

In The Matter Of:

*Ervin v.
Dunlap*

*William S. Richbourg
Vol. 1, July 28, 1998*

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*Original File wr072898.2, 238 Pages
Min-U-Script® File ID: 0675120272*

Word Index included with this Min-U-Script®

Ervin v.
Dunlap

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

----- X
ERVIN AND ASSOCIATES,
INCORPORATED, et al.,
Plaintiffs,
vs
HELEN DUNLAP, et al.,
Defendants.
----- X
Civil Action
No. 96-CV1253
PAGES 1 - 238

Deposition of WILLIAM S. RICHBOURG
Washington, D.C.
Tuesday, July 28, 1998
VOLUME I
Reported by: MaryJo Legg, RMR
JOB NO 110154

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July 28, 1998
9 43 A.M.

Deposition of William S. Richbourg held at the
offices of

Tucker, Flyer & Lewis
1615 L Street, N.W.
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Washington, D.C. 20036-5610
pursuant to notice, before MaryJo Legg, RMR, a Notary
Public of the District of Columbia.

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DAVID ERVIN

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[1] Thereupon,
[2] WILLIAM S. RICHBOURG, [3] a witness,
was called for examination by counsel
for [4] the Plaintiffs, and, after having
been sworn by the [5] notary, was exam-
ined and testified as follows:

[6] EXAMINATION BY COUNSEL FOR
THE PLAINTIFFS

[7] BY MR. HAWKE:

[8] Q: Good morning, Mr. Richbourg. My
name is [9] Dan Hawke, I'm with the law
firm of Tucker, Flyer & [10] Lewis, and we

represent Ervin and Associates in this [11]
matter.

[12] Can you state your full name for the
[13] record, please.

[14] A: William S. Richbourg, R-I-C-H-B-O-
U-R-G.

[15] Q: What is your current position at
HUD?

[16] A: I'm program manager in the Multi-
family [17] Housing Division.

[18] Q: And who is your supervisor?

[19] A: Immediate supervisor is Dave
McDonough.

[20] Q: What's his title?

[21] A: He's the director of the - I guess -
I'm [22] not sure what the official title is.
Our group has

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[1] been designated to be assigned to the
OMHAR, the [2] Office of Multifamily
Housing, once that organization [3] be-
comes effective.

[4] So we are basically a separate group [5]
reporting directly to the director of
Multifamily [6] Housing, Chuck Wherw-
ein.

[7] Q: Who is the current DAS for Multi-
family?

[8] A: Chuck Wherwein, W-H-E-R-W-E-I-
N, I [9] believe, or something thereabouts.

[10] Q: Was he appointed by this Sec-
retary?

[11] A: Yes.

[12] Q: Do you recall approximately
when?

[13] A: I would say approximately six
months, give [14] or take.

[15] Q: Who else is in the - you said
OMHAR?

[16] A: OMHAR, right.

[17] Q: Who else in the office -

[18] A: Dave - well, Dave McDonough is
currently, [19] I guess, designated as a
deputy director, or [20] something to that
effect, for OMHAR and he currently [21]
heads up the day-to-day operations.

[22] Patrick Eckman, I don't know what
his

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[1] official status is, but he is designated to
also be a [2] deputy director in OMHAR;
and then there's myself, [3] George Dip-
man, D-I-P-M-A-N, Dan Sullivan, Court-
land [4] Wilson, and Ginny Tucker.

[5] Q: Are these all program managers?

[6] A: I think so, yeah. I think for - as an [7]
interim title or designation, they're all
program [8] managers.

[9] Q: When you say OMHAR, can you
spell that?

[10] A: It's the Office - O-M-A - I don't [11]
know - I don't know what it stands for

exactly. [12] Office of Multifamily Hous-
ing - I don't know - I [13] don't know what
it stands for. I have to look in the -
statute. I haven't looked at it for a while.

[15] It's the organization - the RTC-like -
organization designated by Congress to
do [17] mark-to-market.

[18] Q: That was my next question. What
is its - [19] what are its responsibilities?

[20] A: Its responsibility is to restructure
the [21] subsidized portfolio.

[22] Q: So, to your knowledge, all of the
people

Page

[1] that you just referred to are tasked
with [2] implementing the portfolio
engineering initiative?

[3] A: Correct.

[4] Q: Also known as mark-to-market?

[5] A: Mark-to-market.

[6] Q: Just so - on mark-to-market. Can
you tell [7] me what the - in general
terms, what the [8] mark-to-market
initiative is?

[9] A: Well, it's an initiative to - I guess
depending on who you ask, to reduce
the project based [11] subsidies, which
a discretionary budget outlay [12] that
has been increasing annually.

[13] I think it was projected the first -
[14] the earlier initiatives to restructure
the portfolio [15] came as a result of
projection that the project [16] has
subsidies would increase from some
thing like [17] seven billion a year to
billion a year and absorb [18] the entire
HUD budget if something weren't done
to [19] reduce them.

[20] And in a large percentage of the -
the [21] cases, the project based subsidies
are in excess of [22] market or com-
parable rents and, therefore, the

Page

[1] objective, certainly at a working level
is to [2] identify those projects with
their rents are in [3] excess of market
reduce those to market, and [4] rest-
ructure the debt for the long term via
of [5] the project.

[6] Q: You said that the budget for
subsidies was [7] going to go from six
billion to 20 billion?

[8] A: Something like that. If you see
mean, basically, I'm kind of quoting
memory from [10] press releases -

[11] Q: Understood.

[12] A: - and introductions to the statute
and so [13] forth.

[14] Q: And I'm asking you in general
terms. I [15] would not expect you
know off the top of your head.

[16] A: Yeah.

[17] Q: Can you tell me what the Sec

(18) reserves are?
(19) MR. LARIZZA: I'm going to object to
(20) this line of questioning. I don't see
any relevance (21) to any of the subject
matter of the lawsuit.
(22) If you're going to go into the details of

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(1) mark-to-market, we are going to be
here all day just (2) on that.
(3) MR. HAWKE: I'm just trying to get (4)
general background questions.
(5) BY MR. HAWKE:
(6) Q: Can you tell me what the - how
accurate (7) the accounting is, in your
view, for the Section 8 (8) reserves?
(9) A: The Section 8 reserve - I don't (10)
understand the question.
(11) Q: For the amount of subsidy that is -
that (12) is put aside by the Agency in
anticipation of (13) projected subsidies
that will be required in the (14) future.
(15) A: I have -
(16) Q: Or, you know, spent funds?
(17) A: I have no idea.
(18) Q: Can you tell me how long have
you been at (19) HUD for?
(20) A: Since 1991, I believe.
(21) Q: What was your title when you
came to HUD?
(22) A: Director of the management con-
trol staff.

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(1) Q: What office was that in?
(2) A: Office of the Comptroller.
(3) Q: Who was the comptroller at that
time?
(4) A: Ellie Clark.
(5) Q: E-L-L-I-E?
(6) A: Right. I guess it was a nickname for
(7) Ellen Clark or - I'm sorry, Eleanor
Clark.
(8) Q: And what were your respon-
sibilities as (9) director for management
control?
(10) A: To implement an internal control-
-or (11) internal and management control
program specifically (12) to address out-
standing audit findings and material (13)
weakness issues.
(14) Q: When you say audit findings, you
mean (15) findings by the Inspector
General that the IG has (16) asked the
Agency to address?
(17) A: Correct.
(18) Q: And material weaknesses, what
would you (19) mean by that?
(20) A: Material weakness was a defin-
ition. I (21) believe, that came out of OMB,
but it designates an (22) area or a problem,
if you will, that is of

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(1) significant or material risk to the
Agency.
(2) And once it - again, I think recalling (3)
from memory, that a material weakness
has to be (4) reported to Congress until
it's resolved; and if you (5) go on OMB's
list, you go on GAO's list if you have (6)
material weaknesses.
(7) Q: Weaknesses in - in accounting
practices?
(8) A: It could be a lot of things. I mean,
one (9) of the material weaknesses that
obviously is related (10) to this is the fact
that HUD had at the time a couple (11)
thousand multifamily notes that - that
had been (12) assigned to the Depart-
ment. Had something like (13) 70,000
single family notes that it was essentially
(14) the mortgagee and the servicer; and,
clearly, HUD (15) never - did not have the
capacity to manage (16) effectively that
inventory. And hadn't for years.
(17) Q: So your responsibilities were to -
(18) correct me if I'm wrong - to im-
plement or identify (19) those weak-
nesses and figure out ways to enable the
(20) Agency to deal with them?
(21) A: Coordinate Agency efforts to deal
with (22) weaknesses. That was part of
the management control

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(1) program.
(2) Q: Can you tell me what - were your
efforts (3) specifically authorized or dele-
gated by statute, to (4) your knowledge?
(5) A: I think so. Under the A-123 - what
was (6) that? You told me that, it's not a
statute, it's -
(7) MR. LARIZZA: It's an OMB Circular.
(8) THE WITNESS: OMB Circular A-123
that (9) implements a statute.
(10) BY MR. HAWKE:
(11) Q: So in dealing with coordinating
the (12) Agency's efforts to deal with
material weaknesses and (13) address
outstanding audit findings, you were -
you (14) were limited according to what
the law says you could (15) or could not
do with respect to those efforts?
(16) A: Are you referring to me spec-
ifically or -
(17) Q: I mean the Agency.
(18) A: The Department?
(19) Q: The Department.
(20) A: The Department. Yeah, I guess so.
Yeah.
(21) Q: In other words, the Agency could
not use, (22) to your knowledge, unlawful
efforts to address

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(1) outstanding audit findings or solve
material (2) weaknesses in its practices?

(3) A: I wouldn't think so.
(4) Q: How long were you a director of
management (5) control?
(6) A: I think - well, until about - until (7)
about '95, I guess.
(8) Q: And what happened in 1995?
(9) A: The organization was - well, to
back up, (10) I mean the title - the
designation did not change (11) but my
duties changed in about '93, '94, I guess.
(12) Q: Why did they change?
(13) A: Well, one of the - one of the key
things (14) that had happened was that
when I came on board, (15) there were
some 300 outstanding audit findings and
(16) something like 30 material weak-
nesses, basically, on (17) record for the
Department or for the - for FHA, (18)
which is not the Department per se, but
is the part (19) of it that I was concerned
with.
(20) And over that period, I basically
helped (21) the program managers work
off all but six or seven of (22) those 300
audit findings and we basically closed, I

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(1) don't know, all - all except three or
four of the (2) material weaknesses.
(3) So I had - and then OMB suspended
the (4) A-123 and the internal control
program because they (5) were going to
rewrite the statute. And so all of - (6)
pretty much the entire management
control program in (7) FHA was essen-
tially put on hold. So I had worked (8)
myself out of a job.
(9) And the sales - the asset sales program
(10) came along about that time.
(11) Q: Did any of the audit findings or
material (12) weaknesses involve con-
tracting procedures?
(13) A: Peripherally. Again, the Office of
(14) Procurement and Contracts was - is
separate from (15) FHA, so if there were -
if they had audit findings, (16) they would
resolve from that end. If we had program
(17) related findings that had to do with
contracting, we (18) would address it.
(19) Q: Do you recall any of those? Whe-
ther there (20) were?
(21) A: Not specifically.
(22) Q: Generally, do you?

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(1) A: No, I don't recall.
(2) Q: All right. You said in 1995 your title
(3) changed - well, let me ask you,
stepping back, you (4) just mentioned
asset note sales started to begin in (5) or
around '93 and '94; is that correct?
(6) A: I believe so, yeah.
(7) Q: And did you take on respon-
sibilities in (8) connection with the asset
note sales initiative?

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[14] A: No.
[15] Q: What about Dave Ryan?
[16] A: No.
[17] Q: Frank Malone?
[18] A: No.
[19] Q: Do you recall them - when you say they [10] accepted it stoically, do you recall any concern [11] about the motivations behind why Mr. Peterson was [12] transferring the responsibilities?
[13] A: No, nothing - nothing sinister.
[14] Q: Do you know - I'm sorry.
[15] A: I was just saying, again, nothing - I [16] guess I would term it sinister. I mean, obviously, I [17] was upset at first; but I mean, in looking at the [18] logic of it, it probably should have been there from [19] the beginning.
[20] Q: Can you characterize the nature of [21] Mr. Peterson's relationship with Helen Dunlap?
[22] A: I don't know.

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[1] Q: Do you know if they had any relationship [2] at all?
[3] A: Well, that that I observed was good.
[4] Q: Do you know whether Mr. Peterson was [5] acting on Ms. Dunlap's authority or with her approval [6] or knowledge when he made the decision to transfer [7] these responsibilities?
[8] A: I don't know.
[9] Q: Are you aware of whether or not there had [10] been any dissention among your staff or others in the [11] FHA Comptroller's Office prior to this time [12] concerning the prices that Hamilton was charging the [13] government for the services that it was providing?
[14] A: Can you clarify the - I'm not sure -
[15] Q: Earlier you testified that Judy May had [16] clashed with Helen concerning what she perceived as [17] the prices that Hamilton Securities was charging the [18] Agency for the work that it was doing under the [19] financial advisor contract.
[20] MR. LARIZZA: I'm going to object, [21] that mischaracterizes his testimony.
[22] My recollection is he testified that he

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[1] heard rumor and innuendo and speculated that that had [2] gone on, but he had no firsthand knowledge.
[3] MR. HAWKE: Your objection is well [4] taken.
[5] BY MR. HAWKE:
[6] Q: Subject to your counsel's objection; is [7] that correct?
[8] A: Concerning Judy May?
[9] Q: Yeah.
[10] A: Yes.

[11] Q: And at the time, as I understand, Hamilton [12] Securities was - or at least for a period of time, [13] Hamilton Securities was also subcontracting out the [14] due diligence work to Coopers & Lybrand that it [15] was - under its financial advisor contract?
[16] A: Uh-huh.
[17] Q: Do you know whether or not there was any [18] other dissention within the Comptroller's Office [19] concerning Hamilton's prices that it was charging [20] under the Financial Advisor Number 1 contract?
[21] A: Not that I recall. I'm trying to think [22] through the various task orders. And I assume you

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[1] are referring to dissention coming from a Chris [2] Peterson, coming from other -
[3] Q: Well, people like Myrna Gordon or Dave [4] Ryan or Frank Malone or other people in the [5] Comptroller's Office who may have had knowledge of [6] Hamilton's pricing.
[7] A: Well, at various times, issues were raised [8] about it. I mean, I think we went through a lot - [9] we went through a lot of analysis of that; and yes, [10] on various occasions, we - myself included - I [11] don't recall Dave Ryan specifically, again because [12] see, when Dave Ryan got involved, Dave Ryan worked [13] for this cash and control division, worked for Frank [14] Smeltzer and then he picked up the day-to-day GTR [15] responsibilities and I basically became a - like a [16] free agent and I was just making sure the work got [17] done and doing other things related to the asset [18] sales and the closings and so forth.
[19] So I kind of, you know, wiped my brow and [20] walked away from all the nitty-gritty.
[21] I think at that point, Dave raised [22] questions - you know, we all did - on various task

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[1] orders and at various points.
[2] Q: Why was that?
[3] MR. KEYES: Why was what?
[4] THE WITNESS: Why was what?
[5] BY MR. HAWKE:
[6] Q: Why was it you were raising questions?
[7] A: I think in the normal course of business, [8] that's part of your responsibility. I mean, to look [9] at the cost and to raise questions about it. And [10] questions would come back from Office of Procurement [11] and Contracts that we would then have to investigate, [12] so that raised further questions. And, you know.

[13] Q: Can you characterize whether - in terms [14] of the number of questions that were being raised, [15] whether these were normal questions or whether they - in the ordinary course or were they [17] exceptional questions?
[18] MR. KEYES: Objection, calls for speculation.
[20] THE WITNESS: I mean, I would speculate that they were probably normal to - I [22] don't know.

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[1] I mean, again - well, if you want my opinion, I think in my opinion, this was an unusual [3] circumstance, okay? Unusual to the extent that, A, a [4] huge program; B, a lot of visibility; C, tremendous [5] numbers, sales and costs, okay; D, different pricing [6] methodology that the Office of Procurement and [7] Contracts is used to seeing.
[8] In fact, I would speculate that the Office [9] of Procurement and Contracts people that were [10] overseeing that had never seen anything but a cost plus fixed fee workup in their professional lives.
[12] BY MR. HAWKE:
[13] Q: And what was the nature of that Financial [14] Advisory Number 1?
[15] A: Well, I think Financial Advisor was a [16] cost - I'm sorry. Again, you are talking about the [17] contract, not a task order.
[18] Q: Well, did there come a time when pricing [19] would change under the task orders from that which [20] was specified in the contract?
[21] A: I don't know - I don't recall what was [22] specified in the contract.

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[1] Q: When you say cost plus fixed fee, you mean [2] work done on an hourly basis up to a certain -
[3] A: Yeah, hourly - whether - I don't know [4] that - whether it was cost plus fixed fee or [5] labor hours. I know, there's different kinds of [6] that where you bill by the hour.
[7] I don't recall what that one - whether [8] that one was specified in the contract but at some [9] point, we evolved over time from an hourly [10] bill to a - basically, a percentage of the portfolio.
[12] Q: And at the time, 1993, '94, can you give [13] me a ballpark estimate of the portfolio was [14] worth?
[15] A: Well, they - the cost buildup done on [16] each. In other words, we were going to sell 100 [17] mortgage portfolio, then they - I believe their fee - like [19] some number of basis points on the portfolio.

[20] Q: With respect to the entire FHA portfolio, [21] that - that includes multi-family notes, single [22] family notes, I guess some nursing homes?

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- [11] A: Everything, yeah.
- [2] Q: Can you give me a general estimate of what [3] the total value of the - or total unpaid principal [4] balance on the portfolio was at that time?
- [5] A: Of the HUD-held portfolio?
- [6] Q: Yeah.
- [7] A: 12 billion dollars, 10 billion dollars.
- [8] Q: What about HUD-insured portfolio?
- [9] A: Single family or multifamily?
- [10] Q: Everything, the entire -
- [11] A: About 400 billion.
- [12] Q: Do you know whether Hamilton's - when [13] this evolved from this cost plus fixed fee to a [14] percentage of the portfolio at any time under [15] Financial Advisor 1, whether Hamilton's fee structure [16] was based on the value of the total FHA portfolio?
- [17] A: Yeah, but I think you are getting ahead of [18] yourself.
- [19] Q: We'll come back.
- [20] A: Okay. Yes. The total - the total 400 [21] billion dollar portfolio?
- [22] Q: Yes.

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- [1] A: I'm not certain.
- [2] Q: With respect to - can you tell me what [3] Mr. Peterson - do you know whether Mr. Peterson had [4] a relationship with Hamilton Securities of any kind [5] at this time?
- [6] A: Not to my knowledge. Well, let me - what [7] do you mean by relationship?
- [8] Q: I mean professional interaction or [9] personal interaction of any kind with principals of [10] Hamilton.
- [11] A: Yes. Yes. If you mean interaction with [12] them, yes. If you mean a relationship like he dates [13] Austin Fitts -
- [14] Q: No, no. No, I don't mean that. Although, [15] I mean if - if there is a - well, let me say this:
- [16] Are you aware - in the course of [17] conducting his duties as FHA Comptroller, he had [18] occasion to interact with Hamilton Securities on a [19] professional basis; is that correct?
- [20] A: Yes, he did.
- [21] Q: Do you know - can you characterize the [22] nature of that relationship? Was he favorably

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[1] disposed to Hamilton?

[2] MR. KEYES: Objection, vague and [3] ambiguous and calls for speculation.

[4] BY MR. HAWKE:

- [5] Q: You can answer.
- [6] A: I think - yeah, I think he was. Yeah.
- [7] Q: Have you ever - do you know whether - [8] just going back to your - the questions you raised [9] about the prices that Hamilton was charging, was it [10] your opinion at that time that Hamilton was being [11] overpaid?
- [12] A: Well, I think on certain task orders.
- [13] Q: Do you recall which ones?
- [14] A: There was - well, there was a task order [15] to do something with - and I don't recall exactly [16] whether it was supposed to do with the rating [17] agencies, to - I guess take FHA's story to the [18] rating agency as a preliminary step to getting a [19] rating for FHA debts a step to doing securitized [20] transactions similar to the partially assisted and [21] get better execution and better pricing because the [22] rating agencies already were comfortable with the

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- [1] Agency, et cetera, et cetera, et cetera.
- [2] That is one, I'm trying to remember [3] another one.
- [4] Q: Do you include state - is that state [5] FHAs?
- [6] A: The state FHAs, that - my recollection is [7] vague. That may have been one where we had some [8] discussion disputes.
- [9] Q: Was there a perception - or did you have [10] a perception that Hamilton was favored by Ms. Dunlap [11] at this time?
- [12] A: Well -
- [13] Q: Was she receptive to criticisms about [14] pricing?
- [15] A: Well, in my opinion, she was not as [16] willing to take Hamilton on as maybe she should have [17] been.
- [18] (Mr. Travell present.)
- [19] Q: Have you ever heard of the term "honey [20] pot" before?
- [21] A: In connection with all this?
- [22] Q: In connection with anything at HUD.

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- [1] A: At HUD?
- [2] Q: Yeah.
- [3] A: No.
- [4] Q: What about with respect to contracts being [5] let to Hamilton or others, have you ever used that [6] term before?
- [7] A: I don't think so.
- [8] Q: After 1996, when - after responsibilities [9] were transferred over to - was it Mr. Smeltzer?

[10] A: Yeah.

- [11] Q: What - you said you were a free agent. [12] Can you tell me what your responsibilities were [13] there?
- [14] A: Just continuing to see that - in other [15] words, that the due diligence work was completed, [16] that the sales - you know, I basically monitored - [17] I say monitored, I was involved in setting up and [18] executing the bidding, seeing that all that happened. [19] Just monitoring the process, moving files.
- [20] We had - at that time, we were in - you [21] know, had gotten to the point of where you were [22] closing and you were moving files and you were

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- [1] getting documents back and forth and they were [2] being - documents were being shipped from the due [3] diligence to us and from due diligence to the [4] successful bidders and the successful bidders were [5] doing their title work and trying to get closed.
- [6] So all that required a lot of just [7] coordination work.
- [8] Q: When you say - so you were actively [9] involved in helping to close the sales after the [10] bidding had taken place, making sure that the [11] transfer of title of the notes was properly done [12] to -
- [13] A: Right. Make sure the closings were [14] scheduled, make sure we had people there to close. [15] The attorneys handled - I mean, the actual [16] documents, I mean, what the document looked like; but [17] then we had to have people there, we had to have [18] notaries there, we had to have a room to do it in, we [19] had to make sure the files got shipped out and that [20] the money was wired.
- [21] And so I handled the wiring of deposits to [22] the losers and deposit and the balance from the

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- [1] winners and so forth and so on.
- [2] Q: How long did you continue in that position?
- [3] A: Until February '97.
- [4] Q: Is that when you moved over into [5] Multifamily?
- [6] A: Yes.
- [7] Q: Why did you move at that point?
- [8] A: Well, you know, they had - they needed [9] somebody and Chris Greer had requested or asked Kathy [10] Rock if he could approach me about moving up there.
- [11] The sales were running down, I basically [12] again, had worked - kind of was out of a job where I [13] was.
- [14] Q: Now, you mentioned Chris Greer. Who was [15] he?

identify the documents (8) that -

(9) A: That I looked at? I think so.

(10) MR. HAWKE: We would request a copy (11) of that list.

(12) MR. LARIZZA: You know I'm not going (13) to give it to you, you can request it all you want.

(14) MR. HAWKE: I assume, though, that (15) all the documents that he reviewed have been produced (16) in this case?

(17) MR. LARIZZA: That's correct, either (18) by you or us.

(19) A couple of the ones we showed him were (20) actually exhibits to things you filed or were (21) exhibits in other depositions and they may not have (22) been obtained from us.

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(1) MR. HAWKE: On your representation (2) that they have been produced, I will defer our (3) request.

(4) MR. LARIZZA: That's our practice, we (5) don't show witnesses documents that we haven't seen.

(6) MR. HAWKE: But there are - none of (7) the documents you showed him are documents that you (8) are presently claiming attorney-client privilege or (9) work product?

(10) MR. LARIZZA: No, no. That's (11) correct.

(12) BY MR. HAWKE:

(13) Q: Mr. Richbourg, have you discussed - other (14) than with Mr. Moore and Mr. Larizza or other (15) Department of Justice or inside HUD attorneys, have (16) you discussed your deposition today with anybody?

(17) A: No.

(18) Q: Are you aware that other HUD employees (19) have been deposed in this case?

(20) A: Yes.

(21) Q: Have you ever spoken with any of those (22) employees concerning their testimony?

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(1) A: No.

(2) Q: Have you ever heard them describe their (3) testimony?

(4) A: No.

(5) Q: Have you ever heard people talking in the (6) hallways about the testimony they've given in this (7) case?

(8) A: No.

(9) Q: Any rumors about things that were said in (10) depositions by HUD employees?

(11) A: No.

(12) Q: Or any rumors about questions that John (13) Ervin, through his counsel, have asked in deposition?

(14) A: No.

(15) Q: Did reviewing the documents that your (16) counsel showed you help refresh your recollection (17) concerning the matters contained in those documents?

(18) A: Probably to a certain extent, yeah.

(19) Q: Did you look at a copy of the complaint in (20) this matter?

(21) A: No.

(22) Q: Have you ever seen a copy of any complaint

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(1) that's been filed in this lawsuit by Mr. Ervin?

(2) A: Well, I saw - I don't know - I saw a - (3) I don't know - I guess it's not a complaint, it's a (4) list of questions that we were asked to respond to, (5) that came from Ervin, I guess, or came from whatever (6) source, but I was asked to -

(7) Q: Was this recently?

(8) A: In the last couple months, yeah.

(9) MR. LARIZZA: To clarify the record, (10) what he is referring to is your request for (11) admissions.

(12) MR. HAWKE: That's what I thought.

(13) BY MR. HAWKE:

(14) Q: Going back to 1996, had you - strike (15) that.

(16) Let me - I'd like to go into - we are (17) going to break at 12:30, but I'd like to talk a (18) little bit about your relationship with John Ervin.

(19) Can you tell me how long -

(20) MR. LARIZZA: Can I take five myself?

(21) MR. HAWKE: Certainly.

(22) MR. LARIZZA: Or two and a half.

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(1) (Recess taken - 11:55 a.m.)

(2) (After recess - 12:00 p.m.)

(3) BY MR. HAWKE:

(4) Q: Can you tell me how long you have known (5) John Ervin for?

(6) A: I guess since about early '80s.

(7) Q: How did you first come to know Mr. Ervin?

(8) A: I worked for John at Oxford and (9) Associates, Oxford Development.

(10) Q: What was Oxford?

(11) A: It was an apartment developer.

(12) Q: Are they considered an affordable housing (13) provider?

(14) A: Yeah, I think so. I think that they (15) started - started out as an affordable housing (16) building some kind of subsidized housing in Baltimore (17) and then branched out into - did a lot of bond (18) finance deals. Commercial - I mean commercial rate, (19) luxury.

(20) Q: What was the nature of your work for John (21) at Oxford?

(22) A: Analyzing and approving development

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(1) proposals from development partners in the field.

(2) Q: Did you work closely with John Ervin?

(3) A: Uh-huh.

(4) Q: And how long did you work with him for?

(5) A: About a year.

(6) Q: How was Mr. Ervin to work for?

(7) A: Pardon me?

(8) Q: How was he to work for?

(9) A: Do I have to answer?

(10) Q: Remember you are under oath.

(11) A: We got along fine.

(12) Q: Is Mr. Ervin a fair-minded man in your (13) opinion?

(14) A: He's always been very fair to me, yeah.

(15) Q: Do you believe he conducted himself at (16) Oxford with integrity, honesty and all that?

(17) A: Absolutely.

(18) MR. KEYES: And all that?

(19) MR. HAWKE: Strike the "all that"

(20) BY MR. HAWKE:

(21) Q: Integrity and honesty?

(22) A: Yes.

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(1) Q: Did you have an opinion on Ervin's (2) knowledge or expertise housing issues in general?

(3) A: Yes.

(4) Q: And what is that?

(5) A: That he is very knowledgeable, is (6) probably an expert in affordable housing. I mean, I (7) respect his work, I respect what he's done.

(8) Q: After you worked for Mr. Ervin at Oxford, (9) what did you do then?

(10) A: I went to work for the Trammell Crow (11) Company.

(12) Q: In commercial real estate?

(13) A: Yeah, residential development.

(14) Q: Would that also be in the affordable (15) housing area?

(16) A: No. Trammell Crow did not do affordable (17) housing - well, we did do some exempt bond, 80-20 - (18) some housing. Mostly luxury rental.

(19) Q: Did you have contact with John Ervin after (20) you left Oxford but you went to HUD?

(21) A: Occasionally.

(22) Q: Over the years?

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- (11) A: Over the years.
- (12) Q: Can you be more specific in terms of the (13) time period when you went to Trammell Crow?
- (14) A: You mean about the time period?
- (15) Q: Yeah. About when did you go?
- (16) A: '85 to '89, something like that.
- (17) Q: Had you been at Oxford until 1985?
- (18) A: No. I was at Oxford for about a year, so (19) '84, '85, I guess, something like that.
- (110) Q: So I'm just trying to understand. You (111) went from Oxford to Trammell Crow?
- (112) A: Correct. Directly.
- (113) Q: Where were you prior to Oxford?
- (114) A: I ran a small syndication and management (115) firm in Alexandria.
- (116) Q: And after Trammell Crow, did you go (117) directly to HUD?
- (118) A: I was basically in business for myself for (119) about a year, year and a half, something like that.
- (120) Q: Developing real estate?
- (121) A: Renovating real estate, working as a - I (122) worked for a - as a consultant for a temporary

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- (11) services company, basically management consulting.
- (12) Q: Can you tell me whether John - to your (13) knowledge, is John Ervin generally well-known in the (14) affordable housing industry?
- (15) A: Well, to my knowledge, yeah. He's at (16) least generally well-known around HUD, I guess. I (17) can't speak for the rest of the industry.
- (18) Q: I think I asked you this: Can you tell me (19) whether you are familiar with the nature of Ervin's (110) claims in this matter?
- (111) A: Only - no - I'd have to say no. Only in (112) a very broad sense. I've never really read any of (113) the detailed claims.
- (114) Q: What is your broad sense understanding of (115) the nature of Mr. Ervin's -
- (116) A: Well, I would characterize it as a claim (117) for unfair procurement practices, favoritism, and/or (118) discrimination.
- (119) Q: When you say - so unfair contracting (120) practices, that would be in connection with HUD (121) contracts?
- (122) A: Yes.

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- (11) Q: Any other broad sense understanding of (12) what he's alleged?
- (13) A: Well, again, I understand there's an issue (14) with the termination of the asset management contract (15) or the annual

financial statement contract; and I (16) don't know - I don't know of anything else.

- (17) Q: Are you aware that Mr. Ervin has (18) complained about problems with the mark-to-market (19) program?
- (110) A: Yes. Yes, now that you - yes.
- (111) Q: And what is your recollection or (112) understanding -
- (113) A: That - I guess that he is disputing the (114) program as it's currently designed and the related or (115) the underlying analysis that was done.
- (116) Q: How do you know that he's disputed that?
- (117) A: I either heard it or read it, again in one (118) of the publications - the private publications.
- (119) Q: Are you also aware that Mr. Ervin has been (120) critical of the note sales program?
- (121) A: Yes.
- (122) Q: How do you know that?

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- (11) A: Either read it or heard it.
- (12) Q: With respect to Mr. Ervin's complaints (13) about unfair contracting practices, do you have an (14) opinion as to the truth of Mr. Ervin's complaints?
- (15) A: Well, I guess I'd have to ask you, give me (16) a specific complaint.
- (17) Q: His complaint that Hamilton Securities has (18) been favored by the Agency in its receipt of (19) contracts at HUD.
- (110) A: The Hamilton contract?
- (111) Q: Yeah.
- (112) A: Okay. Now, what was your question?
- (113) Q: Do you have an opinion as to whether or (114) not Mr. Ervin's allegations that Hamilton has been (115) the beneficiary of favoritism is an accurate (116) allegation?
- (117) MR. LARIZZA: I'll object, his (118) personal opinion is totally irrelevant.
- (119) BY MR. HAWKE:
- (120) Q: You can answer.
- (121) A: I can answer? Yes, I think that - I (122) think that Hamilton was the beneficiary of certainly

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- (11) that - that program in that period of time; and (12) whether they - they used or did anything illegal, (13) unethical, or otherwise, I really can't speak to - I (14) mean, I think it's - part of it is circumstance, (15) that they got there at the right time, they sold the (16) program; and at the time it was - it was a - you (17) know, again, it was a gigantic program that - (18) actually, gigantic in terms of other related types of (19) programs at HUD.

(110) They were there at the right time and the (111) right place with the right sales job; and I think (112) John knows, to a certain extent, an incumbent is at (113) an advantage.

- (114) Q: Do you know how it was that Hamilton (115) became the incumbent?
- (116) A: No. I mean, I was not there during that (117) initial - for the Financial Advisor Number 1.
- (118) Q: Are you aware - was Ms. Fitts the FHA (119) Commissioner at the time that you were at HUD?
- (120) A: No.
- (121) Q: She had left - but you are aware that she (122) was the FHA Commissioner at some point?

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- (11) A: For a short period.
- (12) Q: Okay. And that was prior to the time that (13) you arrived at HUD?
- (14) A: Yes.
- (15) Q: So when you refer to incumbent, you are (16) not referring to the fact that she was prior FHA (17) Commissioner, are you?
- (18) A: No, huh-huh.
- (19) Q: You are referring to her status as the (110) awardee of the Financial Advisor Number 1 contract?
- (111) A: Right, right.
- (112) Q: Now, my question, when you say that (113) Hamilton was the beneficiary, okay, can you tell me (114) what you mean by that?
- (115) You mean - are you aware of Mr. Ervin's (116) allegations that procurement laws were circumvented (117) to insure that Hamilton would be the chosen (118) contractor for financial advisor services for the (119) Agency?
- (120) A: No. Wait a minute, were you asking if I (121) was aware of the allegations -
- (122) Q: Yes.

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- (11) A: - or aware that -
- (12) Q: I'm asking, are you aware of Mr. Ervin's (13) allegation?
- (14) A: Vaguely.
- (15) Q: Do you have an opinion as to the truth of (16) those allegations?
- (17) A: No, because I don't know any of the (18) history as to how they became financial advisor.
- (19) Q: Do you know whether Hamilton has (110) benefitted from having HUD employees who were (111) favorably disposed to it in terms of contracting (112) decisions that were made on Hamilton's contract?
- (113) A: Financial Advisor Number 1?

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[14] Q: Or 2, any.
[15] A: Ask me - ask the question again.
[16] MR. HAWKE: Can you read that back.
[17] (The record was read as requested.)
[18] MR. LARIZZA: I'm going to object
again on the grounds of favorably disposed is too vague and uncertain a term to allow the witness to formulate a response.
[22] BY MR. HAWKE:

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[1] Q: You can answer.
[2] A: Yeah, I think Hamilton benefitted from that.
[4] Q: Are you aware that Mr. Ervin has also alleged that Ervin and Associates has been the victim of retaliation by the Agency in contracting decisions that have been made with respect to Mr. Ervin's contracts?
[9] A: Yes.
[10] Q: Can you - is Mr. Ervin viewed within the Agency as a critic of the Agency?
[12] MR. KEYES: Objection, calls for speculation.
[14] MR. LARIZZA: It's also an objection on the grounds of it's too vague in terms of who he is asking about.
[17] I don't think this witness can testify as to what the whole Agency thinks about John Ervin or even if the whole Agency has a perception of John Ervin.
[21] MR. HAWKE: Fair enough.
[22] BY MR. HAWKE:

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[1] Q: Have you ever perceived Mr. Ervin as a critic of the Agency?
[3] A: No. I would differentiate a critic of the Agency and a critic of these particular practices and these circumstances.
[6] Q: And particular officials?
[7] A: Yes.
[8] Q: Can you expand on that for me?
[9] MR. KEYES: What's the question?
[10] THE WITNESS: The question you are asking, have I perceived or - that Mr. Ervin is a critic of the Agency?
[13] BY MR. HAWKE:
[14] Q: Uh-huh.
[15] A: Or individuals in the Agency?
[16] Q: Or programs.
[17] A: Yes. Well, I mean, I think that one could only conclude that from the nature of the complaint, the nature of the publicity, and the nature of the press that surrounds the complaints.
[21] Q: That he is - that he is viewed as a critic of the Agency? Or its programs

or officials?

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[1] A: That -
[2] MR. LARIZZA: Objection. Viewed by who?
[4] THE WITNESS: Yeah. I mean, I can't -
[6] BY MR. HAWKE:
[7] Q: You seem to draw a distinction between Mr. Ervin being critical of the Agency versus being critical of particular actions that the Agency is alleged to have taken, okay?
[11] Is that - are you drawing that distinction?
[13] A: Yeah. I'm drawing that distinction because that is - again, I can only speak from my - my own view.
[16] I have no idea, no way to speculate on what other people's views are; but in my view, Ervin I don't think has ever criticized the Agency as a whole, FHA as a whole, affordable housing programs in general, except for certain officials and, I guess, the execution of pieces of certain programs.
[22] Q: With respect to those criticisms, can you

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[1] tell me what your opinion of Mr. Ervin's criticisms is?
[3] MR. LARIZZA: I'm going to object. It hasn't even been established that he knows what the criticisms are.
[6] MR. HAWKE: I think we have established that, but -
[8] MR. LARIZZA: He's a critic as to some vague, undefined set of programs and unnamed officials. I think the question is too vague, too -
[11] BY MR. HAWKE:
[12] Q: We have talked about unfair contract - you understood that Mr. Ervin had complaints about unfair contracting practices; and we established that - I believe, correct me if I'm wrong - that you believe there is some merit to John's criticisms that Hamilton may have been the beneficiary of favorable treatment by HUD officials; is that correct?
[20] MR. LARIZZA: Well, I'm going to object again on the grounds that favorable is, again, a vague term.
[11] Obviously, any decision that's made that gives somebody a contract can be regarded as favorable; whether or not that implies any sort of wrongdoing or undue influence is another thing.
[5] THE WITNESS: Yeah. I mean, I find it difficult to answer unless you ask me specific questions.

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[8] BY MR. HAWKE:
[9] Q: Can you tell me generally whether - what your opinion of Mr. Ervin reputation is within the Agency right now?
[12] MR. KEYES: If you know.
[13] THE WITNESS: I mean, you know. I don't - I don't know. I mean, quite frankly, it's - it's not a subject of discussion generally and so I mean, I can't - I don't know.
[17] BY MR. HAWKE:
[18] Q: Over the last three years, have you ever heard negative or disparaging comments about Mr. Ervin at the Agency or Ervin and Associates by anybody?
[22] A: No. Disparaging in the - now, me

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[1] make a distinction.
[2] I have heard comments that I would classify as your typical grousing or complaining about I just got 12 FC requests from Ervin, it's going to take me three weeks to put them together (indicating).
[7] I have never heard directly derogatory or disparaging complaints, if you want to call them complaints, about the firm or the individuals.
[10] Q: You mean - the firm, you mean Ervin and Associates?
[12] A: Ervin and Associates as a company or Mr. Ervin as an individual.
[14] In fact, I know there are a number of people at my level who speak highly of the firm's competence.
[17] Q: You've never heard Ms. Rock or Ms. Dunlap express negative disparaging comments about Ervin and Associates or Mr. Ervin?
[20] A: Again, not - not of enough significance, I can't - as I'm thinking back, I don't know - I mean, I think, a few comments that I have heard
[1] would really merely be in the context of the fact that you have this dispute. And if one disagrees - again, haven't - you know, and I would expect them to make those in front of me or in front of a general group.
[7] Q: Have you ever perceived a bias against Ms. Dunlap and Ms. Rock or at their level towards Mr. Ervin?
[10] A: Bias in what regard?
[11] Q: A bias against him or his ability to win contracts or keep contracts?
[13] A: No, not that I'm aware of.
[14] Q: Can you tell me whether

you have [15] ever heard people state within the Agency that John [16] Ervin is to blame for causing Ms. Dunlap's [17] departure?

[18] A: Scuttlebutt only.

[19] Q: And what is that?

[20] A: Just that, because of the Ervin - Ervin [21] case, she left.

[22] Q: Are you aware of whether or not there is a

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[1] criminal investigation going on into the allegations [2] that Mr. Ervin has made concerning unfair contracting [3] practices, note sales favoritism, problems in [4] mark-to-market?

[5] A: I've heard that, yes.

[6] Q: Are you - and how have you heard that?

[7] A: Again, I may - I may very well have read [8] that in that Daily Housing Reporter or whatever it is.

[9] Q: Are you aware of any instances in which [10] HUD officials made contracting decisions affecting [11] Ervin's status as a contractor or its ability to win [12] or keep new contracts because of his criticisms of [13] the Agency or of officials and programs of the Agency?

[14] A: I am - no, I am not aware of him being [15] excluded from award - is that what you are asking?

[16] Q: Uh-huh.

[17] A: I'm not aware of that.

[18] Q: Or having contracting - on existing [19] contracts, having contracts not renewed or extended [20] because of criticisms that he had made of HUD [21] officials or programs?

[22] A: No. I have no direct knowledge of that.

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[1] Q: Do you have indirect knowledge?

[2] A: Well, I think I heard - well, again, that [3] probably was in your request for admissions, [4] something to do with not renewing the AFR, AFS [5] contract.

[6] Again, I don't have any direct knowledge. [7] I don't know where - either I heard it or saw it [8] somewhere.

[9] Q: Do you have any suspicions or concerns [10] that Ervin and Associates may have been subjected to [11] retaliation by HUD officials for being critical of [12] their actions or program objectives?

[13] A: No.

[14] Q: Do you know of anybody in the Agency who [15] has ever voiced concerns or suspicions that Ervin may [16] be the victim of retaliation in contracting decisions [17] by the Agency?

[18] A: No.

[19] Q: Do you have any knowledge concerning [20] whether any HUD - other HUD employees have been [21] subjected to retaliation for speaking out on the [22] issues of unfair contracting practices, note sales.

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[1] favoritism, or mark-to-market problems or [2] discrimination at the Agency?

[3] A: In terms of this contract - in terms of [4] the Ervin contracts?

[5] Q: In terms of the Ervin contracts or [6] financial advise - any of the matters we have been [7] talking about.

[8] A: Now, the question is, do I know of one -

[9] Q: Do you know of any instances of [10] retaliation by HUD officials against individuals [11] within the Agency or outside of the Agency, period, [12] who have spoken out about unfair contracting [13] practices or note sales problems or mark-to-market [14] problems or discrimination?

[15] A: No.

[16] Q: Have you ever been aware of whether any [17] HUD employees have feared retaliation for speaking [18] out against contracting decisions or actions by the [19] Agency or HUD officials that they disagreed with?

[20] A: Well, I mean, again, that's - you are [21] asking me for a very broad kind of - you know, [22] it's - I mean, I think that there - there are a lot

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[1] of people who are afraid, to a certain extent, of [2] taking something - basically, taking it to the mat [3] if - one, if it's - again, how big is the issue and [4] what - what are their motives.

[5] Q: During the time that Ms. Dunlap was DAS [6] for Multifamily Housing and DAS for Operations, did [7] you have a perception that there was a sense of fear [8] among HUD employees or among people known to you that [9] if they spoke out against her programs or her [10] objectives they would be retaliated against?

[11] MR. KEYES: Objection, calls for [12] speculation.

[13] THE WITNESS: Yeah. I mean, not [14] specific individuals.

[15] BY MR. HAWKE:

[16] Q: Generally speaking?

[17] A: I mean, I think generally, my perception [18] was that that could be the case - that could be the [19] occasion - that could be the situation, but I don't [20] have any direct knowledge of -

[21] Q: Why was that your perception?

[22] A: I think that there were a lot of -

there

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[1] were a number of people in the Agency who were afraid [2] of Helen Dunlap.

[3] Q: And who were they?

[4] A: I mean, in general, people who worked for [5] her.

[6] Now, see, I never really worked in the [7] same organization, so I can't really say; and people [8] did not confide in me that I'm afraid of her, I'm not [9] doing anything.

[10] Q: Would Ms. May be one of those people, do [11] you think?

[12] A: I don't know if Judy May was afraid of [13] speaking out against her.

[14] Q: Did you have a perception - you testified [15] earlier this morning that you believed that there was [16] some conflict between Ms. May and Ms. Dunlap.

[17] A: Correct.

[18] Q: And that you took the position that [19] Ms. May had in the Comptroller's Office?

[20] A: Correct.

[21] Q: Do you know whether Ms. May's departure [22] from that position was the consequence of her

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[1] disagreements with Ms. Dunlap?

[2] A: That was my opinion.

[3] Q: With respect to Frank Malone, do you know [4] whether or not he was one of these people who was [5] fearful of Ms. Dunlap?

[6] A: That was my opinion.

[7] Q: What about Phil Salamone?

[8] A: Well, Phil, I think, retired shortly after [9] I got there. I didn't know him that well, so -

[10] Q: What about Ms. Clark?

[11] A: You mean, did she fear -

[12] Q: Uh-huh.

[13] A: I don't know. To a certain extent, [14] possibly, because Ms. Dunlap was, I guess, senior to [15] her in the pecking order.

[16] MR. HAWKE: It's 12:30 and I would [17] suggest we break for lunch for, say, an hour and [18] reconvene at 1:30.

[19] MR. LARIZZA: All right. [20] (Luncheon recess - 12:30 p.m.)

[21] (Afternoon session - 1:38 p.m.)

[22] BY MR. HAWKE:

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[1] Q: Mr. Richbourg, did there come a time [2] beginning in 1995 when you and Mr. Ervin had [3] conversations regarding problems that were occurring [4] at HUD?

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[5] A: I recall some occasional conversations, [6] but not - not any real specifics.

[7] Q: Tell me what you recall about those [8] conversations.

[9] A: Well, I think that we had one conversation [10] about - what was it? I don't remember which sale it [11] was, but there was the instance of a - an employee [12] from BlackRock Capital - I think it was BlackRock [13] Capital - sitting outside the bid room essentially [14] all day.

[15] Q: Why would you have been talking with [16] Mr. Ervin about that?

[17] A: Well, as I recall, I think Mr. Ervin had [18] inquired as to whether I knew this.

[19] Q: So are you saying that Mr. Ervin contacted [20] you and told you this information?

[21] A: I believe so, yeah. I don't - because I [22] would not have known about the person sitting outside

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[1] of there unless somebody told me.

[2] I don't recall now whether it was [3] Mr. Ervin or whether I heard it from other sources.

[4] Q: Is it possible that you heard it from [5] other sources and communicated it to Mr. Ervin?

[6] A: It's possible, yes.

[7] Q: About how many conversations do you recall [8] having?

[9] A: Three or four, something like that.

[10] Q: So it's your testimony that you only had [11] three or four conversations with John?

[12] A: Over - over that period of time?

[13] Q: Beginning in 1995.

[14] A: Yeah. I mean, I don't - I mean, it could [15] have been a couple more. I don't know. Something in [16] that range.

[17] Q: In or around July 1995, did you have [18] occasion to step down off of any Source Evaluation [19] Boards at HUD that you might have been serving on?

[20] A: Was - let's see. '95?

[21] Q: Mid 1995.

[22] A: I stepped down from the Financial Advisor

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[1] Number 2 board, if that - if that was the time frame.

[2] Q: After you stepped down - prior to the [3] time that you were - obviously, you would not have [4] been having conversations with Mr. Ervin like that; [5] is that correct?

[6] A: Yes.

[7] Q: But after you stepped down, did

there come [8] a time when you began to have regular conversations [9] with Mr. Ervin about - about problems that were [10] happening in HUD?

[11] A: Well, I wouldn't call it regular [12] conversations. You know, again, occasionally, off [13] and on.

[14] Q: How would the conversations take place?

[15] A: Probably via telephone.

[16] Q: Would you ever meet John in person?

[17] A: I think we met - we met - again, I don't [18] recall if it was during this period, but we met for [19] breakfast on at least one occasion and, as I [20] recall - I mean, on a different subject, not [21] specifically this subject.

[22] Q: What was that subject - would it have

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[1] been non-HUD business?

[2] A: Yes.

[3] Q: Okay. With respect to the meetings that [4] you - or the discussions that you had with John, do [5] you recall whether they involved any other matters [6] beyond this person from BlackRock sitting outside the [7] bid room?

[8] A: Yes. In other words, there were subjects [9] other than that person sitting outside the bid -

[10] Q: Yes.

[11] A: Uh-huh.

[12] Q: Can you recall the nature of those [13] subjects?

[14] A: Well, I think we had talked in general [15] about the bidding process.

[16] Q: Would you characterize this as general, [17] wide ranging discussions?

[18] A: Fairly wide ranging, yeah. I mean, [19] generally, within the broad subject area, but fairly [20] wide ranging. About the bidding process, I think we [21] talked one time about publicity that was - or rumors [22] about the results of the single family sale and how

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[1] that was conducted. Talked about, I guess, the [2] optimization model in very broad terms.

[3] Q: Who would initiate these conversations?

[4] A: I don't - I don't know what you mean.

[5] Q: Who would begin - who would make the [6] contact? Would it be you contacting Mr. Ervin or [7] would it be Mr. Ervin contacting you or did it go [8] both -

[9] A: Probably both. Probably both ways.

[10] Q: Did you discuss contracts - you

know, [11] concerns about contracting improprieties or the way [12] in which procurements were being conducted and [13] whether they were being conducted fairly or not?

[14] A: We could have, yeah.

[15] Q: How about expressing any concerns that you [16] had about the way the Multifamily Housing was being [17] run or the program objectives of Ms. Dunlap or others?

[18] A: No, because I wouldn't have known anything [19] about that. I don't think, except, again, in the very [20] broad - I wasn't in Multifamily Housing. I would [21] have been - if it were, but only again, in the [22] broadest sense since I was doing it secondhand. I

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[1] guess.

[2] Q: But I mean in terms of just being a [3] interested observer of the Agency's programs and [4] functioning and moral and things like that, are [5] those the kind of discussions you would have been [6] having with -

[7] A: Yeah.

[8] Q: Did you ever express concerns to Mr. Ervin [9] about things that you had heard in the hallways or [10] things that you had - things you had observed in [11] contracting or -

[12] A: Possibly, yeah.

[13] Q: Do you recall what they were?

[14] A: No, not offhand.

[15] Q: But just - just to confirm, you were [16] there occasions in which you expressed concerns [17] about - about contracting issues, suspected [18] improprieties at the Agency?

[19] A: Possibly, yeah, uh-huh.

[20] Q: Same thing with the way the [21] sales [22] might have been conducted

[22] A: Possibly.

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[1] Q: Did you have similar conversations with [2] anyone else regarding such things at HUD? Inside or [3] outside HUD.

[4] A: Probably, yeah.

[5] Q: Tell me with who.

[6] A: Frank Smeltzer, Dave Ryan.

[7] Q: Do you recall the kinds of things that you [8] would be - you would be discussed with them?

[9] A: Well, I think general - I mean, in [10] the general areas that you mentioned.

[11] Q: Contracting?

[12] A: Uh-huh.

[13] Q: Note sales, discrimination against

[14] individuals or based on gender

age?
[15] A: I think in just general terms, yeah.
[16] Q: Was there ever a time that you felt
[17] concern that somebody in a position
of authority [18] ought to know about
your concerns?
[19] A: Run that by me again.

[20] Q: I mean, if you had concerns about
the way [21] in which procurements were
being conducted or the way [22] in which
the note sales were being run, did you -

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[1] was it important to you that somebody
in a position [2] to do something about
those things be made aware of [3] the fact
that they were occurring or that you had
[4] those concerns?

[5] A: Did I express that?

[6] Q: Yes.

[7] A: Possibly.

[8] Q: What I'm trying to get at, you seem -
[9] just correct me if the perception is
wrong because I [10] want to be clear on
this.

[11] That you seem like you had genuine
[12] concerns that things might be amiss
in contracting or [13] in the note sales; is
that a fair statement?

[14] MR. LARIZZA: I object. I think that [15]
mischaracterizes his testimony.

[16] I think on virtually every question
you [17] asked, he said he may have said
something, he might [18] have possibly
said something.

[19] I haven't heard him say positively that
he [20] ever expressed any concerns to
anybody specifically [21] about any con-
tract.

[22] BY MR. HAWKE:

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[1] Q: Do you recall having concerns
about -

[2] A: There were certain instances
where things [3] I was concerned about;
and I think that, to the [4] extent that I
could, those were communicated and, in
[5] some cases, communicated in writing.

[6] Q: To?

[7] A: To Office of Procurement and
Contracts. [8] And certainly, later on,
communicated to the [9] Inspector Gen-
eral.

[10] Q: Did there come a time in any of
your [11] conversations with Mr. Ervin
where you said, John, I [12] just can't
believe what's going on here. You know,
[13] this is clearly wrong, they shouldn't
be doing this, [14] I don't understand, you
know?

[15] A: Possible, yeah.

[16] Q: Did you recall - in addition to
Frank [17] Smeltzer and Dave Ryan, do
you recall having [18] discussions with

them about discrimination type [19]
issues, about opportunities for ad-
vancement by white [20] males within the
Agency?

[21] A: Possibly, yeah.

[22] Q: Do you recall what exactly you
discussed?

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[1] A: No. I mean - no. I mean, I don't
know [2] the exact subject. I mean, I think
it was just a [3] general observation.
Smeltzer had been around a lot [4] longer
than I had and probably had made his
own [5] observations about that in a
passing conversation.

[6] Q: Do you recall what his general [7]
observations were?

[8] A: Well, I think he - in his view, that a
[9] lot of the promotions, a lot of the
opportunities [10] were being taken by
women or African-American women, [11]
you know.

[12] Q: And did others express - do you
recall [13] others expressing those views
as well?

[14] A: Possibly, yeah.

[15] Q: Do you - was there - at any time
did [16] these people attribute the re-
asons for why they [17] thought these
opportunities were going to people [18]
other than white males?

[19] A: The reasons they were going?

[20] Q: Did they attribute the reasons to
the fact [21] that Helen Dunlap was - had
as part of her agenda [22] that white males
not be afforded those opportunities?

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[1] A: Possibly. I don't recall specifically it
[2] being attributed to Helen Dunlap.

[3] Q: Do you recall generally?

[4] A: I think generally - again, this may
be my [5] opinion coloring what I heard,
but that - that it [6] was the kind of the
nature of the - or the culture [7] of the
organization to - to be moving in that [8]
direction. Or - you know, in my view, the
whole [9] government moving in that
direction.

[10] Q: With respect to issues concerning
[11] contracting improprieties or irreg-
ularities, do you [12] recall having dis-
cussions with Mr. Smeltzer or [13] Mr.
Ryan about those issues?

[14] A: Uh-huh, yes.

[15] Q: What was the - anybody else?

[16] A: Possibly, I can't remember.

[17] Q: Sue Mitchell?

[18] A: No.

[19] Q: Who is Sue Mitchell?

[20] A: She is - well, at one time she
worked in [21] admin, she took another -
took another job, I assume [22] in the
Agency, but I haven't - I don't recall even

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[1] seeing her for the last couple of years;
but I would [2] not have had con-
versations with her.

[3] Q: What about Frank Malone?

[4] A: Doubtful.

[5] Q: Did you ever talk to Judy May?

[6] A: Occasionally.

[7] Q: About suspected irregularities or
things [8] that didn't strike you right
about the way [9] contracting decisions
were being made?

[10] A: Yes.

[11] Q: Myrna Gordon?

[12] A: Possibly, yeah. Myrna worked for
me for a [13] while and then went down as
GTR, so I probably talked [14] to her about
that, yeah.

[15] Q: Do you recall what either Mr.
Smeltzer or [16] Mr. Ryan or Ms. Gordon,
what their general view of [17] what was
going on in the Agency was at that time?

[18] A: Not specifically, no.

[19] Q: Generally speaking, can you tell
me?

[20] A: Well, I think Frank Smeltzer was,
you [21] know - I think his view was -
again, I speculate [22] that his view was
that Hamilton was being favored in

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[1] the contracting process, particularly
as they moved [2] into this - the cross-
cutting task order.

[3] Q: So just to be clear, we are talking in
the [4] mid to late 1995 period when the
Financial Advisor 1 [5] is in place and
Financial Advisor 2 is in the process [6] of
being procured but hasn't been awarded
yet; is [7] that correct?

[8] A: Actually - well, I think I was talking
[9] about a little later than that.

[10] Q: So you're talking more in the time
frame [11] of spring of '96, when -

[12] A: After the award.

[13] Q: After the award of Financial Ad-
visor 2 -

[14] A: Right.

[15] Q: - but before or right around the
time of [16] the crosscutting task order?

[17] A: That's correct.

[18] Q: Would you characterize the views
as - [19] Mr. Smeltzer's views as widely
held within the [20] Comptroller's Office?

[21] A: I would speculate that that was -
that [22] was the case, yeah.

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[1] Q: Do you know whether in your
discussions [2] with Mr. Smeltzer or Mr.
Ryan or Ms. May whether they [3] ever
expressed any fear or - or concern about
[4] speaking out on these issues?

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[15] A: No. I don't think so.
 [16] Q: They never expressed a sense that if - or [17] a concern that if they were to - to confront [18] Ms. Rock or Ms. Dunlap, that they might imperil their [19] jobs with the Agency?
 [10] A: No.
 [11] Q: Did you ever talk - can you tell me who [12] Asset Strategies is?
 [13] A: It's a firm out of New York that was a [14] subcontractor to Hamilton, I guess, on the single [15] family. One of the single family sales.
 [16] Q: Who are the principals of Asset Strategies?
 [17] A: I don't recall their names.
 [18] Q: Deborah Kooney?
 [19] A: That's correct
 [20] Q: Marian Lee?
 [21] A: Possibly. I remember Deborah Kooney, I [22] remember that name.

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[1] Q: Do you know Karen Burstein?
 [2] A: No.
 [3] Q: Do you recall having discussions with [4] Asset Strategies concerning concerns about what was [5] going on in the Agency?
 [6] By this, let me be more specific. [7] Conversations concerning the manner in which Hamilton [8] was conducting the note sales or by which Hamilton [9] was receiving contracts or task orders?
 [10] A: No.
 [11] Q: Do you recall what you discussed with [12] Asset Strategies?
 [13] A: I'm trying to remember. There was a - [14] there was a dispute between Asset Strategies and [15] Hamilton, and Asset Strategies was fired by Hamilton [16] as a subcontractor and replaced - I don't know if we [17] had conversations with Asset Strategies or whether [18] Asset Strategies subsequently wrote a letter to HUD [19] which expressed all their concerns.
 [20] Q: Do you know whether - just to be clear, [21] whether Asset Strategies sent this letter prior to [22] the time that it was fired or after?

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[1] A: I don't recall.
 [2] Q: Do you recall seeing the letter that Asset [3] Strategies wrote?
 [4] A: Yes.
 [5] Q: Would it have come under the letterhead of [6] its attorney?
 [7] A: Yes, uh-huh.
 [8] Q: And you don't recall whether that was [9] Ms. Burstein or not?
 [10] A: Yeah, that's - that's where I recall that [11] name. I didn't know whether she

was a principal or [12] she was the attorney.
 [13] Q: Do you recall who the letter was addressed [14] to?
 [15] A: I think it was addressed, actually, to the [16] Secretary or to the General Counsel.
 [17] Q: Mr. Cuomo at the time?
 [18] A: No. Cisneros or his General Counsel.
 [19] Q: Mr. Diaz?
 [20] A: Diaz.
 [21] Q: Did you ever have substantive discussions [22] with Ms. Burstein or Deborah Kooney about the

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[1] concerns they raised in this letter?
 [2] A: Substantive discussions?
 [3] Q: Substantive discussions.
 [4] A: No.
 [5] Q: Did you have discussions with them about [6] other issues that were things that you were concerned [7] about at HUD?
 [8] A: The only conversation I ever remember [9] having with them is I ran into Ms. Kooney and her [10] partner in New York at the - at the Italian festival [11] or something like that. Think about the probability [12] of that happening.
 [13] Q: How did you know who they were?
 [14] A: They came up to me and said hi. I was [15] walking along the street. I mean, they recognized me.
 [16] Q: They recognized you?
 [17] A: Yeah.
 [18] Q: Do you know how it is that they came to [19] recognize you?
 [20] A: Well, we used - they attended status [21] meetings in the - in connection with the single [22] family sale.

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[1] Q: Where you would have been sitting at a [2] table?
 [3] A: Yeah.
 [4] Q: So you would have - they would have had [5] occasion to focus on you more so than you would have [6] had occasion to focus on them; is that correct?
 [7] A: Correct, yeah.
 [8] Q: Did they know or, to your knowledge, did [9] you have any - can you tell me why it was that you [10] would be having discussions with them?
 [11] A: You mean at this festival?
 [12] Q: Yeah. At the festival, did you have [13] discussions about anything of substance?
 [14] A: No. All I remember is, you know,

hi, how [15] you doing, what are you doing up here, you know, that [16] kind of thing. I don't think we had any substantive [17] discussions.
 [18] I mean, I don't think that - as I recall [19] if they really weren't - you know, that was not an [20] atmosphere to talk. My wife and family was there. So [21] I wasn't really -
 [22] Q: Can you tell me who MAPS is?

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[1] A: MAPS is a - or was a - I think a two-person software company that was working for one [3] of the due diligence contractors.
 [4] Q: Do you know who the two person were?
 [5] A: One of them was Andrea - Pimentel was her [6] last name at the time. The other one was - I don't [7] remember the other one's name.
 [8] Q: Toni Moss?
 [9] A: Toni Moss.
 [10] Q: Did you ever have a discussion with either [11] Ms. Moss or Ms. Pimentel concerning either your [12] concern about what was happening with the Agency [13] contracting wise or no sales wise or their [14] concerns?
 [15] A: Yes.
 [16] Q: Can you tell me what - tell me what [17] you -
 [18] A: Well, I think - I think they - they [19] had - they had been reprimanded; - I don't know [20] what they did with data file.
 [21] In other words, they had data files [22] the single family notes on disk - apparently, they

Page

[1] had been working late; and I do know all the [2] circumstances, but I think they had been reprimanded [3] transmitting that data to Hamilton or Asset [4] Strategies from a - I don't know how they did it - [5] from a phone line shopping mall late at night.
 [6] Q: Are you sure that was them or that [7] Williams Adley?
 [8] A: Well, they must have been working as a sub [9] to Williams Adley. I thought it was them on behalf [10] of Williams Adley. At least that's as I recall it.
 [11] Q: Did you ever have any - I can you [12] tell me why it would be you would be talking [13] with them?
 [14] A: Well, in that particular situation they [15] had called me to explain to me they had heard that [16] there was this flak or flap about Williams Adley's [17] handling of the data. Either they had heard [18] about Asset Strategies' complaints about Williams Adley's handling of the data.

[20] Q: Did they express any other issues or [21] concerns about things they had observed in other [22] people's conduct in the note sales?

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[1] A: I think that was Asset Strategies.
[2] Q: Can you tell me who Nancy Kay is?
[3] A: Nancy Kay is a consultant. She worked for [4] me for a short time at Trammell Crow. She worked for [5] Oxford at some point in the finance department, as I [6] recall.
[7] Q: Did you have occasion to speak to her [8] about concerns that either you or she had about note [9] sales or contracting improprieties or other matters [10] that were occurring at HUD?
[11] A: Only in the - probably in the very [12] broadest sense. I mean, she really was not involved, [13] as I recall, in note sales at all, so.
[14] Q: What about - can you tell me who Joel [15] Zegart is?

[16] A: He runs the - an imaging firm and was a [17] subcontractor to, I guess, all of the due diligence [18] contractors on single family sales.
[19] Q: And did you have conversations with [20] Mr. Zegart concerning issues or problems that either [21] you or he had observed at HUD?
[22] A: I think only in a very general sense.

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[1] Q: Same way as with Ms. Kay?
[2] A: Yeah. I mean, I don't recall having [3] conversations with Ms. Kay. It's possible and [4] probable that I had conversations with Joel Zegart; [5] but, again, in a very general sense.
[6] Q: You don't recall having any conversations [7] with Ms. Kay?
[8] A: Not about problems in asset sales [9] contracting and things.
[10] Q: What about - or contracting?
[11] A: Again, maybe in a general lunch-time [12] conversation kind of way. She was a HUD contractor, [13] I mean, again - you know.
[14] Q: What about Hae Han, can you tell me who [15] she is?
[16] A: She runs an accounting firm. She used to [17] work - she worked for me for a while at Trammell [18] Crow.
[19] Q: Have you ever talked to any reporters, [20] members of the media or press, concerning issues or [21] problems that you had observed at HUD that you were [22] concerned about or that they were concerned about?

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[1] A: Yes, but I don't remember his name. [2] Worked for -

[3] Q: Mr. Richbourg, just to go back to your [4] meetings with John Ervin, are you sure it was only [5] three or four meetings or could it have been several [6] dozen meetings that you had? Meetings or phone [7] calls.

[8] A: I can't - I don't believe it was several [9] dozen. You are talking about that one restricted [10] period of time?
[11] Q: Beginning in mid 1995 to the present - or [12] to the time that Mr. Ervin filed his lawsuit in June [13] of 1996.

[14] A: I don't - I don't think it was several [15] dozen.
[16] Q: But does it refresh your recollection if I [17] told you it was more than three or four?

[18] A: Could possibly have been, yeah.
[19] Q: Are you aware that Mr. Ervin took notes of [20] your conversations?

[21] A: No.
[22] Q: Are you learning that for the first

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[1] time -
[2] A: Uh-huh.
[3] Q: - now? Or are you aware that he [4] summarized notes of his conversations with you after [5] the conversations occurred?
[6] A: No.
[7] Q: Did there come a time when you were [8] interviewed by HUD's Inspector General?
[9] A: Yes.
[10] Q: Do you know why you were interviewed?
[11] A: Same reason I guess I'm here. I was there.
[12] Q: At the time you were interviewed, did you [13] understand that the Inspector General was conducting [14] an investigation into the allegations that Mr. Ervin [15] had raised in the lawsuit that is pending in this [16] case?

[17] A: I believe so, yeah.
[18] Q: Did you understand when you - when you [19] spoke to the Inspector General, that you were [20] obligated to give truthful and honest and complete [21] answers to the investigators who were asking the [22] questions?

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[1] A: Uh-huh.
[2] Q: Were these auditors or were they [3] investigators?
[4] A: I think they were investigators.
[5] Q: Did they carry a badge and a gun and all [6] that?
[7] A: They didn't have a gun on them, but they [8] carried a badge.
[9] Q: Did they tell you that you had a right to [10] have your personal counsel

present?

[11] A: No.
[12] Q: Did they tell you why it was that they [13] were interviewing you or what they intended to do [14] with your - the information that you provided to [15] them?
[16] A: No, huh-huh.
[17] Q: Did they tell you - do you recall being [18] informed as to where they were getting the [19] information they were basing their questions on?
[20] A: No.
[21] Q: In early 1996, in a phone call with John [22] Ervin, Mr. Ervin's records reflect that you told him

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[1] that you had been interviewed by the Inspector [2] General and that during the interview they had pulled [3] out Mr. Ervin's notes of his conversations with you.
[4] Do you recall that conversation? Excuse [5] me, early August 1996.
[6] A: Vaguely.
[7] Q: And Mr. Ervin's notes of that conversation [8] indicate that you - you told Mr. Ervin that you had [9] felt blindsided by the fact that the Inspector [10] General had pulled out these notes.
[11] Do you recall telling Mr. Ervin that?
[12] A: Vaguely, yeah. Okay.
[13] Q: How many days of interviews had you given [14] the Inspector General?
[15] MR. LARIZZA: I'm going to object. I [16] fail to see the relevance of this line of [17] questioning. In fact, I fail to see the relevance of [18] about the last hour's worth of questions.
[19] This lawsuit is about whether or not your [20] client should or should not have won certain [21] procurements for which he placed a bid or whether or [22] not your client should have had certain contracting

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[1] work. None of this has anything to do with [2] procurements that - in which Mr. Ervin was an [3] interested party.
[4] Now, Mr. Richbourg is a witness who, by [5] the way, does have expertise on those subjects. He [6] did sit for a time on the SEB on the Financial [7] Advisory 2, he was the chairperson of the SEB on Due [8] Diligence 2, and you haven't asked him any questions [9] about that.
[10] MR. HAWKE: We're getting there.
[11] MR. LARIZZA: Well, let me finish my [12] point.
[13] These depositions are taking an inordinate [14] amount of time, I think in large part because the [15] questions are dealing with matters that are not [16] germane to the lawsuit.

Inspector General (18) requested these records from Mr. Ervin, that he had (19) an obligation to turn them over?

(20) A: Okay. Yeah.

(21) Q: Do you believe that everything that you (22) told the Inspector General in response to their

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(1) questions was the truth and nothing but the truth?

(2) A: I believe so.

(3) Q: All right. Mr. Ervin's records reflect on (4) March 22nd, 1996, in a phone call with him, you used (5) the term "white men's hell" and told Mr. Ervin that (6) Phil Salamone was going to retire and that "he has (7) been pushed aside by Helen, she got another one."

(8) Do you recall that conversation?

(9) A: No.

(10) Q: Do you recall ever using the term "white (11) men's hell"?

(12) A: No, I don't recall using it. I could (13) have, but I don't recall using -

(14) Q: Do you recall using any term similar to (15) that?

(16) A: No.

(17) Q: Did you ever hear the term "white boy's (18) hell" used at HUD?

(19) A: Seen it in - I think I've seen it in (20) publications, the private publications.

(21) Q: You mean the private -

(22) A: In an article referring -

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(1) Q: Have you ever heard other individuals at (2) HUD use that name - that phrase?

(3) A: Occasionally, yeah.

(4) Q: What do you understand that phrase to (5) mean?

(6) A: I guess in terms of promotion and so (7) forth, I guess. My opinion, that's what that would (8) mean.

(9) Q: Can you just expand on that? When you say (10) promotion, what do you mean by that?

(11) A: Well, I think if one were interpreting (12) that, that would mean that the white men in that (13) Agency were given lower preferences on opportunities (14) in order to advance others.

(15) Q: Do you believe that Helen Dunlap forced (16) Phil Salamone to retire?

(17) MR. KEYES: Objection, calls for (18) speculation.

(19) THE WITNESS: Yeah, I - at this (20) point in time, I don't recall the specific (21) circumstances of Phil Salamone's retirement.

(22) BY MR. HAWKE:

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(1) Q: Do you recall having told John Ervin that (2) Mr. Salamone had been pushed aside by Helen?

(3) A: I don't recall that, no.

(4) Q: Could you have said it?

(5) A: Possibly, I could have said it.

(6) Q: Do you recall having told Mr. Ervin that (7) she got another one?

(8) A: I don't know - no, I don't recall saying (9) that.

(10) Q: Could you have said that?

(11) A: Possibly.

(12) Q: In November of 1995, Mr. Ervin's records (13) reflect that he had a phone call with you in which (14) you said that Phil Salamone was transferred to (15) special assistant, which is the kiss of death.

(16) Do you recall telling that to Mr. Ervin or (17) words to that effect?

(18) A: I don't recall the conversation. I could (19) have possibly said that.

(20) Q: And why did you - assuming you said that, (21) why would you have referred to the special assistant (22) position in that way?

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(1) A: I don't know.

(2) Q: Did you have a belief that being promoted (3) to a special assistant position is really - is a - (4) like being put out to pasture?

(5) A: No, not - not in - not in a general (6) sense.

(7) Q: Are you aware of any instance in which (8) somebody was transferred to the position of special (9) assistant or promoted to the position of special (10) assistant in order to force their retirement?

(11) A: Well, I can only speculate. I think (12) that - that Ellie Clark was transferred to an admin (13) or special assistant position for that purpose.

(14) Q: But you would not ascribe the same purpose (15) to Mr. Salamone?

(16) A: I don't recall - I simply don't recall (17) the circumstances surrounding Phil Salamone's issues. (18) I mean, he came from Boston and I know that he was (19) close to or considering retirement the entire time (20) that I knew him, but I don't recall any specific (21) circumstances.

(22) Q: Do you recall having a conversation in

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(1) July 1996 with - with John in which you told him (2) that Dave Ryan, Bob Wesselowski, and Len Nowak would (3) be good people to talk to about white boy's hell at (4) HUD?

(5) A: No, I don't recall that.

(6) Q: Are those people that would have a view or (7) an opinion on that issue. In your knowledge?

(8) A: Len - who, Len Nowak?

(9) Q: Len Nowak, Bob Wesselowski, and Dave (10) Ryan.

(11) A: Possibly Dave Ryan and Len Nowak. (12) Wesselowski, I didn't know him that well. Possibly.

(13) Q: With respect to Mr. Ryan and Mr. Nowak, (14) what leads you to believe that they would have a view (15) about white boy's hell?

(16) A: Well, I believe that they - the were (17) passed over for promotions or couple of occasions.

(18) Q: And do you know who was responsible for (19) making those promotions?

(20) A: No, not right offhand.

(21) Q: Do you know whether it was Dunlap or (22) Ms. Rock?

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(1) A: Well, I think in Dave Ryan's case (2) was - it could have been Kathy Rock could have (3) preceded Kathy Rock either Chris Peterson or Marta (4) Queirra.

(5) In the case of Len Nowak, it could have (6) been Helen or Helen's predecessor.

(7) Q: Do you believe that any of the people (8) that I mentioned have been discriminated against, (9) Mr. Salamone, Mr. Ryan, Mr. Wesselowski, Mr. Nowak (10) based on their gender?

(11) MR. LARIZZA: I'm going to object his personal opinion is of no relevance.

(12) THE WITNESS: You mean in - in (13) the eyes of the law discriminated against? I (14) couldn't say. I mean, possibly.

(15) (Richbourg Deposition Exhibit Number 2 was (16) marked for identification.

(17) BY MR. HAWKE:

(18) Q: Handing you what's been marked as Exhibit (19) Number 2, there is no number on this document.

(20) MR. KEYES: What is the source of this document?

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(1) MR. HAWKE: Hamilton Securities

(2) BY MR. HAWKE:

(3) Q: Can you identify this document?

(4) A: No.

(5) Q: This appears to be a cc: Mail from Helen (6) Dunlap to Austin Fitts, 8/18/96, 3:08 p.m.

(7) Do you see on the bottom of the paragraph, it says, "Second observation. The (8) abolitionist and reform move

in this country were [10] run by minorities and women with a few kind white [11] males along for image."

[12] Do you see that?

[13] A: Yeah.

[14] Q: Do you have any knowledge as to what [15] Ms. Dunlap may have been referring to when she said [16] "with a few kind white males along for image"?

[17] A: Absolutely not.

[18] Q: Do you believe that - do you have any [19] knowledge as to whether Ms. Dunlap believed that [20] white males were only good for image?

[21] A: I have no knowledge of that.

[22] Q: Do you have suspicion about that?

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[1] A: Possibly.

[2] Q: Do you believe this accurately reflects [3] Ms. Dunlap's view of white males?

[4] A: I don't really know. I mean, this could [5] have been tongue-in-cheek. I mean -

[6] Q: Based on everything that you know about [7] Helen Dunlap and what you have heard from other [8] people at HUD, is it consistent with your [9] understanding and your view of her?

[10] A: I guess - well, to a certain extent. [11] I mean, I would say this is somewhat tongue-in-cheek.

[12] Q: Have you ever heard Ms. Dunlap use the [13] term TOMS?

[14] A: No.

[15] Q: Do you know what that means?

[16] A: Tired old males.

[17] Q: Very good. Have you ever heard anybody at [18] HUD refer to white male employees at HUD as TOMS?

[19] A: No.

[20] Q: You never heard that term used at HUD?

[21] A: No.

[22] Q: How did you know -

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[1] A: I was asked the same question a couple [2] days ago.

[3] Q: By whom?

[4] A: By my - by HUD's attorneys.

[5] Q: Prepared you well. [6] (Richbourg Deposition Exhibit Number 3 was [7] marked for identification.)

[8] BY MR. HAWKE:

[9] Q: I'm informed - this is Exhibit Number 3, [10] it was provided to us pursuant to a Freedom of [11] Information Act request; and you are welcome, [12] Mr. Richbourg, to review the entire document, but I'm [13] going to begin on the third to last page. "Sales [14] Improve

HUD's Minority, Women and Small Business [15] Performance".

[16] Mr. Richbourg, isn't it correct that you [17] were involved in several of the procurements that HUD [18] used to implement its asset sales programs?

[19] A: That's correct.

[20] Q: The title of this document is "Briefing [21] for the Congressional Budget Office, FHA Mortgage [22] Loan Sales Program, April 15th, 1996."

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[1] You have the third to last page?

[2] A: Third to last page? Sales Improve HUD's [3] Minority - that page, is that what you want?

[4] Q: Yes.

[5] A: Okay.

[6] Q: You see the first diamond? Can you read [7] that into the record, please.

[8] A: "During 1995, the Department's total [9] contract actions for portfolio restructuring [10] activities exceeded \$42 million. Of that amount, 69 [11] percent went to minority firms and 26 percent to [12] women-owned firms."

[13] Q: Are those numbers considered high based on [14] your understanding of typical HUD contracting [15] practices?

[16] A: I don't know. I mean, I don't have any [17] knowledge of - any idea of what the typical split [18] would be.

[19] Q: Do you know why it was that 69 percent [20] of - 69 percent of total contract actions went to [21] minority firms and 26 percent went to women-owned [22] firms?

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[1] A: Why?

[2] Q: Yeah.

[3] A: I don't understand the question.

[4] Q: Do you know - was there - were they the [5] only qualified people to perform these contracts?

[6] A: No.

[7] Q: Do you know whether a deliberate decision [8] was made to award these contracts to these firms?

[9] A: Yes.

[10] Q: Do you know who made that decision?

[11] A: Well, in the case of Due Diligence Number [12] 1, I don't know how that decision was arrived at. In [13] the case of Due Diligence Number 2, the - it was [14] essentially, as I would view it, a departmental [15] decision that evolved from the financial advisor or [16] in conjunction with the financial advisor to offer [17] the due diligence contracts as an 8(a) set-aside.

[18] Q: So is it your testimony that the

financial [19] advisor, being Hamilton Securities, was advising the [20] Agency on - on how to select contractors in [21] connection with Due Diligence Number 2?

[22] A: Yes.

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[1] Q: Is that an appropriate thing for the [2] contractor to be doing?

[3] A: I don't think it's inappropriate.

[4] Q: Is it part of their scope of work?

[5] A: I don't - I don't know. I mean, I think [6] that - I don't know.

[7] Q: At a breakfast meeting with John Ervin on [8] September 28th of 1995, did you tell John Ervin that [9] if he wants to still work at HUD, he needs to [10] bring - needs to get women over to HUD headquarters?

[11] A: Not that I recall.

[12] Q: Could you have said that to him?

[13] A: Possibly. I'm not clear about the context.

[14] Q: Did you have a view or did you express a [15] view to Mr. Ervin that in order for him to win [16] contracts at HUD, it would be beneficial to him to [17] bring women with him when he went over to the Agency [18] for meetings and things like that?

[19] A: Not - not that I recall.

[20] Q: Do you believe that Mr. Ervin or his firm [21] were disadvantaged at HUD because he's a white male?

[22] A: I believe that he was disadvantaged in

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[1] many procurements because he was not a minority firm.

[2] Q: Do you believe that he was [3] disadvantaged - do you believe that you were [4] disadvantaged at HUD because you were a white male?

[5] A: To a certain extent, among other factors, [6] yes.

[7] Q: Would any of those other factors be - [8] include the fact that you had - that you were [9] friendly with John Ervin? Or provided information to [10] Ervin and Associates?

[11] A: No. I think more in terms of the fact [12] that I was not a long term - long time HUD employee, [13] I was basically considered an outsider. The fact [14] that my expertise and interest lies in kind of asset [15] management deal making and not in running a large - [16] operating a large operating division where the [17] opportunities were arising. I think that's among the [18] factors.

[19] Q: Drawing your attention to the second [20] diamond, can you read that into the record.

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[21] A: "During the first quarter of 1996, the [22] Department's total contract actions for portfolio

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(1) restructuring activities reached almost \$43 million. (2) Of that amount, 76 percent went to minority firms."

[3] Q: Do you know what contract actions that [4] refers to?

[5] A: No. I have - I mean, I could guess, but [6] I don't know at this - I mean, I don't know right [7] here. Apparently, that increased by a million [8] dollars, 42 million in the last paragraph.

[9] I assume it's the -

[10] Q: Just to be clear, are you talking about [11] that so for all of 1995, they spent \$42 million on [12] portfolio restructuring; but in the first quarter of [13] 1996 alone they spent almost 43 -

[14] A: No. I mean, in my opinion or my [15] interpretation of this is that in the first quarter [16] of '96, they reached almost 43 million.

[17] Q: Total?

[18] A: So they only spent a million, in the first [19] quarter of '96, more. I don't know, but I - that [20] would be my interpretation of that.

[21] MR. KEYES: Did you participate in [22] the preparation of this document?

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[1] THE WITNESS: No. Not that I recall.

[2] BY MR. HAWKE:

[3] Q: Do you know why it would be that HUD would [4] be telling the Congressional Budget Office this [5] information?

[6] A: Why they would be telling -

[7] Q: Telling the Congressional Budget Office [8] how many of these contracts have been -

[9] A: I would - well, again, I don't know. I [10] would speculate that they thought the Congressional [11] Budget Office thought that was a good thing or would [12] think that was a good thing.

[13] Q: Do you know whether or not the Agency [14] considered its obligations under the Supreme Court's [15] decision of Adarand versus Pena to determine whether [16] (a) or not these were proper uses of the 8(a) set-aside [17] program?

[18] A: I have no idea.

[19] MR. KEYES: You produced Exhibits 2 [20] and 3 previously?

[21] MR. HAWKE: Not to you.

[22] MR. KEYES: To anyone? To the

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[1] Federal Defendants?

[2] MR. HAWKE: I'm not sure why that's [3] your concern, Mr. Keyes.

[4] MR. KEYES: What's your objection to [5] answering that question?

[6] MR. HAWKE: I'm not here to answer [7] your questions.

[8] MR. KEYES: Okay. I'll take that as [9] a no.

[10] MR. HAWKE: Check with the Federal [11] Defendants.

[12] BY MR. HAWKE:

[13] Q: On August 18th, 1995, at a breakfast [14] meeting with John Ervin, you expressed the concern [15] of - with the number of noncompetitive solicitations [16] that were occurring within HUD. Do you recall that?

[17] A: No. It's possible I said it.

[18] Q: Do you believe HUD utilized non-competitive [19] contracting too often?

[20] A: It's my opinion that they did.

[21] Q: And why is that?

[22] A: It's simply my opinion that they use -

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[1] well, let me back up.

[2] I don't know if it would be considered [3] noncompetitive contracting. It's the award of large [4] indefinite quantity contracts and then the award of [5] noncompetitive task orders against those contracts.

[6] Q: And why did - why does this concern you?

[7] A: Well, I think any time - I mean, there [8] are two sides to every issue. I think many times [9] with a sole - someone in sole possession of a [10] contract, it's often - or offered task orders, you [11] don't always get the best price or the best [12] execution.

[13] On the other hand, competition comes with [14] a cost and so it's always - you know, an evaluation [15] process is to trade off the costs of continually [16] competing procurements and the costs that you pay to [17] have a contractor available.

[18] Q: With respect to your views of HUD's use of [19] noncompetitive contracting, did you ever tell John [20] Ervin that you might go to the Inspector General [21] about these concerns?

[22] A: Possibly.

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[1] Q: And why would you have told John Ervin [2] that?

[3] A: I don't know. I mean, as a part of - one [4] of the conversations we talked about, possibly told [5] him.

[6] Q: Just being concerned about what you were [7] seeing and knowing that John would have concerns [8] about these things, too?

[9] A: Yes.

[10] Q: Did you ever go to the IG about [11] contracting irregularities or concerns?

[12] A: No. The IG came to me.

[13] Q: Were you concerned that if you went to the [14] IG, that the IG would do anything about it?

[15] A: No. Possibly. I mean, I think, also, you [16] know - again, I must couch this that I'm not a [17] contracting expert and I was not inclined to do a [18] study of HUD contracting to - to have facts to [19] provide. These are all suppositions and my opinion [20] and observation of things.

[21] So I can't tell you today whether they do [22] two percent or 200 percent minority contracting.

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[1] Q: What I'm asking is through the - when [2] you - with respect to things like noncompetitive [3] contracting, where an incumbent - where task orders [4] are issued against a contract for very large amounts [5] that are not otherwise competitively bid, did you [6] feel that if you went to the IG with your concerns - about those practices, that the IG would not do [8] anything to investigate those those concerns?

[9] I'm not speaking about minority firms. I'm [10] just talking about in general.

[11] A: I don't know.

[12] Q: Did you have a perception of the Inspector [13] General as not being responsive to - to concerns [14] about contracting improprieties that might have been [15] occurring at HUD?

[16] A: It was my perception - or I would [17] speculate that the IG had limited capability to [18] effect real change some of those practices or that [19] they could - that they could determine factually a [20] solid basis for making change.

[21] Q: Did you ever refer to the Inspector General as the kinder, gentler IG?

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[1] A: Quite possibly, and that was a term [2] that - I think was a term used in Department for [3] the IG's operation from the point that the current incumbent came on board.

[5] The fact that it was, I believe, a specific stated policy of the IG, kinder, gentler; we [7] are not going to audit, attack you, we are going [8] to help make things better.

[9] Q: Do you recall whether Mr. G. was [10] assigned to the note sale program as part of the IG's [11] kinder, gentler effort to work with HUD program officials in implementing that program?

[13] A: I don't recall.

[14] Q: What about David Derecoltz?

(15) A: I don't recall if he was specifically
(16) assigned. I think he sat in on some of
the meetings.

(17) Q: Is Lauch Faircloth a distant re-
lative of (18) yours?

(19) A: Yes.

(20) Q: Did you ever tell John Ervin that
you (21) thought about going to Senator
Faircloth about the (22) problems that
you were perceiving at HUD?

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(1) A: Possibly.

(2) Q: But that you were concerned that if
you (3) did, that the Senator might use
that as an (4) opportunity to attempt to
have the Agency shut down (5) or dis-
continued?

(6) A: I mean, I don't recall that. Possibly.
(7) (Richbourg Deposition Exhibit Num-
ber 4 was (8) marked for identification.)

(9) BY MR. HAWKE:

(10) Q: I've handed you what's been mar-
ked as (11) Exhibit Number 4. This is an E-
mail message that was (12) obtained from
Hamilton Securities.

(13) You see at the bottom of the page, (14)
Mr. Richbourg -

(15) A: Second page or first page?

(16) Q: First page, I'm sorry, where it says
reply (17) separator?

(18) A: Okay.

(19) Q: Do you see - can you identify that
(20) particular message?

(21) A: Looks like I wrote it, July 19th, '95,
to (22) Skip Day, I guess.

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(1) Q: What were the services that you
were (2) referring to in this E-mail?

(3) A: "On the partially assisted trans-
action, (4) the Loan Sales Team is pur-
suing a transaction (5) structure that may
require that HUD hire an Interim (6)
Trustee at a cost of approximately 10 to
20,000 (7) dollars."

(8) So this must have been inquiring as to
(9) whether we could hire an interim
trustee without the (10) competition.

(11) Q: Do you know whether these -
whether a (12) purchase order was ever
issued for those services or (13) whether
the task order was - Hamilton task order
(14) was -

(15) A: I don't think interim trustee was -
well, (16) to my knowledge, an interim
trustee was not hired.

(17) Q: You see the statement just above
the one (18) that you read? It says, "With
justification we can (19) sole source at
almost any amount..see the rating (20)
agency contracts which are sole source
for \$350,000."

(21) A: Where is this?

(22) Q: Right above the paragraph you

just read on

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(1) page 2, it begins "with justification".

(2) A: Oh, on page 2.

(3) Q: It's in the middle of the page. See
"with (4) justification"?

(5) A: Okay.

(6) Q: And are those your initials at the
end of (7) that paragraph?

(8) A: I assume so, yes.

(9) Q: What do you mean by the statem-
ent, with (10) justification we can sole
source work at almost any (11) amount?

(12) A: Well, apparently, at the time, I
thought (13) that with appropriate jus-
tification to the Office of (14) Contracts,
you could sole source for amounts larger
(15) than \$25,000.

(16) Q: When you say with justification,
what kind (17) of justification are you
referring to?

(18) A: Whatever Contracts asks for. I
mean, you (19) basically explain why you
need it, why you have to (20) sole source
it, why you can't get other sources, why
(21) you can't do competition.

(22) Q: So you could sole - so it's con-
ceivable

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(1) that HUD could sole source any
contract; is that (2) correct?

(3) A: Apparently, that was my opinion at
that (4) moment.

(5) Q: At this time, have you come to learn
(6) otherwise?

(7) A: Well, I think in - in today's en-
vironment (8) because of all that has
transpired, I don't believe (9) that that
statement is true any longer.

(10) Q: When you say all that has trans-
pired, you (11) mean -

(12) A: In terms of the - the Ervin suit, the
(13) issues surrounding Hamilton Sec-
urities.

(14) I have a - again, I have no basis for - (15)
for judging this factually, but it would be
my (16) opinion that OPC has probably -
basically very (17) restrictive on what
they will allow to sole source.

(18) OPC now has a new czar of con-
tracting as (19) well.

(20) Q: Do you believe that Ervin's suit
has (21) resulted in changes in the way
that HUD does business (22) in con-
tracting?

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(1) A: I think it certainly is a contributor
to (2) changes.

(3) Q: And what about the Inspector
General's (4) investigation?

(5) A: Probably a contributor, yes.

(6) Q: Relative to the investigation or

audits (7) that you have been aware of
since you have been at (8) the Agency,
how would you characterize the scope
of (9) the investigation that the IG is
currently conducting (10) into Ervin's
allegations?

(11) A: I know nothing about the depth or
scope of (12) their investigation.

(13) Q: Were you aware that the IG issued
(14) subpoenas and seized documents
from Kathy Rock, Helen (15) Dunlap -

(16) A: Yes.

(17) Q: - Nic Retsinas, Chris Greer?

(18) A: Yes.

(19) Q: To your knowledge, has that hap-
pened in (20) connection with - to your
knowledge, did that happen (21) in con-
nection with this investigation?

(22) A: That was my speculation.

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(1) Q: Has that occurred in any other case
that (2) you have been involved in?

(3) A: Not that I'm aware of.

(4) Q: Or that you have had knowledge
of?

(5) A: No.

(6) Q: So relative to the statement that -
that (7) the IG is a kinder, gentler IG, do
you believe its (8) actions in investigating
these matters are consistent (9) with that
policy?

(10) A: I have no opinion.

(11) Q: You think the IG, as far as you
know, has (12) been pretty aggressive in
its pursuit of the (13) allegations?

(14) A: As far as I know, yes.

(15) Q: Do you believe the IG would be
pursuing (16) this investigation for as long
as it has if - if (17) there were no merit or
truth?

(18) MR. LARIZZA: Objection, that's (19)
complete and total speculation. And
argumentative.

(20) BY MR. HAWKE:

(21) Q: With respect to the rating agency
(22) contracts that you are referring to
that were let on

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(1) a sole source basis, tell me what those
are.

(2) A: That was a contract with, I believe,
two (3) of the rating agencies to es-
sentially rate FHA and (4) rate FHA's
paper.

(5) Q: Do you know who won these
contracts?

(6) A: I don't recall -

(7) Q: Or, excuse me, do you know who
were (8) awarded these contracts?

(9) A: I don't recall exactly, I - my guess
(10) would be, as my memory serves me,

(7) A: On her own.

(8) Q: Okay. Do you know whether she was doing (9) that because of her loyalty to Helen Dunlap?

(10) MR. KEYES: Objection, misstates the (11) testimony. He didn't say it actually happened.

(12) THE WITNESS: Yeah. I mean, again, (13) speculating to another level, I mean, that would be (14) the logical - logical person.

(15) BY MR. HAWKE:

(16) Q: And why do you - what do you base your (17) personal opinion on that Ms. Hinton was disposed to (18) influencing the outcome of SEBs in this fashion?

(19) MR. LARIZZA: In what fashion? I (20) object, the question is vague.

(21) THE WITNESS: Restate your question.

(22) BY MR. HAWKE:

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(1) Q: You just - I believe you just testified (2) that it was your personal opinion that Ms. Hinton was (3) disposed to attempting to manipulate the outcome of (4) an SEB determination by - based on her - you said (5) was being manipulated. I guess my question is, what (6) do you mean by that?

(7) A: Well, I think I answered that if - if we (8) speculated that - that her intent was to manipulate (9) this board - and I don't know that, I mean only - (10) we can only look at the face of the scores - that it (11) would be my spec - further speculation that she was (12) not doing this of her own initiative but being that (13) she worked for Helen Dunlap and worked very closely (14) for Helen Dunlap in Multifamily, Helen Dunlap would (15) be the only speculative source of her motivation.

(16) Q: Okay. And when you say we can only -

(17) A: I'm sorry, go ahead.

(18) Q: - we can only look at her scores, wasn't (19) it possible for - for you or - to - as the (20) chairman of the SEB - and I mean - I don't mean (21) you, Mr. Richbourg, but as chairman of the SEB, you (22) had the power and authority to - to question her to

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(1) find out what the - what the rationale was (2) underlying her - her scoring?

(3) A: Absolutely.

(4) Q: If you had known that the reason why she (5) was scoring a proposal the way she was based on (6) an attempt by Ms. Dunlap to influence the outcome, (7) would that have caused you concern?

(8) A: That would have caused me con-

cern, yes.

(9) Q: Are you aware - at the time, were you (10) aware of any facts which indicated to you that that (11) was the case?

(12) A: Not at the time I was on the board.

(13) Q: Since you were on the board, have you (14) become aware of facts that that is the case?

(15) A: I've not become aware of any facts.

(16) Q: Looking at these scores that I've shown (17) you, doesn't it appear that that is the case?

(18) MR. LARIZZA: Objection, calls for (19) speculation.

(20) MR. KEYES: Same objection.

(21) THE WITNESS: I would speculate that (22) had I been chairman and these were the final scores,

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(1) I would have seriously questioned producing a final (2) recommendation with that big of a divergence in (3) scores, particularly if it was the difference between (4) making the best qualified and not making the best (5) qualified. Certainly, if it was a difference between (6) being ranked in the top three and not being ranked in (7) the top three.

(8) I have, to my knowledge - in my (9) experience, I haven't sat on a board where a - a (10) scoring was finalized with that kind of divergence in (11) scores because it would indicate to me, again, a (12) dramatic difference of opinion among board members as (13) to the qualifications, and I don't believe that's (14) acceptable.

(15) BY MR. HAWKE:

(16) Q: Okay. And isn't it a fact that Kenneth (17) Leventhal ultimately became one of the financial (18) advisors selected as - as -

(19) A: To my knowledge, they did, yes.

(20) Q: So given that result, based on these (21) scores, is it reasonable to - to infer that - that (22) this was an effort to insure that Kenneth Leventhal

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(1) be one of the offerors selected?

(2) MR. KEYES: You are asking for his (3) personal opinion?

(4) MR. HAWKE: Uh-huh.

(5) THE WITNESS: Well, I think (6) clearly - it clearly is my opinion that had this (7) score not been as it is shown here, the rankings of (8) Ervin and Leventhal would have been different.

(9) BY MR. HAWKE:

(10) Q: Are you aware that approximately three (11) weeks after the September 11th, 1995 scoring, (12) Ms. Wiles took a buyout from HUD and was looking for

(13) a job in the private sector with a HUD contractor?

(14) A: I am aware that Ms. Wiles took a buyout. (15) I am not aware of the exact date. I mean, I would (16) speculate that if it was one of those (17) end-of-the-fiscal-year buyouts, that, yes, she (18) probably left shortly after this.

(19) Q: If Ms. Wiles was looking for a job with (20) HUD contractors, including any of the bidders in this (21) procurement should three weeks after the scoring of (22) the September 11th proposals - shouldn't that have

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(1) caused her to recuse herself from from this panel?

(2) MR. LARIZZA: Objection. It's a (3) hypothetical question, calls for speculation. It's (4) addressed to a subject upon which the witness has no (5) expertise.

(6) BY MR. HAWKE:

(7) Q: Well, you did resign from the SE because (8) of the perceived conflict of interest with (9) discussions with Ms. Fitts -

(10) A: I did.

(11) Q: - concerning the appearance of conflict (12) of interest?

(13) A: That's correct.

(14) Q: Okay. Now, if Ms. Wiles was interviewing (15) with HUD contractors participating in this (16) procurement the time that this procurement was pending, shouldn't that also have (17) qualified her on (18) the same ground?

(19) A: Well, it is my opinion that (20) certainly, (21) again, would be an appearance of conflict.

(22) Q: Can you tell me what Ms. Wiles relationship was like with Ms. Fitts or Dunlap?

Page

(1) A: I have no recollection of any - (2) particular animosity or particular closeness between (3) Ms. Wiles and Dunlap.

(4) Q: Or Ms. Fitts?

(5) A: Or Ms. Fitts.

(6) Q: On January 25th, 1996, at a (7) fast (8) meeting, you told John Ervin Kenneth Leventhal (9) was protesting financial advisor procurement and that Ervin should think about protesting it as well.

(10) Do you recall that?

(11) A: I don't recall that.

(12) Q: Okay. Is it possible -

(13) A: It's possible, yes.

(14) Q: Do you believe that that was the case? Do (15) you have knowledge that?

[16] MR. LARIZZA: Knowledge of what?
[17] BY MR. HAWKE:
[18] Q: Knowledge that Leventhal was protesting [19] the financial advisor procurement?

[20] A: It's my recollection that I have heard [21] it. I have never seen documents of a Leventhal [22] protest, but I am relatively certain that that did

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[1] occur.

[2] Q: Why would you have told Mr. Ervin that he [3] should think about protesting the procurement as well? [4] This is approximately six months after you left the [5] SEB.

[6] A: I don't recall why I would have told him. [7] Well, I could speculate that, again, it is my [8] experience that -

[9] MR. LARIZZA: It hasn't been [10] established that the witness actually made the [11] statement.

[12] THE WITNESS: No, no, I'm speculating [13] that if -

[14] MR. LARIZZA: You're speculating [15] about a statement that you don't know that you made?

[16] THE WITNESS: Right.

[17] MR. HAWKE: That he said it's [18] possible that he made.

[19] THE WITNESS: It's possible, yeah.

[20] BY MR. HAWKE:

[21] Q: Right.

[22] A: In speculating about that particular

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[1] statement on its face - well, I guess I would [2] speculate that had I made that, it - it would be [3] because protests generally get consideration and [4] would generate another look at the process.

[5] Q: Were you concerned that another look at [6] the process was - was necessary in order to insure [7] that a fair contract award was made?

[8] A: Well, I would speculate that another look [9] never hurts.

[10] Q: Okay. And in this case, isn't the reason [11] why you - you told Mr. Ervin that he should consider [12] protesting was because you believed that the - there [13] had been problems in this procurement that warranted [14] another look?

[15] MR. LARIZZA: Objection. He did not [16] testify that he made that statement to Mr. Ervin.

[17] BY MR. HAWKE:

[18] Q: Assuming that possibility that you made [19] the statement, you can answer the question.

[20] A: Well, I would speculate that there was [21] enough controversy surrounding the - the procurement [22] that it could have warranted another look.

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[1] Q: Okay. And is it - the reason why it [2] could have warranted another look is because of the [3] controversy surrounding it or, in fact, there was [4] real issues concerning the propriety of the [5] procurement?

[6] A: Again, I would have to speculate that I [7] would have had no direct knowledge of anything other [8] than controversy surrounding it at that point in [9] time.

[10] Q: What was the controversy surrounding it at [11] that point in time?

[12] A: Well, I think the fact that there was - [13] there was a protest. I don't recall - I think - I [14] think the fact that there was a protest and it was [15] kind of being opened up.

[16] There were - I think there were, at the [17] time, some complaints by other potential bidders [18] either regarding the process, regarding their [19] proposals or regarding - I recall some issues [20] regarding conflict of interest provisions that were [21] being discussed.

[22] Q: Do you recall controversy about the manner

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[1] in which Hamilton's proposal had been scored in this [2] procurement?

[3] A: I don't recall any specific issue about [4] that.

[5] Q: What about a general issue?

[6] A: No, other than - are you referring to the [7] U.S. News report?

[8] Q: Well - yes. That there had been [9] controversy concerning the - whether, in fact, [10] Hamilton was qualified to receive the award based on [11] the SEB's evaluation of their proposal.

[12] A: I don't recall hearing any specific rumors [13] about, you know, their specific score or not specific [14] score.

[15] Q: What about general?

[16] A: I mean, just again, general rumors, [17] scuttlebutt.

[18] Q: About?

[19] A: About controversy.

[20] Q: I'm trying to understand what the [21] controversy was that related to Hamilton.

[22] Was there a perception that Hamilton was

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[1] being favored in connection with the scoring of its [2] proposal in this procurement?

[3] MR. LARIZZA: I'm going to object. [4]

The word "favored" is vague, I don't know what that [5] means.

[6] BY MR. HAWKE:

[7] Q: Getting more consideration than any other [8] contractor?

[9] MR. LARIZZA: Same objection. The [10] question is vague.

[11] THE WITNESS: Well, I - I would [12] speculate that if you are referring to Hamilton [13] getting higher scores, again, all I can recollect [14] are, again, just rumors that that - that that might [15] have been the case. No attribution, I don't recall [16] any specific person or any specific issue of [17] controversy.

[18] BY MR. HAWKE:

[19] Q: Are you aware that both Ervin and [20] Associates and Kenneth Leventhal protested the [21] procurement?

[22] A: I'm not aware of that.

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[1] Q: Are you aware that HUD held a corrective [2] action, best and final - corrective best and final?

[3] A: Yes.

[4] Q: And do you know the outcome of that [5] corrective outcome?

[6] A: No, I don't.

[7] Q: Let me ask you this: Do you know who the [8] awardees of the Financial Advisor 2 contract were?

[9] A: I believe I do - I believe so.

[10] Q: Okay. Who were the - who were the [11] awardees?

[12] A: I believe that the awardees were Merrill [13] Lynch, Hamilton, Cushman & Wakefield, and Kenneth [14] Leventhal. Is that correct?

[15] Q: Well, do you recall there being - do you [16] recall C.S. First Boston being selected as a [17] financial advisor?

[18] A: I recall - yes, I recall some sequence of [19] events where First Boston was selected.

[20] Q: Okay. And do you know why it was that [21] C.S. First Boston was selected as a financial advisor?

[22] A: No, I do not.

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[1] Q: Do you know whether it was because [2] Mr. Retsinas asked that they be selected as a [3] financial advisor?

[4] A: I believe I saw a memo to that effect two [5] days - a couple days ago.

[6] Q: You saw a memo?

[7] A: I thought - yes, I believe I saw a memo.

[8] Q: Would it have been a HUD document?

[9] A: I don't know - my recollection is that it [10] was a - some kind of memo.

(11) MR. HAWKE: I'd like - if you have (12) it, I'd like to see it.
 (13) MR. LARIZZA: We will see - we will (14) see if we can figure out what he is talking about.
 (15) MR. HAWKE: Okay. (16) (Richbourg Deposition Exhibit Number 67 was (17) marked for identification.)
 (18) BY MR. HAWKE:
 (19) Q: Handed you what's been marked as Exhibit (20) Number 67. Can you identify this document? It's (21) Bates number INT001 0265.
 (22) Is this the memo that - or is it the

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(1) December 6th, 1995 memorandum referred to by (2) Mr. Retsinas?
 (3) A: I don't recall which - which memo it (4) was. I believe I saw the December 6th memo because I (5) don't recall it being this long and this is - this (6) is a memo dated January, something unreadable, 1996, (7) from Nicolas Retsinas to Craig Durkin.
 (8) Q: So based on your review of this memo, does (9) it appear that Mr. Retsinas overruled the (10) recommendations of the SEB by adding C.S. First (11) Boston to the list of contractor awardees?
 (12) A: It would appear that - that he did, yes.
 (13) Q: Do you know why Mr. Retsinas did that?
 (14) A: I do not.
 (15) Q: Do you have a suspicion as to why he did (16) that?
 (17) A: I do not.
 (18) Q: Mr. Ervin's records reflect that on (19) February 2nd, 1996, in a telephone call with him, you (20) told Mr. Ervin that First Boston and Merrill Lynch (21) should have been disqualified from Financial Advisor (22) Number 2 due to their excessive prices.

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(1) Do you recall telling that to Mr. Ervin?
 (2) A: I don't recall that, no.
 (3) Q: Is it possible that you told him that?
 (4) A: It's possible.
 (5) Q: Is it a fact that they should have been (6) disqualified because of their excessive prices?
 (7) MR. KEYES: Objection. Is it a (8) fact? Calls for an opinion.
 (9) THE WITNESS: I would speculate that (10) the procurement rules that - which this was let (11) under was a best value and the price was only a (12) consideration and not necessarily an in or out (13) factor.
 (14) BY MR. HAWKE:
 (15) Q: So if Ervin's technical score might

(16) have - was it your view that the services that HUD (17) was procuring from C.S. First Boston and Merrill (18) Lynch were services that HUD could have done itself?
 (19) That - did you tell Mr. Ervin that all - (20) all they were doing was administering a bid? All (21) they were being asked to do was administer a bid?
 (22) A: Are you asking me if HUD could have done

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(1) this itself?
 (2) Q: I'm asking if - if you told Mr. Ervin (3) that the services that the - that the transactional (4) financial advisors were being asked to perform, (5) Merrill Lynch and C.S. First Boston, were limited to (6) admin - merely administering a bid and that HUD (7) could have performed these services itself?
 (8) A: I don't recall that.
 (9) Q: Is it possible that you said that to him?
 (10) A: It's possible. (11) (Richbourg Deposition Exhibit Number 68 was (12) marked for identification.)
 (13) BY MR. HAWKE:
 (14) Q: I've handed you what's been marked as (15) Exhibit 68, Bates number INT001 0183.
 (16) Can you identify this document?
 (17) A: Appears to be a correction to the Source (18) Evaluation Board appointments from Audrey Hinton (19) appointing Lessley Wiles as a HUD volunteer, (20) nonvoting advisor.
 (21) Q: How did the - hadn't the procurement (22) been - hadn't the contract already been awarded at

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(1) this point?
 (2) A: I don't know.
 (3) Q: Weren't the financial advisor contracts (4) awarded in January of 1996?
 (5) A: Well, it appears from Mr. Retsinas's memo (6) that the selections had been made around January of (7) '96.
 (8) Q: And then as - then they were - when the (9) contract awards were made, they were protested and (10) the SEB was asked to go back and -
 (11) A: And reconsider.
 (12) Q: - and reconsider. (13) So do you see that this Exhibit Number 68 (14) is appointing Lessley Wiles to the Source Evaluation (15) Board as a nonvoting advisor?
 (16) A: Yes.
 (17) Q: Okay. And do you believe that was in (18) connection with the reconsideration of the contract (19) award following the protest?

(20) A: I have no idea. I could only speculate (21) that you told me that she had retired prior to this (22) day.

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(1) Q: That's right.
 (2) A: So I have no idea why this would have been (3) done.
 (4) Q: Okay. Do you see it says, "Lessley D (5) Wiles, HUD volunteer"?
 (6) Do you know why it was that HUD wa (7) appointing a volunteer to -
 (8) A: I have no knowledge of this.
 (9) Q: In your experience at HUD, have you ever (10) seen volunteers serve on Source Evaluation Boards?
 (11) A: I have not.
 (12) Q: And at this time, do you know whether (13) Ms. Wiles was a HUD employee or not?
 (14) A: At this -
 (15) Q: Yeah.
 (16) A: At the time of this memo? I do not.
 (17) Q: Could I go down and volunteer to be on a (18) Source Evaluation Board HUD?
 (19) A: I don't know.
 (20) Q: Do you think I could?
 (21) A: It's my opinion that you could.
 (22) Q: I could not?

Page

(1) A: You could not.
 (2) Q: So if I couldn't, why is it then that Ms. Wiles could?
 (4) A: I don't know.
 (5) Q: Do you know that Ms. Wiles been (6) working as a consultant to Kerry Company at the (7) time that was working as a HUD volunteer?
 (8) A: I have no knowledge of that.
 (9) Q: Are you aware that The Kerry Company has a (10) very close relationship with Helen Dunlap?
 (11) A: I'm aware of that only thru scuttlebutt.
 (12) Q: And what's -
 (13) A: I've heard that Helen Dunlap worked for (14) The Kerry Company one time, possibly.
 (15) Q: Do you have any - can you think any (16) reason why Ms. Wiles would be brought in as a (17) volunteer to serve on a Source Evaluation Board under (18) these circumstances?
 (19) A: I do not.
 (20) Q: It looks pretty funny, doesn't it?
 (21) MR. LARIZZA: Objection. Question (22) vague.

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(1) THE WITNESS: In my opinion, it's (2) funny.

(3) BY MR. HAWKE:

(4) Q: It looks very suspicious, doesn't it?

(5) A: It looks very funny, yeah. (6) (Richbourg Deposition Exhibit Number 69 was (7) marked for identification.)

(8) BY MR. HAWKE:

(9) Q: Handed you what's been marked as Exhibit (10) Number 69, Bates number INT001 0230.

(11) Can you identify this document?

(12) A: Appears to be a scoring sheet for (13) financial advisory proposals dated 4 something '96.

(14) Q: I will represent to you that this is (15) the - this is the corrective action - these are the (16) scores following the corrective action best and final (17) on the financial advisory proposal.

(18) Do you see - you've identified the (19) winners of the financial advisory procurement (20) originally as Cushman & Wakefield, Hamilton (21) Securities, and Merrill Lynch. Do you recall that?

(22) A: Yes.

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(1) Q: Okay. Now, if you look at Exhibit (2) Number 66, which is the September 11th scoring, going (3) down the page, you see that Hamilton Securities' (4) score went from an 80.25 in September to a 94 (5) following the corrective final - corrective action (6) best and final. Do you see that?

(7) A: Uh-huh.

(8) Q: Cushman & Wakefield went from an 81.5 in (9) September to what appears to be an 86.5 in the (10) corrective action best and final. Do you see that?

(11) A: Uh-huh.

(12) Q: Okay. And Merrill Lynch went from an (13) 82.75 in September to what appears to be a 91.2 in (14) the corrective action best and final.

(15) A: Okay.

(16) Q: So with respect to the awardees, following (17) the best and final, all of their scores went up; is (18) that a fair statement?

(19) A: It appears - yeah, that appears to be the (20) case.

(21) Q: Now, if you look at Ernst & Young/Kenneth (22) Leventhal, in September their score was a 77 and in

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(1) April, on the corrective action best and final, their (2) score was a 77. Okay?

(3) A: That's correct.

(4) Q: Look at Ervin. In September, their score (5) was a 63.5 in September, and in April, corrective (6) action best and final went down to a 52.2; is that (7) correct?

(8) A: That's correct.

(9) Q: Okay. And isn't it correct that all the (10) other offerors' scores -

(11) A: Was that a 52 or 62?

(12) Q: 62.2. So it went down. It went down a (13) notch.

(14) See that with respect to the other (15) offerors, Pryor McClandon, their score went from a 73 (16) to 69. KPMG went from a 79 to a 69. Do you see (17) that?

(18) So is it fair to say that all of the (19) offerors who were awarded contracts, their scores (20) went up following the corrective action, Ernst & (21) Young/Kenneth Leventhal stayed the same, and all the (22) other offerors went down?

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(1) A: Okay. This is after - is this the re -

(2) Q: This is the reconsideration -

(3) A: - reevaluation.

(4) Q: - following the corrective action. (5) Do you believe based on - looking at (6) these documents, that HUD was attempting to (7) rationalize their prior decision to the General (8) Accounting Office?

(9) MR. LARIZZA: Objection, calls for (10) pure speculation.

(11) THE WITNESS: I can only speculate (12) that that is certainly possible.

(13) BY MR. HAWKE:

(14) Q: Are you aware that Allen Gittelsohn from (15) Ernst & Young/Kenneth Leventhal met with Helen Dunlap (16) on March 8, 1994 in her office?

(17) MR. KEYES: Objection, assumes facts (18) not in evidence.

(19) THE WITNESS: I have no - no (20) knowledge of that.

(21) BY MR. HAWKE:

(22) Q: Do you know - all right. Do you know

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(1) what - do you know whether Ms. Dunlap briefed (2) Mr. Gittelsohn or people from Ernst & Young/Kenneth (3) Leventhal concerning the status of the rescoring (4) while it was going on?

(5) A: I have no knowledge of that.

(6) Q: Would it have been improper for her to (7) have done that?

(8) MR. KEYES: To do what?

(9) MR. HAWKE: To advise Ernst & (10) Young/Kenneth Leventhal of the status of the (11) corrective action.

(12) THE WITNESS: In my opinion, that (13) would have been improper.

(14) BY MR. HAWKE:

(15) Q: All right. Do you recall your testimony (16) yesterday about the crosscutting task order? I (17) believe we established that - that the - the word (18) crosscutting task order was never men-

tioned in the (19) original RFP.

(20) Do you recall that?

(21) A: Yes.

(22) Q: Did there come a time when HUD, to your

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(1) knowledge, issued a crosscutting task order?

(2) A: Yes.

(3) Q: And when was that?

(4) A: Well, in my recollection, that task order (5) was in process at the time - in and around the time (6) that the government shutdown occurred. I don't (7) recall the specific dates.

(8) Q: Do you know whether offerors in the best (9) and final range were ever told that - that HUD (10) intended to procure a crosscutting task order as part (11) of this procurement?

(12) A: In the - are you talking about in the (13) reoffering?

(14) Q: Prior to the reoffering, prior to the (15) award of the contract itself.

(16) A: Not to my knowledge.

(17) Q: Is it your understanding that - would a (18) contractor - an offeror in the position of Ervin (19) have had any reason prior to the contract award to (20) know that HUD intended to issue a crosscutting task (21) order prior - prior - following the contract award?

(22) A: Would - the question is, would Ervin have

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(1) had any -

(2) Q: As a bidder in the procurement, would they (3) have had any reason to know that a crosscutting task (4) order would have been awarded? Was intended to be (5) awarded?

(6) A: To my knowledge, they would not have.

(7) Q: They would have - they should have had no (8) reason to know that; isn't that a fact?

(9) A: Well, certainly - well, I would say (10) certainly there would be no reason for one contractor (11) to know and the other contractors not to know.

(12) Q: Okay. And in this case, isn't it true (13) that - that a contractor in Ervin's position, based (14) on what was stated in the RFP, would have had no way (15) of knowing about the existence of an opportunity to (16) bid for a crosscutting task order based on the - (17) solely on the offering materials that were - were (18) being provided to bidders?

(19) A: Based on my very vague recollection of the (20) contents of the RFP, I do not recall the crosscutting (21) task order being laid out in that RFP.

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[22] Q: And if - if bidders had known about -

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[11] that they were going to be - have an opportunity to [2] bid on a crosscutting task order after contract [3] award, wouldn't their proposals have been very [4] different when they were submitted to the Agency [5] given - given that the services that were called for [6] were not transactional financial advisor services?

[7] MR. LARIZZA: Objection, calls for [8] speculation.

[9] THE WITNESS: I would speculate [10] that - that - I don't know - again, your [11] definition of dramatically different -

[12] BY MR. HAWKE:

[13] Q: Significant.

[14] A: I would speculate that the proposals would [15] have been different or would have gone beyond [16] transactional presentation.

[17] Q: But isn't it correct that the work that [18] was being procured under the RFP for the Financial [19] Advisor 2 procurement was for transactional financial [20] advisors?

[21] A: Again, in my recollection of the RFP, it [22] was primarily transactional - it was transactionally

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[1] oriented.

[2] Q: In the statement of work for the [3] crosscutting task order, it included no transactional [4] work; is that correct?

[5] A: I have never seen the statement of work [6] for the crosscutting task order.

[7] Q: Is it your understanding -

[8] A: I would speculate based on my [9] understanding of what work was being done that it was [10] not transactionally oriented.

[11] Q: So given that crosscutting task order - [12] assuming that the crosscutting task order did not [13] contain transactional services, you - isn't it fair [14] to assume that the proposals that were submitted as [15] part of the Financial Advisor Number 2 procurement [16] would have been significantly different if the [17] bidders had known that those services were going to [18] be procured?

[19] MR. LARIZZA: Objection, calls for [20] speculation.

[21] THE WITNESS: I would speculate the [22] proposals would have been different, yes.

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[1] MR. HAWKE: Can we take a five-minute [2] break right at this point? We have been going for an [3] hour and a half.

[4] (Recess taken - 10:29 a.m.)

[5] (After recess - 10:40 a.m.)

[6] (Richbourg Deposition Exhibit Number 70 was [7] marked for identification.)

[8] BY MR. HAWKE:

[9] Q: Mr. Richbourg, I've handed you what's been [10] marked as Exhibit Number 70. It's a memorandum from [11] Austin Fitts, dated August 7th, 1995, to Christopher [12] Peterson, Helen Dunlap, Carol Steinbach; Subject: [13] Bottom Line.

[14] Do you see that?

[15] A: Uh-huh.

[16] Q: As of August 7th, 1995, even though you [17] were no longer chairman of the SEB, you were still [18] officially on the SEB; isn't that correct?

[19] A: According to this chronology, I guess I [20] was, yes.

[21] Q: Do you see in the second full paragraph on [22] page 1, Ms. Fitts states in the middle of the

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[1] paragraph, "and Hamilton's no longer doing [2] crosscutting functions as new financial advisors come [3] in."

[4] Do you see that?

[5] A: Yes.

[6] Q: And that she's warning Ms. Dunlap - [7] Ms. Dunlap and Mr. Peterson that - that it's [8] evolving into a situation where HUD is headed into a [9] serious problem in three to six months. Okay?

[10] A: Uh-huh.

[11] Q: During this time, this is when the [12] Financial Advisor 2 procurement was pending; is that [13] correct?

[14] A: That's correct.

[15] Q: This is before the rescoring - this is [16] before the scoring of proposals on September 11 -

[17] A: September 11th, that's correct.

[18] Q: All right. Now, if you turn to the bottom [19] of page 3, you see Ms. Fitts says, "Proactive [20] Planning: My prediction is that the loan sales is [21] missing career capacity (will, expertise, number of [22] able hands) in all three areas;" and she identifies

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[1] proactive planning and leadership, crosscutting [2] issues and operations.

[3] Do you see that?

[4] A: Yes.

[5] Q: And Ms. Fitts is using the word [6] crosscutting and is discussing crosscutting issues [7] with Ms. Dunlap?

[8] A: That's correct.

[9] Q: And she -

[10] MR. KEYES: And Mr. Peterson.

[11] MR. HAWKE: And Mr. Peterson; and [12] she's saying - you're right.

[13] BY MR. HAWKE:

[14] Q: She's saying to them, "My estimate of [15] capacity is different from yours, Helen. I see real [16] serious trouble coming unless we take the steps - now."

[18] Do you see that?

[19] A: Uh-huh.

[20] Q: Do you have any idea based on your [21] knowledge of what was going on during the procurement [22] what - what Ms. Fitts might be referring to here?

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[1] A: My - in her estimate of capacity - [2] that - is that what you are asking me?

[3] Q: Why is she discussing crosscutting issues [4] with Ms. Dunlap?

[5] A: I have no idea.

[6] Q: How is it that they have - that Mr. Fitts [7] is having these discussions with Ms. Dunlap?

[8] MR. KEYES: I don't understand [9] you mean, how is it? In what capacity?

[10] BY MR. HAWKE:

[11] Q: I'm wondering why it is that Mr. Fitts - [12] at the time of this memo - were - you were still [13] the GTR on - this contract; isn't that correct?

[14] A: I assume - yeah, I don't recall again, [15] I don't recall the date that he went to Myrna [16] Gordon.

[17] Q: The question that I have is, do you [18] understand the services that Ms. Fitts is talking [19] about as relating to the services that Hamilton was [20] providing under the cross - under the Financial Advisor 1 contract or relating to the needs in [22] connection with the - what would be done under

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[1] the Financial Advisor 2 procurement

[2] A: What services are you talking about?

[3] Q: Well, the crosscutting services

[4] A: Where is she talking about crosscutting [5] services?

[6] Q: In the second paragraph of document, [7] she's saying Hamilton no longer doing crosscutting [8] functions

[9] A: Oh, on the first page?

[10] Q: Yeah. What crosscutting functions had [11] Hamilton been doing previously?

[12] A: Well, I would speculate that may be [13] referring to - there some tasks in the [14] partially as a sale which - which addressed the structuring issues beyond the mer of that [16] portfolio.

[17] There was a Task Order Number which I [18] believe addressed and authorized them to work on a [19] various issues. I don't recall specifically it

mentioned crosscutting issues, but there were - I [21] know Task Order 6 had a variety of tasks that were [22] eligible under that.

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- [11] Q: Now, but if you look at page 3 -
[12] A: All right.
[13] Q: - under the section Proactive Planning, [14] Ms. Fitts is telling Ms. Dunlap that HUD is missing [15] career capacity - I would assume that means HUD [16] career people - to do, and then number 2 she says, [17] crosscutting issues.
[18] Do you see that?
[19] A: Yes, uh-huh.
[10] Q: And then Ms. Fitts is warning Ms. Dunlap, [11] "My estimate of capacity is different from yours, [12] Helen. I see real serious trouble coming unless we [13] take steps now."
[14] A: Okay.
[15] Q: Do you know whether she is referring to [16] taking steps in connection with the services that [17] were being provided under Financial Advisor Number 1 [18] or whether or not she was referring to services that [19] would be procured under Financial Advisor 2?
[20] MR. LARIZZA: I'm going to object. [21] This calls for speculation. This witness has no way [22] of knowing what was in the mind of the author of a

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- [1] document he has never seen before.
[2] THE WITNESS: I would speculate - I [3] mean, I can speculate that she's referring to [4] prospectively -
[5] BY MR. HAWKE:
[6] Q: Future -
[7] A: Future work.
[8] Q: Now, if you look on the next page - [9] number 3, next page, the last page of the exhibit, [10] paragraph 3, can you read that into the record?
[11] A: "A written request for help with a list - [12] it is one thing if Nic or the Secretary will not give [13] you what you request, it is another thing to not have [14] asked in a highly professional WRITTEN matter -" I [15] assume that means manner. "Failure to do it and do [16] it in writing in a thorough and thought out way will [17] bring the checklists carriers after us. Can Kevin [18] help produce this?"
[19] Q: Now, if Ms. Fitts is speaking [20] prospectively about crosscutting issues that she is [21] warning Helen HUD will require, would this have been [22] appropriate for Hamilton to be providing HUD with

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- [1] such a list at a time when its proposal

was pending [2] as part of Financial Advisor Number 2?

- [3] MR. KEYES: The question is premised [4] on that assumption?
[5] MR. HAWKE: Yes.
[6] THE WITNESS: What assumption?
[7] MR. HAWKE: Can you read back my [8] question.
[9] (The record was read as requested.)
[10] MR. LARIZZA: I'll object to the [11] question, it calls for a conclusion that is beyond [12] the scope of the expertise of this witness.
[13] THE WITNESS: I would speculate that [14] if Hamilton is providing such a list, that - at this [15] particular time, it would not - not be appropriate.
[16] BY MR. HAWKE:
[17] Q: And Helen accepting such a list would not [18] be -
[19] A: Well, certainly - I mean, again, I would [20] read - one read of this is that she's - she's [21] merely telling Helen she needs a list, not that [22] Hamilton's going to do a list.

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- [1] BY MR. HAWKE:
[2] Q: She's asking, isn't she, can Kevin help [3] produce this?
[4] A: Yes, she is.
[5] Q: That would be Kevin McMahan, the person [6] stationed at HUD from Hamilton?
[7] A: That would be my guess, yes. [8] (Richbourg Deposition Exhibit Number 71 was [9] marked for identification.)
[10] MR. MOORE: What was the source of [11] 70, Dan?
[12] MR. HAWKE: Jenner & Block.
[13] BY MR. HAWKE:
[14] Q: Handed you what's been marked as Exhibit [15] Number 71. It's a document from Kevin McMahan, dated [16] August 14, 1995, to Helen Dunlap, Chris Peterson, and [17] Austin Fitts. Subject: One IOU Paid; and attaching [18] a document.
[19] Do you see, Mr. Richbourg, that this - [20] Exhibit Number 71 is approximately - is dated seven [21] days after Exhibit Number 70, which is Ms. Fitts's [22] E-mail to Ms. Dunlap and Mr. Peterson?

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- [1] A: Okay.
[2] Q: If you could just take a minute to review [3] this document.
[4] MR. MOORE: The source of 71 is also [5] Jenner & Block?
[6] MR. HAWKE: Yes.
[7] BY MR. HAWKE:
[8] Q: Actually, if you look, it's really only

[9] three pages. Just read the first three pages of - [10] after the E-mail because they are the same document [11] but in different formats.

- [12] A: Okay.
[13] Q: One is WordPerfect and one is Word. [14] (Pause.)
[15] MR. MOORE: Dan, this is Jenner & [16] Block, also?
[17] MR. HAWKE: Yeah. [18] (Pause.)
[19] BY MR. HAWKE:
[20] Q: Have you read it?
[21] A: Uh-huh.
[22] Q: This appears to be the written request for

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- [1] help to Mr. Retsinas that Ms. Fitts had suggested in [2] her August 7th, 1995 E-mail; isn't that correct?
[3] A: That appears to be correct, yes.
[4] Q: Now -
[5] MR. LARIZZA: I'm going to object. I [6] don't see anything on here that indicates it was [7] addressed to Mr. Retsinas.
[8] MR. HAWKE: Well, the cover of the [9] E-mail states nic-memo.doc.
[10] BY MR. HAWKE:
[11] Q: Based on that, Mr. Richbourg, is it fair [12] to assume that this is the memo that - that [13] Ms. Fitts was referring to in her August 7th E-mail?
[14] A: Well, I guess I could speculate that this [15] was filed in Word under this nic-memo.doc label of [16] the file.
[17] Q: wp-needs.doc -
[18] A: Is the WordPerfect version in the file.
[19] Q: And they appear to be the same documents, [20] don't they?
[21] A: Yes. And they're to Helen Dunlap and [22] Chris Peterson; and from reading the memo, I would

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- [1] infer that it is likely that it is what she was [2] referring in her August 7th memo.
[3] Q: All right. If you look on page 2 of the [4] memo, where it says, "Oversight & Crosscutting [5] Contractor".
[6] A: Okay.
[7] Q: Was it within the scope of Hamilton's [8] statement of work under its Financial Advisor [9] Number 1 contract to be preparing memoranda for [10] Ms. Dunlap and Mr. Peterson to be submitted to [11] Mr. Retsinas concerning Financial Advisor 2?
[12] MR. LARIZZA: Object on the grounds [13] that it calls for a legal conclusion.
[14] THE WITNESS: And your question was, [15] was it within the scope?
[16] BY MR. HAWKE:

[13] Q: Yes.
[14] A: To the best of my understanding, it would [5] have been consistent.

[16] Q: If the statement of work would have been [7] the thing that flowed from -
[18] A: Would have built - would have built on [9] the recommendations and findings in that memo, yes.

[10] Q: But you had never seen these [11] recommendations and findings before, so how did you [12] know that Hamilton was involved with helping Kathy [13] Rock prepare?

[14] A: It's my recollection that I saw what is [15] essentially a presentation from - made by Hamilton [16] to Kathy Rock, which essentially outlines specific [17] tasks.

[18] Q: Now, was that done in connection with the [19] procurement of the cross-cutting task order or was it [20] prior to the procurement?

[21] A: I don't know. Well, that's right. Let me [22] back up. That may have been - the report I

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[1] I recollect may have been after the crosscutting task [2] order was let. I - I have no recollection of the [3] preparation of the statement of work itself, having [4] any firsthand knowledge about - about that.

[5] Q: About Hamilton being involved in the [6] preparation of the statement of work?

[7] A: That's correct.

[8] Q: Okay. But you had - but isn't it correct [9] that you had heard rumor and scuttlebutt to that [10] effect, that Hamilton had been involved in that?

[11] A: Yes.

[12] Q: And that you were concerned about that?

[13] A: Yes.

[14] Q: And it's possible that you raised those [15] concerns with Ms. Rock?

[16] A: It's possible, yeah.

[17] Q: And your testimony is that you don't [18] recall what her reaction was to those concerns?

[19] A: No.

[20] Q: On June 25th, 1996, in a phone call with [21] Mr. Ervin, Mr. Ervin's notes reflect that you told [22] him that Hamilton's crosscutting task order was 20

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[1] million dollars for two years and could be increased [2] if the scope increased, which was already happening [3] because mark-to-market was not included in the scope [4] of the work.

[5] Do you recall that conversation?

[6] A: No, I do not.

[7] Q: Is it possible that you had that [8] conversation with John?

[9] A: It's possible. I don't recall having that [10] kind of detail on the - on the task order.

[11] Q: Do you know whether - by June 25th of [12] 1996, whether the cross-cutting task order had been [13] awarded already to Hamilton Securities?

[14] A: I do not know.

[15] Q: Do you know whether mark-to-market work [16] was included in the original crosscutting task [17] order?

[18] A: I do not. [19] (Richbourg Deposition Exhibit Number 73 was [20] marked for identification.)

[21] BY MR. HAWKE:

[22] Q: Show you what's been marked as Exhibit

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[1] Number 73. E-mail from Kate Trygstad to Kevin [2] McMahan, Annette Hancock, Chris Greer, Kathryn Rock, [3] Helen Dunlap, Frank Smeltzer, and Carlton Tolbert, [4] dated July 11, 1996. Do you see that?

[5] A: Yes.

[6] Q: Do you see "Re: XC Amendment: New [7] Transaction." Does XC, to your understanding, refer [8] to crosscutter?

[9] A: Yes.

[10] Q: Can you take a moment to read this. [11] Have you had a chance to review this?

[12] A: Yes.

[13] Q: Is the mark-to-market program considered a [14] large initiative within HUD?

[15] A: In my opinion, yes.

[16] Q: It's one of the biggest, isn't it?

[17] A: Currently, yes.

[18] Q: Can you tell me why it was that the [19] cross - given Hamilton's role in working on [20] portfolio reengineering, how it is that the - that [21] the work that is being envisioned in this amendment [22] that they are discussing was not included in the

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[1] original scope of work of the cross-cutting task [2] order?

[3] A: I have no idea.

[4] Q: Do you consider that a fairly significant [5] oversight?

[6] A: I guess - I think that would depend on [7] how broad one had wanted to make the crosscutting [8] task order to begin with.

[9] Q: Well -

[10] A: I mean, a crosscutting task order could [11] have been merely to cross-cutting single family, [12] multifamily

asset sales. I don't know.

[13] Q: Do you recall expressing your concerns [14] that - that the crosscutting task order was very [15] open-ended?

[16] A: Yes.

[17] Q: Okay. Does this evoke memories of the [18] original financial advisor contract where things just [19] got amended in that weren't originally included?

[20] MR. LARIZZA: Objection. I don't recall him ever testifying that that took place.

[22] BY MR. HAWKE:

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[1] Q: Increase in the amount of money being paid [2] under the contract?

[3] A: This would appear to be similar.

[4] Q: Okay. But you don't have any knowledge as [5] to why it is that - that such a significant [6] initiative would have been overlooked at the time - that the crosscutting task order was put in place?

[8] A: No.

[9] Q: Do you know whether, in fact, an amendment [10] was executed increasing the scope of the crosscutting [11] order to include mark-to-market work?

[12] A: I do not know.

[13] Q: Do you have a belief?

[14] A: Well, I could speculate, based on my [15] exposure to mark-to-market for seven or eight months [16] later, I do not. Although I - I mean, I don't know.

[18] Q: So Hamilton - so any work at Hamilton [19] would have been doing mark-to-market following the [20] issuance of the crosscutting task order would not [21] have been pursuant to the task order?

[22] MR. LARIZZA: Objection. It calls

Page

[1] for a legal conclusion.

[2] THE WITNESS: I don't know.

[3] BY MR. HAWKE:

[4] Q: Well, if the amendment was entered [5] into -

[6] A: But I only base it on the fact when I [7] went into mark-to-market February -

[8] Q: Of '97?

[9] A: February of '97, to my knowledge Hamilton [10] was not around. I have knowledge as to whether [11] they work under an amendment here on prior [12] to February of '97.

[13] MR. MOORE: 73 was from Jenn [14] Block?

[15] MR. HAWKE: Yes. [16] (Richbourg Deposition Exhibit Number 74 was marked for identification.)

(118) BY MR. HAWKE:

(119) Q: Mr. Richbourg, I've handed you what's been (20) marked as Exhibit Number 74, refer your attention to (21) page 2. (22) This is a contract modification that we

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(1) received under FOIA, dated January 24th - effective (2) January 24th, 1996.

(3) Excuse me, signed on December 31st of '96 (4) by Hamilton and January 24th, '97 by HUD.

(5) And if you turn to page 2, paragraph 4, (6) you see that they - the Agency is increasing the (7) maximum ordering quantities by six million dollars.

(8) Do you see that?

(9) A: Yes.

(10) Q: Do you know if HUD ever ordered any (11) services to take advantage of this increase?

(12) A: I have no knowledge of that.

(13) Q: Do you have any belief as to that?

(14) A: I don't - I don't know what this six (15) million dollars is. I don't - what was in the task (16) order - the initial task order, the original task (17) order?

(18) Q: Well, I believe the - they - they had a (19) 20 million dollar contract under Financial Advisor 1, (20) correct - Financial Advisor 2?

(21) A: You mean the base amount - are we talking (22) about the contract or this task order?

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(1) Q: I'm talking about under the existing (2) contract, there was already 20 million dollars (3) available for Hamilton's work under that contract (4) pursuant to the crosscutting task order?

(5) A: I don't know.

(6) Q: Have you heard that before?

(7) A: Without looking at the documents, I don't (8) know.

(9) It was my understanding that it was like a (10) 12 million dollar contract. If you say it's 20 (11) million dollars, I mean, I'd have to look at the (12) documents.

(13) Q: The \$868,000 a month approximately for two (14) years.

(15) A: Whatever that translates into, yes.

(16) Q: For approximately two years.

(17) A: That was my understanding.

(18) Q: All right. So assume that the cross-cutter (19) gave Hamilton approximately 20 million dollars to do (20) the work that was required under that task order.

(21) Why would HUD be adding six million (22) dollars to the maximum order limit for that contract?

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(1) MR. LARIZZA: The witness already (2)

testified he doesn't know why.

(3) MR. HAWKE: Okay.

(4) BY MR. HAWKE:

(5) Q: Do you have any knowledge?

(6) A: No.

(7) Q: Do you know who Dick Ravitch is?

(8) A: Dick Ravitch?

(9) Q: R-A-V-I-T-C-H.

(10) A: No.

(11) Q: Have you ever heard of Dick - of HUD (12) retained - or Hamilton retaining a person named Dick (13) Ravitch as a subcontractor? At a rate of \$21,000 per (14) month?

(15) A: No. No.

(16) Q: For five days' worth of work - a year?

(17) A: No. Can I clarify? Is this modification (18) effective 1/96 and signed a year later or is that a (19) misprint?

(20) Q: That's a good question. I don't know. (21) It's our understanding that contract (22) modifications are always effective on the date that

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(1) the contract is signed.

(2) A: Okay.

(3) Q: Mr. Richbourg, I have a series of (4) questions for you that are not going to require any (5) documents. I'd like to go through them with you.

(6) Can you tell me what kind of controls were (7) in place to protect the integrity of the note sale (8) bidding process?

(9) A: Define what you mean, the integrity of the (10) process?

(11) Q: To insure that the note sales were being (12) conducted in a fair and impartial manner.

(13) MR. LARIZZA: I'm going to object to (14) this question on the grounds that the issue of (15) whether or not the note sales were or were not fairly (16) conducted is irrelevant to the issues in the (17) litigation and goes to the truth of Ervin's criticism (18) of the program and has nothing to do with the (19) procurement decisions that are at issue here.

(20) MR. HAWKE: Let me - so we have a (21) complete record on it.

(22) It goes to the - the advice that Hamilton

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(1) was giving and the performance of Hamilton under its (2) financial advisor contract, and that goes to whether (3) or not there has been favoritism, which does not (4) relate to -

(5) MR. KEYES: How is that relevant to (6) the issues in the complaint?

(7) MR. HAWKE: Favoritism?

(8) MR. KEYES: Yeah.

(9) MR. HAWKE: You need to read the (10) complaint.

(11) MR. LARIZZA: Let me -

(12) MR. KEYES: Is that the proffer of (13) the relevance?

(14) MR. HAWKE: The proffer of the (15) relevance - let me finish.

(16) The proffer of the relevance of this line (17) of questioning goes to the - the relevance of this (18) line of questioning goes to Hamilton's conduct as a (19) financial advisor and the question of whether or not (20) its conduct was taken into account as a financial (21) advisor in connection with the Source Evaluation (22) Board's analysis of its performance and whether or

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(1) not it was qualified to do the things that it was (2) doing. And I believe that it is - it is within the (3) scope.

(4) We will - we will try to keep our (5) questions narrowly tailored. I'm not interested (6) in - except with respect to particular auctions (7) which may - which are in dispute, I'm not going to (8) delve deeply in the auction process.

(9) I do think I'm entitled to know about (10) basic financial controls and things like that to (11) determine whether or not Hamilton was doing - was (12) capable of doing the things that it did.

(13) With that you can make your objections.

(14) MR. LARIZZA: I'll just repeat my (15) objection that I - and express my general (16) disagreement with Mr. Hawke's exposition. I still (17) see this more as related to the truth of the (18) criticism and not related to the procurement (19) decisions.

(20) But by the same token, on the (21) representation that this questioning is going to be (22) brief, I'm certainly not going to instruct the

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(1) witness not to answer. He can answer the question if (2) he knows.

(3) MR. KEYES: I'll just echo my (4) agreement with Mr. Larizza's point and note for the (5) record that this is not a protest of any particular (6) winning bid or of any contract awarded by HUD.

(7) BY MR. HAWKE:

(8) Q: Mr. Richbourg, can you tell me what kind (9) of financial controls were in place to insure the (10) integrity of the auction? Insure that the right (11) bidders won and the right bidders lost?

(12) A: Well, I - I assume that you are talking (13) about a relatively narrow portion of the process (14) starting from the day that the team is sequestered in (15) a - in a location or facility to receive

bids [16] through the selection of winning bids; is that [17] correct?

[18] Q: Yes. Actually, go a little bit before [19] that. In the due diligence process, to insure [20] that - that all bidders have access to the same [21] information.

[22] Can you tell me what - were there efforts

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[1] or controls in place to insure that certain bidders [2] didn't have access to information that other bidders [3] did based - proprietary inside information that [4] would only be available through the Agency or its [5] financial advisors?

[6] A: Well, to start at that point, it - to the [7] best of my knowledge, the - the control to assure [8] fairness in the bidding was essentially one of full [9] disclosure. We attempted - or the Department [10] attempted, at the advice of the financial advisor, to [11] gather research and make available all - everything [12] that we knew about every asset in the portfolio.

[13] So that - would any particular investor [14] have an advantage from having information that other [15] investors didn't have? I know of no instance or [16] circumstance where that - that could - I mean, [17] anything is conceivable.

[18] I mean, but that was, I think, the basic [19] premise that we move through the process at least up [20] until - I mean, the front end up to the point of [21] accepting bids.

[22] Q: Okay. Now, let's go to the bid day

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[1] procedures.

[2] Can you tell me, generally speaking, what [3] financial controls HUD and Hamilton had in place to [4] insure the integrity of bids?

[5] A: Well, it started with an auditor was hired [6] specifically to review our procedures and to be [7] on-site for the bidding, to audit and make sure that [8] all of the procedures with regard to access, [9] dissemination, storage, recording, and so forth of [10] the bidding was done according to procedures that had [11] been developed beforehand.

[12] Q: Who was the auditor?

[13] A: I don't recall his name right now.

[14] Q: Do you know who he was hired by?

[15] A: It's - well, it's my recollection that it [16] was basically hired through the FA task order.

[17] Q: That would have been a Hamilton [18] subcontractor?

[19] A: That's correct, yeah.

[20] Q: Do you know whether it was Michael Brocks [21] at Coopers & Lyb-

rand?

[22] A: Yes, at one time, he was - he did a

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[1] couple of them. I don't know whether he did the [2] procedures and the procedures review as a Coopers & [3] Lybrand employee or as an independent - at some [4] point, he left and basically had his own firm or was [5] in another firm.

[6] Q: Was there procedures in place so that if [7] the independent - if Mr. Brocks found that there [8] were problems with a particular sale and reported [9] those problems to Hamilton, that there was a protocol [10] to be followed for the purpose of dealing with those [11] problems?

[12] A: To my knowledge, there was; and one of the [13] procedures was that there would be on-site for every [14] sale for as long as the doors were open a HUD program [15] official and a HUD attorney.

[16] Q: Okay. And what about prior to - if the [17] problems were - did the auditor's responsibilities [18] end with the day of the receipt of the bids or did it [19] include a post-auction analysis prior to closing on [20] the transaction to verify that the bids were [21] evaluated correctly?

[22] A: I believe it included - now, again, I

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[1] don't recall whether the auditor himself evaluated [2] the propriety of that or whether the auditor verified [3] that the procedures were done to verify that.

[4] Q: Do you believe - is it your understanding [5] that Mr. Brocks had a responsibility to report any [6] problems that he observed directly to HUD?

[7] A: Yes. It's my understanding or [8] recollection that he did.

[9] Q: Do you know who at HUD he was supposed to [10] do that?

[11] A: Well, I think the HUD official that was in [12] the bid room during that period. If you are talking [13] about something post - in other words, the day after [14] it was closed and the bids were evaluated, I do not [15] recall who he was supposed to report that to. The [16] program manager -

[17] Q: Do you know who the officials from HUD [18] were who typically attended the auctions?

[19] A: I recall that Jerry Salzman was - from [20] OGC attended the Multifamily auctions as the legal [21] rep. There may have been other attorneys.

[22] In some instances, I attended a couple of

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[1] those. I don't recall how many.

[2] Q: Ms. Hinton ever attend any?

[3] A: Audrey Hinton attended -

[4] Q: Were there -

[5] A: - Kathy Rock attended. Again, I don't [6] know if she were - I don't remember who the [7] designated official was.

[8] Q: Do you recall who the official HUD [9] was that attended the West of Mississippi sale?

[10] A: No, I do not.

[11] Q: Do you know whether the auditor who is [12] on-site stays with the bids - they come in and [13] insures the integrity through to the point where they are processed and evaluated for the purpose of [15] deciding a winner?

[16] A: It's my recollection that at least the [17] cases where I was in attendance the bids were signed [18] in and immediately placed in a file. I don't recall [19] whether they were even opened that point or were [20] opened somewhat later.

[21] There was also a team, and I don't know [22] whether they were - at that time - well, that was -

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[1] see, once we went to multiple there were [2] different accounting firms involved.

[3] But there were auditors there: again, [4] they were subcontractors to financial advisor, [5] either Price Waterhouse - I don't recall. I guess [6] Coopers

[7] Q: To the particular transactional financial [8] advisor that was conducted that -

[9] A: That's right. And those folks were [10] instructed to open the bids, log in bids. [11] Various people had various functions with regard to [12] process the bids.

[13] Q: And is it your understanding the [14] auditor accompanied the bid the way through to [15] the point where it was processed through the [16] optimization model? Is that correct?

[17] A: Again, I think the process changed. In [18] one - in one occasion bids were transported to [19] the where the optimization was done [20] armored car, a guard, Jerry Salt and I'm not sure [21] who - who accompanied the bids.

[22] On another occasion, I believe were

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[1] wired - I say wired, sent via an mechanism to [2] Lucent Technology who ran the optimization model.

[3] Q: They were subcontractor to Hamilton?

[4] A: Yes.

(15) Q: Do you know whether the E-mail was a (16) secure E-mail, encrypted?

(17) A: It was a secure E-mail. It's my (18) understanding it was secure.

(19) Q: Can you tell me what the procedures were (10) at Lucent? Did the auditor stand by while Lucent (11) processed the bids through the optimization model?

(12) A: I don't recall. I mean, I personally (13) never accompanied the bids to Lucent, so I don't know (14) what the procedure was.

(15) Q: Do you know whether it was possible at any (16) point in that process for somebody to change a bid in (17) that process?

(18) A: I mean, anything is possible; but to my (19) knowledge, I don't - I mean, we did everything that (20) was humanly possible to do to protect - prevent (21) mishandling of the bids.

(22) Q: Okay. Did there come a time when - when

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(1) there were problems involving the West of the (2) Mississippi sale?

(3) A: Are you referring to the - the reported (4) discrepancy in the bids?

(5) Q: Yes.

(6) A: I have no direct recollection of - of (7) that issue.

(8) Q: Do you recall when the West of the (9) Mississippi sale took place?

(10) A: Not exactly.

(11) Q: In September of 1995?

(12) A: Yeah, yeah.

(13) Q: That would have been while the Financial (14) Advisor Number 2 procurement was pending; is that (15) correct?

(16) A: That's correct.

(17) Q: Was it your understanding of the controls (18) and efforts that you were making to insure that bids (19) were handled correctly, that if Hamilton became aware (20) of problems or mishandling of the bids, that it was (21) under an obligation to inform HUD of those problems?

(22) A: Yes. I would speculate that would be the

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(1) case.

(2) Q: So that if Mr. Brocks or one of the (3) auditors to the financial - to the transactional (4) financial advisor detected an irregularity or a (5) problem and they told Hamilton, it was your (6) understanding from the Agency's point of view that (7) they had an obligation to then inform the Agency of (8) the problem?

(9) A: Yes.

(10) Q: In the West of the Mississippi sale, do (11) you know whether Hamilton ever informed the Agency of (12) the discrepancy in the selection of the winning bids?

(13) A: No, I have no - no firsthand knowledge (14) that they - that they did or did not inform the (15) Agency of the discrepancy.

(16) Q: Do you have any secondhand knowledge of (17) that?

(18) A: Again, it's my recollection or (19) understanding that - that the press has reported (20) that the discrepancy was reported to program (21) officials.

(22) Q: That would be Ms. Rock and Mr. Retsinas?

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(1) A: Yes.

(2) Q: And that did not occur - is it your (3) understanding that did not occur until nearly a year (4) and a half or two years after - a year after the (5) West of the Mississippi sale occurred?

(6) A: I was not aware of that.

(7) Q: Do you have any knowledge of that (8) whatsoever?

(9) A: Only - only from the press accounts.

(10) Q: If Hamilton had known of these problems as (11) of - at or around the time of the West of the (12) Mississippi sale, it's your understanding that (13) they - that they should have reported those errors (14) to Ms. - Ms. Rock and Mr. Retsinas prior to December (15) of 1996 when - when they, in fact, did? They (16) shouldn't have waited over a year to do that?

(17) A: No, no. Clearly, if one speculates that (18) they knew, they should have reported it.

(19) Q: And if the auditor had raised questions (20) about what they knew about - raised questions about (21) the discrepancy, that would have been enough to have (22) triggered an obligation by Hamilton to report it to

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(1) the Agency? Or the auditor?

(2) A: Or the auditor, yes.

(3) Q: Do you know whether when Hamilton reported (4) it, they reported that - that bids were changed (5) after they were received in the bid room?

(6) A: Do I know if bids were changed by Hamilton?

(7) Q: Yes. Or its subcontractors.

(8) A: No.

(9) Q: Do you have any secondhand knowledge of (10) that?

(11) A: Again, I think that's what was reported in (12) the press.

(13) Q: If the mistakes that - in the run-

ing - (14) in the discrepancy in the West of the Mississippi (15) sale had been known to HUD at the time that HUD was (16) evaluating the Financial Advisor 2 proposals, would (17) that have affected the outcome or the evaluation of (18) Hamilton's proposal on that procurement?

(19) MR. LARIZZA: Objection, calls for (20) speculation.

(21) THE WITNESS: I would speculate it (22) would - I guess would depend on the - the nature of

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(1) the error, the extent, and the magnitude.

(2) BY MR. HAWKE:

(3) Q: If the error cost the Agency several (4) million dollars that it otherwise would have been (5) entitled to receive had they not made the mistake?

(6) A: I would speculate it would have a bearing, (7) yes.

(8) Q: On the SEB's evaluation of Hamilton's (9) capability -

(10) A: Possible, yes.

(11) Q: - as a financial advisor? And would it (12) be - can you tell me whether it's your belief that (13) it would have been a motivation by a bidder - by (14) Hamilton to keep that information from HUD in order (15) to preserve its chances of being selected as a (16) financial advisor in the Financial Advisor 2 (17) program?

(18) A: I would speculate that would be the case.

(19) Q: Mr. Richbourg, was Hamilton under an (20) obligation to make truthful representations as HUD's (21) financial advisor concerning the opportunities the (22) bidders had with respect to chances of success within

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(1) the auctions?

(2) A: I know of nothing in the task order that (3) required them to make representations as to - is (4) that what you are talking about? To certify as to (5) the chances -

(6) Q: Well, if in the advertising or promotion (7) of the sales, Hamilton - is it fair to assume that (8) Hamilton was under an obligation to make sure that (9) they didn't say anything inaccurate to bidders in the (10) bid materials?

(11) A: I would - yeah. I mean, I would (12) speculate clearly that they are not - they are under (13) an obligation not to, in other words, lie to the (14) public about -

(15) Q: About the opportunities that - that (16) bidders might have in connection with the outcome of (17) the auctions? Do you understand my question?

(18) A: Yeah. I'm just trying to put it in (19)

ther or not (7) the conclusions that you - that you reported to (8) Mr. Peterson were - were made available by him to (9) the Source Evaluation Board in its consideration of (10) Hamilton's proposal in the second financial advisor (11) procurement?

(12) A: To my recollection, they were not.

(13) Q: Would your conclusions have been material (14) to the SEB's evaluation of Hamilton's proposal?

(15) A: As I - as I recall, my conclusions (16) probably would not have been material.

(17) Q: Is that because you believe you concluded (18) that the facts stated in paragraph 4 were not true?

(19) A: Well, I don't know that I even addressed (20) paragraph 4. I mean, I only - I was asked to look (21) at certain parts of this and to address certain items.

(22) Q: Do you know whether Mr. Ryan or

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(1) Mr. Smeltzer would have been asked to evaluate the (2) facts in paragraph -

(3) A: They would have been - I don't know if (4) they would have been asked to evaluate paragraph 4 (5) specifically, but they would have - they were asked (6) to evaluate different parts of it.

(7) Q: Do you -

(8) A: And I have no knowledge as to whether (9) other - whether Multifamily also got a copy and was (10) asked to evaluate - I mean, not Multifamily but (11) other program staff.

(12) Q: Okay. How were you able to conduct an (13) inquiry of the facts in this letter without having a (14) copy for yourself to do that?

(15) A: I was asked to memorize it.

(16) Q: Why do you think you were asked to (17) memorize it?

(18) A: I have no idea.

(19) Q: Were you concerned that in a situation (20) where a suggestion was being made by an attorney for (21) a subcontractor to Hamilton in which a bidder may (22) have had access to inside information about the

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(1) assets that it was later bidding on, that you were (2) not being given the information you needed to conduct (3) an appropriate inquiry into whether or not the facts (4) in that letter were true or not?

(5) A: I've forgot the first half of your (6) question.

(7) Q: Does it concern you - actually, if you (8) could just read it back.

(9) (The record was read as requested.)

(10) MR. LARIZZA: I'll object to the (11) question. The witness did not testify that he was (12) not being given the in-

formation he needed to conduct (13) an investigation.

(14) THE WITNESS: I mean, it was my (15) understanding at the time that - that the Secretary (16) had requested that copies not be widely disseminated.

(17) BY MR. HAWKE:

(18) Q: Secretary being Cisneros?

(19) A: Cuomo. This is addressed to Cuomo.

(20) Q: Well, it's addressed to the Assistant (21) Secretary.

(22) A: Oh, okay. Whatever.

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(1) Q: He would not have been Secretary at this (2) time.

(3) A: Right. It was my understanding that he, (4) whatever job he was in, had requested that it not get (5) wide dissemination, i.e., multiple copies.

(6) Q: Do you know why that is?

(7) A: No. I mean, I just - I mean stranger (8) things have happened. I was concerned, but I didn't (9) seriously question it.

(10) Q: These are pretty serious allegations in (11) Ms. Burstein's letter, aren't they?

(12) A: They are.

(13) Q: And do you know whether Secretary Cuomo (14) reported this letter to the Inspector General?

(15) A: I do not.

(16) Q: Was it your understanding or impression (17) that the IG had already received a copy of this (18) letter?

(19) A: I believe it was my impression at the time (20) that the IG had not received a copy.

(21) Q: Had not?

(22) A: Had not received a copy.

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(1) Q: Did you ask, when you were given an (2) opportunity to review the letter, whether this was a (3) matter that was under investigation by the IG?

(4) A: I do not believe I asked.

(5) Q: What led you to believe that it had not -

(6) A: I believe that I recall that Mr. Peterson (7) had - had said that it has not gone to the IG yet.

(8) Q: Did he say why?

(9) A: No.

(10) Q: Is this the kind - are these the kind of (11) allegations that the IG should have been told about?

(12) A: Again, it's my opinion that at some point, (13) they should, unless there were adequate explanations. (14) I guess that's what the Department was trying to do,

(15) determine whether there were adequate explanations of (16) these issues

(17) Q: How is it possible to get adequate (18) explanations to facts stated in a letter if you don't (19) have a copy of the letter that you can rely on in (20) order to elicit those explanations. If you are (21) required to commit to memory what it is that is being (22) stated in the letter?

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(1) A: You just - you remember what's in the (2) letter.

(3) Q: Doesn't that strike you as being kind of (4) ineffective?

(5) A: Not necessarily. I mean, if I were only (6) given one topic and asked to report back on that (7) topic, I could remember that topic.

(8) Q: Did it appear to you that Secretary Cuomo (9) viewed this as being a very serious matter of a (10) sensitive nature and that that was the reason why (11) he did not want copies distributed?

(12) MR. LARIZZA: I'm going to, first of all, object because I think you mean Assistant (14) Secretary Cuomo at that time.

(15) MR. HAWKE: Correct.

(16) MR. LARIZZA: And there has been (17) basis, no foundation at all for - concluding (18) that he has any reason to know what was in Assistant (19) Secretary Cuomo's mind.

(20) BY MR. HAWKE:

(21) Q: Was it your perception that that was a (22) sensitivity?

Page

(1) A: I would speculate that there was a degree (2) of sensitivity with this letter.

(3) Q: Based on your understanding of HUD (4) employees' obligations to me ask you a (5) question:

(6) What is your understanding of the obligations of a HUD employee to matters (8) brought to its attention by referral to the (9) Inspector General?

(10) MR. LARIZZA: I'll object to the question, it calls for speculation and also (12) addressed to matters on which this witness is not an (13) expert.

(14) THE WITNESS: I don't know the (15) obligation is.

(16) BY MR. HAWKE:

(17) Q: You understand that - do you have an (18) understanding that when an employee is presented (19) with evidence or allegations of potential fraud, or abuse, that it has an obligation to report (21) those matters to the Inspector General so that the (22) Inspector General can conduct an inquiry to determine

Page

(1) whether or not those, in fact, are

[2] A: I mean, I don't know that for a fact, but [3] I'll take your word for it.

[4] Q: That's a reasonable assumption, based on [5] your understanding?

[6] MR. LARIZZA: Objection. His [7] assumptions are totally irrelevant, reasonable or [8] not.

[9] BY MR. HAWKE:

[10] Q: Do you know whether or not this letter was [11] ever given to the contracting officer on Hamilton's [12] contract?

[13] A: I do not know.

[14] Q: Do you know why - did you ever ask or did [15] Mr. Peterson ever indicate why the - whether the [16] letter was going to be given to the contracting [17] officer?

[18] A: I don't know, and he did not indicate to [19] me.

[20] Q: Do you know whether the facts that were [21] reflected in Ms. Burstein's letter had - were taken [22] into consideration by the Agency in connection with

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[1] the drafting of HUD's conflict of interest policy [2] relating to the Financial Advisor Number 2?

[3] A: I do not know.

[4] Q: On September 28th, 1995, in a phone call [5] with John Ervin, you stated that Helen Dunlap was [6] running the single family rebid possibly to do damage [7] control for Hamilton.

[8] Do you recall telling Mr. Ervin that?

[9] A: No.

[10] Q: Is it possible that you could have told [11] him that?

[12] A: Possible.

[13] Q: Was Helen Dunlap running the single family [14] rebid?

[15] A: Was - which sale was this?

[16] Q: Single Family I.

[17] A: I recall that - that certain pools were [18] reoffered, but not the entire portfolio.

[19] Q: Do you know why that happened?

[20] A: Not now.

[21] Q: What's that?

[22] A: Not now.

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[1] Q: Not now?

[2] A: I can't recall now.

[3] Q: Okay. Do you know - do you believe Helen [4] Dunlap was doing damage control for Hamilton on this [5] sale?

[6] MR. KEYES: Are you asking for his [7] personal opinion?

[8] MR. HAWKE: Yes.

[9] THE WITNESS: By doing a rebid?

[10] BY MR. HAWKE:

[11] Q: Yes.

[12] A: No, I don't think so.

[13] Q: If Helen hadn't gotten involved and helped [14] salvage the sale with respect to the reoffering, [15] would this have affected Hamilton's scoring on [16] Financial Advisor Number 2?

[17] MR. LARIZZA: I'm sorry, would you [18] repeat the question? I just didn't hear it.

[19] BY MR. HAWKE:

[20] Q: Let me restate it. [21] Was the need for a reoffering on Single [22] Family 2 material to the SEB's evaluation, in your

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[1] opinion, of Hamilton's proposal in Financial [2] Advisor 2?

[3] MR. LARIZZA: Hasn't been established [4] that the board members were aware of it at the time.

[5] THE WITNESS: No.

[6] BY MR. HAWKE:

[7] Q: Do you know whether the SEB was aware of [8] the -

[9] A: I don't believe the SEB was aware of - of [10] the circumstances surrounding that rebid. I [11] personally cannot recall the specific circumstances [12] surrounding that. I don't know if it was viewed at [13] the time as a - as a mistake or as a circumstance. [14] Again, without the details of why the rebid was [15] done.

[16] Q: Would a failed offering in the single [17] family note sale have - have reflected on Hamilton's [18] capabilities as a financial advisor? Assuming it was [19] a mistake, would that have been material to the SEB's [20] evaluation?

[21] A: In my opinion, a serious mistake would [22] have been relevant to SEB deliberations.

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[1] Q: If the sale itself was unsuccessful, would [2] that have also reflected on -

[3] A: In my opinion, that would have reflected [4] on.

[5] Q: Adversely on -

[6] A: Adversely, yeah.

[7] Q: - Hamilton's contract? Do you know [8] whether the SEB was ever made aware of the failure of [9] that auction?

[10] MR. LARIZZA: Objection. It's not - [11] has not been established that it failed.

[12] THE WITNESS: To the best of my [13] knowledge, during the period I was involved with the [14] SEB, it was not made aware of the circumstances of [15] that sale.

[16] BY MR. HAWKE:

[17] Q: On April 11th, 1996, Mr. Ervin's notes [18] reflect that you have - you had a phone call with [19] him in which you told him that HUD has been getting a [20] lot of letters on optimization.

[21] Do you recall what types of letters HUD [22] had been getting?

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[1] A: No, I do not.

[2] Q: Do you know what types of investors may [3] have been complaining? Whether many investors were [4] complaining?

[5] A: Well, it's my recollection that we had [6] numerous inquiries about the results and there were [7] some letters about - yeah, there were some letters [8] about the optimization model.

[9] Q: And was it from small bidders or medium [10] size bidders complaining that the optimization model [11] favored large bidders?

[12] A: It was my recollection letters to that [13] effect. I think there were letters from large [14] bidders as well.

[15] Q: On April 16th, 1996, in a phone call with [16] John Ervin, you told Mr. Ervin that in a meeting to [17] kick off the Northeast sale, Kathy Rock said that the [18] only thing not on the table is optimization.

[19] Is it your understanding that Helen Dunlap [20] and Kathy Rock would not countenance or tolerate [21] complaints regarding the use of the optimization [22] model?

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[1] A: It's my understanding that the [2] optimization model was - had been agreed to be the [3] model for evaluating bids.

[4] Q: And that - that they would not accept [5] complaints or criticisms of - of the optimization [6] model at that point?

[7] MR. LARIZZA: Objection, the question [8] is vague.

[9] MR. KEYES: Same objection.

[10] THE WITNESS: It's my understanding [11] that - that they had determined not to substitute an [12] alternative method.

[13] Not that - now, to clarify, I believe [14] they did make efforts to address the complaints [15] within the confines of that model by different [16] stratification techniques, by the ability to do all [17] or none or not to do all or none bids and attempted [18] to do all or none that; but I think that the Department saw [19] the optimization model as kind of the best overall [20] solution to a number of issues they wanted to [21] address.

[22] BY MR. HAWKE:

11) EXAMINATION BY COUNSEL FOR THE DEFENDANT HELEN DUNLAP

12) BY MR. KEYES:

13) Q: Mr. Richbourg, as you know, my name is 14) Andrew Keyes. I'm with the law firm of Williams & 15) Connolly, and we represent Helen Dunlap.

16) MR. HAWKE: In her individual 17) capacity.

18) BY MR. KEYES:

19) Q: In her individual capacity, 110) Did Ms. Dunlap at any time direct you what 111) scores to assign to any offeror's proposal?

112) A: In any - you are talking about in general?

113) Q: In any procurement?

114) A: Not to my knowledge.

115) Q: Okay. To your knowledge, did she ever 116) direct anybody else what scores to assign to an 117) offeror's proposal?

118) A: Not that I'm aware.

119) Q: Did she ever direct you to insure the 120) outcome of a particular procurement?

121) A: No.

122) Q: To your knowledge, did she direct any

12) A: No.

13) Q: Are you aware of Ms. Dunlap violating any 14) procurement regulations?

15) A: No.

16) Q: Has Ms. Dunlap ever directed you to take 17) any adverse action towards Ervin and Associates 18) because of what he said?

19) A: No.

110) Q: To your knowledge, has she ever directed a 111) HUD employee to do so?

112) A: No.

113) MR. KEYES: I have no further 114) questions. Thank you.

115) MR. HAWKE: One second, I may have 116) some follow-up.

117) EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

118) BY MR. HAWKE:

119) Q: Mr. Richbourg, with respect to Mr. Keyes' 120) question about whether you were aware of any instance 121) in which Ms. Dunlap violated procurement regulations 122) or laws, you stated that you were not, correct?

11) But I believe -

12) A: Aware that she violated?

13) Q: Right.

14) A: That's correct.

15) Q: Now, earlier today, we went over 16) communications between Ms. Dunlap and Hamilton 17) Securities during the pendency of the - during the 18) pendency of the Financial Advisor 2 contract. Do you 19) remember that? Communications that involved the 110) cross-cutting task order?

111) A: That's correct.

112) Q: And when I asked you whether or not you 113) thought that was inappropriate, you stated your 114) personal opinion that you thought that it was. Do 115) you remember that?

116) A: Yes.

117) Q: Can you tell me why it is that you 118) answered Mr. Keyes' question that you were not aware 119) of any violations of procurement regulations or 120) procurements by Ms. Dunlap given your testimony to me 121) earlier today?

122) A: Well, because, again, I am not a contracts

11) expert and I think that clearly, in my opinion, that 12) that action or activity is inappropriate; but I 13) cannot tell you that communicating with - with an 14) incumbent financial advisor is in violation of 15) procurement regulations.

16) I mean, somebody may sit here - some 17) attorney may say, yes, that's a violation.

11) other HUD employee what outcome should be the result 12) of a procurement?

13) A: No.

14) Q: Okay. To your knowledge, did she ever 15) manipulate the outcome of a procurement?

16) A: No.

17) Q: Okay. To your knowledge, did she ever 18) direct you or any other HUD employee to make sure 19) that Ervin and Associates did not win a contract?

110) A: No.

111) Q: Did Ms. Dunlap ever direct you to keep any 112) information from the Office of Procurement and 113) Contracts or the Office of General Counsel within HUD?

114) A: No.

115) Q: To your knowledge, did she ever direct any 116) other HUD employee to do so?

117) A: No.

118) Q: To your knowledge, has Ms. Dunlap derived 119) any personal benefit from the outcome of any 120) procurement within HUD?

121) A: Not to my knowledge.

122) Q: Are you aware of Ms. Dunlap violating any

11) procurement laws?

I don't 18) know if it's a violation of regulations or law. Okay?

19) Q: You don't know - right. And you don't 110) know if it's not, either?

111) A: I don't know if it's not, either.

112) Q: But based on your personal opinion, it's 113) inappropriate?

114) A: I would think it's inappropriate.

115) Q: Are you aware - and with respect to 116) Mr. Keyes' questions about asking other HUD employees 117) to do - to take actions to insure the outcome of 118) procurements, you stated you were not aware of any.

119) But I believe earlier today you testified 120) that Ms. Hinton may have been acting at the behest of 121) Ms. Dunlap in connection with her scoring on the 122) Financial Advisor 2 proposal:

11) MR. LARIZZA: I don't see any 12) inconsistency.

13) MR. KEYES: There's a difference between personal knowledge and speculation.

15) MR. LARIZZA: His testimony was that he speculated; and I believe that questions that were 17) being directed him were whether or not he knew.

18) BY MR. HAWKE:

19) Q: Are you aware of any instances which 110) Ms. Dunlap intimidated people or attempted to 111) intimidate people in order to insure the outcomes of particular procurements?

113) MR. LARIZZA: I'll object to the question, the word "intimidate" is vague and undefined.

115) MR. KEYES: I'll object, too. I didn't use that word in my questions.

117) BY MR. HAWKE:

118) Q: Intimidate -

119) A: Should I answer?

120) Q: Yes, please.

121) A: I am not aware of specific instances where 122) I observed Ms. Dunlap intimidate employees into

11) taking contract actions that were appropriate.

12) Q: In your personal opinion, is it 13) belief that there have been instances in which she 14) has done that?

15) MR. LARIZZA: His personal belief

16) MR. HAWKE: His personal belief

17) MR. LARIZZA: - speculation or a position is irrelevant.

19) THE WITNESS: I would speculate 110) it - it certainly could have happened over a 111) five-year period.

112) MR. HAWKE: Thank you very r.

[13] MR. KEYES: Thank you, Mr. Richbourg.

[14] MR. LARIZZA: I want to ask a couple [15] questions.

[16] THE WITNESS: Okay.

[17] EXAMINATION BY COUNSEL FOR THE FEDERAL DEFENDANTS

[18] BY MR. LARIZZA:

[19] Q: I want to take you back to your discussion [20] of the Burstein letter; and I think you had indicated [21] your understanding that the letter got into [22] Mr. Peterson's hands from then Assistant Secretary

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[1] Cuomo; is that right?

[2] A: That's correct.

[3] Q: Could I ask you, if you can tell me, what [4] facts you base that understanding on - let me make [5] it easier.

[6] Did Mr. Peterson tell you that he had [7] received the letter from Mr. Cuomo's office? Or from [8] Mr. Cuomo himself?

[9] A: Mr. Peterson called a group in; and I [10] don't recall the details, but he produced this letter [11] and said that - again, I don't recall the specific [12] details, but that this letter had been given to him [13] from Assistant Secretary Cuomo's office or had come [14] down - or from the General Counsel's Office, I don't [15] recall which.

[16] It seems to me now that maybe it went to [17] the General Counsel's Office, even though it was [18] addressed to Cuomo; and had asked him not to make [19] copies but to - to get feedback on the parts of the [20] letter - the allegations in the letter that we [21] could - they were in a position to provide.

[22] Q: I want to try to be as specific as you

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[1] can. Was it the General Counsel's Office that [2] requested Mr. Peterson to undertake the investigation [3] or was it Mr. Cuomo's office? And I'm asking you [4] what Mr. Peterson told you, if you can remember.

[5] A: Well, I don't recall specifically. It [6] seems to me that it was the General Counsel's Office.

[7] Q: And was the General Counsel's Office the [8] source of the instruction not to make copies?

[9] A: It was my understanding that it was.

[10] MR. LARIZZA: All right. I'm done.

[11] MR. HAWKE: Okay. Thank you very [12] much.

[13] MR. KEYES: You're done. [14] (Whereupon, at 3:02 p.m., the deposition was [15] concluded.)

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[1] ACKNOWLEDGMENT OF DEPONENT

[3] I, William S. Richbourg, do hereby acknowledge I [4] have read and examined the foregoing pages 706 to 946 [5] of testimony, and the same is a true, correct, and [6] complete transcription of the testimony given by me, [7] and any changes and/or corrections, if any, appear in [8] the attached errata sheet signed by me.

[11] Date William S. Richbourg

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CERTIFICATE OF NOTARY PUBLIC

I, MaryJo Legg, the officer before whom the foregoing deposition was taken, do hereby certify that the witness, William S. Richbourg, whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotypy and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the District of Columbia

My Commission expires: March 31, 2001

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WILLIAM S. RICHBOURG
c/o Raymond Lanza, Esquire
U.S. Department of Justice
Civil Division, Federal Programs Branch
901 E Street, N.W.
Room 948
Washington, D.C. 20004

In Re: Ervin and Associates v. Dunlap, et al.
Volume IV of your original deposition transcript in the above-captioned matter is being held for thirty (30) days for review and signature.

Reviewing and signing may be accomplished by either of two ways: The deponent may appear at 1825 K Street, N.W., Suite 1212, Washington, D.C., (for which an appointment should be made), or counsel may provide the witness with a copy of the deposition transcript to review and sign.

If the latter method is chosen and the witness is provided with a copy of the deposition transcript for review, the deponent should keep in mind that the purpose of review is only to ensure accuracy and not to revise in an editorial manner. If any changes and/or corrections are necessary, the deponent should list them on an errata sheet, listing the page, line number and correction, i.e., page 15, line 8, change "he said" to "she said." When the errata sheet is completed, it should be signed and dated by the deponent and returned to our office. The errata sheet will subsequently be attached to the original transcript.

The original deposition transcript will be held until September 6, 1998, at which time, if the deponent has not followed either of the methods mentioned above for review and signature, it will be assumed that reviewing and signing are no longer desired, and the original transcript will be sent to the attorney who ordered the original

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SHERRY ROE & ASSOCIATES, INC.
1825 K Street, N.W.
Suite 1212
Washington, D.C. 20006

ERRATA SHEET
CASE NAME: Ervin and Associates v. Dunlap, et al.
WITNESS NAME: William S. Richbourg
DEPOSITION DATE: Friday, July 31, 1998
JOB NO.: 110157
Page No. Line No. Change
Signature Date