it is -- you mean
16 to prepare the foreclosure papers? Or you mean to do the
17 declarations?

18 Q Both, to prepare the papers doing the declaration
19 and signing the assignment of mortgages.

20 A Well, the declarations and the assignment of
21 mortgages, can be -- you can be a lay person. There's no
22 requirement to be an attorney to work for a bank. And so as a
23 layperson who's employed by a bank, you may be authorized to do
24 assignments and you may be authorized to review the record and
25 satisfy yourself that the assignments are all in place and that

1 the ledger, the record of payments, indicates the person
2 has -- is in default. At this point typically you send notices
3 and that type of thing. So there's nothing -- I have no doubt
4 that they were lay people who are doing that. There's nothing
5 wrong with that.

6 Now, as for preparing -- as for preparing
7 foreclosure pleadings, you know, complaints and those sorts of
8 things to foreclose, there's nothing that prevents a nonlawyer
9 from preparing such papers under the supervision or subject to
10 the review of a lawyer. But in order to file them, the lawyer
11 who's representing the lender should review them and satisfy
12 themselves that -- that it meets the requirements
13 under -- under law, that it is as the lawyer would have
14 prepared them.

15 Q Well, let me clarify something right quick. When
16 I'm talking about the assigning of documents, this is what I
17 mean: On the assignment, they had robo-signers signing the
18 documents saying This is what I mean. If, say, like you're the
19 president of Bank of America and I got hired by this
20 foreclosure mill, so I'm required to sign 400 assignment of
21 mortgages a day, but my name is not Mr. Klevansky, but my job
22 is to sign Mr. Klevansky 400 times on 400 documents and that's
23 what they were doing. Now, are you familiar with that aspect
24 of the robo-signing?

25 A I know and I would think it unlikely that the

1 foreclosure mill would -- as we've described it -- would be
2 doing the assignments. That's generally done, you know,
3 between the banks. They may have what we call the robo-signer,
4 somebody -- well, not the assignments. The assignments are
5 generally done by an officer or a representative of the bank.
6 If they have delegated that responsibility to someone, you
7 know, and that person is an agent for doing so, they're
8 entitled to do that.

9 Q So --

10 A But it's generally not the foreclosure mill that
11 would do that. The foreclosure mill comes into play at a later
12 stage when the -- when it is alleged that the loan is in
13 default and they turn it over to somebody to foreclose.

14 Q Well, this is what -- this is what the problem was
15 with the foreclosure where they was assigning the mortgages to
16 another company and then that company would foreclose the
17 company that got assigned the fraudulent mortgage that was
18 robo-signed by --

19 MR. SORENSON: Objection. Your Honor, is there a
20 question?

21 THE DEFENDANT: Yes. I'm going to form the
22 question.

23 THE COURT: I'm sorry. So what is your question?

24 Q (BY THE DEFENDANT:) So when the assignment of
25 mortgage was signed by someone that's not an officer of that

1 company and they just sign with no authorization to sign, when
2 they filed this assignment of mortgage, that's a invalid
3 mortgage, that's a forged document?

4 THE COURT: Okay. So you're asking him is that an
5 invalid mortgage?

6 THE DEFENDANT: Right.

7 THE WITNESS: You have to distinguish between the
8 mortgage and the assignments. The mortgage is not made invalid
9 by an improper assignment.

10 The assignment may not be effective, but the mortgage and
11 the consequence of the invalid mortgage is that the mortgage
12 still belongs to the original lender. It's just never been
13 assigned because by your hypothetical, by your premise, the
14 person who signed the assignment was not authorized to do so.

15 Whether or not they're an officer is a different question.
16 They can be -- they can be delegated the authority to do it,
17 and if they are delegated the authority by the lender that owns
18 the mortgage, they can assign the mortgage.

19 But if they have not been delegated with that authority,
20 then the assignment is ineffective, but the mortgage does not
21 disappear. The mortgage still remains an asset of the original
22 lender or the assigner bank because it's never been assigned.

23 Q So the -- in the invalid mortgage assignment case
24 that they assigned it to bank B, so with the assignment being
25 invalid, bank B cannot foreclose, correct, because it was

1 incorrectly assigned, correct?

2 A That's correct.

3 Q Right. Now, under -- are you familiar with the
4 Hawaii Rules of Evidence in regards to like security
5 instruments, negotiable instruments, promissory notes?

6 A You know, reasonably so, but whenever an evidentiary
7 issue comes up, I go back to the volume and make sure I get it
8 right. So I am somewhat familiar with the rules of evidence.

9 Q Okay. So typically, if someone is asserting -- like
10 the bank is asserting like Hey, I own the note, mortgage, to
11 prove that they have ownership of the note, they have to
12 produce the original, correct, 'cause they have to have
13 ownership?

14 A It depends on whether the originality is contested,
15 whether they have a reason why it cannot be produced. There
16 are exceptions to the rule. The best evidence -- the term is
17 the best evidence -- would be the original note. But there are
18 reasons why they may not be able to produce the original note
19 and a copy where a -- an appropriate person gives evidence that
20 this is a true and correct copy may well be admitted by a court
21 of jurisdiction over the matter.

22 THE COURT: So that's going to have to be the last
23 word for today because we're at 2 o'clock. So I need to excuse
24 the jury.

25 But, Mr. Klevansky, you're ordered to return tomorrow to

1 complete your testimony.

2 Ladies and gentlemen, it is the 2 o'clock hour so I will
3 bid you a very good evening on behalf of Mr. Williams and all
4 the attorneys.

5 I ask you that you leave the iPads and the notebooks
6 behind, and of course, don't discuss the case with anyone or
7 allow anyone to discuss it with you. Don't read, research,
8 Google, or investigate any of the witnesses or issues that have
9 been raised. Don't go on social media regarding the trial, and
10 of course, don't read, listen to, or watch any media account,
11 should there be any. Have a very good evening.

12 Please rise for the jury. And we are all in recess until
13 our 2:30 hearing. All right? Thank you.

14 (Proceedings adjourned at 2:02 P.M., until
15 Tuesday, February 11, 2020, at 8:30 A.M.)

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COURT REPORTER'S CERTIFICATE

I, DEBRA READ, Official Court Reporter, United States District Court, District of Hawaii, do hereby certify that pursuant to 28 U.S.C. §753 the foregoing is a complete, true, and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

DATED at Honolulu, Hawaii, April 24, 2020.

/s/ Debra Read

DEBRA READ, CSR CRR RMR RDR