



1           2. On or about February 18, 2005, defendant STEPHEN M. KRAUT,  
2 acting as Vice-President for Tracy Chevrolet, executed an  
3 "Automobile Flooring and Security Agreement" with Citibank (West)  
4 FSB. On or about June 30, 2005, First Hawaiian Bank assumed this  
5 contract from Citibank (West) FSB.

6           3. On or about October 30, 2006, defendant STEPHEN M. KRAUT,  
7 acting as Vice-President for Tracy Chevrolet, executed a "Flooring  
8 Agreement," "Security Agreement-Dealer Inventory," "Commercial  
9 Continuing Guaranty," a "Subordination Agreement," and a letter of  
10 commitment with First Hawaiian Bank.

11           4. The "Automobile Flooring and Security Agreement" dated  
12 February 18, 2005, and described more fully in Paragraph 2, above,  
13 made available to Tracy Chevrolet a line-of-credit of approximately  
14 \$11,000,000. The primary purpose of the line-of-credit was to  
15 finance Tracy Chevrolet's purchase of new and used vehicles from  
16 third party vendors.

17           5. The "Flooring Agreement" dated October 30, 2006, with First  
18 Hawaiian Bank, described more fully in Paragraph 3, above, made  
19 available to Tracy Chevrolet a line-of-credit of approximately  
20 \$12,100,000. The primary purpose of the line-of-credit was to  
21 finance Tracy Chevrolet's purchase of new and used vehicles from  
22 third party vendors.

23           6. Both flooring agreements provided generally that, after  
24 purchase of the vehicles from third party vendors, Tracy Chevrolet  
25 was then to place the vehicles in its inventory for re-sale. Under  
26 the flooring agreements, upon re-sale of a vehicle from its  
27 inventory, Tracy Chevrolet had between three to twenty days to pay  
28 off the credit that the banks extended to finance the purchase of

1 the vehicle. In industry parlance, failure to pay down the line-of-  
2 credit within the time proscribed by a flooring agreement is called  
3 being "out of trust."

4 7. Both flooring agreements contemplated that the bank would  
5 transfer funds to Tracy Chevrolet's bank upon receipt of a "Flooring  
6 Line Advance Request" (hereafter "FLAR"). The FLAR would typically  
7 contain vehicle identification numbers and prices for vehicles that  
8 Tracy Chevrolet claimed it was purchasing.

9 8. Documents in support of the FLAR would also be faxed to the  
10 bank along with the FLAR. Supporting documents included invoices  
11 for the vehicles to be purchased. Copies of checks from Tracy  
12 Chevrolet made payable to vendors from whom it claimed it was  
13 purchasing vehicles under the flooring agreement were also at times  
14 faxed to the banks in support of certain FLARs.

15 9. Under its "Automobile Flooring and Security Agreement" with  
16 Citibank (West) FSB, and in a commitment letter with First Hawaiian  
17 Bank, Tracy Chevrolet was required to provide periodic financial  
18 statements showing the true net worth and the true profit and loss  
19 of Tracy Chevrolet.

20 10. At all times relevant to this Indictment, the accounts of  
21 Citibank (West) FSB were insured by the Federal Deposit Insurance  
22 Corporation (FDIC), and Citibank (West) FSB was a financial  
23 institution within the meaning of Title 18, United States Code,  
24 Section 20.

25 11. At all times relevant to this Indictment, the accounts of  
26 First Hawaiian Bank were insured by the Federal Deposit Insurance  
27 Corporation (FDIC), and First Hawaiian Bank was a financial  
28 institution within the meaning of Title 18, United States Code,

1 Section 20.

2 II. THE SCHEME TO DEFRAUD

3 12. Beginning no later than on or about September 9, 2005 and  
4 continuing up through and including on or about August 17, 2007, in  
5 the State and Eastern District of California and elsewhere, the  
6 defendant, STEPHEN M. KRAUT, with intent to defraud, knowingly  
7 executed and attempted to execute a material scheme and artifice to  
8 defraud First Hawaiian Bank, a federally insured financial  
9 institution, and to obtain by material false and fraudulent  
10 pretenses, representations and promises, and by the knowing omission  
11 of material facts, the monies, funds, credits, assets, and other  
12 property owned by, and under the custody and control of First  
13 Hawaiian Bank, in violation of Title 18, United States Code, Section  
14 1344.

15 13. A purpose of the scheme and artifice to defraud was to  
16 mislead First Hawaiian Bank into believing it was advancing credit  
17 to Tracy Chevrolet for Tracy Chevrolet's use in purchasing specific  
18 vehicles from third party vendors. Another purpose of the scheme  
19 and artifice to defraud was to mislead First Hawaiian Bank into  
20 believing that it would have a security interest in all of the  
21 vehicles that Tracy Chevrolet indicated it was purchasing. In truth  
22 and in fact, Tracy Chevrolet did not intend to purchase, was not in  
23 the process of purchasing, nor ever did purchase, many of the  
24 vehicles that defendant KRAUT, and others acting at his direction,  
25 falsely indicated to First Hawaiian Bank that Tracy Chevrolet was  
26 purchasing from third party vendors.

27 14. As part of the scheme and artifice to defraud and in  
28 furtherance thereof, defendant KRAUT knowingly made, and caused

1 others to make, materially false and fraudulent representations to,  
2 and concealed material facts from, First Hawaiian Bank, including:

- 3           A.    Providing on FLARs vehicle identification numbers  
4                   (VIN) and purchase amounts for listed vehicles in  
5                   order to induce First Hawaiian Bank to believe that  
6                   Tracy Chevrolet was purchasing all of the listed  
7                   vehicles, when, in truth and in fact, and unbeknownst  
8                   to First Hawaiian Bank, Tracy Chevrolet was not  
9                   purchasing many of the listed vehicles;
- 10           B.    Providing invoices for vehicles listed on FLARs and  
11                   omitting to state that Tracy Chevrolet did not intend  
12                   to purchase, nor was in the process of purchasing,  
13                   many of the vehicles indicated on the invoices;
- 14           C.    Providing altered invoices of vehicles by redacting  
15                   the true owner of the vehicles and by redacting  
16                   facsimile transmission history on invoices of  
17                   vehicles in order to conceal the true location of the  
18                   vehicles and the source of the invoices;
- 19           D.    Providing to First Hawaiian Bank copies of false  
20                   checks to third party vendors for hundreds of  
21                   thousands of dollars drawn on Tracy Chevrolet's bank  
22                   accounts purporting to be for payment of vehicles  
23                   listed on FLARs, when, in truth and in fact, and  
24                   unbeknownst to First Hawaiian Bank, the checks were  
25                   not sent to the third party vendors and were not  
26                   negotiated;
- 27           E.    Providing false financial statements to First  
28                   Hawaiian Bank, which purported to show that Tracy

1 Chevrolet was profitable, when, in truth and in fact,  
2 and unbeknownst to First Hawaiian Bank, Tracy  
3 Chevrolet was actually operating at a loss;

4 F. Causing false statements to be made to First Hawaiian  
5 Bank about the true location of vehicles listed on  
6 the FLARs, in order to conceal the fraud and to  
7 prevent First Hawaiian Bank from charging a higher  
8 interest rate and/or requesting immediate payment for  
9 "out of trust" vehicles.

10 15. By executing the scheme and artifice to defraud, defendant  
11 KRAUT, knowingly and with intent to defraud, caused Tracy Chevrolet  
12 to become "out of trust" with First Hawaiian Bank. The "out of  
13 trust" amount exceeded \$2,500,000. Defendant KRAUT used the fraud  
14 proceeds, in part, to make lulling payments to First Hawaiian Bank  
15 in order to continue the fraud scheme. Defendant KRAUT also used  
16 the fraud proceeds to keep Tracy Chevrolet operating. Defendant  
17 KRAUT also redirected fraud proceeds to benefit himself, including  
18 paying himself a monthly bonus, and using the fraud proceeds as  
19 interest-free loans to finance his own personal business ventures.

20 III. THE COUNTS

21 16. On or about each date set forth below, within the State  
22 and Eastern District of California, defendant STEPHEN M. KRAUT, with  
23 intent to defraud, did knowingly execute and attempt to execute a  
24 material scheme and artifice to defraud First Hawaiian Bank, a  
25 federally insured financial institution, and to obtain by material  
26 false and fraudulent pretenses and representations, and by the  
27 knowing omission of material facts, the monies, funds, credits,  
28 assets, and other property owned by, and under the custody and

1 control of, First Hawaiian Bank, as set forth below, and as more  
2 fully described in Paragraph 14(A)-(F) of this indictment:

Count	Date	Manner of Executing Scheme to Defraud
1	09/09/2005	Providing to First Hawaiian Bank: two FLARs that included VIN numbers and purchase amounts of vehicles not actually purchased.
2	11/02/2005	Providing to First Hawaiian Bank: FLAR that included VIN numbers and purchase amounts of vehicles not actually purchased.
3	12/05/2005	Providing to First Hawaiian Bank: FLAR that included VIN numbers and purchase amounts of vehicles not actually purchased.
4	03/07/2006	Providing to First Hawaiian Bank: FLAR that included VIN numbers and purchase amounts of vehicles not actually purchased; invoices with redacted facsimile transmission history.
5	03/15/2006	Providing to First Hawaiian Bank: A "General Motors Dealer Operating Report" that falsely indicated that Tracy Chevrolet has earned a profit of \$134,732 for the period January 1, 2006 through February 28, 2006, when, in truth and in fact, Tracy Chevrolet actually suffered a loss during this period.
6	12/11/2006	Providing to First Hawaiian Bank: FLAR that included VIN numbers and purchase amounts of vehicles not actually purchased; altered invoices.
7	03/05/2007	Providing to First Hawaiian Bank: FLAR that included VIN numbers and purchase amounts of vehicles not actually purchased; altered invoices.
8	05/15/2007	Providing to First Hawaiian Bank: FLAR that included VIN numbers and purchase amounts of vehicles not actually purchased; copy of false check No. 53491 drawn on Tracy Chevrolet's Union Bank of California account in the amount of \$444,056.33 made payable to "Inventory Connection" but never negotiated; altered invoices.

Count	Date	Manner of Executing Scheme to Defraud
9	05/18/2007	Providing to First Hawaiian Bank: FLAR that included VIN numbers and purchase amounts of vehicles not actually purchased; copy of false check No. 53531 drawn on Tracy Chevrolet's Union Bank of California account in the amount of \$243,463.77 made payable to "Inventory Connection" but never negotiated; altered invoices.
10	05/22/2007	Falsely stating to a flooring auditor from First Hawaiian Bank during a vehicle inventory review at Tracy Chevrolet, that certain vehicles listed on FLARs were at a "tent sale" and that others had just been sold to Enterprise Rental Company.
11	05/29/2007	Providing to First Hawaiian Bank: FLAR that included VIN numbers and purchase amounts of vehicles not actually purchased; copy of false check No. 53590 drawn on Tracy Chevrolet's Union Bank of California account in the amount of \$115,778.98 made payable to "Gilroy Chevrolet" but never negotiated; altered invoices.
12	06/01/2007	Providing to First Hawaiian Bank: FLAR that included VIN numbers and purchase amounts of vehicles not actually purchased; altered invoices.
13	06/18/2007	Providing to First Hawaiian Bank: FLAR that included VIN numbers and purchase amounts of vehicles not actually purchased; altered invoices; copy of false check No. 52158 drawn on Tracy Chevrolet's Citibank account in the amount of \$326,152.12 made payable to "Inventory Connection" but never negotiated.
14	08/10/2007	Providing to First Hawaiian Bank: FLAR that included VIN numbers and purchase amounts of vehicles not actually purchased; copy of false check No. 52197 drawn on Tracy Chevrolet's Citibank account in the amount of \$364,511.84 made payable to "Inventory Connection" but never negotiated; altered invoices.

Count	Date	Manner of Executing Scheme to Defraud
15	08/17/2007	Providing to First Hawaiian Bank: FLAR that included VIN numbers of vehicles not actually purchased; copy of false check No. 52201 drawn on Tracy Chevrolet's Citibank account in the amount of \$222,110.27 made payable to "Inventory Connection" but never negotiated; altered invoices.

All in violation of Title 18, United States Code, Section 1344.

A TRUE BILL.

*/s/* Signature on file w/AUSA

\_\_\_\_\_  
FOREPERSON

  
LAWRENCE G. BROWN  
Acting United States Attorney

No. \_\_\_\_\_

**UNITED STATES DISTRICT COURT**

*Eastern District of California*

*Criminal Division*

THE UNITED STATES OF AMERICA

vs.

STEPHEN M. KRAUT

INDICTMENT

**VIOLATION(S): 18 U.S.C. § 1344 - Bank Fraud (15 counts)**

*A true bill,*

*LSJ*

Foreman.

Filed in open court this 30th day

of Apr. 1, A.D. 20 09

*P. Buze*  
Clerk.

**WARRANT: NO BAIL PENDING HEARING**

Bail, \$ \_\_\_\_\_

*John A. Dyd*

GPO 863 525

09 - CR - 0201 EIG

PENALTY SLIP

Defendant:           **STEPHEN M. KRAUT**

**COUNTS ONE thru FIFTEEN:**

Violation:           18 U.S.C. § 1344 - Bank Fraud

Penalty:             Not more than 30 years imprisonment  
                          Not more than \$1,000,000.00  
                          Term supervised release of at least 5 years.

**PENALTY**

**ASSESSMENT:**     \$100.00 penalty assessment per count

2009 - CR - 0201 EG