

1 to him to furnish the material again to United  
2 Leasing?

3 A Once the FBI began investigation of AGM,  
4 they used their investigative authority to instruct  
5 the Bank not to provide any third party with access  
6 to the computer records or paper records. And,  
7 therefore, we could not give any information directly  
8 to a third party.

9 We - at no time did we object to United  
10 Leasing having the information, but we certainly had  
11 to go through AGM in order to provide that  
12 information. And we did take all the steps that we  
13 knew possible to do that.

14 Q Had you - what instructions as of  
15 October 25, 1999 did you have from the FBI?

16 A Not to provide any third party with  
17 access to the records that we held, or that Resource  
18 Bank, that belonged to AGM.

19 Q And you were told that prior to October  
20 25th?

21 A We were told that at the beginning of the  
22 FBI's investigation process.

23 Q Do you know when that was?

24 A The FBI first contacted the Bank in  
25 August. I can't tell you the exact date.

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1 Q Did they tell you that in August?

2 A To the best of my recollection, they  
3 instructed us that as soon as they started the  
4 investigative process.

5 Q And your best recollection is that's  
6 August?

7 A Yes.

8 Q Who told you?

9 A The FBI Special Agent that we dealt most  
10 directly with was Nicole Hendricks was her name at  
11 that time. She's since married.

12 Q Do you know what her married name is?

13 A Duckworth.

14 Q Duckworth?

15 A Duckworth.

16 Q Your best recollection is that she told  
17 you?

18 A Yes.

19 Q Did she tell you you couldn't tell  
20 anybody that you had been instructed by them to  
21 behave that way?

22 A Would you restate that question?

23 Q Yeah. Did she tell you that you could  
24 not disclose to anyone that you had received such an  
25 instruction from the FBI?

1 the assistance that he needed.

2 Q Even though he said he needed something  
3 else?

4 A Correct.

5 MR. DURRETTE: Why don't we take a short  
6 break. Been going about an hour and a half.

7 (Recess)

8 BY MR. DURRETTE:

9 Q Okay. Do you recall -- I think I have  
10 asked you this. I think you said you didn't recall  
11 the date of the first, the first time you learned of  
12 the FBI investigation of the Agnews?

13 A I don't recall the date.

14 Q Do you recall who contacted you?

15 A From the FBI?

16 Q From the FBI.

17 A Yes, Nicole Hendricks.

18 Q That was your first contact?

19 A Yes.

20 Q Did anyone other than United Leasing seek  
21 access from Resource Bank to AGM's records during  
22 August or September or October of 1999?

23 A AGM.

24 Q Besides AGM, any third parties besides  
25 United Leasing seek access to AGM's records?

1 A (Deponent shaking head.)

2 Q No?

3 A (Deponent shaking head.)

4 Q And you didn't give access to any third  
5 parties?

6 A No.

7 Q Did you -- were Resource -- were AGM's  
8 records maintained by Resource Bank in the same  
9 location from the time you seized them until you  
10 turned them over to the FBI?

11 A (Deponent nodding head.)

12 Q Where was that?

13 A In our bank, in the main building, they  
14 were kept behind locked doors in an area off of the  
15 commercial lending area on the first floor in their  
16 office. It was office area. Computers were  
17 maintained in the vault.

18 Q Vault at the Bank?

19 A Yes.

20 Q And this was in the bank location where  
21 you worked?

22 A That's correct.

23 Q Did Resource Bank have other locations in  
24 the Tidewater area?

25 A We had one -- well, let's see. No, the

1 one in Chesapeake had not opened then. We have one  
2 in Chesapeake now, but at that time, no, we didn't.

3 Q Did anyone other than -- now excluding  
4 AGM and United Leasing from this question -- did  
5 anyone other than Bank personnel have access to the  
6 records during the time, during this time that they  
7 were in your possession?

8 A No.

9 Q Did Resource Bank make copies of any of  
10 these documents of, of AGM's documents for anyone  
11 other than AGM or United Leasing during the time that  
12 they were in the Bank's possession?

13 A No.

14 Q No?

15 A No.

16 Q To the best of your knowledge, did the  
17 Bank remove any original documents from the files  
18 that were not turned over to the FBI?

19 A No.

20 Q To the best of your knowledge, did  
21 Resource Bank add any documents to AGM's file that it  
22 had in its possession that were not part of what the  
23 Bank got from AGM?

24 A No.

25 Q Do you know whether or not there's

1 Q What had you done?

2 A Again, once the FBI began its  
3 investigative process, the records were not available  
4 to any, any third party. They were available to AGM  
5 with supervision, and the Bank had no authority after  
6 that.

7 Q With respect to there being available to  
8 AGM with supervision, did the Bank to the best of  
9 your knowledge make the records available to AGM  
10 that - to the Agnews whenever either of them asked  
11 and for as long as either of them wanted?

12 A As I recall, Barbara Agnew requested that  
13 she have access to the records in order to find  
14 information for the insurance claim, which she was  
15 granted. And the FBI was present during that  
16 meeting.

17 Other than that, I don't recall receiving  
18 a request from the Agnews to have access to the  
19 information.

20 Q Do you recall that on that occasion she  
21 had access for whatever time she wanted?

22 A As I recall, yes.

23 Q So your recollection is that there was no  
24 time at least prior to November 15th or during the  
25 entire time, if you wish, that either of the Agnews

1 asked for access to the records that -- and that  
2 access was denied?

3 A I am not aware of that.

4 Q You're not aware of that either of them  
5 asking for access to the records for any length of  
6 time that was not agreed to by the Bank?

7 A Again, the Bank did not have the  
8 authority to agree to the time. The FBI had that  
9 authority. To my knowledge, I'm not aware that  
10 they -- the Bank never objected to AGM having access  
11 to the records.

12 Q Do you know whether or not it was the  
13 FBI's position that without the consent of the Bank  
14 they could not grant access to the records?

15 A Excuse me?

16 Q Do you know whether or not it was the  
17 FBI's position that unless the Bank consented to the  
18 Agnews having access, the FBI could not unilaterally  
19 grant access?

20 A Absolutely not. The FBI had total  
21 control over the access to the records.

22 Q So whether the records were at the Bank  
23 physically or with the FBI physically, is it your  
24 position that the FBI had complete control over the  
25 records?

1 A That is correct. Resource Bank never  
2 objected to or never refused to consent because we  
3 were never asked to consent by the FBI for access to  
4 those records.

5 Q By the Agnews, or by anyone?

6 A By anyone.

7 Q Mr. Shield ends his letter with a request  
8 that you call at your earliest convenience to discuss  
9 this matter further. Did you?

10 A I don't recall if I did or not.

11 Q Was it your position at the time that you  
12 received this letter, November 15th, 1999, that the  
13 Bank had fully cooperated on a timely basis with any  
14 request that ULC had made to the extent that it could  
15 with the FBI restrictions, any request that ULC had  
16 made for access to AGM's furniture, records,  
17 computers, and equipment?

18 A Yes.

19 Q Was it your position that the Bank had  
20 fully cooperated with any request that United Leasing  
21 made for any form of assistance with respect to the  
22 liquidation of the collateral or the collection of  
23 accounts receivable?

24 A Yes.

25 (Smith Exhibit No. 16 was marked for

1 through 38 on page 14.

2 A I assume I can read those sections before  
3 you -

4 Q I'm sorry?

5 A I assume I can read those sections before  
6 -

7 Q Yes, ma'am. You can read the whole  
8 thing, but what I was going to suggest is read the  
9 sections I'm going to ask you about, and then if you  
10 feel you need to read anything else in order to be  
11 complete, please do so.

12 Okay. I'm also going to ask you about  
13 something on page 1 in paragraph 3.

14 Did you read all of paragraph 3?

15 A No. I only read -

16 Q Just read all of paragraph 3.

17 A Okay.

18 Q At the bottom of page 1 on paragraph 3,  
19 this is, this is an affidavit of Nicole Hendricks of  
20 the FBI. And she says in paragraph 3, Your affiant  
21 is presently conducting an examination into  
22 allegations of financial institution fraud based upon  
23 information received from Mary E. Smith, senior vice  
24 president, Resource Bank.

25 Did you initiate contact with the FBI?

1 A No. FBI initiated contact with me.

2 Q On the next page it says that she  
3 interviewed you for the first time on August the  
4 17th.

5 Do you remember whether or not that was  
6 the first date that you heard from the FBI, or did  
7 you hear earlier and then an appointment scheduled to  
8 interview you on August 17th?

9 A She placed a phone call earlier. I can't  
10 tell you an exact date, but she called earlier.

11 Q Do you have any recollection of  
12 approximately how many days before August 17th?

13 A No, I really don't.

14 Q Did she tell you prior to August 17th  
15 about not allowing any third parties to have access  
16 to AGM's records, or did she tell you that on August  
17 17th or subsequent to August 17th?

18 A As I testified earlier, I don't recall  
19 the exact date she told us that.

20 Q Okay. Do you recall whether she told you  
21 in person or on the telephone?

22 A No, I don't recall.

23 Q Okay. Let's go over to page 11.

24 Is it accurate – is what she attributes  
25 to you at the beginning of page 30 accurate?