

Dcadkurl Trial

1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK  
2 -----x

2  
3 UNITED STATES OF AMERICA,

3  
4 v. S1 12 Cr. 376(RMB)

4  
5 RUDY KURNIAWAN, a/k/a "Dr. Conti,"  
5 a/k/a "Mr. 47,"

6  
6 Defendant.

7 -----x  
8  
8 December 10, 2013  
8 9:12 a.m.

9  
9 Before:

10  
10 HON. RICHARD M. BERMAN,  
11  
11 District Judge

12  
13 APPEARANCES

13  
14 PREET BHARARA,  
14 United States Attorney for the  
15 Southern District of New York  
15 JASON HERNANDEZ,  
16 JOSEPH FACCIPONTI,  
16 Assistant United States Attorneys

17  
17 WESTON, GARROU & MOONEY  
18 Attorneys for defendant  
18 BY: JEROME MOONEY

19  
19 VERDIRAMO & VERDIRAMO, P.A.  
20 Attorneys for defendant  
20 BY: VINCENT S. VERDIRAMO

21  
21 - also present -

22  
22 Ariel Platt, Government paralegal

23  
23 SA James Wynne, FBI  
24 SA Adam Roeser, FBI

24  
25

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1 (Jury not present)

2 THE COURT: OK. Hi. How are you all? I think we are  
3 going to bring in the jury.

4 (Jury present)

5 THE COURT: How are you all? Good.

6 So, good morning, everybody. Please be seated.

7 I know some of you were skeptical yesterday when I  
8 said we would start at 9, but there is no better place for you  
9 to be on a day like today than right where you are at  
10 9 o'clock. So I am happy to see you.

11 And we will begin with the first government witness.

12 MR. FACCIPONTI: The government calls Barbara Chu.

13 THE CLERK: Ma'am, if you could step up this way.

14 Remain standing by the chair.

15 And raise your right hand once you have a chance.

16 BARBARA CHU,

17 called as a witness by the government,

18 having been duly sworn, testified as follows:

19 THE CLERK: Could you please state your full name for  
20 the record.

21 THE WITNESS: Barbara Chu.

22 THE CLERK: Could you spell your last name, please?

23 THE WITNESS: C-h-u.

24 THE CLERK: Thank you, ma'am. You may be seated.

25 MR. FACCIPONTI: May I proceed?

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1 THE COURT: Yes. Sure.

2 DIRECT EXAMINATION

3 BY MR. FACCIPONTI:

4 Q. For whom do you work?

5 A. I work for Emigrant Bank Fine Art Finance.

6 THE COURT: If you could maybe bend that down a  
7 little. Yes.

8 THE WITNESS: OK.

9 Q. So for whom do you work?

10 A. I work for Emigrant Bank Fine Art Finance.

11 Q. Ms. Chu, if you could just maybe bend the microphone closer  
12 and maybe pull your chair up a little bit.

13 A. OK.

14 THE COURT: That is good.

15 A. I work for Emigrant Bank Fine Art Finance.

16 Q. Was that previously known as Fine Art Capital?

17 A. Yes.

18 Q. Approximately when did the name change?

19 A. I can't remember exactly.

20 Q. Was it after 2008?

21 A. I really don't recall.

22 Q. And just to be clear, when we talk about Fine Art Finance,  
23 we are talking about the same company that was once called Fine  
24 Art Capital?

25 A. Absolutely.

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- 1 Q. What kind of company is Fine Art Finance?  
2 A. We're a joint venture with Emigrant Bank, and we make loans  
3 but the collateral that we take is Fine Art.  
4 Q. What is Fine Art Finance's relationship with Emigrant Bank?  
5 A. We're a wholly-owned subsidiary -- we are a joint venture  
6 and we are a subsidiary of a major bank.  
7 Q. Is Fine Art Finance itself a bank?  
8 A. No. It is a subsidiary of Emigrant.  
9 Q. Where is Fine Art Finance's offices located?  
10 A. 6 East 43rd Street on the 25th floor.  
11 Q. Of Manhattan?  
12 A. Yes.  
13 Q. Where is Emigrant Bank's principal offices located?  
14 A. I think it's the same building.  
15 Q. When did you first start working at Fine Art Finance?  
16 A. March 3rd, 2005.  
17 Q. What was Fine Art Finance's status at that time?  
18 A. We were a start-up company. We started on the 1st of  
19 January 2005.  
20 Q. Prior to Fine Art Finance, what did you do?  
21 A. I worked in real estate finance for insurance companies. I  
22 also worked for private real estate investors as a consultant.  
23 I also taught real estate finance at Columbia Business School.  
24 Q. What is your current title or position at Fine Art Finance?  
25 A. I'm a partner there.

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1 Q. What are your responsibilities as a partner at Fine Art  
2 Finance?

3 A. We're a very small company. So I do everything from  
4 transactions to hiring and firing of staff to managing staff to  
5 looking for new ways to develop the business to maintaining  
6 client relationships and we all do pretty much a bit of  
7 everything.

8 Q. Were your responsibilities basically the same in 2007 and  
9 2008?

10 A. Yes.

11 Q. What are some of the factors that Fine Art Finance  
12 considers when deciding whether to make a loan?

13 A. We look at the credit quality of the collateral and we look  
14 at the credit quality of the borrower and we look at the  
15 structure of the transaction and the overall risk profile of  
16 the loan.

17 Q. How do you determine the credit quality of the borrower?

18 A. We look at the borrower's financial status and we look at  
19 the backup documentation to support that.

20 Q. And what kind of information do you ask the borrower to  
21 provide so that you can do that analysis?

22 A. We ask the borrower to fill something out called a personal  
23 financial statement which lists their assets, their  
24 liabilities, their income, their expenses, and then it has  
25 different schedules attached to it that ask them to detail

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1 their bank accounts, real estate assets, or any other  
2 investments.

3 Q. And what is the reason that you ask for this information?

4 A. That is the first step in our process to see whether or not  
5 a borrower has a credit profile that is going to be adequate  
6 for the type of transaction we are looking at.

7 Q. So that you can determine whether they can repay the loan?

8 A. Yes, that is part of it.

9 Q. What kinds -- would you make a loan if you learned that the  
10 borrower has lied on his or her personal financial statement?

11 A. No.

12 Q. And what is the reason you would not make that loan?

13 A. We don't make loans to people who lie because if you lie  
14 about one thing it's unclear as to whether or not you told us  
15 the truth about anything else.

16 Q. So, Ms. Chu, if you could just lean again closer to the  
17 microphone.

18 A. OK.

19 Q. What kind of inquiry do you perform on the proposed  
20 collateral for the loan?

21 A. We look at evidence of the purchase and the provenance of  
22 the collateral, and we also have an independent third-party  
23 appraiser who looks at whether or not the collateral is what it  
24 is represented to be and the value of the collateral.

25 THE COURT: Did you use the word "provenance"?

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1 THE WITNESS: Yes.

2 THE COURT: And by that you mean the history or --

3 THE WITNESS: The history of the ownership and the  
4 history of exhibition and publication.

5 MR. VERDIRAMO: I can't hear her.

6 THE WITNESS: I'm sorry. I don't know what's  
7 happening with this.

8 Now can you hear?

9 MR. VERDIRAMO: A little better.

10 THE COURT: You are doing fine. We are working on the  
11 system in the meantime, so we can just continue.

12 BY MR. FACCIPONTI:

13 Q. In the meantime just try and speak as closely into the  
14 microphone as you can.

15 What are the risks associated with collateral?

16 A. There are lots of risks associated with collateral because  
17 fine art is not something that you can easily look at a value  
18 like a stock or a bond, and it's value fluctuates with market  
19 conditions and also with the particular type of the art, the  
20 artist, the genre, and the quality of the art itself, and many  
21 of those characteristics are subjective.

22 Q. How is a decision to approve a loan at Fine Art Finance  
23 made?

24 A. We have a credit policy and the credit policy dictates what  
25 level of authorization is necessary and who are the members of

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1 the credit committee for each of those levels of authorization.

2 Q. Directing you now to 2007 and 2008. Did Fine Art Capital  
3 make a \$3 million loan to someone named Rudy Kurniawan?

4 A. Yes.

5 Q. What, if any, role did you have with respect to approving  
6 that loan?

7 A. I underwrote the loan and I was the principal person  
8 responsible for looking at the loan and reviewing it and  
9 writing the credit memo, but I was also on the credit policy,  
10 the credit committee that approved it.

11 Q. And did your responsibilities involve you interacting at  
12 all with Mr. Kurniawan?

13 A. Yes.

14 Q. What kind of interactions did you have?

15 A. We met him and we also had lots of phone calls with him and  
16 e-mails.

17 Q. Approximately how many times did you speak with him on the  
18 phone?

19 A. Many, but I can't tell you how many.

20 Q. What is the reason that Mr. Kurniawan sought a loan from  
21 Fine Art Capital?

22 A. He said that he needed to bridge the payments that he  
23 received from his family and that he was starting a new wine  
24 company.

25 MR. FACCI PONTI: Your Honor, may I approach with  
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1 exhibits?

2 THE COURT: Sure.

3 Did you know him before the loan came in?

4 THE WITNESS: No.

5 BY MR. FACCIPONTI:

6 Q. Ms. Chu, in front of you is a binder that has several  
7 exhibits. I would like to direct you to look at Government's  
8 Exhibit 23-5.

9 A. OK.

10 Q. Do you recognize that document?

11 A. It's a revolving credit note.

12 Q. Who is the party on that revolving credit note?

13 A. Rudy Kurniawan.

14 Q. How do you recognize that document?

15 A. It's signed by him.

16 MR. FACCIPONTI: Your Honor, we offer Government's  
17 Exhibit 23-5.

18 THE COURT: I will allow it.

19 (Government's Exhibit 23-5 received in evidence)

20 MR. FACCIPONTI: May we publish it to the jury?

21 THE COURT: Yes. Sure.

22 BY MR. FACCIPONTI:

23 Q. Now, Ms. Chu, directing you to the top of this document,  
24 what is the date in the upper right-hand corner?

25 A. January 18, 2008.

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1 Q. And what is the amount of this loan?

2 A. \$3 million.

3 Q. And could you just explain to the jury what is a revolving  
4 credit note?

5 A. It means that the borrower may borrow up to \$3 million and  
6 that if the borrower repays any of that amount, he may reborrow  
7 it. So, by example, if he were to borrow \$2 and a half  
8 million, he would still be able to borrow another 500,000. And  
9 then if he were to pay down some of the loan amount, he could  
10 reborrow up to a total amount of 3 million.

11 Q. And when is the loan -- when is the loan due?

12 A. Well, the loan is due in one year, but it also has the  
13 ability to be extended by two one-year periods.

14 Q. And that is at the top of the first paragraph that says  
15 "Promise to Pay"?

16 A. Yes.

17 Q. What is the interest rate of the loan?

18 A. It's prime plus 5 percent.

19 Q. And what is prime?

20 A. Prime is the prime bank lending rate, which is something  
21 that doesn't change very often, which is why we use it. And at  
22 the time I believe it was 3-and-a-quarter percent but I'm not  
23 actually positive.

24 Q. So if it was 3-and-a-quarter percent, the interest rate  
25 would be 8-and-a-quarter percent?

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1 A. Correct.

2 Q. I would like to direct you to page 4 of this document.

3 Would you look at the section that says "Representations and  
4 Warranties" at the bottom?

5 A. Yeah.

6 Q. If you look at Subtitle 6 -- I'm sorry, 7, which is  
7 actually on the next page.

8 A. Mm-hmm.

9 Q. Can you read what is printed there?

10 A. "There exists no liens, security interests or other charges  
11 or encumbrances or any other type of preferential arrangements  
12 upon or with respect to any of the works, and the undersigned  
13 has not assigned any right to receive income to secure any debt  
14 as defined below of any person or entity."

15 Q. And what does that section mean?

16 A. That means that the collateral is not pledged to any other  
17 party.

18 Q. The collateral that secures this loan?

19 A. Right.

20 Q. And could you read what is written in Subsection 8 of that  
21 paragraph?

22 A. "The undersigned has no debt except for the debt listed on  
23 Schedule I hereto, the existing debt."

24 Q. I would like to direct you now to sections -- paragraph 7  
25 of this document, which is titled "Covenants."

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1 A. Mm-hmm.

2 Q. If you look at -- what is the covenant section of the note?

3 A. Covenants are additional terms and requirements of  
4 maintaining the loan status. So, for instance, a borrower has  
5 to submit financial statements every year. You know, sometimes  
6 there are covenants about additional indebtedness or  
7 prohibitions against additional indebtedness.

8 Q. Can you read what is Subsection 6 of the covenants section?

9 A. "Not incur, create or suffer to exist any debt other than  
10 debt in favor of the lender and the existing debt."

11 Q. What does that mean?

12 A. That means that the borrower is not supposed to take on any  
13 additional indebtedness except for the loan that we made to him  
14 and also the existing debt, which was the loan that he already  
15 had.

16 Q. Now, if you turn to the next page, Title 8, "Events of  
17 Default." What does this paragraph discuss?

18 A. It defines what constitutes a default under the loan  
19 documents.

20 Q. And what is a default?

21 A. A default is when a loan is not meeting its contractual  
22 obligations.

23 Q. Can you read Section B of that paragraph?

24 A. "The failure of the undersigned to perform or observe any  
25 covenant or other obligation hereunder under the security

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1 agreement or under any instrument, agreement, or other document  
2 delivered in connection herewith or therewith."

3 Q. What does that section mean?

4 A. It means that if the borrower were to not meet the  
5 covenants that are described in the previous section, or any of  
6 the other obligations detailed under the security agreement,  
7 that that would constitute an event of default.

8 Q. Was there a separate security agreement executed by the --

9 A. Yes.

10 Q. Can you read Section G of this paragraph?

11 THE COURT: Excuse me. I'm wondering. Do you have  
12 the ability to yellow highlight a section that the jury is  
13 looking at? That might make it easier. I'm sorry.

14 A. "Any representation or warranty made by the undersigned  
15 under or in connection with this note, the security agreement,  
16 or any financial statement or certificate delivered in  
17 connection herewith or therewith shall have been materially  
18 incorrect when made or deemed made."

19 Q. And what does this section mean?

20 A. That means that if what the borrower submitted as being the  
21 case -- so, for example, what he submitted on his financial  
22 statements -- was not correct, that's an event of default.

23 Q. Do the terms of this note reserve \$500,000 for interest  
24 payments?

25 A. Yes.

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1 Q. How does that work?

2 A. That means we did not advance the entire amount available  
3 under the revolving credit facility and that we kept aside  
4 500,000 to pay interest when interest payments were due.

5 Q. And what was the reason you did that?

6 A. The borrower did not have a regularly recurring source of  
7 cash flow.

8 Q. And the total amount, therefore, that Mr. Kurniawan  
9 received was 2.5 million?

10 A. I don't think he even received the full 2.5 immediately  
11 because I think some other monies were held back to meet in  
12 regard of another requirement. I think he received the money  
13 in two draws.

14 THE COURT: Two draws?

15 THE WITNESS: Yes. Two payouts.

16 THE COURT: Two segments?

17 THE WITNESS: Yes, two segments.

18 BY MR. FACCIPONTI:

19 Q. Ordinarily, when would the money have been paid to  
20 Mr. Kurniawan?

21 A. Well, a revolving line of credit is paid in amounts when  
22 the borrower applies to have them paid out.

23 Q. Can you turn now to what has been marked for identification  
24 as Government Exhibit 23-1.

25 A. Yes.

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1 Q. Do you recognize that document?

2 A. It's the security agreement.

3 Q. The security agreement for what?

4 A. For the revolving credit facility to Mr. Kurniawan.

5 Q. And how do you recognize it?

6 A. Well, it says that at the top in the first paragraph, and  
7 it's signed by him and by me.

8 MR. FACCIPONTI: We offer Government's Exhibit 23-1.

9 THE COURT: I will allow it.

10 (Government's Exhibit 23-1 received in evidence)

11 THE COURT: By the way, at the end the jury will get  
12 to see any exhibits that have been introduced in the case.

13 BY MR. FACCIPONTI:

14 Q. What is the security agreement?

15 A. The security agreement goes with the revolving credit note,  
16 because the note is basically like an IOU and the security  
17 agreement details the other terms and conditions that apply in  
18 connection with that IOU.

19 Q. And does the security agreement specifically address the  
20 collateral for the loan?

21 A. Yes.

22 Q. If you can look in the middle of the first page, "Section  
23 1, Collateral."

24 A. Yes.

25 Q. Can you read that first paragraph -- that paragraph there?

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1 A. "As collateral security for the prompt payment in full when  
2 due, whether at stated maturity by acceleration or otherwise of  
3 the obligations of the grantor under the note, the obligations,  
4 the grantor hereby pledges and assigns to the agent and grants  
5 to the agent a continuing security interest in all of the  
6 grantor's right, title and interest in and to the following  
7 whether now or hereafter distinct and whether now owned or  
8 hereafter acquired, the collateral."

9 Q. Could you read the following subparagraph, subparagraph A.  
10 THE COURT: Before do you that, can you just sort of  
11 tell us in layman's terms what does that mean?

12 THE WITNESS: When a lender makes a loan, the note  
13 signifies what is owed. The security agreement describes the  
14 security that is pledged to collateralize that note. So when  
15 you borrow money secured by your house, you have a note which  
16 is what you owe the bank and the security agreement describes  
17 what's securing the bank's loan, which is your house.

18 And it's also -- from a legal point of view, it's  
19 granting a perfected security interest in the collateral that's  
20 securing the loan.

21 THE COURT: To you, the lender?

22 THE WITNESS: To the lender.

23 BY MR. FACCIPONTI:

24 Q. What is a perfected security interest?

25 A. A perfected security interest means that the borrower

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- 1 acknowledges that the lender has taken as collateral for the  
2 loan, and, therefore, as security for the loan, whatever is  
3 being pledged.
- 4 Q. Could you now read paragraph A?
- 5 A. "The works of art specified in Schedule I, hereto the  
6 works."
- 7 Q. Does that refer to the actual art that secures this loan?
- 8 A. Yes. Because if you look at Schedule I, it's a schedule of  
9 images of the art as well as descriptions, the artist, what  
10 year it was made, where it came from, etc.
- 11 Q. And approximately how many works of art are listed in  
12 Schedule I?
- 13 A. 24.
- 14 Q. And are some of these works of art by famous artists?
- 15 A. Yeah.
- 16 Q. Can you name some of those artists?
- 17 A. I know there is some by Warhol.
- 18 Q. That would be Andy Warhol?
- 19 A. Andy Warhol, Damien Hirst, John McCracken, Robert Indiana.
- 20 Q. Could you turn now to the part of this agreement that is  
21 titled Section 3.7, "Dispositions and other Liens."
- 22 A. Yes.
- 23 Q. Could you read that paragraph?
- 24 A. "The grantor will not:
- 25 "1. Sell, assign, by operation of law or otherwise,  
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1 exchange or otherwise dispose of any of the collateral without  
2 the agent's written consent or;

3 "2. Incur, create, assume, or suffer to exist any  
4 lien, directly or indirectly, upon or with respect to any of  
5 the grantor's right, title or interest in or to any of the  
6 collateral except for the security interest created by this  
7 security agreement."

8 Q. Can you explain what this paragraph means?

9 A. It means that the borrower is not to go and pledge this  
10 collateral as security to anyone else.

11 THE COURT: When there is collateral, do you take  
12 possession of it or do you leave it with the borrower?

13 THE WITNESS: We sometimes leave it with the borrower  
14 and we sometimes take possession.

15 THE COURT: And what did you do in this case?

16 THE WITNESS: In this case we took possession.

17 BY MR. FACCIPONTI:

18 Q. Approximately how much was the collateral in this case  
19 appraised for?

20 A. I don't recall, but it would be north of 7 or 8 million,  
21 probably.

22 Q. Would that have been recorded in a credit memo in this  
23 case?

24 A. Yes.

25 Q. Would that refresh your recollection if you reviewed that

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1 memo?

2 A. Yes.

3 Q. Do you want to turn to the be document that has been marked  
4 23-3, and look at page 7.

5 (Pause)

6 A. Yes.

7 Q. Approximately how much was the collateral appraised for?

8 A. 6.86 million.

9 Q. I would like to direct you now to Government's Exhibit  
10 23-4.

11 A. Yes.

12 Q. Do you recognize that?

13 A. Yes.

14 Q. What is it?

15 A. It is a bailment agreement.

16 Q. What is a bailment agreement?

17 A. It is a bailment agreement with a warehouse that was  
18 storing Rudy's art, Mr. Kurniawan's art, because the bailment  
19 agreement is -- the bailee, or the warehouse, is acting as our  
20 agent and keeping the artworks, and also acknowledging that we  
21 have a perfected security interest in the artworks and that  
22 they have been pledged as collateral for a loan. And they also  
23 acknowledge that they will not move or do anything with the  
24 collateral without written instruction from us. So we, as the  
25 lender, actually control whether the collateral stays in that

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1 building or not.

2 MR. FACCIPONTI: We offer government's Exhibit 23-4.

3 THE COURT: I will allow it.

4 (Government's Exhibit 23-4 received in evidence)

5 BY MR. FACCIPONTI:

6 Q. Ms. Chu, can you look at the top of this document. Does  
7 that appear to be a fax ribbon?

8 A. Yes.

9 Q. What is the telephone number that is listed up there?

10 A. 626-445-1933.

11 Q. What is the date that this document appears to have been  
12 faxed?

13 A. January 17, 2008.

14 Q. What was the reason that Fine Art Finance took possession  
15 of the collateral in this case?

16 A. The overall risk profile of the loan.

17 Q. Can you explain that a little further?

18 A. The borrower was a foreign national, not a U.S. citizen.

19 He didn't have a stable and easily documented source of  
20 recurring income, and he was starting a new business.

21 Q. What was that business?

22 A. It was some kind of wine business.

23 Q. Now, you also testified that Mr. Kurniawan spoke on the  
24 phone with you when he was applying for the loan?

25 A. Yes.

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1 Q. Where did Mr. Kurniawan live?

2 A. In California.

3 Q. And where were you when you had these conversations with  
4 him?

5 A. In New York.

6 Q. Directing your attention to -- your Honor, we would like to  
7 read a stipulation into the record.

8 THE COURT: OK. So for the jury, I think I may have  
9 touched on it preliminarily when I was describing what is  
10 evidence, and one form of evidence can be a stipulation, and  
11 that is something that both sides agree is true.

12 MR. FACCIPONTI: It is hereby stipulated and agreed by  
13 and among the United States of America, by Preet Bharara,  
14 United States Attorney for the Southern District of New York,  
15 Joseph P. Facciponti and Jason P. Hernandez, Assistant United  
16 States Attorneys, of counsel, and Rudy Kurniawan, the  
17 defendant, by and with the consent of his attorneys, Jerome  
18 Mooney, Esq. and Vincent Verdiramo, Esq. that:

19 "1. Government Exhibit 41-1 is a true and correct  
20 copy of documents of AT&T. The original records were made at  
21 or near the time by or from information transmitted by a person  
22 with knowledge of the matters set forth in the record. They  
23 were kept in the course of a regularly conducted business  
24 activity, and it was the regular practice of that business  
25 activity to make the records.

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1 "It is further stipulated and agreed that this  
2 stipulation may be received in evidence at the trial in the  
3 above-referenced matter."

4 The stipulation is marked Government Exhibit 29-8, and  
5 we offer it, your Honor.

6 THE COURT: I will allow it.

7 (Government's Exhibit 29-8 received in evidence)

8 BY MR. FACCIPONTI:

9 Q. Ms. Chu, can you turn to the document that is marked  
10 Government's Exhibit 41-1.

11 A. OK.

12 Q. You just heard that stipulation that these are records  
13 produced by AT&T?

14 A. Mm-hmm.

15 Q. Do these appear to be Mr. Kurniawan's phone records?

16 A. I suppose, yes.

17 Q. Does it have his name on the front page there?

18 A. Yep.

19 Q. And his address?

20 A. Yes.

21 THE COURT: So now they are showing the stipulation.  
22 Are they going to show Exhibit 41?

23 MR. FACCIPONTI: When we offer it, your Honor.

24 THE COURT: Oh, OK.

25 MR. FACCIPONTI: We offer Government's Exhibit 41-1.

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Dcadkurl Chu - direct

1 THE COURT: All right.

2 (Government's Exhibit 41-1 received in evidence)

3 BY MR. FACCIPONTI:

4 Q. If you look at the top, where it says "Information for" and  
5 provides a number, what is the number that's written there?

6 A. 626-445-1933.

7 Q. Now, does that match the phone number that appears on the  
8 bailment agreement?

9 A. Yes.

10 Q. Now, if you look down, there is a name and address of the  
11 subscriber.

12 A. Yes.

13 Q. What name and address is printed there. Just read the  
14 name.

15 A. Rudy Kurniawan.

16 Q. Is that an address in California?

17 A. Yes.

18 Q. Now, if you turn now to the fifth page of this document,  
19 which has 50692 at the bottom of it, do you see in the middle  
20 there there is a series of phone numbers that have the  
21 series -- does this appear to be records of telephone calls?

22 A. Yes.

23 Q. And in the left-hand column, do there appear to be a date  
24 and time stamp?

25 A. Yes.

Dcadkurl Chu - direct

1 Q. If you can enlarge the middle of this page.

2 And if you look -- there are some telephone calls on  
3 what appear to be December 4, 2007.

4 A. Yep.

5 MR. FACCIPONTI: Do you want to highlight it.

6 THE COURT: Does it look like there are five phone  
7 calls on that date?

8 MR. FACCIPONTI: There appear to be four phone calls  
9 on that date.

10 Q. Is that the same 646-445-1399 number that appears in the  
11 first column?

12 A. Yes.

13 Q. That is the highlighted call. And the second corresponding  
14 number, can you read that?

15 A. 212-850-4503.

16 Q. What is that? Do you recognize that number?

17 A. That is our fax number.

18 Q. That is Fine Art Finance's fax number?

19 A. Yes.

20 Q. Can you turn now to the next page. Could you look at maybe  
21 the bottom 10 or 15 calls?

22 A. Yes.

23 Q. Do you also see calls involving Fine Art Finance's numbers?

24 A. Yes. That's our fax number.

25 Q. When were the loan funds provided to Mr. Kurniawan?

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Dcadkurl Chu - direct

1 A. I believe some of them were provided at closing but not all  
2 of them.

3 Q. And you testified earlier that the reason why you waited --  
4 what was the reason that not all of them were provided at  
5 first?

6 A. I think that some of the collateral was not in the  
7 warehouse yet.

8 Q. Would it refresh your recollection to look at the credit  
9 memo?

10 A. Sure.

11 Q. Turn to government's Exhibit 23-3, page 2.

12 If you look at maybe the second full or third full  
13 paragraph from the bottom.

14 A. Yes. It says, "Additional funding amounts over and above 2  
15 million are contingent on FAC having control of the collateral.  
16 Therefore, additional funds secured by the Los Angeles  
17 collateral will not be disbursed until the collateral is in  
18 lender's control in New York."

19 Q. Can you turn now to Government's Exhibit 23-7.

20 A. Yep.

21 Q. Do you recognize it?

22 A. Yes. It's an instruction from the borrower, Mr. Kurniawan,  
23 to draw down funds from his revolving credit facility.

24 MR. FACCIPONTI: We offer Government's Exhibit 23-7.

25 THE COURT: OK. I will allow it.

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Dcadkurl1 Chu - direct

1 (Government's Exhibit 23-7 received in evidence)

2 THE COURT: Could you show it?

3 MR. FACCIPONTI: Yes. And can you blow up the to and  
4 from and date block.

5 Q. What is the date of this document?

6 A. February 27, 2008.

7 Q. And who is it from?

8 A. It's from Mr. Kurniawan.

9 Q. And who is it to?

10 A. Myself and Laura Miller.

11 Q. Can you now mark the instruction portion, the whole bottom.

12 What are the instructions that are written there?

13 A. "Please withdraw 500,000 and wire transfer to Wells Fargo  
14 Bank account number 5488926907, account name Rudy Kurniawan,"  
15 and then it is the wire instructions.

16 Q. And does it provide a branch address for the bank account?

17 A. Yes.

18 Q. What is that branch address?

19 A. 1024 South Baldwin Avenue, Arcadia, California 91007.

20 Q. Where were Fine Art Finance's bank accounts located at the  
21 time that you made this loan?

22 A. In New York.

23 Q. And in which borough?

24 A. I beg your pardon?

25 Q. In Manhattan?

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Dcadkurl

Chu - direct

1 A. Yes.

2 THE COURT: So is this requesting, this wire transfer,  
3 that money be wired from New York to California?

4 THE WITNESS: Yes.

5 MR. FACCIPONTI: We have another stipulation to read  
6 into the record, your Honor.

7 THE COURT: OK.

8 MR. FACCIPONTI: "It is hereby stipulated and agreed  
9 by and among the United States of America, by Preet Bharara,  
10 United States Attorney for the Southern District of New York,  
11 Joseph P. Facciponti and Jason P. Hernandez, Assistant United  
12 States Attorneys, of counsel, and Rudy Kurniawan, the  
13 defendant, by and with the consent of his attorneys, Jerome  
14 Mooney, Esq. and Vincent Verdiramo, Esq. that:

15 "1. Government Exhibits 25-1, 25-2, 25-3, 25-4,  
16 25-4A, 25-4B, 25-5, 25-6, 25-7 and 25-8 and 25-9 are true and  
17 correct copies of documents of Wells Fargo Bank. The original  
18 records were made at or near the time by or from information  
19 transmitted by a person with knowledge of the matters set forth  
20 in the record. They were kept in the course of a regularly  
21 conducted business activity, and it was the regular practice of  
22 that business activity to make the records.

23 "2. Government Exhibits 26-1, 26-2 and 26-3 are true  
24 and correct copies of documents of American Express. The  
25 original records were made at or near the time by or from

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1 information transmitted by a person with knowledge of the  
2 matters set forth in the record. They were kept in the course  
3 of a regularly conducted business activity, and it was a  
4 regular practice of that business to make the records.

5 "3. Government Exhibit 27-1 and 27-2 are true and  
6 correct copies of documents of the Federal Reserve Bank. The  
7 original records were made at or near the time by or from  
8 information transmitted by a person with knowledge of the  
9 matters set forth in the record. They were kept in the course  
10 of a regularly conducted business activity, and it was the  
11 regular practice of that business activity to make the record;  
12 and,

13 "4. Defendant Exhibit A contains true and correct  
14 copies of documents of Bank of America. The original records  
15 were made at or near the time by or from information  
16 transmitted by a person with knowledge of the matters set forth  
17 in the record. They were kept in the course of a regularly  
18 conducted business activity, and it was the regular practice of  
19 that business activity to make the records.

20 "It is further stipulated and agreed this stipulation  
21 may be received into evidence at the trial of the  
22 above-referenced matter."

23 Your Honor, we offer this stipulation, which is  
24 Government Exhibit 29-1.

25 THE COURT: I will allow it.

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Dcadkurl Chu - direct

1 MR. VERDIRAMO: Your Honor --

2 THE COURT: I will allow it.

3 (Government's Exhibit 29-1 received in evidence)

4 BY MR. FACCIPONTI:

5 Q. Ms. Chu, if you can turn to the two exhibits in that binder  
6 that have been marked Government's Exhibit 27-1 and 27-2.

7 You heard from the stipulation that these are records  
8 maintained by the Federal Reserve Bank.

9 A. Yes.

10 Q. Do they appear to be two wire transfers from Fine Art  
11 Finance to Rudy Kurniawan in respect of this loan?

12 A. Yes.

13 MR. FACCIPONTI: We offer Government Exhibit 27-1 and  
14 27-2.

15 THE COURT: I will allow them.

16 (Government's Exhibits 27-1 and 27-2 received in  
17 evidence)

18 MR. FACCIPONTI: Could you publish Government Exhibit  
19 27-1.

20 Q. What is it?

21 Can we enlarge the date at the top of that document.

22 What is the date?

23 A. January 18th, 2008.

24 Q. And can we enlarge the amount of this wire.

25 What is the amount of the wire?

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Dcadkurl Chu - direct

1 A. \$1.94 million.

2 Q. And who is the sender?

3 A. Fine Art Capital.

4 Q. And why is does Emigrant Bank appear there?

5 A. I beg your pardon?

6 Q. Why does Emigrant Bank appear on this document?

7 A. Because it is bank funds.

8 Q. Fine Art Capital's finances were held by Emigrant Bank?

9 A. Right.

10 Q. And who is the -- what is the receiving bank?

11 A. The beneficiary is Rudy Kurniawan, and the bank is Wells  
12 Fargo.

13 Q. If you look down to the beneficiary -- if you can enlarge  
14 that -- do you recognize the account number listed there?

15 A. No, but it's probably the one that he sent us a memo  
16 referencing.

17 Q. Could you turn back to that memo?

18 A. You have to refresh my memory as to which exhibit it is.

19 Q. It is 23-7. Sorry.

20 A. It's the same account number.

21 THE COURT: So does this say that your company sent  
22 \$1.94 million to Wells Fargo for the benefit of Rudy Kurniawan  
23 on that date?

24 THE WITNESS: Yes, it does.

25 BY MR. FACCIPONTI:

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Dcadkurl Chu - direct

1 Q. And now if we could quickly turn to Government Exhibit  
2 27-2.

3 Does this show that Fine Art Finance wired from New  
4 York to Mr. Kurniawan's account in California approximately  
5 \$500,000 on February 28, 2008?

6 A. Yes.

7 Q. I would like to --

8 THE COURT: Does that mean the total of the two wires  
9 is about \$2.4-plus million?

10 THE WITNESS: Correct.

11 BY MR. FACCIPONTI:

12 Q. Can you turn now to Government's Exhibit 23-11.

13 A. Yes.

14 Q. Do you recognize it?

15 A. Yes.

16 Q. What is it?

17 A. It's a personal financial statement submitted by  
18 Mr. Kurniawan.

19 MR. FACCIPONTI: We offer Government's Exhibit 23-11.

20 THE COURT: I will allow it.

21 (Government's Exhibit 23-11 received in evidence)

22 BY MR. FACCIPONTI:

23 Q. What is a personal financial statement?

24 A. I beg your pardon?

25 Q. What is a personal financial statement?

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Dcadkurl Chu - direct

1 A. It is the borrower submitting information about their  
2 assets and liabilities and also their income and expenses and  
3 then details of those statements.

4 THE COURT: So is the borrower submitting it to you  
5 for review?

6 THE WITNESS: Yes.

7 MR. FACCIPONTI: Can we now blow up the top section  
8 that says "Applicant's Personal Information."

9 Q. What is the name there?

10 A. Rudy Kurniawan.

11 Q. Does it provide an address in Arcadia, California?

12 A. Yes.

13 Q. In the column that says "Citizenship," what is listed  
14 there?

15 A. "PR."

16 Q. Did Mr. Kurniawan explain to you what "PR" meant?

17 A. Yes.

18 Q. What did he say?

19 A. Permanent resident.

20 Q. Did he state any reference about applying for a green card?

21 A. I think that he said he was in the process of applying.

22 Q. Can you turn now to the section that says "Assets."

23 A. Yes.

24 THE COURT: Could you go back for a minute? I have a  
25 question before you get to assets.

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Dcadkurl Chu - direct

1 So where it says "Any other residences, including  
2 non-U.S.," do you see that?

3 THE WITNESS: Yes.

4 THE COURT: What does that say?

5 THE WITNESS: Well, any other residences is another  
6 address in Los Angeles that he said he was moving from one  
7 place to another.

8 THE COURT: But what is the address that's indicated  
9 there?

10 THE WITNESS: It's 11782 Southampton Court, Los  
11 Angeles.

12 THE COURT: I see.

13 BY MR. FACCIPONTI:

14 Q. Actually, if you could turn to the section that says  
15 "Liabilities."

16 A. Yes.

17 Q. Could you enlarge that.

18 And is there a -- what are the portions that are  
19 completed here?

20 A. Mortgage debt of \$6 million and a tax liability of 1 to  
21 \$2 million.

22 Q. What are the total liabilities listed?

23 A. 7 to \$8 million.

24 Q. At any time did Mr. Kurniawan provide information about any  
25 additional liabilities that he had?

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Dcadkurl Chu - direct

1 A. No, he did not.

2 THE COURT: Apart from mortgage and tax, is that what  
3 you are saying?

4 THE WITNESS: Correct.

5 BY MR. FACCIPONTI:

6 Q. Are you familiar with Acker Merrall & Condit. That is  
7 A-c-k-e-r, M-e-r-r-a-l-l, and Condit, C-o-n-d-i-t.

8 A. Yes.

9 Q. What is that?

10 A. It's a wine auction house.

11 Q. At the time he was applying for a loan from Fine Art  
12 Finance, what, if anything, did Mr. Kurniawan say about owing  
13 money to Acker Merrall & Condit and his customers?

14 A. He didn't say he owed money to them.

15 THE COURT: They are a wine auction house where?

16 THE WITNESS: In New York.

17 Q. I would like you --

18 MR. FACCIPONTI: May I approach, your Honor?

19 THE COURT: Sure.

20 Q. I'm handing you what's been marked as Government's Exhibit  
21 24-1 and 24-9.

22 Do these documents -- do you recognize these  
23 documents?

24 A. Yes.

25 Q. Do these appear to be a confession of judgment and

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Dcadkurl Chu - direct

1 affidavit of confession of judgment by Mr. Kurniawan in a  
2 lawsuit brought by Acker Merrall & Condit?

3 A. Yes.

4 MR. FACCIPONTI: Your Honor, we offer 24-1 and 24-9 as  
5 self-authenticating documents. They have a stamp on them, your  
6 Honor.

7 THE COURT: Yes. I would allow them.  
8 (Government's Exhibits 24-1 and 24-9 received in  
9 evidence)

10 THE COURT: Could you just tell us, tell the jury,  
11 what you understand a confession of judgment to mean?

12 THE WITNESS: A confession of judgment is when you  
13 admit that you owe something that was -- you know. And in this  
14 case he admitted that he owed a large amount of money to Acker  
15 Merrall & Condit.

16 THE COURT: And that's 24-1?

17 THE WITNESS: Yes, and 24-9. But the confession of  
18 judgment is 24-1, and the affidavit of the confession of  
19 judgment is 24-9.

20 THE COURT: OK.

21 BY MR. FACCIPONTI:

22 Q. Could you turn now to Government's Exhibit 24-9.

23 A. Yes.

24 MR. FACCIPONTI: Can we enlarge the bottom portion of  
25 this document. Actually, enlarge the top portion.

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Dcadkurl Chu - direct

1 Q. Is that a caption that says -- that shows a civil lawsuit  
2 brought by Acker Merrall & Condit against Rudy Kurniawan?

3 A. Yes.

4 MR. FACCIPONTI: Can we enlarge the bottom portion?

5 THE COURT: Before you do that, and can you tell from  
6 this where that lawsuit had been brought?

7 THE WITNESS: The supreme county of the State of New  
8 York.

9 THE COURT: The supreme?

10 THE WITNESS: Court of the State of New York, County  
11 of New York.

12 MR. FACCIPONTI: If you can enlarge the tax portion.

13 Q. Does Mr. Kurniawan's name appear there as a deponent on  
14 this affidavit?

15 A. Yes.

16 Q. It says that it provided the address as living in  
17 California?

18 A. Yes.

19 Q. Can you read the third paragraph?

20 A. "I hereby confess judgment pursuant to CPLR 3218 in this  
21 court in favor of Acker Merrall & Condit Company, plaintiff, in  
22 the total amount of \$10,401,655.06, and authorize plaintiff, or  
23 plaintiff's heirs, executors, administrators, or assigns to  
24 enter judgment for that amount against me in the circumstances  
25 described below."

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Dcadkurl Chu - direct

1 Q. Can you turn to the second page of the document --

2 THE COURT: Before you do that, so could you tell us  
3 in lay terms, so to speak, what you think that means, 3?

4 THE WITNESS: It means that he admits that he owes  
5 Acker Merrall & Condit this amount of money.

6 THE COURT: What is the amount?

7 THE WITNESS: \$10,401,655.06.

8 BY MR. FACCIPONTI:

9 Q. Can you turn now to the second page of the document.

10 Can we enlarge paragraphs 5 and 6.

11 Can you read paragraph 5?

12 A. "Plaintiff, on behalf of itself and its clients, has made  
13 loans to me of which \$4,945,913.70 in principal remains unpaid  
14 and \$1,012,955.73 in interest remains unpaid; collectively, the  
15 initial loans."

16 Q. And what do you understand that to mean?

17 A. It says that the -- Acker has made loans of nearly \$5  
18 million in principal and unpaid interest of about \$1 million to  
19 Rudy on behalf of itself and its clients, presumably people who  
20 bought wine from Acker.

21 Q. Can you read paragraph 6?

22 A. "Plaintiff, on behalf of itself and its clients, has made  
23 additional loans to me, of which \$2,887,500 remains unpaid, the  
24 additional loans, and collectively with the initial loans, the  
25 loans."

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Dcadkurl Chu - direct

1 Q. What does that paragraph mean?

2 A. That means that Acker made additional loans of which 2.887  
3 million remains unpaid. And so altogether he owes them roughly  
4 8 or \$9 million.

5 (Continued on next page)

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DCABKUR2

Chu - direct

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THE COURT: "He" being?

THE WITNESS: Mr. Kurniawan. Sorry.

THE COURT: "They" being?

THE WITNESS: Acker Merrall.

MR. FACCIPONTI: Can you turn to paragraph 14? And if you can enlarge that as well.

THE WITNESS: "In total to date, I owe plaintiff \$10,401,655.06 as detailed in Exhibit 1 attached hereto."

BY MR. FACCIPONTI:

Q. Can we look at Exhibit 1 that's attached? There are a number of charts and columns on page.

A. Yes.

MR. FACCIPONTI: Can you focus in and enlarge the left-hand column? Can we highlight all of the loans from 2007?

Q. What is the title of the right-hand column in this chart?

A. "Initial loans."

Q. And do there appear to be quite a few loans made from Acker Merrall in 2007 to Mr. Kurniawan?

A. Yes.

Q. Okay. And what are some of the amounts of those loans? Just two or three.

A. Just the ones that are highlighted?

Q. Yes. Well, how about this? For the jury's reference, when did you make the loan from Fine Art Capital to

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DCABKUR2

Chu - direct

1 Mr. Kurniawan?

2 A. We funded it in January of 2008.

3 Q. And he was applying for the loan in or about December of  
4 2007?

5 A. Right.

6 Q. And the dates that appear in the left-hand column, are they  
7 all prior to December of 2007?

8 A. Yes.

9 Q. Did Mr. Kurniawan disclose any of these loans to you when  
10 he applied for a loan from Fine Art Capital?

11 A. No, he did not.

12 MR. FACCIPONTI: Can we enlarge the --

13 THE COURT: Before you do, do you see for the 2007,  
14 there's two \$500,000 numbers in parentheses. What does that  
15 mean there?

16 THE WITNESS: Those were amounts that were repaid.

17 THE COURT: So that means he paid on October 12, 2007,  
18 and then again on November 9, 2007? He repaid half a million  
19 dollars each time?

20 THE WITNESS: Correct.

21 THE COURT: Toward his indebtedness?

22 THE WITNESS: Correct.

23 MR. FACCIPONTI: Can we enlarge the top right-hand  
24 chart?

25 Q. Does this appear to show additional loans from August of

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DCABKUR2

Chu - direct

1 2007?

2 A. Yes.

3 Q. And taking these additional loans plus the loans on the  
4 left-hand column, the ones that were not repaid, is it  
5 approximately between five and seven million dollars all  
6 together for 2007?

7 A. Yes.

8 Q. And had Mr. Kurniawan disclosed any of that when he was  
9 applying for a loan from Fine Art Finance?

10 A. No, he did not.

11 Q. What, if anything, did Mr. Kurniawan tell you about how  
12 much money he spends each year on his personal expenses?

13 A. He gave us a --

14 THE COURT: You mean at the time he was securing.

15 MR. FACCIPONTI: At the time he was applying for the  
16 loan.

17 A. I believe he said he spent around \$150,000 a year.

18 Q. And what is the reason that you asked Mr. Kurniawan about  
19 his living expenses?

20 A. We ask about living expenses just as we ask about income,  
21 so that we can see whether or not there's enough funds to pay  
22 the debt service.

23 Q. At any time did Mr. Kurniawan tell you that he spent far  
24 more than \$150,000 a year on living expenses?

25 A. No, he did not.

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DCABKUR2 Chu - direct

1 Q. I believe you said earlier that when Mr. Kurniawan was  
2 applying for the loan with Fine Art Finance, he told you that  
3 he was a permanent resident of the United States?

4 A. I can't recall whether he said he was a permanent resident  
5 or he was applying for permanent residency.

6 Q. What was his country of citizenship?

7 A. Indonesia.

8 Q. Would it refresh your recollection if you looked at the  
9 credit memo in this case?

10 A. Yes.

11 Q. That was 23-3, page 4.

12 A. Okay.

13 Q. Does that refresh your recollection?

14 A. It says "Rudy Kurniawan is a U.S. resident applying for a  
15 permanent residency green card. He has a Social Security  
16 number and files U.S. income tax returns."

17 Q. Thank you.

18 At the time Mr. Kurniawan was applying for a loan with  
19 Fine Art Finance, had he told you that he had been ordered  
20 deported from the United States?

21 A. No.

22 Q. Turning back to Government Exhibit 23-11 --

23 THE COURT: I'm sorry, what document are you talking  
24 about?

25 MR. FACCIPONTI: That is the personal financial

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DCABKUR2 Chu - direct

1 statement.

2 THE COURT: What's the number?

3 MR. FACCIPONTI: 23-11.

4 Q. Do you see at the top it's written "Eddie Milstein"?

5 A. Yes.

6 Q. Is that Edward Milstein?

7 A. Yes.

8 Q. Who is he?

9 A. He is the brother of Howard Milstein, who's the chairman of  
10 Emigrant Bank.

11 Q. What, if any, involvement did Mr. Milstein have with  
12 respect to this loan?

13 A. Mr. Milstein is a large collector of wine, so I made a  
14 phone call to him asking if he ever had heard of  
15 Mr. Kurniawan.

16 THE COURT: This is you called Eddie Milstein?

17 THE WITNESS: I did.

18 THE COURT: The brother of the chairman of the bank?

19 THE WITNESS: Correct.

20 Q. And what did Mr. Milstein tell you?

21 A. He said he was known to be a very large collector of wines.

22 Q. And by "he" you mean Mr. Kurniawan?

23 A. Correct.

24 Q. Did Mr. Milstein have any other involvement in this loan?

25 A. No, he did not.

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DCABKUR2

Chu - direct

1 Q. Did there come a time when you learned that Mr. Kurniawan  
2 had pledged some of the collateral from the Fine Art Finance  
3 loan to another entity?

4 A. Yes.

5 Q. Okay. When was that approximately?

6 A. I think it was in November of 2008. Yes, November of 2008.

7 Q. So is it --

8 THE COURT: And when you say you learned he pledged,  
9 what do you mean? What did you learn happened?

10 THE WITNESS: Well, the way that we actually learned  
11 was that the attorneys for Acker Merrall approached us and then  
12 we did a search and we found the confession of judgment.

13 THE COURT: Which showed what?

14 THE WITNESS: Which showed that Mr. Kurniawan admitted  
15 to having ten and a half million dollars of loans to Acker  
16 Merrall and he had signed a confession of judgment.

17 BY MR. FACCIPONTI:

18 Q. What, if anything, did you do then? Was the loan in  
19 default at that point?

20 A. We did declare a default.

21 Q. And what happened --

22 THE COURT: Wait a minute. You declared a default on  
23 the loan that you had with Mr. Kurniawan.

24 THE WITNESS: Yes.

25 Q. And what, if anything, did you do with the collateral that

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DCABKUR2 Chu - direct

1 Mr. Kurniawan had provided?

2 A. Well, we told Mr. Kurniawan that he would have to sell the  
3 collateral to repay the indebtedness.

4 Q. And what happened--

5 THE COURT: So he had to sell the collateral to pay  
6 the indebtedness to you?

7 THE WITNESS: Correct.

8 Q. And what happened with the collateral?

9 A. The collateral was consigned to Christies and it was sold  
10 during the spring sales, the spring contemporary art sales, in  
11 2009.

12 Q. And how much money approximately did the collateral sell  
13 for?

14 A. I don't remember the exact amount, but I know there was  
15 enough money to repay all of our indebtedness and then there  
16 was some additional money over and above that that was paid to  
17 Acker Merrall.

18 Q. Ms. Chu, all things being equal, which outcome would Fine  
19 Art Capital rather have for its loans, one--

20 MR. VERDIRAMO: Objection.

21 THE COURT: Overruled. Go ahead.

22 Q. One, a the borrower repay the loan as agreed or, two, the  
23 borrower defaults and Fine Art Finance has to sell the  
24 collateral?

25 A. Number one.

DCABKUR2

Chu - direct

1 Q. And what is the reason? Number one is have the borrower  
2 repay the loan as agreed.

3 A. Yeah. We're in business to have our loans be current and  
4 to earn interest on them and have the principal repaid. We're  
5 not in the business of selling collateral to have our  
6 indebtedness repaid.

7 Q. Is there ever any guarantee that Fine Art Finance would be  
8 made whole through the sale of collateral?

9 A. No.

10 Q. In fact, when Mr. Kurniawan defaulted on the loan in 2008,  
11 was there anything happening in the economy at that time that  
12 could have adversely affected the sale of the collateral?

13 A. Yeah, we were in the midst of a major financial crisis  
14 that has been characterized as bad as the late Great  
15 Depression.

16 Q. To be clear, at the time that Fine Art Finance is reviewing  
17 Mr. Kurniawan's application, if you had known that he had been  
18 ordered to leave the country, would Fine Art Finance have made  
19 the loan to him?

20 A. No.

21 Q. Why is that?

22 A. We don't consider that he would have been here legally if  
23 he had been ordered to leave the country.

24 Q. At the time Fine Art Finance is reviewing Mr. Kurniawan's  
25 application, if you had known that he spent millions of dollars

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DCABKUR2 Chu - direct

1 a year on personal expenses rather than a \$150,000 a year,  
2 would Fine Art Finance have made the loan?

3 A. We would have to look at the underwriting differently.

4 Q. Would you have made the same loan to him?

5 A. Not necessarily.

6 Q. And to be clear, at the time Fine Art Finance is reviewing  
7 Mr. Kurniawan's application, CHECK you had known that he had  
8 between five to seven million dollars of undisclosed debt to  
9 Acker Merrall, would Fine Art Finance have made him the loan?

10 A. Not the same loan necessarily. Not any loan necessarily.

11 Q. At the time Fine Art -- and why would you change?

12 A. Because the credit profile would have been completely  
13 different.

14 Q. And what measures would you have taken if you were going to  
15 provide a different loan?

16 A. We probably wouldn't have lent him as much money or we  
17 might not have provided him a loan at all if we thought that  
18 was too much indebtedness for his situation.

19 Q. At the time Fine Art Finance is reviewing Mr. Kurniawan's  
20 application, if you had known that he had lied about any of  
21 this to you, would Fine Art Finance have made the loan?

22 A. No.

23 MR. FACCIPONTI: We have no further questions. Thank  
24 you.

25 THE COURT: Counsel.

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DCABKUR2 Chu - direct

1 MR. VERDIRAMO: Thank you, Judge.

2 CROSS-EXAMINATION

3 BY MR. VERDIRAMO:

4 Q. Good morning, Ms. Chu.

5 A. Good morning.

6 Q. Directing your attention to Government Exhibit 23-11, the  
7 first page.

8 A. Yes.

9 Q. Mr. Milstein is the brother of the owner of Emigrant.  
10 Correct?

11 A. He's the brother of the chairman of the bank, yes.

12 Q. So Mr. Milstein's brother is, in effect, your boss. Would  
13 that be fair to say?

14 A. He's our partner.

15 Q. And Mr. Milstein -- Eddie Milstein you said you called him.  
16 Correct?

17 A. I did.

18 Q. And you said on direct that all he said about my client was  
19 that he was a large wine collector?

20 A. Correct.

21 Q. And you said that he had no further involvement at all with  
22 regard to the transaction. Is that correct?

23 A. Correct.

24 Q. Can you turn to Government Exhibit 23-3, please?

25 THE COURT: 23-3?

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DCABKUR2 Chu - cross

1 MR. VERDIRAMO: Yes.

2 Q. Page 3, transaction background.

3 MR. FACCIPONTI: Objection, your Honor. This document  
4 is not in evidence.

5 THE COURT: Are you moving it into evidence?

6 MR. VERDIRAMO: We will be moving it, Judge.

7 THE COURT: You will be?

8 MR. VERDIRAMO: I'll move it at this time, Judge.

9 It's a government exhibit. I can't imagine the government is  
10 going to object to their own document.

11 THE COURT: You just make the motion and I'll rule.

12 MR. VERDIRAMO: Move it into evidence, Judge.

13 THE COURT: I'm granting that application.

14 MR. VERDIRAMO: Thank you, Judge.

15 (Government's Exhibit 23-3 received)

16 Q. Turn to page 3, please.

17 A. Yes.

18 Q. "Transaction background."

19 A. Yes.

20 Q. Can you read the second sentence, please?

21 A. "He was also informed of FAC's services by Edward Milstein  
22 who knows Kurniawan" through wine collecting.

23 Q. Read the next sentence, please.

24 THE COURT: Wait. Wait. Could we highlight that  
25 somehow?

DCABKUR2

Chu - cross

1 THE WITNESS: It's right there.

2 THE COURT: So you mean the section "Transaction  
3 Background." And you're referring to the second sentence?

4 MR. VERDIRAMO: Yes, your Honor. "He was also  
5 informed..."

6 THE COURT: Who's the "he" referred to there? It  
7 looks like Mr. Kurniawan?

8 MR. VERDIRAMO: I would assume so, yes.

9 THE COURT: Yes.

10 MR. VERDIRAMO: The first sentence refers to  
11 Mr. Kurniawan.

12 THE COURT: Okay. I just want to take a look at it  
13 again. Right.

14 BY MR. VERDIRAMO:

15 Q. Can you read the third sentence, please?

16 MR. VERDIRAMO: And highlight that, please, if  
17 possible.

18 A. "Mr. Milstein characterizes Kurniawan as one of the world's  
19 top five wine collectors and confirmed that he sold over \$30  
20 million of wine over the last two years through Acker Merrall &  
21 Condit, wine auctioneers."

22 Q. So now that you've had an opportunity to review this and  
23 refresh your recollection, it would be fair to say that  
24 Mr. Milstein had a lot more to do with this loan?

25 MR. FACCIPONTI: Objection.

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DCABKUR2 Chu - cross

1 A. No, that's not true because --

2 THE COURT: Overruled, first off. She's saying that's  
3 not true to your question.

4 Q. Mr. Milstein, the brother of your boss, the brother of your  
5 partner, introduced Mr. Kurniawan to the transaction. Correct?

6 A. Not as far as I knew.

7 Q. Are you the author of this document?

8 A. I am.

9 Q. So Mr. Kurniawan, based on the document that you wrote, it  
10 says that Mr. Milstein informed my client, Mr. Kurniawan, of  
11 FAC Services. Isn't that correct?

12 A. That is correct.

13 Q. Thank you.

14 A. That's not the same thing as saying that Mr. Milstein  
15 introduced Mr. Kurniawan to us because, actually, Mr. Kurniawan  
16 called up and he said that he was having difficulty with our  
17 finance partners. And I was never told that Mr. Milstein had  
18 told him anything about our business.

19 Q. Okay. That's not an answer to my question. Try to --

20 THE COURT: Wait, wait. It's an answer.

21 MR. VERDIRAMO: It certainly is an answer, Judge.  
22 Whether --

23 THE COURT: Okay. Just ask the next question.

24 Q. So, in effect, Mr. Milstein, based on what you wrote in  
25 this document, in effect vouched for Mr. Kurniawan, saying that

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DCABKUR2

Chu - cross

1 he did over \$30 million of business with Mr. Kapon and that--

2 THE COURT: Slow down. Slow down.

3 Q. Correct?

4 THE COURT: There's a couple of questions. The first  
5 question is, did Mr. Milstein vouch for Mr. Kurniawan?

6 A. Mr. Milstein told us he was one of the world's top five  
7 wine collectors and he heard of him. And it was a public  
8 record that he had sold \$30 million of wine through Acker  
9 Merrall & Condit.

10 Q. Correct. But Mr. Milstein gave you that information,  
11 didn't he?

12 A. No, I got it on Google.

13 Q. Is there any reason why you didn't write down in your  
14 summary then that you got the information from Google rather  
15 than from the brother of your boss?

16 A. Because it was to do with wine and because Mr. Milstein is  
17 a big wine collector, we simply asked him if he knew who  
18 Mr. Kurniawan was.

19 Q. Do you believe everything you read on the internet?

20 A. No, but since I had it verified from more than one source  
21 on the internet, including Mr. Kapon of Acker Merrall & Condit,  
22 that was sufficient.

23 Q. We're going to talk about Mr. Kapon soon.

24 Now, you've taken this application-- strike that.

25 MR. VERDIRAMO: 23-11, personal financial statement --

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DCABKUR2

Chu - cross

1 THE COURT: Wait, wait. You're going to 23?

2 MR. VERDIRAMO: 23-11, your Honor.

3 THE COURT: Exhibit?

4 MR. VERDIRAMO: Yes, Government Exhibit 23-11.

5 Q. This document got sent to Mr. Kurniawan after you spoke  
6 with Mr. Milstein. Correct?

7 A. I don't recall if it was before or after.

8 Q. This document, 23-11, is how the transaction gets started.  
9 Correct?

10 A. Yes. It's one --

11 Q. It's the first piece of paper that's generated?

12 A. It's not necessarily the first piece of paper that's  
13 generated.

14 Q. What is the first piece of paper that's generated?

15 A. Sometimes it's information on the collateral.

16 Q. In this instance, was this the first piece of paper  
17 generated or do you --

18 A. I don't recall.

19 Q. Do you recall having a conversation with Mr. Kurniawan  
20 where he advised you that he was appealing his immigration  
21 decision?

22 A. No, I did not.

23 Q. He never discussed with you that he had applied for asylum  
24 in this country?

25 A. No, he did not.

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DCABKUR2

Chu - cross

1 Q. And he never told you that that was under appeal?

2 A. No.

3 Q. Did you tell him to write the words "permanent resident" on  
4 the form?

5 A. I did not.

6 Q. Now, this is a \$3 million transaction. Correct?

7 A. Correct.

8 Q. Now, in Fine Art Capital's experience at this time, was  
9 that --

10 THE COURT: At the time of the loan?

11 MR. VERDIRAMO: Of the loan.

12 Q. Back in November of 2007, going into 2008, you had been in  
13 business for two years.

14 A. Right.

15 Q. Correct me if I'm wrong. I think I read somewhere in  
16 discovery that your range of loans is anywhere from \$3 million  
17 to around \$20 million, \$25 million?

18 A. Yes.

19 Q. So this was a small loan for FAC?

20 A. Yes, smallish.

21 Q. Okay. And is that why you could control the transaction  
22 you previously during your direct testimony --

23 THE COURT: Wait. Go slower.

24 MR. VERDIRAMO: I'm sorry, Judge. I talk too fast. I  
25 apologize.

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DCABKUR2

Chu - cross

- 1 THE COURT: No, no, that's fine. I just want to make  
2 sure we understand.  
3 Q. You had previously testified on direct that you originated  
4 this loan. Correct?  
5 A. Correct.  
6 Q. And that you also underwrote it?  
7 A. Correct.  
8 Q. And now underwriting means that you do the bona fides.  
9 Correct?  
10 A. What are bona fides?  
11 Q. You check out to make sure that the information is correct,  
12 et cetera.  
13 A. Yes, I did it with an analyst in the office.  
14 Q. And you do the risk analysis as well?  
15 A. Yes.  
16 Q. And you coordinated investigations that you conducted with  
17 regard to this loan. Yes?  
18 A. Yes.  
19 Q. In fact, you hired two separate investigating companies to  
20 check out Mr. Kurniawan before you granted the loan. Correct?  
21 A. Correct.  
22 Q. And they did all sorts of document searches and background  
23 searches, et cetera. Correct?  
24 A. They did what they could.  
25 Q. And you received, by my recollection, three different

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DCABKUR2 Chu - cross

1 reports with regard to approving this loan and validating  
2 Mr. Kurniawan. Correct?

3 A. I didn't think there were three.

4 Q. You did use a company called NCO, did you not?

5 A. I did, yes.

6 Q. And you interacted with at least two or three different  
7 people at NCO?

8 A. No, I think I only spoke to one person at NCO.

9 Q. Now, at your company, do you know a person by --

10 THE COURT: Hold on. Just so we all understand, is  
11 NCO one of the companies that investigated Mr. Kurniawan in  
12 connection with the loan?

13 THE WITNESS: Correct.

14 THE COURT: Okay.

15 Q. And you also had a person who worked for you at that time  
16 by the name of Laura Miller?

17 A. Yes.

18 Q. And Laura Miller also performed some of the tasks that you  
19 were performing as well. Correct?

20 A. Yes.

21 Q. And many of these things that she did, she would interact  
22 with you. Correct?

23 A. Yes.

24 Q. And she would send you e-mails confirming conversations?

25 A. Yes.

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DCABKUR2 Chu - cross

1 Q. And you were part of those-- so you received all of these  
2 in the ordinary course of business. Correct?

3 A. Yes.

4 Q. So you were kept informed as to the progress of the  
5 investigations. Yes?

6 A. Yes.

7 Q. You actually spoke with John Kapon. Correct?

8 A. Correct.

9 Q. Now, you spoke with John Kapon at or about the time that  
10 this loan was being made. Correct?

11 A. Correct.

12 Q. And Mr. Kapon told you that Mr. Kurniawan --

13 THE COURT: Hold on a second. Who is Mr. Kapon?

14 THE WITNESS: He's the head of Acker Merrall & Condit.

15 MR. VERDIRAMO: Thank you, your Honor.

16 Q. And when you spoke with Mr. Kapon, you did this as part of  
17 your due diligence. Correct?

18 A. Correct.

19 Q. And when you spoke with Mr. Kapon, what he said to you was  
20 that Mr. Kurniawan was a good businessman. Correct?

21 A. No, he said he was a big wine collector. They did a lot of  
22 business together and he sold millions of dollars of wine with  
23 him.

24 Q. Okay. And he had no complaints whatsoever with regard  
25 to --

DCABKUR2

Chu - cross

- 1 A. None.
- 2 Q. Did he say a single word to you about Mr. Kurniawan owing  
3 him any money at all?
- 4 A. No.
- 5 Q. You've been a banker for how long?
- 6 A. I've been a real estate lender and a banker for probably  
7 20-some years, 30 years.
- 8 Q. Don't you think it's a little unusual that if somebody owed  
9 someone \$10 million and--
- 10 MR. FACCIPONTI: Objection.
- 11 Q. -- another banker called them up --
- 12 THE COURT: Sustained. Sustained.
- 13 Q. Did Mr. Kapon discuss with you at any point his business  
14 dealings with Mr. Kurniawan?
- 15 A. Only to say that he had sold a lot of wine with him.
- 16 Q. Did he tell you at all whether they ever did anything  
17 called advances on sales?
- 18 A. I don't recall.
- 19 Q. Are you familiar with the concept of advances of sales?
- 20 A. Yes.
- 21 Q. And what is your understanding of advances on sales?
- 22 A. Auction houses give advances when people are consigning  
23 goods to be sold.
- 24 Q. And what's the expectation?
- 25 A. The expectation is that the advance will be repaid upon the

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DCABKUR2 Chu - cross

1 sale of the goods.

2 Q. And those advances are booked as loans until such time as  
3 the collateral is sold. Correct?

4 A. I don't know how they account for them.

5 Q. It was your understanding, was it not, that there was an  
6 ongoing relationship between my client and Mr. Kapon at Acker  
7 Merrall?

8 A. Yes.

9 Q. And that based on what you heard not only from Mr. Kapon,  
10 but also from Mr. Milstein, that they had sold a tremendous  
11 amount of wine?

12 A. Yes.

13 THE COURT: "They" being Acker Merrall?

14 MR. VERDIRAMO: Acker Merrall and Mr. Kurniawan.

15 Q. Correct?

16 A. Correct.

17 Q. Now, you didn't mention this in your direct, but he also  
18 told you when he was applying for this that he knew he owed a  
19 considerable amount of money in taxes because of these wine  
20 sales. Correct?

21 THE COURT: You're talking about now your client?

22 MR. VERDIRAMO: Correct.

23 A. Correct.

24 THE COURT: Told her when he was applying.

25 MR. VERDIRAMO: I'll rephrase.

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DCABKUR2

Chu - cross

1 THE COURT: Yes.

2 Q. When you were speaking with Mr. Kurniawan and you were  
3 talking about the intended purposes of the loan, he informed  
4 you that because of the money he had earned as a result of  
5 these wine sales that year, that he had a tax liability and  
6 that he needed this money to pay his taxes as well?

7 A. Correct.

8 Q. So he came to you seeking funds so that he could pay his  
9 taxes?

10 A. Partly, yes.

11 MR. VERDIRAMO: 23-11, please, the third page.

12 Can we highlight the upper left corner where it says  
13 "Income," please?

14 Q. It's completely blank?

15 A. Correct.

16 Q. Doesn't list a salary? Doesn't list bonuses,  
17 distributions?

18 A. Correct.

19 Q. It doesn't list any income at all.

20 A. Correct.

21 MR. VERDIRAMO: Can we turn to the right box, please,  
22 where it says "Expenses"? Thank you.

23 Q. Nothing about taxes? Nothing about mortgage payments?  
24 Nothing about insurance, alimony? In fact, it's completely  
25 blank. Correct?

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DCABKUR2

Chu - cross

1 A. Correct.

2 MR. VERDIRAMO: Can we have the bottom portion  
3 highlighted, please?

4 Q. Contingent liabilities. Once again, completely blank?

5 A. Yes.

6 Q. And you underwrote this loan? Correct?

7 A. Yes. We asked other questions and he explained.

8 Q. Ma'am, answer my question: Did you underwrite this loan?

9 A. I did.

10 Q. How many other loans have you ever underwritten and  
11 approved where the income box, the expense box and the  
12 liability box were completely blank?

13 A. Actually, quite a lot of people will send in the first  
14 round of the personal financial statement not completely filled  
15 in, and then we will go through it with them and fill in the  
16 rest of it and ask --

17 Q. But you didn't do that in this case, did you?

18 THE COURT: Let her finish.

19 A. Wait a minute. Part of our due diligence is asking  
20 other questions and making sure that we understand the other  
21 items that should have been properly filled in on the  
22 personal financial statement and they become part of the credit  
23 file.

24 Q. But you didn't do it on this form --

25 A. No, we didn't --

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DCABKUR2

Chu - cross

1 Q. -- in this deal?

2 A. No, we didn't put it on the form, but we did do the  
3 research into his sources of income and his expenses.

4 Q. But you never filled in your own form?

5 A. You don't have to fill in the form. You had to find the  
6 information.

7 Q. When you presented it to your loan committee, did you  
8 present this blank form to them?

9 A. No, this is not part of what's presented to the loan  
10 committee. What's presented to the loan committee is the  
11 result of the research and due diligence you've done on these  
12 things, verifying or not verifying whether it's blank or not  
13 blank.

14 Q. What you presented to the loan committee is actually  
15 document 23-3. Correct?

16 A. Correct.

17 Q. And you don't --

18 THE COURT: I'm sorry. This is 23-3?

19 THE WITNESS: The credit memo.

20 MR. VERDIRAMO: Which is the executive summary.

21 THE COURT: Are you turning to that now?

22 MR. VERDIRAMO: Not quite yet, Judge. Thank you.

23 THE COURT: Oh, okay.

24 Q. Turn to 23-3.

25 You testified previously that the collateral in this

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DCABKUR2 Chu - cross

1 transaction was 24, 25 pieces of artwork. Correct?

2 A. Yes.

3 Q. And these were pieces of art by highly desirable artists.

4 Is that fair to say?

5 A. No, it was very mixed actually. Some of them were very  
6 desirable artists and some of them were emerging artists whose  
7 work is not necessarily always desirable.

8 Q. And because of that, you actually retained two separate  
9 outside appraisers to look at the artwork. Correct?

10 A. We often do that.

11 Q. But in this case you did do that. Yes?

12 A. Yeah.

13 Q. Okay. And when you look at the transaction compared to the  
14 fair market value of the collateral-- strike that.

15 Can you explain to the jury, please, what the fair  
16 market value of collateral is?

17 A. The fair market value is what you would expect to get if  
18 you tried to sell the collateral in a-- under reasonable market  
19 conditions and within a reasonable amount of time. So not in a  
20 hurry.

21 Q. And based on your analysis and the analysis of your outside  
22 appraisers, the loan to value in this instance was 43.68  
23 percent. Correct?

24 THE COURT: Well, could you explain that, the  
25 fraction?

DCABKUR2 Chu - cross

1 MR. VERDIRAMO: Sure.

2 THE COURT: The loan versus the value of the  
3 collateral, is that what you're saying?

4 MR. VERDIRAMO: Yes.

5 Can we go to page one of the executive summary,  
6 please? The middle of the page, where it's listed as "loan to  
7 value."

8 Q. Can you explain to the jury what "loan to value 3 million  
9 over 6.868 equals 43.68" means?

10 THE COURT: Well, actually, why don't you do the whole  
11 thing? It says "loan to FMV" and then it has-- why don't you  
12 explain that line.

13 THE WITNESS: It's the ratio of the loan amount to the  
14 fair market value of the collateral.

15 THE COURT: And does "FMV" stand for fair market  
16 value?

17 THE WITNESS: Correct.

18 THE COURT: And that's how you get to 43.68 percent?

19 THE WITNESS: Correct. The loan amount is \$3 million.  
20 The fair market value of the collateral was \$6.868 million.  
21 The resulting fraction is 43.7 percent.

22 BY MR. VERDIRAMO:

23 Q. So as a condition of making the loan, you were going to  
24 take possession of collateral worth at least more than twice  
25 the loan amount. Correct?

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DCABKUR2

Chu - cross

1 A. Yes.

2 Q. And you would agree with me, would you not, that when you  
3 do these fair market values and you retain these outside  
4 appraisers, in order to protect the bank's position, that fair  
5 market value is a conservative fair market value?

6 A. It's conservative.

7 Q. In addition, there was other artwork that was coming from  
8 other places other than the original Delaware warehouse.  
9 Correct?

10 A. Correct.

11 Q. And because of that, those other works in transit were not  
12 included in determining the loan-to-value ratio. Correct?

13 A. That's correct.

14 Q. So that when you finally did receive that, those other  
15 artworks, that would actually make the loan-to-value ratio even  
16 smaller. Correct?

17 A. Correct, but I don't know by how much.

18 Q. And the reason why there were actually two wires sent in  
19 this matter is because of the fact that you didn't send the  
20 second wire until such time as you received that additional  
21 collateral?

22 A. That's correct.

23 Q. And --

24 THE COURT: You're referring now to the two wires sent  
25 to Mr. Kurniawan's account?

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DCABKUR2 Chu - cross

1 MR. VERDIRAMO: Yes, your Honor.

2 THE COURT: Okay.

3 Q. Now --

4 THE COURT: One for about \$1.9 million and one for  
5 about \$500,000?

6 MR. VERDIRAMO: \$500,000, that's correct, your Honor.

7 Q. Now, as part of these other documents that were signed, one  
8 of those documents was the bailment agreement?

9 A. Correct.

10 Q. And you previously testified as to the bailment agreement?

11 A. Yes.

12 Q. And would it be fair to say the function of the bailment  
13 agreement, it basically entrusts my client's collateral with  
14 your agent, the warehouse, and in effect he's giving up all his  
15 rights to that collateral until you say he can get it back?

16 A. Well, he gives up control of the collateral, yes.

17 Q. Okay. He couldn't just go to that warehouse and say I want  
18 my Damien Hirst back?

19 A. No.

20 Q. Couldn't go back and get his Warhol back, could he?

21 A. No.

22 Q. He certainly couldn't take them and sell them without your  
23 help?

24 A. No.

25 THE COURT: He certainly what?

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DCABKUR2

Chu - cross

1 MR. VERDIRAMO: Sell them without Ms. Chu's approval.

2 Q. Correct?

3 A. That's correct.

4 THE COURT: But is it also true that he continues to  
5 own those things?

6 THE WITNESS: Correct.

7 Q. Now, you charged a two-point origination fee?

8 A. Correct.

9 Q. Can you explain to the jury what a two-point origination  
10 fee is?

11 A. We charge fees for originating a loan.

12 Q. And that's based on a percentage of the gross amount of the  
13 loan?

14 A. Yes.

15 Q. And in this instance, 2 percent of the loan would be  
16 \$60,000?

17 A. Correct.

18 Q. So you made a \$60,000 fee by advancing monies to my client  
19 that you were double collateralized for. Correct?

20 A. Yes.

21 Q. And on top of that, also, you collected a \$50,000 fee from  
22 my client so that you could perform your due diligence.

23 Correct?

24 A. The \$50,000 is a due diligence deposit which is for  
25 third-party expenses that are incurred during the course of the

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DCABKUR2 Chu - cross

1 transaction. Anything that isn't used is returned to the  
2 borrower or else applied to the origination fee.

3 MR. VERDIRAMO: Can I have page 2, about the top third  
4 of the page, where it has "origination fee" --

5 THE COURT: Wait a minute. Of this same exhibit?

6 MR. VERDIRAMO: Yes, your Honor.

7 THE WITNESS: That isn't money that goes to the bank.  
8 It's money that goes to the third-party appraisers and their  
9 lawyers.

10 Q. I understand that. I haven't asked-- I haven't indicated  
11 that you received it.

12 THE COURT: Okay. Okay.

13 Q. But it's money that my client paid as part of the  
14 transaction?

15 A. Yes.

16 Q. And in paying that \$50,000 fee, it was understood by  
17 everyone that that was so the bank could perform its due  
18 diligence such that it would be comfortable in making the loan.  
19 Correct?

20 A. It's not just for due diligence. It's also for legal fees  
21 and the appraisal.

22 Q. Well, I'm just going by your listed headline on the  
23 document that you wrote. It says "due diligence deposit."

24 A. That's correct.

25 Q. So that's what it was used for. Correct?

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DCABKUR2

Chu - cross

1 A. In the term sheet it delineates exactly what that can be  
2 used for. This isn't the term sheet. This is the credit  
3 memo.

4 Q. And so my client paid that \$50,000 to the debt that he --

5 A. Correct.

6 THE COURT: Wait. Wait. Finish the question.

7 MR. VERDIRAMO: Right. She answered while I was in  
8 the middle of the question, Judge.

9 THE COURT: She anticipated what the question would  
10 be.

11 MR. VERDIRAMO: I'll say it again, Judge. Thank  
12 you.

13 Q. So my client paid the \$50,000 due diligence deposit?

14 A. Yes.

15 Q. And you collected the \$60,000 fee out of the proceeds?

16 A. Yes.

17 Q. And this was a one-year note, but it could be extended?

18 A. Yes.

19 MR. VERDIRAMO: Can we go to page 3, please? Top  
20 portion of the page, "Risks."

21 Q. Item 1, bullet point 1 under "Risks," "Borrower's lack  
22 of regular income and reliance on asset sales to repay the  
23 loan."

24 THE COURT: Well, no, it doesn't say quite that,  
25 right? It says "Borrower's lack of regular recurring

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1 income."

2 MR. VERDIRAMO: I'm sorry, Judge, that's what I  
3 thought I said. I apologize.

4 THE COURT: And "reliance on asset sales to repay  
5 loan." Is that right?

6 THE WITNESS: Yes.

7 Q. Can you explain what that means?

8 A. Just what it says. He doesn't have a regular recurring  
9 income and, therefore, he has to rely on selling assets in  
10 order to repay the loans.

11 Q. And you understood that when you made the loan?

12 A. Yes.

13 Q. "Borrower's source of wealth and foreign citizenship."

14 A. Yes.

15 Q. You understood that when you made the loan. Correct?

16 A. I did.

17 THE COURT: You understood what?

18 THE WITNESS: That he had-- he was an Indonesian  
19 citizen and that his source of wealth was primarily his family  
20 and his family's holdings.

21 Q. Next item, "borrower's tax liabilities estimated at \$1  
22 million or less."

23 A. Correct.

24 Q. So you understood that he had tax issues as well?

25 A. Yes.

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DCABKUR2 Chu - cross

1 Q. Then the mitigants. These would be the items that would be  
2 in my client's favor. Correct?

3 A. Yes.

4 Q. Things that were positives towards making the loan. Yes?

5 A. They're not necessarily things that are positive. They're  
6 things that have reduced the risk.

7 MR. VERDIRAMO: First item, if we could highlight  
8 that, please.

9 Q. This is information-- can you read that out loud, please?

10 A. "Borrower is known as one of the world's top five wine  
11 collectors and has sold over \$30 million of wine through Acker  
12 Merrall & Condit over the last two years."

13 Q. And this is information that you received from the  
14 internet, as you said before. Right?

15 A. Also from Mr. Kapon.

16 Q. Okay. And also from Mr. Milstein?

17 A. Correct.

18 Q. And also from your investigators?

19 A. Correct.

20 Q. Next item, "Borrower is known by Edward Milstein" --

21 THE COURT: Wait, wait. Hold on. There we go.

22 Q. "Borrower is known by Edward Milstein, who ranks him as in  
23 the top five wine collectors of the world."

24 Did I read that correctly?

25 A. Correct.

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DCABKUR2 Chu - cross

1 Q. So, once again, here's Mr. Milstein, who you told us before  
2 had very little involvement in the transaction, in effect  
3 vouching for my client. Correct?

4 A. No, I had one conversation with Mr. Milstein. He told me  
5 he was one of the top five wine collectors in the world. He  
6 had no other involvement in this transaction.

7 Q. But, Ms. Chu, you're not going to tell this jury that that  
8 wasn't important to you. You mentioned it three times in this  
9 document.

10 THE COURT: Whoa, whoa, whoa.

11 MR. FACCIPONTI: Objection.

12 THE COURT: You've got several different questions  
13 going on here.

14 So did you reflect your conversation with Mr. Milstein  
15 in this bullet point? Is that what is happening?

16 THE WITNESS: Yeah, that's all he told me.

17 Q. And clearly it was an important factor to you, was it not?  
18 Your boss's brother vouched for my client. That was important  
19 to you, wasn't it?

20 A. It was simply important because when there's a deal that  
21 involves wine and wine collecting, we always touch base with  
22 Mr. Milstein because he's a big wine collector and he has a lot  
23 of expertise in it. And all we asked was whether he knew  
24 Mr. Kurniawan. And he said, "Yes, he ranks as one of the top  
25 five wine collectors in the world." That's it.

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1 Q. And you're saying that wasn't important to you?

2 A. It would have been important to me if he said "I never  
3 heard of him."

4 Q. Skipping down-- well, the next item, you consulted  
5 investigators, so you're confirming that?

6 A. Right.

7 Q. Next item, "FAC will have control and possession of the  
8 collateral in question."

9 A. Correct.

10 Q. That's a big deal. Correct?

11 A. Yes.

12 Q. In fact, that's the heart of the deal, isn't it?

13 A. There isn't such a thing as a heart of the deal because a  
14 deal is made up of lots of different components.

15 Q. But without at least twice the collateral, there isn't a  
16 chance in the world you would have made this loan. Correct?

17 A. Excuse me, but we rarely make any loan that has a loan to  
18 value over 50 percent no matter what and we often make loans  
19 with loan to values of less than 50 percent.

20 Q. And that's what you did here.

21 A. Correct, but I'm just pointing out it's not unusual.

22 Q. Last item, "The loan yields 13.4 percent."

23 Now, previously on direct you told us this was about  
24 an 8 and 1/2 percent loan.

25 A. That's the coupon.

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DCABKUR2 Chu - cross

1 Q. Explain that to the jury, please.

2 A. A loan yield consists of all the monies that the bank earns  
3 on the loan. So it would have included the amortization of the  
4 up-front fee as well as the coupon.

5 Q. So, in effect, your real return on your money is 13  
6 percent?

7 A. Correct.

8 Q. Not 8.

9 A. No.

10 MR. VERDIRAMO: Page 4, please. Thank you.

11 Q. Second paragraph. It's unquestioned that you realized he  
12 was a foreign national. Yes?

13 A. I beg your pardon?

14 Q. It's unquestioned that you realized he was a foreign  
15 national?

16 A. Yes, I knew he was a foreign national.

17 MR. VERDIRAMO: Bottom of the page, please,

18 "Assets."

19 Q. Each of these listed assets totaling approximately \$41.6  
20 million you conducted an investigation on. Correct?

21 A. We did not necessarily conduct an investigation on every  
22 single thing, but we did conduct an investigation on some of  
23 those items.

24 Q. You were reasonably secure with regard to each and every  
25 one of these items. Otherwise you would not have presented it

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DCABKUR2 Chu - cross

1 to your committee. Correct?

2 A. Yes.

3 THE COURT: And you calculated that his total assets  
4 were \$41,696,000?

5 THE WITNESS: Approximately. None of these assets are  
6 very easy to value.

7 Q. Starting on the bottom of page 5, going on to page 6 and 7  
8 and 8, you then get into a lengthy discussion about the various  
9 collateral. Correct?

10 A. That's correct.

11 Q. And there's no question in your mind, is there, that your  
12 two appraisers did a very thorough job with regard to these  
13 various artworks?

14 A. Correct.

15 Q. And as we said previously, some of these artists were very  
16 well known and very famous?

17 A. And some of them are very young and emerging.

18 Q. Correct.

19 The emerging artists you hired specialists to deal  
20 with. Correct?

21 A. Correct.

22 Q. And some of these emerging artists' works, such as Zhang  
23 Xiaogang, sell artwork for over a million dollars apiece.

24 Correct?

25 A. They don't always sell at that price level. It depends on

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DCABKUR2 Chu - cross

1 the market conditions.

2 Q. You would agree with me that Zhang Xiaogang at this time  
3 was an emerging artist. Yes?

4 A. Yes.

5 MR. VERDIRAMO: Can we go to the top of page 8?

6 THE COURT: Just, for example, what were the  
7 well-known artists?

8 THE WITNESS: Somebody like Andy Warhol.

9 THE COURT: And what about Damien Hirst?

10 THE WITNESS: Yes, whose prices are also very  
11 volatile.

12 THE COURT: And what about Ed Ruscha?

13 THE WITNESS: Yes.

14 Q. Robert Indiana?

15 A. Yes, but this category of art has the highest volatility.

16 Q. The volatility you're speaking of now did not so much  
17 concern you back when you made the loan, did it?

18 A. Oh, yes, it did, because if you look at the category of  
19 volatility on the analysis of the collateral, you'll see that  
20 64 percent of the collateral has a 3 volatility. And 3 is only  
21 one down from the highest level of volatility.

22 Q. So you took that all into account?

23 A. We did.

24 Q. Because you were more than adequately secured with the  
25 Damien Hirsts and the Warhols and the Ruschas, et cetera.

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DCABKUR2 Chu - cross

1 Correct?

2 A. Do you know how much Damien Hirst's prices dropped after  
3 his recent sale at Sotheby's? Forty-five percent.

4 Q. That's now. We're talking about when you made the loan.  
5 Correct?

6 THE COURT: Okay. Wait a minute.

7 A. I'm just pointing out that this is a very volatile  
8 category.

9 Q. None of us can predict the future, can we?

10 A. Especially not in the art market.

11 Q. Now, Big Family, which was part of the series from Zhang  
12 Xiaogang, sold for over a million dollars, did it not?

13 A. I don't recall because there are many, many paintings of  
14 that name by that artist.

15 Q. Well, it's listed in your report. That's why I bring it up  
16 to you.

17 A. Okay.

18 Q. The reason for taking the collateral is so that if there's  
19 a default and the borrower is not able to pay, you have  
20 recourse. Correct?

21 A. Yes.

22 Q. And it's part of your business, is it not, that sometimes  
23 people don't repay the loan?

24 A. Yes.

25 Q. When you declared the matter to be in default,

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DCABKUR2 Chu - cross

1 Mr. Kurniawan not ever, never, denied to you that he owed you  
2 money. Correct?

3 A. No, he didn't deny it.

4 Q. In fact, he wanted your help, didn't he?

5 MR. FACCIPONTI: Objection.

6 THE COURT: Sustained. I don't understand the  
7 question.

8 Q. Did he ask you whether he could get access to the works by  
9 people on the outside that he was trying to sell some artwork  
10 to?

11 MR. FACCIPONTI: Objection.

12 THE COURT: I'm still not sure I'm understanding what  
13 you're saying.

14 Q. Did you ever receive a phone call or an e-mail after the  
15 event of default, the declaring of default, from my client  
16 saying that he had potential purchasers--

17 MR. FACCIPONTI: Objection, your Honor.

18 THE COURT: Go ahead.

19 Q. -- that he had potential purchasers for the artwork?

20 A. I don't recall that.

21 Q. Did you ever instruct anyone at the warehouse not to allow  
22 anyone in to see the artwork?

23 A. I don't recall.

24 Q. Do you recall a series of conversations with  
25 representatives from Acker Merrall who wanted to buy the

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DCABKUR2 Chu - cross

1 artwork?

2 A. No.

3 Q. After the note went into default and you declared default,  
4 did you engage in negotiation or discussions with Mr. Kurniawan  
5 about extending the loan?

6 A. No.

7 Q. Did you ever ask for any additional collateral after the  
8 event of default?

9 A. I can't recall.

10 Q. Do you recall ever discussing with Mr. Kurniawan the  
11 provision of certain wines that were located in London as a  
12 condition of extending the loan?

13 MR. FACCIPONTI: Objection, your Honor.

14 THE COURT: I'll allow it.

15 You mean was there a conversation that he would put up  
16 wine as collateral in addition?

17 MR. VERDIRAMO: After the event of default, Judge.

18 THE COURT: You can answer.

19 A. I don't remember.

20 THE COURT: How soon after the default did you sell  
21 the collateral?

22 THE WITNESS: About four or five months, because the  
23 sales are in the-- they are seasonal sales so...

24 MR. VERDIRAMO: Judge, may I approach?

25 THE COURT: Sure.

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DCABKUR2 Chu - cross

1 Q. Ms. Chu, you've now been handed D-2-- D-12 for  
2 identification.

3 Do you recognize that document?

4 A. It's an amendment to the security agreement.

5 Q. And the top right-hand corner has what date?

6 A. February 19, 2009.

7 Q. And that was after the event of default. Correct?

8 A. Yes, it was.

9 Q. Seeing this document --

10 THE COURT: Hold on a second. Is it also after the  
11 sale of the --

12 THE WITNESS: No, it's before the sale.

13 MR. VERDIRAMO: It's before the sale.

14 Q. Does this refresh your recollection?

15 A. Yes.

16 Q. So, in fact, after the event of default, you executed  
17 further agreements with my client to extend the loan?

18 A. I think this is because we were going to have him sell the  
19 collateral and the loan was maturing.

20 Q. Well, the loan had already matured, had it not?

21 A. Yes.

22 Q. And this was after you had found out that my client had  
23 assigned some of these same artworks to Acker Merrall.

24 Correct?

25 A. Correct, but he needed to consign the works to Christies to

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DCABKUR2 Chu - cross

1 sell them, and we didn't want to be consigning with a loan that  
2 was-- you know, had already matured. And we knew the sales  
3 couldn't occur until May.

4 Q. So you entered into this further agreement with my client?

5 A. Right.

6 Q. Because he was cooperating with you, wasn't he?

7 A. Yes.

8 Q. He was fully cooperative? Everything you asked him to do  
9 to cure this default, he did, within his power, didn't he?

10 A. He was quite cooperative most of the time.

11 THE COURT: And what does this document do? It's  
12 called "First Amendment to Security Agreement." What is --

13 THE WITNESS: It extends the maturity because we  
14 needed the loan to be in place so that he could consign the  
15 works to be sold, because we didn't foreclose on the  
16 collateral. He cooperated with us to consign them for sale at  
17 Christies.

18 THE COURT: Which happened.

19 THE WITNESS: Yes.

20 MR. VERDIRAMO: Judge, may I approach, please?

21 THE COURT: Is this something that you're--

22 MR. VERDIRAMO: I will be moving that, yes, your

23 Honor.

24 THE COURT: Okay. And you'll have copies for the  
25 jury?

DCABKUR2

Chu - cross

1 MR. VERDIRAMO: Yes, your Honor.

2 THE COURT: Okay. Go ahead.

3 THE DEPUTY CLERK: Do you have one for the judge?

4 MR. VERDIRAMO: Oh, sorry, Judge, I carried it up here  
5 for you.

6 THE DEPUTY CLERK: Thank you.

7 BY MR. VERDIRAMO:

8 Q. Ms. Chu, you've now been handed defendant's D-2 for  
9 identification.

10 A. Right.

11 Q. Do you recognize this document?

12 A. Well, I see notes for a discussion with Rudy,  
13 Mr. Kurniawan.

14 Q. Yes.

15 THE COURT: Would those be your notes?

16 THE WITNESS: I think so. I think they're a  
17 combination of my notes and Ms. Miller's notes.

18 THE COURT: I see.

19 Q. And this was part of your due diligence package. Correct?

20 A. Right. And then I also see a credit report.

21 Q. Okay. Turning to the credit report --

22 THE COURT: Where would that be?

23 THE WITNESS: It's the second document. It's after  
24 here.

25 Q. This was actually a complete folder kept in the due

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1 diligence file. Correct? That's why the front cover has the  
2 tab that says "credit checking"?

3 A. Okay.

4 Q. Is that your handwriting, by the way, or is that Laura  
5 Miller's?

6 A. I don't think that's either of our handwriting. It's  
7 probably mine. It's not hers.

8 Q. Now, turning to the page that's listed as RK 0011126.

9 A. Yes.

10 THE COURT: In the lower right?

11 MR. VERDIRAMO: In the lower right-hand corner.

12 Q. That's the government's Bates stamp number, correct, if you  
13 know? At the top of the page it says "Emigrant Mortgage  
14 Company Inc./Elmsford." Right?

15 A. Yes.

16 Q. What does that signify to you?

17 A. They ran the credit check for us.

18 Q. So you ordered a credit check--

19 A. Yeah.

20 Q. -- as part of your normal due diligence?

21 A. Yes.

22 THE COURT: And is it your plan to give this to the  
23 jury, also?

24 MR. VERDIRAMO: Yes, your Honor.

25 Q. Please go to the middle of the page, directing your

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1 attention to the item listed as "AmEx."

2 A. Yeah?

3 Q. You previously testified that it was your recollection that  
4 my client had represented that his annual expenses were  
5 \$150,000 a year.

6 Do you recall that testimony?

7 A. Yes.

8 Q. And this AmEx-- this credit report, this was in your  
9 possession at the time you decided to make the loan. Correct?

10 A. Yes.

11 Q. What's the high limit indicated for Mr. Kurniawan's AmEx  
12 card?

13 A. It's \$1,808,000.

14 Q. And his past payment?

15 A. \$458,852.

16 Q. So at the time that you made the loan, you knew that at  
17 least on his AmEx card he had spent that kind of money in that  
18 year. Correct?

19 A. Yeah, but I don't know whether that was personal expenses  
20 or business expenses. And entrepreneurs often use their credit  
21 cards.

22 Q. Did you discuss that with Mr. Kurniawan?

23 A. I don't recall.

24 Q. So you didn't ask him with regard to his business expenses  
25 what he spent, did you?

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DCABKUR2 Chu - cross

1 A. He didn't know because it was a start-up business.

2 Q. Did you ask him about his wine buying and selling business?

3 A. It wasn't, per say, a business. He was a wine collector  
4 who had bought and sold a lot of wine.

5 Q. Did you ask him about what his expenses were in connection  
6 with that?

7 A. I can't recall.

8 Q. Did you ask him what he spent on restaurants, for instance?

9 A. No.

10 Q. Did you ask him what his monthly expenditures were for  
11 wines?

12 A. I don't believe so.

13 Q. Did you ask him what his monthly expenses were for hotels  
14 or restaurants or other items such as that?

15 A. Not to my recollection.

16 Q. You collected copies of his tax returns, did you not?

17 A. Yes.

18 Q. And there was nothing on his tax returns to indicate a  
19 separate business, was there, at this time?

20 A. No, because he was starting it.

21 Q. The confession of judgment to Acker Merrall that you  
22 referenced before during your direct testimony, that came  
23 eleven months after you made this loan. Correct?

24 A. Correct.

25 THE COURT: By the way, are we finished with the  
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DCABKUR2 Chu - cross

1 document that's on the screen?

2 MR. VERDIRAMO: Yes, your Honor.

3 THE COURT: Okay.

4 MR. VERDIRAMO: Just a moment.

5 THE COURT: Yes.

6 (Continued on next page)

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Dcadkur3 Chu - cross

1 MR. VERDIRAMO: May I approach, Judge?

2 THE COURT: Sure.

3 Q. Ms. Chu, I have now handed you D6, for identification. Do  
4 you recognize this document?

5 A. Yes.

6 Q. The upper right -- the upper left-hand corner actually  
7 bears your company logo, yes?

8 A. Right.

9 Q. And what would you call this document in your field?

10 A. I think this is showing the sales proceeds that were  
11 realized as a result of the things that were sold at  
12 Christie's.

13 Q. And it lists in the customer summary in the top right-hand  
14 corner --

15 A. Yeah.

16 MR. VERDIRAMO: Judge, may I use the Elmo so that the  
17 jury can see the document?

18 THE COURT: Absolutely. I don't know if we have a  
19 screen here.

20 MR. VERDIRAMO: I would like to move this into  
21 evidence as well, Judge.

22 THE COURT: Christine, there is no screen. I don't  
23 think it goes directly to the --

24 MR. VERDIRAMO: Oh, all right.

25 THE COURT: Do you have copies? I don't have any

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Dcadkur3 Chu - cross

1 problem with that. Are you going to move this into evidence?

2 MR. VERDIRAMO: I am going to move that into evidence,  
3 Judge.

4 THE COURT: So I will allow it into evidence.

5 Do you have copies?

6 MR. VERDIRAMO: Not at this time, Judge. It is  
7 Exhibit D6.

8 THE COURT: OK.

9 (Defendant's Exhibit D6 received in evidence)

10 BY MR. VERDIRAMO:

11 Q. It lists at that time, according to your records, my  
12 client's total indebtedness to FAC --

13 A. Correct.

14 Q. -- was 2,538,762.12, correct?

15 A. Correct.

16 Q. And it further indicates that on June the 1st of 2009, a  
17 piece by McCracken got sold for \$65,000?

18 A. Yes.

19 Q. One piece by Hirst got sold for \$520,000?

20 A. Yes.

21 Q. Another piece by Hirst sold for 240,000?

22 A. Yes.

23 Q. And that Xiaogang piece that we spoke about before, the one  
24 you said was the emerging artist --

25 A. Yes.

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Dcadkur3 Chu - cross

- 1 Q. -- that sold for 600,000, correct?  
2 A. Yes.  
3 Q. So that sale realized \$1,424,980, correct?  
4 A. Correct.  
5 Q. That same day, June 1st of that year, a Warhol sold for  
6 \$150,000?  
7 A. Yes.  
8 Q. And the Robert Indiana sold for \$350,000?  
9 A. Yeah. These are -- this is the date of the settlement. It  
10 is not the date of the sale.  
11 Q. Oh, OK. Can you explain the difference?  
12 A. Yeah. The sale took place in May, which is when the spring  
13 sales occur, and then the auction house gives people a certain  
14 amount of time to pay.  
15 Q. OK.  
16 A. These are the dates when the actual settlement proceeds  
17 were received by us from Christie's.  
18 Q. Thank you. And that raised the total amount that you  
19 received by that point to \$1,924,960, correct?  
20 A. Right.  
21 Q. And four days later you received payment on the Prince  
22 piece?  
23 A. Yes.  
24 Q. The Prince piece in the amount of \$260,000?  
25 A. Yes.

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Dcadkur3 Chu - cross

1 Q. The Aitken piece for \$65,000?

2 A. Yes.

3 Q. So with those monies, that total coming in then was raised  
4 to \$2,249,940, yes?

5 A. Correct.

6 Q. And, finally, on June the 9th, you received payment for an  
7 Ed Ruscha painting, correct?

8 A. Correct.

9 Q. And you received \$840,000 for that artwork, correct?

10 A. Correct.

11 Q. So the total realized from the sale of these pieces,  
12 \$3,089,940?

13 A. Correct.

14 Q. You got paid back all the money that you were owed?

15 A. That's right.

16 Q. And \$551,000 and change was sent to Acker Merrall, correct?

17 A. Correct.

18 Q. So it's fair to say that as a result of this entire  
19 transaction you didn't lose a penny?

20 A. That's correct.

21 MR. VERDIRAMO: I would like to move D6, Judge.

22 THE COURT: D6 is already in, but no problem.

23 MR. VERDIRAMO: D2.

24 THE COURT: No problem.

25 (Defendant's Exhibit D2 received in evidence)

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Dcadkur3 Chu - cross

1 MR. VERDIRAMO: D12.

2 THE COURT: No problem.

3 (Defendant's Exhibit D12 received in evidence)

4 MR. VERDIRAMO: And Government's 23-3. I think that  
5 is in already.

6 THE COURT: That is already in.

7 MR. VERDIRAMO: I just want to make sure, Judge.

8 Thank you.

9 THE COURT: Is that it?

10 MR. VERDIRAMO: That is it, Judge. Thank you.

11 THE COURT: OK. Any redirect?

12 MR. FACCIPONTI: Yes, your Honor.

13 THE COURT: Do you want a short break?

14 (Pause)

15 Yes. All right. So we will take the morning break.

16 (Recess)

17 (Jury not present)

18 THE COURT: Counsel, the Elmo is now direct to screen.

19 (Jury present)

20 THE COURT: OK. Please be seated, everybody.

21 MR. FACCIPONTI: May I proceed, your Honor?

22 THE COURT: Yes. Sure.

23 So we will have some brief redirect examination.

24 THE CLERK: Just to remind you, you are still under

25 oath.

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Dcadkur3 Chu - cross

1 THE WITNESS: OK.

2 REDIRECT EXAMINATION

3 BY MR. FACCIPONTI:

4 Q. Ms. Chu, does a borrower at Fine Art Finance have an  
5 obligation to provide Fine Art Finance with truthful  
6 information when they apply for a loan?

7 MR. VERDIRAMO: Asked and asked, your Honor.

8 THE COURT: Overruled.

9 Q. You may answer.

10 A. Yes.

11 Q. Could you turn to Government Exhibit 23-11, the final page  
12 of that document.

13 Could we enlarge the portion with Mr. Kurniawan's  
14 signature and the paragraph above it. Perhaps just the  
15 immediate paragraph above the signature.

16 It is a little hard to see, but can you read where it  
17 says "Certification?"

18 A. "Each of the undersigned represents, warranties and  
19 certifies that the information provided in this form is true,  
20 correct and complete as of the date set forth opposite my  
21 signature on this form, and acknowledge my understanding that  
22 any intentional or negligent misrepresentation of the  
23 information contained in this form may result in civil  
24 liability and/or criminal penalties, including, but not limited  
25 to, fine or imprisonment or both under the provisions of Title

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1 18, United States Code, Section 1001, and sequence and  
2 liability for monetary damages to the lender, its agents,  
3 successors and assigns, insurers, and any other person who may  
4 suffer any loss due to reliance upon any misrepresentation  
5 which I have made on this form."

6 Q. And what do you understand that to mean?

7 A. The person who signs this form is rep and warranting that  
8 what they say is accurate and true.

9 Q. They are representing that what they say is accurate and  
10 true?

11 A. Correct.

12 Q. In addition to this form, you obtained information from  
13 potential borrowers by speaking to them on the phone and in  
14 other ways?

15 A. Correct.

16 Q. And you spoke to Mr. Kurniawan on multiple occasions in  
17 connection with approving this loan?

18 A. Yes.

19 Q. And you rely on the information that borrowers provide you?

20 A. Correct.

21 Q. Can you check all the information -- check or verify all  
22 the information that a borrower provides to you?

23 A. No. It's not possible.

24 Q. Mr. Verdiramo asked you some questions about defendant's  
25 immigration status. Do you remember those?

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Dcadkur3

Chu - redirect

- 1 A. Yes.
- 2 Q. Does it make a difference to you, at the time you were
- 3 approving this loan, whether Mr. Kurniawan is an Indonesian
- 4 national who is here illegally or an Indonesian national who is
- 5 here legally?
- 6 A. Of course it makes a difference.
- 7 Q. How does it make a difference?
- 8 A. If the borrower is here illegally, we're not going to make
- 9 a loan to someone who is here illegally.
- 10 Q. At the time you spoke to Mr. Kurniawan on the phone, did
- 11 you or someone else make notes of those phone conversations?
- 12 A. Yes.
- 13 Q. Would it refresh your recollection about your conversation
- 14 with Mr. Kurniawan about personal expenses if you looked at
- 15 those notes?
- 16 A. Yes.
- 17 Q. Could you turn to Government Exhibit 23-9.
- 18 A. Yes.
- 19 Q. Is this from a phone conversation on December 29, 2007?
- 20 A. Yes. It is a --
- 21 MR. VERDIRAMO: Objection, your Honor.
- 22 THE COURT: Overruled.
- 23 MR. VERDIRAMO: This --
- 24 THE COURT: Overruled.
- 25 A. It's a phone conversation that Ms. Miller, my colleague,  
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Chu - redirect

1 had.

2 Q. What did Mr. Kurniawan represent about his personal annual  
3 personal and living expenses?

4 MR. VERDIRAMO: Judge, it is hearsay.

5 THE COURT: Overruled, counsel.

6 A. He said that he spent around \$150,000 annually? His real  
7 estate taxes, in addition to that, are around 70,000 a year,  
8 and his annual mortgage payments are between 400 and 700,000 a  
9 year.

10 Q. Did you -- is it your practice to ask borrowers how much  
11 they spend at restaurants?

12 A. No.

13 Q. Now, do you remember Mr. Verdiramo asked you some questions  
14 about how cooperative the defendant was when he defaulted on  
15 Fine Art Capital's loan; do you remember those?

16 A. Yes.

17 Q. To be clear, the defendant never paid the Fine Art Capital  
18 loan, right?

19 A. He never paid the principal off until the works were sold.

20 Q. You had to get your money from selling the collateral?

21 A. Correct.

22 Q. And to be clear, the defendant repledged those same  
23 artworks that were your collateral to someone else after he  
24 entered into the loan with you?

25 A. Correct.

Dcadkur3 Chu - redirect

- 1 Q. Do you remember Mr. Verdiramo asked you some questions  
2 about John Kapon?  
3 A. Yes.  
4 Q. You testified that you called Mr. Kapon, from Acker  
5 Merrall, to get a reference for the defendant?  
6 A. Correct.  
7 Q. At the time you called John Kapon, is it true that  
8 Mr. Kurniawan owed him millions of dollars, correct?  
9 A. I don't know that for a fact.  
10 Q. But based on the documents you saw, Mr. Kurniawan's own  
11 confession of judgment showed that he owed Acker millions of  
12 dollars, correct?  
13 A. Yes.  
14 Q. Did you tell Mr. Kurniawan the reason why you were calling?  
15 THE COURT: Did you tell?  
16 Q. Did you tell Mr. Kapon that you were calling to -- because  
17 you were doing a reference check for a loan?  
18 A. I think that Mr. Kurniawan told me to call Mr. Kapon.  
19 Q. Did Mr. Kapon, who was owed money by the defendant, give  
20 him a good reference nonetheless?  
21 A. Yes.  
22 Q. Is Fine Art Finance an auction house?  
23 A. No.  
24 Q. Is Fine Art Finance in the business of selling artwork?  
25 A. No.

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Dcadkur3 Chu - redirect

1 Q. Does Fine Art Finance have an unlimited pool of money to  
2 lend to potential borrowers?

3 A. No.

4 Q. Does Fine Art Finance need to make decisions among which  
5 borrowers it extends loans to?

6 A. Yes.

7 Q. Does Fine Art Finance rely on the information that those  
8 borrowers provide to it when it makes those decisions?

9 A. Yes.

10 Q. One final question. Everything else being equal, if you  
11 would have known that Mr. Kurniawan was not here legally but  
12 had been order deported at the time he made his loan  
13 application, that he owed millions of dollars to Acker Merrall  
14 & Condit, and had millions of more dollars in personal living  
15 expenses when he applied for the loan, would you have made him  
16 that loan?

17 A. No.

18 MR. FACCIPONTI: No further questions, your Honor.

19 THE COURT: Thank you. We will excuse the witness and  
20 ask for the next government witness.

21 (Witness excused)

22 MR. FACCIPONTI: The government calls Truly Hardy.

23 THE CLERK: Sir, if you could step up to the witness  
24 stand. Remain standing for a moment and then raise your right  
25 hand.

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Dcadkur3

1 TRULY HARDY,

2 called as a witness by the government,

3 having been duly sworn, testified as follows:

4 THE CLERK: Could you please state your full name for  
5 the record.

6 THE WITNESS: Truly Hardy.

7 THE CLERK: Could you spell your first name as well as  
8 your last name?

9 THE WITNESS: It's T-r-u-l-y H-a-r-d-y.

10 THE CLERK: Thank you, sir. You may be seated.

11 DIRECT EXAMINATION

12 BY MR. FACCIPONTI:

13 Q. Mr. Hardy, before you begin, you just want to pull the  
14 microphone closer to you and lean forward so that everyone can  
15 hear.

16 For whom do you work?

17 A. Acker Merrall & Condit.

18 Q. What is Acker Merrall & Condit?

19 A. We are a fine wine -- fine and rare wine retailer and  
20 auction house.

21 Q. How long have you worked there?

22 A. I've work with Acker Merrall since the spring of 1999.

23 Q. What is your current job title?

24 A. The director of auction operations.

25 Q. What are your responsibilities as a director of auction

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Dcadkur3 Hardy - direct

1 operations?

2 A. Among other things, I am responsible for client relations  
3 both on the seller and buyer side, the catalog -- auction  
4 catalog production, the mailing of the auction catalogs, and  
5 auction day activities.

6 Q. How long have you had that position?

7 A. I would say approximately ten years.

8 Q. Where are Acker Merrall & Condit's offices located?

9 A. Our offices are located on 72nd Street in Manhattan and  
10 also in Valley Cottage, New York. We also have an affiliate in  
11 Hong Kong.

12 Q. In addition to auctions, you said Acker Merrall has a  
13 retail store?

14 A. We do. That's on 72nd Street and Broadway in New York  
15 City.

16 Q. I would like to ask you some questions about auctions for  
17 fine and rare wines.

18 To begin with, when you say fine and rare wines, what  
19 do you mean?

20 A. Typically higher valued bottles and really collectible  
21 bottles.

22 Q. Are the wines from certain areas, or where are they from?

23 A. They're from all over the world.

24 Q. In particular, are there any areas in France where the  
25 wines are typically from?

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1 A. The most famous areas in France for wine production are  
2 Burgundy and Bordeaux.

3 Q. And are fine and rare wines older wines? Have they been  
4 around for a while? How old, typically, are they?

5 A. Wines can -- fine and rare wines can really be of any age,  
6 but they can be as -- we've sold bottles as old as the early  
7 1900s, as examples.

8 Q. What price range are we talking about for these wines?

9 A. Do you mean at auction?

10 Q. At auction.

11 A. At the live auction -- we also do Internet auctions. At  
12 our live auctions, bottles can vary anywhere from between,  
13 let's say, a couple hundred dollars a bottle to tens of  
14 thousands of dollars a bottle.

15 THE COURT: Are fine and rare wines sold retail or are  
16 they mostly or exclusively sold at auction?

17 THE WITNESS: We sell fine and rare wines both retail  
18 and at auction, and we sell -- our auctions are conducted in  
19 live situations and also online as well.

20 BY MR. FACCIPONTI:

21 Q. When you say some of these wines can be worth tens of  
22 thousands of dollars, what makes them so expensive?

23 A. Just the fact that they're fine and rare, that they're rare  
24 and collectible.

25 THE COURT: And is that tens of thousands of dollars

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1 per bottle?

2 THE WITNESS: It can be, yes.

3 BY MR. FACCIPONTI:

4 Q. Is Acker Merrall & Condit the only company that auctions  
5 fine and rare wines?

6 A. No.

7 Q. How long has Acker Merrall & Condit been auctioning fine  
8 and rare wine?

9 A. I believe our first auction was -- our first live auction  
10 was sometime in 1998, and we've been doing auctions ever since  
11 I can remember, which is the earlier part of 1999.

12 Q. Typically speaking, what happens at a live auction?

13 A. It's pretty much as you'd imagine. Once all of the wines  
14 are received and cataloged and the catalogs are distributed to  
15 our clients and to other interested parties, we go into  
16 typically higher end restaurants or into hotels, where our  
17 clients come in. Our auctioneer towards the beginning of the  
18 actual start of the auction will stand at a podium, much like  
19 you are standing at, and then start with lot number one as  
20 described in the auction catalog for that particular sale.

21 Q. About how many live auctions does Acker Merrall & Condit  
22 have each year?

23 A. Acker Merrall & Condit and its affiliates have about 15 to  
24 16 auctions each year, live auctions.

25 Q. And where do, practically, these auctions take place?

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1 A. We hold our auctions here in New York City and our  
2 affiliate company we hold in Hong Kong.

3 THE COURT: You mentioned a minute ago a lot or lots.  
4 Is wine auctioned in a lot with other bottles, or is it  
5 sometimes auctioned per bottle?

6 THE WITNESS: An auction lot can be one or more  
7 bottles. It can be one bottle, it can be 12 bottles  
8 contained in a case. It could be a variety of different  
9 bottles put together.

10 BY MR. FACCIPONTI:

11 Q. Let me ask you some technical terms that are often used in  
12 connection with auctions.

13 What is a consigner?

14 A. A consigner is the seller of the wines.

15 Q. What is a consignment?

16 A. A consignment is the group of wines that the seller would  
17 like us to offer.

18 Q. What is a hammer price?

19 A. The hammer price is much like as described; it is the price  
20 that the auctioneer hammers down, which would be the highest  
21 bid achieved for that particular lot.

22 Q. How does Acker Merrall & Condit make money from its  
23 auctions?

24 A. Primarily we make our money by charging a buyer's premium  
25 to the buyer.

Dcadkur3 Hardy - direct

1 Q. Is that a percentage of the hammer price?

2 A. It is a percentage of the hammer price, yes.

3 Q. How does somebody who wants to sell their wine in an Acker  
4 Merrall & Condit auction go about doing that?

5 A. They would -- somebody with a certain amount of wine, any  
6 amount, would contact us. We would then discuss placement and  
7 pricing. We would then assist with or receive the wines into  
8 one of our facilities, typically into our warehouse. We would  
9 then go about our process of cataloging, distributing the  
10 catalog, and conducting an auction.

11 Q. Does Acker Merrall & Condit produce catalogs for the  
12 auctions?

13 A. Yes, we do.

14 Q. What kind of information is included in those catalogs?

15 A. The wine information pertaining to the lot, the number of  
16 bottles in a lot, an estimated range that we provide as a guide  
17 to buyers so that -- to help assist in the bidding process, and  
18 general information regarding the condition of the bottles  
19 themselves.

20 Q. Is there any photographs included in those catalogs?

21 A. There are.

22 Q. And the photographs are of what?

23 A. The photographs are of, you know, specific bottles,  
24 typically the highlights in the catalog.

25 Q. How do you decide who receives a copy of these catalogs?

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1 A. There are seven -- well, at what period of time?

2 Q. Starting back in 2006.

3 A. Generally speaking, although the process hasn't changed --  
4 it really hasn't changed at all, we do have seven criteria in  
5 order to put the list together, let's say, before we set up a  
6 mailing. So one of the criterias, that we will include any  
7 consigners or sellers in that particular auction, any  
8 consigners or, as we call them -- or sellers rather, that have  
9 sold in the past three auctions, any buyers that have bought  
10 one lot or more in the last auction, any buyers that have spent  
11 \$25,000 or more in the past quarter, any buyers that have  
12 purchased one or more lots in the past three years, and then  
13 anybody who has contacted a member of our staff requesting a  
14 copy.

15 THE COURT: So that's how you do your mailing list, so  
16 to speak?

17 THE WITNESS: We do. There is a little bit of overlap  
18 with that, but what we do is we then do dupe and produce our  
19 mailing list and then mail our catalogs out.

20 BY MR. FACCIPONTI:

21 Q. Have these criteria changed since 2006?

22 A. No.

23 Q. Where do you get the information to generate these mailing  
24 lists?

25 A. We have our own database, our own proprietary system, if

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1 you will, on computers, on our server, and I go in and access  
2 this information.

3 Q. That's information that's kept in the ordinary course of  
4 Acker Merrall & Condit's business?

5 A. It is.

6 Q. And the information is entered into the database around the  
7 times the events reported therein happen?

8 A. That's correct.

9 Q. How do you distribute the catalogs to potential buyers?

10 A. We typically use common carriers such as FedEx and UPS.  
11 Primarily, though, we use the U.S. Postal Service, and  
12 specifically the bulk mail department here in Manhattan to  
13 distribute our catalogs.

14 Q. So when you use the Postal Service you mail them from  
15 Manhattan?

16 A. We do, yes.

17 Q. And has that changed since 2006?

18 A. No.

19 Q. Where are the people who receive the catalogs located?

20 A. Really globally, all over the world.

21 Q. Including some in New York?

22 A. Yes.

23 Q. Can you explain the process -- well, how far in advance are  
24 the catalogs for an auction mailed out?

25 A. About two to three weeks before an auction.

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1 Q. What, if anything -- how do the bidders obtain the wines  
2 they purchased at auction?

3 A. Once they actually pay for the wines that they purchased,  
4 they would contact us and make shipping arrangements.

5 Q. What happens if the buyer is unhappy with a wine purchased  
6 at an Acker Merrall & Condit auction?

7 A. They would contact us and we would make every attempt to  
8 resolve the issue.

9 Q. What are the reasons for which a buyer can return a wine?

10 A. Typically buyers return wines due to conditions, or  
11 conditions not being possibly described exactly as the bottle  
12 appears in our catalogs and, to a lesser extent, questions of  
13 authenticity.

14 Q. Does Acker Merrall & Condit sometimes arrange for the  
15 direct sale of wine from the buyer -- from the seller to a  
16 buyer?

17 A. We do. That's typically handled through our retail  
18 department.

19 Q. Who is John Kapon?

20 A. He is the CO of the company.

21 Q. How long has he had that position?

22 A. I don't know officially. He has always been my boss and  
23 president of the company. I believe he became the CO and owner  
24 possibly two to four years ago.

25 Q. I direct your attention to 2001 and 2002. Did somebody

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1 named Rudy Kurniawan become a client of Acker Merrall & Condit  
2 around that time?

3 A. Yes.

4 Q. How long was he a client of Acker Merrall & Condit?

5 A. He was a client, I believe, in -- my earliest recollection  
6 is sometime towards the end of 2001, all the way up through  
7 2008 or so.

8 Q. During that time, did he purchase wines from Acker Merrall  
9 & Condit?

10 A. Yes, quite a bit.

11 Q. Did he ever consign wines for sale at Acker Merrall &  
12 Condit's auctions?

13 A. Yes.

14 THE COURT: Did you deal with him personally?

15 THE WITNESS: Yes, I have.

16 BY MR. FACCIPONTI:

17 Q. Approximately how many interactions have you had with  
18 Mr. Kurniawan while he was a client of Acker Merrall & Condit?

19 A. I can't say for certain but dozens of times.

20 Q. When Mr. Kurniawan first became a client of Acker Merrall &  
21 Condit, what was his reputation among wine collectors?

22 A. Oh, that he was a very wealthy individual who came from a  
23 very wealthy Indonesian family, was a great lover of wine, and  
24 was a serious and avid collector.

25 Q. What, if anything, was known about his palate?

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Hardy - direct

1           What is a palate when we refer to wine?

2           A. I guess the definition can mean a little bit -- or  
3 different things. But palate is really just how you perceive  
4 wine, your taste of wine, how you can understand, you know,  
5 what you are drinking.

6           Q. What, if anything, was his reputation of his palate?

7           A. That he had an expert palate.

8           Q. What do you mean by that?

9           A. Oh, just that is he was very good at determining what he  
10 was drinking, possibly the grapes, possibly even the area that  
11 it came from.

12          Q. What, if anything, did you learn about Kurniawan's family?

13          A. I learned, you know, that he -- as I mentioned before, that  
14 he was wealthy. He came from a wealthy Indonesian family. I  
15 know that he was living in California with his mother and  
16 brother, at least at one point.

17          Q. Do you know what his brother's name was?

18          A. I don't remember whether -- I do know a brother named, or  
19 the mention of a brother named Dar. I don't know whether that  
20 was the brother that he was living with in California. I do  
21 know that he had more than one brother, though.

22          Q. Dar is D-a-r?

23          A. As far as I recall, yes.

24          Q. Did Kurniawan's reputation change over the years?

25          A. Yeah. I mean, as a client over the years, he became a

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Dcadkur3 Hardy - direct

1 bigger buyer and also a larger consigner with us.

2 THE COURT: Meaning a bigger buyer and a bigger  
3 seller, too?

4 THE WITNESS: Yeah. He -- you know, in the beginning  
5 or the end of 2001, when I became aware of him, you know, he  
6 was buying a certain amount and that definitely increased over  
7 time.

8 BY MR. FACCIPONTI:

9 Q. What, if any, other names did you know Mr. Kurniawan by?

10 A. The nicknames Dr. Conti and Mr. 47.

11 Q. Do those names have any meaning in the wine collecting  
12 community?

13 A. They do. Dr. Conti is a play on Romanee-Conti, which is a  
14 wine made in Burgundy by Domaine de la Romanee-Conti, and it's  
15 probably one of the most famous if not the most famous wine in  
16 the world.

17 And Mr. 47 is a play on a very famous vintage of 1947  
18 that a lot of very -- a lot of -- it is a famous vintage in  
19 Bordeaux, I will just say.

20 Q. What do you mean by "vintage"?

21 A. It's when the wine was made.

22 Q. Directing your attention to 2004. Did Kurniawan consign  
23 wine in any Acker Merrall & Condit auctions that year?

24 A. Yes, he did.

25 Q. What, if any, titles were Kurniawan's wines listed under in

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1 any catalogs for the 2000 auction?

2 A. For the 2000 auction?

3 Q. 2004 auction.

4 A. For the 2004 auction, I know that there was a listing of  
5 wines from the Cellar and also I believe a catalog that was  
6 named Pomerol Power.

7 THE COURT: How do you spell that?

8 THE WITNESS: Pomerol is P-o-m-e-r-o-l, I believe.

9 THE COURT: And the second?

10 THE WITNESS: Just the Cellar, as in C-e-l-l-a-r.  
11 That's the wine cellar.

12 Q. Was that what they call the Magic Cellar?

13 A. Yes, it was actually, come to think of it.

14 THE COURT: And do you know what wines they were?

15 THE WITNESS: I don't recall specifically. I could go  
16 back to my records, or our records, rather, and check.

17 THE COURT: Were they fine and rare wines?

18 THE WITNESS: They were definitely fine and rare  
19 wines, yes.

20 BY MR. FACCIPONTI:

21 Q. Directing your attention to January 2006, were you involved  
22 in an auction at Acker Merrall & Condit called THE Cellar?

23 A. Yes, I was.

24 Q. Can we just refer to that as the Cellar I?

25 A. Yeah. It's also referred to as sale 061, which would mean

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1 the first sale of 2006.

2 Q. So the 06 referring to the year and the 1 referring to the  
3 sequential order of the sale?

4 A. Correct.

5 Q. Who was the principal consigner at the Cellar I?

6 A. Mr. Kurniawan.

7 Q. Where was the Cellar I auction held?

8 A. The Cellar I was held at Cru Restaurant, which was on Fifth  
9 Avenue in New York City.

10 Q. Let me direct your attention to October of 2006.

11 Were you involved in an auction called THE Cellar II.  
12 And, again, that's capital T, capital H, capital E Cellar and  
13 then the Roman numeral 2.

14 A. Yes.

15 Q. Who was the principal consigner at that auction?

16 A. Mr. Kurniawan.

17 Q. Where was THE Cellar II auction held?

18 A. It was at Cafe Gray, which was in the Time Warner Building  
19 in New York City.

20 Q. Let me direct your attention to April of 2008.

21 Were you involved in an auction for Acker Merrall &  
22 Condit?

23 A. In 2008?

24 Q. April of 2008.

25 A. Yes, I was.

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- 1 Q. Was Mr. Kurniawan a consigner at that auction?  
2 A. I believe that was sale 084, and, yes, he was a consigner  
3 in that sale.  
4 Q. What were some of the wines he consigned to that auction?  
5 A. In that auction there were certain bottles of Ponsot wines,  
6 Burgundy wines that were made by Domaine Ponsot, offered  
7 initially in that auction.  
8 Q. And how do you spell Ponsot?  
9 A. P-o-n-s-o-t.  
10 Q. Where was THE Cellar III auction held?  
11 A. That particular auction was held at Cru Restaurant as well.  
12 Q. In Manhattan?  
13 A. On Fifth Avenue in Manhattan, yes.  
14 Q. Were your responsibilities the same for each of these three  
15 auctions, THE Cellar I, THE Cellar II and then this Ponsot  
16 auction?  
17 A. Yes.  
18 Q. What were your responsibilities for these auctions?  
19 A. Auction day responsibilities, greeting buyers that were  
20 coming in, clients that were coming in. Providing them with  
21 paddle numbers, which are just as described, paddles with  
22 identifying numbers, for which they could then use to bid.  
23 Helping people, receiving their invoices after the sale, and  
24 just general client relations throughout the actual sale day.  
25 Q. And were you involved in the mailing of catalogs for those

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1 auctions?

2 A. Yes, I was.

3 Q. And were they all mailed -- catalogs from each of those  
4 three auctions mailed from Manhattan by the U.S. Postal  
5 Service?

6 A. Yes, they were.

7 MR. FACCIPONTI: May I approach, your Honor?

8 THE COURT: Yes.

9 Q. I am handing you what's been marked for identification as  
10 Government's Exhibits 3 -- sorry, Government Exhibit 15-3, 15-4  
11 and 15-5.

12 Why don't you take them one at a time, starting with  
13 15-3.

14 A. OK.

15 Q. Do you recognize it?

16 A. I do.

17 Q. What is it?

18 A. It is the -- it is our auction catalog from the Cellar, or  
19 THE Cellar I, which is that sale labeled 061.

20 Q. And can you take a look at 15-4.

21 A. Yes.

22 Q. What is that?

23 A. It is a copy of our auction catalog from THE Cellar II,  
24 also known as 069.

25 Q. And the same for 15-5?

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1 A. This is a copy of our auction catalog from 084.

2 Q. And what month is that auction?

3 A. This was held in April of 2008.

4 MR. FACCIPONTI: Your Honor, we offer 15-3, 15-4 and  
5 15-5.

6 MR. MOONEY: No objection.

7 THE COURT: Fine.

8 Do you have extra copies for me? They are not in the  
9 binder.

10 MR. FACCIPONTI: We, unfortunately, don't, your Honor.  
11 We have some pages that I am going to get to in a minute.

12 I would actually ask that the catalogs be passed  
13 around the jury.

14 THE COURT: I will allow them, first of all. No  
15 objection.

16 (Government's Exhibits 15-3, 15-4 and 15-5 received in  
17 evidence)

18 (Pause)

19 BY MR. FACCIPONTI:

20 Q. Now, Mr. Hardy, was Mr. Kurniawan mentioned by name as the  
21 consigner in any of these catalogs?

22 A. No.

23 Q. What is the reason that he wasn't?

24 A. Typically we don't name our consigners.

25 Q. At the time of these auctions, was there any question

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1 amongst Acker Merrall & Condit's buyers as to Mr. Kurniawan's  
2 identity as a consigner at these auctions of these wines?

3 A. No. The auctions were promoted by Mr. Kurniawan. Tastings  
4 and dinners were held prior to the auctions, hosted by  
5 Mr. Kurniawan. And no.

6 THE COURT: So is that a common thing that happens?  
7 So the seller generates publicity for an auction of his or her  
8 wines?

9 THE WITNESS: They are not responsible for it, but in  
10 larger auctions, such as this, it is very typical, yes.

11 BY MR. FACCIPONTI:

12 Q. You mentioned these tastings. Can you describe a little  
13 bit more about them, where they were held, who attended, what  
14 kind of wines were sampled?

15 A. You know, our top clients would attend or be invited to  
16 attend. They would be held at restaurants -- really fine, very  
17 fine restaurants in New York City. And the wines would be  
18 wines that came from the consigner, and were offered to show  
19 provenance and to be indicative of the wines that we were  
20 selling during the actual sale.

21 Q. And who paid for these tastings?

22 A. The tastings -- depending on which tastings, the tastings  
23 themselves, the bottles came from the consigners. In terms of  
24 the rental of the event space, typically Acker Merrall would  
25 coordinates that and pay for that.

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1 Q. And how expensive were the bottles that were sampled at the  
2 tastings?

3 A. Oh, very expensive, yes.

4 Q. What, if any, role did Mr. Kurniawan play in reviewing --

5 THE COURT: Excuse me. Just so I understand, so the  
6 bottles from which there is a tasting, those bottles are the  
7 same bottles or intended to be the same bottles that will be  
8 auctioned so someone can get an idea of what the wine tastes  
9 like?

10 THE WITNESS: Not necessarily. It is not exactly the  
11 wines that are offered necessarily. Sometimes there are, for  
12 sure. But it's really just to show, you know, the provenance  
13 of similar vintages, similar ages from the actual owner of the  
14 wines.

15 BY MR. FACCIPONTI:

16 Q. What, if any, role did Mr. Kurniawan have in reviewing or  
17 approving the content of these catalogs?

18 A. I know that he had offered input to our president, John  
19 Kapon, possibly about lot positioning, groupings of wine to  
20 create a lot, possibly which photos to be used.

21 MR. FACCIPONTI: May I approach, your Honor?

22 THE COURT: Sure.

23 Q. I'm handing you a binder with several exhibits in it. If  
24 you could turn to Government Exhibit 13-8.

25 A. Yep.

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1 Q. Does this appear to be an e-mail message between Acker  
2 Merrall and Mr. Kurniawan?

3 A. It appears to be, yes.

4 Q. And do you recognize the e-mail address AckerBids@aol.com?

5 A. I do.

6 Q. Whose e-mail address is that?

7 A. John Kapon's.

8 Q. And do you recognize the e-mail address ri8@hotmail.com?

9 A. I do.

10 Q. Does this appear to be a conversation between -- an e-mail  
11 conversation between Mr. Kapon and Rudy Kurniawan?

12 A. It does, yes.

13 Q. And in it do they appear to be discussing the Cellar II  
14 catalog?

15 MR. MOONEY: Objection. Hearsay.

16 THE COURT: Hold it for a minute because I don't  
17 appear to have 13-8 in my binder.

18 MR. FACCIPONTI: 13-8, your Honor?

19 THE COURT: Is that what you said?

20 MR. FACCIPONTI: Yes, your Honor.

21 THE COURT: That is what we are talking about, right?

22 Oh, I do. I'm sorry. Hold on one second.

23 Your question was what?

24 MR. MOONEY: Hearsay, your Honor.

25 THE COURT: No. No. Your question.

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Dcadkur3 Hardy - direct

1 BY MR. FACCIPONTI:

2 Q. Does this appear to be a conversation about THE Cellar  
3 II -- do they appear to be discussing THE Cellar II catalog?

4 A. Given the time stamp and the header, yes, it appears to be.

5 THE COURT: I will allow it.

6 (Government's Exhibit 13-8 received in evidence)

7 MR. FACCIPONTI: Your Honor, may we publish to the  
8 jury a page from THE Cellar II catalog?

9 THE COURT: Yes. Sure.

10 MR. FACCIPONTI: Can put on page 1 from Government  
11 Exhibit 15-4.

12 THE COURT: This is an excerpt from the catalogs that  
13 that you have passed around to the jury, is that right?

14 BY MR. FACCIPONTI:

15 Q. Let me direct your attention to the bottom paragraph.

16 THE COURT: Again, this is from which one of those  
17 catalogs?

18 MR. FACCIPONTI: THE Cellar 2, which is Government  
19 Exhibit 15-4.

20 THE COURT: OK.

21 BY MR. FACCIPONTI:

22 Q. First of all, what is this page? It appears to be a letter  
23 from Mr. Kapon?

24 A. Yes. It appears to be the "Dear Client" letter.

25 Q. What is a dear client letter?

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1 A. It is an introduction that's printed in the beginning of  
2 all of our catalogs that introduce the consignments and the  
3 auction itself.

4 Q. And is there anything about Government's Exhibit 13-8 and  
5 the conversation there that relates to this page, specifically  
6 the bottom paragraph of that page?

7 A. Yes. It looks like -- it looks like the same sentences are  
8 contained above.

9 Q. Can you read the paragraph in government's Exhibit 15-4  
10 that is in front of you on the screen from the catalog?

11 A. Besides buying wines directly from many chateau and  
12 domaines, the owner of the cellar, both the majority -- it is  
13 also just cut off to the left. I don't know if there is a way  
14 to...

15 I can start by saying, Besides buying wines directly  
16 from many chateau and domaines, the owner of the cellar  
17 built -- and it is cut off. I assume, the majority of his  
18 collection.

19 THE COURT: I think it is, "a majority of his  
20 collection."

21 THE WITNESS: OK. A majority of his collection by  
22 buying private cellars, cellars that he has personally visited  
23 in order to -- again, that side is cut off.

24 THE COURT: Assess.

25 THE WITNESS: Assess the cellar conditions and

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1 storage, a cellar that he has tasted numerous bottles from, the  
2 worst of --

3 THE COURT: Vintages.

4 THE WITNESS: -- vintages to its biggest commodities.

5 The owner once told me tasting is the only way you can  
6 assess provenance so I know I'm definitely qualified in that  
7 regard.

8 BY MR. FACCIPONTI:

9 Q. Mr. Hardy, let me just stop you there.

10 What do you understand provenance to mean?

11 A. Where the bottle came from, the history of the bottle.

12 Q. And why is that important to wine collectors?

13 A. It's important to wine collectors because it tells the  
14 history. It tells when it was made, by who it was made, where  
15 it came from, where it has been.

16 Q. Please continue with "He was half joking."

17 A. He was half joking but most serious --

18 THE COURT: Mostly.

19 THE WITNESS: Mostly serious, excuse me. Because his  
20 passion for wine and the experience of wine remains unbridled  
21 and unmatched by few. And the fact that he has been there,  
22 done that, educated him tremendously. Whenever he has been  
23 unsure of a wine's provenance or authenticity, he would always  
24 pop the cork and find out for himself. I often sent him photos  
25 and asked him questions when I am unsure myself, and he always

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1 seems to know the answer.

2 Q. Just to be clear, this is Mr. Kapon writing about  
3 Kurniawan?

4 A. That's correct.

5 Q. And the "he" is --

6 THE COURT: So it is an excerpt from one of those  
7 catalogs that was just passed around.

8 Q. Can you turn now to a document that's been marked as  
9 Government Exhibit 13-9.

10 MR. FACCIPONTI: Before I forget, we offer Government  
11 Exhibit 13-8.

12 THE COURT: I allowed it a couple of minutes ago.  
13 Oh --

14 MR. MOONEY: This is the one I object to.

15 THE COURT: 13-8?

16 MR. MOONEY: Yes.

17 THE COURT: Over the objection of the defense, I  
18 allowed it.

19 BY MR. FACCIPONTI:

20 Q. Do you recognize this, 13-9?

21 A. It appears to be an e-mail from John Kapon to  
22 Mr. Kurniawan.

23 Q. And what is the date of it?

24 A. The date of it is October 4th, 2006.

25 Q. And does it contain an exchange of e-mails between

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Dcadkur3 Hardy - direct

1 Kurniawan and John Kapon?

2 A. I'm sorry?

3 Q. Does it appear to contain an exchange of e-mails between  
4 John Kapon and Kurniawan?

5 A. It appears to contain an exchange, yes.

6 Q. Does it appear to be discussing the photographs for THE  
7 Cellar II catalog?

8 MR. MOONEY: Again, objection. Hearsay.

9 THE COURT: Overruled.

10 A. I can't be certain, but given the time stamp and the  
11 different things that they're mentioning, yes, it appears to  
12 be.

13 Q. And if you just want to -- can you put that up?

14 MR. FACCIPONTI: Your Honor, we offer Government  
15 Exhibit 13-9.

16 THE COURT: I will allow it.

17 (Government's Exhibit 13-9 received in evidence)

18 MR. FACCIPONTI: If we can have that on the screen.

19 And if we can enlarge the part that says, "In a  
20 message dated October 4, 2006," and then continue with the two  
21 paragraphs that follow. That is a little bit higher.

22 Q. Do you see, it says, in a message dated October 4, 2006,  
23 ri8@hotmail.com writes -- and who do you understand  
24 ri8@hotmail.com to be?

25 A. To be Mr. Kurniawan.

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Dcadkur3 Hardy - direct

1 Q. Can you read what is written there?

2 A. "We have so many RC jeros and large formats but no pics.  
3 That's way too funny, no? I rather be late than have a  
4 disastrous catalog. The idea is to have a great detailed  
5 catalog that sells the wines, not just to be done with it  
6 attitude. PS, here's today 's shot."

7 Q. Let's go back. When Kurniawan refers to -- keep it up.

8 When Kurniawan refers to RC jeros and large formats,  
9 what is he talking about?

10 A. RC, I assume --

11 MR. MOONEY: Objection to assumptions, your Honor.

12 THE COURT: Sustained.

13 Q. Are you familiar with an abbreviation "RC" in the wine  
14 collecting business?

15 A. I am.

16 Q. What is it?

17 A. Romanee-Conti.

18 (Continued on next page)

19

20

21 BY MR. FACCIPONTI:

22 Q. What is Romanee-Conti?

23 A. Romanee-Conti is the wine name of a particular type of wine  
24 that Domaine de la Romanee-Conti produced in Burgundy, France.

25 Q. And what are jeros?

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DCABKUR4 Hardy - direct

1 A. Jeros are jeroboams and they define the size -- or it's  
2 really just another name for a size of bottle. It's a large  
3 format, a large size.

4 THE COURT: How big a bottle is it?

5 THE WITNESS: Depending on the area, it can be four to  
6 five bottles' worth of wine inside of this format.

7 THE COURT: So the contents of four or five what we  
8 might consider normal size wine bottles in one big bottle?

9 THE WITNESS: That's correct.

10 Q. And what do you understand Mr. Kurniawan to be saying in  
11 this paragraph?

12 A. I understand him to be asking why there are no pictures  
13 even though there are so many bottles of Romanee-Conti and  
14 other large formats, and that he would rather hold up the  
15 catalog production to include the pictures rather than to just  
16 go ahead without them.

17 Q. I like you to turn to Government Exhibit 13-7.

18 A. Yes.

19 Q. Do you recognize it?

20 A. Again, it appears to be an e-mail from John Kapon to  
21 Mr. Kurniawan on August 9th of 2006.

22 Q. And does it appear to be discussing the catalog for the  
23 Cellars II auction?

24 A. Again, I don't know for certain, but given the timestamp it  
25 appears to be, yes.

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DCABKUR4

Hardy - direct

1 MR. FACCIPONTI: We offer Government 13-7.

2 THE COURT: I'll allow it.

3 (Government's Exhibit 13-7 received)

4 MR. MOONEY: For the record, we object on foundation  
5 and on hearsay.

6 THE COURT: Okay. When you say "it appears to be,"  
7 what's the basis of your conclusion that it appears to be? How  
8 do you know that?

9 THE WITNESS: Talking about some of the wines, given  
10 the date stamp would be around the time that we started to  
11 produce the catalog. That's about it, though.

12 THE COURT: Well, can you tell anything from the  
13 "from" and the "to" and the "subject"?

14 THE WITNESS: That it is from John Kapon to  
15 Mr. Kurniawan.

16 MR. FACCIPONTI: Your Honor, in addition, I should  
17 note that there'll be testimony later about where these e-mails  
18 came from in terms of the defendant's account.

19 THE COURT: All right. Go ahead. I'm allowing it.

20 BY MR. FACCIPONTI:

21 Q. Do you understand-- do you see the subject line? It says  
22 "Call Brett tomorrow"?

23 A. I do.

24 Q. Is that a reference to Brett Anderson?

25 A. I believe so, yes.

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DCABKUR4 Hardy - direct

1 Q. Who is Brett Anderson?

2 A. I believe at this time period he was a writer for -- I  
3 believe, I'm not entirely person -- but I believe the Robb  
4 Report.

5 THE COURT: The?

6 THE WITNESS: The Robb Report. It's a periodical --  
7 or, rather, a magazine that highlights very expensive items:  
8 Watches, boats, cars. Things like that.

9 MR. MOONEY: I'm going to object, your Honor. It's  
10 speculative.

11 THE COURT: Overruled.

12 MR. FACCIPONTI: Can we enlarge the section that says  
13 "In a message dated August 9, 2006, ri8@hotmail.com writes" and  
14 then the paragraph below it?

15 Q. Does it appear that Kurniawan is providing instructions  
16 about what should-- about something that should go into the  
17 catalog here?

18 MR. MOONEY: Objection; foundation.

19 THE COURT: Overruled.

20 MR. MOONEY: And speculation.

21 THE COURT: Well, why don't you tell us what you think  
22 is in there.

23 A. I know that they're talking about highlights. And when  
24 they refer-- you know, when referring to highlights, I would  
25 assume they're referring to highlights in the auction. But I'm

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1 not sure whether they're talking specifically about the auction  
2 or something to do with this gentleman Brett.

3 Q. Can you turn to Government Exhibit 15-4 in front of you,  
4 page 7? That's the Cellar II auction catalog. It's one of the  
5 big --

6 A. Sorry about that. You said page number?

7 Q. Page 7.

8 A. Yes.

9 Q. What appears on page 7 of the catalog?

10 A. It appears to be a copy of an article written by Brett  
11 Anderson.

12 MR. FACCIPONTI: Can we enlarge the name on the  
13 bottom, bottom of the right-hand column?

14 THE COURT: And when you say "appears to be," is that  
15 what you mean?

16 THE WITNESS: Yeah, it looks to be an article that  
17 Mr. Anderson wrote about The Cellar.

18 THE COURT: Because it's got his name on it.

19 THE WITNESS: Correct.

20 MR. FACCIPONTI: Can we enlarge the first full  
21 paragraph of this article?

22 Q. Can you read it to the jury?

23 MR. FACCIPONTI: Actually, I think we've done too  
24 much. The article, the first paragraph stops where it says  
25 "Kapon, a friend of the owner..."

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DCABKUR4 Hardy - direct

1 Q. Could you read that?

2 A. "There exists in the world a wine collection so rare and  
3 extensive that, in oenophilic circles, it is known simply as  
4 "The Cellar."

5 Q. Let me just stop you right there. What does oenophilic  
6 mean?

7 A. It means from oenophile. From oenophile it means a wine  
8 lover. Wine aficionado.

9 Q. You may continue.

10 A. "Despite this seller's importance, however, the young owner  
11 of this fabled trove regards it less as a collection than as an  
12 opportunity to share with others his passion for wine. At a  
13 recent 'casual' dinner, he served a 2001 Coche-Dury  
14 Corton-Charlemagne, a magnum of 1959 Roumier Bonnes-Mares, and  
15 a magnum of 1947 Chateau Lafleur."

16 Q. So, Mr. Hardy, let me stop you there.

17 Are those expensive wines?

18 A. Yes, they are.

19 Q. Are they very expensive wines?

20 A. Yes, they are very expensive.

21 Q. You may continue.

22 A. "As one guest" --

23 THE COURT: What does that mean, expensive and very  
24 expensive?

25 Q. Approximately how much would they sell for?

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1 A. Hundreds of bottles to-- hundreds of dollars, I believe at  
2 the time, for the-- thousands. Thousands of dollars.

3 THE COURT: For a bottle?

4 THE WITNESS: Thousands of dollars. I'm not sure on  
5 the Coche-Dury Corton Charlemagne, but thousands of dollars for  
6 the '59 Bonnes-Mares and '47 Lafleur.

7 Q. And you mentioned before that is Chateau Lafleur in  
8 Bordeaux?

9 A. It is. It is, yes.

10 Q. Did you testify before that 1947 was a special year for  
11 Bordeaux?

12 A. It is a very special year in Bordeaux. It is regarded as  
13 one of the greatest vintages in Bordeaux.

14 Q. Please continue reading.

15 THE COURT: Before you go further, just what would  
16 that mean, the greatest vintage in Bordeaux?

17 THE WITNESS: It's regarded as one of the greatest.  
18 The production levels were great, the product was great, the  
19 wine tasted fantastic to people. Overall it was a very  
20 impressive year.

21 THE COURT: And so consequently that wine would be  
22 most expensive or more expensive?

23 THE WITNESS: It would eventually-- yes, it would be.  
24 Yes, it would be more expensive, especially during the period  
25 that it was being drunk.

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1 A. Just to continue, "As one guest that evening, Acker Merrall  
2 & Condit's president and auction director, John Kapon, remarks  
3 'He's kind enough to open \$50,000 bottles for people. He can't  
4 help himself.' And that night, his generosity was way beyond  
5 the call of duty."

6 Q. I'd like to direct your attention to Government Exhibit  
7 13-11.

8 THE COURT: Just so I understand, so at a tasting,  
9 that's exactly what happens, right: People get to taste the  
10 wine?

11 THE WITNESS: At a tasting, typically, yes, people  
12 would be tasting the wine. They would be tasting wines that  
13 are provided by the consigners.

14 THE COURT: And they don't pay the consigner for the  
15 wine at that point, right?

16 THE WITNESS: No, a tasting isn't something that we  
17 charge clients to attend. They're invited to help promote the  
18 sale.

19 THE COURT: And one way to promote the sale is to  
20 offer the tasting at no cost to the prospective purchaser?

21 THE WITNESS: Yes, that's correct.

22 BY MR. FACCIPONTI:

23 Q. So turning to Government Exhibit 13-11, also recognize this  
24 as an e-mail exchange between Mr. Kapon and Mr. Kurniawan?

25 A. It appears to be, yes.

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DCABKUR4 Hardy - direct

1 Q. What makes you think that?

2 A. It's from John Kapon to Mr. Kurniawan dated October 12th of  
3 2006. It looks like the subject line is "Presale Tasting  
4 Wines."

5 Q. And do you understand that to be talking about the upcoming  
6 Cellar II auction?

7 A. Yes, it appears to be.

8 MR. FACCIPONTI: We offer Government Exhibit 13-11.

9 MR. MOONEY: Objection; hearsay and foundation.

10 THE COURT: I'll allow it.

11 (Government's Exhibit 13-11 received)

12 MR. FACCIPONTI: Can we enlarge the portion that  
13 begins "In a message dated October 11, 2006" and then the two  
14 paragraphs below it?

15 Q. Does that appear to be a message from Kurniawan?

16 THE COURT: And, by the way, is this also an e-mail  
17 that you are subsequently going to demonstrate to us where it  
18 came from, et cetera?

19 MR. FACCIPONTI: Yes, your Honor.

20 THE COURT: All right.

21 A. Yes, it does say that it's from ri8@hotmail.

22 Q. Is it fair to say that Kurniawan appears to be upset about  
23 something? Can you describe what he's upset about?

24 A. It appears to be that he's upset about a 1961 Chateau  
25 Lafleur shot.

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DCABKUR4 Hardy - direct

1 Q. Not being in the catalog?

2 A. Yes, possibly not being in the catalog.

3 MR. MOONEY: Objection as to speculation, your Honor,  
4 or best evidence. The document is what it is.

5 THE COURT: Overruled.

6 Q. And how does Mr. Kapon respond?

7 MR. FACCIPONTI: If you can enlarge the paragraphs  
8 that appear below.

9 A. He says, "Dude, relax. Everyone is drooling. Got first  
10 bite from your list - guy in Japan got catalog already. Call  
11 me later this afternoon."

12 Q. And, finally, can we turn to Government Exhibit 13-4? Does  
13 this also appear to be an e-mail between Mr. Kapon and  
14 Kurniawan?

15 A. It appears to be, yes.

16 Q. And --

17 THE COURT: How do you know that?

18 THE WITNESS: It says "From: Ri8@hotmail"; "To," it  
19 looks like, "Ackerbids1@aol."

20 THE COURT: It looks like "From: Ackerbids1@aol.com"  
21 at the top. Right?

22 THE WITNESS: It states "From: Rudy Kurniawan"; "To:  
23 Ackerbids1@aol.com," which at that time was my e-mail address,  
24 with the subject of "Please help."

25 Q. So do you recognize this as an e-mail exchange between you

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1 and Kurniawan?

2 A. I would have to-- I don't recall it clearly enough, but it  
3 is, yes.

4 MR. FACCIPONTI: We offer Government Exhibit's 13-4.

5 THE COURT: I'll allow it. And you're going to  
6 demonstrate again later where these came from?

7 MR. FACCIPONTI: Yes, your Honor.

8 If we can enlarge the text portion of it starting with  
9 "Please overnight," ending with "Thanks Truly as always."

10 Q. What do you understand Mr. Kurniawan to be requesting here?

11 A. He is requesting me to ship him bottles of wines.

12 Q. Can you look at the bottom full paragraph where it says  
13 "Then please wrap all my returns"? There's a reference to  
14 "assorted empty wooden cases." What do you understand that to  
15 be?

16 A. It says "DRC assorted empty wooden case 90." And I believe  
17 that he's referring to a wooden box that contains 12 bottles of  
18 wine from Domaine de la Romanee-Conti. However, it appears  
19 that he's asking for a specific box which would be an  
20 assortment case.

21 MR. FACCIPONTI: Can we turn to Government Exhibit  
22 15-4?

23 THE COURT: 15-4?

24 MR. FACCIPONTI: Yes, which is the catalog.

25 Q. And I just want you to turn to page 8.

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1 A. Okay.

2 Q. Do you see where it says "Introduction by Allen Meadows"?

3 MR. FACCIPONTI: If you can enlarge that first full  
4 paragraph.

5 A. Yes.

6 Q. Who is Allen Meadows?

7 A. He is a well-known wine writer and wine reviewer.

8 Q. Can you read where it starts "Indeed, I have had..."?

9 MR. FACCIPONTI: If we can highlight that.

10 A. "Indeed, I have had some of the most extraordinary wine  
11 experiences of my life due to both his unparralled generosity  
12 and the sheer breadth of his collection. He has the nose of a  
13 bloodhound and the tenacious persistence required to track down  
14 the rarest of the rare."

15 Q. And what do you understand Mr. Meadows to be discussing  
16 here?

17 A. He's discussing Mr. Kurniawan's generosity; the overall  
18 depth of his collection, the size of his collection; and his  
19 knowledge of wine.

20 Q. And by "generosity" you mean the bottles that Mr. Kurniawan  
21 shares?

22 A. Yes.

23 THE COURT: And did you personally share those  
24 impressions with Mr. Kurniawan?

25 THE WITNESS: Yes, I did. Mr. Kurniawan was very  
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1 generous with me personally.

2 THE COURT: So that was your experience, as well, as  
3 described in there?

4 THE WITNESS: Absolutely.

5 THE COURT: Do you personally have knowledge of his  
6 "nose of a bloodhound"? What does that mean?

7 THE WITNESS: Well, you know, I think that he was  
8 regarded as having an expert palate, as we discussed before,  
9 and --

10 THE COURT: Is part of palate actually the smell?

11 THE WITNESS: It is. It's your senses. It's the  
12 perception, the overall senses of how you perceive and  
13 experience wine as an example.

14 THE COURT: Smell, taste?

15 THE WITNESS: Smell, taste, would be --

16 THE COURT: Visual too.

17 THE WITNESS: Visual would be one of the indicators as  
18 well, yes.

19 THE COURT: And what about "persistence required to  
20 track down the rarest of the rare"?

21 THE WITNESS: I imagine Mr. Meadows is referring --

22 THE COURT: No, I mean in your experience. Would you  
23 describe that to Mr. Kurniawan?

24 THE WITNESS: I don't really-- I know that he was an  
25 avid collector. He purchased from us and other auction houses.

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- 1 So, yes, he was very persistent. That would be a fair  
2 assessment.
- 3 Q. I'd like to now turn to two documents that have been marked  
4 as Government Exhibits 15-1 and 15-2.
- 5 A. Okay.
- 6 Q. And do you recognize these documents?
- 7 A. Yes, I do.
- 8 Q. Starting with 15-1, what is it?
- 9 A. It is a copy of Mr. Kurniawan's postsale advice, or his  
10 sales advice, from the Cellar I, Sale 061.
- 11 Q. And what is a postsale advice?
- 12 A. It is the sales advice provided to a consigner that  
13 describes the lots and the hammer price for each of the lots.
- 14 Q. So it lists all of the wines that a consigner sold at  
15 auction?
- 16 A. That is correct.
- 17 Q. And what about Government Exhibit 15-2?
- 18 A. The same, except this is for sale number 069, which is  
19 commonly referred to as the Cellar II.
- 20 Q. And what makes you recognize these documents?
- 21 A. I produced these documents.
- 22 Q. You obtained them?
- 23 A. Yes, I obtained them from the Acker Merrall & Condit  
24 auction database.
- 25 Q. Do you recognize Mr. Kurniawan's name in the numbers of the

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1 auctions?

2 A. I do, yes.

3 MR. FACCIPONTI: We offer Government Exhibit 15-1 and  
4 15-2?

5 THE COURT: I'll allow it.

6 MR. MOONEY: Objection.

7 THE COURT: I'll allow it.

8 (Government's Exhibits 15-1 and 15-2, received)

9 THE COURT: So just so it's clear, when you refer to  
10 The Cellar, C-e-l-l-a-r, you're referring to Mr. Kurniawan's  
11 wine collection?

12 THE WITNESS: No, I'm referring to the auction  
13 catalog. It's the actual auctions themselves.

14 THE COURT: The Cellar, C-e-l-l-a-r, refers to --

15 THE WITNESS: The Cellar was the name given to the  
16 first sale of 2006.

17 THE COURT: I see. By your company?

18 THE WITNESS: That's correct.

19 BY MR. FACCIPONTI:

20 Q. So let's look at the first page of Government Exhibit 15-1.

21 A. Okay.

22 MR. FACCIPONTI: Can we enlarge the 061 postsale  
23 advice and then the address and contact information that  
24 appears below it? And as I discussed, if you can highlight  
25 these.

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- 1 Q. Whose name appears here?  
2 A. Mr. Rudy Kurniawan.  
3 Q. And is there given an address in California?  
4 A. Yes.  
5 Q. And is there a fax number given for Mr. Kurniawan?  
6 A. There is, yes.  
7 Q. And what number is that?  
8 A. 626-445-1933.  
9 Q. And is there an e-mail address given for Mr. Kurniawan?  
10 A. There are two.  
11 Q. Okay. What is the first one?  
12 A. Ri8@hotmail.com.  
13 Q. Is that the same e-mail address that appeared in the  
14 e-mails you discussed before?  
15 A. Yes.  
16 Q. Let's look at the column headings.  
17 MR. FACCIPONTI: If you can enlarge those.  
18 Q. Now, you've already described what a lot is in connection  
19 with an auction. Correct?  
20 A. Correct.  
21 Q. Can a lot have more than one bottle in it?  
22 A. Yes, it can be one or more bottles of any size.  
23 Q. So turning next to the next column heading, "quantity and  
24 size," what does that refer to?  
25 A. The quantity refers to the number of bottles in a lot, and

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1 the size refers to the size of the bottle or, as we refer to  
2 it, format of the bottle.

3 Q. And let's talk about the different formats of wine.

4 What is a magnum bottle?

5 A. It is the equivalent of two standard bottles of wine, or  
6 1,500 milliliters.

7 Q. And you already mentioned what a jeroboam is. Are there  
8 larger formats of wine?

9 A. There are, yes.

10 Q. What are some of those and how big are they?

11 A. Their names can be Balthazar, Melchior. Other names such  
12 as that.

13 Q. Methuselah?

14 A. Methuselah is another. They can range in content size,  
15 using a standard format as a measurement, of six standard  
16 bottles, nine standard bottles, twelve standard bottles in one  
17 format and larger.

18 Q. And how many bottles are in a jeroboam, standard bottles?

19 A. My understanding is it's approximately four to five,  
20 depending on where the jeroboam is made. In terms of in  
21 France, if the bottle, the jeroboam, comes from one region, it  
22 could be four bottles; if it comes from another, it could be  
23 five bottles.

24 Q. Is there something known as a double magnum?

25 A. Yes, there is.

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- 1 Q. How many standard size bottles of wine can be poured into a  
2 double magnum?  
3 A. It would be four.  
4 Q. And the next title heading, "Vintage," is the year the wine  
5 was made?  
6 A. The year that the wine was made, yes.  
7 Q. And then "wine name" and "producer/location," what do those  
8 refer to?  
9 A. The name given to the wine. The producer is who made the  
10 wine.  
11 Q. Continuing to move from left to right, what does the  
12 "reserve" refer to?  
13 A. The reserve is the lowest price that the consigner would  
14 like to obtain for each of the lots.  
15 Q. Can a wine be sold for below the reserve at an auction?  
16 A. Not typically, but, yes, it can, but very rarely.  
17 Q. And then continuing on, there appears to be something  
18 called a low estimate and a high estimate?  
19 A. Yes.  
20 Q. What are those?  
21 A. That is an estimated range that Acker Merrall provides. It  
22 really is a bidding guide. It's printed in our catalogs to  
23 assist bidders and show them where we estimate the lot to sell  
24 between.  
25 Q. And I believe you already testified that "hammer" refers to

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1 the hammer price of a line?

2 A. It's the highest bid price for the lot.

3 Q. It's what the successful buyer pays for the wine?

4 A. Correct.

5 Q. If you can turn to page 45 of 47.

6 MR. FACCIPONTI: And if we can enlarge where it says  
7 "Total due consigner."

8 Q. What does that mean, "Total due consigner less fees due  
9 AMC"?

10 A. This is the total sales amount for this auction due to the  
11 consigner less any fees due to Acker Merrall & Condit.

12 Q. What might those fees be?

13 A. Typically expenses, maybe some shipping.

14 Q. And for the Cellar I auction, what was the total fees due  
15 consigner?

16 A. There were none.

17 Q. Okay. And so how much was due to the consigner in this  
18 auction?

19 A. \$7,312,740.

20 THE COURT: And the consigner was whom?

21 THE WITNESS: Mr. Kurniawan.

22 THE COURT: Just one consigner?

23 THE WITNESS: This postsale advice is Mr. Kurniawan's  
24 postsale advice and it would only contain lots that were owned  
25 by Mr. Kurniawan.

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1 Q. Now, below that there's a section entitled "Payments." Do  
2 you see that?

3 A. Yes.

4 Q. Okay. What information is contained in that section?

5 A. It's accounting notations that describe how the payments  
6 were made to Mr. Kurniawan.

7 MR. FACCIPONTI: And if you could just-- if we can  
8 just enlarge the first three payments there, including the  
9 "section" comments.

10 Q. Do you see in the "Comments" section it says "loans"?

11 A. I do, yes.

12 Q. Does this reflect that-- what does that reflect here?

13 A. It looks to reflect advances that were made to  
14 Mr. Kurniawan.

15 Q. What is the difference between a loan or an advance?

16 A. In my mind, none.

17 Q. Well, explain how that works then.

18 A. It's a very-- in order to be competitive in our field, we  
19 offer consigners advances on future sales. We would hold wines  
20 as collateral. If they shipped us a certain amount of wine, we  
21 would then make an agreement with them to advance them funds  
22 before the actual auction takes place. It enables us to be  
23 competitive in a very competitive field.

24 Q. And --

25 THE COURT: Excuse me just so I understand.

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- 1 So the total due consigner less fees, there were no  
2 fees here, is \$7,312,740, right? That's the total due to  
3 Mr. Kurniawan?  
4 THE WITNESS: That's correct, for this sale.  
5 THE COURT: For this sale. Were there other  
6 consigners at that sale?  
7 THE WITNESS: In this sale, I believe that there might  
8 have been a couple of different consigners. Very few.  
9 THE COURT: So his wines were the principal wines that  
10 were sold at that sale?  
11 THE WITNESS: That's correct.  
12 BY MR. FACCIPONTI:  
13 Q. And does the consigner have an obligation to pay the  
14 advance back?  
15 A. The consigner does have an obligation to pay the advance  
16 back, be it from the proceeds of the actual auction or if the  
17 wines don't sell, yes.  
18 Q. So if the wines don't sell, then the consigner would have  
19 to pay the advance back?  
20 A. Yes. It is an advance.  
21 Q. Do you know who "Bob" is in this?  
22 A. I believe it to be Bob Bishop.  
23 Q. Who is Bob Bishop?  
24 A. He's a client of hours.  
25 Q. And do you also see the third entry there is "Direct wire

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1 from Roy"?

2 A. Yes.

3 Q. Who is Roy?

4 A. I believe that to be Roy Welland.

5 Q. And who is Roy Welland?

6 A. He's also a client of ours.

7 Q. And each of these loans or advances is a million dollars?

8 A. Yes.

9 Q. Now, if you --

10 THE COURT: Excuse me. If you have any idea-- so if  
11 the one consigner, Mr. Kurniawan, received seven million  
12 whatever from that sale, how much do you think was taken in  
13 overall at that sale by all consigners?

14 THE WITNESS: Oh, I would have to go back to my  
15 records. I believe that we reported somewhere in the vicinity  
16 of ten and a half million dollars sold, but that takes into  
17 account our buyer's premium, as well, which I think at the time  
18 was roughly 20 percent. So if you take 20 percent away from  
19 the ten million or so -- as far as I can recall that's the  
20 number -- and then subtract the 7.3 million, you come up with a  
21 very small amount, a couple hundred thousand maybe.

22 THE COURT: Yes.

23 THE WITNESS: Right.

24 MR. FACCIPONTI: If we can now enlarge one of the  
25 entries towards the middle of this section where it says

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1 "February 15, 2006."

2 Q. Do you see there in the "Comment" section, just for the one  
3 at the top, it says "lot 47 had 11 not 12 bottles"?

4 A. I do.

5 Q. And what does that mean?

6 A. That's what we commonly refer to as an errata. And what  
7 this is referring to is that there were 12 bottles stated in  
8 lot 47 in the sale 061, but the box only had 11 bottles in it.

9 Q. And so this is a charge to refund the cost to the buyer who  
10 purchased lot 47 for the missing bottle?

11 A. Well, this is the other half of it. This is us charging  
12 Mr. Kurniawan for that bottle that wasn't actually sold.

13 Q. And then, down below, do you see where it says "multisale  
14 offset"?

15 A. I do, yes.

16 Q. And what does that refer to?

17 MR. FACCIPONTI: If we can enlarge that section, too.

18 A. It refers to payments to us for wines that he purchased  
19 from other sales. So he owed us a certain amount for wines  
20 that he purchased from other sales, and we offset that amount  
21 against monies that were due to him."

22 Q. Mr. Kurniawan was allowed to buy other wines with the  
23 proceeds from the 061 auction?

24 A. In this case, yes.

25 MR. FACCIPONTI: Can we turn to the next page?

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1 Q. About one-quarter of the way down, it says "50 percent  
2 interest Bob." And then, right below, it also says "interest."  
3 What are these interest payments for?

4 A. I don't know specifically. The amounts are definitely  
5 accounting entries against the proceeds for Mr. Kurniawan.

6 Q. And could it be interest against the --

7 MR. MOONEY: Objection to what it could be.

8 THE COURT: Sustained.

9 Q. Does Acker Merrall & Condit typically charge interest for  
10 consigners?

11 A. What do you mean? Sorry.

12 Q. Well, what would Acker Merrall & Condit charge interest for  
13 on a consignment?

14 A. I mean, I'm not typically involved. I'm not personally  
15 involved really in these particular loans, but we might  
16 charge --

17 MR. MOONEY: Objection to what they might do.

18 THE COURT: Overruled.

19 A. We might charge interest depending on what the contract,  
20 the negotiation that we have between us and the consigner,  
21 whether it calls for interest to be paid after a certain amount  
22 of time.

23 I'm not sure about what this specifically refers to.

24 Q. And can loans or advances be made by Acker Merrall or by  
25 Acker Merrall's clients?

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1 A. Acker Merrall & Condit has provided advances and loans.

2 And we've also negotiated advances and loans where we act as

3 the guarantor of the loan. We do that when we don't have

4 enough money to necessarily pay for the loan ourselves. And

5 our clients-- you know, we can negotiate with our clients to

6 cover the advance or loan where we are the guarantor.

7 Q. And then, just turning to the last page of this document,

8 it says "Balance due consigner less fees due AMC."

9 A. Yes.

10 Q. And here the amount is zero. Why is it zero here?

11 A. Because Mr. Kurniawan was fully paid out for this sale.

12 Q. And the payment section above explains what those payments

13 were?

14 A. They detail each of the payments, yes.

15 Q. Turning to Government Exhibit 15-2.

16 A. Yes.

17 Q. This was for the Cellar II auction?

18 A. Yes, 069.

19 Q. And, again, this is a record of all of the wines that were  
20 consigned and sold by Mr. Kurniawan at that auction. Correct?

21 A. That's correct.

22 Q. And no other --

23 THE COURT: Wait a minute. I just want to clear  
24 something up in my mind.

25 So we were just talking about the auction for The

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1 Cellar?

2 THE WITNESS: Correct.

3 THE COURT: And this is the one where Mr. Kurniawan  
4 received some \$7.9 million?

5 THE WITNESS: \$7.3 million, yes.

6 THE COURT: And there were only a couple hundred  
7 thousand dollars left over, as it were, for other consigners?

8 THE WITNESS: Again, I would have to check our records  
9 to be specific about it, but, yes.

10 THE COURT: And this is also the one where-- is it  
11 Mr. Kapon? I forget his name.

12 THE WITNESS: Mr. Kapon. John Kapon.

13 THE COURT: So in the first page of his client letter,  
14 he talks about where the wine is coming from. Right?

15 THE WITNESS: Well, he talks about the consignment  
16 itself.

17 THE COURT: Right.

18 THE WITNESS: And the-- I guess about the owner as  
19 well.

20 THE COURT: So my point is so he's really talking  
21 about Mr. Kurniawan?

22 THE WITNESS: Yes, he is.

23 THE COURT: And just to be clear, the seller, is  
24 Mr. Kurniawan the seller, so to speak, principally?

25 THE WITNESS: That is what it's referred to. Yes,

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1 that is correct.

2 THE COURT: Okay.

3 MR. FACCIPONTI: Can we turn to page 77 of this  
4 document? If we can enlarge that, as well.

5 Q. What is the total due consigner less fees due AMC for this  
6 sale?

7 A. \$15,950,530.

8 Q. And to be clear, that figure just represents the wine that  
9 Mr. Kurniawan sold in this auction?

10 A. Yeah, that's correct.

11 THE COURT: Well, similarly, was there much other wine  
12 sold at this auction other than Mr. Kurniawan's?

13 THE WITNESS: I'm really not entirely sure. It might  
14 have been a handful of other wines. I'd really have to check  
15 our records, though, to be --

16 THE COURT: Can you tell from the catalog?

17 THE WITNESS: No, I wouldn't be able to because we  
18 don't describe consigners in the catalog.

19 THE COURT: Okay.

20 MR. FACCIPONTI: And if you could just turn to page 80  
21 of 81 of this document. If you can enlarge the middle section  
22 of that page.

23 Q. Do you see there, right in the middle, it says "AMC share  
24 of 061 Bishop loan"? Do you understand what that is?

25 A. I don't, no.

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1 Q. Do you know who Bishop is?

2 A. That was the Bob that was referred to before, Bob Bishop.

3 Q. And the Welland is-- who is that? Is that the Roy Welland  
4 that was referred to before?

5 A. Correct.

6 Q. And who is Blattman?

7 A. Eric Blattman, our only client with the last name Blattman.  
8 Eric Blattman.

9 Q. And are there other loans or loans that are described here  
10 as well?

11 A. As stated in the "Notes" field, yes.

12 Q. And at the very end, after o'spmt, what is the balance due  
13 consigner less fees to AMC?

14 A. Negative 15,500 (sic).

15 Q. Turn now to what's been marked as Government Exhibit 15-7  
16 and 15-6 as well.

17 THE COURT: Just for a moment, if you could go back to  
18 what we've been discussing. This is the sale for the Cellar  
19 II. Right?

20 THE WITNESS: Yes.

21 THE COURT: And this similarly, as in The Cellar  
22 catalog, has a letter from the president of your company in  
23 which he describes a particular seller, this time with an  
24 s-e-l-l-e-r, right? He phrases in the introductory letter,  
25 doesn't he, the--

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Hardy - direct

1 THE WITNESS: He refers to The Cellar with a C.

2 THE COURT: I'm not so sure. I mean, I'm now  
3 referring to the seller as a person, because I think he  
4 describes a person in that introductory letter, doesn't he?

5 THE WITNESS: He is describing the owner,  
6 Mr. Kurniawan.

7 THE COURT: Right.

8 THE WITNESS: And The Cellar and the contents of this  
9 auction coming from the seller.

10 THE COURT: Right. So that would suggest, too, that  
11 at least the principal contents of merchandise, so to speak,  
12 being auctioned is Mr. Kurniawan's?

13 THE WITNESS: Oh, yes. Yes.

14 THE COURT: Right. Okay. Thanks.

15 Q. So turning to Government Exhibit 15-6.

16 A. Yes.

17 Q. Do you recognize it?

18 A. I do, yes.

19 Q. What is it?

20 A. It's a copy of an invoice for Mr. Michael Fascitelli from  
21 sale number 069 as referred to as the Cellar II.

22 Q. And 15-7?

23 A. 15-7 is a copy of Mr. Fascitelli's invoice from the sale  
24 061, or The Cellar.

25 Q. And who is Michael Fascitelli?

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1 A. He's a client of ours.

2 Q. Where does he live?

3 A. I don't know where he resides, but I've always known him to  
4 be in New York.

5 MR. FACCIPONTI: We offer 15-6 and 15-7.

6 MR. MOONEY: No objection, your Honor.

7 THE COURT: I'll allow it.

8 (Government's Exhibits 15-6 and 15-7 received)

9 Q. So starting with 15-7, this, you said, was for The Cellar  
10 I, or the 061 auction?

11 A. Correct.

12 Q. And what does this list of wines here represent?

13 A. It represents the wines that were purchased by  
14 Mr. Fascitelli at that auction.

15 MR. FACCIPONTI: Your Honor, I notice that we're about  
16 to break for lunch. We're about to get into a different  
17 segment of the testimony. This might be a good time.

18 THE COURT: I'm happy to do that. So it's about 20  
19 minutes to one. Why don't I give you until two. We'll pick up  
20 at 2 o'clock.

21 And there is, by the way, a cafeteria in this  
22 building, if you don't want to go out, on the eighth floor  
23 which you're free to use. I would ask the lawyers and the  
24 parties who are going to the cafeteria to use a different  
25 cafeteria, such as the one across the street at 40 Centre

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1 Street. Okay?

2 Thanks. Leave everything in place. We'll see you at  
3 2 o'clock.

4 (Jury excused)

5 THE COURT: Could I get a sense of how are we doing  
6 timewise, Mr. Facciponti, in terms of witnesses?

7 MR. FACCIPONTI: We're about to enter the portion  
8 where we introduce the bottles through him. I suspect it may  
9 be another 45 minutes to an hour of direct.

10 THE COURT: Okay. And then after him, after we do  
11 cross, whose likely to be the next witness?

12 MR. HERNANDEZ: Case agent, James Wynne.

13 THE COURT: All right. See you at 2 o'clock. Thank  
14 you.

15 (Recess)

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Dcadkur5

Hardy - direct

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

2 p.m.

(Jury not present)

1 THE COURT: So I have -- not for now but I will do it  
2 later because we want to bring the jury out but two brief  
3 comments to make about evidentiary matters, and I'll just give  
4 you a heads up. One relates to some questions that I asked  
5 about the catalogs. I thought that there was confusion -- or  
6 there could be with the jurors about not understanding those  
7 catalogs, which is why I asked those questions, and I will  
8 explain this a little bit later. It seemed to me that, from  
9 the testimony and the catalogs themselves, they were  
10 predominantly describing wine being sold by Mr. Kurniawan, and  
11 so I tried to make that clear.

12 And, second, with respect to the e-mails that defense  
13 objected to, the government has to at some point make a proper  
14 connection -- lay a proper foundation. So their admission is  
15 subject to the government doing that later on. I will mention  
16 that later as well. I just wanted to give you a heads up.

17 So we will bring in the jury.

18 And just so you know, Christine, someone will come  
19 while they are in here to see --

20 THE CLERK: To maybe get it resolved.

21 THE COURT: Got it. OK.

22 THE CLERK: Please rise.

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1 (Jury present)

2 THE COURT: OK. Please be seated, everybody. And we  
3 will continue with the examination of Mr. Hardy.

4 Is everybody all right.

5 A JUROR: Our pads are all mixed up.

6 THE COURT: We do that just to make sure that you are  
7 all alert.

8 THE CLERK: I'm sorry.

9 (Pause)

10 TRULY HARDY,

11 Resumed, and testified further as follows:

12 THE CLERK: Sir, before we begin, I would like to  
13 remind you, you are still under oath.

14 THE WITNESS: Thank you. Yes.

15 THE COURT: OK, counsel.

16 DIRECT EXAMINATION (Resumed)

17 BY MR. FACCIPONTI:

18 Q. Mr. Hardy, please turn to Government Exhibit 15-8.

19 Do you recognize it?

20 A. Yes, I do.

21 Q. What is it?

22 A. It's a retail sales receipt from Acker Merrall & Condit to  
23 Bill Koch.

24 Q. How do you recognize it?

25 A. I recognize it because I obtained this document from Acker

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1 Merrall & Condit's records.

2 Q. Who is Bill Koch?

3 A. Bill Koch was one of our -- is the client of ours.

4 MR. FACCIPONTI: We offer Government Exhibit 15-8.

5 MR. MOONEY: No objection.

6 THE COURT: I will allow it.

7 (Government's Exhibit 15-8 received in evidence)

8 BY MR. FACCIPONTI:

9 Q. Can you turn to Government Exhibit 15-9, 15-10.

10 Do you recognize 15-9?

11 A. I do.

12 Q. What is it?

13 A. It's Mr. Donald Stott's invoice for wines that he purchased  
14 in sale number 069 or THE Cellar II.

15 Q. Who is Donald Stott?

16 A. He is a client of ours.

17 Q. How do you recognize this document?

18 A. I recognize it because I produced it from our records.

19 Q. And do you recognize 15-10?

20 A. I do, yes.

21 Q. What is it?

22 A. It is an auction invoice from sale number 061, or THE  
23 Cellar, of wines purchased by William Koch, Mr. Bill Koch.

24 Q. How do you recognize it?

25 A. Again, because I produced the -- I obtained the document

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1 from our records.

2 Q. Now please turn to Government Exhibit 15-12.

3 A. Yes.

4 Q. Do you recognize it?

5 A. I do.

6 Q. What is it?

7 A. It's a purchase order or a sales receipt of wines from  
8 Mr. Kurniawan to Acker Merrall & Condit.

9 Q. And what makes you recognize it?

10 A. I produced this document from our records as well.

11 Q. And, finally -- actually, at this time, we offer Government  
12 Exhibit 15-10, 15-12, 15-9, 15-8, and if we haven't already,  
13 15-6 and -7.

14 THE COURT: I will allow them.

15 (Government's Exhibits 15-6, 15-7, 15-8, 15-9, 15-10,  
16 15-12 received in evidence)

17 MR. FACCIPONTI: If we could have Government Exhibit  
18 5-2 and 5-3. They are not in the binders, your Honor.

19 BY MR. FACCIPONTI:

20 Q. When Acker Merrall & Condit auctioned the wine, did it  
21 attach any special label or anything to the wine bottle?

22 A. Yes. Typically, we adhere a sticker on the back of the  
23 bottles.

24 Q. And what, if any, information is typically reported in that  
25 sticker?

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1 A. Typically, it will say "Acquired from a private  
2 collection," and it will have Acker Merrall & Condit's name on  
3 it.

4 Q. Does it also record the name of the auction?

5 A. It can sometimes, yes.

6 Q. Was that the case in 2006?

7 A. I don't know whether that was the case with all of the  
8 auctions in 2006, but, yes, for the two sales that we had been  
9 referring to, 061 and 069.

10 MR. FACCIPONTI: Your Honor, may I ask the witness to  
11 step down so we can examine them?

12 THE COURT: Sure.

13 MR. FACCIPONTI: Mr. Hardy, if you can step down and  
14 take down with you the binder of exhibits as well as the three  
15 catalogs that you have there.

16 (At the jury rail)

17 BY MR. FACCIPONTI:

18 Q. I would like to direct your attention to Government Exhibit  
19 5-2.

20 THE COURT: Which is what?

21 Q. Do you recognize it?

22 MR. MOONEY: Your Honor, can I come around?

23 THE COURT: Yes. Sure. Maybe you could come around  
24 this side so the folks in the back can see.

25 MR. MOONEY: That would be perfect, your Honor. Thank

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1 you.

2 A. Although I can't say for certain, you know, it appears to  
3 be, given the label on the back and the labels on the front, a  
4 magnum of 1934 La Tache from THE Cellar.

5 Q. Meaning THE Cellar I auction?

6 A. That is correct.

7 Q. The 061 auction?

8 A. That is correct.

9 THE COURT: When you say magnum, you referred to that  
10 before, right? So it is bigger than a --

11 THE WITNESS: It would be the volume of two bottles.

12 THE COURT: Maybe you could hold it up so people can  
13 see it.

14 BY MR. FACCIPONTI:

15 Q. What makes you recognize it as being from the Cellar I?

16 A. Again, I can't say for certain but because of the sticker  
17 on the back, it appears be to from THE Cellar I.

18 Q. Do you know if this bottle was actually sold at cellar I?

19 A. Again, I can't say for certain but the label purports to be  
20 a '34 La Tache. I could check in the catalog.

21 Q. Could you check the advice of sales, Government's Exhibit  
22 15-1, page 14.

23 A. I do see a magnum offered in lot number 516 of 1934 La  
24 Tache.

25 Q. And what was the hammer price for that bottle?

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- 1 A. The hammer price for this bottle was 11,000.  
2 Q. \$11,000?  
3 A. That's correct.  
4 THE COURT: If you could just --  
5 MR. FACCIPONTI: If you could just stand on the other  
6 side and face the jury.  
7 THE COURT: That is fine.  
8 Q. And the fact that it appears in the --  
9 THE COURT: Mr. Mooney, have you seen it?  
10 MR. MOONEY: Yes, your Honor.  
11 THE COURT: OK. You could go back there, right?  
12 MR. MOONEY: All right. I think he is going to be  
13 looking at another one right away.  
14 THE COURT: I see.  
15 Q. What does it mean that it appears in the sales advice,  
16 Government Exhibit 15-1?  
17 A. The sales advice means that is a magnum of '34 La Tache  
18 sold for \$11,000 U.S. in lot number 516.  
19 Q. Who sold it?  
20 A. On the sales advice, it is Mr. Kurniawan.  
21 Q. And do you know if any other magnums in that year and that  
22 wine were sold at that auction?  
23 A. I would have to check the catalog.  
24 Q. If you can.  
25 A. Sure.

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1 Q. That is Government Exhibit 15-3.

2 (Pause)

3 Page 54.

4 A. Mm-hmm. It is the only bottle of this format that was sold  
5 in the sale.

6 MR. FACCIPONTI: We offer Government Exhibit 5-2.

7 MR. MOONEY: No objection.

8 THE COURT: I will allow it.

9 (Government's Exhibit 5-2 received in evidence)

10 Q. Can you now please look at Government Exhibit 5-3?

11 THE COURT: The jury can have it later in the jury  
12 room -- I mean, see it. You could see it.

13 MR. HERNANDEZ: No corkscrew, though.

14 THE COURT: You could see it.

15 MR. MOONEY: We will provide the glasses.

16 THE COURT: I used the wrong word.

17 MR. FACCIPONTI: The jury could have a look at this.

18 THE COURT: You could have a look at it.

19 BY MR. FACCIPONTI:

20 Q. What does this appear to be?

21 A. It reports to be a large format, in this case a Methuselah,  
22 of 1971 Romanee-Conti and, from the sticker on the back,  
23 showing from THE Cellar II.

24 THE COURT: Could we -- is it very heavy. Could we  
25 impose upon you to lift it and just show it to the people in

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1 the back as well.

2 Q. Mr. Hardy, while I'm doing this, do you know if this was a  
3 wine that was sold by Mr. Kurniawan?

4 A. I'd have to check.

5 Q. Could you check the sale advice for that option, 15-2?

6 MR. FACCIPONTI: (Publishing to the jury)

7 THE COURT: Counsel, if you could just maybe hold it  
8 up that way, please.

9 A. It looks to be lot number 2199, which is described as a  
10 Methuselah of 1971 Romanee-Conti.

11 Q. What was the hammer price for that?

12 A. 85,000.

13 Q. \$85,000?

14 A. Yes.

15 Q. If you could just check the catalog for THE Cellar II,  
16 Government Exhibit 15-4, page 71, for any other Methuselaha for  
17 this wine and vintage sold at that auction?

18 (Pause)

19 A. No. That is the only Methuselah as described which sold in  
20 lot number 2199 in that sale.

21 Q. Now I am going to show you a series of exhibits.  
22 Government 4-2, 4-2A, 4-3 and 4-4.

23 MR. FACCIPONTI: And, your Honor, we offer Government  
24 Exhibit 5-2 and 5-3.

25 THE COURT: Those are the first two?

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1 MR. FACCIPONTI: Yes.

2 THE COURT: I will allow it.

3 (Government's Exhibits 5-2 and 5-3 received in  
4 evidence)

5 BY MR. FACCIPONTI:

6 Q. While that is being brought out, could you look at  
7 Government Exhibit 4-2 and 4-2A. Do you recognize them?

8 A. They appear to be bottles of --

9 Q. You could step around the other side.

10 A. They appear to be bottles of 1934 Romanee-Conti from THE  
11 Cellar.

12 Q. And do you know who sold them, consulting the wholesale  
13 advice, Government Exhibit 15-1? If you want to look at page  
14 16.

15 MR. FACCIPONTI: Your Honor, can we switch the  
16 published exhibits to the jury?

17 A. There is a lot of two bottles of 1934 Romanee-Conti in lot  
18 number 559 in sale 061.

19 Q. And who sold that?

20 A. This particular lot was sold by Rudy Kurniawan.

21 Q. What was the hammer price for that lot?

22 A. The hammer price for this lot was \$22,000.

23 Q. And looking at Government's Exhibit 15-3, THE Cellar I  
24 auction catalog, specifically at page 58, were any other  
25 bottles of -- were any bottles of this wine and vintage sold?

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1 A. Not of this bottle format, no.

2 Q. So these are the only two bottles of 1934 Romanee-Conti  
3 sold at that auction?

4 A. Correct.

5 MR. FACCIPONTI: Your Honor, we offer Government's  
6 Exhibit 4-2 and 4-2A.

7 MR. MOONEY: No objection.

8 THE COURT: I will allow them.

9 (Government's Exhibits 4-2 and 4-2A received in  
10 evidence)

11 Q. Could you now look at Government's Exhibit 4-3 and 4-4.

12 What do they appear to be?

13 A. They appear to be magnum format of 1962 Romanee-Conti from  
14 THE Cellar, based on the sticker on the back of the bottle.

15 Q. Do you want to look at Government Exhibit 15-1, at page 17,  
16 lot 570.

17 A. That is two magnums of 62 Romanee-Conti.

18 Q. What was the hammer price for that?

19 A. The hammer price for this lot was \$55,000.

20 Q. If you want to look at the cellar catalog, page 60.

21 A. Again, lot number 570, two magnums.

22 Q. Were any other magnums of 1962 Romanee-Conti sold at this  
23 auction?

24 A. Not at -- no.

25 MR. FACCIPONTI: We offer Government's Exhibit 4-4 and  
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1 4-3.

2 MR. MOONEY: No objection.

3 THE COURT: I am allow it in.

4 (Government's Exhibits 4-3 and 4-4 received in  
5 evidence)

6 BY MR. FACCIPONTI:

7 Q. Now turning to Government Exhibit 4-5, do you recognize  
8 that?

9 A. It appears to be a magnum format of '37 Romanee-Conti from  
10 THE Cellar.

11 Q. And based upon the wholesale advice 15-1, page 16, lot 563,  
12 what was the hammer price for that?

13 A. For this magnum of '37 Conti, Romanee-Conti, the hammer  
14 price was \$32,000 U.S.

15 MR. FACCIPONTI: We offer Government Exhibit 4-5.

16 MR. MOONEY: No objection, your Honor.

17 THE COURT: I will allow it.

18 (Government's Exhibit 4-5 received in evidence)

19 MR. FACCIPONTI: Your Honor, I can just hold this one  
20 for the jury.

21 THE COURT: OK. Sure.

22 (Publishing to the jury)

23 THE COURT: You need to get a little closer for them  
24 to get a look at that label.

25 MR. FACCIPONTI: Could I just pass them?

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1 JUROR NO. 1: At 32,000?

2 THE COURT: Yes. What is the expression? "You break  
3 it, you own it."

4 JUROR NO. 1: At \$40 a day?

5 BY MR. FACCIPONTI:

6 Q. Mr. Hardy, in front of you is Government Exhibit 6-1, 6-2  
7 and 6-3, what are these exhibits?

8 A. They appear to be bottles of '62 Romanee-Conti. They have  
9 stickers on the back of the bottles labeled as THE Cellar II.

10 Q. According -- can you refer to Government Exhibit 15-2, page  
11 70. How much were they sold for? Page 70, lot 2174.

12 A. 2174 was a six-bottle lot of '62 Romanee-Conti that sold  
13 for \$50,000.

14 Q. These are three of the six bottles in that lot?

15 A. There were other bottles, but I believe these to be three  
16 of the six bottles, yes.

17 Q. Who were these bottles sold to?

18 A. I believe that they were sold to Mr. Eddie Milstein.

19 Q. And what, if anything, happened with those bottles after  
20 Mr. Milstein purchased them?

21 A. What do you mean?

22 Q. What did Mr. Milstein do with those bottles after they were  
23 purchased?

24 A. He -- I know that he returned these three bottles to us.

25 Q. Do you know the reason why they were returned?

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1 A. I believe there was questions of authenticity.

2 MR. FACCIPONTI: We offer Government Exhibit 6-1, 6-2  
3 and 6-3.

4 MR. MOONEY: No objection, your Honor.

5 THE COURT: OK. I will allow it.

6 (Government's Exhibits 6-1, 6-2 and 6-3 received in  
7 evidence)

8 BY MR. FACCIPONTI:

9 Q. Mr. Hardy, I want you to look at what's been marked as  
10 Government's Exhibit 7-1 through 7-4. What are those?

11 A. They appear to be four bottles of 1923 Bonnes-Mares Roumier  
12 with stickers indicating THE Cellar II.

13 Q. And do you see those bottles on Government's Exhibit 15-1,  
14 the post-sale advice for that auction, page 53, lot 1815?

15 A. I do see a six-bottle lot of 1934 Bonnes-Mares Roumier that  
16 sold for \$95,000.

17 MR. FACCIPONTI: We offer Government Exhibits 7-1  
18 through 7-4.

19 THE COURT: OK. I will allow them.

20 (Government's Exhibits 7-1 through 7-4 received in  
21 evidence)

22 Q. Now, if you want to look at what's been marked as  
23 Government's Exhibit 7-5.

24 MR. FACCIPONTI: Your Honor, is it all right if I give  
25 two of these to the jury?

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1 THE COURT: Yes.

2 Q. Do you recognize -- what is 7-5?

3 A. It appears to be a bottle of '29 Bonnes-Mares Roumier with  
4 a sticker indicating THE Cellar II.

5 Q. And does that also appear in the post-sale advice on page  
6 53, Exhibit 18 -- lot 1816?

7 A. Lot 1816 was four bottles of '29 Bonnes-Mares Roumier that  
8 sold for \$38,000.

9 MR. FACCIPONTI: We offer Government's Exhibit 7-5.

10 THE COURT: I will allow it.

11 (Government's Exhibit 7-5 received in evidence)

12 Q. And Government's Exhibit 7-6, what is that?

13 A. It reports to be a 1934 Bonnes-Mares Roumier with a sticker  
14 indicating THE Cellar II on the back.

15 Q. If you want to consult 15-2, page 53?

16 A. There is a lot number 1817, which is a three bottle lot  
17 that sold for \$30,000.

18 MR. FACCIPONTI: We off Government Exhibit 7-6.

19 THE COURT: I will allow that, too.

20 (Government's Exhibit 7-6 received in evidence)

21 Q. I just want you to look at -- what is Government's Exhibit  
22 7-7?

23 A. It appears to be a '45 Bonnes-Mares Roumier with a sticker  
24 indicating Cellar II on the back of it.

25 Q. Does it also appear on the post-sale advice on page 54, lot

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1 1819?

2 A. Lot 1819 is six bottles of the '45 Bonnes-Mares Roumier  
3 that sold for \$65,000.

4 MR. FACCIPONTI: We offer Government Exhibit 7-7.

5 THE COURT: I will allow that, too.

6 (Government's Exhibit 7-7 received in evidence)

7 Q. And, finally, Government Exhibit 7-8, what is that?

8 A. It appears to be a bottle of 1962 Roumier Musigny, with a  
9 sticker on the back indicating THE Cellar.

10 Q. If you look at the post-sale advice for THE Cellar, the  
11 first one, lot 449.

12 A. Lot 449 is the six-bottle lot of '62 Musigny. It sold for  
13 \$32,000.

14 MR. FACCIPONTI: We offer Government Exhibit 7-8.

15 THE COURT: I will allow it.

16 (Government's Exhibit 7-8 received in evidence)

17 MR. FACCIPONTI: Mr. Hardy, if you want to return to  
18 the witness stand, and bring the catalogs and the exhibits with  
19 you.

20 (The witness resumed the witness stand)

21 Q. I direct your attention to page 148 of Government's Exhibit  
22 15-5.

23 THE COURT: Do you have the catalog? It is one of the  
24 catalogs?

25 MR. FACCIPONTI: It is one of the catalogs, your

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1 Honor.

2 A. Yes.

3 Q. What is this the catalog for again?

4 A. This is a catalog for sale number 084, which was the  
5 April 25th sale in 2008.

6 Q. And on page 4, 148, does it describe lots 413 through 434?

7 A. It describes the Domaine Ponsot.

8 Q. Those are where these lots purportedly are from?

9 A. And the lots in the header of 413 through 434 are where  
10 those bottles were made. Yes, that where they are from.

11 Q. In the pages that follow, does it provide a description of  
12 the individual lots for those purported Ponsot wines?

13 A. I'm sorry. Could you repeat that?

14 Q. Does it provide a description of what those lots are in the  
15 pages that follow?

16 A. Yes, it does.

17 Q. And just a rough estimate of the low estimate provided for  
18 those lots, is it fair to say it is around \$450,000?

19 THE COURT: How much?

20 MR. FACCIPONTI: \$450,000.

21 A. I would have to add it up.

22 Q. Do you want to take a minute to do that.

23 (Pause)

24 A. Yes, that's fair to say.

25 Q. Who consigned lots 413 through 434 for THE Cellar III

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1 auction, for this auction?

2 A. Rudy Kurniawan.

3 Q. Were these wines described in these lots the only wines  
4 consigned by Mr. Kurniawan for this auction?

5 A. No, they were not.

6 Q. Were these wines described in lots 413 through 434  
7 ultimately sold at that auction?

8 A. No, they were not.

9 Q. What was the reason they were not sold at that auction?

10 A. There were questions of authenticity raised to John Kapon,  
11 and the bottles were immediately removed from the sale.

12 THE COURT: That was before the auction took place?

13 THE WITNESS: That's correct.

14 Q. After they were pulled from the auction, what did Acker  
15 Merrall & Condit do with them?

16 A. We removed them from our lotting line, which is essentially  
17 just where we have the lots of the sale in our temperature  
18 controlled warehouse. We moved them to another section of the  
19 warehouse, where they remained.

20 Q. Just to be clear, Mr. Hardy, do you know if these are  
21 Ponsot bottles or not?

22 A. I don't, no.

23 Q. And after you removed them from the auction line, what did  
24 you do with them?

25 A. We stored them in our warehouse.

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Hardy - direct

1 Q. And after you stored them -- did there come a time when you  
2 took them out of storage?

3 A. Yes.

4 Q. And what did you do with them?

5 A. We took them out of storage so that we could present them  
6 and deliver them to the FBI.

7 Q. In front of you is a document marked Government Exhibit  
8 15-3.

9 A. Yes.

10 Q. I'm sorry. 15-13.

11 A. Yes.

12 Q. Do you recognize that?

13 A. I do.

14 Q. What is it?

15 A. It is a packing list that was created by myself for the  
16 FBI.

17 Q. Does that list the bottles that you provided to the FBI?

18 A. That's correct.

19 MR. FACCIPONTI: We offer Government's Exhibit 15-13.

20 MR. MOONEY: No objection.

21 THE COURT: I will allow it.

22 (Government's Exhibit 15-13 received in evidence)

23 MR. FACCIPONTI: We would actually like the Government  
24 Exhibit 8 series bottles.

25 Mr. Hardy, I am going to ask you to step down again.

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1 THE WITNESS: Would you like me to bring any of this?

2 MR. FACCIPONTI: It is not necessary.

3 (At the jury rail)

4 BY MR. FACCIPONTI:

5 Q. Now, in front of you are a number of bottles that have been  
6 marked Government's Exhibit 8-27, 8-28, 8-34, 8-22, 8-23, 8-24,  
7 8-25, 8-26, 8-29, 8-30, 8-31, 8-32, 8-33, 8-35, 8-36 and 8-37.

8 Do you recognize these as the bottles that you  
9 provided to the FBI that are represented on Government's  
10 Exhibit 15-3?

11 A. Although I can't say for certain but it appears to be, yes,  
12 the bottles.

13 Q. What helps you to recognize them?

14 A. The labels on the front, the vintage labels; some of the  
15 bottles have stickers on the reverse of the backside.

16 Q. The Acker Merrall stickers?

17 A. That is correct.

18 Q. Why do some of the bottles not have Acker Merrall stickers?

19 A. Not all of the bottles that were received were offered for  
20 sale.

21 Q. So some of those bottles were not offered at the auction in  
22 April of 2008?

23 A. That's correct.

24 Q. And the ones that had been offered for auction were pulled  
25 because of questions about authenticity?

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1 A. Immediately, yes.

2 MR. FACCIPONTI: We offer the government's Exhibits  
3 8-22 through 8-37.

4 THE COURT: I will allow them.

5 (Government's Exhibits 8-22 through 8-37 received in  
6 evidence)

7 MR. FACCIPONTI: You may go back to the witness stand.  
8 (The witness resumed the witness box)

9 MR. FACCIPONTI: Your Honor, may we pass around a  
10 bottle of wine?

11 THE COURT: Sure.

12 BY MR. FACCIPONTI:

13 Q. I would like you to look at a document marked Government's  
14 Exhibit 24-2.

15 A. Yes.

16 Q. Do you recognize it?

17 A. I do.

18 Q. What is this?

19 A. It appears to be -- it is a document that I obtained from  
20 Acker Merrall & Condit's records that reports to be -- although  
21 I didn't have any personal involvement in creating this  
22 document, it reports to be a security agreement between  
23 Mr. Kurniawan and Acker Merrall & Condit.

24 MR. FACCIPONTI: We offer Government's Exhibits 24-2.

25 MR. MOONEY: No objection.

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Dcadkur5 Hardy - direct

1 THE COURT: I will allow it.

2 (Government's Exhibit 24-2 received in evidence)

3 MR. FACCIPONTI: Can we publish it to the jury?

4 Q. We want to focus on the first paragraph of that document.

5 Can you read that first paragraph?

6 A. It says: "Security agreement (Chattel Mortgage)

7 "Chattel Mortgage Executed May 2, 2008 by Rudy

8 Kurniawan of 9638 East Naomi Avenue, Arcadia, California

9 91007, in this agreement referred to as mortgagor, to Acker,

10 Merrall & Condit Company, of 160 West 72nd Street," New York --

11 excuse me, "City of New York, County of New York, State of New

12 York, in this agreement referred to as mortgagee."

13 Q. If you want to focus on the second paragraph.

14 If you want to focus on -- would you actually want to  
15 start reading that paragraph.

16 A. "Section one. Mortgage of property.

17 "Mortgagor, for value received, hereby mortgages to

18 mortgagee and hereby grants to mortgagee a security interest in

19 any wine owned by mortgagor in its possession or the possession

20 of LLK Enterprises as well as the property described on Exhibit

21 A and all accessories, parts, and equipment now or hereafter

22 affixed thereto or used in connection therewith in this

23 agreement collectively referred to as collateral; such mortgage

24 shall secure the payment of the principal of and interest on

25 all debts owed to Acker Merrall & Condit and all debts owed to

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1 other persons who claim to look to Acker Merrall Condit or John  
2 Kapon or Michael Kapon for payment, or make claims against  
3 Acker Merrall Condit or John Kapon or Michael Kapon by reason  
4 of wine sold by or to the mortgagor, referred to as debt of  
5 mortgagor, all obligations of mortgagor hereunder and all other  
6 obligations of mortgagor, to mortgagee, its successors, and its  
7 assigns, officers and employees however created, arising or  
8 evidenced, whether direct or indirect, absolute or contingent,  
9 or now or hereafter existing, or due or to become due. The  
10 debt and all other obligations secured hereby are collectively  
11 referred to in this agreement as liabilities."

12 Q. I want to look at Section Three of the bottom of that page,  
13 paragraph 3.

14 A. Yes.

15 Q. If you could read paragraph 3.

16 A. "Mortgagor shall at all times keep collateral free of all"  
17 items "and claims whatsoever, other than the --

18 THE COURT: All?

19 A. Excuse me. It looks like it could be "liens."

20 -- "liens and claims whatsoever, other than the  
21 security interest hereunder."

22 Q. And if you can zoom out to that page again and focus on  
23 what appears at the top. Does that appear to be a fax ribbon?

24 A. Yes, it does.

25 Q. And what is the date of that?

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1 A. The date of it is May 15th of 2008.

2 Q. And what does the fax number appear to be?

3 A. 626-445-1933.

4 Q. Could it be 445-1933?

5 A. Yes, 445-1933.

6 Q. And if you want to turn to what is Exhibit A to this  
7 document.

8 A. OK.

9 Q. If you want to scroll through those pages, what does that  
10 appear to be?

11 A. It appears to be a list or description of items, possibly  
12 art. It looks like possibly a watch, other items. Just a list  
13 of items.

14 Q. Some of these appear to be works of art?

15 A. Appear to be, yes.

16 Q. If you want to turn to page 10 of this document.

17 A. OK.

18 Q. There is artwork that appears at the bottom.

19 If you want to enlarge that?

20 Does that appear to be --

21 THE COURT: Are you showing this on the jury screens  
22 as well?

23 MR. FACCIPONTI: Yes, your Honor.

24 THE COURT: It should be, right.

25 Q. And does that appear to be a work of art by Andy Warhol?

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1 A. Yes, it does appear to be.

2 THE COURT: Are you going to pass that around, too, to  
3 the jury?

4 Q. And I think the title is "Beatles Boots," is that it?

5 A. Yes. It looks like "Beatles Boots."

6 Q. Can we now have Government Exhibit 23-1, which has already  
7 been entered into evidence?

8 And if you could look at page 8 of that document. It  
9 is 11647 at the bottom.

10 A. I'm sorry. You said 23-1?

11 MR. FACCIPONTI: You don't have it in front of you.  
12 We are going to put it on the screen.

13 THE WITNESS: I'm sorry.

14 Q. 11647. Can we enlarge the work of art that appears at the  
15 bottom there?

16 Does that appear to be the same work of art as what  
17 you just saw?

18 A. Yes.

19 Q. I am handing you what's already been entered into evidence  
20 as a hard copy version of 23-1.

21 Do you want to take a minute and compare the works of  
22 art that appear at the end of this document with what is in  
23 front of you as Government Exhibit 24-2.

24 Does it appear to contain many of the same works of  
25 art?

Dcadkur5 Hardy - direct

1 A. It does, yes.

2 Q. Can you now turn to Government Exhibit 24-3.

3 A. Yes.

4 Q. Do you recognize it?

5 A. I do.

6 Q. What is it?

7 A. It reports to be a -- it says, "Amendment to Security  
8 Agreement."

9 Q. And what makes you recognize it?

10 A. I produced this from -- or I obtained this, rather, from  
11 Acker Merrall Condit's internal records.

12 Q. And is it an amendment to the security agreement with  
13 Mr. Kurniawan?

14 A. It does report to be, yes.

15 MR. FACCIPONTI: We offer Government's Exhibit 24-3.

16 THE COURT: I will allow it.

17 (Government's Exhibit 24-3 received in evidence)

18 BY MR. FACCIPONTI:

19 Q. I just want to turn to the first page, the middle of that  
20 document, "Whereas mortgagor has acknowledged."

21 A. OK.

22 Q. Could you just read that?

23 A. "Whereas mortgagor has acknowledged that another entity  
24 has, or may have, a first priority security interest in some or  
25 all of the works."

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1 Q. And do you want to look at the fax ribbon that is at the  
2 top of this document. What is the date there?

3 A. The date is November the 7th of 2008.

4 Q. Finally, do you want to turn to Government's Exhibit 24-10.  
5 Do you recognize that?

6 A. I do, yes.

7 Q. What is it?

8 A. It appears to be an agreement between Acker Merrall &  
9 Condit and Rudy Kurniawan.

10 Q. How do you recognize it?

11 A. I only recognize this because I obtained this through  
12 subpoena from Acker Merrall & Condit's files.

13 MR. FACCIPONTI: We offer Government's Exhibit 24-10.

14 THE COURT: I will allow it.

15 (Government's Exhibit 24-10 received in evidence)

16 Q. What are the dates that appear at the top of this document?

17 A. There is a date of July the 21st of 2006 and a date of  
18 August the 7th of 2006.

19 Q. And can you read the first paragraph there?

20 A. "Agreement made this day of 26th July, 2006 between Acker  
21 Merrall & Condit, Inc., a New York corporation, and Rudy  
22 Kurniawan, an individual, residing at in the State of  
23 California."

24 Q. And can you read the first sentence of paragraph 2 at the  
25 bottom.

Dcadkur5 Hardy - direct

1 A. "Rudy represents and warrants that he is the sole and  
2 exclusive owner of an art collection worth four million five  
3 hundred thousand dollars. Rudy further represents that each  
4 item within the artwork is an original work of art."

5 Q. Do you want to turn to the next page.

6 In the middle of that paragraph, does it say, "Rudy  
7 will at his own expense transport the artwork to warehouse in  
8 New York, which warehouse shall store the artwork in AMC's name  
9 as additional security for all advances made by AMC pursuant to  
10 this agreement?"

11 A. Yes, it does.

12 MR. FACCIPONTI: Your Honor, may I have a moment?

13 (Pause)

14 MR. FACCIPONTI: We have no further questions.

15 THE COURT: OK.

16 Counsel.

17 CROSS-EXAMINATION

18 BY MR. MOONEY:

19 Q. Good afternoon, Mr. Hardy.

20 A. Good afternoon.

21 Q. Let's, before we jump back to the beginning, sort of wrap  
22 up where we ended, shall we?

23 You were just looking at a document that you said you  
24 pulled from the files of Acker Merrall & Condit, Government's  
25 Exhibit 24-10, is that correct?

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Dcadkur5

Hardy - cross

1 A. That's correct.

2 Q. And I take it, from what you told us, that you were not  
3 personally involved in negotiating this document?

4 A. That's correct.

5 Q. And I take it that you were not involved in any subsequent  
6 discussions that may have gone on between Mr. Kurniawan and  
7 anybody at Acker with regards to any security arrangements?

8 A. That's correct.

9 Q. And I take it you never saw works of art that were  
10 transferred into the possession of Acker Merrall?

11 A. That's correct.

12 Q. And so with regards to this document, which is dated in  
13 July of 2006, you don't have any personal knowledge of what  
14 might have happened to the relationship over the next year and  
15 a half, do you?

16 A. The relationship, what do you mean by that?

17 Q. In terms of any security being provided by Mr. Kurniawan  
18 for advances.

19 A. No, I don't have any knowledge of that.

20 Q. But you do know, from what you told us, that by the summer  
21 of 2008 Acker Merrall did not have those pieces of art?

22 A. I don't know whether I did say that. I don't have any  
23 knowledge of the art, where the art moved to or from, no.

24 Q. But you do have knowledge that at least in the summer of  
25 2008 some sort of security agreement was negotiated between

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Dcadkur5 Hardy - cross

1 Mr. Kurniawan and Mr. Kapon?

2 A. I don't recall exactly what time period, but I do recall  
3 that there was an agreement made, yes.

4 Q. And that agreement specifically makes reference, as you  
5 just pointed out to us, to a prior security agreement that  
6 exists in those pieces of art?

7 A. Within the documents -- these three documents, I would  
8 assume so, yes.

9 Q. And you don't know what happened with regards to how that  
10 security came about prior to the time that later security  
11 agreement was made, do you?

12 A. No. That's correct.

13 Q. Nobody asked you?

14 A. No.

15 Q. Nobody involved you?

16 A. No.

17 Q. You weren't a part of that?

18 A. That's correct.

19 Q. All you know is that by the time the summer of 2008 comes  
20 about and a security agreement is being prepared, Acker Merrill  
21 knows that there is a prior security interest that exists with  
22 regard to these pieces of art?

23 A. Based on what I just read, yes, they did.

24 Q. Let's talk about a few things, and then we will get up to  
25 sort of that summer of 2008 and things that were happening.

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Dcadkur5 Hardy - cross

1 I think you said that Mr. Kurniawan first appears in  
2 Acker Merrall sometime around 2002/2001, someplace in that  
3 area?

4 A. That is my recollection, yes.

5 Q. You were already with Acker Merrall at that point?

6 A. That is correct.

7 Q. And Acker Merrall was already involved in the wine auction  
8 business at this point?

9 A. That is correct.

10 Q. And also involved in the retail wine --

11 A. That is correct.

12 Q. -- business?

13 And when Mr. Kurniawan came into Acker Merrall, you  
14 first met him as somebody who was a buyer and collector of fine  
15 wines, is that fair?

16 A. That's fair, yes.

17 Q. And you had -- Acker Merrall had a lot of fine wine buying  
18 customers at that point, did it not?

19 A. We did, yes.

20 Q. And you were rising up; you were becoming more known for  
21 the wine auction business?

22 A. We had just started in '98/'99, so, yes, it's fair to say  
23 that.

24 Q. You weren't the 800-pound gorilla at that point?

25 A. No, I don't believe so.

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Dcadkur5 Hardy - cross

- 1 Q. In fact, there were some pretty big guys who were out there  
2 doing big auctions, were there not?  
3 A. Oh, yes.  
4 Q. People likes Christie's?  
5 A. Absolutely, yes.  
6 Q. People like Zachy's?  
7 A. At that time period I don't believe so. I would have to  
8 check my records of when Zachy's started performing, you know,  
9 live auctions.  
10 Q. OK. And people like Sotheby's?  
11 A. Yes.  
12 Q. Would it surprise you that in 2004, Acker Merrall was  
13 fourth in position behind each of the three of those with  
14 regards to wine auctions?  
15 A. Do you mean in New York?  
16 Q. Worldwide, I believe.  
17 A. I don't really know worldwide. At that time we had a focus  
18 in New York. But it would be fair to say in New York, as far  
19 as I know, we would be up there, yes.  
20 Q. So you hadn't opened your Hong Kong office yet?  
21 A. At that point in 2001?  
22 Q. 2004.  
23 A. 2004, no.  
24 Q. When did you open the Hong Kong office?  
25 A. I believe we officially opened it sometime in 2008.

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Dcadkur5 Hardy - cross

1 Q. And when Rudy first comes around in 2002, you know him as  
2 somebody who is buying wine, is that right?

3 A. That was my first experience with him as a client, that I  
4 can recall, yes.

5 Q. And he wasn't just buying from you, he was buying at other  
6 auction houses as well?

7 A. Yes.

8 Q. And it was pretty clear that this person was someone buying  
9 prodigious amounts of wine?

10 A. He seemed to be buying quite a bit of wine, yes.

11 Q. In fact, he, during a period of time, at least -- maybe  
12 starting in 2002 and at least going up into 2006, was one of  
13 the largest individual buyers of rare wines in the market  
14 anywhere, wasn't he?

15 A. I don't know whether he was in the whole market --

16 MR. FACCIPONTI: Objection.

17 THE COURT: Overruled.

18 A. -- but he was a very large client at Acker Merrall &  
19 Condit.

20 Q. Now, some of the wines that he was buying and accumulating  
21 at auctions were going back and apparently ending up with him  
22 in California, is that correct?

23 A. Yeah. Mm-hmm.

24 Q. Some of the wines that he was buying were going straight to  
25 warehouses at Acker Merrall, weren't they?

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Dcadkur5 Hardy - cross

1 A. At that time Acker or LLK, yes.

2 Q. And so Rudy had -- you knew that he had wines in New York,  
3 you knew that he had wines in California, and he just kept  
4 buying wines?

5 A. He kept buying from us, yes.

6 Q. You heard that he was buying from other people, that's what  
7 you understood?

8 A. Yes. I knew that he was also buying from other people.

9 Q. And some of these other customers and other people that  
10 Acker Merrall had that were buyers of rare wine, this is kind  
11 of a club for some pretty wealthy people, isn't it?

12 A. Typically, but also some serious enthusiasts, people that  
13 are just really just all about wine, as we say.

14 Q. You gave us some hammer prices at least on some of the  
15 bottles that we have seen over here, and those to a lot of  
16 people would be a pretty crippling prices, wouldn't they?

17 A. If I understand your definition of crippling, yes. Yes.

18 Q. So buy a car or buy a bottle of wine?

19 A. For some of these prices, yes. Absolutely.

20 Q. And that in and of itself sort of limited the group of  
21 people that were part of these floor buyers, is that right?

22 A. The overall prices definitely focuses that group, yes.

23 Q. In fact, when you are inviting people to come to your  
24 auctions, one of the things that you are looking for is people  
25 that have spent a great deal of money?

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Dcadkur5 Hardy - cross

1 A. Yes. Of course.

2 Q. And the majority of these people that get invited and get  
3 the catalogs are people who have spent some sometimes a lot  
4 of -- over a hundred thousand dollars?

5 A. Sure. Yes.

6 Q. Some of the documents that were admitted here -- I am just  
7 going back here.

8 (Pause)

9 I will be with you in a second. There is lots of  
10 stuff here.

11 I mean, if we look at just some of the documents that  
12 have been admitted in the last few minutes, I mean, let's start  
13 with 15-6. Could you put 15-6 up on the screen, please. Now,  
14 this -- and would you highlight -- over there. I can look  
15 here. Would you blow up the name of the purchaser of this  
16 bottle, of these wines.

17 So I take it that Mr. Fascitelli is one of the people  
18 who was a buyer of your wines, is that correct?

19 A. That is correct.

20 (Continued on next page)

21

22

23

24

25

DCABKUR6 Hardy - cross

1 MR. MOONEY: And if you go could back to the full  
2 document again, please. And then if you would highlight the  
3 portion in the upper right-hand corner.

4 Yes, thank you.

5 BY MR. MOONEY:

6 Q. Okay. And this tells us sale number 069, but I think  
7 you've already told us, what that tells us is that this is the  
8 auction that was the ninth auction that took place in 2006. Is  
9 that right?

10 A. That's correct.

11 Q. And you've identified that ninth auction in 2006 as being  
12 The Cellar II -- that's cellar we a "C," not seller with an  
13 "S" -- auction.

14 A. That's commonly referred to that, yes.

15 Q. And the other one that we were talking about in 2006 was  
16 061, which was the first auction in 2006. Is that right?

17 A. That's right.

18 Q. Okay. So if you go back to the whole document again, this  
19 one from the ninth auction, and if you would please flip to the  
20 next page.

21 MR. MOONEY: And if you would highlight down at the  
22 bottom the "Total Paid." Above that. Thanks.

23 Q. Mr. Fascitelli didn't owe any money at that point, did  
24 he?

25 MR. MOONEY: Let's go back up and go to the second

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DCABKUR6 Hardy - cross

1 page again, if you would. Take it all the way from "Total."

2 Yes, that's good. All that. Thanks.

3 Q. Okay. And so if we look at this, what we see is that

4 Mr. Fascitelli bought \$561,350 worth of wine. Is that

5 correct?

6 A. That's correct.

7 Q. And he paid for that \$670,813?

8 A. That's correct.

9 Q. Now, if we go down to Exhibit 1517.

10 MR. MOONEY: Would you bring it up, please? 1517,

11 please. Or 15-7. I'm sorry, my mistake. And, again, if you

12 would highlight the top portion of this. Yeah, all of that.

13 That's good.

14 Q. And, once again, this is an invoice for Mr. Fascitelli. Is

15 that correct?

16 A. That's correct.

17 MR. MOONEY: So if you would go over to the right top

18 on this one, please.

19 Q. What sale is this for?

20 A. This is sale 061 as referred to as The Cellar.

21 Q. So that was the first sale in 2006?

22 A. That's correct.

23 Q. And that means that Mr. Fascitelli purchased at The Cellar

24 I and then later purchased at The Cellar II, and there's

25 separate invoices for each of those. Correct?

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DCABKUR6 Hardy - cross

1 A. Correct. Separate for each sale.

2 Q. Okay.

3 MR. MOONEY: Then if you would then, please, go to--  
4 and this is a longer one. If you would come to page 6 of 6,  
5 please, and if you would highlight from the subtotals down on  
6 that one. Thank you.

7 Q. So for The Cellar I purchase, this buyer purchased \$830,550  
8 worth of wine. Is that correct?

9 A. That's correct.

10 Q. And he paid \$984,201. Is that right?

11 A. That's correct.

12 Q. So in the year of 2006, at two of your nine auctions, we  
13 know that Mr. Fascitelli spent on wine someplace in the  
14 neighborhood of \$1.6 million. Is that fair?

15 A. That's fair.

16 Q. Do you know whether Mr. Fascitelli bought any other wine at  
17 any of the other nine auctions during that 2006 year?

18 A. I'd have to check our records.

19 Q. It's not impossible?

20 A. Oh, no, not impossible.

21 Q. He was a fairly prodigious buyer?

22 A. Yes.

23 MR. MOONEY: Now, while we're still on this invoice,  
24 if you go back to page 2 of 6 and highlight, if you will, if  
25 you see up there where it says "125 bottles" and then it lists

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1 magnums and then totals.

2 Q. Okay. Now, this invoice is actually broken into parts,  
3 isn't it?

4 A. It is. It's a grouping of all of Mr. Fascitelli's paddle  
5 numbers from that sale.

6 Q. Okay. And so under one paddle number, he bought 149  
7 bottles. Is that right? That would be the part that shows on  
8 page 2 of 6?

9 A. Correct, yes.

10 MR. MOONEY: And then, if we go over to page 4 of 6,  
11 if you would do that, please, and highlight the bottles up  
12 there on 4 of 6.

13 Q. And then he bought 158 bottles under a different paddle  
14 number. Is that correct?

15 A. That's correct.

16 Q. So we've got him at three hundred and something.

17 MR. MOONEY: Then if you go after that to page 5 of 6  
18 and you highlight the bottles there.

19 Q. He buys 73?

20 A. That's correct.

21 Q. So he buys just under four hundred bottles of wine at that  
22 one auction, that auction number one of the year. Is that  
23 correct?

24 A. That's correct.

25 MR. MOONEY: If you would jump back, please, to  
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1 Exhibit 15.6.

2 Q. And 15.6, again, that was the sale of the ninth auction.

3 That was The Cellar II. Is that correct?

4 A. Yes, that's correct.

5 MR. MOONEY: And if you would go to the second page of  
6 that, please, and highlight the bottle section there.

7 Q. We have him here buying 134 bottles. Is that correct?

8 A. That's correct.

9 Q. Okay. So he's bought over five hundred bottles at just  
10 these two auctions. Is that fair?

11 A. That's fair.

12 Q. And then you have a number of bottles that he ended up  
13 returning to you. Is that correct?

14 A. That Mr. Fascitelli returned to us?

15 Q. Well, maybe not. Maybe I'm thinking of somebody else.

16 Mr. Fascitelli didn't return any bottles to you, did  
17 he?

18 A. What time period are you referring to?

19 Q. Strike that.

20 MR. MOONEY: Let's now take a look at 15-8, please.  
21 And if you would highlight the name of the buyer on this one  
22 for us, please.

23 Q. Who's this buyer?

24 A. Bill Koch, William Koch.

25 Q. And that's K-o-c-h, Koch?

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DCABKUR6 Hardy - cross

- 1 A. That's correct.  
2 Q. And he's also a customer of yours?  
3 A. At that time, yes.  
4 Q. Is he not a customer anymore?  
5 A. I don't believe so, no.  
6 Q. He sued you?  
7 A. I am aware of a lawsuit, yes.  
8 Q. Those sorts of things interfere with customer relationships  
9 sometimes?  
10 A. All sorts of things.  
11 Q. Okay. Now, he bought in this purchase--  
12 MR. MOONEY: Go back to the full invoice again. If  
13 you would highlight the part that he bought.  
14 Q. He bought \$150,000 worth of wine. Is that correct?  
15 MR. FACCIPONTI: Objection. Relevance, your Honor.  
16 THE COURT: I'll allow it.  
17 A. On this sales receipt, yes.  
18 MR. MOONEY: And go back up, if you would, and show  
19 the actual bottles that he purchased. The middle of the  
20 document. Yes, that's it. Perfect. All right.  
21 Q. And this shows that there was only nine bottles that he  
22 purchased in this particular sale. Is that correct?  
23 A. That's correct, yes.  
24 Q. Now, were these bought from one of the auctions or was this  
25 bought in a private sale?

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DCABKUR6 Hardy - cross

1 A. This was bought as a retail sale.

2 MR. MOONEY: And if you could go back to the full  
3 invoice and show us the subtotal portion again at the bottom,  
4 please.

5 Q. We can tell this is a retail because there's nothing added  
6 on. It's just the straight price for what was purchased. Is  
7 that correct?

8 A. That's not the reason, but that is one indication, yes.

9 Q. Okay. And in a circumstance like that, Acker Merrall is  
10 still going to make some money on the sale even if the wines  
11 had been provided or consigned by somebody else. Is that  
12 right?

13 A. It's a retail sale, so there's a certain price that we  
14 purchased the wines at and a certain price that we'll be  
15 selling them at.

16 Q. Do you know if any of those bottles of wine were ever  
17 returned to you?

18 A. I don't know specifically.

19 MR. MOONEY: If you would go next then to Exhibit 15-9  
20 and highlight for us at the top the name of the purchaser on  
21 this one.

22 Q. Who is this?

23 A. This is Mr. Donald Stott.

24 Q. And was Mr. Donald Stott also one of your good customers?

25 A. Yes, he is a good client of ours.

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DCABKUR6

Hardy - cross

1 Q. Buys a lot of wine?

2 A. Yes.

3 Q. Now, I can't tell from what I'm looking at -- this does not  
4 look to me like this is a complete exhibit. Is there something  
5 missing from this exhibit?

6 A. It's an exhibit of an invoice. There looks to be no  
7 subtotal or totals page. This is a packing list provided to  
8 the client at the time of a shipment. What we would do is we  
9 would take an invoice and then mark off which boxes which  
10 bottles and lots went into and then provide a copy of that to  
11 the client.

12 Q. So the purpose of this is to show the wines that he bought  
13 at the auction being sent to him?

14 A. I don't know the purpose of it. That's what this is,  
15 though.

16 Q. Okay.

17 MR. MOONEY: If we look at the upper right. If you  
18 would highlight the upper right-hand corner portion of this,  
19 please.

20 Q. This tells us it's sale number 069. Does that tell us,  
21 again, that that was the ninth auction of 2006 or The Cellar II  
22 auction?

23 A. Yes, that's correct.

24 Q. But we do know these would all be wines that were bought by  
25 Mr. Stott at that auction. Is that correct?

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DCABKUR6 Hardy - cross

1 A. That's correct.

2 Q. And would it represent all of the wines that he bought at  
3 that auction or could there be others?

4 A. There could be others. This is for this particular paddle  
5 number.

6 Q. If you would go then to 15-10 and show us again, up at the  
7 upper left-hand corner, the individual that this represents.

8 A. It's William Koch.

9 Q. And so this is Mr. Koch buying again or on a different  
10 occasion?

11 A. In sale 061, yes.

12 Q. And 061, again, was the first auction of 2006 or The Cellar  
13 I auction we talked about. Is that correct?

14 A. That's correct.

15 MR. MOONEY: And if we flip over to the second page,  
16 and if you would highlight the bottom right from the subtotal  
17 down. Yes, thank you.

18 Q. So this tells us then that Mr. Koch bought \$1.4 million  
19 worth of wine. Is that correct?

20 A. That's correct.

21 Q. And that's at that auction?

22 A. That's correct.

23 MR. MOONEY: And if you go back and go up to where it  
24 shows the number of bottles. Over here. Yes, right there.  
25 Perfect.

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DCABKUR6 Hardy - cross

- 1 Q. And he bought 170 bottles?  
2 A. That's correct.  
3 Q. And 36 of them were in large formats?  
4 A. That's correct.  
5 Q. Thirty-three of those just being magnums?  
6 A. That's what's stated, yes.  
7 Q. Three really big ones?  
8 A. Three large ones, yes.  
9 Q. That's kind of like the big one we see standing up, except  
10 that one's maybe even bigger, isn't it?  
11 A. Yes. It's kind of like that bottle, yeah.  
12 Q. So when we're looking at the wines, talking about it, the  
13 standard bottle is going to be something more like this, like  
14 7.8. Is that right?  
15 A. 7.8?  
16 Q. Exhibit 7.8.  
17 A. Yes, excuse me. Yes, more like that bottle.  
18 Q. And that's a 750 liter, is what it's referred to as--  
19 A. No, 750 milliter.  
20 Q. A 750 milliter. A 750 liter would be big. We'd like  
21 that.  
22 Then, when we talk about the next size up, which is  
23 more commonly available, would be the magnums and that's going  
24 to be a bottle like this one that's 4.4?  
25 A. That's correct.

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DCABKUR6

Hardy - cross

1 Q. Exhibit 4.4.

2 And then, when we get into the really big formats, the  
3 kind that we see sitting around as exhibits in restaurants and  
4 things, we're going to then talk about ones like this, this one  
5 in Exhibit 5.3. Is that right?

6 A. That's correct.

7 Q. Now, a large quantity, a large portion, maybe almost all,  
8 of the first auction and the ninth auction that occurred in  
9 2006 for consignments of wine, that came from Mr. Kurniawan.  
10 Is that correct?

11 A. For those two sales? Yes.

12 Q. Those two sales.

13 And they were reflected by those catalogs that we've  
14 seen so much about and by some of these bottles that are  
15 sitting out here on this table. Is that right?

16 A. That's correct.

17 Q. Although some of them come from 2008.

18 Mr. Kurniawan sold a lot of wine in those two  
19 auctions, didn't he?

20 A. Yes, he did.

21 MR. MOONEY: If you would go to 15.1, please, and if  
22 you turn to page 47 of 47. And if you would highlight over on  
23 the right the listing of the bottles, the stuff from below the  
24 line. On the left-hand side, I'm sorry. That's it. Yes.  
25 Okay.

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DCABKUR6

Hardy - cross

- 1 Q. Now, this is a list of the bottles that were sold in that  
2 auction, that were put in consignment by Mr. Kurniawan. Is  
3 that correct?  
4 A. Yes, they were consigned by Mr. Kurniawan.  
5 Q. And sold?  
6 A. Not necessarily sold. I see even just above that there's a  
7 pass, but these are all of the bottles on offer.  
8 Q. Okay. And a half bottle, we didn't have any half bottles  
9 up there to look at, did we?  
10 A. No.  
11 Q. That's what some of us would refer to as a split?  
12 A. Sure.  
13 Q. Okay. And we might buy that in a restaurant if we're  
14 having dinner and maybe we're driving?  
15 A. That's right.  
16 Q. Because it's going to be half of the amount that is in a  
17 regular bottle. Is that right?  
18 A. That's right.  
19 Q. So small number of those, 73. 3,577 bottles. Is that  
20 right?  
21 A. Yes, that's right.  
22 Q. And if we look down at the bottom, we see that in that sale  
23 he sold 4,289 bottles of wine. Is that right?  
24 A. That's correct.  
25 Q. And he had been buying lots and lots of wine?

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DCABKUR6

Hardy - cross

1 A. Lots of wine.

2 Q. So you weren't surprised when he came up with 4,289 bottles  
3 of wine. It was consistent with what you had seen him doing,  
4 wasn't it?

5 A. That's correct.

6 MR. MOONEY: Now, if we would jump to 15.2, please.  
7 And on 15.2, if you would go to page 71 of 81. And here,  
8 again, if you would now highlight the bottle numbers that are  
9 over there on the left. Yes, perfect.

10 Q. Okay. Now, this exhibit is the-- these are actually sort  
11 of reversed. This is the first auction, isn't it, or is this  
12 the second auction?

13 A. 069 would be the second auction.

14 Q. That's the second auction?

15 A. Yes.

16 Q. So this is the second auction.

17 So in auction number one, which took place in January  
18 of 2006, he sold 4,200 bottles of wine?

19 A. That's correct.

20 Q. And in auction number --

21 A. Or thereabouts.

22 Q. Excuse me?

23 A. Or thereabouts. That's what was offered. Sorry about  
24 that.

25 Q. But in that neighborhood?

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DCABKUR6 Hardy - cross

1 A. That's correct, yes.

2 Q. Okay. And then, when we get around to October, about nine  
3 months later, there's another sale and this time he consigns  
4 almost eight thousand bottles of wine. Is that right?

5 A. That's correct.

6 Q. So over a period of about nine months, he sells over 12,000  
7 bottles of wine. Is that right?

8 A. Yeah, I could see that that would be fair. I'd have to add  
9 up all of the numbers, but that would be fair.

10 Q. We're over four thousand in that number and we're just  
11 under eight thousand in this one. Is that fair?

12 A. That's fair.

13 Q. That's a lot of wine.

14 A. It's a lot of wine.

15 Q. What do you think we've got on this table here, about 15 or  
16 20?

17 THE COURT: You mean bottles?

18 MR. MOONEY: Bottles.

19 THE COURT: We can count them.

20 MR. MOONEY: Yes. Okay.

21 Q. Now, when you were getting ready to do an auction, is it  
22 normal for the person who's consigning--

23 MR. MOONEY: And you can take this one down, the  
24 exhibit.

25 Q. Is it normal for the person who's consigning the wine, or

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DCABKUR6 Hardy - cross

- 1 whatever the property is, to be interested in getting a good  
2 price at auction?  
3 A. Of course.  
4 Q. Is it normal for the person who is consigning the property  
5 for the auction to want the catalog to put forward the best  
6 foot?  
7 A. Of course.  
8 Q. But, now, Mr. Kapon-- what is the proper pronunciation?  
9 A. Kapon.  
10 Q. Okay. Mr. Kapon is experienced at putting these catalogs  
11 together because he knows the customers. Is that right?  
12 A. Because he knows the?  
13 Q. He knows who your customers are. He knows what's going to  
14 catch them.  
15 A. Well, I think the wines do speak for themselves for the  
16 most part, but in terms of putting catalogs together, he's very  
17 much responsible for that, yes.  
18 Q. And so he's going to pretty much figure out how the catalog  
19 works out, but he's certainly going to talk to the consigner  
20 because they have a big interest in it?  
21 A. Typically, yes.  
22 Q. And then, one of the things that would often happen with  
23 regards to particularly big consignments of wine is that some  
24 of it would get tasted. Is that right?  
25 A. Prior to the sale or?

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DCABKUR6 Hardy - cross

1 Q. Prior to the sale.

2 A. Yes.

3 Q. But even prior-- let's go back even before that.

4 Even before you get into these sales, you learn that

5 Mr. Kurniawan was somebody who would do tastings for people.

6 Is that right?

7 A. I don't know whether he would do tastings for people, but

8 he definitely was very generous with his bottles and poured

9 them I'm sure on a number of occasions. I recall a great

10 number of occasions that he poured wines for me and for our

11 staff.

12 Q. If he got invited to come someplace, you could count on him

13 to bring bottles. Right?

14 A. I don't ever-- I've never known him not to bring a bottle,

15 yes.

16 Q. And that did help his popularity a little bit with other

17 people because he'd bring these wines that people wanted to

18 taste?

19 A. I'm sure it did, yes.

20 Q. And he was quite a bit younger than most of these other

21 gentlemen we've talked about, isn't he?

22 A. Yes.

23 Q. I mean, Mr. Koch is an older gentleman?

24 A. I know that he's older than Mr. Kurniawan, yes.

25 Q. And Mr. Fascitelli is certainly an older gentleman?

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DCABKUR6 Hardy - cross

1 A. Older than Mr. Kurniawan, yes.

2 Q. They're going to be closer to my age probably than his age.  
3 Isn't that right?

4 A. I don't know your age, but older than Mr. Kurniawan.

5 Q. Okay. I mean, just based on what you visually see in  
6 people, you knew that they were older than he was?

7 A. Yes.

8 Q. And Mr. Stott's older?

9 A. Yes.

10 Q. These are all established business people, are they not?

11 A. Yes.

12 Q. And in some cases, people that they've made their money and  
13 they're in a more relaxed sort of state of things now?

14 A. Well, I don't know how relaxed they are, but they've  
15 definitely made enough money.

16 Q. Very fair.

17 So one way that Rudy could get invited places was by  
18 bringing wine. Right?

19 A. I'm sure, yes.

20 Q. And people knew if you invite Rudy, he'll bring some good  
21 wine?

22 A. That was my understanding.

23 Q. And then, after he had been doing all of this buying and  
24 accumulating all of this wine, he starts saying, okay, we need  
25 to sell some. And you get into the first part of 2006 and you

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DCABKUR6

Hardy - cross

1 get into that first auction of 2006, which is The Cellar I  
2 auction.

3 Did they do some tastings before that auction?

4 A. Do you mean did Rudy host tastings?

5 Q. Did he make wines available for people to taste?

6 A. Yes.

7 Q. And, in fact, wasn't Mr. Kapon involved in picking the  
8 wines that would be tasted?

9 A. I would imagine he would be, yes.

10 Q. So the wines would be shipped out, you're getting things  
11 ready. If you've got a case of wine, you might pull one of  
12 those bottles out and say, Let's open one of these?

13 A. Well, we probably wouldn't break a case, but there would be  
14 something indicative of the seller, the provenance, things like  
15 that.

16 Q. And you don't know of any circumstance or any situation  
17 when Mr. Kapon said, Well, let's taste this one and Rudy said,  
18 No, no, no, don't taste that one, taste this one instead?

19 A. Not to my knowledge.

20 Q. And for the most part, when people came to the tastings and  
21 tasted the wines-- after all, this stuff is supposed to be  
22 drunk, isn't it?

23 A. That's why it's made.

24 Q. Everything that's in here, we hope, is a biological  
25 product. Right?

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DCABKUR6 Hardy - cross

- 1 A. I think everybody would hope that, yes.  
2 Q. And what's happening, even right now as we sit and we watch  
3 this, every one of these is just breaking down and decomposing,  
4 a tiny little bit, but even as we stand here looking at it.  
5 Right?  
6 A. I think that's just the natural process of aging.  
7 Q. And wine is one of those products that takes a while to get  
8 to its best part. Right? There's early versions of wine where  
9 maybe you don't want to taste it, it's not ready yet? It needs  
10 to have that aging process to come into its own?  
11 A. Some wines do, yes.  
12 Q. And then those wines that need the aging process are going  
13 to have a period of time where they're at their peak and best  
14 to be drunk?  
15 A. I think that every wine does have a peak, yes.  
16 Q. And then there's going to be a period of time when they're  
17 going to start to become not really drinkable?  
18 A. It would depend greatly on the wine, but, yes, I'm sure.  
19 Q. While we're here, a lot of these bottles have this foil  
20 around the top. What's this called around the top, when you do  
21 that with the foil or with the wax?  
22 A. That's just a capsule.  
23 Q. That's called a capsule?  
24 A. Yes.  
25 Q. And I see that a number of these have been cut.

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DCABKUR6 Hardy - cross

- 1 A. Yes, it looks that way.  
2 Q. What's the purpose of doing that?  
3 A. People cut the capsules to get a better view of the cork.  
4 Q. And an inspector, somebody that's trying to authenticate a  
5 wine, might do that to look at it?  
6 A. Sure.  
7 Q. And to help try to figure out if there's questions with the  
8 wine?  
9 A. Sure.  
10 Q. Because as we see with this one, when the capsule's cut,  
11 and this is Exhibit 7.8, with that cut capsule, we can now get  
12 a pretty good look at the cork?  
13 A. Much better view, yes.  
14 Q. And if we compare it instead to one like 8.34, here, it's  
15 pretty hard to see the cork?  
16 A. Impossible.  
17 Q. I mean, we can look up the bottom, but we can't see any  
18 markings on it. Right?  
19 A. That's right.  
20 Q. All right. So this cutting of the capsule then is  
21 something that might be done by somebody trying to authenticate  
22 the wine?  
23 A. Sure.  
24 Q. Do you know if these capsules were in this cut condition at  
25 the point in time that they were sold or is that something that

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DCABKUR6 Hardy - cross

1 happened to them later?

2 A. I don't know.

3 Q. So it may be a mix. Some of them may have been that way  
4 and some of them may not. Is that fair?

5 A. I'm not certain, but, yes, that's right.

6 Q. One with a cut capsule like that would not prevent that  
7 from being sold at auction, would it?

8 A. No, it would not prevent it.

9 Q. Because the seal still otherwise appears to be good?

10 A. That's correct.

11 Q. And we want the seal to be good because we want to protect  
12 what's inside. Right?

13 A. That's the goal.

14 Q. Okay. So, for example, if you look at 8.22, what's wrong  
15 with that?

16 A. It looks like it's seeping slightly.

17 Q. The wine's leaking out?

18 A. That's right.

19 MR. MOONEY: Your Honor, may I show the jury?

20 Q. What's wrong with that?

21 A. It would mean that there's something possibly wrong with  
22 the cork and they would obviously-- or not obvious, but it  
23 would also mean that there's air that's being allowed into the  
24 wine and it would age faster.

25 Q. The air getting in, the more air that gets in, the more the

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DCABKUR6 Hardy - cross

1 integrity of what's inside there is--

2 MR. FACCIPONTI: Objection; relevance. He's not an  
3 expert on this.

4 THE COURT: I'll allow it.

5 Q. You don't know if any of those bottles were leaking at the  
6 time that you sold it, do you?

7 A. I don't know.

8 Q. Would you normally not want to sell a bottle that's  
9 leaking?

10 A. Normally, no.

11 Q. You said that in your experience, Rudy was somebody that  
12 had a very, very good palate. Is that right?

13 A. That's my experience, yes.

14 Q. And everybody's a little bit different in terms of how good  
15 they are at being able to taste something like this and tell  
16 you about it. Is that right?

17 A. Yeah, everybody's different.

18 Q. What's a blind tasting?

19 A. A blind tasting is when somebody tries a wine without  
20 knowing really anything about the wine: Where it came from,  
21 what vintage it was, et cetera.

22 Q. So instead of messing with one of these, if we went back  
23 into the box someplace and pulled another wine out and opened  
24 that wine up and put it in little glasses and gave a sip to all  
25 of the members of the jury without telling them anything more,

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DCABKUR6 Hardy - cross

1 would that be a blind-- at least the first step of a blind  
2 tasting?  
3 A. Sure.  
4 Q. And then, after we did that, what we would want them to do  
5 is to try to sort of figure out from what they've tasted what  
6 it was that they tasted. Is that right?  
7 A. To describe what they're experiencing, yes.  
8 Q. And you get to smell it and you get to look at it and then  
9 you get to put a little in your mouth and move it around and  
10 see if you can figure it out?  
11 A. That would be one way to taste, for sure.  
12 Q. And there are people who are very good at that and there  
13 are other people who haven't got a clue. Is that fair?  
14 A. That's fair.  
15 Q. Okay. And Rudy was one of those people who was very, very  
16 good at that?  
17 A. Yes.  
18 Q. Natural talent, perhaps?  
19 A. In my experience, yeah.  
20 Q. Even for a very young man.  
21 And you understood, when you first met him back in  
22 2002 or 2003 and he first came in and started buying, you  
23 understood back then, at that period of time, that he'd  
24 really only been on the wine scene for a year or two. Is that  
25 right?

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DCABKUR6 Hardy - cross

- 1 A. Only to my knowledge, yes.  
2 Q. So all of the knowledge that he'd acquired had to have come  
3 from that very brief period of time?  
4 A. I don't know whether it came from a longer period of time.  
5 I first met him, as I mentioned, at the end of 2001 or so and  
6 he seemed to be quite experienced.  
7 Q. In 2006, when you did the first sale, The Cellar I sale,  
8 the first auction of 2006, and the 4,200-some-odd bottles of  
9 wine were put up by Mr. Kurniawan, following what's your  
10 standard practice, it appears that he received advances. Is  
11 that correct?  
12 A. He received advances.  
13 Q. He received advances.  
14 A. Yes.  
15 Q. And I think you told us that's pretty normal?  
16 A. I wouldn't say it's normal. It happens on occasion with  
17 larger consignments, that we can help secure them.  
18 Q. 4,200 bottles is a lot of wine.  
19 A. Yes, it is.  
20 Q. Made for a really big auction.  
21 A. Made for a very big auction, yes.  
22 Q. And you guys are in the business of having an auction and  
23 selling the wine.  
24 A. That's what we do.  
25 Q. And if Acker Merrall doesn't have the cash on hand to make

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DCABKUR6 Hardy - cross

1 the advances, it can go to some of its good customers and have  
2 them put up money. Basically fund the advance. Right?

3 A. I mean, we have been known, but we can go to banks as well,  
4 yes.

5 Q. All right. And, in fact, when we looked at the exhibit,  
6 when we looked at 15-1, it looked like perhaps Bob and Roy had  
7 been the people who had funded the advances, didn't it?

8 A. It looks like they had funded an advance. I don't know  
9 whether it was all of the advance. I don't know the amounts.

10 Q. But at least something, at least part of the advance?

11 A. Sure, something, yes.

12 Q. So at that point in time, we have a big sale and a fair  
13 amount of money comes in. And then, while you're having your  
14 other seven sales during the course-- or eight sales during the  
15 course of the year-- it was seven, yes-- we get up then to the  
16 ninth sale, which is in October, and then that's going to be  
17 Cellar II?

18 A. That's right.

19 Q. And we would have expected that there were advances that  
20 were given in anticipation of that. In fact, it looks like  
21 that's the case from the documents, doesn't it?

22 A. That's correct.

23 Q. And at that sale now we have almost 12,000 bottles that he  
24 sells.

25 Now, it would be relatively normal for him to think

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DCABKUR6 Hardy - cross

1 about the relationship with you guys as one where he's provided  
2 what's going to be sold and what he's getting is just part of  
3 the sale. Right?

4 MR. FACCIPONTI: Objection.

5 THE COURT: I'll allow it.

6 A. What he's getting in terms of?

7 Q. What he's getting in advance of the sale is part of what's  
8 coming from the sale?

9 A. Well, that's the hope.

10 MR. FACCIPONTI: Objection, your Honor.

11 THE COURT: I'll allow it.

12 Q. And then, after the October of 2006 sale, we go around and  
13 eventually we get to a sale in 2008. Is that right?

14 A. A sale that --

15 Q. Another auction.

16 A. Yes, sure.

17 Q. It gets scheduled for him in 2008.

18 A. Yes.

19 Q. And have you been communicating with Rudy at all during  
20 2007 and heading up into 2008 about what his financial  
21 condition was like?

22 A. No. No, I hadn't.

23 Q. And do you know if it was anticipated that there would be  
24 another sale or was the ones back in 2006 going to be the only  
25 ones?

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DCABKUR6 Hardy - cross

1 A. I don't think that there was anything that I was aware of  
2 that indicated that he definitely would be selling at a certain  
3 point after the second sale or not.

4 Q. He hadn't stopped buying, had he?

5 A. No.

6 Q. He was still buying?

7 A. Yes.

8 Q. And at one point in time, hadn't you heard that his cellar  
9 was 30,000 bottles?

10 A. I don't remember hearing an exact figure.

11 Q. So even after he finishes the sale in October of 2006, he's  
12 still buying and he's still got wine coming in so he's in a  
13 logical position to start thinking about doing another auction  
14 at some point, isn't he?

15 MR. FACCIPONTI: Objection.

16 THE COURT: Overruled.

17 A. With Acker Merrall? I'm sure.

18 Q. And John Kapon would certainly-- you guys were in the  
19 business of having auctions. You would want to have an  
20 auction. Right?

21 A. I'm sorry, we would?

22 Q. You would want to have an auction. Right?

23 A. We always want to have an auction, yes.

24 Q. Okay. In fact, even during this period of time, you've  
25 got-- you are still continuing to have wines that he's bought

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DCABKUR6 Hardy - cross

1 and wines that are coming in that are sitting there in storage  
2 that you've got?

3 THE COURT: You know what, Mr. Mooney, let's take a  
4 five-minute break. Is that okay?

5 MR. MOONEY: Thank you, your Honor.

6 (Jury excused)

7 (Recess)

8 (In open court; jury not present)

9 THE COURT: Two things. If any of you all want to  
10 take a closer look at this table, you could do eight at a time  
11 or something like that, just briefly while the jury's out. I  
12 don't have a problem with that. Maybe in two shifts.

13 (Recess)

14 THE COURT: Mr. Mooney, do you have much more to go?

15 MR. MOONEY: Pardon, your Honor?

16 THE COURT: I said, do you have much more to go?

17 MR. MOONEY: Not a great deal. At least I hope not.

18 I need just a minute.

19 THE COURT: Okay. You've got to do it quick.

20 (Pause)

21 (In open court; jury present)

22 THE DEPUTY CLERK: Sir, I remind you, you're still  
23 under oath.

24 THE WITNESS: Thank you.

25 THE COURT: Okay, Mr. Mooney. Go ahead.

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DCABKUR6 Hardy - cross

1 MR. MOONEY: Thank you, your Honor.

2 BY MR. MOONEY:

3 Q. Mr. Hardy, before we broke, we moved out of the 2006  
4 auctions and moved into the 2009.

5 I take it that Acker continued to be active within the  
6 wine auction business in 2007, as well, and also into 2008. Is  
7 that fair?

8 A. Yes.

9 Q. And, in fact, the market position of Acker was increasing  
10 vis-a-vis the other people who were in the fine wine auction  
11 business over that period of time, was it not?

12 A. That's correct.

13 Q. So The Cellar I had been a successful auction, had it not?

14 A. Yes, it was.

15 Q. And Cellar II had been a successful auction. So there was  
16 no reason to suspect that there would be a problem with an  
17 auction that was then getting scheduled for 2008, is there?

18 A. I don't really...

19 Q. I mean, John Kapon wasn't expecting that anything different  
20 would happen with regards to an auction of a consignment for  
21 Rudy in 2008 than had happened in the first auction of 2006 or  
22 the ninth auction of 2006, when he put the wines in?

23 A. Right, no.

24 Q. So do you know what auction number the April 2008 auction  
25 was going to be?

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DCABKUR6 Hardy - cross

- 1 A. Was going to be? At which time?  
2 Q. The auction that Mr. Kurniawan was putting wines in for  
3 2008.  
4 A. Okay.  
5 Q. The one in April. What auction number was that?  
6 A. That auction number was 08-4.  
7 Q. So there had already been three auctions of wine at Acker  
8 Merrall prior to that in that year?  
9 A. Three live auctions, yes.  
10 Q. Yes. So this would have been the fourth auction?  
11 A. The fourth New York live auction, yes.  
12 Q. Okay. Meanwhile you're doing other sorts of internet sales  
13 and things of that nature?  
14 A. Things of that nature, yes.  
15 Q. And Mr. Kurniawan consigned wines for this sale that were  
16 going to take place, this fourth sale of 2008. Is that right?  
17 A. That's correct.  
18 Q. And in consigning wines, it was pretty much the same  
19 practice that had taken place previously with regards to the  
20 two auctions that we talked about in 2006. Is that right?  
21 A. Same process, yes.  
22 Q. And one of the things that happens when the wines come in,  
23 of course, is that you as the auction house take a look at  
24 them. Right?  
25 A. We do take a look at the bottles, yes.

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DCABKUR6 Hardy - cross

- 1 Q. I mean, you have an "as is" clause in your sales to  
2 customers. Right?
- 3 A. I would have to refresh my memory of exactly what it says,  
4 but, yeah, pretty much.
- 5 Q. But that doesn't mean you want to sell them something that  
6 they're going to be unhappy about, because you want good  
7 customers?
- 8 A. Our entire business is based on client relations and  
9 customer service.
- 10 Q. So you would never purposefully sell a bottle of wine to a  
11 customer that you knew was bad?
- 12 A. That's correct.
- 13 Q. And when I say "bad," either that it wasn't what it  
14 represented to be on the bottle or that it had somehow been  
15 spoiled.
- 16 A. That's correct.
- 17 Q. And your customers aren't going to want to buy something  
18 that's bad?
- 19 A. No. I wouldn't imagine anybody wants to.
- 20 Q. And the consigners that you work with, you're expecting  
21 that they're not going to want to sell something that's bad?
- 22 A. Yeah, they -- in a matter of being a consigner, they  
23 warrant that what they're giving to us to sell is good,  
24 legitimate wines, yes.
- 25 Q. And as we get up to April of 2008, suddenly there were

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DCABKUR6 Hardy - cross

- 1 problems with auction four of 2008, weren't there?  
2 A. There were problems with auction four of 2008, yes.  
3 Q. And that started shortly after the catalog had gone out?  
4 A. I don't exactly remember when it happened, but I believe it  
5 was after the catalog had gone out, yes.  
6 Q. And even before the sale ever started, there were people  
7 saying there's problems with some of these wines that have been  
8 put on consignment here?  
9 A. That's correct.  
10 Q. And it included virtually all of one vineyard of wine, did  
11 it not?  
12 A. To my recollection, it was just one vineyard, and that was  
13 the Ponsot vineyard.  
14 Q. That's the Ponsot vineyard?  
15 A. Well, Domaine Ponsot.  
16 Q. Domaine Ponsot.  
17 A. Yes.  
18 Q. And ultimately none of that wine was put up for sale at  
19 auction. Right?  
20 A. It was immediately removed, yes.  
21 Q. So you pulled it all back.  
22 A. That's correct.  
23 Q. And that meant Acker Merrall couldn't sell it?  
24 A. We had no interest in selling it.  
25 Q. And Mr. Kurniawan agreed that it should be pulled?

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DCABKUR6

Hardy - cross

1 A. I don't know exactly the arrangements, but we were not  
2 willing to sell it.

3 Q. And that meant that any advances that had been given to  
4 Mr. Kurniawan would not be paid for out of the auctions. Is  
5 that right?

6 A. Well, no, there were other bottles that he had consigned  
7 during that sale.

8 Q. So some of it got paid?

9 A. I don't know whether there were specifically advances on  
10 084. I'd have to take a look back at our records, but there  
11 were certain bottles that remained in the auction.

12 Q. What we do know is that at least by the middle of the  
13 summer of 2008, you're now starting to look-- you, Acker  
14 Merrall, not necessarily you, Mr. Hardy-- but your employer,  
15 your company, is starting to look to Mr. Kurniawan and trying  
16 to find out other ways to provide some security, because we've  
17 got this wine now that isn't usable anymore, isn't good. Is  
18 that right?

19 A. Well, I don't know what amount of wine, if we're talking  
20 about the Ponsot wines, but based on the dates on the other  
21 documents, the agreements that we looked at earlier, yes.

22 Q. It ties right in, doesn't it?

23 A. It does.

24 Q. The auction was supposed to be in April, right, and the  
25 security documents start to happen in May?

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DCABKUR6

Hardy - cross

1 A. I don't know whether it ties right in to that time period  
2 or whether something was going on before then, but the Ponsot  
3 bottles were definitely removed from the sale.

4 Q. And then, by the time you get up to November, you're  
5 talking about Mr. Kurniawan agreeing to a confession of  
6 judgment, that he owes you a bunch of money. Right?

7 A. I did see the confession of judgment, yes.

8 Q. And some of that is for money for wines that he bought and  
9 didn't pay for?

10 A. Yes.

11 Q. Some of it is for what appear to be advances or something  
12 that were given, but it's hard to tell from this document,  
13 isn't it?

14 A. Which document?

15 Q. From the--

16 MR. FACCIPONTI: Objection.

17 THE COURT: I'll allow it.

18 Q. It's hard to tell from this confession of judgment exactly  
19 what everything was that -- or what he owed for, isn't it?

20 A. I didn't have anything to do with the confession of  
21 judgment, putting it together. I could review it if you'd  
22 like.

23 Q. Sure.

24 So that wasn't your job, to go through and say, okay,  
25 this is what-- this is what he owed for?

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DCABKUR6 Hardy - cross

1 A. No, that's not my job.

2 Q. So when we see 4.9 or \$4,945,000 in there, you don't  
3 necessarily know how that came together or what that is, just  
4 that's what he owed?

5 A. I could look back at our records and associate the  
6 different amounts, but I don't know off the top of my head.

7 Q. And those records aren't here with you today? You'd have  
8 to go back and do some research, wouldn't you?

9 A. I don't know what's been brought here today, but nothing  
10 from what I've seen.

11 Q. All right. But at least prior to all of this happening  
12 with regards to the April of 2008 auction, there was no reason  
13 for Mr. Kurniawan or anybody else to believe that the fourth  
14 auction of 2008 would really be any different than the ninth  
15 auction of 2006 or the first auction of 2006, was there?

16 A. No.

17 MR. FACCIPONTI: Objection.

18 A. You're right.

19 THE COURT: Sustained.

20 Q. And the first inkling of any difficulties with this auction  
21 in April of 2008 happened within weeks of the time of the  
22 auction. Isn't that correct?

23 THE COURT: You mean first inkling that the witness  
24 had?

25 Q. The first thing that you hear about anything at Acker

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DCABKUR6 Hardy - cross

1 Merrall that there's a problem coming up in the auction, the  
2 first thing you hear is only weeks ahead of the auction. Is  
3 that right?

4 A. For this particular sale. Speaking of this particular  
5 sale, yes.

6 Q. That particular sale.

7 A. Yes.

8 Q. So as of December of 2007, there's no inkling that there's  
9 going to be a problem?

10 A. Not with this sale, no.

11 Q. And as of January of 2008, there's no inkling that there's  
12 going to be a problem?

13 A. Not with this sale.

14 MR. MOONEY: May I have one moment, your Honor?

15 THE COURT: Yes.

16 (Pause)

17 Q. Is there a warehouse called LLK Warehouse that is connected  
18 or under control of Acker Merrall?

19 A. No. No longer, no.

20 Q. Was it back in this period of time, 2006 to 2008?

21 A. It was a separate storage company that Acker Merrall &  
22 Condit had stored wines at.

23 Q. And thousands of wines that had been purchased or that  
24 belonged to Mr. Kurniawan were stored in LLK, were they not?

25 A. At what period of time?

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DCABKUR6 Hardy - cross

1 Q. During the period of time between 2006 and up to  
2 2008/2009.

3 A. Yeah, I mean, I don't know the exact number, but quite a  
4 number, yes.

5 MR. MOONEY: No more questions, your Honor. Thank  
6 you.

7 THE COURT: Thank you.  
8 Any redirect?

9 MR. FACCIPONTI: Very briefly, your Honor.

10 THE COURT: Go ahead.

11 REDIRECT EXAMINATION

12 BY MR. FACCIPONTI:

13 Q. Mr. Hernandez, at any time in your employment at Acker  
14 Merrall & Condit, was it part of your responsibilities to make  
15 loans to Acker Merrall's clients?

16 A. My responsibilities? No.

17 Q. Were you involved in the making of any loans or advances to  
18 Mr. Kurniawan?

19 A. No.

20 Q. Were you aware of the arrangements that Mr. Kurniawan had  
21 made with Acker Merrall for any loans?

22 A. Not with any detail, no.

23 Q. Specifically in 2007 and 2008, were you aware of any of the  
24 arrangements or involved with any of the loans made to  
25 Mr. Kurniawan?

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Hardy - redirect

1 A. No.

2 Q. And as you understand it, if money is advanced to a  
3 client of Acker Merrall, they have to pay that money back.

4 Correct?

5 A. That's correct.

6 Q. So if the wines at auction don't sell, they're responsible  
7 for paying that money. Right?

8 A. Absolutely.

9 Q. All right. Do you remember Mr. Mooney asked you some  
10 questions about the defendant's state of mind, what he was  
11 thinking at certain points in time? Do you have any basis to  
12 know what Mr. Kurniawan was thinking at any given time?

13 A. No, I have no basis other than he wanted to sell wine.

14 Q. Do you remember Mr. Mooney asked you some questions about  
15 whether wine was made for drinking or for any other purpose?

16 Do you remember those?

17 A. I remember the line of questioning.

18 Q. Yes. Okay.

19 Isn't it true that most of or many of Acker's clients  
20 purchased wine as an investment?

21 A. Many do, yes.

22 Q. And isn't it the case that the price of rare and fine wines  
23 over the past decade has increased substantially?

24 A. It has.

25 MR. FACCIPONTI: We have no further questions, your

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DCABKUR6 Hardy - redirect

1 Honor.

2 THE COURT: All right. We'll excuse the witness and  
3 ask for the next government's witness.

4 (Witness excused)

5 MR. HERNANDEZ: The government calls James Wynne.

6 (Continued on next page)

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Dcadkur7 Wynne - direct

1 MR. HERNANDEZ: The government calls James Wynne.

2 THE CLERK: Sir, please remain standing for a moment.

3 And could you raise your right hand, please.

4 JAMES PATRICK WYNNE,

5 called as a witness by the government,

6 having been duly sworn, testified as follows:

7 THE CLERK: Could you please state your full name for  
8 the record?

9 THE WITNESS: My name is James Patrick Wynne, spelled  
10 W-y-n-n-e.

11 THE CLERK: Thank you. Sir, you may be seated.

12 DIRECT EXAMINATION

13 BY MR. HERNANDEZ:

14 Q. Agent Wynne, could you tell us what you do for a living?

15 A. I'm a special agent with the Federal Bureau of  
16 Investigation.

17 Q. Where is your office?

18 A. Kew Gardens, Queens.

19 Q. How long have you been a special agent with the FBI?

20 A. I joined the FBI on November 27th, 1983.

21 Q. Could you tell us what the duties and responsibilities of a  
22 special agent are?

23 A. FBI agents are responsible for investigating violations of  
24 federal law.

25 Q. And in your career with the FBI, have you specialized in

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1 any particular kinds of investigations or cases?

2 A. Yes, I have. Since January 1987, I've specialized in  
3 investigations of art, antique and collectible theft, and also  
4 cases involving fraud with respect to art and antiques and  
5 collectibles.

6 Q. I want to direct your attention to the morning of March 8,  
7 2012. Do you remember that date?

8 A. Yes, I do.

9 Q. Where were you?

10 A. I was in Arcadia, California, to participate in the  
11 execution of an arrest warrant issued by a U.S. Magistrate  
12 Judge in the Southern District of New York against Rudy  
13 Kurniawan.

14 Q. Did you in fact arrest Rudy Kurniawan that day?

15 A. Yes, sir.

16 Q. And do you see Rudy Kurniawan sitting here in the courtroom  
17 today?

18 A. Yes, sir, I do.

19 Q. Could you identify him by telling us where he is sitting  
20 and identifying an article of clothing?

21 A. He's sitting in the second row of the bench, wearing a dark  
22 suit and a gray or white shirt with a dark tie and black  
23 glasses.

24 MR. HERNANDEZ: Your Honor, we ask that the record  
25 reflect that Agent Wynne has identified the defendant Rudy

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1 Kurniawan.

2 MR. MOONEY: No objection.

3 THE COURT: The record will so reflect.

4 BY MR. HERNANDEZ:

5 Q. And Agent Wynne, the arrest that you made, was that at 9638  
6 East Naomi Avenue in Arcadia, California?

7 A. Yes, it was.

8 Q. Now, the day of the arrest, was there anyone else in the  
9 house?

10 A. Yes. Mr. Kurniawan's mother Lenywati Tan was in the house.

11 Q. Can you spell that name for us?

12 A. L-e-n-y-w-a-t-i. Second name T-a-n.

13 Q. And did you speak to Ms. Tan that morning?

14 A. Yes, I did.

15 Q. Did you speak to her in English?

16 A. No. We had an interpreter there who spoke Mandarin and he  
17 assisted in the interview.

18 Q. Ms. Tan doesn't speak English?

19 A. That's correct.

20 Q. Was there anyone else in the house?

21 A. Mr. Kurniawan was at the house.

22 Q. Anyone else?

23 A. No, sir.

24 Q. Now, did the FBI get a search warrant for Rudy Kurniawan's  
25 home in Arcadia, that day?

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Dcadkur7

Wynne - direct

1 A. Yes, sir.

2 Q. Was that issued by a Magistrate Judge in Los Angeles?

3 A. Yes, sir.

4 Q. Did you and other FBI agents execute the search warrant  
5 that day?

6 A. Yes, sir.

7 Q. And can you give a general description of the kinds of  
8 evidence you were looking for pursuant to the search warrant?

9 A. We were looking for evidence of counterfeiting activities  
10 of fine wine. So we were looking for corks, capsules, labels,  
11 devices to extract corks, devices to rebottle, documents  
12 respecting wine transactions, and/or provenance.

13 Q. Did you find any evidence of those things in Rudy  
14 Kurniawan's home?

15 A. Yes, we did.

16 Q. Now, do you know whether the FBI took photographs of Rudy  
17 Kurniawan's home the day of the arrest?

18 A. Yes, we did.

19 MR. HERNANDEZ: Your Honor, may I approach?

20 THE COURT: Yes.

21 Q. I'm handing you a group of exhibits that's government  
22 Exhibit 2-1 through 2-25.

23 Could you take a moment to look through those  
24 photographs.

25 (Pause)

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1 A. I'm finished.

2 Q. Do you recognize those photographs, Agent Wynne?

3 A. Yes, I do.

4 Q. How do you recognize them?

5 A. They were photographs taken at the search of

6 Mr. Kurniawan's residence on March 8, 2011.

7 Q. Are those photos fair and accurate depictions of what Rudy  
8 Kurniawan's home looked like on the date of the arrest?

9 A. Yes, sir.

10 MR. HERNANDEZ: Your Honor, the government would offer  
11 into evidence Government Exhibits 2-1 through 2-13.

12 THE COURT: I will allow them.

13 (Government's Exhibits 2-1 through 2-13 received in  
14 evidence)

15 MR. HERNANDEZ: Your Honor, if I may, I am going to  
16 ask in a moment Mr. Platt to put up some of those photographs  
17 that relate to the entryway and the kitchen. And then what I  
18 would like to do is try to introduce some physical evidence  
19 from that room, and to do that we need to clear our wine cellar  
20 here. So I don't know if your Honor would be OK with Agent  
21 Roeser secreting those away while we do that.

22 THE COURT: Sure. No problem.

23 MR. HERNANDEZ: Thank you.

24 Your Honor, may we publish 2-1 through 2-13 to the  
25 jury?

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Wynne - direct

1 THE COURT: Yes. Yo can do that on their screens?

2 MR. HERNANDEZ: On the screens would be preferable.

3 It is a better quality image.

4 BY MR. HERNANDEZ:

5 Q. Agent, I am going to ask you a series of questions about  
6 each of these governments exhibits. They are all going to  
7 start off with the same question, for you to tell us what's in  
8 the photograph, what it is that we're looking at, and where in  
9 the home the photograph is from.

10 So starting with Government Exhibit 2-1, can you tell  
11 us what that photograph is?

12 A. Exhibit 2-1 is a view from the front door of the hallway  
13 into Mr. Kurniawan's residence, and it shows boxes and boxes  
14 and crates of wine, wine bottles, wine-related material.

15 Q. OK. That's what all of those boxes are on the right-hand  
16 side stacked up?

17 A. That's correct.

18 THE COURT: Is that the front door to the left in that  
19 picture?

20 THE WITNESS: Yes, your Honor.

21 BY MR. HERNANDEZ:

22 Q. This is the main entrance to the residence?

23 A. This is the main entrance to the residence, yes.

24 Q. All right. Can we see 2-2, Mr. Platt?

25 A. In Exhibit 2-2 is a view, when you come in and look back to

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1 that front door with the wine crates and other paraphernalia  
2 stacked high there against the wall.

3 Q. In the middle of this photograph, Agent Wynne, you see that  
4 there are some wooden boxes stacked up. Do you see those?

5 A. Yes.

6 Q. Are those what is known as original wooden crates?

7 A. Yes, they are.

8 Q. What are those used for?

9 A. Used for shipping cases of wine.

10 THE COURT: And to the right, is that the door now in  
11 its closed position?

12 THE WITNESS: Yes, your Honor.

13 THE COURT: Is that the front door?

14 THE WITNESS: Yes, your Honor.

15 BY MR. HERNANDEZ:

16 Q. So this is the main entrance to the home?

17 A. Yes.

18 Q. Can we look at 2-3, please.

19 A. Exhibit 2-3 is an image of Mr. Kurniawan's kitchen. To the  
20 right corner is a treadmill loaded with bottles, unlabeled.

21 There are bottles on the floor, sitting sort of  
22 center. There are bottles to the right on the counter. There  
23 is a kitchen sink. You can see it in the back. You can see a  
24 little sign that says "E." That was put up by the FBI during  
25 the search to identify the room.

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Wynne - direct

1           And the kitchen window is covered in foil. You can't  
2 see out or in. There are two bottles or three bottles there  
3 waiting right next to the kitchen. And there's a device --

4           THE COURT: I'm sorry. Waiting?

5           THE WITNESS: Waiting next to the sink, rather.

6 Sorry.

7           THE COURT: On the counter next to the sink?

8           THE WITNESS: On the counter next to the sink, yes,  
9 your Honor.

10          And to the right of that is like a drainer, I think,  
11 is what I remember.

12 Q. OK. And the foil that's up against the -- behind the boxes  
13 of the kitchen sink, what is behind that foil?

14 A. That is a window.

15 Q. This is the condition in which you found the kitchen when  
16 you went in on the morning of March 8, 2012, correct?

17 A. That is correct.

18 Q. We have some next photos that are a little bit closer part  
19 of the kitchen. So if you look at 2-4?

20 A. 2-4 is a more close-up image of the sink area. You can see  
21 three bottles sitting there. You can see a bottle in the sink  
22 soaking. You can see that foil covering the window. And you  
23 can see that device or drying piece of equipment with a funnel  
24 in the background and some other devices that there are some  
25 better pictures of laying there.

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Dcadkur7

Wynne - direct

1 Q. All right. Am I correct that the three bottles that are  
2 standing up still had labels on them?

3 A. That's correct.

4 Q. And the sink, what we are seeing is there is water in the  
5 sink. That's why that looks like water. Is that what that  
6 was?

7 A. That is correct. And there is a bottle sitting in there in  
8 this image.

9 Q. Can we go to the next photograph, 2-5?

10 A. 2-5 is an image looking down on the sink filled with water  
11 with three bottles sitting in the sink. And you can see to the  
12 left some image -- some darker images of labels that have come  
13 off bottles and are sitting in the bottom of the sink.

14 Q. So on our photograph there is a circular kind of like a  
15 bright light. Is what you are referring to, the labels, just  
16 to the bottom left of that kind of light board in the  
17 photograph?

18 A. That's correct.

19 Q. Can we look at Government Exhibit 2-6?

20 A. 2-6 is an image of that straining or drying area. And you  
21 can see this device partially red in color. It looks like big  
22 pliers or a big mechanical device. You can see a green funnel.  
23 And you can see a small cork extraction device that's used to  
24 extract corks without piercing the actual cork.

25 Q. OK. The last thing you are talking about, the corks

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Dcadkur7 Wynne - direct

1 extractor, I think sometimes they are called Ah-So, A-h S-o,  
2 removers. Have you ever heard of that before?

3 A. Yes, sir, I have.

4 Q. What you are referring to is the device that has a handle  
5 and the two tongs?

6 A. Yes.

7 Q. All right. Can we look at Government Exhibit 2-7?

8 THE COURT: That would be in the upper right of this  
9 2-6 or --

10 MR. HERNANDEZ: In the upper right. Thank you, your  
11 Honor.

12 Q. You testified a little bit earlier about a partial image of  
13 the treadmill from one of the previous photographs. What are  
14 we looking at in 2-7?

15 A. 2-7 is an image looking down on the treadmill. And laying  
16 on the bed of the treadmill are a number of bottles, over 15 at  
17 least in a quick count here, all unlabeled, laying there,  
18 corked but no labels. No main labels.

19 Q. Look at Government Exhibit 2-8.

20 A. Exhibit 2-8 is an image looking down on a drawer in the  
21 kitchen containing all sorts of different labels, both main,  
22 front labels for bottles, and back labels for bottles as well.

23 Q. Can we look at Government Exhibit 2-9?

24 A. Exhibit 2-9 is an image of a drawer from the kitchen pulled  
25 out showing capsules, metal capsules that are sitting in the

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Dcadkur7

Wynne - direct

1 drawer that had been removed from bottles, along with other  
2 supplies, and, for example, a stamp for a serial number to the  
3 right. It reads 36,569, if my eyes are right. Used to stamp  
4 serial numbers on bottles, specifically Mouton Rothschild.  
5 There are other supplies in the drawer as well. There are some  
6 corks.

7 MR. HERNANDEZ: And, Mr. Platt, can we look at  
8 Government Exhibit 2-10.

9 A. 2-10 is an image of bottles sitting on the counter in his  
10 kitchen. All opened.

11 Q. All right. Agent Wynne, there are some other witnesses  
12 during this trial that will testify about those particular ones  
13 so I am not going to ask you to discuss what those wines are.

14 But if we can look at 2-11.

15 A. Exhibit 11 is a similar photograph of additional wines  
16 sitting on the counter in the kitchen. And as you can see,  
17 they are all -- they have been opened and sort of loosely  
18 corked.

19 Q. And we can move to Government Exhibit 2-12.

20 A. 2-12 is an additional photograph of bottles on that kitchen  
21 counter.

22 Q. And I'll ask you now, because I think it is visible in the  
23 photographs, the selection of bottles in the kitchen counter  
24 that we can see in this photograph and the previous two  
25 government exhibits, are they arranged with different vintages

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1 from older wines to much younger wines?

2 A. Yes, they are.

3 Q. And then if we could look at Government Exhibit 2-13.

4 A. This is an image of objects in a counter that has supplies,  
5 including a number of glues, adhesives, tapes that were in the  
6 kitchen.

7 Q. There is a bottle there that says Krylon on it. Do you  
8 know what that is?

9 A. It's a paint, a flat black paint.

10 Q. Is it a spray paint?

11 A. Yes.

12 Q. All right. Thank you. We can take the photographs down  
13 now.

14 Now, Agent Wynne, did you seize the physical evidence  
15 from Rudy Kurniawan's home on March 8, 2012?

16 A. Yes, I did.

17 Q. And after it was seized, what, if anything, did the FBI do  
18 with the evidence?

19 A. The evidence was selected at the scene and it's boxed and  
20 transported to the FBI office, where it's processed, assigned a  
21 number, and then shipped to New York because this is a New York  
22 case. I signed the evidence out in New York. It is in my  
23 custody. It is then used to develop the case.

24 Q. And is that what happened in this particular case?

25 A. Yes.

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1 Q. And to be clear, you were involved in the packaging of the  
2 evidence that was seized at Kurniawan's home?

3 A. Yes, I was.

4 Q. And then you received it from the FBI Los Angeles office  
5 here in New York?

6 A. Yes, sir.

7 Q. All right?

8 MR. HERNANDEZ: Your Honor, may I ask the witness to  
9 step down for the next portion. We have some physical  
10 evidence.

11 THE COURT: Sure.

12 MR. HERNANDEZ: I am going to ask Agent Roeser if we  
13 can have Government Exhibits 1-101 through 1-110, which are in  
14 a box.

15 Q. And, Agent Wynne, I would ask you to look in the box and  
16 tell me if you recognize what those exhibits are.

17 A. These are items marked as exhibits that were seized from  
18 the kitchen area of Mr. Kurniawan's house.

19 MR. HERNANDEZ: Your Honor, we offer government  
20 Exhibits 1-101 through 1-110.

21 THE COURT: I will allow it.

22 (Government's Exhibits 1-101 through 1-110 received in  
23 evidence)

24 MR. HERNANDEZ: And can we publish these to the jury?

25 THE COURT: Yes.

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1 BY MR. HERNANDEZ:

2 Q. Agent Wynne, when you do, could you please just refer to  
3 the exhibit number when you do?

4 A. Exhibit 1-101 is the recorker.

5 Q. Could you show us how this works?

6 A. So the cork is placed in here. It is put on top of the  
7 bottle, and it is inserted into the bottle.

8 Government Exhibit 102 is a funnel and the cork  
9 extraction device.

10 Q. For the record, Agent Wynne, 1-102 is in a plastic bag  
11 that's about 8-and-a-half-by-11, sealed at the top. That's how  
12 it holds both of those exhibits, right?

13 A. That's correct.

14 Q. OK. You don't have to do them in order.

15 A. OK. Government Exhibit 104 are the labels that were in  
16 that drawer. You saw the image of it. It is a '45 Chateau  
17 Mouton Rothschild with a serial number but different than the  
18 one you saw in the photo. 104 are a series of labels.

19 Exhibit No. 106 is a group -- one sample of a group of  
20 glues from the kitchen.

21 Government Exhibit 110, additional labels.

22 Government Exhibit 107, corks.

23 Government Exhibit 109, additional what are called  
24 strip labels.

25 Q. And do you know why they are called strip labels? Because

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1 of the size?

2 A. Because of the small size placed above or below or on the  
3 back of a bottle, above or below the main label.

4 Government Exhibit 105, additional labels.

5 Q. Now, could you pause just for a second for Government  
6 Exhibit 105.

7 Could you open up 105. And there are some labels that  
8 are on yellow paper. Could you move to take those out of the  
9 exhibit.

10 (Pause)

11 Could you show those to the jury and tell them what it  
12 says on those labels.

13 A. These labels say "Reserve Nicolas."

14 Q. N-o-c-a-l-a-s?

15 A. Correct.

16 Q. And do you know what Nicolas is?

17 A. Nicolas was a negotian, which was like a private production  
18 of wine, a company that would produce wine received from the  
19 vineyard, and they would have a business where they would  
20 bottle. And Nicolas was a very famous bottler.

21 These are back labels for Nicolas bottles. It says,  
22 "Ce Vin Doit Etre Decante."

23 Q. Those back labels, they have the word decant in them, is  
24 that right?

25 A. Yes, they do.

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1 MR. HERNANDEZ: OK. Your Honor, can we pass a few of  
2 these around to the jury?

3 THE COURT: Yes.

4 Q. Those labels that are being passed around right now, do  
5 they look new, distressed, or something in between?

6 A. The Nicolas labels look distressed.

7 THE COURT: Is it possible to put one up on the Elmo?

8 MR. HERNANDEZ: Absolutely.

9 THE COURT: So everybody can view it.

10 (Pause)

11 THE CLERK: Mr. Hernandez, do you want to put one up?

12 MR. HERNANDEZ: I do. I just don't want to snatch one  
13 out of anyone's hands. If anyone is done with one, I will put  
14 it up on the Elmo.

15 (Pause)

16 Q. And then are there any other exhibits in this box, Agent  
17 Wynne?

18 A. Yes, there are.

19 Q. Can you tell us what those are?

20 A. Grand Jury -- sorry, Government Exhibit 1-103 are  
21 additional labels.

22 Government Exhibit 1-108, stencils.

23 That's it.

24 Q. OK. I think if we could just return these back to the box.

25 MR. HERNANDEZ: And, your Honor, can we just wait

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1 maybe 30 seconds or a minute or so until the jury is done with  
2 this exhibit and then we will reassemble it?

3 THE COURT: Yes.

4 (Pause)

5 MR. HERNANDEZ: Ms. Murray, could you turn the Elmo  
6 on. We have one other type of label.

7 I'm going to move on, if that is all right, your  
8 Honor?

9 THE COURT: Yes.

10 Q. Agent, what you have in front of you in the box has  
11 Government Exhibits 1-121 through 1-144.

12 Have you seen those exhibits before?

13 A. Yes, sir, I have.

14 Q. Were you personally involved in preparing them?

15 A. Yes, I was.

16 Q. And what are those exhibits, 1-121 through 1-144?

17 A. These are exhibits of items seized from Mr. Kurniawan's  
18 house during the search warrant.

19 MR. HERNANDEZ: The government offers Exhibits 1-121  
20 through 1-144.

21 THE COURT: I will allow it.

22 (Government's Exhibits 1-121 through 1-144 received in  
23 evidence)

24 Q. And, Agent Wynne, the same exercise as before. I am going  
25 to ask you to go through each exhibit, show it to the jury, and

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1 tell them what it is.

2 A. Government Exhibit 1-123 is a bag of corks and capsules.

3 Government Exhibit 1-128 is a bag of stamps of various  
4 wineries in France.

5 Q. Stamps? What do you mean by stamps? Can you describe what  
6 is on there?

7 A. It's a stamp that you use with an ink pad, and the stamp  
8 has the logo of a particular chateau or domaine in France that  
9 creates wine. And the bag is filled with all sorts of  
10 different stamps for domaines and/or chateaus.

11 Q. Do you have an understanding of what those stamps could be  
12 used for?

13 A. I understand that the stamps are used to place a logo on a  
14 cork that could then be inserted in the bottle.

15 Q. And when you say "cork," do you mean a blank cork?

16 A. Yes, sir.

17 Q. All right.

18 MR. HERNANDEZ: And, your Honor, can we pass around a  
19 couple of these stamps?

20 THE COURT: You sure can. You could even pass around  
21 the bag.

22 MR. HERNANDEZ: We'll pass around the bag. That's  
23 fine.

24 Q. What is the next government exhibit you have in your hand?

25 A. Exhibit No. 1-140.

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1 Q. What is that?

2 A. A bag containing labels for Domaine Ponsot for two  
3 different wines that they manufacture, they produce, that you  
4 will hear about and have heard about already.

5 Government Exhibit 1-129 are more of the same kind of  
6 ink stamps.

7 Government Exhibit 1-125 is a bag of corks and  
8 capsules.

9 Exhibit 1-133 are more stamps.

10 Exhibit 1-130 are more stamps.

11 Exhibit 1-126 are four devices to stamp numbers on  
12 paper or on wine labels. They're flexible. The numbers can  
13 change for wines that have serial numbers.

14 Government Exhibit 1-127 is a bag containing vintage  
15 stamps, showing the year of production of a particular wine.

16 Q. Could you read a couple of the examples from the bag, just  
17 from the outside?

18 A. 1959, 1900, 1961, 1956, 1969, 1937, 09 -- this is a serial  
19 number. There are also some serial number stamps in here.  
20 09572.

21 THE COURT: You know what, maybe we will take a minute  
22 and pass some of these bags around, too, so people will get an  
23 idea of what --

24 MR. HERNANDEZ: We will, your Honor.

25 (Pause)

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1 A. Exhibit 1-134 is a bag containing wine labels.

2 THE COURT: Do you want to pass that around.

3 Q. And the exhibit you just passed, handed to the juror to  
4 pass around, do those wine labels look new or used to you?

5 A. They look brand new. They are banded altogether as if they  
6 had been manufactured.

7 Q. All right. There are easily over a hundred in that bag, is  
8 that right?

9 A. That's correct.

10 Q. Now, I'm going to hand you Government Exhibit 1-136. I'm  
11 going to ask you again to describe what it is, but also in this  
12 case tell us what some of the wineries that are included in  
13 this bag of labels are?

14 A. 1-136 has banded labels, again, including labels for  
15 Domaine Roumier, which you will hear about in the case, Chateau  
16 Cheval Blanc.

17 Q. Cheval Blanc, C-h-e-v-a-l B-l-a-n-c?

18 A. Yes.

19 Labels for Richebourg, R-i-c-h-e-b-o-u-r-g. And  
20 stacks of some others that are behind the front pieces.

21 Government Exhibit 1-138 is another bag containing  
22 stacks of labels, all looking brand new, for Chateau Petrus,  
23 P-e-t-r-u-s.

24 Q. Agent Wynne, those labels look larger than some of the ones  
25 you have been passing around. Is there any indication about

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1 the size of that label that goes to the bottle, a correlation  
2 between the label and the bottle?

3 A. This is going to be used on a bigger format bottle, and  
4 this is an older style label for Petrus.

5 Q. What is the vintage on that label for Petrus?

6 A. 1920. And the other larger style label is 1947.

7 Q. I'm going to hand you 1-135, and, again, I'll ask you to  
8 identify a few of the wineries but also to open this one to  
9 show the jurors the largest label in that exhibit.

10 A. 1-135 contains stacks of labels all banded or organized  
11 together. Chateau Lafleur. And the largest label is for a six  
12 liter Chateau Lafleur Pomerol.

13 Q. What is the vintage on that?

14 A. 1988.

15 Q. I will put that back.

16 A. Government Exhibit 1-121 are stacks of labels for Chateau  
17 Lafite Rothschild from 1982 on top and then other vintages as  
18 well.

19 Q. Agent Wynne, those have a yellow back to them. Do you know  
20 why they have a yellow back?

21 A. These are adhesive back labels. You remove that and you  
22 place it on the bottle.

23 Q. And then I am going to hand you 1--

24 A. 1-137. Sorry. Chateau Latour labels.

25 Q. Now, can you tell us what it is that you see? And I am

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1 going to actually use the Elmo for this one so that everyone  
2 can see it. Can you just describe what the two labels look  
3 like that you are holding? There are two different stacks of  
4 labels in that exhibit.

5 A. To the right you can see a completed label. To the left  
6 you can see a label in production, not fully completed. It  
7 still needs to get the logo, so to speak, on it.

8 Exhibit 1-131 is a bag containing some more stamps.  
9 1-141 is a bag containing additional stamps.

10 Q. Could you tell us what the stamp is for, if you can read  
11 it?

12 A. This Exhibit 1-141 is for Cheval Blanc, two stamps.

13 1-132 is a stamp for an American wine called Screaming  
14 Eagle.

15 And 1-131, that I mentioned, had three first Chateau  
16 Petrus.

17 THE COURT: Mr. Hernandez, maybe keep the stuff in the  
18 box and we will continue with that tomorrow morning. You will  
19 need the items that you have taken out out on that table.

20 MR. HERNANDEZ: That is fine, your Honor. Absolutely.

21 THE COURT: Because I think we are going to stop here  
22 for today. We will retrieve the exhibits and place them on the  
23 table.

24 And let me give the jurors my instructions again.

25 If you keep your pads on the seats, I guarantee that

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1 they will be on the right seat for the right person tomorrow  
2 morning.

3 Here's the instructions overnight.

4 As I've said before, do not talk to each other about  
5 the case or about anyone who has anything to do with it until  
6 the end of the case when you go to the jury room to deliberate  
7 on your verdict.

8 Second, do not talk with anyone else about the case or  
9 about anyone who has anything to do with it until the trial has  
10 ended and you have been discharged as jurors. And if you  
11 remember, I said by "talking" I am including also not only  
12 face-to-face but e-mail, text, tweeting, blogging, etc., and I  
13 am also talking about communications in any forum, including  
14 Facebook, MySpace, Twitter, etc. Additionally, don't remain in  
15 the presence of other persons who may be discussing this case.  
16 And "anyone else" includes members of your family and your  
17 friends and also embraces social media. You may tell someone  
18 that you are a juror in "a" case, but don't tell them anything  
19 else about "the" case until after you have been discharged by  
20 me.

21 Third, do not let anyone talk to you about the case or  
22 about anyone who has anything to do with it. If someone should  
23 try and talk to you about the case, please report that to  
24 Christine or me immediately.

25 Fourth, do not read any news or Internet stories or

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1 articles or blogs or listen to any radio or TV or Internet  
2 reports about the case or about anyone who has anything to do  
3 with it.

4 And, fifth, please do not do any type of research or  
5 investigation about the case on your own.

6 So we'll -- the same drill as today. See you at 8:45.  
7 We'll have coffee and tea for you, and be ready to go at  
8 9 o'clock in the morning.

9 Thanks so much.

10 (Continued on next page)

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1 (Jury not present)

2 THE COURT: If counsel don't mind waiting around a few  
3 minutes, I would have no objection to having the media if they  
4 wanted to take a quick look at the table and see these  
5 exhibits. So maybe, again, in two groups. Maybe the second  
6 group be the first group this time and that first group be the  
7 second group to come up.

8 Six or seven of you at a time, if you want.

9 (Pause)

10 (Adjourned to 9 a.m., Wednesday, December 11, 2013)

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