

CHIQUITA BRANDS INTERNATIONAL Multi-Page™

(b)(7)(C)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
 CHIQUITA BRANDS INTERNATIONAL) File No. HO-3361

WITNESS: (b)(7)(C)

PAGES: 1 through 136

PLACE: Securities and Exchange Commission Headquarters
 Room 1C-13
 450 Fifth Street, N.W.
 Washington, D.C.

DATE: Wednesday, December 15, 1999

The above-entitled matter came on for hearing, pursuant to notice, at 10:15 a.m.

APPEARANCES:

On behalf of the Securities and Exchange Commission:

(b)(7)(C)
 Securities and Exchange Commission
 440 Fifth Street, N.W.
 Washington, D.C. 20549

(b)(7)(C)

On behalf of the Witness:

(b)(7)(C)
 1001 Pennsylvania Avenue, N.W.
 Washington, D.C. 20004-2595

(b)(7)(C)

CBI-V1-001-003605

PROCEEDINGS

(b)(7)(C) We are on the record at approximately 10:15 a.m. on Wednesday, December 15, 1999, at the offices of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C., 20549. My name is (b)(7)(C) and I am an officer of the Securities and Exchange Commission for the purposes of this proceeding.

Whereupon, (b)(7)(C) was called as a witness and, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY (b)(7)(C)

Q (b)(7)(C) your testimony has been requested by the staff as part of a formal investigation by the United States Securities and Exchange Commission entitled in the matter of Chiquita Brands International, Inc., HO-3361.

This investigation seeks to determine whether there have been any violations of federal securities laws. However, the facts developed may constitute violations of other federal or state, civil or criminal laws. Do you understand this?

A Yes.

Q Prior to our going on the record, you were provided with a copy of the formal order of investigation in this

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matter. It will remain available to you throughout the course of this proceeding. Have you had the opportunity to review the formal order?

A Yes.

Q Prior to our going on the record, you were provided with a copy of the Commission's supplemental information form 1662, which has been marked as SEC Exhibit No. 1. Have you had the opportunity to review form 1662?

A Yes.

Q (b)(7)(C) are you being represented by counsel here today?

A Yes, I am.

Q Would counsel please identify themselves?

(b)(7)(C) Yes. (b)(7)(C) of Crowell & Moring, 1001 Pennsylvania Avenue, N.W., Washington, D.C.

(b)(7)(C) And are you both here representing (b)(7)(C) today?

(b)(7)(C) Yes, we are.

(Whereupon, SEC Exhibit No. 45 was marked for identification.)

BY (b)(7)(C)

Q (b)(7)(C) the document I am handing to you and your counsel has been marked as SEC Exhibit No. 45. This document contains a copy of a subpoena ad testificandum dated

(b)(7)(C)

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1 November 3, 1999. For the record, SEC Exhibit No. 45 is a
2 three-page document consisting of a two-page cover letter
3 addressed to (b)(7)(C) and the subpoena ad testificandum is
4 attached.

5 Is this document, and specifically the subpoena ad
6 testificandum, a copy of the subpoena you are appearing
7 pursuant to here today?

8 A Yes.

9 Q Would you please state and spell your full name,
10 for the record?

11 A (b)(7)(C)

12 Q Have you ever changed your name?

13 A (b)(7)(C)

14 Q

15 A

16 (b)(7)(C)
17 Q Do you go by any other name, or do people know you
18 by any other name?

19 A No.

20 Q What is your date of birth?

21 A (b)(7)(C)

22 Q Your place of birth?

23 A (b)(7)(C)

24 Q Your citizenship?

25 A (b)(7)(C)

Page 7

1 A (b)(7)(C)

2 Q And for how long had you lived in (b)(7)(C)

3 A (b)(7)(C)

4 Q

5 A Correct.

6 Q I want to briefly cover your educational

7 background. If you could start with high school, tell me

8 where you went to school, give me the time period during

9 which you were at the institution.

10 (b)(7)(C)

11

12

13 Q Okay, that's fine. And after that?

14 (b)(7)(C)

15

16 (b)(7)(C)

17

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Page 6

1 Q And what is your social security number?

2 A (b)(7)(C)

3 Q What is your present home address?

4 (b)(7)(C)

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Non Interest/
Confidential

001-003606

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(b)(7)(C)

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1 A No.
 2 Q Have you ever testified in any proceeding conducted
 3 by the National Association of Securities Dealers?
 4 A No.
 5 Q Have you ever been deposed in a court proceeding?
 6 A No.
 7 Q Have you ever been named as a defendant or a
 8 respondent in any action or proceeding brought by the SEC,
 9 any other federal agency, a state securities agency, the
 10 NASD, or any stock exchange.
 11 A No.
 12 Q Have you ever been a defendant in any action
 13 alleging violations of the federal securities laws?
 14 A No.
 15 Q We left off with your educational background, with
 16 (b)(7)(C)
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Page 10

1 (b)(7)(C)
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 18 (b)(7)(C)
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Page 11

1 A Yes.
 2 Q What was your position at (b)(7)(C)
 3 A (b)(7)(C)
 4 Q And what were your duties in your (b)(7)(C)
 5 (b)(7)(C)
 6 A My primary duties as an (b)(7)(C) (b)(7)(C)
 7 (b)(7)(C)
 8
 9 Q And the type of audits we're talking about, these
 10 are -- they're internal audits, not general auditing
 11 standards audits?
 12 A Right. They were internal audits, but at various
 13 occasions we would do work for (b)(7)(C)
 14 which at the time was (b)(7)(C) So they would rely
 15 on internal audits to replace their work.
 16 Q You had said that, I think, in (b)(7)(C) you
 17 had taken a position with Chiquita Brands. Take me forward
 18 from there.
 19 A I accepted a position at Chiquita Brands (b)(7)(C)
 20 (b)(7)(C)
 21
 22
 23
 24 Q That is the position you held until --
 25 A Until I was given the assignment as a (b)(7)(C)

Page 12

1 (b)(7)(C)
 2 Q Okay. And is that the position you hold presently?
 3 A That's correct.
 4 Q What were your duties and responsibilities in your
 5 (b)(7)(C)
 6
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 11
 12
 13 A Operational audits are more focused on improving
 14 processes and trying to identify efficiencies and provide
 15 management with recommendations to improve overall processes.
 16 Q And how would you do that?
 17 A Normally what we would do is we would have
 18 interviews with the accounting personnel and understand the
 19 flow, the work flow of each individual, and basically break
 20 it down into its basic elements and try to extract
 21 inefficiencies from the system. And a byproduct of all this
 22 is obviously a reduction in head count and cost savings.
 23 Q Chiquita has operations, you know, strewn over a
 24 large part of the world. How did you do this from your base
 25 in Cincinnati. Did you go to the locations and sit down with

(b)(7)(C)

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1 people and see the location? Is -- that's what I'm trying to
 2 get an idea of.
 3 A Yes, the audits were performed on site at the
 4 specific location and country.
 5 Q (b)(7)(C)
 6 (b)(7)(C)
 7 A (b)(7)(C)
 8 (b)(7)(C)
 9
 10
 11
 12 Q Hopefully some time later today we're going to
 13 discuss an internal audit of the Colombian operations that
 14 happened some time around (b)(7)(C)
 15 And I just want to get straight in my mind now --
 16 what position were you in when that -- I seem to be right in
 17 that transition period here. What was your position at that
 18 point in time, when that audit was conducted?
 19 A (b)(7)(C)
 20 Q We'll discuss that later, but I just didn't want to
 21 leave that unclear in my mind.
 22 (b)(7)(C) how was -- to
 23 give you a time frame, how was internal audit structure, in
 24 terms of personnel and offices?
 25 A The hierarchy was as follows: we had a VP of

Page 14

1 internal audit.
 2 Q Who was that?
 3 A (b)(7)(C) And his direct report was the
 4 controller. We had two --
 5 Q Who was the controller?
 6 A (b)(7)(C)
 7 Q He reported to (b)(7)(C)
 8 A Correct.
 9 Q Okay.
 10 A We had two audit directors.
 11 Q And who were they?
 12 A (b)(7)(C)
 13 Q Can you spell --
 14 A (b)(7)(C)
 15 Q Okay.
 16 A And we had a -- the next level was audit manager.
 17 Q How many of those?
 18 A I don't recall the exact number, but at least three
 19 that I recall.
 20 Q And who were they?
 21 A (b)(7)(C)
 22 (b)(7)(C)
 23 Q How do you spell (b)(7)(C)
 24 A (b)(7)(C)
 25 Q Below the audit managers?

Page 15

1 A Below the audit managers you had audit supervisors.
 2 Again, I don't recall the number of audit supervisors. There
 3 was (b)(7)(C) and I don't recall the others.
 4 Q Do you recall about how many people there were in
 5 that position?
 6 A I don't recall.
 7 Q Was it more than ten?
 8 A No.
 9 Q Was it more than two?
 10 A Yes.
 11 Q Who reported to the audit supervisors?
 12 A The auditors. They didn't have a defined name.
 13 Q When you went on site to perform an audit job, who
 14 went on site, initially?
 15 A The process was as follows: we would -- the
 16 manager, audit supervisor, and the audit staff would visit
 17 the division management on site, and we would have an opening
 18 meeting and discuss with management the scope of the audit
 19 and laid out our work plan.
 20 After that opening meeting, the manager would
 21 normally leave either that day or within a day or two. And
 22 the people that would remain on site would be the audit
 23 supervisor and the audit staff for the entirety of the audit.
 24 Q And how long could an audit take?
 25 A An audit could take as long as two days or it can

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1 take up through three weeks. Again, it depends on the scope
 2 of the audit.
 3 Q I'm going to move forward to your position as
 4 Colombian operations controller. How did that transition
 5 come about?
 6 A After -- approximately some time in June of 1996 --
 7 I don't recall the exact month, but right around that time
 8 period -- we had been asked, or (b)(7)(C)
 9 (b)(7)(C) and that
 10 task force was to begin in June and there was no definite
 11 time period in terms of the -- when it would last.
 12 Q And how does the task force in June, how does that
 13 lead to you becoming controller in the fall?
 14 A Since I was part of this task force, it -- the
 15 person that was -- that had offered me the position thought
 16 it would be the best alternative for putting (b)(7)(C)
 17 (b)(7)(C) after being part of a task force that
 18 related to Colombia.
 19 Q Who is that person that you're referring to?
 20 A (b)(7)(C)
 21 Q (b)(7)(C) are is the same (b)(7)(C) who we
 22 recently spoke about was an audit director?
 23 A Correct, but he had a different position at the
 24 time.
 25 Q Okay, what was his position at this time?

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(b)(7)(C)

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1 A His position was (b)(7)(C)

2 Q And in that position, he was in a position to place

3 a person as controller in the Colombian operations?

4 A He was in a position to recommend people to the

5 tropical locations.

6 Q Who -- again, who asked you to be on the assessment

7 team, this -- I forget what you specifically called it,

8 but --

9 A It was called the task force team, and I was asked

10 to be part of that -- I don't recall -- it was either (b)(7)(C)

11 (b)(7)(C)

12 Q When you were working with the task force team,

13 were you still performing your audit manager duties?

14 A As soon as I was given that -- I was assigned to

15 that particular task force team, I was relieved of other

16 audit engagements and worked specifically on that particular

17 project.

18 Q Did you have a position or a title, or were you

19 still -- in other words, I guess I'm asking is this a

20 temporary assignment, or was this a new job?

21 A It was a temporary assignment like any other audit

22 engagement.

23 Q Let's move forward to your position as controller

24 for the Colombian operations. What were your duties and

25 responsibilities in that position?

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1 A My duties and responsibilities were primarily

2 managing the day-to-day accounting activities of the company.

3 Q And who did you report to in that position?

4 A I reported to the chief administrative officer,

5 (b)(7)(C)

6 Q And who reported to you in that position?

7 A My direct -- my -- the person who reported to me

8 was (b)(7)(C) who was my assistant controller.

9 Q Who else was in the financial department of the

10 Colombian operations at this time?

11 A There was a financial manager. His name was (b)(7)(C)

12 (b)(7)(C)

13 Q Anyone else?

14 A Not that I recall.

15 Q Well, were there bookkeepers and other such that

16 participated in the accounting function at that time, or was

17 it just (b)(7)(C)

18 A No, there were other staff accountants and

19 bookkeepers. I understood the question in terms of

20 administrative or management positions.

21 Q Why don't you just take me through the structure

22 and you know, without specific names tell me what positions

23 comprised the financial and bookkeeping operations at the

24 Colombian operations, Chiquita's Colombian operations?

25 A Again, it's the controller, the assistant

Page 19

1 controller, we had a chief accountant, we had senior

2 accountants, we had different layers of staff accountants,

3 based on their seniority, staff account one, two, and three.

4 And you had your clerical people.

5 Q So there was one chief accountant?

6 A There was one chief accountant I recall, yes.

7 Q Okay. Do you recall that person's name?

8 A I just recall his last name, and that was

9 (b)(7)(C)

10 Q And was there one senior accountant, or more than

11 one?

12 A There was one senior accountant for each legal

13 entity that we had.

14 Q And when you say each legal entity, what legal

15 entities are you referring to?

16 A There were approximately 26 legal entities when I

17 first got to Colombia.

18 Q And are we talking about farms? What exactly are

19 we talking about?

20 A The -- certain farms were comprised of -- were

21 included in one legal entity. So they're comprised of

22 various producing farms.

23 Q And it would help if, at this point, you could just

24 describe the Colombian operations. And this way we'll have

25 that as a background for other of our discussions.

Page 20

1 (b)(7)(C) When he showed up, or --

2 (b)(7)(C) Yes. When he shows up in November of

3 1996. Is that the right time? November of 1996?

4 THE WITNESS: Right. When I arrived in Colombia,

5 the Colombian structure was as follows: CI Banadex is the

6 exporting company of the division, and there was a group of

7 other legal entities. And these legal entities were the

8 actual farms that produced the bananas, and would sell the

9 bananas to Banadex.

10 Let me step back. At the time, there was also

11 another exporting company called Samarex. Colombian

12 operations are geographically set up as follows: we have

13 operations in Santa Marta, operations in Turbo, and

14 administrative in Medellin, Colombia.

15 BY (b)(7)(C)

16 Q Who is (b)(7)(C)

17 A It's our general manager.

18 Q General manager where?

19 A Of all of Colombia.

20 Q For all of the Colombian operations?

21 A That's correct.

22 Q Who is (b)(7)(C)

23 A (b)(7)(C) is our legal counsel for all of Colombia.

24 Q Who is (b)(7)(C)

25 A (b)(7)(C) of all of

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(b)(7)(C)

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Page 23

1 the Colombian operations.
 2 Q Who is (b)(7)(C)
 3 A Orlando Dangond was the head of the materials
 4 department.
 5 Q For?
 6 A For the Colombian operations.
 7 Q Who was (b)(7)(C)
 8 (b)(7)(C) for the
 9 Colombian operations.
 10 Q (b)(7)(C) Colombian
 11 operations?
 12 A He has since resigned from the company.
 13 Q And when did that -- when did he resign?
 14 A I don't recall the exact date, but it was within
 15 the last three months.
 16 Q Who is (b)(7)(C)
 17 A (b)(7)(C)
 18 checks that were requested by the security department.
 19 Q Was he an employee of Banadex, or any of Chiquita's
 20 operations or entities?
 21 A To the best of my recollection, he was not on the
 22 Colombian payroll.
 23 Q Who was (b)(7)(C)
 24 A Al Backoczy is the corporate security, head of
 25 security.

1 A It's Chiquita Brands International.
 2 Q I need to know in some detail how you're paid, and
 3 who is paying you. So I could kind of fumble through this,
 4 but it may be easier if you just -- you know, if you just
 5 tell me where you understand the money comes from, and who's
 6 paying it to you.
 7 A Is -- the way that I'm being paid is a portion is
 8 of my monthly pay is deposited in my account in Cincinnati,
 9 and a portion is paid in dollars, but converted to Colombian
 10 pesos, at the exchange rate of that date.
 11 That money that I am paid by Chiquita Brands is
 12 charged to the Colombian operations via an intercompany
 13 charge. So in essence, the Colombian operations assumes 100
 14 percent of my salary.
 15 (b)(7)(C) We're going to go off the record for
 16 a moment.
 17 (A brief recess was taken.)
 18 (b)(7)(C) We're back on the record at
 19 approximately four minutes after 11:00 a.m. No discussions
 20 of substance were had while we were off the record. Is that
 21 correct?
 22 (b)(7)(C) That's correct.
 23
 24 Q I want to move on to another topic and discuss
 25 Chiquita's FCPA compliance procedures.

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Page 24

1 Q And who -- which Chiquita entity does he work for?
 2 A I don't know.
 3 Q Where is he located?
 4 A Cincinnati.
 5 Q Does -- or how did (b)(7)(C)
 6 A He had a dotted-line responsibility to help
 7 (b)(7)(C)
 8 Q Okay, could you explain the dotted line?
 9 A (b)(7)(C) the
 10 general manager of Colombia, and he had his -- he had a -- he
 11 reported indirectly to (b)(7)(C)
 12 Q In November, 1996, in your position as controller
 13 for the Colombian operations, what entity were you employed
 14 by?
 15 A I was employed by Banadex.
 16 Q How was your salary paid in that position?
 17 A My salary is paid portion in the U.S. and a portion
 18 in Colombia.
 19 Q Are you an employee of any entity other than
 20 Banadex?
 21 A My contract that I have is with Banadex. But I
 22 consider myself an employee of the Chiquita Brands
 23 International.
 24 Q Who pays the Colombian portion of your salary?
 25 What entity?

1 (b)(7)(C): Can I interrupt for just a second?
 2 (b)(7)(C) Absolutely.
 3 (b)(7)(C) Have you gotten squared away on --
 4 completely on the manner in which you're paid?
 5 THE WITNESS: Let me take that back, take it
 6 back --
 7 (b)(7)(C) Oh, sure. Sure, yes. Absolutely.
 8 THE WITNESS: -- to clarify, because I think
 9 there's some confusion. Again, the portion the U.S. is paid
 10 by Chiquita Brands and that's deposited into my account, and
 11 to an intercompany charge, it's charged to the Banadex
 12 operations. The portion in pesos is paid by Banadex out of a
 13 Banadex account in Colombia. It's just in dollars and they
 14 convert it to pesos. But it's paid in Colombia, and I just
 15 wanted it clear that it's paid out of the Banadex account in
 16 Colombia.
 17 BY (b)(7)(C)
 18 Q Are they paid into the same account, your account?
 19 A The portion offshore and the portion -- the portion
 20 paid in the U.S. is paid to my account in Cincinnati.
 21 Different bank, obviously, but in my account.
 22 Q Okay, that's what I was asking. Different bank;
 23 different account.
 24 A But in my individual account.
 25 Q Yes. Understood. Does Chiquita, speaking

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(b)(7)(C)

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1 generally now, Chiquita Brands organization as a whole, have
 2 a procedure for identifying instances where Chiquita employe
 3 or agent has made a payment of money or something of value to
 4 a foreign official?
 5 A All Chiquita employees comply with the Foreign
 6 Corrupt Practices Act. And that's -- those are policies that
 7 are followed by the employees.
 8 Q Okay. Is there a procedure in place for
 9 identifying instances where an employe of Chiquita, or an
 10 agent of Chiquita, has actually given something of value to a
 11 foreign official?
 12 A Yes.
 13 Q What is that procedure?
 14 A The procedure that exists to report any types of
 15 facilitating payments made to a government official, I can
 16 speak for Colombia.
 17 Q Okay, speak for Colombia.
 18 A In Colombia, the procedure is as follows: we
 19 record all types of sensitive payments in the securities
 20 account, and that account is where we report all the
 21 facilitating payments.
 22 And in that procedure, we review that on a
 23 quarterly basis with the head of security and we submit all
 24 payments that either we have knowledge and/or have made to
 25 government officials to the legal department in Cincinnati.

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1 Q Who is in charge of Chiquita's FCPA compliance?
 2 A In Colombia?
 3 Q In Cincinnati. You say you're reporting this to
 4 someone in Cincinnati, so I'm going to work on the assumption
 5 that it's someone in Cincinnati who has ultimate
 6 responsibility for this compliance.
 7 A The person that -- the liaison between the
 8 divisions and Cincinnati is (b)(7)(C) who works for legal
 9 department.
 10 Q How do you spell (b)(7)
 11 A (b)(7)(C)
 12 Q You mentioned that there is an account that
 13 facilitating payments are made from. What exactly is this
 14 account? Start with that. What exactly is this account?
 15 A It -- the account in the general ledger is
 16 described as security. And under security there is a
 17 subaccount under it with a description of logistics. And
 18 that's where these facilitating payments are recorded.
 19 Q See if I understand. Any payment made by the
 20 Colombian operation of anything of value that makes its way
 21 to a government official should come from this account, this
 22 logistics account. Is that correct?
 23 A The -- any payments that are facilitating payments
 24 to a government official should be recorded under the
 25 security account, and in the subaccount of logistics.

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1 Q Correct. I think you said you went through a
 2 process, quarterly, of reviewing payments in this logistics
 3 account, facilitating payments. Is that correct?
 4 A That's correct.
 5 Q Just very practically in reality, take me through
 6 that process, you know, from beginning to end. You decide
 7 you're going to do a review. What do you do? Who does it?
 8 You know, who's involved?
 9 A I have the question -- I don't understand the
 10 question --
 11 Q No, no --
 12 A -- because the policy -- the procedure -- had
 13 changed since I arrived in Colombia and what's the current
 14 practice today, so I can comment on --
 15 Q Very good. I want to know both.
 16 A Okay.
 17 Q I want to know when you started there, let's
 18 discuss that first, and then you know, we can leverage off
 19 that to discuss how the process has changed or improved.

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1 or -- okay? And if you ever don't understand a question,
 2 that's good. You tell me, because I don't want you -- it
 3 confuses us both.
 4 A When I arrived in Colombia, I was not responsible
 5 for the FCPA, if you will, in that I was only responsible for
 6 reporting any payments that I either had knowledge of, or
 7 have signed during the -- each quarter. And I reported those
 8 to Cincinnati.
 9 Some time around -- in 1997, that responsibility,
 10 to coordinate with security, was assigned to me by the chief
 11 administrative officer (b)(7)(C)
 12 Today the procedure that I do on a quarterly basis
 13 is that I sit down with the head of security and he has a
 14 listing of all payment requests and payments made to
 15 government officials in the quarter and I bring to the
 16 meeting the listing of payments that were recorded in the
 17 security account under the logistics.
 18 And included in this review, I also take it a step
 19 further and include payments that are recorded in another
 20 subaccount that's called operations. And these payments that
 21 are in the operations account are payments made to guerillas.
 22 Q When you worked in internal audit, did you have any
 23 responsibilities with regard to FCPA compliance?
 24 A When I was in internal audit, and we did an audit
 25 at a division, the general practice was to do testing for

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1 compliance with FCPA -- with the provisions of the FCPA.

2 Q How did you do that?

3 A We took with us the information that was submitted
4 by the respective division to the division and compared it
5 against the accounting records.

6 Q And when you say the information that was
7 submitted, what are we talking about?

8 A Payments, facilitating payments to government
9 officials that were sent up from the divisions.

10 Q Okay, I need much more basically. I mean, just
11 what is it? Is it a form that various individuals are
12 required to submit quarterly? Is it -- where are you getting
13 it from?

14 A The information that was submitted to the legal
15 department by the divisions. But that was -- our VP of
16 internal audit, Bud White, would provide us a listing of
17 these payments.

18 Q And when you say a listing, was it exactly what was
19 submitted, or was it something different?

20 A (b)(7)(C) I don't recall.

21 Q I think you said you take this information on an
22 audit, and you perform a check. What are the mechanics of
23 that check? How do you go about checking to ensure that the
24 information that has been provided is accurate and that no
25 one has withheld information regarding payments to government

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1 officials, facilitating or otherwise?

2 A All payments -- again, talking about the Colombia
3 division specifically, when we audit the -- when we went to
4 look at the FCPA payments in Colombia, we looked at all the
5 payments that were recorded in the securities account, and we
6 would take that and compare it against the information that
7 was submitted, and vice versa, to make sure all the payments
8 and the accounting records under the securities account were
9 properly reported and the information submitted to the legal
10 department.

11 Q Now, when you say the securities account, you had
12 said that the securities account included subaccounts. Is
13 that correct?

14 A That's correct.

15 Q So when you say compare it against a securities
16 account now, are you drawing a distinction between the
17 logistics account and the larger realm of the securities
18 account?

19 A The comparison was made to the securities account.
20 And knowing that there are various accounts in securities,
21 there could be as many as fifteen or twenty subaccounts under
22 the securities department.

23 Q Not every transaction recorded in the securities
24 accounts is reflected on this -- these FCPA disclosure forms.
25 Is that correct?

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1 A That's correct.

2 Q When you're doing the check then, how are you
3 distinguishing -- let me withdraw that.

4 My understanding then, is that you are not merely
5 checking to see that every transaction in the securities
6 accounts has been disclosed on an FCPA form, because they
7 don't match up. Is that correct?

8 A Could you repeat the question?

9 Q If I have a printout of the transactions that occur
10 in the securities accounts, you know, on my right side, and
11 on my left side I have the FCPA information that you obtained
12 from (b)(7)(C) or whomever in the legal department, there
13 are going to be a number of transactions reflected in the
14 ledger for the securities accounts that are not being
15 disclosed on the FCPA materials. Is that correct?

16 A That's correct.

17 Q Okay. I guess what I'm trying to understand is
18 during the mechanics of this check then, how do you know
19 whether all payments that needed to be recorded have been
20 recorded? And this is, again, during the time of the
21 internal audit that I want to focus on for the moment.

22 A In the -- in audits, audits of any particular
23 account or any particular balance sheet item should provide
24 you reasonable assurances that information is properly
25 recorded, properly presented on the balance sheets. Again,

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1 reasonable assurance.

2 One of the things you do in an audit is you select
3 samples. And those samples should be representative of a
4 population, and it should give you that reasonable assurance.

5 So many times as an auditor, you may select -- of
6 the 500 transactions, you may select a sample that you deem
7 appropriate and you use that sample to come to a conclusion
8 that the account is properly and fairly stated.

9 Q Was there sufficient information -- let me take a
10 step back.

11 The internal audit personnel, attempting to do this
12 FCPA check that we're discussing, in Colombia, is that person
13 provided with sufficient information in terms of ledger
14 entries or you know, whatever books and records, to identify
15 that payments were made to government officials, or were some
16 other types of transactions sufficient to be able to perform
17 a check to ensure the accuracy of the documents?

18 A (b)(7)(C) I understand the question -- if I
19 understand the question correctly is, is adequate information
20 provided to the auditors to conclude whether these payments
21 are governmental payments?

22 Q Let me back up a little. We're going to get into a
23 discussion maybe an hour, an hour-and-a-half from now, where
24 you know, we're going to talk about sensitive payments in
25 these accounts and entries that were made in these accounts

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(b)(7)(C)

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1 that where there is -- documents suggest to me that there is
2 some effort not to have out in the open the books and
3 records, you know, a description of the transaction that
4 would alert everyone to what, exactly, is being done.

5 Now, if that's the case, and you know, we'll get
6 into that specifically, you know, in a little while, but if
7 that's the case, and that's what this person in internal
8 audit -- I'm having trouble figuring out how, exactly, that
9 person can perform -- or just the mechanics, you know, not
10 making a judgement, I'm trying to understand how the
11 mechanics are working if that person has these very vague
12 entries and yet they're trying to, in some manner, perform a
13 check to ensure that what was -- you know, the FCPA
14 disclosure documents that they're trying to run a check
15 against are complete and compliant. That is what I'm trying
16 to figure out. And I'm hoping you can help me out with that.

17 A Sure. The -- as part of an audit, if we provide
18 the internal audit department a listing, let's say, of all
19 the security payments, and we -- they select their sample --
20 and they can look at 100 percent of those payments -- we, as
21 the division, present them with both the payment request
22 which, in Colombia, we referred to as a 1016, and a copy of
23 the check that was actually issued.

24 With those two documents, those two documents are
25 the documents that support the actual journal entry that the

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1 auditors would otherwise be looking at when they do their
2 testing.

3 Q Okay. So say, to leverage off testimony I've
4 already had, say the 1016 says it was paid to (b)(7)(C)
5 and the entry in the ledger says (b)(7)(C) and that's --
6 is that a realistic circumstance?

7 A That could happen.

8 Q Okay. Now, as an internal audit person, that's
9 what I have. How do I know that that's not a payment that --
10 if that turns up in my sample, what do I do with that?

11 A As an auditor, in this particular case, you would
12 either discuss this payment with either the general manager
13 or the controller and ask what the payment is for.

14 Q You also have the documentation submitted to
15 Cincinnati, in case of payments to government issues, that
16 show what certain payments were for. Is that right? And
17 you're comparing all that?

18 A That's correct.

19 Q When you became controller for the Colombian
20 operations in -- and I think you said November, 1996, how
21 were you told, or how were you made aware of what your FCPA
22 compliance duties and responsibilities were going to be as
23 part of that position?

24 A When I arrived in Colombia, again the chief
25 administrative officer was the -- had primary responsibility

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1 for the FCPA.

2 Q Who was that?

3 A (b)(7)(C)

4 Q Okay.

5 A And he had said that he was going to manage that,
6 and I would need to submit like the other officers in
7 Colombia, on a quarterly basis, my FCPA report.

8 Q And how did you know what you were supposed to put
9 on that report?

10 A From my experience in accounting and auditing in
11 Cincinnati, I was aware of the types of payments that were
12 needed to be sent and communicated to --

13 Q I guess my question was more basic than that. I
14 wasn't really referring to in general what would constitute a
15 payment, but was it only payments that you made? Was it
16 payments that you were aware of? Was it payments that you
17 approved? Were there -- there's a spectrum of payments that,
18 you know, an organization makes and your involvement, you
19 know, runs across a spectrum of involvement and, you know,
20 that having been said, did you have an understanding of, you
21 know, what would trigger your need to put a specific payment
22 on your quarterly disclosure form?

23 A Yes. I was aware of the payments that needed to be
24 recorded whether if I was aware, had knowledge, approved,
25 and/or paid any payments to government officials.

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1 Q Those would all need to be put on your report?

2 A That's correct.

3 (b)(7)(C) I'm going to hand you and your
4 counsel a document that has been previously been marked at
5 SEC Exhibit No. 5. And that's an extra copy for your.

6 (b)(7)(C) Thanks.

7 (b)(7)(C) And I'll give you and your counsel an
8 opportunity to look that document over and page through it.
9 And while you do that, I'll begin describing the document for
10 the record.

11 SEC Exhibit No. 5 is a multi-page document spanning
12 Bates stamp numbers DOJ/SEC-01/22/99-0030 through and
13 including 0036. The first part of the document is a memo
14 with the heading Chiquita Brands International. It begins,
15 "Dear Associate," and has an re line of U.S. Foreign Corrupt
16 Practices Act, SEC Consent Decree, and the Statement of
17 Policies and Procedures.

18 That part of the document spans the first four
19 pages, is followed by a document identified on the top as
20 United Brands Company Statement of Policies and Procedures
21 Adopted by the Board of Directors on February 19, 1976. That
22 is one page, and the final page is identified as Appendix A.
23 and it is a letter that has a, "To (b)(7)(C) and an
24 re line of Foreign Corrupt Practices Act Compliance.

25 (The witness examined the document.)

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(b)(7)(C)

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1 BY (b)(7)(C)

2 Q Have you ever seen this document before?

3 A I don't recall seeing this particular document

4 before.

5 Q Okay. Have you seen any part of this document

6 before?

7 A The last page of this document looks like the

8 listing that we report all payments and I sign on a quarterly

9 basis.

10 Q Okay. The last page you say looks like the FCPA

11 quarterly disclosure form that we were talking about?

12 A The last page looks very similar to the one that I

13 submit to Cincinnati's legal department every quarter with

14 the names and the payment dates of any facilitating payments

15 that were made during the quarter.

16 Q Where do you get that form from that you submit

17 every quarter?

18 A That form is sent to us by (b)(7)(C) in the legal

19 department.

20 Q And you are sent -- you're sending that -- if I

21 understand correctly, that you're sent the final page of this

22 document, and that is all you see?

23 A The information sent by (b) includes three pages

24 in general, is the cover page with my name on it, indicating

25 that I -- it's time to submit -- the time is coming to submit

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1 the upcoming quarterly letter. And if I recall, it's only

2 within fifteen days at the end of the quarter.

3 And the second page of the document that's sent to

4 me looks similar to the second to the last page --

5 Q Bates stamp coding in 00357

6 A Correct, 0035 in SEC Exhibit No. 5. And this looks

7 very similar to what's also attached to what (b)(7)(C)

8 sends us on a quarterly basis.

9 Q And when you say looks very similar, are you

10 identifying a specific difference, or are you just saying

11 that it looks very similar?

12 A I'm saying it looks very similar.

13 Q Okay, you're not identifying that, "I know the one

14 I get is different, but this is similar."

15 A That's correct.

16 Q I just wanted to make sure I understood that. With

17 regard to this document as a whole, this document being SEC

18 Exhibit No. 5, do you know for certain that you never

19 received this whole document before?

20 A I don't deny that I've never received it, I just

21 don't recall seeing this particular document.

22 Q That's what I was asking. When you say I don't

23 know, sometimes I don't know if you mean, you know, "I never

24 received it before. I know that," or -- draw a distinction.

25 Okay.

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1 Within the Colombian operation, again using the

2 time period, you know, after you arrive as controller -- so

3 the November, 1996 time period -- who in that organization is

4 required to submit an FCPA quarterly disclosure?

5 A The people that are required to submit an FCPA are

6 the managers that -- of the Colombian division.

7 Q If you could give me names and positions.

8 A The first is the general manager, (b)(7)(C) the

9 second is (b)(7)(C)

10 head of security. At the time it (b)(7)(C)

11 We're talking at the time, correct (b)(7)(C)

12 Q Yes.

13 A Okay. Financial manager, (b)(7)(C) our

14 legal counsel, (b)(7)(C) our operations manager,

15 whose name is (b)(7)(C)

16 (b)(7)(C)

17 Those are the names and positions of the people that I recall

18 that are required to file FCPA.

19 Q Who is (b)(7)(C)

20 A (b)(7)(C) is the vice president responsible also

21 for the Colombian division.

22 Q Would he have had to submit FCPA quarterly

23 disclosure?

24 A I don't know.

25 Q During your time as controller, did you ever

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1 discuss with him FCPA quarterly disclosure?

2 A I don't recall. (b)(7)(C) IT-site. He lives in

3 Costa Rica.

4 (Whereupon, SEC Exhibits No. 46

5 through 51 were marked for

6 identification.)

7 (b)(7)(C) I've handed you a series of exhibits

8 that have just been marked, and I want to describe them for

9 the record.

10 SEC Exhibit No. 46 is what we believe to be an FCPA

11 disclosure form relating to the period January through March,

12 1997, the first quarter of 1997. And it has the name (b)(7)(C)

13 (b)(7)(C) and it is Bates stamped 1CHQ1-002667.

14 The next document is -- appears to be an FCPA

15 disclosure form for the first quarter 1997 relating to

16 (b)(7)(C) and it ends in Bates stamp 002668.

17 SEC Exhibit No. 48 is also an FCPA quarterly

18 disclosure form for the first quarter of 1997 and it relates

19 to (b)(7)(C) and it ends in Bates stamp 002669.

20 The next is an FCPA quarterly disclosure form that

21 relates to the first quarter of 1997 and relates to (b)(7)(C)

22 (b)(7)(C) ends in Bates stamp 002670.

23 (b)(7)(C) Is that 49?

24 (b)(7)(C) Yes. Did I say the wrong --

25 (b)(7)(C) o, you just said, "The next," I

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(b)(7)(C)

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1 didn't hear a number.
 2 (b)(7)(C) Oh, okay. Forty-nine. Sorry.
 3 Following, document SEC Exhibit No. 50, is a first quarter
 4 1997 FCPA disclosure form for (b)(7)(C) and it's been
 5 Bates stamped 002671.
 6 And the final document in the series is an FCPA
 7 disclosure form relating to the first quarter of 1997 and
 8 there's the name (b)(7)(C) and it bears Bates
 9 stamp 2CHQ7-000011. That is SEC Exhibit No. 51.
 10 (The witness examined the document.)
 11 BY (b)(7)(C)
 12 Q Let's start with SEC Exhibit No. 49. Do you
 13 recognize this document?
 14 A Yes.
 15 Q Is that your signature on the signature line of
 16 this document, above your name in print?
 17 A Yes.
 18 Q What is this document?
 19 A It is the quarterly FCPA report that we submit to
 20 Cincinnati.
 21 Q And what period does it relate to?
 22 A It relates to the first quarter of 1997, beginning
 23 January 1, ending March 31.
 24 Q And how do you know that?
 25 A The -- it is circled, the appropriate period.

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1 Q Okay, and that is the procedure for identifying the
 2 period to which this document relates?
 3 A That is the -- indicating that it's related to that
 4 period, circled.
 5 Q The document says circle appropriate period, and
 6 that's how one identifies the period to which they're filing
 7 the form?
 8 A Correct.
 9 Q On SEC Exhibit No. 49, under the typed statement
 10 and columns for roman numeral five, there is handwriting that
 11 says, "Nothing to report." Is that your handwriting?
 12 A Yes.
 13 Q What exactly does that mean here, nothing to
 14 report?
 15 A The -- nothing to report indicates that I was -- I
 16 did not have any payments in that period in time to report.
 17 Q I want to go back for a moment to SEC Exhibit No.
 18 5, and the second to last page coding in Bates stamp 0035.
 19 And this is the -- we had discussed that this is the page
 20 before the FCPA disclosure form where you sign. Is that
 21 correct?
 22 A As I said before, this looks very similar to the
 23 page that is attached to the quarterly listing.
 24 Q Okay. Do you see roman numeral three on that page?
 25 A Yes.

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1 Q If you want to take a moment to read roman numeral
 2 three, and I'm going to ask you specifically, with regard to.
 3 -- it says, "By my signature below, I confirm the following,"
 4 and I want to get an understanding of when you write nothing
 5 to report, and I want your understanding at the time you
 6 wrote nothing to report, how -- what you were writing in
 7 conjunction with this roman numeral three. Okay?
 8 (b)(7)(C) Can we go off the record just a
 9 second?
 10 (b)(7)(C) Yes, absolutely.
 11 (A brief recess was taken.)
 12 (b)(7)(C) Okay, we're back on the record a few
 13 moments later, at about approximately five minutes before
 14 noon. No discussions of substance were had while we were off
 15 the record. Is that correct?
 16 (b)(7)(C) That's correct.
 17
 18 Q Before our break, we were focusing on roman numeral
 19 three and Bates stamp coding in 0035, of SEC Exhibit No. 5.
 20 And roman numeral three says, "By my signature below, I am
 21 confirming -- I confirm the following," and then there's
 22 entries for A, B, and C.
 23 In filling out the quarterly disclosure form,
 24 specifically SEC Exhibit No. 49, did you have an
 25 understanding that, by your signature on that document, you

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1 were confirming the information in roman numeral three?
 2 A Yes.
 3 (b)(7)(C) Well, we ought to acknowledge with
 4 the qualification that what he remembers his -- with the
 5 qualification that what he remembers is he would routinely
 6 see something like this page ending in 0035, but he can't
 7 swear that what he saw with the form each time was exactly
 8 this page. Right?
 9 THE WITNESS: That's correct. CBI-V1-001-003615
 10 BY (b)(7)(C)
 11 Q Prior to filling out, or prior to writing in,
 12 "Nothing to report," and signing SEC Exhibit No. 49 -- I'll
 13 withdraw that.
 14 SEC Exhibit No. 49 we said relates to the period
 15 first quarter 1997. That's correct?
 16 A Correct.
 17 Q And during that time you were a controller for
 18 Banadex. Is that correct?
 19 A Correct.
 20 Q And you're submitting this form, this form being
 21 SEC Exhibit No. 49, with regard to possible payments that
 22 need to be disclosed, which were made by Banadex or its
 23 employees, or its agents. Correct?
 24 A By completing this -- by signing of this document,
 25 SEC Exhibit No. 49, I'm stating that I do not have any --

(b)(7)(C)

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1 nothing to report. Not all Banadex employees, but (b)(7)(C)
 2 (b)(7)
 3 Q We talked earlier about the security account and
 4 the logistics account as the place where payments that would
 5 need to be disclosed would be made from.
 6 Prior to filling out this form, did you review
 7 those accounts to see whether there was anything in there
 8 that needed to be disclosed?
 9 (b)(7)(C) That's speaking of the end of
 10 March, 1997, is that right?
 11 (b)(7)(C) This form right here and the quarter
 12 to which - this form being SEC Exhibit No. 49 - and the
 13 time period to which it relates, which is indicated by it
 14 being circled here.
 15 THE WITNESS: (b)(7)(C) I don't recall, because I was
 16 responsible for reporting only my payments that I was aware
 17 of or made, and again, that is at the time when I arrived in
 18 Colombia.
 19 (b)(7)(C) All right, maybe I need to back up
 20 here.
 21 (b)(7)(C) There's a time when the procedure
 22 changed, is what's key here.
 23 BY (b)(7)(C)
 24 Q Okay. Go through that change in procedure for me.
 25 Help me to understand. I'm obviously struggling with what's

1 A I would say - the way I would put it is that he
 2 gave responsibility to review all payments that were made out
 3 of the security account, with the head of security, before
 4 they were sent to Cincinnati.
 5 Q Who was doing this before this was assigned to you?
 6 A I don't recall.
 7 Q Was there any coordination among the various
 8 individuals that we discussed needed to submit these reports?
 9 Any coordination to gain some assurance that what needed to
 10 be reported was being reported?
 11 A (b)(7)(C) I don't recall, because I wasn't - at that
 12 time it wasn't under my purview.
 13 Q That's fine. I want to focus for a moment on the
 14 other five exhibits. Leaving SEC Exhibit No. 49 aside for a
 15 moment, so SEC Exhibits numbered 46, 47, 48, 50, and 51.
 16 The only person that has disclosed anything here is
 17 on SEC Exhibit No. 51, the disclosure for (b)(7)(C)
 18 (b)(7)(C) Do you see that?
 19 A Yes.
 20 Q All of the others are blank, where it appears a
 21 disclosure would occur, and with the exception of (b)(7)(C)
 22 (b)(7)(C) who writes "nooc."
 23 Why is it that Alvarado is the only one, in the
 24 words in roman numeral three on SEC Exhibit No. 5, is aware
 25 of any payments that need to be disclosed? Why is that?

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1 going on here.
 2 A When I - I said some time around after March of
 3 1997, somewhere around early 1997, I don't recall if it was
 4 in April or May, but (b)(7)(C) the chief administrative
 5 officer, had assigned me a new responsibility, and that was
 6 to review all FCPA payments with the head of security, a
 7 responsibility that I did not have in the past, when I
 8 arrived in Colombia.
 9 Q What was your responsibility prior to this, or what
 10 was your understanding of what your responsibility was, prior
 11 to this conversation in early 1997?
 12 A My responsibility was, as I understood it, was to
 13 report any payments that I either authorized, signed, paid,
 14 aware of in that period.
 15 Q So on SEC Exhibit No. 49, when you say, "Nothing to
 16 report," that was your understanding at the time, and so you
 17 wrote, "Nothing to report" on the document?
 18 A That is correct.
 19 Q Okay. And so I understand, now you have a
 20 conversation with (b)(7)(C) and he's giving you, in
 21 addition to the understanding you have, some investigatory -
 22 and that's, you know, take issue with that word, but I'm just
 23 trying to find one that somewhat fits what I'm hearing -
 24 investigatory responsibility with regard to potential FCPA
 25 payments. Is that correct?

1 A I don't know.
 2 (b)(7)(C) I'm handing you a document that has
 3 been previously been marked as SEC Exhibit No. 11. Here's an
 4 extra.
 5 For the record, SEC Exhibit No. 11 is a one-page
 6 document Bates stamped number 1CHQ1-002251. The document,
 7 again, appears to be an FCPA quarterly disclosure for the
 8 period first quarter 1997. It relates to (b)(7)(C)
 9 And on the top, in handwriting, it says, "Revised FCPA."
 10 Take a moment to look at that one.
 11 (The witness examined the document.)
 12 BY (b)(7)(C)
 13 Q Have you seen this document before? SEC Exhibit
 14 No. 11?
 15 A I recognize it.
 16 Q Is that your signature on this document, above (b)(7)
 17 (b)(7)(C) print, and next to signature?
 18 A Correct.
 19 Q What is this document?
 20 A It's a quarterly FCPA report with the revised -
 21 Q What period does this quarterly FCPA report relate
 22 to?
 23 A First quarter of 1997, January 1 through March 31.
 24 Q This document, then, relates to the same period as
 25 the document we were just looking at, SEC Exhibit No. 49?

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(b)(7)(C)

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1 A Correct.

2 Q Can you explain to me the circumstances surrounding

3 this revised FCPA report?

4 A To the best of my recollection (b)(7)(C) the -- this

5 -- without knowing the sequence in time, this may -- this is

6 a report that I was asked to sit down with (b)(7)(C) and go

7 over, again, all payments that were made in that quarter, and

8 to submit a revised FCPA to the legal department in

9 Cincinnati.

10 Q Who asked you to do this?

11 A The -- if I recall correctly, it's (b)(7)(C)

12 or my CAO.

13 Q In relation to SEC Exhibit No. 49, can you give me

14 an idea of the timing?

15 A The normal procedure is to submit the FCPA

16 quarterly letter fifteen days after the end of the close. In

17 this case, it would be April 15, 1997.

18 This revised FCPA looks as though it was faxed on

19 May 9, 1997.

20 Q Is this in any way connected to (b)(7)(C) asking

21 you to take on new responsibilities with regard to FCPA

22 quarterly reporting?

23 A I don't recall the timing as to when that

24 responsibility was given to me.

25 Q Where did you get the information from for the

Page 50

1 disclosures that are on this page, this page being SEC

2 Exhibit No. 117

3 A I recall sitting down with (b)(7)(C) and going

4 over his listing and what we had in accounting for those

5 payments that were made in this time period.

6 Q Looking at SEC Exhibit No. 11 next to SEC Exhibit

7 No. 51, which is -- SEC Exhibit No. 51 is (b)(7)(C)

8 (b)(7)(C) FCPA report for the period -- and --

9 (b)(7)(C) For what period?

10 (b)(7)(C) For the period first quarter of 1997.

11 (b)(7)(C) Yes, I wanted to take that up with

12 you. I'm looking at SEC Exhibit No. 51, and I recognize that

13 by -- in the signature block, and where the name appears, the

14 period covered is underlined as January 1 through March 31,

15 1997. However, every other entry on the page seems to

16 indicate that this relates to a year later, the first quarter

17 of 1998.

18 For example, all the payments listed, the dates of

19 payment, are all January and February of 1998. Second, this

20 was faxed, according to the fax headers that appear, that it

21 looks as if it were faxed in April of 1998.

22 So I'm wondering whether what we have in SEC

23 Exhibit No. 51 is simply the form from a year earlier that

24 included typed dates for 1997, but it looks like (b)(7)(C)

25 simply copies and used for convenience to enter payments a

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1 year later, when he was reporting for the first quarter of

2 1998. I just -- I raise that question before we get too far

3 down in comparing two documents that may be actually a year

4 apart.

5 BY (b)(7)(C)

6 Q SEC Exhibit No. 51, do you recognize the entries on

7 this document?

8 A I don't -- when you say recognize --

9 Q Looking at the specific entries on this document,

10 and with my understanding that you were controller in

11 Colombia during the 1998 time frame, do you recognize the

12 entries and descriptions here?

13 (b)(7)(C) Well, do you recognize them -- you

14 can see what they are, but do you remember them from --

15 THE WITNESS: No, I don't remember the entries, but

16 I recognize the names, the recipients names, but I don't

17 recognize the specific payments.

18 BY (b)(7)(C)

19 Q Is there anything there that tells you, that would

20 enable you to tell me that this is 1998 and not 1997? Is

21 there somebody that's being paid here that wouldn't have been

22 paid in 1997, or some indication to --

23 A No, I don't see that.

24 Q Let's stick to SEC Exhibit No. 11. When you met

25 with (b)(7)(C) to generate the information on this

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1 document, what documentation did the two of you have with

2 you?

3 A The documents that I recall looking at, first

4 document was his records that he keeps, himself, of all

5 1016's that were paid in that quarter, and the accounting,

6 the listing of the payments in accounting, that were made

7 through the security --

8 Q And when you say the listing of payments in

9 accounting that were made through -- and I think you stopped

10 short of saying security account -- what exactly is that

11 listing? What, I mean, very basically, physically.

12 A It's simply a green print-out of the activity in

13 accounting for that particular period. You see the payee,

14 and the amount that was paid.

15 Q Okay, and how do you get that?

16 A We generate that from our general ledger system.

17 Q And you go to someone, and you say, "I need a

18 print-out of the activity in the securities accounts for the

19 period such-and-such?"

20 A That's correct.

21 Q Again, focusing on SEC Exhibit No. 11 and the

22 entries that are there, once you fill out this form, sign

23 your name, and begin the process of sending it off, what

24 checks are there in the system, throughout Chiquita Brands

25 International, to make certain, or to give some assurance

(b)(7)(C)

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1 that the information here is correct and complete?
 2 A The procedures in place -- I think that's vested
 3 with the management in the division to provide the legal
 4 department knowledge of any payments that have been made.
 5 And in addition, Chiquita Brands has its internal audit
 6 department that performs audits to ensure that the divisions
 7 are in compliance with the FCPA.
 8 Q The internal audit check is the one we spoke about
 9 earlier, where with the sampling process an individual goes
 10 into the ledger and gathers together from the legal
 11 department, is provided with all the FCPA quarterly
 12 disclosure forms for an organization. Is that what you're
 13 talking about?
 14 A I'm referring to the corporate internal audit
 15 department that goes through divisions and performs its tests
 16 and procedures to ensure compliance.
 17 Q With the FCPA?
 18 A With the FCPA.
 19 Q And specifically with the FCPA disclosure procedure
 20 that is outlined in SEC Exhibit No. 5 that we've been
 21 discussing?
 22 A Right, in compliance with -- that all payments that
 23 have been made, facilitating payments that are made, have
 24 been recorded properly, and have been communicated to legal
 25 department.

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1 Q That check we've discussed and I understand. But
 2 you had mentioned, you know, management's responsibility.
 3 More specifically, is there anybody who checks in some shape,
 4 manner, or form, to you know, looks at SEC Exhibit No. 11, or
 5 looks at, you know, the compilation of quarterly disclosures
 6 for an organization, and in some manner checks to make sure
 7 that items aren't on there that shouldn't be on there, and
 8 items aren't missing that should be on there?
 9 A (b)(7) I'll talk about the practice in place
 10 currently.
 11 Q Okay.
 12 A And that check, which I think is -- provides
 13 reasonable assurance that all payments have been recorded, is
 14 that I sit down on a quarterly basis, after that assignment
 15 was given to me, I sit down with the head of security, who I
 16 review all 1016s.
 17 When I say all 1016's, all payments that were made
 18 through the securities account under operations and
 19 logistics, and I verify that these payments either were
 20 properly included or have been properly excluded in the
 21 submission of the quarterly FCPA reports.
 22 So that's how we gain our assurance that we're
 23 reporting and complying in the Colombia division, because at
 24 this time, I'm responsible for sitting down and reviewing all
 25 payments made, not the ones that I only have knowledge of.

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1 but the payments that have been made by other individuals in
 2 the operations.
 3 Q In performing this task, why are you limiting
 4 yourself to the securities accounts, and just sitting down
 5 with (b)(7)(C)?
 6 A I've limited -- if I understand the question
 7 correctly, is my review is limited to the securities account,
 8 because in accounting, that's where all these payments are
 9 recorded. And further, I look at all 1016's that have been
 10 either signed by myself or by any other individual officer in
 11 the Colombia, and he has a listing of all 1016's that were to
 12 be reported in that quarter.
 13 Q Beyond the securities account?
 14 A No. All payments were made from -- all payments
 15 that were made to government officials, he keeps separate
 16 copies of the 1016's in his record. He maintains, he records
 17 a log.
 18 Q Who is the he?
 19 A (b)(7)(C)
 20 Q How do you know that there are not payments to
 21 government officials that were made outside of the securities
 22 accounts?
 23 A Again, we entrust our security manager, who is the
 24 primary and only person that has the contact with the
 25 government officials who is asked to -- for payment, and we

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1 vest this interest in him and this responsibility. And I,
 2 when I sit down with him, I'm assuming that he is disclosing
 3 all payments and knowledge of any payments that have been
 4 made.
 5 Q If I understand what you're saying, if there is a
 6 payment made, he is the individual who is making it. Is that
 7 correct?
 8 A That's correct.
 9 Q Does he have access to other accounts? Can he make
 10 payments out of accounts other than the securities accounts?
 11 A Yes, I guess he couldn't -- I mean, he could code
 12 something to a different account. When I say code, I mean
 13 coding it with a different code that's not a security
 14 account.
 15 Q We'll get to that later, but I understand, and I'll
 16 just, you know, I'm trying to -- when you say code, we're
 17 going to discuss at some point that I think 216 is a
 18 logistics code, 070 is an operations code. Is that what
 19 you're talking about?
 20 A That's -- I'm referring to the accounting codes
 21 that are given to a particular transaction so that they could
 22 be recorded in the general ledger.
 23 Q Accounting code given to a transaction, or given to
 24 an account so that you know which account it should be?
 25 A Given to a transaction so that the transaction can

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1 be recorded in that particular account.

2 Q How do you know which account it should be recorded
3 in? I thought you had said it was coded to a specific
4 account, and he could, I guess, code it to another account.

5 A He doesn't (b)(7)(C) doesn't have any
6 authority to create a separate account on our books and
7 records. That is my responsibility, in the controller's
8 department.

9 When I make reference to coding a transaction --
10 I'll try to clarify -- in that you may inadvertently charge
11 an expense item to an account that is not the correct
12 account.

13 If, for example, I could use a different
14 department's account, inadvertently classify that -- that's
15 either human error, that's something very normal that happens
16 in accounting.

17 Q Would it be unusual for him to be affecting
18 transactions in accounts -- him being (b)(7)(C)
19 to be affecting transactions in accounts other than the
20 securities accounts?

21 A When I say unusual, it means that every department
22 has its own code. And when each department had reviews,
23 there are charges that are charged to their respected
24 department. They always ask, "Who is recording costs in my
25 respective department," for budget purposes.

1 (b)(7)(C)

2 Q And this (b)(7)(C) is he a real person, or is
3 this a fiction?

4 A As I -- as it has been told to me, he is a real
5 person that exists, and he is not an employee.

6 Q Go ahead. Continue.

7 A To further -- your second question was to identify
8 where the -- who the payees are in the 1016's. So the first
9 one was the guerilla payments, which are identified, as I
10 just described, and the second payments are to government
11 officials.

12 And these payments (b)(7)(C) are very descriptive in
13 nature, in that just looking at SEC Exhibit No. 11, as you
14 see army official, we see a police official, and you see a
15 Battalion Inteligencia. Those are specific army groups
16 and/or officials. So those types of documents are fairly
17 described on the face.

18 You have others such as the last one, that says,
19 (b)(7)(C) and this is to a specific vendor. In this
20 case, many times (b)(7)(C) I understand, negotiates
21 with a third-party vendor to donate or to give materials to
22 an army official.

23 In that case, without looking, without asking him,
24 just looking at the face document, one may not be able to
25 tell whether it's a government or not-government payment.

1 So in that case, I would say it would be unusual
2 for him to charge any other department. Otherwise, that
3 question would be raised.

4 Q Okay. So there is a process, or procedure where,
5 you know, a red flag would show up if the security department
6 was making a government -- payment to a government official
7 out of somebody else's account, or another account unrelated
8 to -- not the securities accounts.

9 A That's correct.

10 Q During this process, when you sit down with (b)(7)(C)
11 (b)(7)(C) and you have your print-out of the transactions
12 from accounting that was -- that were done in security
13 accounts for the quarter, and he brings his 1016's -- if I
14 understand you correctly -- can you, looking at the
15 documentation, tell what the specific nature of the
16 transactions are?

17 A In general, the payments that I see every quarter,
18 sitting down with (b)(7)(C)
19 (b)(7)(C) which I was later to be -- to know that it relates
20 to payments that are made to the guerillas --

21 Q Who told you that?

22 A That -- who told me about the guerilla payments, or
23 who told me about the code name?

24 Q The code name.

25 A The code name, I recall being told that by (b)(7)(C)

1 Q Do you ask about each payment in the ledger, each
2 payment that was made from the accounts? If -- let me
3 withdraw, because I can ask you specifically.

4 If you see an entry that says, (b)(7)(C) does
5 he tell you that was not a payment to a government official,
6 that was a payment to a guerilla group and -- so do you go --
7 I'm asking do you go line by line through all of them and
8 have him tell you what the nature of each payment is?

9 A My normal procedure today is to sit down with (b)(7)(C)
10 (b)(7)(C) and to -- or at this time, he's already gone, but
11 normally with the head of security. And I review all the
12 1016's that he has recorded.

13 I don't inquire as to each individual payment, but
14 -- because we know he has done separated between operations
15 and logistics -- but I do look at the payments made to
16 (b)(7)(C) Obviously, I don't inquire about every one, because

17 these, as I was told when I first came to Colombia, these are
18 payments -- the guerilla payments are -- have been approved
19 by the corporation and are something that is not against
20 policy in Colombia. So I don't inquire about every
21 individual payment that's made, if that's your question.

22 Q Who told you that these payments were approved by
23 the corporation when you came to Colombia?

24 A The guerilla payments?

25 Q Yes.

(b)(7)(C)

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1 A (b)(7)(C) don't recall who, if it was at the time
 2 (b)(7)(C) when I joined the company, or when I arrived in
 3 Colombia.
 4 Q What did you understand that to mean, approved by
 5 the corporation?
 6 A My understanding that the approval meant that these
 7 payments were not illegal, and that they were not to be
 8 reported, or did not fall under the purview of the FCPA.
 9 That was my understanding.
 10 Q Did you have an understanding of a level of
 11 approval? When someone says to you, you know, that this has
 12 been approved by the corporation, did you understand that it
 13 was (b)(7)(C)
 14 A I don't recall.
 15 Q You discussed -- and I just don't want this to get
 16 lost in your answer, what I suspect may be the case -- is you
 17 discussed your procedure for doing this check with security
 18 today, with the head of security today, where you sit down
 19 and you, you know, you look at certain items. My
 20 understanding is you've been doing this for almost three
 21 years now.
 22 Has that procedure evolved over the time, because
 23 you know, for whatever reason, maybe you've gained more
 24 information, or you've gained a greater facility with the
 25 specifics of payments that are made in these accounts. Is

1 involved with the entire process, from the signing of the
 2 1016 to the disbursement of the funds.
 3 Q Did you ask him, you know, to -- did he explain to
 4 you -- he, being (b)(7)(C) -- what exactly was
 5 going on with these payments and these accounts?
 6 A He explained to me the mechanics of how, first of
 7 all, the code names that were used for certain types of
 8 payments. He explained the method of payment, and he
 9 explained who received the payment.
 10 Q And did he explain that to you with reference to
 11 some document that -- some company record that provided this
 12 information?
 13 A I don't recall.
 14 Q At this point in time, when you first got this
 15 assignment, and you're getting involved in the detail of how
 16 these payments are made and these accounts, did you have any
 17 concerns about the control over these funds?
 18 A (b)(7)(C) I felt comfortable with the controls that
 19 were in place to record and identify these types of payments.
 20 But taking into account my background, what I didn't feel
 21 comfortable with, and I felt that that's something -- that
 22 that procedure in place was the funds, you know, we never --
 23 or I never feel like until a -- as an auditor, I don't --
 24 unless I know who is actually receiving the monies, you know,
 25 there's never no check to see if that money was received by a

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1 that the case?
 2 A It's -- when you say evolved, that it's changed
 3 since that -- since --
 4 Q You talked about, or you mentioned that you don't
 5 review every payment, every -- you know the specifics of
 6 every payment that comes out of -- you know, that is on your
 7 green list of transactions in the security account.
 8 When you were first charged with this duty in early
 9 1997, (b)(7)(C) you know, "I need you to do this.
 10 I want you to do this. This is going to be part of your
 11 job." Right then, the first time you did it, what did you
 12 do?
 13 A The best of my recollection is that I sat down with
 14 (b)(7)(C) and basically did what I'm doing, you
 15 know today, in that I went through in -- at that point,
 16 reviewing all payments that were recorded in the securities
 17 account. Again, in the logistics and the operations.
 18 Q And what was your state of knowledge at that point
 19 in time regarding guerrilla payments and the types of payments
 20 that were being made through these accounts?
 21 A I didn't know the process in its entirety, in terms
 22 of how payments were actually made, who received the money,
 23 how it was received. So I was strictly just know where they
 24 were recorded.
 25 After that was given to me, I obviously became more

1 third party, and I'm talking specifically about the guerrilla
 2 payments.
 3 Q Take a very specific question. How did you know at
 4 that time that (b)(7)(C) wasn't pocketing cash?
 5 A That's a very valid question, and that's been my
 6 concern (b)(7) since day one, because the only person that
 7 requests funds and payments for guerrillas is the head of
 8 security. No one ever knows who -- or negotiates with these
 9 groups, except for himself. And that's been my, if you will,
 10 my concern since day one.
 11 But as it was explained to me, that it's the
 12 procedure in place, and that the only way that we can assure
 13 that these monies have been delivered to these groups, is
 14 that if we don't give them the money, they burn down our
 15 farms, or they damage -- or they may harm our personnel.
 16 Q A great deal of trust is placed in the integrity of
 17 (b)(7)(C)
 18 A That's correct.
 19 Q I want to get a better understanding of the codes
 20 that you talked about that (b)(7)(C) uses in the
 21 documentation for these sensitive payments, guerrilla
 22 payments. Why is he using codes?
 23 A As it was explained to me, all payments to these
 24 groups are paid in cash. So the normal process is to use a
 25 third party, and that's why that -- I think in various

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(b)(7)(C)

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1 occasions I saw a name other than (b)(7)(C) pod, but it
 2 was specifically for the payment to these groups.
 3 Q And that name appears in the ledger entry, correct?
 4 A It appears on the 1016 and the ledger entry.
 5 Correct.
 6 Q Okay. Is there any other document, other than the
 7 1016 and the ledger entry which reflects the transaction?
 8 A To the groups?
 9 Q Yes.
 10 A I have seen that he's, at times, prepares a -- in
 11 just a form that he types up to seek approval for these types
 12 of payments.
 13 Q Does that approval in any way expand on the
 14 information and describe exactly what the transaction is, or
 15 describe in any great detail exactly what -- you know,
 16 approval is being sought to pay guerrillas, or whatever other
 17 sensitive payment?
 18 A Again, because of the delicate and confidential
 19 nature of the payment, very little description is placed on
 20 whichever document that he presents.
 21 Q Who, within Banadex's organization or in the
 22 Chiquita organization as a whole, can look at these codes and
 23 tell you what they mean, tell you who, you know, who received
 24 that money and what the purpose of that, you know, that
 25 expenditure of funds was?

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1 A I can only speak for the Colombian division, and
 2 that would be you know, people that have knowledge of this
 3 account. If -- the people that have -- that approves it are
 4 (b)(7)(C)
 5 Q More specific than that, though, who could look at
 6 a specific entry in the ledger, see the name, look at the
 7 1015, and say, "Oh, that's what that was for." Not in
 8 general, just that it was, you know, that this must have been
 9 a guerrilla payment, but who could look specifically at it and
 10 know what that transaction was?
 11 A Let me see if I understand the question. If
 12 somebody looks at the general ledger, and sees that the
 13 description of (b)(7)(C)
 14 Q Yes.
 15 A -- can they -- can a person -- what person could
 16 come away with that and say, "That's a payment to the
 17 guerrillas."
 18 Q Yes.
 19 A I would say at least myself, and (b)(7)(C)
 20 (b)(7)(C) and I would also -- I can't speak for him, but I
 21 would think the person who knows the code name is (b)(7)(C)
 22 well.
 23 Q Are there different code names, depending upon
 24 which guerrilla organization is being paid?
 25 A Again, we don't know, and I'm not -- I'm never -- I

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1 don't even ask, because it's so sensitive. He coordinates,
 2 as (b)(7)(C) explained it to me, he coordinates that money
 3 himself, and through an intermediary, the money is taken to,
 4 if you will, the jungles of where they are and distributed.
 5 I don't know -- there's no code, secret code, as to if it's
 6 to the left wing or the right wing, or who it is.
 7 Q You just don't know that level of detail.
 8 A I don't know.
 9 Q Do you know if (b)(7)(C) knows that level of
 10 detail?
 11 A I don't know.
 12 (b)(7)(C) We'll go off the record at this point
 13 for lunch?
 14 (b)(7)(C) Fine.
 15 (b)(7)(C) Okay. Off the record at
 16 approximately 10 minutes before 1:00.
 17 (A brief recess was taken.)
 18 BY (b)(7)(C)
 19 Q Okay, we're back on the record at approximately 10
 20 minutes after 2:00. No discussions of substance were had
 21 while we were off the record. Is that correct?
 22 A That's correct.
 23 Q Not counting the discussion of the green life of
 24 bananas, but -- assuming that's not of substance.
 25 Before lunch we were talking about an FCPA --

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1 quarterly FCPA compliance, quarterly review procedure that
 2 began in, I think you said early 1997, where you would sit
 3 down with (b)(7)(C) and review entries in the sensitive
 4 payments accounts.
 5 Prior to the time when you were charged with that
 6 duty, did you understand that there was another review
 7 process in place?
 8 A I understood that (b)(7)(C) was responsible for
 9 the overall FCPA compliance.
 10 Q Okay, but as far as you were being charged now with
 11 the duty of a very specific review procedure. Did you have
 12 any understanding from whatever source, that there was
 13 another -- that this was either replacing another review
 14 procedure, or that this was going to supplement some other
 15 review procedure?
 16 A I don't recall.
 17 Q Why was there a need for a review procedure of
 18 Banadex's quarterly FCPA report?
 19 A Are you referring to the time that (b)(7)(C)
 20 had given to me, or --
 21 Q Right then. CBI-V1-001-003621
 22 A Right then?
 23 Q Yes.
 24 A Gerald, as I understand, the responsibility had
 25 been given to me, to the best of my recollection, after a

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(b)(7)(C)

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1 questionable payment had surfaced. And at that time, (b)(7)(C)
 2 (b)(7)(C) had given me the full responsibility to perform the
 3 review procedure with (b)(7)(C)

4 Q What did he tell you, with regard to this topic?

5 (b)(7)(C) Well, which is "this topic?"

6 THE WITNESS: The questionable payment, or the --

7 (b)(7)(C) This is in response to -- we're --
 8 you know, I had asked you why was there a need, and you had
 9 said it was, you know, a questionable payment had come up,
 10 and this procedure was being instituted. What did you
 11 discuss, with regard to the questionable payment and the
 12 need, you know, the tie-in between that and the need for this
 13 procedure?

14 THE WITNESS: Okay. I had knowledge of a
 15 questionable payment when (b)(7)(C) had asked me to
 16 gather some information regarding this payment in question.

17 And I recall shortly thereafter he wanted me to
 18 begin reviewing all payments that (b)(7)(C) was recording
 19 in the security payments, and that I was going to assume
 20 responsibility as of that date.

21 I don't recall any specific reason as to why. I
 22 guess, you know, just it happened simultaneous with the time
 23 when he had asked me to begin gathering information about
 24 this questionable payment.

25 BY (b)(7)(C)

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1 Q When did he ask you to begin gathering information
 2 about this questionable payment?

3 A He had asked me to gather all information relating
 4 to two specific payments that were made in the same time when
 5 -- at the conclusion of an audit review that was being
 6 performed by the internal audit department in Cincinnati.

7 Q Where were you when he asked you to gather this
 8 information?

9 A I mean, I know I was in Medellin, in the office,
 10 but I don't recall specifically where I was at.

11 Q I want to know the setting. Did he call you up on
 12 the phone? Were you in his office reviewing some other work?
 13 Who was in there? That's what I need to know.

14 A He called me to his office.

15 Q Was anyone else there?

16 A I don't recall.

17 Q What did he say to you?

18 A To the best of my recollection, he had indicated to
 19 me that he just came out of a meeting with (b)(7)(C)
 20 of internal audit and others, I don't know who they were, and
 21 that they were -- there was a payment that may have been paid
 22 to a government official, and that he needed all the

23 information that I could gather relating to these payments.

24 Q You said he came out of a meeting. Do you know
 25 what meeting that was that he came out of?

1 A We talked about the normal process of an audit
 2 earlier on.

3 Q Yes.

4 A We talked about the normal processes, who goes to
 5 the audits, and at the conclusion of every audit you normally
 6 have a close meeting with management. And there was -- as I
 7 came to know, there was a second meeting. First -- there was
 8 two close meetings, and he had come out of a close meeting
 9 with (b)(7)(C) and other -- I don't know who the others were,
 10 but he came out of the meeting with (b)(7)(C) at the end of
 11 the audit.

12 Q At different point in time, you said that he asked
 13 you to find out about these two payments, and then later you
 14 said that he asked you to find out about this payment.

15 When he comes out of the meeting, and he asks you
 16 to find out the information, is he talking at this point
 17 about one payment or two payments?

18 A I don't recall the exact, but I recall that there
 19 were payments -- to the best of my recollection, he said
 20 there have been payments. So whether he used two or one, he
 21 just said there have been payments that we need to -- there
 22 were questionable payments that may have been paid, and that
 23 I needed to gather information related to those two payments.

24 Q At this point in time, is this the first you're
 25 hearing of these payments?

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1 A When he had initially indicated to me regarding
 2 what payments, that was the first time that I was aware that
 3 there was a potential -- these potential payments that had
 4 ever paid to a government official.

5 Q I want to get into this in depth later, but for
 6 right now I want to get straight in my mind, at this point in
 7 time when he comes to you, prior to that conversation, did
 8 you have any knowledge of anyone bribing a Colombian
 9 government official?

10 A No. Until then, I had no knowledge of any type of
 11 payment, nor any bribes to any government official.

12 (b)(7)(C) Well, I think he just said, "I
 13 have no knowledge of any type of payment to a government
 14 official." Is it the case that you were aware that at times
 15 there were facilitating payments as you've described?

16 THE WITNESS: That's correct. Let me step back.
 17 (b)(7)(C) then he mentioned it, he mentioned payments to
 18 CEA, which are a customs agent, and that these payments may
 19 have been paid to government officials.

20 But when I earlier said that it was no
 21 government -- that I was not aware of any bribes, nor any
 22 payments to government officials, related specifically to
 23 these two payments in question that (b)(7)(C) had asked me about.

24 (b)(7)(C) Okay. I understood you to mean these
 25 potential problematic payments.

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(b)(7)(C)

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1 THE WITNESS: Okay.
 2 (b)(7)(C) But I appreciate the clarification,
 3 because it was out there. But I understood what you were
 4 saying.
 5 (b)(7)(C) Okay.
 6 BY (b)(7)(C)
 7 Q Again, at the point in time when (b)(7)(C) charges
 8 you with this new duty to sit down with (b)(7)(C) and
 9 review transactions in the sensitive security accounts, do
 10 you know whether at that point in time (b)(7)(C) was filling
 11 out quarterly disclosure forms of his own?
 12 A No, I don't.
 13 Q Once you began the process of undertaking this
 14 duty, who was filing the quarterly FCPA disclosure form that
 15 I take it is going to result from this sit-down?
 16 (b)(7)(C) I didn't understand that question.
 17 BY (b)(7)(C)
 18 Q Okay. You're sitting down with (b)(7)(C) as I
 19 understand it, for the purpose of determining what needs to
 20 be reported on the FCPA quarterly disclosure form. Is that
 21 correct?
 22 A I sit down with (b)(7)(C) to review all payments,
 23 1016's, that were made during the quarter and that are being
 24 properly recorded to Cincinnati.
 25 Q Properly reported on this FCPA disclosure form that

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1 we've seen there is iterations of this morning.
 2 A Properly reported on Juan Manuel's FCPA quarterly
 3 work letter.
 4 Q Okay, I'm -- and that was the essence of my
 5 question, is that at the end of this meeting, who is filing a
 6 quarterly report with the information that both of you have
 7 agreed needs to be reported. Is it just him? Is it you? Is
 8 it you and him?
 9 A What I'm -- when -- by the process of sitting down
 10 with him, I'm ensuring that we're communicating to the legal
 11 department in Cincinnati any and all payments, or knowledge
 12 of any payments, that were made to government officials
 13 during that period.
 14 In doing so, I sit down with (b)(7)(C) and review
 15 his FCPA report and mine to make sure that they're reporting
 16 to Cincinnati, and the legal department has that information.
 17 Q At this point then, is everything that's on his
 18 form also on your form?
 19 A When I began assuming this new responsibility,
 20 (b)(7) I initially started putting -- basically copying what
 21 he had in his information, his report, on my report. Just
 22 basically since I had knowledge of it, I put it on to my
 23 report. Later on, to avoid duplication of effort, I began
 24 just reviewing with him, and just putting on my report what I
 25 had initially signed.

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1 Q Has there ever been a time when you have had
 2 payments on a report you submitted which were not on (b)(7)
 3 (b)(7)(C) report?
 4 A To the best of my recollection, I don't recall.
 5 Q We spoke about (b)(7)(C) using codes
 6 in 1016's to describe certain sensitive transactions. Who
 7 devised this procedure?
 8 A It's a question of who set up that procedure?
 9 Q Yes.
 10 A I don't know.
 11 Q When you were an audit supervisor, approximately
 12 how many Chiquita locations did you go on site to during that
 13 time?
 14 A I recall I visited most of the locations that
 15 Chiquita has operations in.
 16 Q Can you give me an idea of about how many we're
 17 talking about?
 18 A In the tropics we have operations which I've been
 19 in Costa Rica, Honduras, Guatemala, Panama, Colombia, and
 20 Ecuador.
 21 Q Did these locations also make sensitive payments,
 22 not necessarily guerrilla payments, but sensitive-type
 23 payments of some fashion or form?
 24 A I can't answer that question, in that in all my
 25 visits, I did not audit compliance of FCPA. But again, the

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1 FCPA applies to all Chiquita divisions and employees, so I
 2 can only -- I think that they all have specific accounts
 3 where they set up where they record their sensitive payments.
 4 Q And -- I'm asking this more generally than FCPA
 5 payments. I mean, the type of sensitive payments I'm
 6 referring to are not necessarily facilitating payments, not
 7 necessarily to a government official.
 8 I mean, maybe the company is paying someone's
 9 housekeeper, maybe the company is paying someone's medical
 10 bills. You know, and I'm -- that's why I specifically said
 11 not guerrillas. You know, there are sensitive payments, is I
 12 guess the way I've heard them characterized.
 13 And they're you know, to mind, just payments where
 14 for one reason or another, the company doesn't want it to be
 15 general knowledge who the recipient of the payment is, or the
 16 reason for it.
 17 Now, understanding that the FCPA applies to all of
 18 Chiquita's, you know, subsidiaries, do other subsidiaries
 19 besides Colombia make payments like that?
 20 A I don't know.
 21 Q Did Chiquita have a company-wide procedure for --
 22 or concerning how to account for sensitive-type transactions
 23 in the books and records, in the company books and records?
 24 A Chiquita had a policy for how to record expenses
 25 that were, as I understood it to be, recorded under a general

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(b)(7)(C)

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1 manager expense account in divisions.

2 Q And what is a general manager's expense account?

3 A As I understand, the general manager's expense

4 account relates to sensitive payments -- how to record

5 sensitive payments, and in sensitive payments as I understand

6 them, any payment that is very delicate and confidential that

7 could have -- that could place the company and/or the

8 employee in harm.

9 Q How do you know about this procedure?

10 A I know about the procedure simply when I was an

11 audit supervisor and I needed to go to divisions and check

12 for compliance with the FCPA.

13 Q And does that procedure implicate your duties as

14 controller in Colombia?

15 A Could you repeat the question, (b)(7)(C)

16 Q Does -- you said that you needed to know that

17 procedure when you were an audit supervisor.

18 A Mm-hmm.

19 Q Does that procedure have anything to do with your

20 duties as a controller in -- for the Colombian operations?

21 A I can't answer the question, because in Colombia we

22 don't use a general manager's expense account to record

23 sensitive payments.

24 Q You use a different procedure?

25 A What I can comment on is the procedure in place

1 Expenses."

2 (The witness examined the document.)

3 BY (b)(7)(C)

4 Q Have you seen this document before?

5 A I don't recall.

6 (b)(7)(C) Could we go off the record?

7 (A brief recess was taken.)

8 (b)(7)(C) Okay, we're back on the record at

9 approximately fifteen minutes before 3:00. No discussions of

10 substance were had while we were off the record. Is that

11 correct?

12 (b)(7)(C) That's correct.

13 BY (b)(7)(C)

14 Q I think before we took that break, I had asked you

15 if you had seen this document before. Have you seen this

16 document before?

17 A To the best of my recollection, I don't see -- I

18 don't recall seeing this document.

19 Q (b)(7)(C) was the controller in Colombia that

20 you replaced. Is that correct?

21 A That's correct.

22 Q My frustration is that -- my understanding is that

23 all the names on the top are the controllers for the various

24 locations. I -- well, maybe you know these people. Can you

25 look at the names following the two on the front page of SEC

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1 when I arrived in Colombia, and that was the procedure that I

2 knew that existed in Colombia, and that was being applied and

3 submitted to Cincinnati in that fashion.

4 Q Why, when you arrived, was Colombia not using the

5 other procedure that you talked about, the general manager's

6 expense account procedure?

7 A I -- since I wasn't part of the -- I wasn't

8 involved in setting up this procedure, I don't know. It was

9 there when I got there.

10 Q I'm handing you a document that has previously been

11 marked as SEC Exhibit No. 13. Take a moment to review that

12 with your counsel, and while you do, I'll describe it for the

13 record.

14 SEC Exhibit No. 13 is a multi-page document

15 spanning Bates stamp 2CHQ6-000055 through and including

16 000058. The first page of the document is a memorandum dated

17 January 30, 1996. It has the Chiquita Brands International

18 at the top. The subject matter is accounting for sensitive

19 payments. It is from (b)(7)(C)

20 The second page is a different memorandum, again,

21 with the Chiquita Brands, subject accounting for sensitive

22 payments. The date is April 19, 1990, with a revision date

23 of February 16, 1994. And that memo has attached to it on

24 the last page a form that contains a chart and on the top it

25 says, "CBI Internal Audit Department 1995 General Manager's

1 Exhibit No. 13? Do you know who these individuals are? (b)(7)(C)

2 (b)(7)(C)

3 A Yes, I know them.

4 Q Who is (b)(7)(C)

5 A (b)(7)(C)

6 Q And who was he during this time period, January 30,

7 1996?

8 A (b)(7)(C)

9 (b)(7)(C)

10 Q (b)(7)(C)

11 A (b)(7)(C)

12 (b)(7)(C)

13 Q (b)(7)(C)

14 A (b)(7)(C)

15 Q (b)(7)(C)

16 A (b)(7)(C)

17 Q (b)(7)(C)

18 A (b)(7)(C)

19 Q (b)(7)(C)

20 A (b)(7)(C)

21 Q (b)(7)(C)

22 A (b)(7)(C)

23 Q Did you understand that there was a company-wide

24 procedure in place to use a manager's expense account code

25 for sensitive payments?

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(b)(7)(C)

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1 A I understood that there was a mechanism for
2 separating sensitive payment in specific accounts, but not
3 necessarily a company-wide procedure for doing so.
4 Q Why didn't Banadex and the Colombian operations use
5 the general manager's expense code?
6 A I don't know.
7 Q We talked about during your time in audit, you had
8 gone to other locations. Did they use the general manager's
9 expense account code?
10 A I don't recall which divisions had or hadn't -- or
11 didn't have a general manager's expense code.
12 Q Were there other locations that had their own
13 procedure for dealing with sensitive payments?
14 A I don't recall. I know that -- what I do know is
15 that each division had a mechanism to -- when the auditors
16 were asked to audit, they were segregated in specific
17 accounts.
18 Q When you arrived in Colombia, who explained to you
19 the way things work with regard to the security accounts and
20 sensitive payments in Colombia?
21 A To the best of my recollection, it was (b)(7)(C)
22 (b)(7)(C)
23 Q I'm not talking about -- I think we had talked
24 about you had a, you know, a candid discussion with (b)(7)(C)
25 (b)(7)(C) after you were charged with the duty of sitting down

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1 with him to do FCPA compliance-type review.
2 I'm talking about -- I don't want you to confuse
3 the two -- I'm talking about when you walk in the door and
4 you're going to begin functioning as a controller in what I
5 take to be a much earlier time in November, 1996. Who tells
6 you what the situation is with regard to sensitive payments
7 and, in particular, the security accounts?
8 A When I arrived in Colombia?
9 Q Yes.
10 A I don't recall, because at the time (b)(7)(C)
11 was responsible. So my -- you know, I knew what my
12 responsibility was, in terms of completing the quarterly
13 report, but I don't recall having any discussion.
14 Q I'm moving beyond the FCPA quarterly report.
15 A Mm-hmm.
16 Q And I'm talking more generally of you, as
17 controller, walking into your new job and your new office,
18 and who explains to you, you know, the sensitive payment
19 situation and, in particular, the specific accounts in
20 Colombia, the security accounts?
21 A (b)(7) when I first arrived in Colombia, I spent
22 several days transitioning with the former controller (b)(7)
23 (b)(7)(C) and to the best of my recollection, he mentioned the
24 structure of the -- the process briefly, and how it operated.
25 Q And what did he tell you about how it operated?

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1 A Again, to the best of my recollection, that they
2 were maintained in the security account, and he went on to
3 explain very briefly the -- what the logistics account was
4 used for, and what the operations account was used for.
5 And he didn't go into any detail in terms of
6 guerrilla payments. He assumed that I knew what these
7 payments -- that these payments were being made.
8 Q And when you say they, were you talking about
9 sensitive payments?
10 A I was talking, when I said --
11 Q Because I think you said, "They were being made."
12 A Oh, I was referring to the guerrilla payments.
13 Q How many security accounts are there?
14 (b)(7)(C) accounts or subaccounts?
15 (b)(7)(C) Subaccounts under the umbrella of
16 security accounts.
17 THE WITNESS: Right. I don't recall the exact
18 number, but more than 10.
19 BY (b)(7)(C)
20 Q Are they all active?
21 A They're all active.
22 Q And is that today, the time period you're giving me
23 that answer for?
24 A Correct.
25 Q When (b)(7)(C) explains these accounts to you, you had

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1 said, "He told me logistics is this," or I think you
2 mentioned operations. Is that -- what does he say to you,
3 more specifically?
4 A Again, to the best of my recollection, he explained
5 that the logistics account is aware of payments to -- or
6 where facilitating payments to government officials are
7 recorded, and the operations account is used for payments to
8 the guerrillas.
9 Q Did the logistics account have a code or you know,
10 a number that --
11 A Subaccount?
12 Q Yes.
13 A Yes, but I don't recall the exact codes.
14 Q What other accounts were there?
15 A One second. I guess what it would be helpful to
16 clarify --
17 Q Sure.
18 A -- (b)(7) is the account structure, whether it's a
19 security department, or the controller's department, or the
20 production department, every department has its perspective
21 subaccounts.
22 And in these accounts you have your miscellaneous
23 accounts, you have your salary, you have your benefits, you
24 may have commissions or any other -- so depending on the
25 specific department, it may have an additional subaccount

(b)(7)(C)

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1 that you can look at.

2 But in general, all departments have a -- pretty
3 much a standard set of accounts, because we assume that we're
4 all going to have payroll, we're all going to have
5 miscellaneous, and benefits. That's the account structure,
6 to put things in perspective a bit.

7 Q So what makes security different is it has this
8 logistics account and this operations account that are the
9 focus.

10 A That's correct.

11 (b)(7)(C) Going back to SEC Exhibit No. 13 for
12 a moment, understanding that you all did not follow the
13 general manager's expense -- did not use a general manager's
14 expense account, there are some procedures in here, and I
15 want to see if you all were following something similar to
16 that.

17 Under paragraph one, the second bullet point, it
18 talks in terms of a list of transactions in the manager's
19 fund account will be prepared quarterly by the local
20 controller. And why don't you take a minute to read
21 paragraph one, because it's in the context of the general
22 manager and the region manager sitting down to review
23 transactions in the manager's fund account for the quarter.

24 (The witness examined the document.)

25 BY (b)(7)(C)

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1 Q Let me start here. With regard to guerrilla
2 payments, facilitating payments, sensitive payments in
3 general, did (b)(7) maintain any supporting documentation or
4 any documentation regarding those payments in his own files?

5 A The time that I arrived in Colombia, I don't know
6 if (b)(7)(C) had maintained his separate file, but (b)(7)
7 (b)(7)(C) maintained files for these payments.

8 Q We talked about the quarterly review that -- of the
9 security accounts that you were charged with performing.
10 This paragraph, paragraph number one, talks about a quarterly
11 review by the general manager's supervisor and the general
12 manager.

13 It says, "Once each quarter, the general manager's
14 supervisor, typically a region manager, will review each
15 transaction in detail and approve on an after-the-fact basis
16 that the expenditure was properly authorized, documented, and
17 supported, documentation and support exists for each
18 transaction recorded in the manager's fund account for the
19 quarter, and that the expenditure was reported on the
20 appropriate quarterly report of the statement, policies, and
21 procedures, if any payments, whether government officials or
22 entities, or payments to any other persons or entities
23 required to be sent to the law department."

24 During your time in Colombia, who is the general
25 manager?

1 A (b)(7)(C)

2 Q And who was the general manager's supervisor, the
3 region manager?

4 A (b)(7)(C)

5 Q Did (b)(7)(C) ever perform, or
6 did they -- let's start with did they ever perform a detailed
7 review of the transactions in the security accounts?

8 A I don't know.

9 Q The second bullet point here says in the
10 parenthetical, "A list of such transactions should be
11 prepared by the local controller." Do you prepare quarterly,
12 a list of transactions in the security accounts?

13 A You say the list of security payments, both what --
14 operations and logistics?

15 Q Yes.

16 A The --

17 (b)(7)(C) Do you mean separate from what's
18 generated automatically in the accounting system, the general
19 ledger?

20 (b)(7)(C) Yes, I'm -- you know, it's not really
21 a tricky question. I'm looking at the document, and it
22 really seems to me to be suggesting that some very summary
23 list independent of just printing out the general ledger is
24 being prepared -- or should be prepared -- by the controller,
25 and is given to the general manager and the region manager so

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1 they could sit down without the ledger -- they use this list
2 instead -- and -- because otherwise, I mean, the word
3 prepared --

4 (b)(7)(C) I'm sorry, where are we?

5 (b)(7)(C) The parenthetical on the second
6 bullet point. And that's my interpretation of the words
7 "should be prepared." You know, if it were merely printing
8 out the green sheet from the ledger, which you know, would
9 seem to be a very similar exercise, but I don't know. I'm
10 struggling with this and you know, I have you here today for
11 a short time as the controller, and it's my opportunity to --

12 (b)(7)(C) I see. Because your last previous
13 question, I think was, "Do you prepare a list of transactions
14 in the security account," and one answer to that is, "Well,
15 you push a button out of the general ledger system, and that
16 presents you --

17 THE WITNESS: A listing.

18 (b)(7)(C) -- a list of transactions.

19 (b)(7)(C) Exactly. If that's what prepare
20 means. I -- you know, prepares is suggesting here, you know,
21 something else. But I don't -- you know, that's what I'm
22 bringing to this, and that may well be the case.

23 But independent, if that's what you do, you know, I
24 don't -- in some shape, manner, or form, are you getting some
25 type of list quarterly, or somebody quarterly asking you,

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(b)(7)(C)

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1 (b)(7)(C) to --
 2 (b)(7)(C) Well understand that what I read
 3 here in SEC Exhibit No. 13 is that this is a procedure to
 4 apply to a general manager's expense account.
 5 (b)(7)(C) Yes.
 6 (b)(7)(C) Which he's explained to you that
 7 they didn't use.
 8 (b)(7)(C) Yes. Okay. All right.
 9 (b)(7)(C) That said, what we're doing is
 10 you're asking -- your questions are does this different
 11 procedure for a different type of account, were they applied
 12 piece-by-piece to the security accounts. Is that the theme
 13 we're --
 14 (b)(7)(C) Yes.
 15 (b)(7)(C): Okay. All right. Now I
 16 understand.
 17 (b)(7)(C) And I'll tell you that in the
 18 context, that I understand that you said you didn't see this,
 19 and that you don't use the accounts, but I'll give to you
 20 that everyone has -- no one has yet to assert to me that this
 21 wasn't -- with Jorge (b)(7)(C) name on there, it's been
 22 represented to me that the spirit of the operation was that
 23 those were being treated as general manager's expense
 24 accounts.
 25 So that's why I, you know, I wouldn't ordinarily go

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1 down this exercise, you know, with what you said, if that
 2 were not the background. So you understand where I'm coming
 3 from?
 4 THE WITNESS: I understand. I understand.
 5 (b)(7)(C) Okay.
 6 THE WITNESS: So as far as the question -- the
 7 answer to your question, the documentation support exists for
 8 each transaction. Except for the -- what we do have is the
 9 listing that comes directly from the general ledger which
 10 shows all the activity recorded in the security account.
 11 BY (b)(7)(C)
 12 Q Was someone -- and the obvious people who are
 13 (b)(7)(C) -- in paragraph one, asking you for that
 14 quarterly?
 15 A Not that I recall.
 16 Q Paragraph two says, "The general manager or
 17 appropriate region manager will accompany the underlying
 18 supporting detail to Cincinnati after the quarterly review,
 19 and submit the detail to (b)(7)(C) the general counsel,
 20 for this review." Do you know whether anyone was sending, or
 21 in some manner getting supporting detail for the transactions
 22 in the security accounts, the operation and logistic
 23 accounts, to -- and I take this to mean, you know, more
 24 generally, the legal department in Cincinnati, not
 25 specifically (b)(7)(C) who I understand is not with the

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1 company any more, but the general counsel. Do you know if
 2 that was occurring?
 3 A I don't know.
 4 Q Paragraph three, it says, "The Vice President,
 5 Internal Audit, has been requested to review manager's fund
 6 expenses submitted to the law department every six months."
 7 Again, it's followed by three bullet points.
 8 Who was the vice president of internal audit during
 9 this time period, January of 1996?
 10 A (b)(7)(C)
 11 Q Do you know whether (b)(7)(C) is reviewing, on a
 12 half-yearly basis, the supporting documentation for the
 13 manager's fund expense accounts that was being submitted to
 14 the law department?
 15 A For the -- what was the -- for the --
 16 Q This paragraph here, to me, is saying that (b)(7)
 17 (b)(7)(C) every six months himself, is going to sit down with
 18 the supporting documentation that has made its way to
 19 Cincinnati, and he is going to -- for whatever reason, being
 20 you know, probably because it was sensitive in nature, the
 21 documents -- he is personally going to sit down and, you
 22 know, for a limited-eye-only review, review the supporting
 23 documentation and make sure that, you know, those three
 24 bullet points here, to assure the general manager's expenses
 25 were reviewed and approved for the previous two quarters on

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1 an after-the-fact basis, and assure compliance with the
 2 accounting provisions of the FCPA, bullet point two, to
 3 assure that disbursements have proper underlying support and
 4 documentation, bullet point three, to assure that payments to
 5 government organizations or individuals were reported on the
 6 appropriate quarterly report of statement of policies and
 7 procedures, to the law department.
 8 Generally, not just Colombia; you know, maybe from
 9 your experience in internal audit or whatever, do you know
 10 whether (b)(7)(C) was conducting this review on a half-yearly
 11 basis?
 12 A (b)(7)(C) kept these types of sensitive
 13 payments very confidential. And I can't say whether yes or
 14 no, if this was being done.
 15 Q As a member of the audit staff, you would not have
 16 been privy to this type of documentation or review?
 17 A As a member of the audit department, I was never
 18 asked by (b)(7)(C) to participate in any type of review of
 19 information that was submitted up to Cincinnati.
 20 Q As controller in Colombia, would (b)(7)(C) or --
 21 you know, in paragraph two, the legal department, necessarily
 22 have had to come to you to get this information?
 23 A (b)(7) can you repeat the question?
 24 Q I'll ask it in English. Could this have been
 25 happening, this being the material making its way to the law

(b)(7)(C)

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1 department as paragraph two talks about, and (b)(7)(C)
 2 review of the documentation, could this have been happening
 3 without you, as controller, knowing that the documentation
 4 was being sent, and that it was being, you know, checked?
 5 A That's possible.
 6 Q Could you turn to the last page of SEC Exhibit No.
 7 13, Bates stamp ending in 000058? Have you seen this form
 8 before?
 9 A I don't recall.
 10 Q Did you ever discuss with (b)(7)(C) his efforts to
 11 provide historical documentation of transactions in the
 12 security account for the period 1993 through -- up until your
 13 arrival in Colombia?
 14 A I don't recall the exact time period, but I do
 15 recall talking to him during the course of an audit about
 16 some payments.
 17 (b)(7)(C) Can I see SEC Exhibit No. 13,
 18 please?
 19 (b)(7)(C) What do you need to see?
 20 (b)(7)(C) SEC Exhibit No. 13.
 21 (b)(7)(C) Sure. I'm handing you a document
 22 that has previously been marked as SEC Exhibit No. 34.
 23 Describe it for the record as a multi-page document spanning
 24 Bates stamp range 4CHQ1-000643 through and including 000670.
 25 (The witness examined the document.)

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1 BY (b)(7)(C)
 2 Q Why were the logistics account and the operations
 3 account not general manager's expense fund accounts?
 4 A I don't know.
 5 Q Is it a matter of just a name? Is that -- that's
 6 how basic my question is.
 7 A Okay. The -- as I understand it, it's just -- it's
 8 the way the payments are described in an accounting record,
 9 in your accounting records.
 10 Q I'm sorry, I don't understand.
 11 A Let me take a step back and explain to you. Just
 12 recently, I received a request by the internal audit
 13 department to open up a general manager's expense account
 14 effective January 1, 2000. So beginning January 1, 2000, the
 15 Colombia division will have a general manager's expense
 16 account.
 17 One of the steps, in order to obtain a general
 18 manager's, or the authorization to use one, is to receive
 19 explicit authorization from the controller, or in this case,
 20 (b)(7)(C) and the last -- within the last month, I
 21 received instructions to open an account and to begin using
 22 it January 1, 2000.
 23 What that means to me is, I'm going to go into my
 24 general ledger system and create an account code, whether
 25 it's separate from -- whether it's outside of security, or

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1 separate from security, still needs to be defined, which --
 2 somebody has to give me more guidance. But these accounts,
 3 logistics and operations, will be reported, and any other
 4 sensitive payments will be recorded under this new title, the
 5 general manager's expense. So it's very basic.
 6 Q So those -- when this transition occurs, what is
 7 presently -- and during our time period here, January 1996,
 8 with the logistics account and the operations account, those
 9 are going to die. They're going to become not-active?
 10 A Right, right.
 11 Q Okay.
 12 A There will be a general manager's -- whether we
 13 have subaccounts, that's yet to be defined, and that's what I
 14 need to discuss with corporate.
 15 Q Going back to SEC Exhibit No. 34 for a moment, have
 16 you ever seen this document before?
 17 A I don't recall.
 18 Q Have you ever seen any part of this document
 19 before? And specifically to help you out, I'm talking about
 20 the charts that we're looking at, the last page of SEC
 21 Exhibit No. 13, there are similar-type charts that are now
 22 being filled in, split throughout the document and you can
 23 see by the division line on the top that they relate to
 24 Colombia.
 25 A (b)(7)(C) I don't recall seeing these documents, but

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1 again, I don't deny that I have. I just don't recall.
 2 Q Okay. On the first page, front page of SEC Exhibit
 3 No. 34, you see this is addressed to (b)(7)(C) it's
 4 from (b)(7)(C) and it's dated July 1996,
 5 prior to your arrival in Colombia.
 6 The first paragraph says, "As you know, we
 7 periodically review the law department and internal audit
 8 records to verify that we have received summary reports on
 9 the supporting documentation for general manager's expenses.
 10 As a result of these reviews over the last two years, we have
 11 on a number of occasions requested support documentation for
 12 Turbo and Santa Marta. At this point, we have not received
 13 all the information needed for 1993 to 1996."
 14 During your time as controller in Colombia, has
 15 anyone asked you, or have you performed an exercise like SEC
 16 Exhibit No. 34?
 17 A I, as -- since I've been in Colombia, I have not
 18 prepared, to the best of my recollection, the type of
 19 quarterly -- responded to a type of request similar to this.
 20 (b)(7)(C) Would you gather that stuff up? I'm
 21 going to hand you a document that's previously been marked as
 22 SEC Exhibit No. 36. For the record, I'll describe it as a
 23 two-page document. At least to me it appears to be a copy of
 24 a ledger print-out, Bates stamped -- this two-page document
 25 is Bates stamp range 1CHQ17-000072 and following page ending

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(b)(7)(C)

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|---|--|
| <p>1 in 73. 2 (The witness examined the document.) 3 (Whereupon, SEC Exhibit No. 52 was 4 marked for identification.) 5 (b)(7)(C) I'm also handing you a document that 6 has now been marked as SEC Exhibit No. 52. I'll give you an 7 opportunity to look at that with your counsel. It's a 8 lengthy document. And while you're doing that I'll describe 9 it for the record. 10 SEC Exhibit No. 52 is multi-page document. The 11 first page says, (b)(7)(C) is 12 (b)(7)(C) Bates stamp 13 range is 14 - I'm sorry, 4CHQ1-001295 through 001427. 14 Look that over. We'll go off the record for a 15 moment. 16 (A brief recess was taken.) 17 (b)(7)(C) We're back on the record at 18 approximately twenty minutes before 4:00. No discussions of 19 substance were had while we were off the record. Is that 20 correct? 21 (b)(7)(C) That's correct. 22 BY (b)(7)(C) 23 Q Starting first with SEC Exhibit No. 36, have you 24 seen this document before? 25 A I recognize this document as a print-out of the</p> | <p>1 you know, with not any real reason behind it, tried to pick 2 some representative payments and thought we could go through 3 them and help me to understand what is going on here. 4 A Okay. Let's start with Bates stamp ending in 1300. 5 So, that's 4CHQ1-001300. 6 Q Okay, looking at the Payment (b)(7)(C) 7 A Okay, can I walk you through this, (b)(7)(C) 8 Q Yes. 9 A Okay. If you look at the first, a description on 10 the 1016 reads (b)(7)(C) 11 Q When you say on the 1016, let's start with what is 12 the 1016? 13 A Okay. The 1016 in Colombia represents a 14 "Comprobante de Pago," which translated means a "request for 15 payment." And comprobante de pago is c-o-m-p-r-o-b-a-n-t-e 16 de, de, pago, p-a-g-o. 17 So this is a particularly typical example of a 18 document presented for security payment. 19 Q And the "this" you are referring to is Bates stamp 20 ending 1300, part of SEC Exhibit No. 52. 21 A Correct. 22 Q And 1016, this thing that I keep hearing, this is 23 related -- I'm going to say obviously, but that's why I'm 24 bringing it up, because it may not be too obvious -- up in the 25 right-hand corner of this document I see FCTV 1016.</p> |
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| <p>1 account activity in Colombia. 2 Q Can you be more specific than that? 3 A It looks like it's the -- a listing of the activity 4 in the Gastos de logistica and Gastos de operaciones. 5 Q And are those the logistics and operations account 6 within the security department account structure that we've 7 been discussing periodically here today? I don't know what 8 "gastos de" means. So -- 9 A Our -- 10 Q -- a simpler question -- it may be a more simple 11 question that you think. 12 A "Gastos" mean, translated into English, mean 13 "expenses, operation expenses, logistic expenses, costs." 14 It looks like that these are the logistics and 15 operation accounts that are used to report the security 16 payments. 17 Q Throughout the morning, we had talked, you know, 18 with some detail, but basically in theory, about payments 19 from these accounts and the documentation that results from a 20 transaction in these accounts. 21 I want to take this opportunity now to you know, in 22 reality, look at what I believe to be the security account 23 documentation and the general ledger. So if there's anything 24 that you want me to look at, you know, that you think would 25 be helpful, I'd appreciate that. But other than that, I --</p> | <p>1 A Yes. 2 Q Is that -- it's called a 1016 because it has 1016 3 on it. Is that -- 4 A That's my understanding as well. There's no reason 5 why it was given 1016 as opposed to 504. It was just 1016 6 was the name that it's always had. 7 (b)(7)(C) That's just the number of the 8 form. 9 THE WITNESS: That's the number of the form. 10 Right. 11 BY (b)(7)(C) 12 Q You call that 1016 like I call the document we 13 started today with 1662? 14 A That's correct. CBI-V1-001-003629 15 Q Okay. Okay. 16 A Okay. If we look at this document (b)(7)(C) here 17 you have a donation program control, donaciones programa 18 control. 19 Q That's under por concepto de? 20 A Under por concepto de, and that means under the 21 concept of, and here you have the amount is for 3 million 22 pesos, or equivalent to \$3,000. And you look under the 23 specific account code, which is here you have a cuenta, and 24 this cuenta is where the account code that's being charged is 25 recorded. And this, for the record, is the source document</p> |

(b)(7)(C)

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1 that's used to enter a transaction into the system of
2 accounting.

3 If you look to the document SEC Exhibit No. 36, you
4 see the date, the account code relates to the 1016, the
5 description on the activity list also reflects the
6 description on the 1016, por donaciones programa control.
7 The amount value is 3 million pesos, which also agrees with
8 the 1016.

9 And you look at the -- on the left-hand corner,
10 there's a category d-e-b-e, debit. That's all your debits.
11 So you're debiting your account for the value of the payment.
12 On the far right-hand corner, you have a saldo actual, and
13 that's essentially just a running total of your debits and
14 credits on the report.

15 The middle column, h-a-b-e-r, haber, is where you
16 record your credits in this account. And that, in essence,
17 is what this report -- why you would read a report like this.

18 Q Looking for a moment at the 1016 Bates stamp ending
19 in 1300, we talked about the number under cucuta.

20 A Right.

21 Q And that that ends in 216. That number represents,
22 if I reference over to SEC Exhibit No. 36, I see the same
23 number followed by (b)(7)(C) So that number
24 ending in 216 tells me that this is going to be entered into
25 the logistics account. Is that correct?

1 Q Is this a guerrilla payment?

2 A I don't know.

3 Q If you -- and I see the page -- if you look at the
4 page before and the page after, so Bates stamp ending in
5 1299, and Bates stamp ending in 1301, do either one of those
6 documents, to your eye, looking at them, have anything to do
7 with the 1016 we have been looking at, Bates stamp ending in
8 1300? I have noticed from time to time they do, and
9 sometimes I can not -- I want to make sure I am not making a
10 mistake here and --

11 A (b)(7) if you look at the document Bates number
12 1298.

13 Q Ninety-eight?

14 A Right, the one prior to this 1299.

15 Q Okay.

16 A There is an amount for 1 million -- 750 million
17 pesos. And that's what this document relates to.

18 Q So 1299 relates to that. How about the one
19 following --

20 A Three hundred?

21 Q Yes, 1300. I will tell you, I did not think so,
22 because there seemed to be these handwritten numbers on here
23 that you have to kind of search for, like Find Waldo, and
24 this one has number three, and then this has now the number
25 sign four, and then the following one has number five, and

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1 A That's correct.

2 Q Going back to the 1016 for a moment, to the entry
3 under codigo cia -- codigo is c-o-d-i-g-o, and cia, c-I-a.
4 What is that entry, and what does the cargo a CI Samarex
5 after that signify?

6 A If you recall, we said at the time there existed
7 two exporting companies, Banadex and Samarex. Banadex being
8 the exporting company for all the turbo farms, and Santa
9 Marta being the exporting company for all the Santa Marta
10 farms.

11 So in order to classify the payments in their
12 respective divisions, this here is saying that it's --
13 "cargo" means "to charge" in English. So you're charging
14 Samarex for the related charge.

15 Q Who is (b)(7)(C)
16 (b)(7)(C)

17 A I don't know.

18 Q A description here, "Donaciones Programa Control,"
19 what does that mean?

20 A Translated, it means "donation for a control
21 program."

22 Q Okay, and beyond that, do you have any idea, or can
23 you tell me what is going on here?

24 A Just from looking at the face of this 1016, I can't
25 determine what this description is for.

1 then six, so I don't think so, but I didn't want to -- if you
2 don't know if it's related, then fine.

3 A Yes, I would say they're not related, (b)(7)(C) just
4 from looking at these documents, because I'm just adding up
5 these amounts, and they don't add up to the 3 million pesos.
6 So I would --

7 Q Okay. That's fine. Thanks. No, I appreciate your
8 help, but that's okay. Sticking with 1300 for a moment,
9 there is a signature next to (b)(7)(C)
10 Do you recognize that signature?

11 A Yes, I do.

12 Q Whose signature is that?

13 A (b)(7)(C)

14 Q Next to the second line on the right-hand side of
15 this document, again ending in Bates stamp 1300, there is the
16 (b)(7)(C) and then a space for a signature, and
17 there's a signature there. Do you recognize that signature?

18 A That signature is -- belongs to (b)(7)(C)

19 Q There's a line above that with a space for a
20 signature that -- who is supposed to sign there, on this
21 form?

22 A Can I take a step back, (b)(7)(C)

23 Q Absolutely, absolutely.

24 A One of the -- when we had talked previously about
25 the controls in place relating to whether (b)(7)(C)

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(b)(7)(C)

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1 charge a specific security payment to the wrong account, or
 2 submit it for payment?
 3 Q Yes.
 4 A One of the controls we do have in place, in
 5 addition to making sure that the accounts are correctly
 6 classified, is this particular thing we're referring to as
 7 the approval level.
 8 In the company, we have various levels of approval,
 9 and -- of which (b)(7)(C) has a very limited, a very low-
 10 level approval, in terms of dollar amounts of what he can
 11 actually sign on his own. Anything in addition has to be
 12 signed by a second signee. And normally that's myself or
 13 (b)(7)(C) who have appropriate signature levels, depending
 14 on our level.
 15 So the answer to your question, (b)(7)(C) what does
 16 this -- the "aprobado," which is "approved" in English -- the
 17 first line is "controlaria," which means "the controller's
 18 department," if you will, and the second line is "gerente,"
 19 which translated, means "general" -- you'd say the "general
 20 manager."
 21 (b)(7)(C) Do all transactions require a
 22 signature of the controller's department?
 23 THE WITNESS: No, they don't.
 24 (b)(7)(C) because I see some of these are
 25 blank on that line. Is there --

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1 THE WITNESS: Again, certain individuals have
 2 certain signing authority, so it's possible that if (b)(7)(C)
 3 if the particular amount falls within the limits of our
 4 general manager, you don't need a second signature.
 5 BY (b)(7)(C)
 6 Q Just while we're on this point, so I could very
 7 well see your name there and not see (b)(7)(C) And in that
 8 case, you would be the second signature to verify, or to
 9 approve a certain amount. Is that correct?
 10 A That's correct.
 11 Q And in an instance where the amount was very small,
 12 and within (b)(7)(C) own approval authority, I may very
 13 well see his own signature only and someone else -- and that
 14 would get processed by people who understand that he's okay
 15 for that amount. Is that correct?
 16 A I don't recall the amount that (b)(7)(C) has, but
 17 as I understand, any type of security payment has to have a
 18 second signature other than (b)(7)(C) has
 19 approval to sign expense reports for his people, but very
 20 limited approval for anything other than travel expenses.
 21 Q I had said very small. I characterized it, but I
 22 didn't mean anything by that. With regard to security
 23 payments in every instance, no matter what the amount, and we
 24 say -- when we say security payments, I'm talking in terms of
 25 payments -- facilitating payments in the logistics account,

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1 guerrilla payments in the operations account. Those are
 2 payment -- those payments always require another signature.
 3 Is that correct?
 4 A That's correct.
 5 Q Okay, and when I say another signature, who else
 6 can sign that, other than (b)(7)(C) signs himself. Who --
 7 give me the complete list of people in Colombia who can be
 8 that other signature.
 9 A The people who have that signing authority are
 10 either myself or (b)(7)(C) and in our absence, the second
 11 in command in terms of the operations is our operations
 12 manager. But that's in extreme circumstance, if we're out of
 13 the country and there's something that needs to be paid
 14 immediately.
 15 Also, (b)(7)(C) we recently were -- this year a new
 16 CAO was assigned. And that CAO has the same approval,
 17 signing approval, for these types of payments. So it's those
 18 three individuals.
 19 Q Who is the new CAO? CBI-V1-001-003631
 20 A (b)(7)(C)
 21 Q What happened to (b)(7)(C)
 22 A (b)(7)(C) resigned from the company.
 23 Q Do you know where he is now?
 24 A (b)(7)(C)
 25 Q

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1 you say the company, you mean Chiquita Brands?
 2 A He left Chiquita all together, and working for a
 3 different organization.
 4 Q Do you know who he's working for?
 5 A No, I don't.
 6 (b)(7)(C) I want to turn to a series of 1016's
 7 beginning with Bates stamp coding in 001328. So I want you
 8 to move ahead approximately 28 pages. And there's a series
 9 of 5 1016's, all for 1 million pesos. All have the
 10 description, to the extent they have one, of primera vuelta.
 11 And that's P-r-i-m-e-r-a Vuelta, V-u-e-l-t-a. And if you
 12 want to take a moment, you can look over SEC Exhibit No. 36
 13 and find them there.
 14 (The witness examined the document.)
 15 BY (b)(7)(C)
 16 Q Okay. The company being charged this time -- I
 17 think that is what we said the line was -- is "Codigo
 18 Compania." And it is -- this time it is "Operaciones
 19 Cincinnati." What does that mean?
 20 A I don't know. I mean translated, it means
 21 "Operation Cincinnati," but --
 22 Q Yes, okay.
 23 A -- I don't know what that description would mean
 24 otherwise.
 25 Q That's what I was asking. "Primera vuelta?" What

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(b)(7)(C)

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1 is he -- what does that tell us about that transaction? This
 2 one I tried to look up, and I couldn't find.
 3 (b)(7)(C) I have a guess, but I do not -- I
 4 am going to see how good my high school Spanish is.
 5 THE WITNESS: "Primera" is --
 6 (b)(7)(C): I spent three weeks in Spain.
 7 THE WITNESS: "Primera" is "first," and "vuelta,"
 8 depending on how it's used -- you can say "first trip," also
 9 can be interpreted as "first time."
 10 (b)(7)(C) I was going to guess "first
 11 flight."
 12 THE WITNESS: It also could be "trip" or "flight."
 13 "Una vuelta," or you can -- it can also be interpreted if you
 14 go for a vuelta in a car, to trip around, a trip in a car, a
 15 ride.
 16 BY (b)(7)(C)
 17 Q Can you tell me what this transaction is?
 18 A No, I can't.
 19 Q This form is slightly different, in that I don't
 20 see the cuenta entry place, but he -- and he being, I'm --
 21 (b)(7)(C) has a rather distinctive signature.
 22 A Mm-hmm.
 23 Q So next to (b)(7)(C) that -- do you recognize
 24 that as his signature?
 25 A It looks like his signature.

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1 Q Okay. That is who I was referring to when I said
 2 "he," and I just wanted to make that clear for the record.
 3 Where on the other document it had "cuenta," and I could see
 4 the account, in a similar space here on the left-hand side,
 5 there's a number this time, and instead of coding in 216, it
 6 ends in 070. Do you see that there?
 7 A Yes, I do.
 8 Q Okay. What does that tell me?
 9 A Looking at where the 1016 is recorded, it's
 10 recorded under the operations account. Given that, it -- if
 11 it's in the operations account, that's -- in the operations
 12 account is where we record -- normally record payments to
 13 guerrillas.
 14 Q The number that we're discussing coding in 070, if
 15 you take that number and you look at SEC Exhibit No. 36, that
 16 is the number that precedes the heading "Gastos de
 17 Operaciones." Is that correct?
 18 A That's correct.
 19 Q First payment we looked at, the number coded in
 20 216, and that sent us to the Gastos de Logistica, the
 21 logistics account. Is that correct?
 22 A That's correct.
 23 Q Okay, and now we're looking at -- this sends us to
 24 the operations account.
 25 A That's correct.

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1 Q Sticking with that page for one more moment, ending
 2 -- that page being the one coding in 001328 -- is this a
 3 guerrilla payment, this being this 1016, this document here?
 4 A I don't know.
 5 Q By using the word "operaciones," and it being in
 6 this account, am I supposed to assume -- and when I say am I,
 7 I mean is the organization, is personnel in Banadex, yourself
 8 as the controller, supposed to assume that this is a guerrilla
 9 payment, if you see this? Let me withdraw that, because
 10 that's -- it appears I have a loaded question, and that's not
 11 what I'm trying to do.
 12 Is he trying to tell you, "he" being (b)(7)(C)
 13 (b)(7)(C) by putting "operaciones" on here, and it coming
 14 from this account, is he trying to tell you that this is a
 15 guerrilla payment?
 16 A I don't know.
 17 Q If you could move ahead four pages to the page
 18 Bates stamp coding in 001331, there is a name on this page,
 19 next to what I believe translates into "paid in favor of:"
 20 "pagose a favor de." It is (b)(7)(C) last name I
 21 believe, it's (b)(7)(C) Do you know who (b)(7)(C)
 22 (b)(7)(C) is?
 23 A No, I don't.
 24 Q I want to move forward to page coding in Bates
 25 stamp 001378. Again, we have a 1016 reflecting a payment in

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1 favor of (b)(7)(C) Can you tell me what it says
 2 here under "por concepto de" for this?
 3 A I'm trying to -- it's difficult to read. It says
 4 here "programa" -- program -- "STA" is -- we used that as an
 5 initial for "Santa Marta." Then you have "programa U," or U,
 6 which again, "U" could stand for "Uraba."
 7 Q (b)(7)(C)
 8 A That's what it looks like. I can't make that out.
 9 But the -- with the next page, it's related to 10 million. I
 10 can't make out the last few words. I can't translate that.
 11 Q Okay. This one now, and the following numbers
 12 here, we could see on the right-hand side on the middle of
 13 the 1016 next to the first aprobado, there is N-27. And then
 14 if you turn to the following page, coding in Bates stamp
 15 1379, the memo that follows this 1016 also has N-27. And
 16 then matching up the amounts, as you were looking to do
 17 before, I come to the conclusion that these two may be
 18 related.
 19 My question is: are these two related, the 1016 that
 20 was 1378, and the memo -- document that looks like a memo
 21 that's 1379?
 22 A Looking at the -- comparing the two documents, it
 23 looks like both documents are related.
 24 Q At some point earlier in the day, I recall you
 25 saying something about at times, (b)(7)(C) would

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1 type something up or have some short memo asking for
 2 approval. Is this -- and this being Bates stamp ending in
 3 1379 -- an example of what you were trying to describe to me?
 4 A Yes.
 5 Q Looking at that document for a moment, what does
 6 "solicitud descombolso" mean?
 7 A "Le solicito descombolso" translated, means "I am
 8 soliciting or requesting" a disbursement for the sum of 10
 9 million pesos.
 10 Q On this document, he's not describing -- he's not
 11 giving detail regarding that -- the transaction. Is that
 12 correct?
 13 A That's correct.
 14 Q Let's stick to this for a moment, this being these
 15 two documents. I have SEC Exhibit No. 36, I have the 1016
 16 that is page 1378, and I have the memo, which is 1379. Is
 17 there another document that exists that tells me the true
 18 nature of a transaction like this? And I'm assuming -- this
 19 is from the operations account, and I have reason to assume,
 20 because of a long line of people telling me, that these are
 21 guerilla payments made in this account, that this is a
 22 guerilla payment.
 23 It's -- you know, so it's not a trick question,
 24 it's I want to make sure that I'm looking at everything that
 25 is out there, and that there's not some file somewhere, or

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1 puzzle. This is -- these are the two documents that would
 2 exist. Again, the communication is made via (b)(7)(C)
 3 (b)(7)(C) and approved normally by (b)(7)(C)
 4 BY (b)(7)(C).
 5 Q Moving forward for a moment to a document that is a
 6 1016 ending in Bates stamp 1381, I want to spend a brief
 7 moment on this one. Periodically throughout the day, and
 8 then I think we started, but then I asked you if you knew
 9 this individual -- this document is paid in favor of (b)(7)(C)
 10 (b)(7)(C). Is this the same (b)(7)(C) that we've
 11 spoken about a few times here today?
 12 A I don't know. I don't know.
 13 Q Okay, you can put those aside for the moment. I
 14 think we're done with this. Handing you a document that has
 15 previously been marked as SEC Exhibit No. 38. I'll give you
 16 an opportunity to review that with your counsel while I
 17 describe the document for the record.
 18 SEC Exhibit No. 38 is a multi-page document
 19 spanning Bates stamp range CHQ6-000707 through and including
 20 000712. Take a look at that document. And as I promised, I
 21 will tell you that if you would focus on page 000710, Bates
 22 stamp ending in that, under tropical operations, it's a
 23 discussion in two paragraphs under tropical operations that I
 24 want to ask a question or two about.
 25 (The witness examined the document.)

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1 some document that has slipped through the cracks that I
 2 don't have.
 3 (b)(7)(C) Well, when do these transactions
 4 date to? February, ninety -- or July?
 5 THE WITNESS: July.
 6 (b)(7)(C) July, 1996. There's a fundamental
 7 problem here, in that --
 8 (b)(7)(C) In that he wasn't there at that time.
 9 (b)(7)(C) Right.
 10 (b)(7)(C) Yes, so I am --
 11 (b)(7)(C) So he can't speak to the
 12 particular transactions.
 13 (b)(7)(C) Yes.
 14 (b)(7)(C) Unless by chance you know, you
 15 recognize this transaction and recall it at all.
 16 THE WITNESS: No, I don't.
 17 (b)(7)(C) No, I'm -- yes, and I understand
 18 that. And I am asking for your help more generally, in terms
 19 of your understanding when you walk through the door, of how,
 20 you know, how the documentation is working in these accounts.
 21 You know, not asking you with regard to this specific
 22 transaction, or even any of these in this exhibit.
 23 THE WITNESS: (b)(7)(C) this is an example of --
 24 these two documents are what you would find as support for a
 25 guerilla payment. You're not missing any piece of the

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1 THE WITNESS: Okay.
 2 BY (b)(7)(C)
 3 Q The first paragraph following tropical operations
 4 on page ending in Bates stamp 710 is talking about a
 5 situation. I don't want to spend a lot of time reading into
 6 the record what it says in describing the situation, but the
 7 beginning of the next paragraph says, "When the situation was
 8 identified," do you know who identified this situation?
 9 A No, I don't.
 10 Q The same sentence goes on to talk about a joint
 11 team of corporate controller's office, internal audit, and
 12 the local and Cincinnati-based Ernst & Young offices, a joint
 13 team of these individuals working on site in Colombia to
 14 assess the extent of the problem. Do you know anything about
 15 this joint team?
 16 A No, I don't.
 17 Q Handing you a document that has been previously
 18 marked as SEC Exhibit No. 39. I'll give you a moment to look
 19 that over with your counsel, and while you do that, I will
 20 describe it for the record. It is a multi-page document
 21 spanning Bates stamp range 1CHQ6-000566 through and including
 22 Bates stamp ending in 582. The document on the first page
 23 says, "Chiquita Brands International, Inc. Internal Audit
 24 Plan 1995, Audit Committee Book."
 25 (The witness examined the document.)

(b)(7)(C)

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1 (b)(7)(C)

2 Q Have you seen this document before?

3 A I recognize the document, but I don't -- can't say

4 I've seen this particular document.

5 Q You recognize the audit plan. Is that what you're

6 saying? But not his 1995 audit plan?

7 A I don't recall if I remember this particular year's

8 audit plan, but I do recognize this as the audit plan for

9 Chiquita Brands.

10 Q Were you involved in the process of putting

11 together an audit plan at any point in time?

12 A I don't recall being part of this process.

13 Q I just want to make sure that we're not limiting

14 ourselves to the 1995 audit plan. When you say you don't

15 recall being part of this process. Are you answering -- my

16 question was more general. It was, have you ever

17 participated, at any time during your employment by Chiquita,

18 in formulating, you know, a given year's audit plan?

19 A The audit plan was normally -- I say normally in

20 general use -- generally prepared by the director and up. So

21 the directors and (b)(7)(C) that would prepare it and that

22 would be based on audit reports and our feedback, supervisors

23 and managers. But I was never -- I was -- I can't say that I

24 was ever involved in drafting one up. But was giving

25 feedback to them.

1 I want you to focus on the last three entries on the chart,

2 the turbo. Next to the three turbo entries, under risk

3 weight, Colombia has 5M, turbo has 5M, 5M, and 5. Can you

4 explain to me what the 5 and 5M, those weightings, mean?

5 A Again, this is -- as I understand it, since I

6 wasn't involved in the preparation of these risk assessment,

7 or audit planning, looking at the far left end indicates

8 mandatory/statutory audits, and 5, as I understood it, it

9 needs -- well, let's see. Risk weighting -- I don't recall

10 this in the scale, where this fits in the scale of the risk

11 weighting.

12 Q Is there a six?

13 A I don't know.

14 Q Let me ask it this way. Five is not good. Is that

15 correct? One would be better?

16 A I would -- I can't say a five would not be good,

17 but five may mean there might be a higher -- it might -- that

18 particular division would go before any other division that

19 would be ranked a two, let's say.

20 Q And what do you mean by "go before"?

21 A Well, since we only have -- since our staff is just

22 -- we have a fixed number of staff, and also in coordination

23 with Ernst & Young we do specific audits that are asked of --

24 by Ernst & Young as well, I mean we can't physically -- or,

25 you know, we try to get coverage on an annual basis. We

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1 (b)(7)(C) Can you turn to page four, please?

2 Page four of the document. You'll see that there are page

3 numbers on the bottom of that, and that is Bates stamp ending

4 in 571. You'll see at the beginning of that, the second

5 sentence, there's a reference to the risk assessment process.

6 If you want to take a moment to look at this page,

7 my question is going to be can you explain to me the risk

8 assessment process.

9 (The witness examined the document.)

10 THE WITNESS: The question was, can I explain the

11 risk assessment process?

12 (b)(7)(C): Yes.

13 THE WITNESS: The risk assessment process -- again,

14 I never participated in either preparing or completing a --

15 the risk assessment model, where you would actually consider

16 all the various factors and put them into this model.

17 And based on that, that would tell you what

18 divisions -- and this is not -- this is, among other things,

19 this is not just to -- this is not all inclusive. It

20 includes other factors as well.

21 But it gives you an idea as to where to begin. It

22 audits the risks or the rotation of a particular division as

23 in the audit process.

24 BY (b)(7)(C):

25 Q Turn to page seven, page ending in Bates stamp 574.

1 I can't just -- we can't audit all our worldwide operations.

2 We try to get reasonable coverage that would be deemed

3 appropriate by both our external auditors and our vice

4 president of internal audit.

5 Q And when you said we in the context of the

6 question, we were talking about Chiquita's internal audit

7 department.

8 A That's correct.

9 Q Using this as a time frame your first -- using as a

10 time frame your time in internal audit at Chiquita, so that

11 was October 1994 through roughly October 1996?

12 A That's correct.

13 Q Okay. What was the perception of the Colombian

14 operations from the standpoint of the audit risk exposure of

15 the operations, to use the words here in SEC Exhibit No. 39.

16 A Before you go on any audits, you try to get an

17 understanding in terms of the environment of the particular

18 division you'd be visiting. So I make this comment based on

19 my understanding prior to my visit to Colombia as part of the

20 1995 audit.

21 My understanding is -- was that the Colombian

22 operation was going through some significant changes.

23 Restructuring -- it was moving from a purchased food

24 operation to a produced operation, which -- that implicates a

25 great deal of change involved.

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(b)(7)(C)

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1 And they were moving and trying to consolidate
 2 their systems. A lot of their systems were done in
 3 piecemeal. System 36, to give you an example. So I
 4 understood that it was -- the division was in the midst of
 5 constant changing.
 6 (b)(7)(C) We'll go off the record for a moment.
 7 (A brief recess was taken.)
 8 (b)(7)(C) We're back on the record at
 9 approximately four minutes after 5:00 p.m. No discussions of
 10 substance were had while we were off the record. Is that
 11 correct?
 12 (b)(7)(C) Correct.
 13 (b)(7)(C) I hand you a document that has
 14 previously been marked as SEC Exhibit No. 3. I'll give you
 15 an opportunity to review that. And while we do that, I'll
 16 describe the document for the record.
 17 The document is a multi-page document spanning
 18 Bates stamp range 2CHQ6-000001 through and including document
 19 ending in Bates stamp 36. The first page of the document is
 20 dated November 16, 1995. The document is identified on the
 21 first page as an Internal Audit Report #95.08, Financial
 22 Internal Control Review, Medellin, Colombia, October 1995.
 23 (The witness examined the document.)
 24 BY (b)(7)(C)
 25 Q Have you seen this document before?

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1 A Yes, I have.
 2 Q What is this document?
 3 A This is the audit report for the financial internal
 4 control review that was performed in 1995 of the Colombia
 5 operations.
 6 Q If you turn to page six please, of the document
 7 which ends in Bates stamp seven, looking toward the bottom of
 8 the document, after etc, there's a number of names there. The
 9 second column of names under (b)(7)(C)
 10 (b)(7)(b)(7)(C)
 11 A Yes.
 12 Q Moving forward four pages to Bates stamp ending in
 13 11. The page is identified as A-4/4. Do you see the --
 14 there's a circle around audit team members. Do you see that
 15 there?
 16 A Yes.
 17 Q And the first name there is (b)(7)(C) and next to
 18 that is says lead. Do you see that there?
 19 A Yes.
 20 Q Is that you?
 21 A Correct.
 22 Q What does lead mean?
 23 A Lead refers to lead auditor.
 24 Q What were your responsibilities? What did you do
 25 with regard to this audit, the October, or the 1995 financial

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1 internal control review?
 2 A My responsibility for this audit was as a
 3 supervisor, to supervise and review the work, the field work,
 4 that was done by the auditors on the team. And basically act
 5 as a liaison between management and the VP of internal audit.
 6 Q Were you on site during the time this audit was
 7 being conducted?
 8 A Yes.
 9 Q Going back to page six again, for a moment, page
 10 ending in Bates stamp seven. There's the name (b)(7)(C).
 11 (b)(7)(C)
 12
 13 Who is (b)(7)(C)?
 14 A He was one of the audit managers in the internal
 15 audit department.
 16 Q And what were his responsibilities with regard to
 17 this particular audit?
 18 A He was responsible for reviewing the work performed
 19 by the audit group that was in the field, and as well as
 20 reviewing my overall conclusion to any areas of the audit.
 21 Q Was he on site during the time of the audit?
 22 A (b)(7)(C) one of the things that makes Colombia
 23 different from the other divisions is the risk and the
 24 violence that exists in Colombia. And as a policy, the
 25 internal audit department, or (b)(7)(C) never made it

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1 mandatory for individuals to fly to Colombia. At times there
 2 was travel restrictions.
 3 So when I was forming my team to go to internal
 4 audit, I had to ask the individuals if they would be willing
 5 to go. And to the best of my recollection, (b)(7)(C) preferred
 6 not to go to Colombia at that time.
 7 Q Maybe if I take a step back and I'll ask you if you
 8 could take these -- you talked about forming your team. If
 9 you could take me through the process of the preparation for
 10 this audit, you know, how it comes about, how it gets
 11 scheduled, and then you know, moving forward to how it
 12 begins. We at one point talked about an opening conference.
 13 That would be helpful to me.
 14 A From the time that I was -- from the time in
 15 Cincinnati to the time I was actually in the field?
 16 Q Yes.
 17 A Normally the process of placing an audit manager or
 18 supervisor on a particular audit, I guess you look at the
 19 person's level of experience and/or ability to speak the
 20 language necessary. If it's in Europe, Italian, depending on
 21 if it's in Italy. And in this case, the tropics, Spanish is
 22 one of the things they look at, and level of experience.
 23 So in this case, each of the team members spoke
 24 Spanish. And that was something that we -- that I, as a
 25 supervisor, prefer on my audits.

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(b)(7)(C)

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1 Q Turn back to -- well, you're still -- I want to
 2 just stay on that page, A-4/4, coding in Bates stamp 11. J.
 3 -- is it (b)(7)(C)?
 4 A That's right.
 5 Q Who was that?
 6 A (b)(7)(C) was also an auditor on the internal audit
 7 team.
 8 Q And specifically with regard to this audit, what
 9 were his responsibilities, his duties?
 10 A I don't recall, (b)(7)(C) the specific duties he was
 11 responsible for, but normally in an audit, I would -- or the
 12 supervisor supervising the audit would assign different areas
 13 to different individuals. And each individual has his or her
 14 own responsibility for the audit and would work directly with
 15 the supervisor.
 16 Q Did one of these individuals review, audit the
 17 logistics and operations accounts for FCPA compliance on the
 18 one hand, and -- let me take that back.
 19 Did somebody have responsibility, one of these
 20 individuals, for reviewing FCPA compliance as part of this
 21 audit?
 22 A My recollection is that somebody did have
 23 responsibility, I just don't recall what person performed the
 24 work.
 25 Q That's fine. I want to turn for a moment to the

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1 second page of the document. The end of the first sentence
 2 on that page coding in Bates stamp two, says that this review
 3 also included performing the necessary tests and procedures
 4 to determine compliance with the company's statements of
 5 policies and procedures for FCPA compliance. Can you tell me
 6 exactly what was done here?
 7 A Again, the work, as relates to the internal audit
 8 department when we go on site to the divisions, we meet with
 9 management, and normally -- in this case we want to look at
 10 FCPA, it's with the general manager and/or the controller,
 11 depending on who's responsible for it.
 12 And we do the testing of the accounts that record
 13 the FCPA to ensure, again, the information is submitted to
 14 the legal department and the information is recorded in the
 15 books and records of the division. And then we do our
 16 testing to see if all payments have been properly recorded to
 17 Cincinnati.
 18 Q Okay. And with regard to Colombia, what would I
 19 need to know? With regard to this particular audit, when you
 20 say we do our testing, very specifically, what is the
 21 mechanics of that? I mean, you know, from the viewpoint
 22 that, you know, I'm the one that has to go do it, what am I
 23 being directed to do? Who am I being directed to talk to?
 24 What am I being directed to ask for?
 25 A Basically the testing was comprised of the

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1 following. Again, you would ask -- I don't recall who had
 2 the information, but the person that is the keeper of the
 3 information for the security payments --
 4 Q Maybe we need to even take a step back. Before you
 5 arrive on site, what do you gather together? Do you bring
 6 anything with you, any information with you that's necessary
 7 to do an FCPA compliance check, you know, in the form that
 8 page two here talks about?
 9 A To the best of my recollection (b)(7)(C) the
 10 information you bring up, I don't know the format it's in,
 11 but it should be some sort of -- the information that was
 12 initially originally sent by a division to the legal
 13 department to report those payments.
 14 Q The quarterly -- the information that's contained
 15 on the quarterly disclosure forms for the period that you're
 16 going to audit?
 17 A That's normally the process.
 18 Q Okay. And it could be the quarterly disclosure
 19 forms themselves, or it could be just that information in
 20 another format.
 21 A That's correct.
 22 Q Okay. Is there anything else that -- CBI-V1-001-003636
 23 A To the best of my recollection, no.
 24 Q So you have that. You're now on site, and you're
 25 going to perform some kind of compliance check. What is the

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1 next step?
 2 A The next step is normally you would ask the
 3 accounting department to provide you with a listing of all
 4 payments that were recorded in the security account for that
 5 period being audited.
 6 Q Was that done here?
 7 A From the sentence here, we can say that we were --
 8 we did do the check and balance between the accounting
 9 records and the records --
 10 Q Okay. Go ahead, I'm sorry.
 11 A -- and the records that we brought from Cincinnati.
 12 Q Understanding that that's the normal procedure, do
 13 you have an independent recollection that in fact, that was
 14 the process that was done during this particular audit? And
 15 again, that being you know, 1995.
 16 A The reason I'm having difficulty answering the
 17 question, (b)(7)(C) is because we're doing this -- the FCPA, I
 18 don't recall when it was done. I know that there was an
 19 inconvenience during the audit, where we had to pull out of
 20 the field early for security reasons, and we were given the
 21 order to leave.
 22 So we weren't able to fully complete all the audit
 23 work that we wanted to in all the areas. So it's hard for me
 24 to answer that question.
 25 Q That was during this audit?

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(b)(7)(C)

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1 A Yes, sir.

2 Q And also it was four years ago.

3 A Yes, sir.

4 Q I'm mindful of that, so again, in terms of the

5 normal process and procedure, the person goes to accounting

6 and asks for you know, the ledger print-out for the relevant

7 accounts. They have that. What do they do with that, and

8 what else do they need, and what do they do with that

9 material?

10 A In general, the -- with those two documents, both

11 the information you bring from the legal department in

12 Cincinnati and the information you have on site from the

13 general ledger, those two documents you can check to see if

14 the information that was submitted to the legal department

15 was the information that was from the general ledger, and to

16 ensure that all the information in the security accounts were

17 properly recorded and reported to Cincinnati.

18 Q Here is where I have some confusion, so when -- the

19 end of that sentence, when you say to ensure that all amounts

20 that needed to be reported are reported. After our exercise

21 with that section of the general ledger that is SEC Exhibit

22 No. 36 -- and I can, you know, put that back in front of you

23 if you need it. It's here somewhere. And after that

24 exercise, I'm not clear as to how anyone can do that. Can

25 you clear that up for me?

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1 A Well, if there is any -- I think you're referring

2 to those particular payments we looked at with the (b)(7)(C)

3 and --

4 Q Or the --

5 A The descriptions --

6 Q The descriptions. In one it was primera yucita, or

7 descriptions that don't really tell you whether this is a

8 payment to a government official, without being able to grab

9 the proper person and say, "What is this?" And you know, my

10 question to some degree is even if you do that, how does this

11 person make that vast statement, that end of your statement,

12 which says that all payments that need to be reported have

13 been reported.

14 I can see the first part. The first part of your

15 statement was everything on the forms the person can see in

16 the general ledger, because they can do it the same way as I

17 could, look at the amounts and then I check what's in there.

18 The later half is where I can't really understand how the

19 person is doing that, based on what I've seen.

20 A In those particular cases that we saw this --

21 earlier today, when you're in an audit, the most -- the

22 necessary step would be then to talk directly to the general

23 manager who has knowledge of these payments, and knows how

24 those -- what those payments are for, specifically.

25 So you would need to talk with the general manager,

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1 and/or the head of security to understand if these payments

2 are, or are not facilitating payments.

3 Q Is that, in fact, what was done? I don't know if

4 you're saying in theory that that's how you would have to

5 proceed to get an answer, or whether you're saying, "This is

6 what we did."

7 A What I'm saying is if the -- if that particular

8 case did arise during this particular audit, in order to come

9 to a conclusion regarding a particular payment, and if we

10 were given this type of document before me, we would need to

11 talk to somebody to get some sort of clarification.

12 (b)(7)(C) Could I help here? Is what you're

13 saying, (b)(7)(C) that you don't remember these details of the

14 field work in this particular audit down to the level of

15 detail we're talking about now?

16 THE WITNESS: What I'm saying, to the best of my

17 recollection, I can't say that they were done, but again, I

18 don't deny they were being done. Again, I was not doing the

19 field work myself, I was reviewing. So that's -- I hope that

20 clarifies.

21 BY (b)(7)(C)

22 Q Do you recall there being an issue with regard to

23 the -- let me take one step back. During the time period of

24 this audit, the October 1995 time frame, what was the status

25 of your knowledge, with regard to guerrilla payments by the

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1 Colombian operation? You're the supervisor, lead auditor on

2 this audit. What do you know about these accounts and these

3 payments?

4 A The guerrilla payments? CBI-V1-001-003637

5 Q Yes.

6 A Before going to Colombia, (b)(7)(C) made me aware

7 of payments that were being made in Colombia to various

8 groups. And these payments were approved normally by the

9 general manager, and that these payments were also -- this

10 information was maintained separately in different accounts.

11 And although not falling under the FCPA requirements, they

12 were also segregated and considered sensitive payments.

13 Q Were you given any instructions with regard to what

14 you were supposed to do on your audit with regard to these

15 payments in these accounts?

16 A The -- my understanding, in terms of what we needed

17 to do for the guerrilla payments, given that they were not

18 FCPA-related, were to ensure that they had the proper

19 authorization from the general manager, and that they were

20 recorded in their proper accounts.

21 As I had mentioned earlier, with these types of

22 payments, you can't take that step further and look and

23 confirm the payee and the person receiving that. And that's

24 what's always given me some sort of uneasiness since I've

25 been in Colombia when we discuss these types of payments.

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(b)(7)(C)

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1 Q And how would the person -- or how would (b) a
2 member of the internal audit staff, go about confirming that
3 it had the appropriate general manager's authorization?

4 A When you look at a 1016, all the payments under --
5 in the 1016 that are recorded under the account of
6 operations, you would look at those and compare to see if the
7 signature, the appropriate signature, was on the 1016.

8 Q Who do I get the 1016's from? Or where, you know,
9 it may be a where question, but --

10 A I guess it depends on if the 1016's for any reason
11 were sent to Cincinnati, you would have them in Cincinnati.
12 Otherwise, you would need to talk to somebody either in
13 accounting or security to pull copies for you so that you can
14 do the audit.

15 Q Again, with regard to this audit specifically, in
16 October 1995, do you recall any effort to pull the 1016's?

17 A Again, to the best of my recollection I don't
18 recall physically -- having somebody physically pull the
19 documents. But again, I don't deny that that may have been
20 the case for several 1016's.

21 Q The procedure was underway, and this is just one of
22 the specifics that you don't recall?

23 A Yes, sir.

24 Q I understood what you were saying, I just wanted to
25 make sure it was clear. Off the record? Okay, we're going

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1 to go off the record at approximately 5:30. And we're going
2 to go off the record for the day at this point, and we will
3 reconvene tomorrow.

4 (Whereupon, at 5:29 p.m., the examination was
5 adjourned.)

6 * * * * *

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(b)(7)(C)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of: CHIQUITA BRANDS INTERNATIONAL, INC. File No. NO-3361

WITNESS: (b)(7)(C)

PAGES: 137 through 201

PLACE: 450 Fifth Street, N.W. Washington, D.C. 20549

DATE: Thursday, December 16, 1999

The above-entitled matter came on for hearing, pursuant to notice, at 9:34 a.m.

APPEARANCES:

On behalf of the Securities and Exchange Commission:

(b)(7)(C) Securities and Exchange Commission 450 Fifth Street, N.W. Washington, D.C. 20549

On behalf of the Witness:

(b)(7)(C) Crowell & Moring LLP 1001 Pennsylvania Avenue, N.W. Washington, D.C. 20004-2595

PROCEEDINGS

1 (b)(7)(C) We are on the record at approximately 2 9:35 a.m. on Thursday, December 16, 1999, at the offices of 3 the Securities and Exchange Commission, 450 Fifth Street, 4 N.W., Washington, D.C., 20549. My name is (b)(7)(C) 5 and I am an officer of the Securities and Exchange Commission. 6 for the purposes of this proceeding. 7

8 This proceeding is a continuation of (b)(7)(C) 9 testimony from yesterday, Wednesday, December 15, 1999. (b)(7)(C) 10 (b)(7)(C) I'll remind you that you remain under oath from 11 yesterday.

12 (b)(7)(C) Okay.

13 THE WITNESS: That's correct.

14 Whereupon,

15 (b)(7)(C) 16 was recalled as a witness and, having been previously duly 17 sworn, was examined and testified further as follows:

18 EXAMINATION 19 BY (b)(7)(C)

20 Q I wanted to go back briefly to something you had 21 mentioned yesterday, which is that during the fall 1995

22 (b)(7)(C) 23 had mentioned some type of situation or emergency that had 24 caused you all (b)(7)(C) to need 25 to leave Colombia. Can you explain that in just a little

CONTENTS

| WITNESSES: | EXAMINATION | |
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| (b)(7)(C) | 139 | |
| EXHIBITS: | DESCRIPTION IDENTIFIED | |
| SEC-53 | Internal Audit Report dated 5/27/1997 | 144 |
| SEC-54 | Audit Program Guide | 149 |
| SEC-55 | Form 1016 | 163 |

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1 more detail, what that was about? 2 A Sure. During that (b)(7)(C) there was a 3 massacre of about 21 people in the Chiquita farms in the 4 Turbo location.

5 That information was coded up in Cincinnati, and 6 under the instructions of (b)(7)(C) and I think (b)(7)(C) 7 (b)(7)(C) at the time, he had asked 8 everyone to leave the country immediately.

9 (b)(7)(C) Let me ask, just to follow up on 10 that, did you do that? Did you comply with that instruction?

11 THE WITNESS: I had talked to (b)(7)(C) and asked 12 him, since we were nearing the audit, and we wanted to at 13 least try to put a closure to some of the areas, I'd asked 14 him if we could stay an initial few days to at least meet 15 with management, have a close meeting. And he said that I 16 was not - that it was his instructions to get everybody out.

17 He went back and talked to, I think, his superior, 18 and he said I could stay and the other people, it's under 19 their discretion. And I asked the team to stay with me an 20 additional three days to put a closure on the audit and have 21 a close meeting, and they agreed, and we stayed on for the 22 additional three days.

23 BY (b)(7)(C)

24 Q (b)(7)(C) I want 25 to get an understanding as to whether the three days you

(b)(7)(C)

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1 stayed was the Turbo time you were expected to be there. How
 2 much was it cut short, is basically my question.
 3 A (b)(7)(C) I don't recall the exact time, but those
 4 three days enabled us at least to tie up as many loose ends
 5 as possible and again, have a close meeting with management
 6 to inform them of the status of the audit, as of that time.
 7 (b)(7)(C) Okay, thank you. I'd like to hand
 8 you a document that has previously been marked as SEC Exhibit
 9 No. 40. I'll give you an opportunity to review that document
 10 with your counsel and again, I will draw your attention to
 11 page three of the document which has been Bates stamped
 12 000989. And while you review that, I'll describe the
 13 document for the record.
 14 For the record, the document is a multi-page
 15 document spanning Bates stamp range 1CHQ6-000985 through and
 16 including Bates stamp ending in 000994. The document is
 17 identified on the cover page as a Chiquita Brands
 18 International, Inc. internal audit annual report relating to
 19 the year 1995.
 20 (The witness reviewed the document.)
 21 (b)(7)(C) The paragraph that's headed --
 22 (b)(7)(C) I'm having a problem. Can we go
 23 off the record?
 24 (b)(7)(C) Absolutely.
 25 (A brief recess was taken.)

1 A Again, (b)(7)(C) it's difficult for me to answer that
 2 question, because I wasn't involved with the preparation of
 3 this planning memo or this annual report, so I don't deny
 4 that it's -- that they may be referring to it, but I don't
 5 know.
 6 Q Okay. You can put that document aside for now.
 7 (b)(7)(C) what was the
 8 charge that that group was given?
 9 (b)(7)(C)
 10
 11
 12
 13 Q (b)(7)(C)
 14 A The assignment was given to me around the time of
 15 July of 1996, June or July. That's when the planning began.
 16 Q And when did you finish your assignment, complete
 17 your assignment (b)(7)(C)
 18 A It was at the time when (b)(7)(C)
 19 (b)(7)(C) It somewhat happened seamlessly.
 20 Q (b)(7)(C) from its
 21 inception through its completion?
 22 A That's correct.
 23 Q So around the time when you are moving (b)(7)(C)
 24 (b)(7)(C) is being
 25 disbanded?

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1 (b)(7)(C) Okay, we're back on the record a few
 2 moments later. No discussions of substance were had when we
 3 were off the record, is that correct?
 4 (b)(7)(C) That's correct.
 5
 6 Q I want to focus for a moment on the paragraph
 7 again, on Bates stamp page 000989 that is headed, "Internal
 8 Controls Review Colombia." And the third sentence of that
 9 paragraph says, "To facilitate future progress, senior
 10 corporate and operations management has recently formed as
 11 assessment team to assist Colombian management in identifying
 12 and prioritizing issues in Colombia, and to participate in
 13 the planning and implementation of solutions to improve and
 14 enhance procedures, processes, and controls."
 15 Do you know anything about that assessment team?
 16 A No, I don't.
 17 Q Is this -- we had spoken at the very beginning,
 18 when we talked about -- we had gone through various positions
 19 you had held at Chiquita about an assessment team, but that
 20 is -- this is a different assessment team?
 21 (b)(7)(C) I think he described a task force.
 22 BY (b)(7)(C)
 23 Q Okay, and that -- okay. But that's essentially
 24 what I'm asking. Is this that task force, that you had
 25 spoken about?

1 A There was really never a defined disbandment (b)(7)(C)
 2 (b)(7)(C) (b)(7)(C) who was my --
 3 (b)(7)(C)
 4
 5 became a member of the Colombian division. So again, it was
 6 hard to say when it was actually completed. It was an
 7 ongoing process.
 8 Q It transitioned, more than disbanded, I take it?
 9 A That's right.
 10 (SEC Exhibit No. 53 was marked for
 11 identification.)
 12 (b)(7)(C) I'm handing you a document that has
 13 now been marked as SEC Exhibit No. 53. I'll give you an
 14 opportunity to look at that document with your counsel. And
 15 while you're doing that, I'll describe it for the record.
 16 For the record, SEC Exhibit No. 53 is a multi-page
 17 document spanning Bates stamp range 2CHQ6-000648 through and
 18 including Bates stamp ending in 000654.
 19 The document, on its front page, bears the legend
 20 of Chiquita Brands International, underneath which is the
 21 name (b)(7)(C) The document
 22 is dated May 27, 1997, and appears to be an internal audit
 23 report number 97.14, financial and information systems
 24 internal control review, Medellin, Santa Marta, and Turbo,
 25 Colombia.

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(b)(7)(C)

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1 Have you seen this document before?

2 A I recognize this document as a report that was

3 issued as part of the review that was being done in Colombia

4 at the time.

5 Q Would you turn to page five of the document,

6 please? The page, I think, is Bates stamped 652. There are

7 two columns after cc at the bottom of the page.

8 A Correct.

9 Q Bottom of the first column is (b)(7)(C) Is that

10 you?

11 A That's correct.

12 Q Did you ever receive a copy of this document?

13 A I recall reading this -- looking at this document,

14 yes.

15 Q Staying on page five, toward the middle of the

16 page, the name (b)(7)(C)

17 (b)(7)(C)

18 A (b)(7)(C) was the audit manager in the internal audit

19 department at that time.

20 Q We had talked in terms of your duties and

21 responsibilities when you were audit manager, and also an

22 audit manager's duties and responsibilities on the 1995

23 audit. Were (b)(7)(C) duties and responsibilities on

24 this audit consistent with what we discussed yesterday?

25 A Again, the -- I have to differentiate between one

1 each one with their respective expertise. So this is

2 something that happens normally in audits.

3 Q Turning to the next page of that document, please,

4 who is (b)(7)(C)

5 (b)(7)(C)

6 A (b)(7)(C) is a staff of the internal audit

7 department.

8 Q Do you know what (b)(7)(C)

9 this 1997 audit of the Colombian operations?

10 A No, I don't.

11 Q The next name is (b)(7)(C) Who is (b)(7)(C)

12 A (b)(7)(C) is also a member of the internal audit

13 department.

14 Q And for the record (b)(7)(C), on this document,

15 is spelled (b)(7)(C) Do you know if that's how

16 you spell (b)(7)(C) name?

17 A It looks correct. I don't know.

18 Q I've seen a number of spellings, so at this point

19 it's kind of like (b)(7)(C) Nobody seems to spell his

20 name right, either.

21 (b)(7)(C) At least with (b)(7)(C) you have an

22 excuse.

23 BY (b)(7)(C)

24 Q Do you know what (b)(7)(C) action was on this

25 1997 audit?

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1 thing. (b)(7)(C)

2 (b)(7)(C) (b)(7)(C) So

3 again, the types of reviews and responsibility is slightly

4 different from supervisor to manager.

5 Q Okay. I was actually not drawing a comparison

6 between your job on that, but I believe it was (b)(7)(C)

7 (b)(7)(C) who was the audit manager on that, and we

8 had discussed what his duties and responsibilities were with

9 regard to that.

10 And so rather than, you know, go through the

11 details again, I was asking whether (b)(7)(C) duties

12 here, with regard to the 1997 audit, would have been

13 comparable to (b)(7)(C)

14 A That's correct.

15 Q You see under that is the name (b)(7)(C)

16 Who was (b)(7)(C)

17 A (b)(7)(C) was again, the -- an audit manager, but his

18 area of expertise (b)(7)(C)

19 Q Why were the audit manager duties split with (b)(7)(C)

20 (b)(7)(C) handling what appears to be financial audit duties,

21 and (b)(7)(C) audit duties on this 1997 audit?

22 A This is something that's common to audits that we

23 conduct in the audit department where there is a -- two

24 specific objectives. And in this case, there was two ongoing

25 audits, one a systems audit and one a financial audit. And

1 A No, I don't.

2 Q Looking at the front page of SEC Exhibit No. 53,

3 the first paragraph there, it says, "We have completed an

4 internal control review of C.I. Banadex S.A. Colombia,

5 division, which also included performing the necessary tests

6 and procedures to determine compliance with the company's

7 statement of policies and procedures for FCPA compliance.

8 Looking back at the document that has previously

9 been marked as SEC Exhibit No. 3, second page of that

10 document, the first paragraph, the language there is similar,

11 correct?

12 A Yes. The language is similar.

13 Q So we don't have to go through the entire procedure

14 again. As part of the 1997 internal audit that was done at

15 the Colombian operations, was the same or similar procedure

16 done by the audit team, with regard to performing the

17 necessary tests and procedures to determine compliance with

18 the company's statement of policies and procedures for FCPA

19 compliance?

20 A The -- we could say that the tests were similar

21 that were performed -- just looking at this -- but it's hard

22 for me to say that he applied the same tests and procedures

23 that I used when I was an audit supervisor. I don't know.

24 Q I don't want you to guess. I'm asking you if you

25 know. I mean, my understanding is that during the time --

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(b)(7)(C)

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1 let me ask you this.

2 During the time of the 1997 audit, you were

3 (b)(7)(C) Is that correct?

4 A That's correct.

5 Q Okay. (b)(7)(C) I

6 am asking you if you know that the audit team that was on
7 site performed similar tests for FCPA compliance. But I'm
8 not asking you to guess or to speculate, or to -- I want to
9 know if you know if they did.

10 A I don't know.

(SEC Exhibit No. 54 was marked for
11 identification.)

12 (b)(7)(C) Okay. I'm handing you a document
13 that has been marked as SEC Exhibit No. 54. I'll give you an
14 opportunity to review that document with your counsel. And
15 while you do that, I'll describe it for the record.

16 SEC Exhibit No. 54 is a multi-page document
17 spanning Bates stamp range 4CHQ1-000761 through and including
18 4CHQ1-000780. The document, on the first page, bears the
19 Chiquita Brands International legend, and in bold, large
20 letters, it says, "Colombia Financial Review April 1997." On
21 the lower right it has the name (b)(7)(C)

22 (b)(7)(C)

(The witness examined the document.)

23 BY (b)(7)(C)

1 Q Up above, the document references financial and

2 administrative policy manual A-2.0. It says, "Which includes
3 the following." I'm handing you the document that has been
4 marked as -- previously been marked as SEC Exhibit No. 41,
5 and I'll describe it for the record.

6 On the top left, it says, "United Brands Company,"
7 and then on the center it says, "Financial and Administrative
8 Policy Manual, Summary of Policy," and on the right it says,
9 "Policy number A-2.0." The subject is FCPA commentary on the
10 company's statement of policies and procedures. The document
11 spans Bates stamp range 1CHQ1-000149 through and including
12 000157.

13 Take a moment to look at that, and I'll ask you if
14 you have seen this document before.

(The witness examined the document.)

15 THE WITNESS: I don't recall seeing this document.

16 BY (b)(7)(C)

17 Q Have you ever heard of an audit program for review
18 of unusual payments? Let me see if I can be more basic here.
19 I'm very interested in unusual payments or sensitive
20 payments.

21 And when I see in this document here something in
22 capital letters that says program for review of unusual
23 payments, I'm very interested in it. And I'm trying to
24 figure out what it is. And for the life of me, I can't

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1 Q Okay. Have you seen this document before?

2 A I recognize this document to be an audit guide
3 that's used on audits.

4 Q Turn to the third page of that document, page
5 ending in Bates stamp 763. You said you recognize this to be
6 an audit guide. See on this page there is a legend that
7 says, "Internal Audit Department Audit Program Guide." What
8 is the audit program guide?

9 A The internal audit department has specific audit
10 programs that are used by the department to audit specific
11 areas.

12 Q Is this a book?

13 A It's a binded manual. And when you go on audits,
14 you take the applicable programs that apply.

15 Q And when you say programs, what do you mean by
16 programs?

17 A I mean these type -- these guides.

18 Q You mean like a section of the book?

19 A Right.

20 Q Could you turn to the following page please, page
21 ending in Bates stamp 764? Under references, there's a
22 series of six bullet points. The last one says, "Audit
23 program for review of unusual payments." Do you know
24 anything about that?

25 A I don't recall what that referred to.

1 figure it out.

2 And looking at A-2.0, it appears that it might be
3 the last page, but that just doesn't strike me as an audit
4 program. And understanding that you haven't seen these, you
5 know, heard of that before or seen these before, can you help
6 me out at all?

7 A (b)(7)(C) I don't recall any specific audit program
8 that was for unusual payments.

9 Q Okay. I want to turn to the next page of the
10 document that has been marked as SEC Exhibit No. 54, page
11 ending in Bates stamp 765 --

12 (b)(7)(C) Go ahead

13 THE WITNESS: Okay.

14 BY (b)(7)(C)

15 Q There is a column at the top that says, "AUD." And
16 under that, "INIT." Do you see that there?

17 A Yes.

18 Q And at the first opportunity of an entry there,
19 there's the letters TF, and then a squiggly-type line running
20 down the page. Do you see that there?

21 A Yes.

22 Q Can you tell, from this document, what that TF
23 stands for?

24 A The AUD INIT stands for audit initials. And that
25 category, an auditor performing a particular audit procedure

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(b)(7)(C)

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1 should initialize each step, whether applicable or not.

2 Q And given the people involved in this audit then,

3 (b)(7)(C) should refer to (b)(7)(C)

4 A That appears to be correct.

5 Q That would be consistent with the procedure, as you

6 understand it?

7 A Correct.

8 Q Moving to the next column, at the top of which is

9 Y/N. What is Y and N, in that column?

10 A As I understood it to be, a yes performed and no

11 was analogous to non-applicable.

12 Q Going down to number one, sub-letter E, there is an

13 entry there that says, "Does the audit testing in the

14 disbursements area support these reports? i.e. Have all

15 questionable payments been reported? Do the reported payees,

16 amounts, and purposes agree with the supporting

17 documentation? Have the items been properly recorded in the

18 financial records?" Do you see that there?

19 A Yes.

20 Q Okay, and then if you go over to the Y/N column,

21 there is an N there.

22 A Correct.

23 Q What does that N mean, with regard to this sub-

24 letter E category?

25 A In this case, I don't know what she's referring to

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1 when she puts an N --

2 Q Let me back up a little, because I think we skipped

3 something. At the top of the page, do you see where it says,

4 "Audit Program Guide," and then across, "The Statement of

5 Policies and Procedures," do you see that there?

6 A Yes, yes.

7 Q What does that tell us about the work that's being

8 done on this page?

9 A The category work paper reference?

10 Q Let me back up a little. It's much more basic than

11 that. We've gotten into discussing specific elements of the

12 page. And I think at the beginning we neglected to cover

13 exactly what the purpose of this page is. And at the top,

14 the heading is, "Statement of Policies and Procedures."

15 So what area is the audit person that we've talked

16 about here, (b)(7)(C) looking into and making notations

17 on on this page?

18 A Her -- this particular program, again, relates to

19 the policies and procedures.

20 Q And when we say statement of policies and

21 procedures, is that FCPA compliance-related? The prior page

22 of the document might help you.

23 A (b)(7)(C) it's hard -- it's difficult to answer the

24 question, because I don't recall if they -- these programs

25 indicate which area, because this guide -- these audit guides

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1 refer to general audit policies and procedures of the

2 company. So I don't see if it specifically refers to FCPA,

3 but normally it has the description of the area being

4 audited.

5 Q Okay. If you go down to the bottom of that page,

6 where it says, "Statement of Policies and Procedures," and

7 then you read the materials underneath that, maybe that will

8 help you out to ascertain what is being reviewed on this

9 page.

10 A From reading this, the bottom paragraph, one could

11 gather that it relates to the FCPA.

12 Q Okay, and in that context, going back to number

13 one, sub-category E, where it says, "Does the audit testing

14 in the disbursements area support these reports?" With the

15 understanding that we're performing an FCPA compliance

16 function here, does that help you understand what the N in

17 the second column next to that means?

18 A (b)(7)(C) it's again, difficult to answer that

19 question, and I would ask if -- and there's a reference of

20 some sort here to the work paper that relates to it, but it's

21 hard to determine what the N stands for, because I -- when

22 you had initially asked me what the Y/N stand for, I looked

23 at this apparently I thought it was yes or non-applicable.

24 But that does not seem to apply here.

25 Q It seems as though it could be no. Is that what

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1 you're saying?

2 A I don't know what specifically it is, but anything

3 is possible.

4 (b)(7)(C) Certainly, I think beginning with

5 the letter N --

6 BY (b)(7)(C)

7 Q The attachments that are referenced here? Let's

8 turn two pages ahead to document ending, page ending in Bates

9 stamp 767. The attachments that are referenced are D2-D3.

10 Do you see on the top of that page, D-27

11 A Yes.

12 (b)(7)(C) Take a moment or two to read that

13 page over. I want to ask you about the first sentence on

14 that page for starters.

15 (The witness examined the document.)

16 BY (b)(7)(C)

17 Q Okay? CBI-V1-001-003658

18 A Okay.

19 Q The first sentence says, "The manager's funds

20 report has been prepared by the chief accountant, who was fired

21 this week as part of overhead reduction." Who was the chief

22 accountant that this sentence is referring to?

23 A The chief accountant was the person I'd mentioned

24 (b)(7)(C)

25 Q Do you know anything about the manager fund report

(b)(7)(C)

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1 being referenced in this sentence?

2 A I don't know what the person that wrote this was --
3 what this manager fund is, because we don't use that term in
4 Colombia.

5 Q During the time period of this audit, we had
6 established that you were the controller in Colombia. Is
7 that correct?

8 A That's correct.

9 Q Did (b)(7)(C) report
10 to you during that time period?

11 A (b)(7)(C) reported to the assistant controller, who
12 managed the day-to-day interaction with the accountants, and
13 the assistant controller reported to me.

14 Q The next sentence of that same paragraph says, "The
15 base for him to prepare this report," referring to the
16 manager's funds report, "is the amounts recorded in the
17 account 65B413510-496045, plus other payments indicated to
18 him by the security department that are recorded in other
19 account or unusual payment (65B454340-496070)."

20 How is it that (b)(7)(C) and the security
21 department understand that the operations account is
22 functioning as a general manager's account and you did not
23 know that?

24 A In my opinion, (b)(7)(C) this is a play with words.
25 here. I don't know. Maybe the translation. They used this

1 specific procedures that seem to go with the semantic
2 importance of calling an account that did not attach in
3 Colombia.

4 However, the equivalent payments, sensitive
5 payments, unusual payments, are being made out of the
6 Colombia operations. However, they're not being made out of
7 this non-existent general manager's expense account code,
8 they're being made out of an operations account and a
9 logistics account.

10 And while the procedures are not -- the procedures
11 embodied in SEC Exhibit No. 13 are not being applied to these
12 accounts, when somebody asks for a manager's fund report
13 containing unusual payments or payments that would ordinarily
14 be made out of an expense account code, (b)(7)(C) and the
15 security department know these accounts.

16 And this is what I've taken away from our
17 discussions. And when I turn here, the person seems to be
18 voicing similar -- or a similar thought to what you said,
19 which is there is no general manager's expense account code,
20 and we're having problems with applying the general manager's
21 expense code procedures and reporting procedures, because we
22 don't have a specific account to look at.

23 So I think that's what you've been describing to
24 me, and then I read this sentence and I wanted to know if
25 you, reading that sentence, saw that as consistent with what

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1 -- in other audits they used this name, manager's expense,
2 interchangeably, very loosely, but again, since I was in
3 Colombia, since arriving in Colombia, we did not use the
4 general manager's expense account, and whether they placed a
5 name on this when they're drafting the report, I can't
6 comment on that.

7 Q And maybe the first sentence in the next paragraph
8 will bear out what I understand you to be telling me. The
9 next paragraph, the first sentence says, "There is not a
10 specific account where the payments corresponding to the
11 manager funds are recorded, which makes the preparation of
12 the report," again referring to the manager's fund report,
13 "more difficult and more susceptible to errors."

14 Is that statement consistent with what you're
15 telling me?

16 A No, I don't understand your question.

17 Q Here, let me -- you know, it's hard to do it this
18 way, so let me just explain it to you. I have the SEC
19 Exhibit No. 13, which we discussed yesterday, which weighs
20 out in great detail, procedures for sensitive payments. And
21 those procedures provide for the use of a general manager's
22 expense account code.

23 We discussed yesterday that the Colombia operation
24 did not use a general manager's expense code, an account code
25 by that name, and you know, to some degree, all of those

1 you were saying.

2 Now we've come way too far for you to -- I
3 understand, you know answer that, but I wanted you -- I said
4 that not really as a question, but for you to understand
5 where I was coming from, because if I ask it as a very short
6 question, I'm going to get a blank stare.

7 (b)(7)(C) Well, I understand that, and I
8 understand the effort to be helpful to explain, by way of
9 background, what you're getting at. But I don't want him to
10 respond in a fashion that adopts entirely what you're saying.

11 I mean, for example, you've mentioned that you're
12 inferring from this document we've got here now as SEC
13 Exhibit No. 54, what (b)(7)(C) knew and what he understood.
14 And what we have is, I'm going to guess, this page we're
15 looking at now, 767, is probably a work paper of (b)(7)(C)
16 reporting her findings which, in part, imply or refer to
17 something (b)(7)(C) did.

18 It's a long way, it's several layers of inference
19 to conclude from that what it is (b)(7)(C)
20 did. And above all, I don't think it's right to ask this
21 witness to opine through that chain of inferences on hearsay
22 what it is somebody else understood and how that compares to
23 what he understood.

24 And it sounds to me like many of these questions,

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(b)(7)(C)

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1 really, are for (b)(7)(C) perhaps. But there's a
 2 limit to what you can expect this witness to know about this,
 3 or to what he could even opine, based on what he's reading.
 4 BY (b)(7)(C)
 5 Q Let's move on to the next page. This page seems to
 6 reference a manager funds account. Can you explain that to
 7 me?
 8 A I don't know.
 9 (b)(7)(C) One simple thing to do is, do we
 10 have a chart of accounts here? I see an account number by
 11 that manager funds account reference. Do we have a chart of
 12 accounts that was current at the time that might assign the
 13 name, as it's known in Colombia, to this account?
 14 (b)(7)(C) I don't have a chart of accounts.
 15 (b)(7)(C) Am I correct, John, that an
 16 account number of that sort should, in the chart of accounts,
 17 have a corresponding description?
 18 (b)(7)(C) Maybe it'll help you if you page
 19 forward to --
 20 THE WITNESS: That's correct.
 21 (b)(7)(C) -- Bates stamp ending in 772. And
 22 you'll see toward the top of that page the same number as is
 23 next to manager funds account on page ending in Bates stamp
 24 768, which is 65B413510-496045. And on page ending in Bates
 25 stamp 772, that number is followed by (b)(7)(C)

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1 say that this is a general manager's expenses that we've seen
 2 in prior documents.
 3 (b)(7)(C) Can I take a quick break here?
 4 (b)(7)(C) Absolutely. It's a good time for me.
 5 Off the record.
 6 (A brief recess was taken.)
 7 (b)(7)(C) Back on the record a few moments
 8 later. No discussions of substance were had while we were
 9 off the record. Is that correct?
 10 (b)(7)(C) That's right.
 11 (SEC Exhibit No. 55 was marked for
 12 identification.)
 13 (b)(7)(C) I'm handing you a document that has
 14 been marked as SEC Exhibit No. 55. I'll give you an
 15 opportunity to look that document over while I describe it
 16 for the record.
 17 SEC Exhibit No. 55 is a two-page document. The
 18 first page is a document that we have previously referred to
 19 here as a 1016. On the top of the page it says, "Comprobante
 20 de Pago." And the second page is -- appears to be a memo of
 21 some sort, and on the top says, "Division Colombia CI Banadex
 22 SA." The Bates stamp for the first page is 4CQ1-001159, and
 23 for the following page ends in 1160.
 24 (The witness examined the document.)
 25 BY (b)(7)(C)

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1 (b)(7)(C) And
 2 that's followed by, in handwriting somebody has written,
 3 "manager funds account."
 4 THE WITNESS: Okay.
 5 BY (b)(7)(C)
 6 Q What is this account, gastos de gerente?
 7 A Translated, it means expenses -- general manager
 8 expenses.
 9 Q Is this a general manager's expense account code?
 10 A The code, the account code, that's give to this
 11 would indicate that these costs should be charged to the
 12 general manager expenses.
 13 Q You've seen SEC Exhibit No. 13, and then at another
 14 point in time yesterday we discussed that going forward, the
 15 Colombian operations are setting up a general manager's
 16 expense fund account code. Correct?
 17 A Correct.
 18 Q Is this account something different than that?
 19 A (b)(7)(C) Is I understand -- as I comment on what I
 20 know is that, you know, we never used a general manager's
 21 account as was indicated in the prior documents that you had
 22 shown me, making reference to procedures that needed to be
 23 applied to general manager's expenses.
 24 Here I see an account that says, gastos de gerente,
 25 but again, we talk about semantics here. I don't -- I can't.

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1 Q Have you seen this document before?
 2 A I recognize this document as a document that I've
 3 looked at as preparation for this deposition.
 4 Q Prior to that, do you recall seeing this document?
 5 This document -- let's focus on actually the front page of
 6 this document, the 1016, the first page only.
 7 (b)(7)(C) Can I suggest something that may
 8 simplify it further?
 9 (b)(7)(C) Absolutely.
 10 (b)(7)(C) If we divide the time period
 11 between -- speaking of the period before (b)(7)(C) asked
 12 you to gather all information regarding two particular
 13 payments, speaking of the period before that.
 14 (b)(7)(C) That works for me.
 15 (b)(7)(C) Do you remember seeing that
 16 document before that?
 17 THE WITNESS: To the best of my recollection, no.
 18 BY (b)(7)(C)
 19 Q Do you see the entry for Acuerdo Maritima?
 20 Acuerdo, A-c-u-e-r-d-o, Maritima, M-a-r-i-t-i-m-a. Do you see
 21 that?
 22 A Yes. CBI-V1-001-003660
 23 Q What does that mean?
 24 A Maritime agreement.
 25 Q Turn to the next page, please. On Bates stamp --

(b)(7)(C)

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1 page coding in Bates stamp 1160, do you see next to cc there
 2 is (b)(7)(C) in capital letters. Do you see
 3 that there?
 4 A Yes.
 5 Q Is that you?
 6 A Yes.
 7 Q Have you ever seen this document before?
 8 A Can we -- at what point in time? Again --
 9 Q Let's say the same ground rules, before (b)(7)(C)
 10 (b)(7)(C) asked you to perform any tasks?
 11 A Prior to (b)(7)(C) asking me to gather
 12 information, to the best of my recollection I have not seen
 13 this document.
 14 Q The sentence that appears to me, with my limited
 15 Spanish, to be soliciting authorization for disbursement or
 16 expenditure, can you tell me what that sentence says?
 17 A Sure. This is my translation. Someone may have a
 18 different, but it's, "in agreement with (b)(7)(C) request,
 19 I -- I referring to (b)(7)(C) -- request -- or solicit --
 20 authorization for disbursement for the following concept."
 21 Q And that concept is once again acuerdo maritima?
 22 A Correct, maritime agreement.
 23 Q Do you recall the request that (b)(7)(C)
 24 (b)(7)(C) is talking about here?
 25 A I recall the particular incident of him coming to

1 And he asked me again if I needed -- if I could
 2 sign it. He insisted I sign it, because they had already
 3 been approved and I said, you know, "Once you get the proper
 4 approval, we can make the payment to CEA."
 5 I knew the importance of the -- of this permit
 6 renewal, because of the activity that goes through that
 7 warehouse. So I had told him to talk to either (b)(7)(C) or
 8 somebody that had actually entered and agreed upon this
 9 transaction.
 10 After that, he left my office and that was all I
 11 heard of that until later, when I went to ask (b)(7)(C)
 12 (b)(7)(C)
 13 Q When you say later, just give me some context.
 14 Because I think you've moved now into the stage where you
 15 were looking into this at the behest of (b)(7)(C)
 16 A No, not quite. No.
 17 Q Okay. So that's why I'm asking, because I don't
 18 understand the context of "later."
 19 A Okay. Once he left the office, again --
 20 Q Look -- I'm cutting you off, I want to say that for
 21 the record. Let's stay at the office for a moment. This way
 22 we'll complete each segment in time and we don't have to keep
 23 jumping around.
 24 When you said he was asking you to sign the CBI-V1-001-003661
 25 document, are you referring to the 1016?

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1 my office, yes.
 2 Q I need to know everything about him coming to your
 3 office and this instance. And it would help me if you could
 4 start from the beginning, and in as much detail as possible,
 5 and nothing is too unimportant for me to know about that's --
 6 A Okay. I don't recall the specific date or time
 7 period, but (b)(7)(C) who is the head of security, came to
 8 my office, as I recall, with a document in his hand. And he
 9 had indicated to me that he needed a signature for a payment
 10 for a service fee that was to be made out to CEA, who is our
 11 customs agent in Colombia. They handle all our
 12 nationalization of merchandise, et cetera.
 13 He said that this was a -- this payment was an
 14 agreement to ensure the renewal of the permit that allows us
 15 to operate a warehouse where we maintain imported
 16 merchandise, and that this permit was expiring, and that this
 17 agreement was entered into from the prior administration, and
 18 he went on to mention (b)(7)(C)
 19 being our legal counsel and our former controller.
 20 He had asked for me to sign the document, but I
 21 told him that I didn't know anything of the agreement that
 22 was made with CEA, since it was outside of my responsibility
 23 area, the dealings with CEA. So I asked him to get the
 24 appropriate signature for the people or peoples that were
 25 involved in the transaction.

1 A (b)(7)(C) he never left the document on my desk, he
 2 never handed me anything. He just -- it was a brief -- he
 3 came in and just explained to me the transaction, and he had
 4 a document. So I don't know if it was the 1016.
 5 Q When you said that you told him to go get proper
 6 approval, I want to understand in context what you mean by
 7 proper approval. Does that deal with the amount? Does --
 8 what you meant by that.
 9 A What I mean by proper approval (b)(7)(C) is that
 10 again, I take it upon myself -- it's common business practice
 11 for myself, and just good business sense, is that if a
 12 payment is going to be made, it should be authorized by the
 13 person or people that were authorized a transaction, whether
 14 it's the purchase of a computer, or a payment to a custom
 15 agent.
 16 So I was not aware of a transaction. And by
 17 signing this, I acknowledge my understanding, or my agreement
 18 with this payment. So I just -- I -- not that I question --
 19 again, if -- I never questioned (b)(7)(C) I was just
 20 asking to get the approval, and then we would simply process
 21 the payment.
 22 Q If I understand you then, your directing him to get
 23 proper approval didn't involve at this point in time any
 24 suspicion on your part? It was merely a part of your normal
 25 business practice to direct someone to get the signature of a

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(b)(7)(C)

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1 person who is involved in the transaction at issue.
 2 A At no time did I question or have reason to
 3 question his representations. That -- there was no reason
 4 for that. It was just simply, again, my good business
 5 practices to get approval from the appropriate person that
 6 negotiated the contract. And again, and it would be
 7 processed. That was my response, as I recall.
 8 Q You said at the point in time of him entering your
 9 office you knew of the importance of the permit renewal.
 10 What did you mean by that?
 11 A Let me rephrase that. When he mentioned to me the
 12 -- that it was for the permit renewal, at that time when he
 13 mentioned the permit renewal, I -- what I meant is that
 14 importance of the -- for the division in that if we don't
 15 have a permit, we would not have a warehouse to store our
 16 merchandise which we rely on for our production. That's what
 17 I meant.
 18 Q To make this perfectly clear, I'll ask you prior to
 19 this conversation that we are discussing with (b)(7)(C)
 20 did you have any understanding that there was a problem, or
 21 an issue, with regard to the renewal of the permit we're
 22 discussing, what I've heard to referred to as the free zone
 23 permit?
 24 A No, sir.
 25 Q Okay. Now you were transitioning into the next

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1 event. And if it's not, please just take me to the very next
 2 event where, in any shape, manner, or form you hear anything
 3 about a customs payment.
 4 A I'll take it from when (b)(7)(C) after I say I
 5 will approve the payment once it has the signatures, he left
 6 the office.
 7 And I don't recall (b)(7) the time, whether it
 8 was a day after or two days after, but it was shortly
 9 thereafter, where I took the opportunity to speak with
 10 (b)(7)(C) just to get -- just to
 11 understand where we stood with the -- with this transaction.
 12 Q Why did you approach these two people, (b)(7)(C)
 13 and (b)(7)(C)?
 14 A I approached those two individuals because first of
 15 all, at the time, (b)(7)(C) was not in Colombia, and no
 16 longer -- was no longer in Colombia. He was out of the
 17 division and really (b)(7)(C) and
 18 (b)(7)(C) the only ones that were there from the prior
 19 administration that were there at that time.
 20 Q I believe you had said as well that (b)(7)(C)
 21 had mentioned (b)(7)(C) in his presentation to you. Is
 22 that correct?
 23 A Yes, that's correct.
 24 Q Had he -- and you had said he had mentioned, I
 25 believe, (b)(7)(C) Is that correct?

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1 A That's correct. True.
 2 Q Had he mentioned (b)(7)(C)
 3 A To the best of my recollection, no.
 4 Q Okay. Why would you have gone to (b)(7)(C)
 5 A The reason I went to (b)(7)(C) is --
 6 he has primary responsibility for the management and
 7 supervision of the -- that zone which includes the warehouse.
 8 Q Now, explain to me the circumstances of your
 9 conversation with (b)(7)(C) because I --
 10 for starters, I don't understand whether they are together,
 11 you know, how this, your approaching them arises.
 12 A I mean, (b)(7) to the best of my recollection,
 13 because it's hard to go back and recreate something that's
 14 happened two years ago, but to the best of my recollection, I
 15 had talked -- I don't recall if it was individually, or at
 16 the same time, but I recall talking to both, at one point in
 17 time, (b)(7)(C) just to get a general
 18 understanding as to what this was, and if this was a real
 19 risk, and if -- what will we do if they were to not renew the
 20 permit.
 21 So I just got -- it was just general background.
 22 And both individuals had explained to me that it was a
 23 payment that we were making to our customs official, CEA, a
 24 representative, CEA, which handles all our nationalization.
 25 And they were going to get the policy renewed so that we

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1 I would continue maintaining that status in the year to come.
 2 Q What did you understand, with regard to the payment
 3 at that point? And if you need me to be more clear, I can.
 4 A Could you?
 5 Q Okay. They tell you that they're making a payment
 6 to CEA. What did you understand that that money was going to
 7 do? Was this part of CEA's normal fee, or was this money
 8 that CEA was going to use to bribe customs officials? What,
 9 in your mind, what understanding did you get from them when
 10 they say, "We're making a payment to CEA."
 11 A First, at no time did I know or have knowledge, or
 12 even have any suspicion that this was a bribe, as you put it,
 13 to a customs official. It was simply put that it was a
 14 payment, it was a service fee, that was going to be made to
 15 CEA and that this was agreed and negotiated with (b)(7)
 16 (b)(7) and basically the payment needed to be made.
 17 Basically -- and at that time, I had no reason not
 18 to believe them, (b)(7) When I refer -- when I discuss or
 19 confer with my legal counsel and they tell me something, I
 20 have no reason to question their integrity, nor what they're
 21 telling me.
 22 Q What -- using this time frame, what was CEA's
 23 relationship with Banadex?
 24 A Again, CEA was a third party that had offices, if I
 25 recall, in Turbo, where the warehouse was located. And their

(b)(7)(C)

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1 primary responsibility was the -- to submit all necessary
2 documentation that we needed to import, as well as export,
3 all materials and product in and out of Colombia.
4 There were essentially, if you will, our liaison or
5 our representative in front of the DIAN, which is the
6 government agency that oversees that area. And they
7 coordinated all the activity with (b)(7)(C) who was
8 their M&S manager.
9 Q And for the record, DIAN I understand to be
10 D-I-A-N, and again, that's a shorthand for a much longer
11 Spanish name for an agency that I cannot remember offhand.
12 A The DIAN is equivalent to the IRS here in the
13 United States.
14 Q Does CEA have a contract with Banadex under which
15 it provides ongoing services in this area?
16 A. CEA had a contract that was an ongoing contract
17 that was discontinued.
18 Q When was that contract discontinued?
19 A I don't recall the specific time period, (b)(7)(C)
20 but I think it was some time around either late 1988 or early
21 1999.
22 (b)(7)(C) 1998, rather than --
23 THE WITNESS: I'm sorry, I'm sorry.
24 BY (b)(7)(C)
25 Q Why was that contract terminated?

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1 A I don't know the details. I was not involved with
2 the transition to the agent we have in place now.
3 Q Do you have any understanding that it had anything
4 to do with these customs payments?
5 A No, I don't.
6 Q Where this has all been leading is, did you have
7 any understanding whether this was part of CEA's -- this
8 payment that you were discussing -- was part of CEA's regular
9 fee under the contract, or was this some extra payment that
10 was being made because they were performing an extra service?
11 I'm trying to get an idea of more specifically, you
12 know, you didn't understand it was a bribe, but in terms of
13 the normal relationship of CEA and Banadex, what did you
14 understand this payment to be?
15 A Again (b)(7)(C) to the best of my recollection, at
16 the time when I was speaking with both (b)(7)(C) and my
17 discussions with (b)(7)(C) they didn't -- they weren't
18 specific whether it was a payment other than the normal
19 monthly fee that we pay them, or if it was a payment for
20 services that they were going to provide in addition to help
21 us get this permit renewal. That was not specifically
22 explained to me.
23 Q Let's move forward to the very next time you have
24 any type of interaction with any one conversation or anything
25 of the like with someone regarding these customs payments.

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1 A The -- after my meeting with (b)(7)(C) and (b)(7)(C)
2 (b)(7)(C) I don't recall hearing anything about this until
3 circa the time of the 1995 audit.
4 (b)(7)(C) 1997.
5 THE WITNESS: What?
6 (b)(7)(C) You had said 1995 audit.
7 THE WITNESS: I'm sorry, I'm sorry.
8 (b)(7)(C) And it's --
9 THE WITNESS: Let me correct that for the record.
10 During the time of the 1997 audit, (b)(7)(C) as I
11 recall, called me to his office and asked me to gather any
12 and all information relating to payments made to CEA. And he
13 asked me to get that and bring that up to him.
14 (b)(7)(C)
15 Q Was there anyone else in the office during this
16 conversation with you and (b)(7)(C)?
17 A Again, I don't recall.
18 Q Do you recall when this conversation took place and
19 let's start with time of day. Was it, you know, to the best,
20 you know, best approximation.
21 A To the best of my recollection, it happened some
22 time after the close meetings that were related to that
23 particular audit.
24 Q Late in the day?
25 A I don't recall if it was late in the day or the

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1 following morning.
2 Q What -- you said that, I believe, (b)(7)(C) asked
3 you to look into payments to CEA. Was he more specific than
4 that with regard to what you were going to look into?
5 A He -- as I recall, again, he came out of a -- he
6 was coming out of a meeting. He had finished a meeting, and
7 he had mentioned to me that his meeting with (b)(7)(C) had
8 indicated that these -- that there were some payments that
9 were made to CEA, but that were -- the ultimate destination
10 was to a government official, and that we needed to gather
11 all information necessary, and that he wanted to look at it
12 before we sent it to -- I don't recall if we sent it to
13 corporate. He said -- I don't know if it was directly to (b)(7)(C)
14 or to the legal department.
15 Q Did he give you some instruction as to where to go
16 to find this information?
17 A As I recall, he said the payments were to CEA, but
18 they were recorded in the security account and he said, you
19 know, "I need this information, and you know, look in these
20 accounts," and so I instructed my people to go into the
21 records and to pull out the documents.
22 Q Okay, and when you say you instructed your people,
23 who did you instruct?
24 A I don't recall, but I -- at the time, (b)(7)(C)
25 (b)(7)(C) he would most likely be

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(b)(7)(C)

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1 the person that I'd go to for any copies or questions on
2 invoices or 1016's.

3 Q (b)(7)(C)

4 A (b)(7)(C)

5 Q Okay, and he was your -- there was something,
6 supervisor.

7 A He was accounts -- A/P supervisor, accounts
8 payable.

9 Q And when you say you were asking him to get the
10 documents, what are the documents that you were asking him to
11 get?

12 A Any and all support related to these payments, the
13 1016, and/or any related attachments.

14 Q And where did he go to get that?

15 A I don't know.

16 (b)(7)(C) Well, do you know where such
17 documentation is typically maintained as a matter of
18 practice?

19 THE WITNESS: As a matter of practice, and for
20 statutory reasons, we're required to file all supporting
21 documents and invoices, and we maintain those in our filing
22 room.

23 BY (b)(7)(C)

24 Q What specifically did you tell (b)(7)(C) with
25 regard to what he was supposed to do, assuming you recall?

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1 A Again, to the best of my recollection, my
2 instructions were very general. Just, "I need to get the
3 documents relating to these payments," and I gave him the
4 date, because with a date and where they're recorded, you can
5 pretty easily identify and retrieve these types of documents.

6 Q And that got to the essence of my question, which
7 was how did -- I couldn't understand how he knew what to
8 bring you back, if you don't give him some detail. So you --
9 do you assume that you gave him a date or -- just because
10 that would be necessary -- or do you specifically recall that
11 you gave him a date?

12 A I don't -- again, we're talking three years now. I
13 don't specifically recall, (b)(7) but he would need
14 something, whether it's a date or an account. If I give him
15 a date, or if he has an account, he can -- those are the two
16 things that he could use to find an invoice.

17 Q I understand, just sometimes -- just in this area
18 especially I want to be very clear about what it is that -- I
19 don't want it to be unclear, that possibly you specifically
20 recall something.

21 And I get this sense that you're trying to help me
22 by speculating. And I appreciate that, but it's -- you know,
23 I do want to make that clear, especially at this point in
24 your testimony.

25 A Okay.

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1 Q After you ask -- and whomever it is on your staff
2 -- to get you documentation, what is the very next thing that
3 happens, with regard to this issue of the customs payments?

4 A Again, as I recall, once I had the information, I
5 gave it to (b)(7)(C) and after that, I don't recall the
6 next time I had any -- heard anything of this, at least of
7 this particular transaction.

8 Q Did you do any investigation beyond this act of
9 retrieving the supporting documentation?

10 A As it was explained to me later, (b)(7)(C) the
11 action, or the investigative action, if you will, that was
12 being undertaken, was being handled by the legal department.

13

14 Again, I was not involved with that, but it was
15 told to me that this was being done, and again, I was there
16 to provide them information, but they were already
17 undertaking an investigation.

18 And in addition, an attorney from Cincinnati, as I
19 recall, came down to the division and spoke with those
20 individuals. I was not one of those, but they spoke with
21 various individuals that were involved, or had more
22 information.

23 Q Who told you that legal was handling this at that
24 point in time?

25 A Again, to the best -- I recall that was (b)(7)(C)

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1 (b)(7)(C)

2 Q I'm handing you a document that has previously been
3 marked as SEC Exhibit No. 25. For the record, I'll describe
4 SEC Exhibit No. 25. It's a one-page document, again it
5 appears to be what we've been calling a 1016, and it is Bates
6 stamped 1CHI17-000052. Have you seen this document before?

7 A Again, I recognize this document as a 1016 for a
8 related payment to the -- this transaction --

9 Q Okay --

10 A -- under question.

11 Q The customs payment, 10167 CBI-V1-001-003664

12 A That's correct.

13 Q So now, with -- I wanted you to have what's been
14 marked as SEC Exhibit No. 55 and what's been marked as SEC
15 Exhibit No. 25 in front of you when I ask what documentation
16 did you gather, pursuant to your charge from (b)(7)(C)
17 relating to these customs payments?

18 A Again, to the best of my recollection, these -- the
19 documents I provided to (b)(7)(C) were limited and they
20 included copies of these two documents.

21 Q SEC Exhibit No. 25 and SEC Exhibit No. 55?

22 A SEC Exhibit No. 25 and SEC Exhibit No. 55.

23 Q Including the memo that is part of SEC Exhibit No.
24 55, the second page?

25 A I don't -- the second page of SEC Exhibit No. 55?

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(b)(7)(C)

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1 don't recall. But I do recall these two specific 1016
2 payments.
3 Q Did you provide him with any other documentation,
4 supporting documentation, relating to these two payments
5 other than these two 1016's?
6 A (b)(7)(C) I don't recall giving him any
7 documentation, but as general practice, attached to the 1016
8 is normally a green print-out, which is the entry that's
9 actually made on the books at the time that the 1016 is
10 inputted into the general ledger system. But I don't recall
11 if that was also provided.
12 Q So looking back at SEC Exhibit No. 36, which we had
13 yesterday, and if you were to look at the second page of that
14 document, and find the entry there corresponding to SEC
15 Exhibit No. 25, is that the information that you're referring
16 to right now?
17 A This is the information that I had said that if I
18 had provided to him a copy, this is probably what I would
19 have given him as well.
20 Q Okay, thank you. Staying to this point in time,
21 when you were trying to get information for (b)(7)(C) did
22 you speak to any of the -- did you speak to anyone regarding
23 the customs payments?
24 A Again, I don't recall who I spoke with. Again, I
25 heard through -- via (b)(7)(C) that, you know, that the

1 again, I can't say that I had any specific conversations with
2 him regarding these payments.
3 Q Just going forward, because we're going to do this
4 for a number of people, when you use the word specific in
5 that manner, you beg me to keep coming back to you to ask you
6 generally, you know, whether you recall having conversations
7 that you may not be able to recall the specifics. You don't
8 know where it was, you don't know who was there, you don't
9 know what was discussed, but you know you asked him, "What
10 were you thinking when you did this?"
11 You know, so again, do you recall any conversation
12 at all with (b)(7)(C) that's happened since that date,
13 where you know, you discussed with him his involvement with
14 these customs payments?
15 A Again, you know, once -- I think after the visit
16 from the attorneys (b)(7)(C) I think as normal, we would begin
17 to talk about the circumstances. And again, in general, as
18 you put it, I had conversations with (b)(7)(C) to discuss, you
19 know, what the payments were, but I don't recall the
20 conversation in terms of what was discussed.
21 Q That's exactly the kind of conversation I'm asking
22 about. Do you recall anything at all regarding those
23 conversations?
24 A I can't -- I don't recall.
25 Q Subsequent to your conversation with (b)(7)(C)

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1 investigation was going to -- that internal was going to come
2 down and talk to certain individuals, but I don't recall
3 speaking to those individuals.
4 Q When was the first time that you understood that
5 these payments involved -- and I don't want to say bribe at
6 this point, so I'll say problematic payment to customs
7 officials?
8 A The first time that I was -- that I had knowledge
9 that there were questionable payments or problematic
10 payments, was when I spoke with (b)(7)(C) when he had
11 called me in his office.
12 Q Other than the conversation with (b)(7)(C) that
13 we talked about, have you at any point in time since that
14 conversation, had another conversation with (b)(7)(C) where
15 you discussed these customs payments?
16 A Subsequent to my initial conversation with him?
17 Q Yes.
18 A I don't recall the conversations I had with (b)(7)(C)
19 after that. Again, I don't deny that I had any
20 conversations, but I don't recall any specific conversations
21 relating to these payments.
22 Q Do you recall generally, after that date,
23 discussing customs payments with (b)(7)(C)
24 A Again, any general discussions, I -- you know, we
25 talk, the managers talk fairly frequent, but I don't --

1 the one that we've discussed in the same time period,
2 possibly even the same discussion as you had with (b)(7)(C)
3 (b)(7)(C) subsequent to that conversation, have you had any
4 discussions with (b)(7)(C) concerning in any shape, manner,
5 or form, these customs payments?
6 A I would answer the same way I did with (b)(7)(C) We
7 -- I had in general -- I discussed the payments, but again, I
8 don't recall any information that we discussed, you know, in
9 meetings subsequent.
10 Q Do you recall whether either one of them told you
11 it was at (b)(7)(C) fault?
12 A Again, I don't recall that comment being made by
13 either party.
14 Q Do you have any understanding that they blamed
15 (b)(7)(C) for this incident?
16 A I later -- it was later mentioned that -- I don't
17 recall who, but that they were implying that (b)(7)(C) was
18 the individual that had negotiated, and that theory was
19 thrown around.
20 Q Do you remember who you had this discussion with?
21 A I don't recall who in Colombia I had the discussion
22 with, but I recall that finger pointing was beginning to
23 occur.
24 Q Have you ever, at any time, discussed these
25 payments, however generally, with (b)(7)(C)

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(b)(7)(C)

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1 A (b)(7)(C) was -- had left the Columbia division
2 before I got there, and after he had left, I don't recall
3 talking with him, and I know for a fact that I never
4 discussed these payments with him.
5 Q Have you ever discussed these payments with (b)(7)
6 (b)(7)(C)?
7 A Again, the -- since the investigation was being
8 handled by the legal department, and (b)(7)(C) was the
9 primary contact, again, I was not -- not that I was privy,
10 but I was never included in conversations. And any
11 information was being handled directly with (b)(7)(C)
12 (b)(7)(C). I don't recall talking with (b)(7)(C) after this
13 incident about these particular payments.
14 Q Have you ever discussed with (b)(7)(C) FCPA
15 compliance or FCPA compliance issues with reference to these
16 customs payments? Do you understand what I'm saying?
17 A Yes. I don't recall (b)(7)(C) talking with (b)(7)
18 White specifically about these payments regarding compliance
19 because again, I wasn't involved.
20 Again, that DLD investigation was being done and
21 channeled through (b)(7)(C) so I wasn't involved with
22 that.
23 Q Have you ever had any discussions with (b)(7)(C)
24 concerning these customs payments?
25 A No.

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1 Q Have you ever had any discussions with (b)(7)(C)
2 concerning these customs payments?
3 A Again, (b)(7)(C) at the time that I was
4 transitioning into the position, never mentioned any type of
5 payments or a type of pending transaction. And after he had
6 left, I had no further communication with him. So, the
7 answer is no.
8 Q Have you had any conversations with (b)(7)(C)
9 regarding -- let me back up, because I don't know if we've
10 mentioned him before. Do you know who (b)(7)(C)
11 A Yes.
12 Q Who is he?
13 A (b)(7)(C) -- let me
14 take a step back. (b)(7)(C)
15 (b)(7)(C) Chiquita Banana Group.
16 Q Okay. Did you at any time have any discussions
17 with (b)(7)(C) regarding these customs payments?
18 A No.
19 Q Did you at any time have any conversations with (b)(7)
20 (b)(7)(C) regarding these customs payments?
21 A To the best of my recollection, no.
22 Q Have you had any conversations with (b)(7)(C)
23 regarding these customs payments?
24 A I do recall conversations that were had subsequent
25 to this, but again, nothing specific.

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1 Q What can you tell me about those conversations?
2 A The conversations -- again, I don't recall what was
3 discussed, but it was discussed, the -- again, the -- how the
4 transaction, if I knew anything, or you know, or did I sign
5 anything, or who took -- you know, questions about facts,
6 similar to a fact-finding mission. And it was just basically
7 done for him to understand.
8 It was -- there were several conversations. I
9 don't know the sequence of time, but they were very general
10 conversations, in terms of the payments and the process of --
11 with the interviews that Cincinnati was conducting.
12 But again, I was not part of that. That was all
13 being handled and channeled through the legal department.
14 And again, I would assist them when needed.
15 Q Did you have any discussion with him at any time
16 regarding what happened, more generally?
17 A I don't recall.
18 Q Did you have any discussion with him regarding
19 other individuals' involvement in these customs payments?
20 A (b)(7)(C) again, to the best of my recollection, I
21 don't recall the conversations we had with (b)(7)(C) or the
22 specifics, but again, as I had mentioned to you before, the
23 question that always came up was who knew what, who didn't
24 know, and that -- those are the kind of questions that were
25 normally discussed.

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1 Q Okay, and do you recall anything, you know, even in
2 the most general fashion, about those discussions that you
3 had with (b)(7)(C)?
4 A What I do recall is that (b)(7) basically said that
5 he did not know about these -- because I recall him asking me
6 if I knew anything, and I told him that I did not know
7 anything about these payments. And he responded he did not
8 know anything about that payment as well, and did I have any
9 additional information? I said, "No, I don't."
10 But those were the types of conversations, in
11 general. It seemed that that was a recurring theme, or
12 topic.
13 Q But can you remember anything more specific with
14 regard to your discussions with (b)(7)(C)?
15 A No.
16 Q Did you speak, at any time, with (b)(7)(C)
17 regarding these customs payments?
18 A Again, I --
19 (b)(7)(C) I'm sorry, you mean beyond what he
20 already described?
21 (b)(7)(C): Beyond when you didn't know.
22 (b)(7)(C) All right, yes.
23 THE WITNESS: I don't recall. CBI-V1-001-003666
24 (b)(7)(C)
25 Q Did you ever properly thank him for trying to get

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(b)(7)(C)

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1 you to authorize that document?

2 A No, sir. Again, I'll go back to that point that
3 you trust -- you put a significant amount of trust in one
4 individual, and you expect that person to carry out his job
5 responsibility.

6 Q Did you have any discussions with (b)(7)(C) after
7 you gave him the information he requested regarding what had
8 -- the larger issue of what had occurred, with regard to
9 these customs payments?

10 A What I recall (b)(7)(C) is that he gave me -- he
11 kind of explained to me what had transpired, and gave me some
12 background as to what was discussed in the meeting, the close
13 meeting with (b)(7)(C) that I was not invited to, and that he
14 had had with them, and this is where it all -- there is where
15 I became involved.

16 Q What did he tell you?

17 A He just explained that there were these payments
18 that were made to a government official to ensure that we
19 would get the permit renewed. And this payment, although it
20 was explained that we were going through CEA, the intention
21 was that a third party other than CEA was to receive the
22 funds.

23 Q In response to this incident, and this incident
24 being these two payments to customs officials, have there
25 been any changes to the manner in which unusual or sensitive

1 of any changes in policies and procedures in the Colombian
2 operations that took place, as a result of this incident of a
3 payment of money to customs officials.

4 A (b)(7)(C) the first fundamental change was the -- was
5 that the CAO had given me the responsibility to sit down and
6 coordinate this review with the head of security each
7 quarter. And I've been doing -- and playing a more active
8 role with the security to make sure these payments are being
9 properly recorded.

10 Secondly, as of recent -- toward the end of October
11 -- I was told by the head of security that we are no longer
12 going to be making payments to the groups, or the guerrillas,
13 and that these payments will be made to one particular group,
14 which is recognized as a governmental -- which is recognized
15 by the Colombian government.

16 So that gave me at least more comfort that the
17 payments would be made and would reach the groups which are
18 intended to receive those monies, since they are a
19 government-recognized group. We can make payments either to
20 their bank accounts, so once they're there, at least from a
21 control standpoint, we feel that the money is getting to
22 where it's intended.

23 Whereas before, there were payments made in cash,
24 handed directly by (b)(7)(C) and as you put it before, how
25 do we know whether he pockets the money or not? That

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1 payments are handled and documented in the Colombian
2 operations?

3 (b)(7)(C) If we're going to change to that
4 new topic, can I take a quick break?

5 (b)(7)(C) Sure. Absolutely.

6 (A brief recess was taken.)

7 (b)(7)(C) Back on the record at approximately
8 10 minutes before 12:00. No discussions of substance were
9 had when we were off the record. Is that correct?

10 (b)(7)(C) That's correct.

11 (b)(7)(C) Before the break, we were moving to a
12 -- I had asked you -- we were moving on to a new topic. I

13 was asking you whether, as a result of these customs
14 payments, there had been any changes in the policies or
15 procedures regarding sensitive or unusual payments by the
16 Colombian operations.

17 (b)(7)(C) We got --

18 (b)(7)(C) Let's go off.

19 (A brief recess was taken.)

20 (b)(7)(C) Back on the record at approximately 8
21 minutes before 12:00. Again, no discussions of substance
22 were held while we were off the record. Is that correct?

23 (b)(7)(C) Correct.

24 (b)(7)(C)

25 Q Returning again to the -- once again to the topic

1 question we -- that concern we can at least minimize.

2 Q The group you're referring to, is that Convivir?

3 A Convivir is the group that exists in the Turbo
4 region, and which we are currently, and have been making
5 payments in the past. There is a new group that was created
6 in Santa Marta, where we have the other operations. That
7 group, I don't know if it's independent of Convivir, but it's
8 still recognized as a government entity, or government-
9 supported group. And that group has the same functions as
10 Convivir.

11 Q Any other changes or alterations in policies or
12 procedures?

13 A The -- just something on my part that I've taken on
14 is since we have a new director of security, after (b)(7)(C)
15 (b)(7)(C) left, what I have recommended and what I'm working
16 toward is basically -- except for expense reports --
17 basically have required that all payments made by the
18 security department be authorized by somebody of upper
19 management in the division, whether it's myself, or (b)(7)
20 (b)(7)

21 But basically -- and again, not to -- for specific
22 reasons, just to -- since that area -- to have more control
23 over the payments going in that area for any type of
24 sensitive payments, I think that's just more -- it's more
25 prudent from a control standpoint.

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(b)(7)(C)

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1 Q I think you're saying -- I just want to make sure I
2 understand -- that this is not due to any specific lack of
3 trust in the present security manager, it's because this is a
4 business practice that you feel more comfortable with.

5 A Right. I think now with -- again, with the
6 payments to the two groups, and that we are no longer going
7 to be making payments to separate individual groups, and no
8 longer cash payments, this is just an added step that makes
9 the whole process itself much more comfortable with my
10 standards, and I think from everyone else's standards.

11 Q We talked today about these two customs -- two
12 payments that made their way to customs officials. Are you
13 aware of any other payments to government officials,
14 problematic, questionable payments to government officials
15 that -- other than these two?

16 A No.

17 Q My question got a little jumbled, so let me ask it
18 very clearly. Do you know about any other bribes, kickbacks,
19 questionable, or problematic payments that I would want to
20 know about?

21 A The reason I hesitated, (b)(7)(C) is that a payment
22 had come across -- a request for a payment had been brought
23 to my attention regarding a similar situation where we needed
24 to make a payment that a DIAN official was asking for, a
25 payment to look the other way.

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1 And in this particular case, the facts and the
2 information was disclosed to me. So I had the facts, and I
3 knew what the purpose of the payment was. And I personally
4 called the legal department in Cincinnati (b)(7)(C)
5 discussed with him the facts, and we agreed, myself and (b)(7)(C)
6 and I also informed (b)(7)(C) after the conversations, that we
7 cannot make these payments, and we were not going to make the
8 payment, and we -- the official was communicated that the
9 payment was not going to be made.

10 Q When did this occur?

11 A It occurred, again (b)(7)(C) some time in 1998. I
12 don't recall the specific date, I just recall the -- I mean
13 obviously, for something like this, this came to my attention
14 and again, the facts were disclosed to me, and I knew where
15 -- what this was supposed to be, and asked if I could make --
16 if I could approve a payment. And that's when I contacted
17 our legal department and told them of this specific case.

18 Q Who asked you if you could approve a payment?

19 A The -- again, the M&S manager, who is the liaison
20 between the customs agent and the -- in the division of the
21 customs agent, as well as he may have contacted the DIAN. He
22 came to me.

23 Q At this point, that was a position that was
24 occupied by (b)(7)(C) correct?

25 A Previously.

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1 Q Okay. This was (b)(7)(C) replacement?

2 A That's correct.

3 Q Who -- what is this individual's name?

4 A (b)(7)(C)

5 (b)(7)(C)

6 M&S manager.

7 Q Was there (b) I recall, I think, an (b)(7)(C) who
8 was part of the audit staff.

9 A That's correct.

10 Q And what did he tell you, what facts did he provide
11 you, about this payment?

12 A As I recall, (b)(7)(C) had come to me and indicated
13 that there was, similar to this, to the previous incident,
14 that there was a DIAN official -- I don't recall if he said
15 he approached him, or did it through the customs agent -- but
16 asked if we were -- we would pay him this money to the
17 official and this money, so that we -- I don't recall what
18 had occurred, but he explained to me that we had opened some
19 merchandise before it was nationalized. And under the
20 customs law, you need to, before you take the merchandise out
21 of the warehouse, it needs to be nationalized.

22 I think what had happened, he had told me, was that
23 this liquid, or what have you, was actually taken out before.
24 The DIAN official was aware of this, and he stepped in, and
25 that's where he asked for monies so that he would not report

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1 this incident, or fine us, if you will.

2 Q And how did this circumstance play out? What
3 happened after you refused to pay the requested amounts?

4 A The -- as -- again, I was not the contact person,
5 but I was -- in this particular case I was actively involved,
6 working with the M&S manager. And I had told (b)(7)(C) that the
7 decision was from Cincinnati.

8 It was very clear that we were not going to make
9 this payment, and that he was to communicate -- I don't
10 recall if it was he or our legal representative who

11 communicated this, because we took this very seriously, and
12 it was very delicate. So we made the communication.

13 I don't recall who did, but I was not involved in
14 the communication. But it was communicated to the customs
15 agent that the payment was not going to be made. And what I
16 understood the DIAN official saying is that well, he'll
17 report this incident to his officials, or his superiors, and
18 we'll receive a notice as to whether we would be penalized or
19 not.

20 Q Did anyone in your organization report the request
21 for payment to Colombian government officials?

22 A Again, the -- we reported it when we contacted (b)(7)(C)
23 (b)(7)(C) in the legal department. Again, the fact that we
24 reported it to him, that was made with -- when we

25 communicated via the telephone, and we informed the legal

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(b)(7)(C)

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1 department of that payment.
 2 Q I was asking a different question, which is do you
 3 know if anyone in Chiquita's organization contacted the
 4 Colombian government to advise them that a DIAN official had
 5 been requesting a payment?
 6 A No, I don't.
 7 Q Did -- was (b)(7)(C) aware of the customs payment
 8 circumstance that had occurred in late 1996 and early 1997?
 9 A I don't know if (b)(7) knew or not, if he had
 10 knowledge of it.
 11 Q Are there any other circumstances of either paying
 12 a problematic payment, or somebody requesting a problematic
 13 payment that you're aware of?
 14 A Not that I recall.
 15 Q I had asked you individually about whether -- I had
 16 gone through a -- let me take that back. I had gone through
 17 a series of names and asked you whether you had spoken to
 18 each of these individuals about customs payments.
 19 And I understand that with no degree -- with any
 20 degree of specificity you are unable to recall the
 21 conversations. But in general, do you have an understanding,
 22 however you obtain that understanding, of what happened with
 23 regard to the two payments to customs officials?
 24 (b)(7)(C) I don't understand.
 25 THE WITNESS: I don't understand the question.

1 recurring in the conversations.
 2 (b)(7)(C) I have no further questions at this
 3 time. Would you all like to take a break or --
 4 (b)(7)(C) Can we take just a minute?
 5 (b)(7)(C) Yes, and then if you have any
 6 clarifying questions or statements that you wanted to make,
 7 that would be an opportune time for that.
 8 (b)(7)(C) Great.
 9 (b)(7)(C) Okay, we're going off the record. It
 10 is approximately 10 minutes after 12:00.
 11 (A brief recess was taken.)
 12 (b)(7)(C) We're back on the record a few
 13 moments later. No discussions of substance were had while we
 14 were off the record. Is that correct?
 15 (b)(7)(C) That's right. And we have nothing
 16 further to add.
 17 (b)(7)(C) Okay. We are off the record at
 18 approximately 11 minutes after 12:00.
 19 (Whereupon, at 12:11 p.m., the examination was
 20 adjourned.)
 21 * * * * *

1 BY (b)(7)(C)
 2 Q Okay. I just want to know if you know a story with
 3 regard to these. You didn't know specifically with regard --
 4 you know, I asked you, "Did you speak to (b)(7)(C)
 5 A Mm-hmm.
 6 Q And you know, taking liberties with what you
 7 said, you said, "I had conversations with him, but I can't
 8 remember what, you know, specifically what." Well, do you
 9 have a general understanding of what happened, the
 10 circumstances surrounding these two customs payments and the
 11 people involved from whatever sources you may have obtained
 12 them?
 13 A Again, I can just comment on what I know as a fact,
 14 and what I recall. And you know, again, in the conversations
 15 that I had with people, it's -- and I mentioned to you there
 16 were people that were saying that these people were involved,
 17 that others were involved, or they negotiated, or she or he
 18 negotiated.
 19 But there is always this, you know, -- whether it
 20 was (b)(7)(C) that negotiated, whether it was (b)(7)(C) that
 21 negotiated, whether it was (b)(7)(C) whether it was all
 22 three of them that negotiated, whether one made the decision
 23 over the other, those are the three individuals that I, when
 24 I met and discuss -- when I met and discussed with people,
 25 those were the three individuals that -- whose names were

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