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**JOINT HEARING ON BANK OF AMERICA AND  
MERRILL LYNCH: HOW DID A PRIVATE DEAL  
TURN INTO A FEDERAL BAILOUT?**

Thursday, June 11, 2009

House of Representatives

Committee on Oversight and

Government Reform,

joint with the

Domestic Policy Subcommittee,

Washington, D.C.

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**Committee Hearings**

of the

**U.S. HOUSE OF REPRESENTATIVES**



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9 Government Reform,

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12 Washington, D.C.

13 The committees met, pursuant to call, at 10:00 a.m., in  
14 Room 2154, Rayburn House Office Building, the Honorable  
15 Edolphus Towns [chairman of the Committee on Oversight and  
16 Government Reform] presiding.

17 Present: Representatives Towns, Kucinich, Issa, Jordan,  
18 Kanjorski, Cummings, Clay, Watson, Lynch, Connolly, Quigley,  
19 Kaptur, Van Hollen, Welch, Foster, Speier, McHenry, Bilbray,  
20 Flake, and Chaffetz.

21 Staff Present: John Arlington, Majority Chief  
22 Counsel-Investigations; Beverly Britton Fraser, Majority  
23 Counsel; Kwane Drabo, Majority Investigator; Brian Eiler,  
24 Majority Investigative Counsel; Aaron Ellias, Majority Staff  
25 Assistant; Linda Good, Majority Deputy Chief Clerk; Jean  
26 Gosa, Majority Clerk; Katherine Graham, Majority  
27 Investigator; Adam Hodge, Majority Deputy Press Secretary;  
28 Carla Hultberg, Majority Chief Clerk; Marc Johnson, Majority  
29 Assistant Clerk; Mike McCarthy, Majority Deputy Staff  
30 Director; Jesse McCollum, Majority Senior Advisor; Amy  
31 Miller, Majority Special Assistant; Leah Perry, Majority  
32 Senior Counsel; Jenny Rosenberg, Majority Director of  
33 Communications; Joanne Royce, Majority Senior Investigative  
34 Counsel; Leneal Scott, Majority Information Officer;  
35 Christopher Staszak, Majority Senior Investigator Counsel;  
36 Ron Stroman, Majority Staff Director; Jaron Bourke, Majority  
37 Staff Director-Domestic Policy Subcommittee; Charisma  
38 Williams, Majority Staff Assistant-Domestic Policy  
39 Subcommittee; Cate Veith, Majority Legislative Assistant,  
40 Office of Congressman Dennis J. Kucinich-Domestic Policy  
41 Subcommittee; Lawrence Brady, Minority Staff Director; John  
42 Cuaderes, Minority Deputy Staff Director; Jennifer Safavian,  
43 Minority Chief Counsel for Oversight & Investigations;  
44 Frederick Hill, Minority Director of Communications; Dan  
45 Blankenburg, Minority Director of Outreach & Senior Advisor;

46 Adam Fromm, Minority Chief Clerk & Member Liaison; Kurt  
47 Bardella, Minority Press Secretary; Benjamin Cole, Minority  
48 Deputy Press Secretary; Christopher Hixon, Minority Senior  
49 Counsel; Brien Beattie, Minority Professional Staff Member;  
50 Molly Boyl, Minority Professional Staff Member.

51 Chairman TOWNS. Good morning. Thank you all for being  
52 here today.

53 On September the 15th, 2008, when the financial crisis  
54 was at its height, Bank of America announced that it was  
55 purchasing Merrill Lynch, creating one of the nation's  
56 largest financial institutions. At the time, Bank of  
57 America's CEO, Mr. Lewis, called the merger a great  
58 opportunity for Bank of America shareholders.

59 When it was announced on September the 15th, this merger  
60 was a marriage negotiated between two willing parties. It  
61 was designed for the exclusive benefit of private  
62 shareholders, and it was to be paid for exclusively with  
63 private money.

64 Four months later, on January the 16th, 2009, after the  
65 merger was consummated and the quarterly earnings were  
66 announced, the world woke up to a different kind of marriage.

67 The American people discovered that Merrill Lynch had  
68 experienced a \$15 billion fourth quarter loss. Most  
69 importantly, we found out that the merger had taken place  
70 only after the Federal Government had committed to give Bank  
71 of America billions in taxpayer money.

72 What happened in the interim?

73 When Bank of America urged its shareholders to approve  
74 the acquisition of Merrill Lynch on December the 5th, 2008,  
75 there was no public disclosure of any problems with the

76 transaction.

77           However, in a deposition taken by New York Attorney  
78 General Cuomo, Mr. Lewis testified that just nine days after  
79 the shareholder vote he discovered a \$12 billion loss at  
80 Merrill Lynch. Mr. Lewis said he told then-Treasury  
81 Secretary Hank Paulson that he was strongly considering  
82 backing out of the deal. According to Mr. Lewis, Paulson  
83 ultimately told him that if he didn't go through with the  
84 acquisition, he and the Board would be fired.

85           However, internal emails we have obtained from the  
86 Federal Government indicate officials there were very  
87 skeptical about Mr. Lewis's motives in threatening to back  
88 out of the Merrill deal. Federal Chairman Ben Bernanke  
89 thought Lewis was using the Merrill losses as a bargaining  
90 chip to obtain Federal funds.

91           Other emails reveal that Federal analysts found it  
92 suspect that Mr. Lewis claimed to be surprised by the rapid  
93 growth of Merrill losses given the clear signs in the data.  
94 They noted that as a minimum it calls into question the due  
95 diligence process Bank of America has been doing in  
96 preparation for the takeover.

97           In short, the Treasury Department had provided \$20  
98 billion for a shotgun wedding. But the question may be, Who  
99 was holding the shotgun?

100           At today's hearing we hope to better understand what

101 | happened in the four months between September the 15th, 2008,  
102 | when the merger was announced, and January the 16th, 2009,  
103 | when the public learned that Bank of America had received \$20  
104 | billion in taxpayer money.

105 |         We will be looking for answers to some puzzling  
106 | questions:

107 |         Why did a private business deal, announced in September,  
108 | and approved by shareholders in December, with no mention of  
109 | government assistance, end up costing taxpayers \$20 billion  
110 | in January?

111 |         Did Paulson and Bernanke abuse their authority by  
112 | ordering Mr. Lewis to go through with the Merrill  
113 | acquisition, or did Mr. Lewis threaten to back out in order  
114 | to squeeze more money out of the Federal Government?

115 |         Did the Federal Government tell Mr. Lewis to keep quiet  
116 | about the escalating Merrill Lynch losses and the  
117 | Government's commitment to provide billions in Federal  
118 | funding?

119 |         I am sure there will be other questions, as well.

120 |         To get to the bottom of these issues, we also intend to  
121 | invite Mr. Paulson and to invite Mr. Bernanke to testify at a  
122 | future date. The Committee's willingness to issue subpoenas  
123 | should clarify our expectation of full cooperation by  
124 | prospective witnesses.

125 |         I want to thank Mr. Lewis for being here and I look

126 forward to his testimony.

127 [Prepared statement of Chairman Towns follows:]

128 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

129 Chairman TOWNS. At this time, I yield to the Ranking  
130 Member of the Committee, Mr. Darrell Issa of California.

131 Mr. ISSA. Thank you, Mr. Chairman, and thank you for  
132 holding this important bipartisan hearing today.

133 It is important that those who see this hearing today  
134 recognize that we are not here to evaluate the value of Bank  
135 of America or Merrill Lynch or their transaction, whether it  
136 was a good deal then or a good deal today for either of the  
137 parties. We are here because there has been a serious  
138 allegation and a number of pieces of evidence have arisen  
139 that make us believe that Government officials felt necessary  
140 to use the power, influence and, in fact, potentially threats  
141 in order to consummate this deal.

142 When Congress envisioned the TARP and other powers in  
143 order to help in the post-September meltdown of the economic  
144 market, we did so in a way that was intended to make dollars  
145 available to help lessen the impact as we unwound credit  
146 markets around the world. Nowhere in the legislation did it  
147 suggest that Hank Paulson, Ben Bernanke, or anyone else  
148 operating on behalf of the United States Government was given  
149 the power to force shotgun weddings.

150 Today we will hear from Ken Lewis, CEO of Bank of  
151 America, a man who has spent decades understanding the value  
152 of financial institutions. We undoubtedly will hear that, in  
153 fact, at the beginning of this transaction, the ratios

154 | determined for a stock trade type merger were in fact  
155 | considered to be reasonable.

156 |       As the Chairman has said, rightfully so, the Federal  
157 | Government played a clear part in this. But the American  
158 | people should understand their dollars were not given to any  
159 | party in this transaction, but in fact loaned at an amount  
160 | substantially greater than the interest rate paid by the  
161 | Federal Reserve. As such, Ken Lewis and all the parties  
162 | involved had an obligation to recognize they were going to  
163 | have to pay this money back and that they had to receive  
164 | value in this transaction.

165 |       Allegations have been made throughout the press, and  
166 | will undoubtedly be reiterated here today, that the value  
167 | that was being questioned by Bank of America had something to  
168 | do with getting more money from the Federal Government. That  
169 | may be true. Having done acquisitions myself, more often it  
170 | is in fact the ratio being paid between the buying company  
171 | and the selling company that is more at stake.

172 |       Had Bank of America had to pay a greater amount in the  
173 | stock trade than it did, the value of Bank of America to the  
174 | existing stockholders would have been reduced. Had, on the  
175 | other hand, instead of a roughly 8 to 10 ratio, had it been a  
176 | 5 to 10 ratio, the stockholders of Merrill Lynch would have  
177 | had a significantly lower value to their stock.

178 |       We are not here, though, today to deal with any of that.

179 We are clearly here today, as the Government Reform and  
180 Oversight Committee, to deal with the question of whether or  
181 not allegations made and evidence that has arisen lead us to  
182 believe that those operating under the color of our  
183 Government's seal used any unreasonable influence or threats  
184 in order to consummate this or any other deal.

185 Mr. Chairman, I thank you for holding this hearing. I  
186 appreciate the fact that this is clearly the first of two  
187 hearings that will be necessary. Today we have part of the  
188 story. When we have Mr. Bernanke and Mr. Paulson, then we  
189 will have the other half of it. I look forward to this first  
190 hearing and yield back.

191 [Prepared statement of Mr. Issa follows:]

192 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

193 Chairman TOWNS. Thank you very much.

194 I now yield five minutes to Mr. Kucinich, who is the  
195 Chair of the Subcommittee.

196 Mr. KUCINICH. Thank you very much, Mr. Chairman, members  
197 of the Committee.

198 Bank of America became the largest commercial bank in  
199 the Nation, the eleventh largest corporation in the United  
200 States, and the 23rd largest company in the world through the  
201 aggressive acquisition of other financial institutions,  
202 including the purchase of Merrill Lynch last year. But  
203 something went terribly wrong with the Merrill Lynch  
204 acquisition, nearly enough to bring Bank of America down.

205 Taxpayers now own \$45 billion in preferred shares and  
206 warrants in Bank of America. That money was committed by the  
207 Treasury Department and the Federal Reserve, and Mr. Lewis is  
208 here today, as the CEO of Bank of America, thanks to the  
209 commitment of those funds through a series of events that  
210 unfolded through the end of December 2008 and into early  
211 January 2009.

212 Due to the secretive and unaccountable conduct of the  
213 Fed throughout its interventions addressing the current  
214 financial crisis, many questions about the Bank of  
215 America-Merrill Lynch deal and bailout have, until today,  
216 remained unanswered. Some of the key questions have been:

217 Were the Merrill Lynch losses that precipitated Bank of

218 | America's distress call to the Treasury on December 17th the  
219 | first such accelerating losses Bank of America observed at  
220 | Merrill Lynch since agreeing to purchase the company? Did  
221 | the Government believe that Bank of America had a credible  
222 | case for abandoning the deal? Did the Federal Reserve compel  
223 | Bank of America to complete the deal against its will?

224 |       Or, Did Bank of America's mistakes and miscalculations,  
225 | more than any other single factor, cause the experienced  
226 | corporate deal-maker to be exposed to Merrill Lynch's  
227 | predictably large losses? Did the Government believe that  
228 | Bank of America knew or should have known about those losses  
229 | before its shareholders ratified the merger? Did the  
230 | Government have an opinion about whether Bank of America  
231 | could be liable for securities fraud for withholding from its  
232 | investors material information it possessed about a  
233 | significant deterioration in Merrill Lynch's balance sheet?  
234 | Did Bank of America in effect negotiate an extraordinary deal  
235 | for billions of additional dollars from taxpayers to continue  
236 | its growth as the Nation's largest commercial bank?

237 |       The hearing today will help to answer those questions.  
238 | This Committee's ongoing investigation and subsequent  
239 | hearings will answer the following questions, among others:

240 |       Did the Federal Reserve, in attempting to protect the  
241 | system, apply well-established remedies when it engineered  
242 | billions of dollars in subsidies to Bank of America to

243 complete its deal with Merrill Lynch?

244 Or, Did the Federal Reserve pursue an untested  
245 experiment in banking regulation at variance with traditional  
246 remedies in committing billions of dollars in taxpayer funds  
247 to a corporate management that the Federal Reserve believed  
248 had failed in major ways?

249 Mr. Chairman, members of the Committee, this Committee  
250 has sifted through tens of thousands of pages of documents  
251 produced by Bank of America, the Department of Treasury, and  
252 the Federal Reserve. Our investigation will help set the  
253 record straight about Bank of America and Merrill Lynch.  
254 Furthermore, the story of Bank of America's merger with  
255 Merrill Lynch and its huge taxpayer-provided subsidy helps to  
256 answer broader questions about how the corporate management  
257 of very large financial institutions operate with virtual  
258 impunity for their mistakes. The documents we will reveal  
259 today provide the public a rare look into the disconnection  
260 between the Fed's ability to analyze financial problems, and  
261 its ability to remedy them, when they involve very large  
262 financial institutions.

263 Finally, Mr. Chairman, before Congress rushes to revise  
264 the banking regulatory framework, we would do well to  
265 incorporate the lessons of the Bank of America-Merrill Lynch  
266 episode that this Committee's hearings over the coming weeks  
267 will draw.

268 I yield back. Thank you.

269 [Prepared statement of Mr. Kucinich follows:]

270 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

271 Chairman TOWNS. I thank the gentleman from Ohio.

272 Now I will yield to the Ranking Member, Jim Jordan, also  
273 from Ohio.

274 Mr. JORDAN. Thank you, Mr. Chairman, for holding today's  
275 hearing. I want to thank you and Ranking Member Issa, and  
276 also the Chairman of the Subcommittee for his tireless  
277 efforts to get to the truth about this issue. I believe  
278 today's hearing is an important first step in learning about  
279 the full extent of the Government's manipulation of the  
280 banking industry.

281 This Committee's investigation of the Bank of  
282 America-Merrill Lynch transaction has raised troubling  
283 questions about potential abuses of Government power. As  
284 both the Chair and the Ranking Member have indicated, we have  
285 learned that, at a minimum, then-Secretary Hank Paulson  
286 threatened to remove Mr. Lewis and Bank of America's board of  
287 directors if Mr. Lewis exercised his legal option to attempt  
288 to bank out of the deal to acquire Merrill Lynch. In  
289 addition, we have learned that the Department of Treasury and  
290 the Federal Reserve were involved in discussions about when  
291 and how the financial condition of Merrill Lynch was to be  
292 disclosed to the two companies' respective shareholders.

293 We have also learned that this transaction took place in  
294 a climate of fear and intimidation by Government officials.  
295 For example, we now know that, in October of 2008, Mr.

296 Paulson brought the CEOs of the largest private banks in  
297 America to the Treasury Department and demanded that they  
298 accept the partial nationalization of their banks in exchange  
299 for an amount of money of the Government's choosing.

300 Mr. Chairman, I understand the significant challenges  
301 that our economic system faced last fall, and I understand  
302 Mr. Paulson's and Mr. Bernanke's intention to do what they  
303 thought was in the best interest of the economic system as a  
304 whole. But in our constitutional system of government, the  
305 rule of law restricts the Government's ability to do whatever  
306 it wants. We must understand the full story of what happened  
307 in the process of the Government taking over much of the  
308 banking industry so that, when the next crisis occurs, we can  
309 understand the proper limits of Government action in a free  
310 and civil society.

311 I am grateful for Mr. Lewis's willingness to appear  
312 before the Committee today. In addition to important  
313 questions regarding Bank of America's transaction with  
314 Merrill Lynch, I also hope Mr. Lewis can shed light on his  
315 personal interaction with Government officials, and I intend  
316 to ask him about his participation in the initial capital  
317 injections and to what extent they were forced upon Bank of  
318 America. And as someone who comes from auto-making country,  
319 I also would like to know the extent to which the Government  
320 is currently involved in day-to-day operations of the

321 | company.

322 |       A full and complete investigation underscores the facts  
323 | surrounding the Bank of America-Merrill Lynch transaction  
324 | requires the Government's decision-makers, in this case Mr.  
325 | Paulson and Mr. Bernanke, to appear before this Committee to  
326 | answer the tough questions that the American people demand to  
327 | be answered, and I know that the Chairman and the Ranking  
328 | Member talked about that. We look forward to that happening  
329 | in a bipartisan fashion in the near future.

330 |       Again, thank you, Mr. Chairman, for this opportunity to  
331 | make an opening statement. With that, I would yield my time,  
332 | if I could, to Mr. McHenry to introduce our witness.

333 |       [Prepared statement of Mr. Jordan follows:]

334 | \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

335 Chairman TOWNS. Mr. McHenry.

336 Mr. MCHENRY. Thank you, Mr. Chairman.

337 Today, I have the privilege of introducing our witness,  
338 whose company is headquartered in Charlotte, North Carolina,  
339 which my district is just to the west of; and, as the only  
340 member of the Committee from the Carolinas, I think it is my  
341 duty and privilege to introduce our witness.

342 Kenneth D. Lewis is currently the Chief Executive  
343 Officer of Bank of America. He is responsible for more than  
344 55 million consumer and small business relationships and \$1.7  
345 trillion in total client assets. With various business and  
346 institutional clients in more than 150 countries and business  
347 relationships with 98 percent of U.S. Fortune 500 companies,  
348 Mr. Lewis oversees one of the largest financial services  
349 corporations in the world and is one of the largest  
350 institutions headquartered in North Carolina; in fact, is the  
351 largest institution headquartered in North Carolina.

352 Born in 1947 in Meridian, Mississippi, Mr. Lewis earned  
353 a Bachelor's Degree in finance from Georgia State University  
354 and a graduate of the Executive Program at Stanford  
355 University. Arriving at NC&B in 1969, which was Bank of  
356 America's predecessor, he served more than 30 years within  
357 the bank, and, in 2001, attained his current position as CEO  
358 of Bank of America. Throughout his career with Bank of  
359 America, he has secured millions of new customers and paved

360 | the way for future expansion.

361 |       He was named, in 2007, as one of the 100 most  
362 | influential people in the world by Time Magazine, has been  
363 | twice named Banker of the Year by the American Bankers  
364 | Association. He has been the former Chairman of the National  
365 | Urban League and has been involved in every possible  
366 | community cause in Charlotte, large and small, and for that  
367 | we do thank you for your leadership for our community.

368 |       Bank of America's presence is certainly felt in western  
369 | North Carolina, in my district, and across North Carolina  
370 | generally. The 10th District has become particularly hard  
371 | hit in this economic recession, and Bank of America employs  
372 | about 17,000 North Carolinians, many of whom are my  
373 | constituents and are proud to work for a strong institution;  
374 | and we look forward to stronger days ahead.

375 |       Thank you for your testimony here today and thank you  
376 | for your presence.

377 |       Chairman TOWNS. Thank you very much, Mr. McHenry.

378 |       It is a longstanding tradition that we swear all of our  
379 | witnesses in, so, Mr. Lewis, would you please stand and raise  
380 | your right hand? Do you solemnly swear to tell the truth,  
381 | nothing but the truth? If so, answer in the affirmative.

382 |       [Witness answers in the affirmative.]

383 |       Chairman TOWNS. Let the record reflect that the witness  
384 | answered in the affirmative.

385           Let me just sort of explain as to the light situation  
386 here. First of all, you have five minutes to summarize your  
387 statement, and then the yellow light will come on. That  
388 means you have one minute. Then, after the yellow light  
389 comes on, then there is a red light; and, of course, that  
390 means stop. Of course, after that, we will allow the members  
391 an opportunity to raise questions with you. So you may  
392 begin.

393           Turn your light on. Push that button.

394 STATEMENT OF KENNETH D. LEWIS, CHIEF EXECUTIVE OFFICER, BANK  
395 OF AMERICA

396 Mr. LEWIS. Chairman Towns, Ranking Member Issa,  
397 Subcommittee Chairman Kucinich, and Ranking Member Jordan, as  
398 has been said, my name is Ken Lewis, and I am Chief Executive  
399 Officer of Bank of America.

400 This Committee is reviewing important issues, and I hope  
401 my remarks will be helpful to you.

402 Let me tell you a little bit about Bank of America. Our  
403 business lines include deposits, wealth and investment  
404 management, corporate investment banking, credit cards, and  
405 mortgages. We have a deep commitment to serving all the  
406 communities in which we operate. We have committed to land  
407 and invest \$1.5 trillion in low and moderate income  
408 communities over the next 10 years.

409 As everyone here is aware, the financial services  
410 industry underwent considerable turmoil in 2008. Bank of  
411 America was affected by that turmoil but, nonetheless, earned  
412 a profit of \$4.2 billion for the year. We also made two  
413 significant acquisitions, Countrywide and Merrill Lynch.

414 There does not appear to be any debate that these  
415 acquisitions were in the best interest of the financial  
416 system, the economy, and the Country. The failure of

417 Countrywide would have caused a massive loss to the deposit  
418 insurance fund and could have destabilized an already  
419 crippled mortgage market. The failure of Merrill Lynch,  
420 particularly on the heels of Lehman's failure, could have  
421 caused systemic havoc or necessitated an AIG-style Government  
422 bailout.

423         These acquisitions, though, were also in the best  
424 interest of Bank of America and its shareholders. Certainly,  
425 the Merrill Lynch acquisition, in particular, came with risk,  
426 some of which materialized in the fourth quarter of 2008,  
427 when Merrill Lynch recognized significant losses. The  
428 Merrill Lynch acquisition, however, also came with the  
429 promise of significant long-term rewards, rewards Bank of  
430 America and its shareholders are already beginning to reap.

431         Through the acquisition of Merrill Lynch, we have put  
432 together what looks to be the preeminent investment bank and  
433 brokerage firm in the world, an organization that is already  
434 producing substantial profits, not losses, for our company.  
435 Understanding that fact is absolutely critical to  
436 understanding why we acquired Merrill Lynch.

437         When we bought Merrill Lynch, we really bought two  
438 businesses. The first is the world's most productive  
439 brokerage force, currently 14,000 Merrill Lynch financial  
440 advisors. Merrill Lynch has more financial advisors listed  
441 in Barron's Top 100, Top 1,000, and Top 100 Women financial

442 advisors than any other firm.

443       The second major business of Merrill Lynch was  
444 investment banking and serving institutional investors.

445       The results here are nothing short of remarkable. As of  
446 the first quarter of 2009, Bank of America Merrill Lynch was  
447 first in U.S. equity-related underwriting, first in  
448 underwriting high-yield debt, second in underwriting  
449 investment-grade corporate debt, third in global equity and  
450 equity-related underwriting, and fifth in global M&A and U.S.  
451 M&A.

452       In the first quarter of 2009, Bank of America earned  
453 \$4.2 billion. Merrill Lynch contributed \$3.7 billion, or 75  
454 percent of that first quarter profit.

455       We continue to go about the business of lending. In the  
456 first quarter of 2009, Bank of America issued \$85 billion in  
457 first mortgages, extended \$3.9 billion in new credit to small  
458 businesses, and provided \$31 million in community development  
459 loans, bolstering the Country's most underserved people and  
460 businesses. I also want to stress that we have paid \$1.1  
461 billion in dividends to the Treasury on the TARP preferred.

462       While Bank of America earned \$4.2 billion in 2008, that  
463 performance did not meet our expectations. As a result,  
464 neither I nor my senior team received any bonus. For the  
465 next level down, the bonus pool was cut by 80 percent from  
466 the previous year, and the level below that by 70 to 75

467 | percent.

468 |         Now let me briefly walk you through the decision to  
469 | purchase Merrill Lynch. We made that decision in September  
470 | 2008. We did so because we saw the potential benefits I just  
471 | described, and we did so without any promise or expectation  
472 | of governmental support.

473 |         In mid-December, I was advised that Merrill Lynch had  
474 | significantly raised its forecast of its losses, and we  
475 | contacted officials of the Treasury and Federal Reserve to  
476 | inform them that we had concerns about closing the  
477 | transaction. At that time, we were considering declaring a  
478 | material adverse change, which, as a matter of contract law,  
479 | can, if upheld, allow an acquirer to avoid to consummate a  
480 | deal. Treasury and Federal Reserve representatives asked us  
481 | to delay any such action and expressed significant concerns  
482 | about both the systemic consequences and the risk to Bank of  
483 | America in pursuing this course.

484 |         We and the Government explored Government support as  
485 | would limit the risk of proceeding with the transaction. We  
486 | both were aware that the global financial system was in  
487 | fragile condition and that a collapse of Merrill Lynch could  
488 | hasten the crisis.

489 |         For its part, Bank of America concluded that there was  
490 | serious risk to declaring a material adverse change and that  
491 | proceeding with the transaction with governmental support was

492 | the better course. This course made sense for Bank of  
493 | America and its shareholders and it made sense for stability  
494 | of the markets.

495 | I believe that committed people of good intentions in  
496 | both the private sector and the Government worked desperately  
497 | hard in late 2008 to prevent a collapse of the global  
498 | financial system that would have resonated throughout the  
499 | whole global economy. Even six months later it is easy to  
500 | forget just how close to the brink our system came. I will  
501 | never forget, and I believe those efforts will be well  
502 | remembered long after any current controversy is forgotten.

503 | With that, sir, I will conclude my remarks.

504 | [Prepared statement of Mr. Lewis follows:]

505 | \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

506 Chairman TOWNS. Thank you very, very much for your  
507 statement.

508 Let me begin the questions.

509 Let me ask unanimous consent that we have 10 minutes on  
510 each side initially, and then after that 5 minutes for each  
511 member. And, of course, if we need a second or third round,  
512 we will do that as well. Without objection, so moved.

513 One of the key questions is when you discovered the  
514 massive losses at Merrill Lynch, Mr. Lewis, you have said  
515 that you learned of them late and they came as a big  
516 surprise. But the emails from the Feds tell a different  
517 story. Tim Clark from the Fed said that your claim to be  
518 surprised seemed somewhat suspect. The Federal Governor  
519 Kevin Warsh wrote that this claim is not credible, and there  
520 are more like this. It is clear that the Feds think you  
521 either knew or you should have known about these losses  
522 sooner.

523 I have to say everything that was happening in the  
524 financial markets last fall, your claim that you had no idea  
525 about Merrill's losses until December is remarkable. The  
526 Feds seem to think that you are either not being forthcoming  
527 about that or you were completely clueless about the merger  
528 and the situation on Wall Street.

529 My question is when exactly did you know about these  
530 losses and why didn't you know about them sooner?

531 Mr. LEWIS. Thank you for the question. The financial  
532 markets in the fourth quarter of 2008 suffered a massive  
533 credit meltdown, something that probably had not been seen  
534 during our lifetimes, and we saw that happening in September  
535 and in October, and we saw things that were evidenced in our  
536 own book that suggested that things were bad and getting  
537 worse. We also had heard rumors on the street that other  
538 banks were suffering losses as well. So the losses at that  
539 particular time were not concerning because they were  
540 consistent with others in the marketplace and what we were  
541 seeing as well.

542 But then, in mid-December, the forecast losses  
543 accelerated dramatically. So it wasn't that we didn't know  
544 about losses. The concern was the fact that these losses  
545 accelerated, and that was what gave us the grave concern.

546 Chairman TOWNS. Let me put it this way. Did you move  
547 forward with the Merrill deal because of pressure from  
548 Government officials or because you thought it was in the  
549 best interest of Bank of America and its shareholders?

550 Mr. LEWIS. There has been a lot of talk about the  
551 pressure from the Federal Government. It is true that we  
552 were told that if we went through or--I can't remember the  
553 exact words, so please give me license with word for word,  
554 but basically if we went through with calling the MAC, that  
555 the Government could or would remove management and the

556 board. And I have said in the past that the threat was not  
557 what gave me concern. What gave me concern that they would  
558 make that threat to a bank in good standing. So it showed  
559 the seriousness with which they thought that we should not  
560 call a MAC, a material adverse change.

561 So as a result of that, that was a factor in our  
562 decisions, because here your regulators and the Federal  
563 Government was saying we don't think calling the MAC is the  
564 best thing for you or the financial system.

565 But there were also other considerations. You weren't  
566 assured you would win the MAC. If in fact you lost the MAC,  
567 you were subject to severe lawsuits and severe amounts of  
568 money that you would have to pay. So we thought that, given  
569 the fact that the Government felt that strongly and the fact  
570 that there was a risk that you would not win the MAC and  
571 then, finally, that you might end up not getting Merrill  
572 Lynch in any sense, even after paying the fines, we felt  
573 like, because of all of those factors, that it was in our  
574 best interest, that is, the Bank of America shareholders'  
575 best interest, to go through with the merger.

576 Chairman TOWNS. So you were pressured.

577 Mr. LEWIS. It is hard to find the exact right word to  
578 describe what I just described, so I have found, as I have  
579 tried to have different words, that is is best just to  
580 describe it and let people come to a conclusion.

581 Chairman TOWNS. I yield to the Ranking Member for the  
582 rest of my minutes.

583 Mr. KUCINICH. Thank you very much, Mr. Chairman.

584 Mr. Lewis, in our review of the Fed's documents, it  
585 reveals that, in contrast to your representations to us  
586 today, Fed officials concluded that you must have known about  
587 the accelerating losses at Merrill much earlier, as early as  
588 mid-November, when your shareholders could have voted to  
589 disapprove the merger.

590 Now, an email from a senior advisor sent to assistant to  
591 Chairman Bernanke on December 13th, 2008; and it is up there  
592 on the board for everyone to see. Writes of "clear signs in  
593 the data we have that the deterioration at Merrill Lynch has  
594 been observably underway over the entire quarter, albeit  
595 picking up significantly around mid-November. Ken Lewis's  
596 claim that they were surprised by the rapid growth of the  
597 losses seems somewhat suspect."

598 Another memo, restricted Federal Reserve analysis of  
599 Bank of America and Merrill Lynch merger, dated December  
600 21st, 2008. "BAC management's contention that the severity  
601 of Merrill's losses only came to light in recent days is  
602 problematic and implies substantial deficiencies in the due  
603 diligence carried out in advance of and subsequent to the  
604 acquisition. Talking about Merrill's losses were clearly  
605 shown in Merrill Lynch's internal risk management reports

606 | that Bank of America reviewed during their due diligence.''

607 |         And then there is an email from the Fed General Counsel  
608 | to Chairman Bernanke on December 23rd, 2008.  ''Lewis should  
609 | have been aware of the problems at Merrill Lynch earlier,  
610 | perhaps as early as mid-November, and not caught by surprise.  
611 | That could cause other problems for him around the  
612 | disclosures Bank of America made for the shareholder vote.''

613 |         Now, Mr. Lewis, I am going to ask you a series of simple  
614 | questions, and if you are not forthcoming, I am not going to  
615 | have any choice but to interrupt you.  I am asking for your  
616 | cooperation.

617 |         Isn't it true that Bank of America examined Merrill  
618 | Lynch's book of business before signing the merger agreement,  
619 | and then received detailed financial reports every week from  
620 | Merrill Lynch after signing the merger agreement on September  
621 | 15th?

622 |         Mr. LEWIS. That is true.

623 |         Mr. KUCINICH. And isn't it true that the Merrill Losses  
624 | of mid-December, that you claim motivated you to go to the  
625 | Government, were not the largest week-to-week losses at  
626 | Merrill you observed since agreeing to purchase the company?  
627 | In fact, wasn't the week-to-week loss experienced in  
628 | mid-November larger than the one in mid-December?

629 |         Mr. LEWIS. The losses that were causing this forecast to  
630 | increase were partly based on losses in November.  So I am

631 | not saying that the losses in that time frame were what  
632 | caused the increase; it was the increased projections of the  
633 | losses based on some of those losses in November.

634 |         Mr. KUCINICH. Mr. Chairman, I move to insert into the  
635 | record a bar graph representing the week-to-week losses  
636 | reported by Merrill Lynch to Bank of America, which clearly  
637 | shows that the mid-November loss exceeded the one in  
638 | mid-December.

639 |         Chairman TOWNS. Without objection.

640 |         Mr. KUCINICH. I also move to insert an analysis by a  
641 | statistics expert finding that the mid-November loss should  
642 | have alerted Bank of America to an accelerating deterioration  
643 | in Merrill Lynch, and the loss evident in mid-December merely  
644 | confirms a trend apparent in mid-November.

645 |         [The information follows:]

646 | \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

647 Mr. KUCINICH. Now, Mr. Lewis, isn't it true that you  
648 understood the composition and performance of Merrill's  
649 portfolio because it was similar to your own in that it was a  
650 portfolio that contained complex structured derivative  
651 products? Isn't that true?

652 Mr. LEWIS. It is true. The issue, though, is nobody  
653 predicted a meltdown like occurred in the fourth quarter of  
654 2008.

655 Mr. KUCINICH. But you were getting weekly reports, and  
656 you certainly understood Merrill because of the similarities  
657 in the composition and performance of their portfolio. Now,  
658 our investigation found that the Fed believed you should have  
659 understood the potential for losses at Merrill because your  
660 own portfolio was similar to Merrill's.

661 I want you to look at the following from the Fed's  
662 restricted analysis of Bank of America and the Merrill Lynch  
663 merger, dated December 21st, 2008. ''The potential for  
664 losses from other risk exposures cited by management,  
665 including those coming from leverage loans and trading and  
666 complex structured credit derivative products--what they also  
667 call correlation trading--should also have been reasonably  
668 well understood, particularly as Bank of America itself is  
669 also active in these products.''

670 Now, Mr. Lewis, how do you explain the apparent  
671 contradiction between your sworn testimony and the Fed's

672 findings that you knew about the acceleration and losses and  
673 the potential for future losses as early as mid-November?

674 Mr. LEWIS. I can only tell you what I just said, that  
675 part of the November losses were causing this projection that  
676 we were getting in December, so they were a factor in the  
677 increased projection.

678 Chairman TOWNS. My time has expired, so let me yield now  
679 to the Ranking Member from California, Congressman Issa, for  
680 his 10 minutes.

681 Mr. ISSA. Thank you, Mr. Chairman. Mr. Chairman, at  
682 this time, I would like to ask unanimous consent that all  
683 opening statements by all members be allowed to be inserted  
684 into the record.

685 Chairman TOWNS. Without objection.

686 Mr. ISSA. Mr. Chairman, I would also ask unanimous  
687 consent that the minority background memo, as well as  
688 documents referred to in it, be included in the hearing  
689 record.

690 Chairman TOWNS. Without objection.

691 Mr. ISSA. Thank you, Mr. Chairman.

692 [The information follows:]

693 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

694 Mr. ISSA. Mr. Lewis, in your 35 years, how many  
695 acquisitions, including stock trades, would you say you have  
696 been involved in, roughly? Including boards you sat on or  
697 were involved in in some tangential way.

698 Mr. LEWIS. Off the top of my head, ten.

699 Mr. ISSA. And probably hundreds that you have looked at  
700 in your review of other people's, competitor's, transactions  
701 and so on.

702 Isn't it true that it is fairly common to get down the  
703 road, particularly in a stock transaction, and find that the  
704 original anticipated ratio is changed, either favorably or  
705 not favorably, and it is often written into the contracts  
706 that there were certain break points based on a material  
707 change in stock trading or other material facts, such as you  
708 had in your MAC agreement, right?

709 Mr. LEWIS. Yes, that is not uncommon.

710 Mr. ISSA. Okay. So the Fed should not have been  
711 surprised that that would be questioned as this very  
712 turbulent market continued to have a number of changes in  
713 what was going on at B of A and what was going on at Merrill  
714 Lynch.

715 Mr. LEWIS. It is hard for me to speak, or I shouldn't  
716 and can't speak--

717 Mr. ISSA. Well, let me just say this. Were you at all  
718 surprised that there were day-to-day, week-to-week changes

719 | that you had to evaluate and forecast what they really meant  
720 | over a much longer period during this turbulent time?

721 |         Mr. LEWIS. No. And the way I would characterize it  
722 | would be, not speaking for the Fed, but somebody on the  
723 | outside who was familiar with mergers and acquisitions, had  
724 | that person known that not strongly considered a material  
725 | adverse change, they would have thought we were asleep at the  
726 | switch.

727 |         Mr. ISSA. And as a fiduciary to your corporation, now  
728 | the combined, but at that time B of A, didn't you have a  
729 | responsibility to weigh that and, in fact, when in doubt,  
730 | assert the possibility? In other words, if you had to err,  
731 | you had to err on the side that you had to look for the  
732 | material adverse change, not assume it wasn't there. You had  
733 | to assume that it could be there and you had to look for it.

734 |         Mr. LEWIS. Well, particularly when we saw the  
735 | acceleration, yes, sir.

736 |         Mr. ISSA. Okay. I don't want to spend a lot of time on  
737 | that part of it because I think it is beyond the purview of  
738 | this Committee, but on December 17th, when you called  
739 | Chairman Bernanke and Secretary Paulson to tell them you were  
740 | thinking of exercising the MAC clause, which, again, you had  
741 | an obligation to at least consider, were you motivated to do  
742 | so because of your fiduciary obligation to your stockholders?

743 |         Mr. LEWIS. I was, sir.

744 Mr. ISSA. I am going to ask a question that perhaps  
745 shows too much of my background off the dais, but to the  
746 extent that you were borrowing or potentially borrowing money  
747 from taxpayer money, was that really--let me put it this  
748 way--that was still borrowed money, it wasn't a gift. You  
749 were not trying to renegotiate a gift from the Government or  
750 even the amount of money coming from them. If you had cited  
751 and they had said, yes, go ahead and exercise that clause,  
752 would the more likely outcome change have been a difference  
753 in the purchase price of Merrill Lynch relative to B of A?

754 Mr. LEWIS. That is one possibility, but I can't predict  
755 the future, obviously.

756 Mr. ISSA. Okay. And when you looked at the material  
757 adverse clause, and particularly the losses that were  
758 building up, did you do so as an officer of a regulated  
759 company who, if your capital dropped below a certain point,  
760 could be in fact closed by the FDIC? In other words, were  
761 you protecting B of A's position that you not take an anchor  
762 that could lead to insolvency of your own company?

763 Mr. LEWIS. Yes, that was a factor.

764 Mr. ISSA. So we have a combination of what was Merrill  
765 really worth relative to what they were getting in B of A  
766 stock, and, as a regulated entity, the real risk if you did  
767 not ensure that B of A's capital base was sufficient--we  
768 recently had the stress test, obviously--sufficient for you

769 | to be a going concern.

770 |         Mr. LEWIS. I want to at least make sure I give full  
771 | disclosure here. If we had done this deal, at least our tier  
772 | one ratio, which is the one that the regulators look at the  
773 | most, would have still been over well capitalized, but it  
774 | would have been well under our internal objective and would  
775 | have been a relatively low ratio in this environment.

776 |         Mr. ISSA. So today's hearing, at least from this  
777 | member's standpoint, is really about whether or not the  
778 | Government asserted either strong influence that would be  
779 | outside the ordinary influence one would expect from a  
780 | neutral party or/and whether or not you felt that there was  
781 | an implied threat, either to yourself, your board, or your  
782 | company, in any of the verbal or written correspondence you  
783 | had with Government officials, including Bernanke and  
784 | Paulson.

785 |         Mr. LEWIS. Well, there was the strong advice that I just  
786 | mentioned. I do want to put it--

787 |         Mr. ISSA. I realize that you don't want to characterize  
788 | it as a threat or any one word, but did you feel that you  
789 | were being pressured to go through with the deal at least as  
790 | strongly as that salesman trying to sell you the car and get  
791 | you to close, or the insurance salesman? You know the  
792 | pressure I am talking about. Were they advocating strongly  
793 | and using both positive and negative forces to do so in those

794 | conversations?

795 |         Mr. LEWIS. Yes, sir, but I think it was in the context  
796 | of them thinking that was in the best interest of Bank of  
797 | America and the financial system.

798 |         Mr. ISSA. I am going to call you to task a little bit.  
799 | You said the best interest of Bank of America and the  
800 | financial system. I am not going to quibble over their  
801 | motives on the financial system, but why do you say Bank of  
802 | America? Did you believe that they really believed this was  
803 | a good deal for Bank of America, even though you were seeing  
804 | a change which would have affected your arm's length  
805 | negotiation of a price?

806 |         Mr. LEWIS. Well, their concern, obviously, was from the  
807 | top, and that is for the financial system. But we are so  
808 | intertwined with the financial system, I think they thought  
809 | that by all of this happening and the uncertainty coming back  
810 | into the financial system, that in fact that would hurt the  
811 | system and us.

812 |         Mr. ISSA. Okay, so when you say and Bank of America, you  
813 | really mean the financial system and, as a member of the  
814 | financial system, you would be affected.

815 |         Mr. LEWIS. Yes.

816 |         Mr. ISSA. But if they went and sold it to somebody else  
817 | or lowered the price and packaged it up, or if Merrill Lynch  
818 | had gone through a bankruptcy and been offered to you free

819 | and clear, all of those alternatives, strictly relative to  
820 | Bank of America, would have been either better or at least no  
821 | worse.

822 |         Mr. LEWIS. I can't speak to that, but those would be  
823 | options. But I can't speak to whether it would be better or  
824 | worse.

825 |         Mr. ISSA. My last question, then I am going to yield to  
826 | one of the other members, if you did not have the Government  
827 | at the table--and I know that is hypothetical, but if you did  
828 | not have the Government at the table, would you have, A,  
829 | asserted the clause and, B, either walked away or  
830 | substantially changed the deal?

831 |         Mr. LEWIS. It didn't happen that way, so it is hard for  
832 | me to project what I would have ultimately done, but,  
833 | obviously, we were strongly considering it.

834 |         Mr. ISSA. So it would be somewhere between possible and  
835 | likely.

836 |         Mr. LEWIS. I don't know how to characterize it. I will  
837 | just stick to how I described it, I think.

838 |         Mr. ISSA. Thank you. Your constituent, Mr. McHenry,  
839 | will control the balance of my time.

840 |         Mr. MCHENRY. Thank you, Ranking Member Issa.

841 |         Mr. Lewis, you have been with Bank of America and its  
842 | predecessor companies for how long?

843 |         Mr. LEWIS. September will be 40 years.

844 Mr. MCHENRY. Forty years. How many mergers or  
845 acquisitions have you personally been involved with in your  
846 career?

847 Mr. LEWIS. I would have to take a few moments and count  
848 them up, but obviously probably more than one, less than ten.

849 Mr. MCHENRY. Okay. Would this be the largest merger or  
850 acquisition that your company and the predecessor companies  
851 have taken?

852 Mr. LEWIS. No. The Nations Bank-Bank of America  
853 acquisition would have probably been--I would have to think  
854 back to the market caps and things, but that would be the  
855 biggest. This would be one of the biggest, however.

856 Mr. MCHENRY. Certainly. Now, in terms of how you  
857 analyze these deals, do you have a process within your bank  
858 to analyze appropriate growth measures and acquiring other  
859 institutions or merging with other institutions?

860 Mr. LEWIS. We do.

861 Mr. MCHENRY. You do. And did you conduct that same  
862 method with this Merrill acquisition?

863 Mr. LEWIS. Yes, we did. We used the same methodology.

864 Mr. MCHENRY. Okay. Thank you. My time has expired and  
865 I have got other questions in that regard later. Thank you.

866 Chairman TOWNS. Thank you very much.

867 Let me now yield to the Chairman of the Subcommittee,  
868 Mr. Kucinich, for five minutes.

869 Mr. KUCINICH. Mr. Chairman, members of the Committee,  
870 our investigation, Mr. Lewis, also finds that Fed officials  
871 believed that you were potentially liable for violating  
872 security laws by withholding material information in your  
873 possession from shareholders before the vote to approve the  
874 merger with Merrill Lynch on December 5th, 2008.

875 Mr. Lewis, please look at the following email from the  
876 Fed's General Counsel to Chairman Bernanke on December 23rd,  
877 2008. ''A different question that doesn't seem to be the one  
878 Lewis is focused on is related to disclosure. Management may  
879 be exposed if it doesn't properly disclose information that  
880 is material to investors. His potential liability here will  
881 be whether he knew or reasonably should have known the  
882 magnitude of Merrill Lynch losses when Bank of America made  
883 its disclosure to get the shareholder vote on the Merrill  
884 Lynch deal in early December.''

885 Mr. Lewis, did Bank of America supplement the proxy  
886 solicitation it sent to shareholders with what the company  
887 learned in mid-November about the rapidly mounting losses and  
888 potential for future losses at Merrill Lynch before the  
889 shareholder vote on December 5th?

890 Mr. LEWIS. Congressman, we take disclosure very, very  
891 seriously. If any--

892 Mr. KUCINICH. Were there supplements? Can you say were  
893 there supplements?

894 Mr. LEWIS. If anybody in our legal group had suggested  
895 we do anything of that nature, we would have done it.

896 Mr. KUCINICH. There were no supplements, isn't that  
897 right?

898 Mr. LEWIS. There was no suggestions to have a  
899 supplement.

900 Mr. KUCINICH. There were no supplements. Okay. So, Mr.  
901 Lewis, look at the following email that circulated among  
902 officials at the Richmond Fed on December 23rd, 2008. "I  
903 think he's worried about stockholder suits. Knows they did  
904 not know do a good job of due diligence, and the issues  
905 facing the company are finally hitting home and he's worried  
906 about his own job after cutting loose lots of very good  
907 people."

908 Now, Mr. Lewis, was your decision to tell the Government  
909 you were considering invoking a MAC, which, of course, refers  
910 to a clause in a merger agreement that allows the acquirer to  
911 abandon the deal if a material adverse change is judged to  
912 have occurred, was your threat to invoke a MAC in fact a  
913 strategy you deployed to protect yourself from shareholder  
914 lawsuits?

915 Mr. LEWIS. No, it was not.

916 Mr. KUCINICH. Isn't it true, Mr. Lewis, that during the  
917 course of your conversations with Chairman Bernanke and  
918 Secretary Paulson, you in fact requested a letter from the

919 Government saying that the Government ordered you to close  
920 the deal to acquire Merrill?

921 Mr. LEWIS. No, that was not what I asked for. Our board  
922 was concerned--

923 Mr. KUCINICH. Your answer is no? Are you sure that is  
924 your answer?

925 Mr. LEWIS. Our board was concerned that we had verbal  
926 assurances, but had nothing in writing, about getting some  
927 assistance. So I called Chairman Bernanke and asked him--

928 Mr. KUCINICH. But you are referring to a different  
929 letter. I am talking about a letter. You requested a letter  
930 from the Government saying that the Government ordered you to  
931 close the deal to acquire Merrill. Wasn't there such a  
932 letter?

933 Mr. LEWIS. I don't recall such a letter.

934 Mr. KUCINICH. You are under oath but your answer is you  
935 don't recall.

936 Mr. LEWIS. I do not recall.

937 Mr. KUCINICH. Isn't it true that your request of that  
938 letter was motivated by your desire to protect yourself from  
939 your shareholders?

940 Mr. LEWIS. Well, sir, if I can't recall it, I can't  
941 answer the second question.

942 Mr. KUCINICH. Well, our investigation reveals that  
943 Chairman Bernanke believed that your request for such a

944 | letter was motivated by a desire to protect you from  
945 | shareholder lawsuits, as demonstrated in this email from  
946 | Chairman Bernanke to the Fed's General Counsel on December  
947 | 23rd, 2008, ``He''--speaking of you, Mr. Lewis--``said he now  
948 | fears lawsuits from shareholders for not invoking the MAC,  
949 | given the deterioration at Merrill Lynch. He''--they are  
950 | speaking of you, Mr. Lewis--``still asked whether he could  
951 | use as a defense that the Government ordered him to proceed  
952 | for systemic reasons. I said no.'' This is from Chairman  
953 | Bernanke.

954 |         Mr. Lewis, is Chairman Bernanke's email describing his  
955 | call with you an accurate statement of your concerns and of  
956 | Bank of America's situation?

957 |         Mr. LEWIS. I can't recall the exact email, but we did  
958 | have concerns and we wanted some assurances that they would  
959 | support our position.

960 |         Mr. KUCINICH. I yield back, Mr. Chairman.

961 |         Chairman TOWNS. Thank you very much.

962 |         I now yield to the Ranking Member of Ohio, Mr. Jordan.

963 |         Mr. JORDAN. Thank you, Mr. Chairman.

964 |         Let me go back to this so-called threat concern here,  
965 | Mr. Lewis. I just want to be clear. On December 17th, when  
966 | you called Mr. Paulson and Mr. Bernanke, I just want to know  
967 | the nature of your call. Did you say we are going to  
968 | exercise the MAC clause or did you say we are thinking about

969 exercising the MAC clause?

970 Mr. LEWIS. Again, it seems like a long time ago. To the  
971 best of my recollection, I said we are strongly considering a  
972 MAC.

973 Mr. JORDAN. So, in other words, the response you then  
974 got changed your decision. You were going to exercise the  
975 clause; you felt that was in the best interest of your bank,  
976 of your shareholders. You were going to do it and then,  
977 based on what the Government told you, you took a different  
978 course.

979 Mr. LEWIS. No, sir, it was a factor because they felt so  
980 strongly. But it was not the only factor in making the  
981 decision. We also thought, after a lot of consideration,  
982 that there was downside risk in not winning the MAC.

983 Mr. JORDAN. Let me change direction, because we have  
984 talked about this a lot. I want to get to just a big concern  
985 I have with the unprecedented level of involvement the  
986 Government now has in the private sector in way too many  
987 industries, in my judgment; and let me provide a little  
988 context.

989 I was on a conference call a week ago Sunday with  
990 members of the Auto Task Force, talking about the GM  
991 situation. I happen to come from car country, as I said in  
992 my opening statement. We had a GM plant that was closed a  
993 week ago Monday; 800 jobs, 800 families and a whole community

994 impacted, as you would expect. The night before that  
995 announcement, we were on this conference call. Members of  
996 the Task Force talked about what was going to happen and one  
997 member of the Auto Task Force indicated, he said, we are not  
998 going to run General Motors; we will only get involved if  
999 there is a major event--major event was the language he  
1000 used--and they explained the whole deal.

1001         When we got done, I asked a question. It was Mr.  
1002 Spurling who made that statement. I said, Mr. Spurling,  
1003 define major event. Define what is major. I said, because  
1004 it is going to be pretty major tomorrow in our district when  
1005 800 people find out they are not going to have a job. And he  
1006 didn't have a definition. In fact, he said, we don't have a  
1007 working definition; it would be something along the lines of  
1008 a merger, a major change in corporate structure, which  
1009 basically told me it could be any darned thing they wanted it  
1010 to be.

1011         So my question to you is what day-to-day involvement  
1012 does the Government have in decisions you are making relative  
1013 to TARP funds, relative to any--if any, talk about that if  
1014 you would, please.

1015         Mr. LEWIS. Well, sir, there is an oversight committee, a  
1016 TARP committee that actually does look at our lending and see  
1017 if we are using the TARP funds to lend money, so that is a  
1018 report we just requested. There obviously is the involvement

1019 | of our regulators, as there normally would be.

1020 |       Mr. JORDAN. I am talking over that, more than that.

1021 |       Mr. LEWIS. The only involvement that would be explicit  
1022 | would be after we were ordered to attain more capital as a  
1023 | part of this stress test. They did suggest to all banks that  
1024 | were raising that capital to re-look at their boards for  
1025 | financial expertise and to look at their management and  
1026 | succession as a part of this process; and we have been doing  
1027 | that, but no day-to-day decisions made by regulators.

1028 |       Mr. JORDAN. Okay, talk to me about TARP funds you have,  
1029 | any kind of undue influence you felt there in relation to  
1030 | when you initially accepted the TARP dollars.

1031 |       Mr. LEWIS. No undue influence, no, sir.

1032 |       Mr. JORDAN. Okay.

1033 |       I would be happy to yield to the Ranking Member, Mr.  
1034 | Chairman.

1035 |       Mr. ISSA. Thank you. Just a couple of follow-ups.

1036 |       Although the threat seems to have been stated, whether  
1037 | or not it influenced you, to your understanding under U.S.  
1038 | law--and I realize we are not asking a banker to be a lawyer,  
1039 | but does the Federal Reserve Chairman have the right to fire  
1040 | you or any member of your board?

1041 |       Mr. LEWIS. I think there is something called a cease and  
1042 | desist, which gives them power to do things like that. I  
1043 | have been told that; I haven't read it myself.

1044 Mr. ISSA. Okay. And the U.S. Treasury Secretary, any  
1045 similar power?

1046 Mr. LEWIS. No, sir, I don't think he would have the  
1047 power.

1048 Mr. ISSA. Okay. But when acting in concert, you would  
1049 perceive that threat to be real, that he could execute on  
1050 that threat, of having you and/or your board relieved.

1051 Mr. LEWIS. My perception was that he was speaking on  
1052 behalf of himself and the regulators. And my perception was,  
1053 in concert, they would have that power.

1054 Mr. ISSA. Thank you.

1055 Chairman TOWNS. Thank you very much.

1056 I now yield to the gentleman from Pennsylvania who has  
1057 been working on these issues for more than 20 years,  
1058 Congressman Kanjorski.

1059 Mr. KANJORSKI. Thank you very much, Mr. Chairman.

1060 Mr. McHenry made a comment in his introduction of you  
1061 that Bank of America has business relations with 98 percent  
1062 of the Fortune 500 companies. What I want to know is what  
1063 are the 10 companies that aren't doing business with you?

1064 [Laughter.]

1065 Mr. LEWIS. I don't know, but it is a very interesting  
1066 question.

1067 Mr. KANJORSKI. Get home and check that.

1068 Mr. Lewis, in some regard we have important questions

1069 | that we are trying to resolve with reforming regulatory  
1070 | authority in the United States, so to that extent these  
1071 | hearings are helpful. But I don't hear anything thus far,  
1072 | either by my colleagues or yourself in responding, that there  
1073 | was some perceived threat or abuse of action on the part of  
1074 | Federal regulators, so I am going to ask you directly. Do  
1075 | you think Mr. Bernanke or anyone working under the Federal  
1076 | Reserve Chairman took unauthorized, illegal, or improper  
1077 | action toward you or the Bank of America during these trying  
1078 | times?

1079 |         Mr. LEWIS. I do not.

1080 |         Mr. KANJORSKI. All right.

1081 |         Mr. LEWIS. And I would say they strongly advised and  
1082 | they spoke in strong terms, but I thought it was with good  
1083 | intention.

1084 |         Mr. KANJORSKI. If I had to characterize it, I was  
1085 | thinking that if the Titanic were going down and some of us  
1086 | were in the life rafts, it sounds like an argument between  
1087 | the captain and some that are in the water and they are  
1088 | refusing to get on board, and he is ordering them to get on  
1089 | board. Is that not too dissimilar to what happened here on  
1090 | this mid-September to December period of time, when all of  
1091 | us, admittedly, had our hair on fire?

1092 |         Mr. LEWIS. And I think they saw, probably with their  
1093 | perspective, they saw rougher seas ahead that no one

1094 | institution would be able to see.

1095 |         Mr. KANJORSKI. My Subcommittee on Financial Services is  
1096 | charged with looking at the reform of regulation. Is there  
1097 | anything that you could see that in, granted, extreme  
1098 | circumstances such as that weekend of September 15th and the  
1099 | failure of Lehman Brothers and what was happening in the  
1100 | implosion or the collapse of the financial system, is there  
1101 | anything that we could do in reforming the regulations to  
1102 | provide for faster disclosure?

1103 |         For instance, the 8-K requirements that were not carried  
1104 | out precisely in this case, and that disclosures by the  
1105 | company were not necessarily made within the four days. I  
1106 | know there is an argument as to whether or not they legally  
1107 | had to or were defined as required, but is there something we  
1108 | could do to assure shareholders, who do get at risk as a  
1109 | result of not force, but encouraged, acquisitions such as  
1110 | this, is there anything we in the Federal Government can do  
1111 | to clarify that problem and to make it clearer that would  
1112 | help the banking institutions in future events of this sort?

1113 |         Mr. LEWIS. Sir, are you speaking to the Lehman or to the  
1114 | Merrill Lynch?

1115 |         Mr. KANJORSKI. No, to the requirement of your filing for  
1116 | disclosure notice to your shareholders when all of this was  
1117 | pending. You didn't necessarily precisely follow what could  
1118 | be considered a notice requirement.

1119 Mr. LEWIS. I think clarity is always better. If it were  
1120 left up to me, I would go to clarity first.

1121 Mr. KANJORSKI. So what would you recommend that we do,  
1122 go into that area and declare more disclosure as to what is  
1123 happening or how it is happening? Shall we put you on the  
1124 net or what?

1125 Mr. LEWIS. I am not sure I am following you in terms of  
1126 the disclosure that you are speaking to, so I am a little  
1127 shaky on your question, frankly.

1128 Mr. KANJORSKI. Okay. Well, do you know of any  
1129 disclosure, do you have any feelings of any disclosures that  
1130 could be made at those highly charged, extreme circumstances  
1131 that you were operating under? Is there anything that we  
1132 could create in the reform of our regulatory requirements on  
1133 acquisitions or mergers?

1134 Mr. LEWIS. It would be difficult because you don't have  
1135 an event, many times, because you are still looking at  
1136 alternatives and negotiating Lehman or the Merrill Lynch-Bank  
1137 of America situation, and then it could be well into the  
1138 morning before you actually get a signed deal, and then you  
1139 do announce it the next day, for instance. So the ebb and  
1140 flow of the circumstances would make it very difficult to  
1141 describe it as an event, because it just may not happen that  
1142 way.

1143 Mr. KANJORSKI. Now, I understood in your testimony you

1144 | pointed out that the Merrill Lynch acquisition was  
1145 | responsible for 75 percent of your last quarter's profits.  
1146 | Are you aware of shareholders that are complaining about that  
1147 | acquisition as a result of that?

1148 |         Mr. LEWIS. No, sir, not now.

1149 |         Mr. KANJORSKI. Okay. Thank you very much.

1150 |         I yield back.

1151 |         Chairman TOWNS. Thank you very much.

1152 |         I now yield to Mr. Chaffetz, the gentleman from Utah,  
1153 | for five minutes.

1154 |         Mr. CHAFFETZ. Thank you, Mr. Lewis. I appreciate your  
1155 | being here. I am looking at some notes here dated December  
1156 | 31st. These are your notes. Also looking at some notes  
1157 | taken by Joe Price, the CFO at Bank of America, that were  
1158 | taken on December 21st of 2008, about the attempt to use the  
1159 | MAC clause and get out of the Merrill Lynch transaction. In  
1160 | those notes it says fire board of directors if you do it,  
1161 | irresponsible for Country. TG agrees.

1162 |         TG, I would assume, would be Timothy Geithner?

1163 |         Mr. LEWIS. Those are Joe Price's notes?

1164 |         Mr. CHAFFETZ. Yes.

1165 |         Mr. LEWIS. I would have to assume with you, because they  
1166 | are his notes.

1167 |         Mr. CHAFFETZ. Based on your recollection of what was  
1168 | going on and based on the notes that we see from the CFO that

1169 | was there, fire board of directors if you do it. Was that  
1170 | your understanding?

1171 |         Mr. LEWIS. That is probably a reference to the  
1172 | conversation I have mentioned that I had with Secretary  
1173 | Paulson. But again, those are his notes.

1174 |         Mr. CHAFFETZ. But based on your personal recollection,  
1175 | is that your understanding, that the board of directors would  
1176 | be let go if this MAC clause was invoked?

1177 |         Mr. LEWIS. You know, I mentioned that I need a license  
1178 | with whether he said could or would, but basically the  
1179 | premise was that management and the board would be removed if  
1180 | in fact we did call the MAC.

1181 |         Mr. CHAFFETZ. Including yourself.

1182 |         Mr. LEWIS. Correct.

1183 |         Mr. CHAFFETZ. So if the suggestion from the Federal  
1184 | Government was to have your job removed, as well as the board  
1185 | of directors, can it be looked at any other way other than a  
1186 | threat?

1187 |         Mr. LEWIS. Well, actually, we didn't actually have much  
1188 | of reaction to the comments themselves as it related to us  
1189 | being removed. Again, what impressed us was here was the  
1190 | Government telling a bank in good standing that they would do  
1191 | something like this. So it was the seriousness of it which  
1192 | caused us to believe that they really did believe that there  
1193 | was an issue here with the MAC and not calling it that did

1194 | influence us. But it wasn't the threat to have us lose our  
1195 | jobs, it was the seriousness because they made it, not the  
1196 | threat it itself.

1197 |       Mr. CHAFFETZ. I am sorry, I didn't catch the last part  
1198 | of that.

1199 |       Mr. LEWIS. It was the seriousness with which they made  
1200 | it, not the threat itself.

1201 |       Mr. CHAFFETZ. Tell me about your discussion. You call,  
1202 | at one point, as I am looking at the time line here, Mr.  
1203 | Paulson is taking a bike ride, I guess, on December 21st.  
1204 | Tell me specifically what was going on in that conversation.

1205 |       Mr. LEWIS. Well, I called him to get an update and I  
1206 | think that was the Sunday. I am pretty sure that was the  
1207 | Sunday that I called him. As I recall the conversation, he  
1208 | said I want to give you some blunt language and I first want  
1209 | to start out by saying that we are very supportive of Bank of  
1210 | America, and then went one step further and said what I have  
1211 | already said. He said but we feel very strongly that you  
1212 | should not call the MAC, and if in fact you do, and, again, I  
1213 | think he said would, but it was would or could, as I recall,  
1214 | remove the board and management.

1215 |       Mr. CHAFFETZ. Well, that certainly sounds like a threat  
1216 | to me and an amazing use of power there. Tell me about your  
1217 | interactions with Timothy Geithner. How early in this  
1218 | process was he involved and engaged in this process?

1219 Mr. LEWIS. After the confirmation hearings or once he  
1220 excused himself from the New York Fed, I had no contact with  
1221 Mr. Geithner.

1222 Mr. CHAFFETZ. But he was involved before he was named  
1223 and brought in as the Treasury Secretary, correct?

1224 Mr. LEWIS. Well, he had been involved in the original  
1225 TARP money, yes.

1226 Mr. CHAFFETZ. Right. And tell me about Mr. Summers, the  
1227 interaction and place of involvement that he had in this  
1228 process.

1229 Mr. LEWIS. I personally had no involvement with Mr.  
1230 Summers.

1231 Mr. CHAFFETZ. He was not engaged in any of these?

1232 Mr. Chairman, I would ask unanimous consent that Mr.  
1233 Price's notes from December 21st, 2008 and Mr. Lewis's notes  
1234 from the conversation with Ben Bernanke on December 31st,  
1235 2008 also be entered into the record.

1236 Chairman TOWNS. Without objection, so ordered.

1237 Mr. CHAFFETZ. Thank you.

1238 [The information follows:]

1239 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

1240 Mr. CHAFFETZ. Tell me about the interaction that you  
1241 continue to have with Mr. Bernanke and Mr. Geithner at this  
1242 point.

1243 Mr. LEWIS. Well, I have had very little conversation  
1244 with--in fact, I can't recall a conversation that I have had  
1245 with Mr. Bernanke in terms of being one-on-one. I am a  
1246 member of a council called the Federal Reserve Advisory  
1247 Council, and there are 12 of us, and we have a dialog with  
1248 the Federal Reserve, including Mr. Bernanke, but that is in a  
1249 group setting. So no--

1250 Mr. CHAFFETZ. Any interaction with the Administration--  
1251 Chairman TOWNS. May I say to the gentleman from Utah,  
1252 your time has expired.

1253 Mr. CHAFFETZ. My apologies, Mr. Chairman. Thank you.

1254 Chairman TOWNS. I now yield five minutes to the  
1255 gentleman from Maryland, Mr. Cummings.

1256 Mr. CUMMINGS. Mr. Lewis, I have listened to your  
1257 testimony very carefully and, you know, I understand and I  
1258 have read a lot about you. You are a great man, but I think  
1259 one of the things that you have tried to do today is to walk  
1260 a very thin line. You just heard Republicans and Democrats  
1261 say, to some degree, that whatever was said to you about  
1262 losing your job and the board being dismissed, basically what  
1263 we have said is we don't buy it.

1264 I assume the minutes are accurate from your board

1265 meetings. Are these things you vote on, the minutes from  
1266 board meetings?

1267 Mr. LEWIS. Yes, sir, we do--

1268 Mr. CUMMINGS. Very well. I am talking about December  
1269 22nd, 2008.

1270 Mr. LEWIS. Yes. Right.

1271 Mr. CUMMINGS. Let me read something you to. It says Mr.  
1272 Lewis reported a series of calls, and you talk about a number  
1273 of things, but this is one thing that I found very  
1274 interesting, the second point. This is what you told your  
1275 board. It says the Treasury and the Fed stated strongly that  
1276 were the corporation to invoke the material adverse change,  
1277 MAC, clause in the merger agreement with Merrill Lynch and  
1278 fail to close the transaction, the Treasury and the Fed would  
1279 remove the board and management of the corporation.

1280 If that isn't a threat, I don't know what is. If I say  
1281 I am going to fire you if you don't do what I tell you to do,  
1282 not only am I going to fire you, but I am going to fire your  
1283 board. I mean, what you said--and I know that you are caught  
1284 in a difficult situation. I know that after this merger was  
1285 done your folks benefitted tremendously, and I know that Bank  
1286 of America is doing fine now. But I am here to tell you that  
1287 no matter how great Bank of America is doing today, the means  
1288 does not justify the end. In other words, throughout these  
1289 transactions we must have honesty, integrity, and

1290 | transparency, period.

1291 |         So what I am saying to you is I know you are trying to  
1292 | be nice, but here we have got a situation where, apparently,  
1293 | Mr. Paulson has told you do it. Sort of like the Nike  
1294 | commercial, just do it. And then you come in here trying to  
1295 | tell us, oh, no, I was worried, the sky was falling, I was  
1296 | just so upset. And we don't buy it. So I am going to give  
1297 | you another chance. You didn't feel threatened?

1298 |         Mr. LEWIS. Well--

1299 |         Mr. CUMMINGS. I mean, don't get us to describe it. We  
1300 | are trying to figure out what you were feeling. And you know  
1301 | why we want to know? Because we want to straighten out this  
1302 | mess.

1303 |         Mr. LEWIS. I have been pretty consistent, as you have  
1304 | just described it as it happened.

1305 |         Mr. CUMMINGS. Yes, well, maybe you need to be  
1306 | inconsistent and tell us how you felt.

1307 |         Mr. LEWIS. Well, I did, as I think I have said at some  
1308 | point in time, maybe not today, it was a strong influence on  
1309 | my decision, but it wasn't the only influence.

1310 |         Mr. CUMMINGS. I understand. So apparently you are going  
1311 | to--okay. Now, let me ask you this. Did Mr. Bernanke have  
1312 | any influence with regard--I understand you just answered the  
1313 | question, but did he ever say that you should not disclose  
1314 | certain information, you should do this deal? I mean, did

1315 | that ever come to you in any kind of way from Bernanke?

1316 |         Mr. LEWIS. No, sir. Well, he never said we should not  
1317 | disclose anything that was disclosable; that would be our  
1318 | decision. And I never heard from him on the issue of us not  
1319 | disclosing something.

1320 |         Mr. CUMMINGS. All right. Or anything else? You look  
1321 | like you are trying to go somewhere. Go ahead.

1322 |         Mr. LEWIS. Well, the second piece I thought that you  
1323 | asked me, sir, was the issue of him not wanting us to call  
1324 | the MAC, and he did express that to us.

1325 |         Mr. CUMMINGS. And when did he do that?

1326 |         Mr. LEWIS. He expressed it on more than one occasion. I  
1327 | can't remember which dates, but several times.

1328 |         Mr. CUMMINGS. And last but not least, you are an  
1329 | experienced man. I understand you have great judgment.  
1330 | Apparently, when you thought about this MAC thing, it was  
1331 | based upon your own experiences, was it not?

1332 |         Mr. LEWIS. Yes, sir.

1333 |         Mr. CUMMINGS. You just don't say I think we may have a  
1334 | MAC here out of the clear blue sky. What were you thinking?

1335 |         Mr. LEWIS. I was thinking that the losses had  
1336 | accelerated to a point that they were out of line with other  
1337 | institutions and our institution.

1338 |         Mr. CUMMINGS. Now, if you were to go back, you think it  
1339 | was not a MAC situation?

1340 Mr. LEWIS. I wouldn't change my decision, but I can't  
1341 say that there wasn't a MAC, because we never called it, so  
1342 we just don't know.

1343 Mr. CUMMINGS. Very well. I see my time is up.

1344 Mr. ISSA. If the gentleman would yield for a moment.

1345 Mr. CUMMINGS. My time is up.

1346 Chairman TOWNS. The gentleman's time is expired.

1347 I now yield to Congressman Flake from Arizona.

1348 Congressman Flake for five minutes.

1349 Mr. FLAKE. Thank you, Mr. Chairman.

1350 I just want to share my colleague's skepticism here  
1351 about whether or not this was a threat. It just seems  
1352 completely incredulous that this wouldn't be considered a  
1353 threat. If this wouldn't be considered a threat, if I might  
1354 just ask you what would be considered a threat. I mean,  
1355 kidnap the family dog, release your college GPA scores? What  
1356 is a threat if this is not a threat, firing and the firing of  
1357 your board?

1358 Mr. LEWIS. I am just trying to describe the circumstance  
1359 and not put one word to it myself.

1360 Mr. FLAKE. Well, from this vantage point, it seems there  
1361 is kind of a Stockholm Syndrome thing going here. I mean,  
1362 you are still regulated by these entities and it seems that  
1363 you have identified with your captors or your regulators in  
1364 some way here. But we would like to have a candid answer

1365 | here, and I don't know if you can wiggle your pinky finger at  
1366 | us or give some sign that nobody else will see. The big  
1367 | grin, maybe that gives it away. But let me just tell you  
1368 | from this vantage point it just seems very difficult to  
1369 | accept that that would not seem threatening behavior.

1370 |         Now, again, from the notes that I believe Mr. Price, the  
1371 | CFO, took during one of these meetings, identified Hank P.,  
1372 | Hank Paulson here, fire board if you do it, invoke the MAC;  
1373 | irresponsible for the Country. Tim G. agrees. I mean, it  
1374 | just seems like there is no other explanation here. And I  
1375 | can understand, maybe from the smile and whatnot, that you  
1376 | agree but can't say it here, but let me just say if you  
1377 | learned later on that there was \$12 billion in losses that  
1378 | you didn't know about, but you said they were compelling. It  
1379 | wasn't so much what they said, but how they said it, the  
1380 | seriousness of which they explained the need for you to move  
1381 | forward with this merger. If not \$12 billion, where is the  
1382 | threshold that you would have said can't do it? Can you  
1383 | enlighten us there a bit?

1384 |         Mr. LEWIS. I can't because I dealt with the  
1385 | circumstances that existed, and I don't think there is a rule  
1386 | of thumb or whatever to cause that to happen. But to your  
1387 | point, whatever you want to call it, I wouldn't change how I  
1388 | described it. So I will let you put the word to whether it  
1389 | was a threat or whatever, but the circumstances that I

1390 | described remain the same.

1391 |       Mr. FLAKE. Well, how compelling was the seriousness of  
1392 | that conversation? Would it have compelled you if the losses  
1393 | were twice as big, as you didn't understand that they were,  
1394 | \$24 billion instead of 12?

1395 |       Mr. LEWIS. Well, at some point you couldn't have made it  
1396 | a viable deal, so there is, at some point, a number that the  
1397 | hole would have been just too big.

1398 |       Mr. FLAKE. But if the taxpayers backfill, 24 is just as  
1399 | easy as 12.

1400 |       Mr. LEWIS. No, sir, because you would, all of a sudden,  
1401 | have--remember, this is 8 percent after tax dividends that  
1402 | you are paying, and at some point you just couldn't bear the  
1403 | burden of that kind of cash flow drain.

1404 |       Mr. FLAKE. But the \$12 billion was within the range.

1405 |       Mr. LEWIS. Within the range. It was painful and it  
1406 | caused us to have to push out our horizon in terms of  
1407 | accretion for the deal to work, but it was workable.

1408 |       Mr. ISSA. Mr. Flake?

1409 |       Mr. FLAKE. I would yield to the gentleman California.

1410 |       Mr. ISSA. I would like to associate myself both with  
1411 | your comments and the gentleman from Maryland when you are a  
1412 | little incredulous, when it has been previously stated under  
1413 | oath before the New York Attorney General, that in fact the  
1414 | gentleman was threatened. We are, oddly enough, arguing over

1415 whether, when you are threatened, you feel threatened, but we  
1416 are not arguing over whether in fact there was a threat. I  
1417 think we have made that pretty clear today and I appreciate  
1418 your sticking to a position of not further indicting those  
1419 who regulate you. But it is our job to get to the truth, and  
1420 I think we have.

1421 Yield back.

1422 Chairman TOWNS. Thank you very much.

1423 I now yield to the gentleman from Massachusetts, Mr.  
1424 Lynch.

1425 Mr. LYNCH. Thank you, Mr. Towns. I want to thank  
1426 Chairman Kucinich as well, along with Ranking Member Issa and  
1427 Ranking Member Jordan.

1428 Thank you, as well, Mr. Lewis, for coming before the  
1429 Committee. Let me just go back to a point that Mr. Cummings  
1430 and also Mr. Kucinich raised a little earlier. Mr. Kucinich  
1431 seemed to be hung up on the fact of when there was a  
1432 significant indicator that Merrill Lynch was in rapid  
1433 decline, and rather than focus of November of 2008, we can go  
1434 all the way back to fall of 2007 when they announced an  
1435 almost \$8 billion loss and Mr. O'Neill was forced into  
1436 retirement. There is a long history of decline here, albeit  
1437 accelerated to some degree around the time of your purchase,  
1438 but there was significant evidence that they had overloaded  
1439 with collateral debt obligations and other complex

1440 derivatives and they were in pretty tough straits for a  
1441 while, isn't that true?

1442 Mr. LEWIS. Yes, sir, it is true.

1443 Mr. LYNCH. Let me ask you. There are a couple of emails  
1444 and, unfortunately, they are very, very small up there, but  
1445 let me try to help you. One is from Chairman Bernanke to a  
1446 selection of the Board of Reserve Governors, and this is  
1447 December 21st, 2008, around the time that you were thinking  
1448 about this material adverse change being existent or not.  
1449 This is a quote from Chairman Bernanke: ``I think the threat  
1450 to use the MAC''--which is the material adverse change--``is  
1451 a bargaining chip and we do not see it as a very likely  
1452 scenario at all. Nevertheless, we need some analyses of that  
1453 scenario so that we can explain to Bank of America with some  
1454 confidence why we think it would be a foolish move and why  
1455 regulators will not condone it.''

1456 The other email sort of reinforces that, and that is  
1457 from Jeffrey Lacker, who was a President, I believe, of the  
1458 Federal Reserve Bank of Richmond at the time, and I think he  
1459 is a member of the Federal Open Markets Committee now, a  
1460 voting member. This email was also cc'd to the Chairman, I  
1461 believe, and it says ``Just had a long talk with Ben.''. Ben  
1462 Bernanke, I presume. ``Says they think the MAC threat is  
1463 irrelevant because it is not credible. Also intends to make  
1464 it even more clear that if they''--meaning Bank of

1465 | America--''play that card and then need assistance,  
1466 | management is gone.'' Then, in parentheses, says ''Forgot to  
1467 | tell him that K.L.'''--I believe that is you, Ken Lewis--''is  
1468 | near retirement.''

1469 |         So there is a different dynamic going on here. Remember  
1470 | the context of all this is the sky is falling, as Mr.  
1471 | Cummings said, and tremendous pressure on everyone. And they  
1472 | think you are playing a game, they think you are throwing  
1473 | this thing out as a red herring, and they think what you are  
1474 | really trying to do, and what some people suggest you might  
1475 | have been doing, is to leverage taxpayer support by falsely  
1476 | putting this MAC out there, the fact that you are going to  
1477 | let this deal crash, walk away, even asserting you don't have  
1478 | to win the MAC, as you said before, you don't have to win it,  
1479 | this deal just has to stop, and then I think the weight of  
1480 | all the forces at play there, with Lehman and everything  
1481 | else, you know, we are in some pretty deep trouble.

1482 |         So what I am asking you is was that your strategy here?  
1483 | Did you use this MAC as leverage to force Bernanke and  
1484 | Paulson to come in with taxpayer support? I also want to  
1485 | note that your own firm was in pretty tough shape at the  
1486 | time. Everybody seems to think there was a perception that  
1487 | you were the white knight here and you were the strong party,  
1488 | but I think, as Mr. Kucinich has indicated, Bank of America  
1489 | had its problems, too, at this time. But tell me what your

1490 strategy was in your negotiations there and what was the  
1491 motivating force behind your decision to put forward this  
1492 MAC.

1493 Mr. LEWIS. Thank you. And thank you for reminding us we  
1494 were in the middle of a pretty bad financial crisis, and I do  
1495 think we had people of good intentions, despite what they  
1496 have said about me. We grew more and more convinced that  
1497 there was a distinct possibility that we had a MAC as a  
1498 result of these accelerated losses.

1499 Mr. LYNCH. You didn't disclose that to your  
1500 shareholders, though.

1501 Mr. LEWIS. But the acceleration really took place about  
1502 a week after. That is when you saw massive acceleration, not  
1503 necessarily those days, but as result of the forecast  
1504 increasing. So this was not some wild bluff. We thought we  
1505 had the real possibility of a MAC.

1506 Mr. LYNCH. Okay.

1507 Mr. Chairman, I yield back.

1508 Mr. KUCINICH. [Presiding] The Chair recognizes Mr.  
1509 McHenry.

1510 Mr. MCHENRY. Thank you, Mr. Chairman.

1511 Were there specific details that the Federal Reserve and  
1512 Treasury told you not to disclosure to your shareholders?

1513 Mr. LEWIS. No, sir. Neither Secretary Paulson, nor the  
1514 Chairman of the Federal Reserve, Mr. Bernanke, ever told me

1515 | not to disclose something that we thought should be publicly  
1516 | disclosed.

1517 |         Mr. MCHENRY. Okay. Mr. Kucinich referenced some emails,  
1518 | and I just wanted to get on the record had you seen those  
1519 | emails before today?

1520 |         Mr. LEWIS. No.

1521 |         Mr. MCHENRY. Okay. I just wanted to make sure we got  
1522 | that on the record, Mr. Chairman, with all due respect to  
1523 | you.

1524 |         Mr. Lewis, as I asked earlier, you have been involved in  
1525 | a number of mergers and acquisitions. Your institution has  
1526 | been involved in dozens upon dozens over your career with the  
1527 | bank. To your knowledge, have there been material adverse  
1528 | change clauses included in previous deals of this sort?

1529 |         Mr. LEWIS. Virtually every acquisition would include  
1530 | some form of material adverse change clause, and it is not  
1531 | totally uncommon to have them invoked.

1532 |         Mr. MCHENRY. Has your institution invoked this clause  
1533 | before?

1534 |         Mr. LEWIS. Yes, sir. We invoked it on a deal that was  
1535 | with Sally Mae.

1536 |         Mr. MCHENRY. All right. And looking at the list of  
1537 | Federal Reserve regulators who were second-guessing your  
1538 | decision or your raising the issue of the material adverse  
1539 | change clause, it is probably fair to say that you have done

1540 | more of these deals than they have in their careers as  
1541 | bureaucrats. Is that safe to say?

1542 |         Mr. LEWIS. I am sorry?

1543 |         Mr. MCHENRY. Is it safe to say you have done more deals  
1544 | that include MAC clauses than the bureaucrats that were  
1545 | second-guessing your decision?

1546 |         Mr. LEWIS. I don't know their backgrounds.

1547 |         Mr. MCHENRY. Okay. Well, I understand you are still a  
1548 | regulated institution, so no need to hit on the Federal  
1549 | Reserve and their staff there. To go to another subject  
1550 | matter, there have been reports about efforts of various  
1551 | banks to raise capital in the wake of stress test results.  
1552 | What is the status of your capital-raising efforts?

1553 |         Mr. LEWIS. We were required to raise \$33.9 billion, and  
1554 | I am pleased to say that we have raised that amount and we  
1555 | will raise more than that. That should be completed sometime  
1556 | toward the end of this month.

1557 |         Mr. MCHENRY. Okay. My constituents are concerned about  
1558 | access to credit. We have got a mortgage foreclosure issue  
1559 | that is widespread across this Country. Can you tell me  
1560 | about Bank of America's actions as it relates to foreclosure  
1561 | mitigation and helping those folks that are facing the loss  
1562 | of their homes?

1563 |         Mr. LEWIS. One of the issues with the loan modification  
1564 | issue was that, initially, the banks were just not staffed up

1565 | to handle that kind that kind of volume and the different  
1566 | type things that were being asked. Since then, we now have  
1567 | 7,200 associates that just focus on loan modifications. And  
1568 | since July of 2008, so less than a year, we actually already  
1569 | have modified 311,000 loans.

1570 |         Mr. MCHENRY. There's been a discussion about access to  
1571 | credit and whether or not institutions are lending. With the  
1572 | downturn in the economy, certainly, institutions have a more  
1573 | difficult time in a down economy to find creditworthy  
1574 | individuals and make loans. Can you discuss the loans that  
1575 | you have made over the last two or three quarters?

1576 |         Mr. LEWIS. Well, it is a great question and it is also  
1577 | the key to us getting this Country back on track, because, if  
1578 | the financial system doesn't make loans, then we have got an  
1579 | issue.

1580 |         First, I would say that I am very proud that Bank of  
1581 | America is the largest lender in the United States. I am  
1582 | very proud of that. Secondly, I can assure you that we are  
1583 | making every good loan that we can make. Simply put, banks  
1584 | take deposits and make loans; that is how we make money. So  
1585 | it is in our own self-interest to do that. If we don't, we  
1586 | don't optimize our profits.

1587 |         But I will say, to your point, that in a recession that  
1588 | is this deep and this prolonged, you do get an issue with  
1589 | demand. People start cutting back, they spend less, and

1590 | companies expand less. So I can't assure you that these loan  
1591 | increases are going to continue because of loan demand. What  
1592 | I can assure you is we are going to make every good loan  
1593 | there is to be made.

1594 | Mr. MCHENRY. Thank you, Mr. Chairman.

1595 | Mr. KUCINICH. The gentleman's time has expired.

1596 | The Chair recognizes Mr. Quigley.

1597 | Mr. QUIGLEY. Thank you, Mr. Chairman.

1598 | It is good morning, still. There has been discussion of  
1599 | a new stress test as it relates to our financial  
1600 | institutions. I guess the question comes was the current test  
1601 | good enough? Do we need a new one? And would either of these  
1602 | kinds of stress test have helped us to understand or prevent  
1603 | these issues when all these issues took place with your  
1604 | acquisition?

1605 | Mr. LEWIS. I do think the stress test was a good one,  
1606 | and I think the fact that they probably used higher standards  
1607 | in terms of things getting worse than hopefully they will was  
1608 | helpful too, because those things can happen. So I know it  
1609 | has caused us to look forward with a greater sense of  
1610 | pessimism or greater sense of things could be worse than we  
1611 | actually think they are, so you should have higher buffers of  
1612 | capital; and that will show up in our internal objectives  
1613 | going forward. So I do think it was a very good thing.

1614 | I don't see any evidence, particularly as we talk about

1615 | there being some signs that the economy may be improving  
1616 | somewhat, to put another stress test on top of that. If you  
1617 | think about the last two years, the industry has gone through  
1618 | a significant stress test in actuality, and then we were  
1619 | getting a stress test on top of that. So I think that is  
1620 | enough.

1621 |         Mr. QUIGLEY. But you know what the stress test was that  
1622 | we just went through. If Merrill had gone through that  
1623 | stress test and you had gotten the results prior to the  
1624 | board's vote, would it have affected what your board did?

1625 |         Mr. LEWIS. I don't know if--the stress test, of course,  
1626 | came after the fact of all of this happening. What we didn't  
1627 | project, and what nobody that I know projected, was the  
1628 | severity of the credit crunch or the credit crisis that  
1629 | occurred during that fourth quarter. It wasn't that we  
1630 | hadn't identified the instruments; we just didn't see the  
1631 | depth of the decline that happened during that quarter, and  
1632 | most people didn't. So, to answer your question, if in fact  
1633 | we had been able to predict that, no, we would not have done  
1634 | the deal, because the hole would have been too big.

1635 |         Mr. QUIGLEY. So you don't think that this stress test  
1636 | would have indicated the problems that Merrill was going to  
1637 | face because you couldn't have predicted the fourth quarter  
1638 | collapse.

1639 |         Mr. LEWIS. No, sir. I don't know of anybody that would

1640 have predicted that. Actually, you can see some evidence of  
1641 that in the fact that virtually very major bank had an  
1642 operating loss in the fourth quarter, and even the financial  
1643 analysts were not predicting those losses prospectively.

1644 Mr. QUIGLEY. Sure.

1645 Switching ground here just for a second, you also  
1646 acquired with that acquisition a significant ownership in  
1647 BlackRock?

1648 Mr. LEWIS. Yes, sir, 49.9 percent.

1649 Mr. QUIGLEY. Okay. I am aware they do have contracts  
1650 with the Federal Reserve and the Department of Treasury,  
1651 BlackRock?

1652 Mr. LEWIS. Yes, they do. I think they do. We don't  
1653 manage them, but--

1654 Mr. QUIGLEY. I am sorry?

1655 Mr. LEWIS. We don't manage the company, but I have heard  
1656 they do have contracts, yes.

1657 Mr. QUIGLEY. So you may not know, then, were any of  
1658 these contracts given to BlackRock in furtherance of  
1659 financial support to Bank of America from the Government?

1660 Mr. LEWIS. No. There is a big distinction in the  
1661 management of the two companies, and we in fact make it a  
1662 point not to be part of the management team.

1663 Mr. QUIGLEY. But you could see the potential for a  
1664 conflict of interest, then. You have to have some control

1665 over them.

1666 Mr. LEWIS. We actually don't, but I do see the cosmetics  
1667 of the potential conflicts.

1668 Mr. QUIGLEY. And cosmetics are becoming important.

1669 Mr. LEWIS. They certainly are, yes, sir.

1670 Mr. QUIGLEY. So how do you avoid even the appearance of  
1671 conflicts or impropriety in that vein?

1672 Mr. LEWIS. Well, you make it very clear, in terms of how  
1673 the company is managed, that you have nothing to do with  
1674 their management; and it is pretty clear in the bylaws of the  
1675 company that we do not manage the company.

1676 Mr. QUIGLEY. Very good. Thank you.

1677 Chairman TOWNS. [Presiding] We now go to one of our  
1678 senior members in Congress in terms of service, not age,  
1679 Marcy Kaptur from Ohio.

1680 Ms. KAPTUR. Thank you, Mr. Chairman. You are a very  
1681 diplomatic man.

1682 Mr. Lewis, thank you for appearing this morning. As you  
1683 can tell, there are serious questions being raised about how  
1684 much you actually knew about Merrill Lynch's condition and,  
1685 indeed, the condition of Bank of America that you then did or  
1686 didn't share with your shareholders; and I would like to cast  
1687 a wider lens on a pattern of behavior of Bank of America, and  
1688 perhaps other institutions in our Country that some have  
1689 dubbed crony capitalism that has led our Nation to the

1690 precipice that it now faces.

1691           On August 20th, 2007, the Federal Reserve replied to a  
1692 Bank of America request to waive banking regulation that  
1693 limited the amount that federally-insured banks can lend to  
1694 related brokerage companies to 10 percent of bank capital.  
1695 Until that point, banking regulation was that banks with  
1696 federally-insured deposits should not be put at risk by  
1697 brokerage activities.

1698           Four months after that waiver was provided to Bank of  
1699 America, Bank of America bought Countrywide, which has proven  
1700 to be the worst subprime lender in our Nation, and I would  
1701 like to place in the record a report by the Center for Public  
1702 Integrity that documents that.

1703           [The information follows:]

1704 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

1705 Ms. KAPTUR. The question that I have is who headed Bank  
1706 of America at the time that the request was made of the Fed  
1707 to waiver that, to allow Bank of America to enter into that  
1708 brokerage activity?

1709 Mr. LEWIS. I was the Chairman and the CEO of the  
1710 company.

1711 Ms. KAPTUR. You were Chairman and CEO. So you made the  
1712 request.

1713 Mr. LEWIS. I don't know of this particular request.

1714 Ms. KAPTUR. But you are aware that Bank of America then  
1715 bought Countrywide four months later.

1716 Mr. LEWIS. Yes, ma'am, I am very aware of that.

1717 Ms. KAPTUR. Okay. What kind of due diligence was done  
1718 on their portfolio?

1719 Mr. LEWIS. We did a great deal of due diligence on the  
1720 portfolio, and I am proud to tell you that we bought them, we  
1721 changed all of their lending practices. They are now a prime  
1722 lender. They are the ones that are doing these loan  
1723 modifications. They are not doing Alt-As and subprimes.  
1724 Bank of America had gotten out of subprime in 2001; we were  
1725 not doing it at all. So we have turned that company around  
1726 to a very reputable mortgage lender doing the right things.

1727 Ms. KAPTUR. But you had to absorb all their losses?

1728 Mr. LEWIS. No, ma'am. In the transaction, there is an  
1729 accounting thing called purchase accounting, where you mark

1730 | the assets down before you buy them.

1731 |       Ms. KAPTUR. That sort of leads me to my next question.

1732 | It has been stated that the Bank of America, in 2008,

1733 | conspired with Merrill Lynch in a sweetheart deal to give out

1734 | exorbitant bonuses to Merrill executives totaling over \$4

1735 | billion--that is with a B--in December 2008. Soon after,

1736 | Bank of America got major infusions from taxpayer TARP money.

1737 | But in 2008, on its Federal taxes, Bank of America, though it

1738 | earned \$4.4 billion that year, apparently paid just \$120

1739 | million in taxes and deferred \$5 billion in taxes for 2008.

1740 |       Some people are saying that Bank of America acquiesced

1741 | to the Merrill bonuses because, otherwise, all of Bank of

1742 | America's 2008 earnings would have been consumed with bonuses

1743 | for Merrill. How do you respond to that?

1744 |       Mr. LEWIS. Well, the transaction with Merrill took place

1745 | on January the 1st of this year, and until that time they had

1746 | a separate board and a separate compensation committee. We

1747 | had entered into agreement which allowed us to cap the

1748 | bonuses and to have influence on the bonuses, but that the

1749 | final decision would be made by their compensation committee

1750 | and their board, because it was still a separate public

1751 | company. So there was not a connectivity fully until after

1752 | they became a subsidiary of Bank of America.

1753 |       Ms. KAPTUR. But it certainly looks like, I don't want to

1754 | use the word hedge, but it certainly looks like financial

1755 | people inside your company were anticipating what might  
1756 | occur, and the deferral of taxes in 2008 seems most curious.

1757 |         Mr. LEWIS. Well, I am no a tax attorney and I don't know  
1758 | exactly what the hedging was, but it was not--I don't see the  
1759 | connection to Merrill because Merrill was the next year.

1760 |         Ms. KAPTUR. Well, I would sure appreciate, Mr. Lewis, if  
1761 | you could provide for the record what net effective tax your  
1762 | company paid in 2008, because, to me, it looks like you paid  
1763 | one-fiftieth of what you should, and I would like to compare  
1764 | what tax rate was paid and the amount that was paid versus  
1765 | what the average middle-class family in our Country pays. I  
1766 | think the record will show you paid actually substantially  
1767 | less.

1768 |         Mr. LEWIS. I would be happy to do that.

1769 |         Ms. KAPTUR. I have a request, Mr. Chairman, if I could,  
1770 | for information for the record.

1771 |         Mr. Lewis, is it possible that in the spring of 2008, I  
1772 | have information that Bank of America bought a portfolio of  
1773 | subprime loans from the Federal Deposit Insurance Corporation  
1774 | that had been previously originated by Superior Bank of  
1775 | Illinois. Subsequently, Bank of America sold those same  
1776 | loans, valued at hundreds of billions of dollars, to  
1777 | investors who, as of last year, have now suffered major  
1778 | realized losses. Has Bank of America estimated the amount of  
1779 | those losses attributable to the acquisition of the Superior

1780 FDIC portfolio sold to Bank of America and can you provide  
1781 that to the record?

1782 Mr. LEWIS. Yes, ma'am, I would be happy to do that.

1783 Chairman TOWNS. Thank you very much.

1784 Ms. KAPTUR. Thank you, Mr. Chairman.

1785 Chairman TOWNS. I now yield to Congressman Welch from  
1786 Vermont.

1787 Mr. WELCH. Thank you, Mr. Chairman, and thank you, Mr.  
1788 Lewis, for being here.

1789 A couple of questions. My understanding is that the  
1790 original transaction started out as a private deal between  
1791 Bank of America and Merrill Lynch, correct?

1792 Mr. LEWIS. Yes, sir.

1793 Mr. WELCH. And you did the due diligence financial  
1794 review to make you come to the conclusion that it was in the  
1795 best interest of the shareholders of Bank of America to  
1796 proceed, correct?

1797 Mr. LEWIS. Yes, that is correct.

1798 Mr. WELCH. And then, sometime after you made this  
1799 decision, you became aware of the \$12 billion additional hole  
1800 in the balance sheet, is that correct?

1801 Mr. LEWIS. Yes, sir.

1802 Mr. WELCH. And that was on December 14th of 2008?

1803 Mr. LEWIS. That is when we saw the accelerating losses.

1804 Mr. WELCH. Well, accelerating as in \$12 billion

1805 additional.

1806 Mr. LEWIS. Correct.

1807 Mr. WELCH. Okay. Now, your shareholders had already  
1808 voted to approve the merger based on information that you had  
1809 provided up to that point, is that correct?

1810 Mr. LEWIS. Yes.

1811 Mr. WELCH. But the \$12 billion figure that you became  
1812 aware of on December 14th was of such magnitude that it made  
1813 you believe that, in your capacity as the CEO, you would have  
1814 to consider invoking the MAC clause, is that correct?

1815 Mr. LEWIS. Yes, sir.

1816 Mr. WELCH. And is it fair to say that the MAC clause  
1817 would be considered, in effect, the nuclear option?

1818 Mr. LEWIS. I don't know--

1819 Mr. WELCH. Well, here is what I mean. If you invoke the  
1820 MAC clause to get out of a deal that you entered into, then  
1821 there is obviously reputational consequences in litigation,  
1822 correct?

1823 Mr. LEWIS. Yes, sir, that is a possibility.

1824 Mr. WELCH. And if you lose the litigation, there are  
1825 financial consequences to your shareholders, correct?

1826 Mr. LEWIS. Yes, sir.

1827 Mr. WELCH. So you wouldn't even consider invoking the  
1828 MAC clause unless there was something of enormous magnitude  
1829 and consequence to the company and the shareholders, correct?

1830 Mr. LEWIS. That is correct.

1831 Mr. WELCH. Now, in order to invoke the MAC clause and  
1832 avoid the consequences of perhaps losing, would it be  
1833 prudent, in the ordinary course, to get financial advice from  
1834 your financial advisors as to the impact of this \$12 billion  
1835 hole on the business plan that justified the original  
1836 decision to enter into the agreement?

1837 Mr. LEWIS. Well, we had finance people looking at all of  
1838 that, so we were looking at that issue.

1839 Mr. WELCH. Well, obviously. This is my question: If  
1840 you found out about a \$12 billion additional hole, whatever  
1841 model you had about payback and value to the shareholders,  
1842 now it was called into question, right?

1843 Mr. LEWIS. I tried to mention this before, but it  
1844 extended the amount of time that you were going to get your  
1845 payback, yes.

1846 Mr. WELCH. It affected shareholder value, correct?

1847 Mr. LEWIS. Correct.

1848 Mr. WELCH. All right, basically two questions. One, did  
1849 you get a financial analysis that you reviewed before you  
1850 made a decision to discuss with the Treasury officials the  
1851 invocation of the MAC--

1852 Mr. LEWIS. There was financial analysis that I saw, yes.

1853 Mr. WELCH. Okay. These were made available to you?

1854 Mr. LEWIS. Yes.

1855 Mr. WELCH. And what was the conclusion of those  
1856 financial analysis?

1857 Mr. LEWIS. The conclusion was that you pushed out your  
1858 payback or your accretion because you had these preferred  
1859 shares now that you were having to pay back.

1860 Mr. WELCH. That is obvious. I mean, the bottom line is  
1861 was there a conclusion about the viability of this  
1862 transaction was.

1863 Mr. LEWIS. Well, we still felt very strongly that all  
1864 the strategic issues that were being addressed prior to  
1865 Merrill Lynch were being addressed by the acquisition of  
1866 Merrill Lynch.

1867 Mr. WELCH. Have you made these financial studies  
1868 available to the Committee for its review?

1869 Mr. LEWIS. I don't know. I don't know what this  
1870 Committee has.

1871 Mr. WELCH. All right.. So what you are saying is that  
1872 you did review financial statements from your advisors.  
1873 Those being whom, by the way?

1874 Mr. LEWIS. Our financial advisors are us.

1875 Mr. WELCH. So all internal. And on the basis of that  
1876 you decided that, despite the knowledge of the \$12 billion  
1877 hole, it was prudent to proceed, correct?

1878 Mr. LEWIS. Yes, sir.

1879 Mr. WELCH. So whatever threat or whatever word it is we

1880 are going to use for Mr. Bernanke and Mr. Paulson  
1881 interactions, you had come to an independent conclusion on  
1882 the basis of financial review by your people that it still  
1883 made sense for your shareholders to proceed, correct?

1884 Mr. LEWIS. No. As I recall, they were done in the  
1885 context of receiving the money.

1886 Mr. WELCH. Let's be clear. You are saying two things  
1887 now. One, you did an independent financial analysis that  
1888 said it will stretch out the payback time, but it still is  
1889 prudent to proceed; but, on the other hand, you had Bernanke  
1890 and Paulson breathing down your neck, so that was a factor.  
1891 Are you saying those two things?

1892 Mr. LEWIS. No, I don't think I am. I am trying to say  
1893 that we--

1894 Mr. WELCH. Okay, I am going to interrupt. I don't  
1895 understand that, because I think you have said those two  
1896 things.

1897 Another thing that is very important I think to  
1898 shareholders, \$12 billion is of consequence to you, correct?

1899 Mr. LEWIS. Yes, it is.

1900 Mr. WELCH. Did you tell your shareholders that you had  
1901 come upon this information that the deal they voted on is not  
1902 the deal that was going through because it had a \$12 billion  
1903 hole that was accelerated? Did you tell them that?

1904 Mr. LEWIS. The \$12 billion was what we discovered later.

1905 Mr. WELCH. And do you think after the fact information  
1906 is not of interest to investors?

1907 Mr. LEWIS. What I do know is that when our lawyers tell  
1908 us we have a disclosable event, we disclose it.

1909 Mr. WELCH. If you have--

1910 Chairman TOWNS. I must interrupt the gentleman.

1911 Mr. WELCH. If I can ask just one final question.

1912 If there is an event that you consider so significant  
1913 that it may allow you to invoke the material adverse  
1914 consequence contract clause, do you not think that same event  
1915 is of interest to shareholders and requires you, in your  
1916 fiduciary duty, to disclose it?

1917 Mr. LEWIS. I leave that decision to our security lawyers  
1918 and our outside counsel.

1919 Mr. WELCH. You are not CEO?

1920 Mr. LEWIS. I am not a securities lawyer.

1921 Mr. WELCH. You are not the ultimate one responsible?

1922 Chairman TOWNS. I have to interrupt the gentleman. We  
1923 have votes and we have other members who have not had an  
1924 opportunity.

1925 Mr. WELCH. Okay. Thank you. Yield back.

1926 Chairman TOWNS. The gentleman from Virginia, Mr.  
1927 Connolly.

1928 Mr. CONNOLLY. I thank the Chairman.

1929 Again, Mr. Lewis, thank you for being here this morning.

1930 Several questions. One is when did you decide that the  
1931 financial losses being incurred by Merrill Lynch should be  
1932 disclosed to your shareholders?

1933 Mr. LEWIS. Again, I don't decide on disclosures; we have  
1934 securities lawyers, and many times they talk to external  
1935 counsel to determine that.

1936 Mr. CONNOLLY. Well, presumably, you--I mean, I worked  
1937 for a company. Presumably, you, as the CEO, are in those  
1938 conversations.

1939 Mr. LEWIS. No. They come to me and they are done.

1940 Mr. CONNOLLY. Right. So when did that happen? When was  
1941 the decision made and how was it made to disclose or not to  
1942 disclose to the shareholders of your company?

1943 Mr. LEWIS. We disclosed the losses at Merrill Lynch  
1944 consistent with disclosing the agreement we had with the  
1945 Government and consistent with us announcing our earnings on  
1946 January the 16th.

1947 Mr. CONNOLLY. January? Why such a long delay?

1948 Mr. LEWIS. Again, I am not a securities lawyer. That is  
1949 when we announced according to schedules given to us by our  
1950 lawyers.

1951 Mr. CONNOLLY. Were you ever encouraged or pressured by  
1952 anyone at the U.S. Treasury or by the Federal Reserve not to  
1953 disclose until January?

1954 Mr. LEWIS. No. We were working on a goal of getting

1955 | everything done at once.

1956 |       Mr. CONNOLLY. I am sorry, I cannot hear you.

1957 |       Mr. LEWIS. We were working on a goal of getting  
1958 | everything done at once so that we didn't have an  
1959 | announcement of something that would cause more damage to the  
1960 | economy. But nobody ever told us that we should not disclose  
1961 | a disclosable event.

1962 |       Mr. CONNOLLY. So, for example, nobody at the Federal  
1963 | Reserve and no one at the United States Treasury urged you to  
1964 | manage the timing of the disclosure so that Merrill's  
1965 | earnings and the receipt of TARP money were all disclosed in  
1966 | January?

1967 |       Mr. LEWIS. The target was to do that so that we didn't  
1968 | damage the economy any more.

1969 |       Mr. CONNOLLY. So there were discussions about that with  
1970 | the U.S. Treasury and with the Federal Reserve.

1971 |       Mr. LEWIS. It was about announcing everything at once.

1972 |       Mr. CONNOLLY. I understand, but the timing is  
1973 | interesting; let's announce it in January, not in December.  
1974 | Was there something critical that had happened on Wall Street  
1975 | that made it better in January than December?

1976 |       Mr. LEWIS. Here was not an agreement in December.

1977 |       Mr. CONNOLLY. I am sorry?

1978 |       Mr. LEWIS. There was not an agreement in December.

1979 |       Mr. CONNOLLY. There was not an agreement among whom?

1980 Mr. LEWIS. Among us, us being the Federal Reserve or the  
1981 Treasury.

1982 Mr. CONNOLLY. So there were discussions, but not an  
1983 agreement, in December.

1984 Mr. LEWIS. There were discussions, but not an agreement,  
1985 yes.

1986 Mr. CONNOLLY. Did those discussions involve the  
1987 Secretary of Treasury himself and the Chairman of the Federal  
1988 Reserve himself?

1989 Mr. LEWIS. Yes, they did.

1990 Mr. CONNOLLY. And yourself.

1991 Mr. LEWIS. Yes, they did.

1992 Mr. CONNOLLY. And the agreement was let's hold off until  
1993 January because we are not in agreement yet about what to  
1994 disclose and when to disclose it?

1995 Mr. LEWIS. We did not have an agreement and we had not  
1996 agreed on all the details or the amounts.

1997 Mr. CONNOLLY. Were the reports that you were reluctant  
1998 to accept TARP funds true?

1999 Mr. LEWIS. I am sorry? I couldn't hear you.

2000 Mr. CONNOLLY. There was a report that you did not want  
2001 to accept TARP funding. Is that correct?

2002 Mr. LEWIS. It is true that we did not think we needed  
2003 the TARP funds at the time we were asked to take them.

2004 Mr. CONNOLLY. And was there any connection between your

2005 | reluctance in accepting them and the exhortation from  
2006 | Secretary Paulson at that time to accept them and the issue  
2007 | of don't disclose the \$12 billion worth of losses you had  
2008 | just discovered?

2009 |         Mr. LEWIS. No, absolutely not.

2010 |         Mr. CONNOLLY. It never came up?

2011 |         Mr. LEWIS. No.

2012 |         Mr. CONNOLLY. Why did you accept TARP funds if you  
2013 | didn't think you needed them?

2014 |         Mr. LEWIS. Because after hearing the various regulators,  
2015 | I felt like, given what they were saying about the potential  
2016 | of further deterioration in the economy, that we should have  
2017 | a healthy fear of the unknown.

2018 |         Mr. CONNOLLY. How much in TARP funds did you accept, Mr.  
2019 | Lewis?

2020 |         Mr. LEWIS. Fifteen billion.

2021 |         Mr. CONNOLLY. That is a lot of money for insurance  
2022 | against the unknown, especially if your initial reaction was  
2023 | we don't need them.

2024 |         Mr. LEWIS. Yes. But if you then see that credit  
2025 | meltdown of epic proportions that happened in the fourth  
2026 | quarter, it may not have been such a big insurance policy  
2027 | after all.

2028 |         Mr. CONNOLLY. My time is almost up. One final question.  
2029 | Greg Curl replaced Amy Brinkley at BoA's Chief Risk Officer.

2030 | Given the fact that Mr. Curl failed to notice \$12 billion of  
2031 | Merrill Lynch's losses, is it wise to have Mr. Curl be your  
2032 | Chief Risk Officer, and did you approve of that decision?

2033 | Mr. LEWIS. Mr. Curl didn't miss the instruments which  
2034 | caused the loss. What happened is we did not anticipate the  
2035 | meltdown of such significant proportions in the fourth  
2036 | quarter. So he had identified everything properly; no one  
2037 | thought things would get as bad as it did in the fourth  
2038 | quarter. And I made that decision.

2039 | Mr. CONNOLLY. You made the decision that Mr. Curl should  
2040 | go ahead to become the CRO.

2041 | Mr. LEWIS. To become the COO. I am sorry, the CRO.

2042 | Mr. CONNOLLY. Thank you. My time is up.

2043 | Chairman TOWNS. Let me thank you too. Let me announce  
2044 | that we have two votes on the floor and that we will recess  
2045 | until 12:30, and we will be returning at 12:30 and, of  
2046 | course, continue the questions. So the Committee is in  
2047 | recess until 12:30.

2048 | [Recess.]

2049 | Chairman TOWNS. The Committee will resume. May I remind  
2050 | the witness that he is still under oath.

2051 | At this time, I yield five minutes to the gentlewoman  
2052 | from California, Ms. Diane Watson.

2053 | Ms. WATSON. Thank you, Mr. Chairman, and thank you, Mr.  
2054 | Lewis for enduring all of this time.

2055           In your testimony, you stated that nine days afer the  
2056 shareholders' vote approving the merger, you became aware of  
2057 significant accelerating losses, the MAC, at Merrill Lynch,  
2058 raising concerns that the Bank of America might want to avoid  
2059 finalizing the deal due to the revelation of MAC. However,  
2060 it is difficult to understand how this came as a complete  
2061 surprise, given reports by The New York Times that shortly  
2062 after the deal was announced in September, B of A had quickly  
2063 installed 200 people at Merrill Lynch to thoroughly review  
2064 their books.

2065           Were any of the 200 Bank of America employees  
2066 responsible for analyzing Merrill Lynch aware of the  
2067 potential for the \$12 billion loss before you allegedly  
2068 discovered it in mid-December?

2069           Mr. LEWIS. I apologize if I haven't been clear. We did  
2070 have people there and we did know that there were losses;  
2071 that was clear both at our company and theirs. We could see  
2072 that that was happening and there were rumors on the street  
2073 that that was happening across all financial institutions,  
2074 and we saw evidence of that after the fourth quarter close  
2075 because we saw most everybody had losses.

2076           The thing that caused us to be concerned was the  
2077 acceleration that we saw when we got the numbers that we did  
2078 on the 14th.

2079           Ms. WATSON. Did you feel that the reviews of Merrill

2080 Lynch's books were thoroughly adequate? Were they researched  
2081 and analyzed adequately?

2082 Mr. LEWIS. Yes, ma'am. I thought the due diligence was  
2083 done adequately. We identified the instruments that we  
2084 thought might have issues if you have credit deterioration,  
2085 but we did not expect the magnitude of the deterioration that  
2086 occurred in the fourth quarter.

2087 Ms. WATSON. So you are saying that you really weren't  
2088 aware of the substantial loss before the shareholders'  
2089 meeting on December the 5th?

2090 Mr. LEWIS. No, ma'am. We saw losses, but they seemed  
2091 consistent with what we were hearing about in the marketplace  
2092 and consistent with what we were seeing at our company. It  
2093 was only when we saw the acceleration, when we got the  
2094 reports, when we did, that caused the alarm.

2095 Ms. WATSON. Well, do you think if you had that knowledge  
2096 before, you would have proceeded with that merger  
2097 differently?

2098 Mr. LEWIS. Well, I can't--it is hard to predict what I  
2099 would have done other than what we did when we had them, so--

2100 Ms. WATSON. Well, the scenario that I just gave you. If  
2101 you were aware, would you have proceeded differently?

2102 Mr. LEWIS. Well, I don't know because it didn't occur  
2103 that way.

2104 Ms. WATSON. In testimony to the New York State Attorney

2105 | General, Andrew Cuomo, you stated that you had been advised  
2106 | by representatives from the Treasury Department and the  
2107 | Federal Reserve not to disclose details of Merrill Lynch's  
2108 | difficult financial position. So why do you believe that  
2109 | representatives from the Federal Government would not want  
2110 | you to disclose knowledge you had of Merrill Lynch's  
2111 | increasingly dire economic position?

2112 |         Mr. LEWIS. During all of that time, there was never ever  
2113 | a time that the Federal Reserve or the Treasury Department  
2114 | told me that we should not disclose something that we thought  
2115 | would be a disclosable event.

2116 |         Ms. WATSON. So there was never a time that you were told  
2117 | to hold back on this information?

2118 |         Mr. LEWIS. Not as regards something that should be  
2119 | disclosed.

2120 |         Ms. WATSON. Okay, remember you are under oath.

2121 |         Okay, despite the fact that the plan for a merger was  
2122 | announced on September 15th, 2008, there was no mention of  
2123 | the \$20 billion capital injection from the Government until  
2124 | January 16th. At what point during the negotiations between  
2125 | the B of A, Merrill Lynch, and the Federal Government was it  
2126 | determined that this money would be necessary for the merger  
2127 | to be finalized?

2128 |         Mr. LEWIS. The discussions around the injection of the  
2129 | preferred stock took place after we went to the Federal

2130 Reserve and the Treasury on the 17th, so during that time we  
2131 began to talk about various ways to inject capital and  
2132 so-called filled the hole. We did not come to a conclusion  
2133 about amounts and the nature of the structure until sometime  
2134 well into that first few weeks of January of 2009.

2135 Ms. WATSON. Thank you. My time is up.

2136 Thank you, Mr. Chairman.

2137 Chairman TOWNS. Thank you very much, gentlewoman of  
2138 California.

2139 Just before I move to the other members, let me just  
2140 sort of ask a couple other questions.

2141 Mr. Lewis, did Merrill Lynch give you all the  
2142 information that you needed to make a decision, an informed  
2143 decision? Did you get all the material that you needed in  
2144 order to be able to make an informed decision?

2145 Mr. LEWIS. Yes, sir, they did. We, in fact, not only  
2146 were we looking at the data, but we had an outside firm that  
2147 had looked at the data before, a company run by Chris  
2148 Flowers, who was looking at the data alongside of us, and he  
2149 had looked at their data some time ago, a few months before  
2150 then, so they had a very good knowledge of the various  
2151 instruments and securities. So we actually had two sets of  
2152 eyes looking at that. Again, sir, it was not the fact that  
2153 we didn't identify the securities, it was that we did not  
2154 expect the credit to deteriorate like it did in the fourth

2155 | quarter.

2156 | Chairman TOWNS. So do you agree that the decision on  
2157 | whether to proceed with the merger was ultimately yours? Was  
2158 | it yours?

2159 | Mr. LEWIS. Well, it was my recommendation to the board  
2160 | and it was mine and the board's decision to go forward, yes,  
2161 | sir.

2162 | Chairman TOWNS. Thank you very much.

2163 | I understand that we got out of rotation here. I  
2164 | understand it was Mr. Connolly next and then go back to Mr.  
2165 | Jordan. Okay, Congressman Connolly.

2166 | No, no, no, Mr. Jordan has to--you yield to him?

2167 | Mr. CONNOLLY. I thank my colleague.

2168 | Chairman TOWNS. Briefly, he says.

2169 | Mr. CONNOLLY. I will be brief. I have to get back to  
2170 | the floor. So I thank my colleagues and I thank the Chair.

2171 | Mr. Lewis, if you look at the minutes of the Bank of  
2172 | America dated December 30th, 2008, it says special meeting.  
2173 | Starting at the top of page 3, it reads, "Mr. Lewis reported  
2174 | that management has obtained detailed oral assurances from  
2175 | the Federal regulators with regard to their commitment and  
2176 | has documented those assurances with emails and detailed  
2177 | notes of management's conversations with the Federal  
2178 | regulators." It goes on to say that you discussed in detail  
2179 | "the commitment of the Federal regulators to deliver

2180 assistance in the form of capital and asset protection to the  
2181 corporation.''

2182 In all, the word commitment in those minutes is used at  
2183 least nine times. But just before the Committee recessed for  
2184 this vote, in response to my question, you said there was no  
2185 agreement in December. In fact, you said that it was for  
2186 lack of agreement in December that you decided to make the  
2187 announcement in January, and that all three  
2188 parties--Treasury, Federal Reserve, and Bank of  
2189 America--agreed to that. How do you reconcile your testimony  
2190 today with what you told the board on December 30th?

2191 Mr. LEWIS. Well, we had an agreement that we would work  
2192 toward a solution, but even from December 30th until the time  
2193 that we signed the agreement, there was back and forth in  
2194 terms of amounts, in terms of structure, and in terms of  
2195 securities to be included in what was then called a wrap. So  
2196 we had agreement for a solution, but we didn't have any kind  
2197 of agreement as I would think of it as a business person.

2198 Mr. CONNOLLY. Well, what about commitment? What was  
2199 your understanding of the commitment, that word used nine  
2200 times in those minutes?

2201 Mr. LEWIS. Commitment to work toward a solution.

2202 Mr. CONNOLLY. Well, but it says that you received, as  
2203 part of that commitment, detailed oral assurances from the  
2204 Federal regulators with regard to their commitment.

2205 Mr. LEWIS. Yes, sir. And you can--

2206 Mr. CONNOLLY. That sounds like more than a commitment to  
2207 find a solution. That sounds like it is pretty detailed and  
2208 we have already worked out the solution, and I am verbally  
2209 sharing with you at the special meeting the nature of that  
2210 commitment.

2211 Mr. LEWIS. No. Different structures had been talked  
2212 about, different amounts had been talked about, so there was  
2213 a back and forth about different types of securities,  
2214 different types of ways we could go about filling the hole.  
2215 But there was never a specific agreement with specific  
2216 numbers of that sort. So it took several more weeks before  
2217 we could actually come to terms as to exactly what it would  
2218 look like.

2219 Mr. CONNOLLY. And it is your testimony that it is that  
2220 failure to come to a specific agreement in December, that is  
2221 the reason the announcement was put off until January?

2222 Mr. LEWIS. That and the desire by the Federal Reserve  
2223 and the Treasury to have an objective of having it all be  
2224 able to be announced at one time, so that it would not spook  
2225 the capital markets because they were so fragile.

2226 Mr. CONNOLLY. Final question, if I may, Mr. Chairman.  
2227 Was there any intentional reason not to put the  
2228 agreement in writing?

2229 Mr. LEWIS. No, sir, because there was not enough

2230 | specifics to put into writing.

2231 |       Mr. CONNOLLY. But at some point there were.

2232 |       Mr. LEWIS. Yes, sir, and that was in the first few weeks  
2233 | of January of the following year.

2234 |       Mr. CONNOLLY. But I want to be very clear. Under oath,  
2235 | it is your testimony today there was no intentional evasion  
2236 | or reason to not put the agreement in writing. Nobody had a  
2237 | conversation with Treasury, the Federal Reserve, or at the  
2238 | Bank of America let's not put this in writing right now.

2239 |       Mr. LEWIS. I can only speak to what was happening at the  
2240 | time. I don't know what was said to everybody, but the two  
2241 | things that I would continue to say is, number one, the goal  
2242 | was to get this done comprehensively so it was one time and  
2243 | we would not shock the markets with something that was  
2244 | dangling that was needed; and, secondly, we had not come to a  
2245 | final conclusion and did not do so for several weeks.

2246 |       Mr. CONNOLLY. I yield back and I thank my colleagues for  
2247 | their indulgence.

2248 |       Chairman TOWNS. Thank you very much.

2249 |       I now yield to Mr. Jordan, gentleman from Ohio.

2250 |       Mr. JORDAN. Thank you, Mr. Chairman.

2251 |       Mr. Lewis, thank you. I know sitting there for three  
2252 | hours and answering questions is not the greatest thing in  
2253 | the world to be able to have to do.

2254 |       In my first round, I asked about whether you felt the

2255 Government, in connection with the TARP program, exercised  
2256 any excessive influence in day-to-day operations, and your  
2257 answer was no. But I want to go back to--and I am taking  
2258 this from a May 13th Bloomberg News story, documents obtained  
2259 by Judicial Watch relative to a meeting that you had with Mr.  
2260 Paulson, Mr. Bernanke, Mr. Geithner, and Ms. Bear. Did you  
2261 and eight other bank CEOs meet with those individuals here in  
2262 Washington back in looks like October 13th?

2263 Mr. LEWIS. Yes, sir, we did.

2264 Mr. JORDAN. Okay. Tell us what happened at that  
2265 meeting, because what the documents indicate is that we had a  
2266 lot of conversation, discussion about the threat that has  
2267 been talked about here by just about everyone relative to the  
2268 MAC clause, but it looks like there was maybe threats here or  
2269 at least strong suggestions that you initially participate in  
2270 the TARP program. So can you tell me about what took place  
2271 at that meeting and walk me through that October 13th  
2272 meeting?

2273 Mr. LEWIS. The nine chief executives were called by Hank  
2274 Paulson, or at least I was--

2275 Mr. JORDAN. Let me interject, if I could, real quick.  
2276 You said earlier, I believe, too--and I forget to which  
2277 member's questions--that you initially, your board and your  
2278 bank and you felt your bank did not need any infusion of cash  
2279 or TARP money from the Government. Is that right?

2280 Mr. LEWIS. Yes, sir, and it was--

2281 Mr. JORDAN. What was that date? When did you make that  
2282 decision as a bank?

2283 Mr. LEWIS. Well, the first reaction that I had to the  
2284 fact that we were being offered \$15 billion was that we  
2285 didn't need it; the prior week we had raised \$10 billion in  
2286 equity.

2287 Mr. JORDAN. Okay.

2288 Mr. LEWIS. And that it could have been--I am  
2289 speculating, but it could have been that is why we were  
2290 offered 15, and not 25, like some of the other big banks  
2291 were.

2292 But, as you mentioned, the people that were there, they  
2293 were on the other side of the table. There were nine of us,  
2294 the nine bank CEOs, and each of those people spoke about the  
2295 possibility of deterioration in the economy. Finally, and I  
2296 think it is a little grey with me, but I think it was  
2297 Secretary Paulson then began to tell each bank what amount  
2298 they should take.

2299 Mr. JORDAN. Were you required to sign a form at that  
2300 meeting?

2301 Mr. LEWIS. Yes.

2302 Mr. JORDAN. What did the form say?

2303 Mr. LEWIS. It basically was a very short form that  
2304 talked about the interest rate of the preferred and the

2305 amount. In fact, we wrote in the amount. It was a blank and  
2306 so each individual wrote in--

2307 Mr. JORDAN. You wrote in the amount, but it was  
2308 suggested by the Treasury Secretary?

2309 Mr. LEWIS. We were told what to write in, so to speak.

2310 Mr. JORDAN. Okay. You did that at that meeting? You  
2311 wrote in the amount at that meeting?

2312 Mr. LEWIS. Not until I had called my executive  
2313 committee.

2314 Mr. JORDAN. Okay.

2315 Mr. LEWIS. So we talked about various things--

2316 Mr. JORDAN. So how long did this meeting last?

2317 Mr. LEWIS. I think it was less than an hour, but, again,  
2318 it has been a while.

2319 Mr. JORDAN. In less than an hour, nine banks decided to  
2320 take billions of dollars?

2321 Mr. LEWIS. Well, we ended up--

2322 Mr. JORDAN. Sign a form? Did you have to check with  
2323 your board first before you signed the form?

2324 Mr. LEWIS. No, no. I ended up, at least, in a position,  
2325 and I think most of my colleagues in the various banks ended  
2326 up, thinking that if this group of people, with the knowledge  
2327 they have of the economy, were saying that this may be  
2328 necessary, you should take it, that we felt like it was  
2329 probably the right thing to do to have a healthy fear of the

2330 unknown. So on that basis I called my executive committee  
2331 and got permission to sign it.

2332 Mr. JORDAN. Okay. And did the events of that hour, on  
2333 that day in October, did that weigh on your mind fast-forward  
2334 a few months in December, when you were deciding or thinking  
2335 about--I think your answer to me earlier was when you called  
2336 Secretary Paulson and Mr. Bernanke and told them about the  
2337 MAC clause, you said you were seriously considering. I think  
2338 that was your answer to me earlier.

2339 Did the events of October, that meeting, that one hour  
2340 meeting, where they put a form in front of you and said you  
2341 need to sign this, you need to write in the amount, you are  
2342 going to participate in this program whether you like it or  
2343 not, did those events impact your decision in December, when  
2344 they said we don't want you exercising this MAC clause?

2345 Mr. LEWIS. No, I didn't correlate them or connect them  
2346 in any way. I was never thinking about that in relation to  
2347 the circumstances.

2348 Mr. JORDAN. Did you know--if I could, Mr. Chairman.

2349 When you walked into that meeting in October, October--

2350 Mr. KUCINICH. Request unanimous consent to give the  
2351 gentleman another two minutes.

2352 Chairman TOWNS. Without objection, so moved.

2353 Mr. JORDAN. I thank the Subcommittee Chairman and the  
2354 Chairman.

2355           When you walked into that meeting on the 13th, did you  
2356 know what it was about? Did you know it was going to be they  
2357 are going to ask us all to take TARP dollars?

2358           Mr. LEWIS. No, sir, I did not.

2359           Mr. JORDAN. You had no idea? You thought it was about  
2360 just the general concern of the economy?

2361           Mr. LEWIS. I didn't know, but--

2362           Mr. JORDAN. What were the rumors on the street? I think  
2363 that is the term you used earlier about some other  
2364 information you had gathered about Merrill Lynch. What were  
2365 the rumors on the street amongst your colleagues in the other  
2366 big lending institutions and banks around the Country?

2367           Mr. LEWIS. It was a weekend. I think Monday was a  
2368 holiday or something, so I didn't hear a lot of things in  
2369 that time period. So I don't know if it ever got out as to  
2370 what was going to--but I did talk to at least one other  
2371 person, and he did not know anything about it either.

2372           Mr. JORDAN. Did anyone in that meeting express any  
2373 reservations about--and forgive me, I don't have the data in  
2374 front of me. Did anyone not sign?

2375           Mr. LEWIS. Not to my knowledge. I think everyone  
2376 signed.

2377           Mr. JORDAN. Did anyone express reservations about not  
2378 signing?

2379           Mr. LEWIS. One person expressed reservations, yes.

2380 Mr. JORDAN. Was that you?

2381 Mr. LEWIS. No, it was not I.

2382 Mr. JORDAN. Okay.

2383 Mr. Chairman, thank you for the time. I have to run to  
2384 a 1:00 o'clock meeting.

2385 And I want to thank the witness for his patience and his  
2386 thoughtful answers.

2387 Chairman TOWNS. Thank you very much.

2388 I now yield to the gentleman from Ohio again, this time,  
2389 Mr. Kucinich.

2390 Mr. KUCINICH. Thank you, Mr. Chairman.

2391 Mr. Lewis, we would hope that a CEO would have both a  
2392 good memory and the integrity to take responsibility for his  
2393 decisions. Mr. Lewis, you stated, in response to my previous  
2394 question, that you did not recall asking for a letter from  
2395 the Government stating that Bank of America was ordered to  
2396 proceed with the purchase of Merrill Lynch. This is the  
2397 lynchpin of clarifying whether you were threatened by the Fed  
2398 or whether the Fed was tough with you because you were  
2399 threatening to be irresponsible. I want to direct your  
2400 attention to an email response from the Fed's General Counsel  
2401 to Chairman Bernanke's email, which I previously disclosed.

2402 Mr. Chairman, it says, I don't think it is necessary or  
2403 appropriate for us to give Lewis a letter along the lines he  
2404 asked. First, we didn't order him to go forward; we simply

2405 | explained our views and what the market reaction would be and  
2406 | left the decision to him. Second, making hard decisions is  
2407 | what he gets paid for, and only he has full information  
2408 | needed to make the decision, so we shouldn't take him off the  
2409 | hook by appearing to take the decision out of his hands.

2410 | I am entering this into the record.

2411 | Chairman TOWNS. Without objection.

2412 | [The information follows:]

2413 | \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

2414 Mr. KUCINICH. Now, Mr. Lewis, is it still your testimony  
2415 that you don't recall asking for a letter to absolve you of  
2416 your responsibility for acquiring Merrill Lynch's huge  
2417 losses?

2418 Mr. LEWIS. Congressman, what I do remember is calling  
2419 Chairman Bernanke and asking him if he could give us  
2420 something in writing along the lines of what the solution  
2421 would be.

2422 Mr. KUCINICH. We are now updating Mr. Lewis's previous  
2423 testimony.

2424 Mr. LEWIS. Sir--

2425 Mr. KUCINICH. That may help you escape perjury, but it  
2426 doesn't get away from the question of whether or not you were  
2427 trying to absolve yourself of responsibility for acquiring  
2428 Merrill Lynch's huge losses. I mean, we are talking about  
2429 events that transpired only a few months ago, and the  
2430 decision to withhold from Bank of America's shareholders  
2431 material information about the deterioration of Merrill  
2432 Lynch's finances was key here. This isn't about a threat,  
2433 this is about your responsibility, and your failure to inform  
2434 your shareholders could constitute a fundamental violation of  
2435 security laws.

2436 I have just given you documentation, Mr. Chairman, that  
2437 Mr. Lewis tried to deflect the matter to the Fed by asking  
2438 for a letter that they made him do it.

2439 Now, I want to ask you, Mr. Lewis, our investigation  
2440 finds that Mr. Bernanke believed that your threat to invoke a  
2441 MAC was not credible. I want you to take a look at the  
2442 following email from Chairman Bernanke dated December 21st,  
2443 2008. ``I think the threat to use MAC is a bargaining chip,  
2444 and we don't see it as a very likely scenario at all.''

2445 You did get a significant amount of financial assistance  
2446 when you dropped the threat to back out of your deal, isn't  
2447 that true?

2448 Mr. LEWIS. Yes, we did.

2449 Mr. KUCINICH. Tell the Committee what you received, how  
2450 much money.

2451 Mr. LEWIS. Twenty billion dollars.

2452 Mr. KUCINICH. And you got the promise of \$118 billion,  
2453 didn't you, in asset protection for a combination of Merrill  
2454 and Bank of America toxic assets? Didn't you get that?

2455 Mr. LEWIS. We hadn't settled on an amount until some  
2456 time, but the wrap was being considered, yes.

2457 Mr. KUCINICH. Now, that was in addition to the \$15  
2458 billion in TARP monies you received directly in October, \$10  
2459 billion in TARP monies you received upon acquiring Merrill,  
2460 isn't that right?

2461 Mr. LEWIS. We did not ever sign the agreement on the  
2462 wrap.

2463 Mr. KUCINICH. Now, our investigation also finds that,

2464 | contrary to your representations to the Fed, that you were  
2465 | concerned primarily about the losses at Merrill Lynch.  
2466 | Merrill's losses were less than half of the problem you  
2467 | faced; losses originating at Bank of America itself were  
2468 | larger than the losses at Merrill.

2469 |         Mr. Lewis, please look at the following email dated  
2470 | December 18th, 2008, between officials at the New York Fed.  
2471 | One reports his findings saying that on the total of 30 basis  
2472 | points deterioration of the tangible common equity ratio of  
2473 | the combined Bank of America-Merrill Lynch entity, they go on  
2474 | to say that 16 basis points of deterioration is due to Bank  
2475 | of America, 14 basis points due to Merrill Lynch. The other  
2476 | official described this discovery as a smoking gun.

2477 |         Isn't it true that more than half of the decline in your  
2478 | all-important tangible common equity ratio evident in  
2479 | mid-December was not caused by Merrill Lynch?

2480 |         Mr. LEWIS. Your apples and oranges. The securities--

2481 |         Mr. KUCINICH. Well, maybe it is rotten apples and rotten  
2482 | apples, because isn't it true that you were told that if you  
2483 | went through with the MAC, and if you later needed financial  
2484 | assistance from the Government, you wouldn't get it? Isn't  
2485 | that true?

2486 |         Mr. LEWIS. I am sorry, repeat that, please.

2487 |         Mr. KUCINICH. That if you went through with the MAC, and  
2488 | if you later needed financial assistance from the Government,

2489 weren't you told you wouldn't get it?

2490 Mr. LEWIS. I think I have seen that in an email, but I  
2491 don't--

2492 Mr. KUCINICH. Were you told that, yes or no?

2493 Mr. LEWIS. I do not recall being told that.

2494 Mr. KUCINICH. Isn't it true that given the precarious  
2495 state of your balance sheet and especially your inadequate  
2496 levels of tangible common equity, you believed at the time  
2497 you reasonably could need financial assistance from the  
2498 Government in the future?

2499 Mr. LEWIS. The preferred stock does nothing to help your  
2500 tangible common equity ratio.

2501 Mr. KUCINICH. You wouldn't think about it? I mean, if  
2502 you got \$15 billion in October and you are going to come back  
2503 two months later and ask for another \$20 billion--you to 15  
2504 and then, two months later, \$20 billion--doesn't it show that  
2505 it really increased your Tier 1 capital ratio? Doesn't it  
2506 show that?

2507 Mr. LEWIS. Not tangible.

2508 Mr. KUCINICH. Tier 1.

2509 Mr. LEWIS. Tier 1, yes.

2510 Mr. KUCINICH. Now, Mr. Lewis, the Government believed  
2511 that you knew or should have known about the Merrill losses  
2512 long before you said you did based on data that Bank of  
2513 America possessed and had reasonably reviewed. The

2514 Government believed you could be in violation and breach of  
2515 security laws.

2516 The Government didn't believe you that Merrill was the  
2517 primary cause of your problems, but thought that Merrill  
2518 losses were less significant than the losses that Bank of  
2519 America was experiencing as a standalone entity. The  
2520 Government even thought that you were making the threat to  
2521 use MAC as a bargaining chip and that it was not credible.  
2522 The Government had already given you \$25 billion before you  
2523 approached it about Merrill Lynch.

2524 If the Government believed all of that about you and  
2525 your management team, were you surprised that the Fed  
2526 arranged for you to receive considerable additional financial  
2527 support in January? Did that surprise you?

2528 Mr. LEWIS. We received \$15 billion, not \$25 billion,  
2529 from the original TARP package. It did not surprise me they  
2530 were willing to give us more because we had talked about  
2531 coming to a solution to get the Merrill Lynch deal done.

2532 Mr. KUCINICH. Well, there was a financial crisis and  
2533 they thought it was necessary for--

2534 Unanimous consent for two more minutes, and then I  
2535 should wrap it up.

2536 Chairman TOWNS. Without objection.

2537 Mr. KUCINICH. There was a financial crisis and they  
2538 thought it was necessary for the system for the deal to go

2539 through. If there is one thing about your record that is  
2540 clear, it is that you have experience in negotiating deals.  
2541 What do you believe your leverage with the Government was at  
2542 the end of 2008?

2543 Mr. LEWIS. The only leverage I would say we had was that  
2544 two honorable people trying to come to the right solution had  
2545 given me their word that they would try their best to find a  
2546 solution.

2547 Mr. KUCINICH. Isn't it true that it was because Bank of  
2548 America is a big bank, and if you hadn't been the CEO of the  
2549 largest bank in America, if you had been the top executive,  
2550 let's say, at a mid-size or small regional bank and you had  
2551 been acquiring another similarly sized bank during the fall  
2552 of 2008, you think the Federal regulator would have behaved  
2553 in the same way?

2554 Mr. LEWIS. Well, sir, I don't think I was such a  
2555 favorite son from some of the emails that you have just read.

2556 Mr. KUCINICH. Well, wouldn't you have, if you were a  
2557 smaller institution, been taken over and liquidated?

2558 Mr. LEWIS. I can't speculate on that, sir.

2559 Mr. KUCINICH. It is fair to say we have a large  
2560 financial institution, Mr. Chairman, that doesn't face the  
2561 same consequences for management of small ones, and the Fed  
2562 had an opinion that there was considerable evidence of  
2563 mismanagement. There has been a misconception here that the

2564 Government put a gun to the head of Bank of America, when it  
2565 is quite possible that it was the Bank of America that put a  
2566 gun to the head of the Fed by threatening to invoke the MAC,  
2567 and I think that this whole idea, Mr. Chairman, about Mr.  
2568 Lewis somehow being a victim here flies in the face of the  
2569 fact that you were CEO of the largest bank and that you are  
2570 pretending that you didn't ask for help from the Government  
2571 to take the burden off your back, that you didn't ask for a  
2572 letter.

2573         You are going to have to excuse me, but this is not  
2574 credible. You are trying to change the scenario from you as  
2575 a victim to you as a powerful CEO who made a decision that  
2576 denied your stockholders, your shareholders material  
2577 information that they needed prior to a vote on a merger, and  
2578 I think that is the central point of this hearing, and I am  
2579 sorry that you haven't been forthcoming enough about that  
2580 central point.

2581         I yield back.

2582         Chairman TOWNS. Well, one thing for sure, there was a  
2583 shotgun marriage, a shotgun wedding. There is no question  
2584 about that.

2585         Let me just sort of raise this issue. On December the  
2586 22nd, 2008, Mr. Lewis, you sent an email to your board, and  
2587 let me just quote. It says, "I just talked with Hank  
2588 Paulson. He said that there was no way the Federal Reserve

2589 | and the Treasury could send us a letter of any substance  
2590 | without public disclosure, which, of course, we do not  
2591 | want.' ' Do you remember that?

2592 |         Mr. LEWIS. Yes, sir. I do, yes, sir.

2593 |         Chairman TOWNS. And I was raising this because of the  
2594 | answer that you gave to my colleague from Virginia, Mr.  
2595 | Connolly. I didn't get that point that you actually sent  
2596 | that memo. I mean, it seemed to me, in his questioning, that  
2597 | didn't come out.

2598 |         Mr. LEWIS. No. May I give you the context?

2599 |         Chairman TOWNS. Sure.

2600 |         Mr. LEWIS. I had called Mr. Bernanke and said is there  
2601 | something you can give us in writing, because my board is  
2602 | concerned that everything is verbal and we have nothing  
2603 | concrete, and we are going in toward the end of the year and  
2604 | about to have to consummate this deal without anything in  
2605 | writing. And he said let me think about it, and the next  
2606 | call I got was from Hank Paulson, and he told me that, first  
2607 | of all, if they gave us any kind of agreement, it would be so  
2608 | watered down that the board would not find it satisfactory  
2609 | and, secondly, that they did not want disclosure. He was  
2610 | talking about the Government not wanting to create a  
2611 | disclosable event and have to disclose, not Bank of America.

2612 |         Chairman TOWNS. You sure didn't make that clear with my  
2613 | colleague from Virginia. But let me just move on.

2614 Mr. LEWIS. I apologize.

2615 Chairman TOWNS. Congresswoman Kaptur from Ohio.

2616 Ms. KAPTUR. Thank you, Mr. Chairman, very much.

2617 Mr. Lewis, I have been here since this morning and find  
2618 your testimony a bit disquieting today for some of the  
2619 following reasons:

2620 Bank of America owns 49.9 percent of BlackRock, but you  
2621 seem not to know anything of its activities.

2622 Number two, you are the person who was in charge when  
2623 Bank of America acquired Countrywide over a year ago, but you  
2624 apparently weren't aware of its books and the losses inherent  
2625 in that purchase.

2626 Number three, you are the CEO of the largest bank in the  
2627 Country and you seem to present yourself as having a rather  
2628 hands-off relationship with the Federal Reserve and the  
2629 Treasury. I find that somewhat incredulous.

2630 So let me ask some follow-up questions. In terms of the  
2631 purchase of BlackRock that was a part of your Merrill Lynch  
2632 merger, it is my understanding that BlackRock now is valued  
2633 at over \$1.3 trillion and that they just received five no-bid  
2634 contracts from the Federal Reserve, among them managing  
2635 troubled subprime mortgages in the Freddie Mac and Fannie Mae  
2636 portfolios. The people of the United States, through the  
2637 Fed, have propped up Fannie and Freddie now to the tune of  
2638 over \$200 billion. For the record, can you provide the

2639 | contract that BlackRock has with the Fed, particularly the  
2640 | one regarding the management of Fannie Mae and Freddie Mac's  
2641 | portfolios?

2642 |         Mr. LEWIS. I don't know if I can because, again, we  
2643 | don't run BlackRock. We have two or three seats on the  
2644 | board, but we don't have a CEO or Chairman, and he does not  
2645 | report to anybody in Bank of America-Merrill Lynch.

2646 |         Ms. KAPTUR. And yet you own 49.9 percent of it? Isn't  
2647 | that a rather strange relationship?

2648 |         Mr. LEWIS. Well, we don't own 51 percent. That would be  
2649 | the difference.

2650 |         Ms. KAPTUR. Do you know how much BlackRock will earn  
2651 | from that contract with the Federal Reserve to manage Fannie  
2652 | and Freddie paper?

2653 |         Mr. LEWIS. No. Possibly some of our board members  
2654 | would, but I don't.

2655 |         Ms. KAPTUR. Let me mention The New York Times wrote the  
2656 | following: Can a company that is being paid to price and  
2657 | sell troubled assets for the Government buy the same kinds of  
2658 | assets for private clients without showing preference? And  
2659 | should the Government seek counsel from a company whose  
2660 | clients stand to make or lose billions if those policies are  
2661 | enacted?

2662 |         Can you outline for us how the Bank of America will  
2663 | avoid conflict of interest in its mortgage portfolios and

2664 insider dealing charges as mortgage portfolios are resolved  
2665 and Bank of America mortgages are involved when BlackRock is  
2666 actually the designee to manage the Freddie and Fannie  
2667 portfolios on behalf of the Federal Reserve?

2668 Mr. LEWIS. BlackRock would have to manage those and with  
2669 the client would have to manage anything like that.

2670 Ms. KAPTUR. But obviously Bank of America, some of your  
2671 mortgages are held by Fannie Mae and Freddie Mac. You were  
2672 the acquirer of Countrywide, the largest subprime abuser in  
2673 the Country, so you must have a pretty healthy portfolio  
2674 there that is going to undergo scrutiny.

2675 Mr. LEWIS. And BlackRock would have to take that into  
2676 account, yes.

2677 Ms. KAPTUR. Can you provide for the record the documents  
2678 that you may have at Bank of America that contain or record  
2679 the conflict of interest review undertaken by Bank of America  
2680 to ensure proper ethics as these mortgages are resolved?

2681 Mr. LEWIS. The conflict would be with BlackRock and the  
2682 client, which would be Freddie or Fannie Mae. And, by the  
2683 way, Countrywide is doing quite well, and we have changed the  
2684 policies dramatically to become one of the most responsible  
2685 lenders in the Country.

2686 Ms. KAPTUR. Well, you know, I think there is a whole  
2687 hearing that could be held just on Countrywide, and--

2688 Mr. LEWIS. It would be pre-Bank of America.

2689 Ms. KAPTUR. And are any of the former Countrywide staff  
2690 on your staff now at Bank of America?

2691 Mr. LEWIS. There is some staff, but nobody in executive  
2692 management.

2693 Ms. KAPTUR. I beg your pardon?

2694 Mr. LEWIS. Nobody in executive management. We sent our  
2695 CEO to run the company, a woman named Barbara Desoer.

2696 Ms. KAPTUR. You know, Mr. Chairman, it wouldn't be bad  
2697 to hold a hearing on the interrelationship between Bank of  
2698 America, BlackRock, Countrywide, the Federal Reserve, Fannie  
2699 Mae, and Freddie Mac, and explore these interlocking, rather  
2700 shadow, relationships that you claim have no bearing on  
2701 activities within your institution, but which sound very  
2702 unusual as you state them before the Committee today.

2703 I wanted to just, in my second question here, relating  
2704 to Superior Bank, which had the largest settlement in  
2705 American history at the FDIC in 2001, over \$450 million as a  
2706 result of their subprime activities in Chicago and beyond,  
2707 including servicing by Merrill Lynch, which is how you would  
2708 acquire the Superior troubled loans. Let me ask you, when  
2709 Bank of America acquired those loans, did you audit them  
2710 prior to reselling them to investors?

2711 Mr. LEWIS. I am no sure of that transaction, so I would  
2712 have to get you somebody who was more familiar with the  
2713 transaction.

2714 Ms. KAPTUR. Well, then explain to us, as head of this  
2715 massive and important bank in our Country, what is your plan  
2716 for dealing with bad loans such as the Superior loans that  
2717 came to you through the FDIC Merrill acquisition?

2718 Mr. LEWIS. Well, to the extent that you have loans you  
2719 can rehabilitate, you do. To the extent that you can sell  
2720 loans for discounts, you do. To the extent that you can't do  
2721 either, you hold them on your books and at some point write  
2722 them off.

2723 Ms. KAPTUR. But if you sell them to knowing investors  
2724 and they were bad loans, what happens?

2725 Mr. LEWIS. Well, you would take a massive discount. The  
2726 bank selling them would take a massive discount.

2727 Ms. KAPTUR. Well, I would certainly like the paper  
2728 trail, the audit trail on those Superior loans that your bank  
2729 has been handling.

2730 I thank you, Mr. Chairman.

2731 Chairman TOWNS. Thank you very much. I thank the  
2732 gentlewoman from Ohio.

2733 I now yield five minutes--

2734 Ms. KAPTUR. Mr. Chairman, may I ask the gentleman to  
2735 yield just for a second? May I place in the record an  
2736 article from The Atlantic Monthly, May 2009, on the financial  
2737 crisis, please?

2738 Chairman TOWNS. Without objection.

2739 [The information follows:]

2740 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

2741 Mr. KUCINICH. I ask unanimous consent to insert all the  
2742 emails that I offered on the screen there for the record.

2743 Chairman TOWNS. Without objection.

2744 [The information follows:]

2745 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

2746 Chairman TOWNS. The gentleman from Maryland.

2747 Mr. CUMMINGS. Thank you very much, Mr. Chairman.

2748 Mr. Lewis, I am confused. Just picking up on some of  
2749 the things that the Chairman and Mr. Kucinich were just  
2750 asking about, I can kind of understand your reaction to  
2751 discovering that there was a \$12 billion loss suffered by  
2752 Merrill Lynch, especially when it was coming after a  
2753 shareholders' vote to purchase Merrill Lynch. I can  
2754 understand you telling the Fed and Secretary Paulson and  
2755 Treasury you were thinking of backing out of the deal. I can  
2756 understand that. I think that was based upon your expertise  
2757 and your experience.

2758 I cannot understand the agreement that you made with  
2759 Treasury and the Fed, which they both deny, to disclose the  
2760 \$12 billion loss. If the loss made this a horrible business  
2761 deal to acquire Merrill Lynch, why did you still do it? And  
2762 I know you have told us over and over again, but let's be  
2763 frank. I mean, I am wondering how do you determine what it is  
2764 you must disclose? I mean, we have shareholders here who are  
2765 concerned.

2766 You are about to go into a deal with a company that is  
2767 worse off than is made to believe, and it just seems to me  
2768 that a person with your experience, there are a lot of people  
2769 in this situation--and I don't care what Paulson may have  
2770 said. I don't care what Bernanke may have said. They would

2771 | have said to hell with you. They would have said I am going  
2772 | to stand on principle, and my principles tell me that there  
2773 | is a MAC here, and here is a real problem; and if I go down,  
2774 | I go down, but I am going down on principle.

2775 | I just want to give you an opportunity to tell us,  
2776 | because I have got to tell you I am kind of concerned,  
2777 | because I think there are some serious credibility issues,  
2778 | and I think Mr. Kucinich has raised some things that, if I  
2779 | were your lawyers, I would be concerned about. So help me.

2780 | Mr. LEWIS. You are referring to the fact that, despite  
2781 | the fact we thought we could have a MAC, we relied on the--

2782 | Mr. CUMMINGS. Yes. And I am also going to the point  
2783 | that I believe that when you said to--you don't just go and  
2784 | tell the Feds and you don't tell Paulson that, look, I smell  
2785 | a rat here. Somebody of your stature. I can understand if  
2786 | you were some guy that just came off the street six months  
2787 | ago and the last thing you did was you were a bank teller--no  
2788 | offense to bank tellers, but that was all you did. You are a  
2789 | major player, and when you speak, people listen.

2790 | So I am trying to figure out. I mean, you said there is  
2791 | a problem here, but then you let these folks--and all due  
2792 | respect to Bernanke, all due respect to the Feds, all respect  
2793 | to Paulson. You are the head of this bank, you are the head  
2794 | of Bank of America; they are not. They may be on high, but  
2795 | you have got to answer to the shareholders.

2796           And I am trying to figure out why--and this is stuff  
2797 that, seems to me, if I had this kind of information, I  
2798 wouldn't even want my shareholders to be voting on something  
2799 and they did not have full disclosure, and I am trying to  
2800 figure out where does the disclosure come in, why weren't  
2801 things disclosed. I get the impression that there was  
2802 insufficient due diligence. I know you were dealing with a  
2803 crunch time. I know it was only a matter of hours that you  
2804 were trying to turn all of this over. I got that. But a man  
2805 of your stature, I refuse to believe that you set integrity,  
2806 honesty, and transparency to the side for expediency. I just  
2807 don't believe it. And I am trying to give you an opportunity  
2808 to explain this to us. Now, if you don't want to, that is up  
2809 to you, but I am asking you to.

2810           Mr. LEWIS. Yes, sir. Well, if you ask, I will do my  
2811 best. I don't know what else I can say other than we were  
2812 influenced by the strong nature of the wording from the  
2813 Federal Reserve and the Treasury in the sense that they  
2814 obviously felt very strongly that we did not have a MAC. I  
2815 also still thought we had strategic reason to do Merrill  
2816 Lynch, despite the fact it had a financial issue. And then,  
2817 third, I thought the downside of calling the MAC and not  
2818 winning was pretty severe. So all of those factors were  
2819 factors in me making that decision. But if I had thought  
2820 that it was a MAC and all these other things didn't matter, I

2821 | would have called a MAC, or we would have called a MAC.

2822 |       Mr. CUMMINGS. I see my time is up, Mr. Chairman.

2823 |       Chairman TOWNS. Let me thank the gentleman from Maryland  
2824 | and let me say that, as we come to the conclusion of this  
2825 | hearing, it is important to remember that we have heard only  
2826 | one side of the story today. The Committee needs to hear  
2827 | from Mr. Paulson and Mr. Bernanke before we draw any hard and  
2828 | fast conclusions. I do believe in fairness.

2829 |       However, I do think it is fair to observe that a flawed  
2830 | financial regulatory process was at work in this case. We  
2831 | see closed door meetings, coded messages, motives, questions,  
2832 | and private emails. Basically, the regulators and financial  
2833 | institutions seemed to be making up the rules as they went  
2834 | along.

2835 |       As Congress considers financial regulatory reform, one  
2836 | of the lessons from this case is that we need much more  
2837 | transparency and accountability in the financial regulatory  
2838 | and oversight process. The American taxpayers and corporate  
2839 | shareholders deserve no less. They need to know what is  
2840 | going on.

2841 |       Let me again thank you, Mr. Lewis, for being here today.  
2842 | Before we adjourn, let me state that this Committee has and  
2843 | will continue to protect the American taxpayers, and will  
2844 | continue to make sure the taxpayers' dollars are spent in a  
2845 | transparent and wise manner.

2846 Without objection, I enter this binder into the  
2847 Committee record and, without objection, the Committee stands  
2848 adjourned.

2849 [The information follows:]

2850 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

2851 [Whereupon, at 1:25 p.m., the committee was adjourned.]

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SPEAKER LISTING  
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CHAFFETZ.	52	53	54	55	56		
CONNOLLY.	83	84	85	86	87	88	93
	94	95	96				
CUMMINGS.	56	57	58	59	60	119	120
	122						
FLAKE.	60	62					
ISSA.	8	33	34	35	36	37	38
	39	47	48	60	62		
JORDAN.	15	44	45	47	96	97	98
	99	100	101	102			
KANJORSKI.	48	49	50	51	52		
KAPTUR.	73	75	76	77	78	112	113
	114	115	116				
KUCINICH.	11	29	30	31	32	41	42
	43	44	66	70	100	102	104
	105	106	107	108	109	118	
LEWIS.	21	27	28	30	32	33	34
	35	36	37	38	39	40	41
	42	43	44	45	46	47	48
	49	50	51	52	53	54	55
	56	57	58	59	60	61	62
	64	66	67	68	69	70	71

	72	73	75	76	77	78	79
	80	81	82	83	84	85	86
	87	88	89	90	91	92	93
	94	95	96	97	98	99	100
	101	102	104	105	106	107	108
	109	111	112	113	114	115	116
	120	121					
LYNCH.	63	64	66				
MCHENRY.	18	39	40	66	67	68	69
	70						
QUIGLEY.	70	71	72	73			
TOWNS.	4	8	11	15	18	19	26
	27	28	29	31	33	40	44
	48	52	55	56	60	63	73
	78	83	88	92	93	96	100
	102	103	108	110	111	112	116
	118	119	122				
WATSON.	88	89	90	91	92		
WELCH.	78	79	80	81	82	83	

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CONTENTS  
\*\*\*\*\*

STATEMENT OF KENNETH D. LEWIS, CHIEF EXECUTIVE OFFICER, BANK  
OF AMERICA

PAGE 21

\*\*\*\*\*  
INDEX OF INSERTS  
\*\*\*\*\*

***** COMMITTEE INSERT *****	PAGE	7
***** COMMITTEE INSERT *****	PAGE	10
***** COMMITTEE INSERT *****	PAGE	14
***** COMMITTEE INSERT *****	PAGE	17
***** COMMITTEE INSERT *****	PAGE	25
***** COMMITTEE INSERT *****	PAGE	31
***** COMMITTEE INSERT *****	PAGE	33
***** COMMITTEE INSERT *****	PAGE	55
***** COMMITTEE INSERT *****	PAGE	74
***** COMMITTEE INSERT *****	PAGE	103
***** COMMITTEE INSERT *****	PAGE	117

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

PAGE 118

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

PAGE 123



