

CHIQUITA BRANDS

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(b)(7)(C)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
 In the Matter of: **CHIQUITA BRANDS INTERNATIONAL, INC.** File No. HO-3361
 WITNESS: (b)(7)(C)
 PAGES: 1 through 191
 PLACE: Securities and Exchange Commission Headquarters
 Room IC-13
 450 Fifth Street, N.W.
 Washington, D.C.
 DATE: Tuesday, November 23, 1999
 The above-entitled matter came on for hearing, pursuant to notice, at 9:30 a.m.
 APPEARANCES:
 On behalf of the Securities and Exchange Commission:
 (b)(7)(C)
 United States Securities and Exchange Commission
 450 Fifth Street, N.W.
 Washington, D.C. 20549
 On behalf of the Witness:
 (b)(7)(C)
 Richard S. Ellis
 455 15th Street, N.W.
 Washington, D.C. 20005
 (b)(7)(C)

CBI-V1-001-003679

PROCEEDINGS

1 (b)(7)(C) We are on the record at approximately
 2 9:30 a.m. on Tuesday, November 23, 1999 at the offices of the
 3 Securities and Exchange Commission, 450 Fifth Street, N.W.,
 4 Washington, D.C. 20549.
 5 My name is (b)(7)(C) and with me is (b)(7)(C)
 6 (b)(7)(C) We are officers of the Securities and Exchange
 7 Commission for purposes of this proceeding.
 8 (b)(7)(C) would you please raise your right hand?
 9 Whercupon,
 10 (b)(7)(C)
 11 was called as a witness and, having been first duly sworn,
 12 was examined and testified as follows:
 13
 14 **EXAMINATION**
 15 BY (b)(7)(C)
 16 Q (b)(7)(C) your testimony has been requested by
 17 the staff as part of a formal investigation by the United
 18 States Securities and Exchange Commission entitled in the
 19 Matter of Chiquita Brands International, Inc., HO-3361.
 20 This investigation seeks to determine whether there
 21 have been any violations of federal securities laws.
 22 However, the facts developed may constitute violations of
 23 other federal or state civil or criminal laws.
 24 Do you understand this?
 25 A I do.

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1 Q Prior to our going on the record, you were provided
 2 with a copy of the Formal Order of Investigation in this
 3 matter. It will remain available to you throughout the
 4 course of this proceeding.
 5 Have you had the opportunity to review the Formal
 6 Order?
 7 A Yes, I have.
 8 Q Prior to our going on the record, you were provided
 9 with a copy of the Commission's Supplemental Information Form
 10 1662, which has been previously marked as Commission Exhibit
 11 No. 1.
 12 Have you had the opportunity to review this form?
 13 A Yes, I have.
 14 Q (b)(7)(C) are you being represented by counsel
 15 here today?
 16 A Yes, I am.
 17 (b)(7)(C) Would counsel please identify
 18 themselves?
 19 (b)(7)(C)
 20 (b)(7)(C)
 21 (b)(7)(C) (b)(7)(C)
 22 (b)(7)(C) And are you representing (b)(7)(C)
 23 here today?
 24 (b)(7)(C) Yes.
 25 (b)(7)(C) (b)(7)(C) the document I am handing

(b)(6), (b)(7)(C)

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1 you has been marked as Commission Exhibit No. 26. This
 2 document contains a copy of a subpoena ad testificandum dated
 3 October 22, 1999.
 4 For the record, Commission Exhibit No. 26 is a
 5 three-page document consisting of a two-page cover letter
 6 addressed to (b)(6), (b)(7)(C) and a subpoena ad testificandum.
 7 (SEC Exhibit No. 26 was
 8 marked for identification.)
 9 BY (b)(6), (b)(7)(C)
 10 Q Is this subpoena a copy of the subpoena you are
 11 appearing pursuant to here today?
 12 A Yes, it appears to be.
 13 Q Thank you. Would you please state and spell your
 14 full name for the record?
 15 A (b)(6), (b)(7)(C)
 16 O-r-d-m-a-n.
 17 Q Have you changed your name?
 18 A No, I have not.
 19 Q Do you go by any other name or do people know you
 20 by any other name or nickname?
 21 A No.
 22 Q What is your date of birth?
 23 A (b)(6), (b)(7)(C)
 24 Q Your place of birth?
 25 A (b)(6), (b)(7)(C)

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1 A That's about right.
 2 (b)(6), (b)(7)(C)
 3
 4
 5 Wait a second. I'm terrible with dates. Could I go about
 6 this in reverse, perhaps?
 7 Q Sure. Whichever way.
 8 A I joined Chiquita in (b)(6), (b)(7)(C)
 9 (b)(6), (b)(7)(C)
 10
 11
 12
 13
 14
 15
 16
 17
 18 Q Okay. If you could sketch out your educational
 19 background beginning with high school and just take
 20 everything forward.
 21 A Sure. (b)(6), (b)(7)(C)
 22 (b)(6), (b)(7)(C)
 23
 24
 25

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1 Q Your citizenship?
 2 A (b)(6), (b)(7)(C)
 3 Q And your Social Security number is?
 4 A (b)(6), (b)(7)(C)
 5 Q What is your present home address?
 6 A (b)(6), (b)(7)(C)
 7 (b)(6), (b)(7)(C)
 8
 9
 10 Q Okay. And there was a word in there that we may
 11 have to --
 12 A (b)(6), (b)(7)(C)
 13 Q Yes -- ask you to spell.
 14 A The (b)(6), (b)(7)(C)
 15 Q Okay. And how long have you lived at that address?
 16 A It will be (b)(6), (b)(7)(C)
 17 Q Okay. And what was your previous home address?
 18 (b)(6), (b)(7)(C)
 19
 20 (b)(6), (b)(7)(C) I lived in a high rise apartment building
 21 there.
 22 Q Okay. So you were in (b)(6), (b)(7)(C)
 23 through the present, approximately? Is that --
 24 A That's right.
 25 Q That is about right?

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1 Upon graduation (b)(6), (b)(7)(C) I went into (b)(6), (b)(7)(C)
 2 (b)(6), (b)(7)(C)
 3
 4
 5 (b)(6), (b)(7)(C) and that was the end of my formal education.
 6 Q Was there any (b)(6), (b)(7)(C)
 7 A (b)(6), (b)(7)(C)
 8 Q Do you have any professional licenses?
 9 A Currently, I do not. When I graduated from
 10 (b)(6), (b)(7)(C) let me back up a minute just to clarify.
 11 (b)(6), (b)(7)(C)
 12
 13
 14
 15
 16 and so forth and so on. Anyway, that piqued my interest in
 17 (b)(6), (b)(7)(C)
 18 My first real introduction to (b)(6), (b)(7)(C) I
 19 did well in (b)(6), (b)(7)(C) I felt that I needed a little
 20 bit more nuts and bolts type exposure and I made the decision
 21 upon graduating (b)(6), (b)(7)(C)
 22 (b)(6), (b)(7)(C)
 23
 24
 25 (b)(6), (b)(7)(C) I am relatively sure

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1 that in order to maintain those credentials you need all
 2 kinds of things. You need ongoing education, you need to
 3 continue to work in the field and so forth and so on. As a
 4 practical matter, I left the (b)(6), (b)(7)(C) with Chiquita
 5 (b)(6), (b)(7)(C) very shortly after or relatively shortly after, I left that
 6 area (b)(6), (b)(7)(C) I'm sure, many years ago.
 7 I've never even really tracked it, to be honest with you.
 8 Q Okay. Have you ever testified in any proceeding
 9 conducted by the staff of the Securities and Exchange
 10 Commission?
 11 A No, I haven't.
 12 Q Have you ever testified in any proceeding conducted
 13 by a state or federal agency?
 14 A No.
 15 Q Have you ever testified in any proceeding conducted
 16 by a stock exchange?
 17 A No.
 18 Q Have you ever been deposed in any court proceeding?
 19 A I have been deposed on one or two occasions in
 20 Latin America, generally around absolutely routine kind of
 21 labor disputes. Somebody gets fired and (b)(6), (b)(7)(C)
 22 (b)(6), (b)(7)(C) I would very occasionally be deposed,
 23 more often than not with little or no knowledge of the actual
 24 incident itself, but it was more a matter of formality than

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1 anything else.
 2 Q Sure. Nothing in the United States?
 3 A Nothing in the United States.
 4 Q Okay. Have you ever been named as a defendant or
 5 respondent in any action or proceeding brought by the SEC,
 6 any other federal agency, a state securities agency, the NASD
 7 or any stock exchange?
 8 A No, I haven't.
 9 Q Have you ever been a defendant in any action
 10 alleging violations of the federal securities laws?
 11 A No, I have not.
 12 Q We have covered some of this here and there, but if
 13 you could, starting with where we left off with your
 14 education, which is, I think -- I have you (b)(6), (b)(7)(C)
 15 (b)(6), (b)(7)(C)
 16 A Right.
 17 Q Take me from the end of your education there
 18 through your work history. Basically, what I am looking for
 19 is if we could come all the way through with you telling me
 20 the company you worked for, the time period you worked for
 21 that company, the position you held and the time period you
 22 held that position. So just work through promotions and
 23 companies and this way I could just get an idea of during
 24 what time period you were where.
 25 A All right. I graduated, as I mentioned, from

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1 (b)(6), (b)(7)(C) That would have been in the summer
 2 of (b)(6), (b)(7)(C) And joined (b)(6), (b)(7)(C)
 3 (b)(6), (b)(7)(C) It would have been an
 4 initial entry position, professional entry position. I think
 5 the title was (b)(6), (b)(7)(C) or something of that nature.
 6 It would be very tough for me to give you dates,
 7 but during the course of my (b)(6), (b)(7)(C) I was
 8 promoted, I think, a couple of times and eventually was
 9 acting as a (b)(6), (b)(7)(C) there which as a practical matter
 10 meant that I ran (b)(6), (b)(7)(C) but always closely
 11 supervised by (b)(6), (b)(7)(C)
 12 I found the (b)(6), (b)(7)(C) experience interesting and
 13 certainly educational, but I was a bit frustrated by the sort
 14 of after-the-fact review nature of the whole thing and was
 15 interested in doing things as opposed to sort of looking at
 16 what other people were doing, so after about (b)(6), (b)(7)(C) with
 17 (b)(6), (b)(7)(C) a friend of mine who had been a friend both in
 18 college and eventually at (b)(6), (b)(7)(C) as well asked me to leave
 19 (b)(6), (b)(7)(C) and join him in (b)(6), (b)(7)(C) in an
 20 entrepreneurial venture in which we set up a (b)(6), (b)(7)(C)
 21 (b)(6), (b)(7)(C) company.
 22 The two of us set this company up. We had a little
 23 bit of financing from a passive investor in (b)(6), (b)(7)(C) And we
 24 created a company called (b)(6), (b)(7)(C) It
 25 was a rather unremarkable company and it was a rather

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1 unremarkable experience.
 2 There was a credit crunch in the U.S. at that time,
 3 interest rates went as high as 12, 13 percent. It was very,
 4 very difficult (b)(6), (b)(7)(C) and to make a
 5 long, painful story short, about a year and a half
 6 thereafter, I was looking for work. We decided to close down
 7 the company and I was looking for work. And living in (b)(6), (b)(7)(C)
 8 (b)(6), (b)(7)(C) which is a (b)(6), (b)(7)(C)
 9 I was very reticent to put my resume out with any
 10 old headhunter in the (b)(6), (b)(7)(C) area and I wasn't sure who the
 11 good ones were and who the bad ones were, so I asked a
 12 neighbor of mine who was a management consultant for some
 13 advice and he said that he also wasn't sure but that he would
 14 call somebody, a friend of his, and ask. And that friend
 15 turned out to be a senior VP at Chiquita.
 16 Chiquita's corporate headquarters were at that time
 17 in Boston and this guy listened to the story, gave us the
 18 name of a headhunter, but also expressed an interest in
 19 talking to me.
 20 I had potentially an interesting background for
 21 Chiquita because I had spent time in Colombia, South America,
 22 so I spoke Spanish, Latin America was not a cultural issue
 23 for me. I'm actually (b)(6), (b)(7)(C)
 24 (b)(6), (b)(7)(C) And I interviewed with a number of
 25 different companies, had a number of different job offers,

(b)(7)(C)

1 but eventually decided to go work for Chiquita.
 2 (b)(7)(C)
 3 (b)(7)(C)
 4 (b)(7)(C)
 5 (b)(7)(C)
 6
 7
 8
 9 (b)(7)(C)
 10
 11

12 At the end of that three-year period, my boss'
 13 boss, who had a position almost analogous to the one that I
 14 have today, approached me and asked me if I would consider
 15 leaving the financial area, getting into the general
 16 management area, and he invited me (b)(7)(C)
 17 (b)(7)(C)
 18
 19
 20
 21
 22

23 And I thought about it. It was not an easy
 24 decision because obviously sort of going from a natural
 25 functional area where you tend to be fairly marketable to

1 the last ten years, but at that period of time we had banana
 2 divisions that were primarily purchased fruit divisions where
 3 we did not own farms but rather purchased fruit from
 4 independent associate producers and we had divisions that
 5 were primarily producing divisions where we might have bought
 6 a little bit of fruit, but primarily we owned farms and
 7 produced the fruit ourselves.

8 (b)(7)(C)
 9 (b)(7)(C) Now, those
 10 definitions over the years have blurred very substantially
 11 because where we originally were purchasing fruit, we've come
 12 to own farms and so forth and so on, so we no longer make the
 13 distinction along those lines, but at that time, that was the
 14 distinction that we made, purchased or produced fruit
 15 divisions.

16 (b)(7)(C)
 17 (b)(7)(C)
 18

19 Now, there's been a title change and there's been
 20 geographical sort of shifting around which I'll try and
 21 explain to you in a minute, but essentially my
 22 responsibilities have been very similar to what they were at
 23 this time. So divisions have moved out from under my
 24 responsibility and into my responsibility. Again, the
 25 geographical areas have shifted. The distinction between

1 something as specialized as general management in the banana
 2 business, where you don't tend to be terribly marketable,
 3 gave me pause for thought, but to make a long story short
 4 again, I did accept the position and I functioned in that
 5 position for, I guess, the better part of two years, at which
 6 (b)(7)(C)
 7

8 The Bocas division, in case we talk about it again,
 9 in some length, goes by three interchangeable names that I
 10 could use on any occasion. It's exactly the same place. We
 11 sometimes refer to it as the Bocas division. We sometimes
 12 refer to it as the Altirante division, A-L-M-I-R-A-N-T-E,
 13 that happens to be the port that we use there. And we
 14 sometimes refer to it as the Changuinola, C-H-A-N-G-U-I-N-O-
 15 L-A, division.

16 At any rate, I was the general manager of that
 17 division for about three years and I believe I mentioned that
 18 it was in early 1984 that I was transferred to general
 19 manager of the Honduras division. The Honduras division was
 20 at that time our largest banana division and I functioned
 21 there as general manager until -- I guess it would have been
 22 some time around the end of 1987:

23 (b)(7)(C)
 24
 25

1 purchased and produced fruit no longer exist.

2 At one point in time, (b)(7)(C)
 3 (b)(7)(C)
 4
 5
 6
 7
 8

9 (b)(7)(C)
 10
 11
 12

13 sourcing. We have reorganized in a source to market manner.
 14 Again, it's not perfect.

15 Some of the fruit that I have responsibility for at
 16 a given point in time could in theory go to the United
 17 States. It's not that it's a perfect source to market
 18 alignment. Some of the fruit from divisions that primarily
 19 service North America could go to Europe, so it's not a
 20 perfect alignment, but we have divided the tropical
 21 operations essentially into three pieces: European sourcing,
 22 North American sourcing and then we have the Far East which
 23 is kind of handled -- because it's so far away and the
 24 markets are unique to the sourcing environments, the
 25 Philippines, Japan and so forth and so on, that's handled

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(b)(7)(C)

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1 totally outside of my sphere of influence.

2 Q (b)(7)(C)

3 (b)(7)(C)

4 (b)(7)(C)

5 (b)(7)(C)

6 (b)(7)(C)

7 (b)(7)(C)

8 (b)(7)(C) They do that here, too.

9 (b)(7)(C) I was not going to say that.

10 (b)(7)(C)

11 Q You have talked a little bit about the changes that

12 occurred. Throughout the day we will be discussing a lot

13 about the 1996 time period. While we are on this topic,

14 could you tell me more clearly during the 1996 time period

15 what your position was and what were the areas that were

16 under your control?

17 A Yes. In 1996, I would have had responsibility

18 for -- let me be careful about this and make sure that I'm

19 being accurate. I believe at that time I may have only had

20 (b)(7)(C) Again, we had a reorganization,

21 one of many that we've had at Chiquita, and at some time

22 around that date, I was looking at our operations exclusively

23 in Colombia. Subsequent to then, a counterpart of mine

24 retired and I assumed his responsibilities for Ecuador and

25 the Atlantic coast of Panama. Some time around then, I

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1 also relinquished my responsibilities for Guatemala and

2 Honduras. I'm a little hazy as to when that break actually

3 occurred. It would have been like roughly during that

4 period.

5 Q During this time period, though, you did have

6 responsibility for Colombia? At least that you are sure of?

7 A Yes, I did. As a matter of fact, I've had

8 uninterrupted responsibility for Colombia since moving to

9 Panama City in '87.

10 Q Okay. Sticking to Colombia, then, for the moment,

11 can you tell me just what your responsibilities have been

12 over this time period with regard to Colombia?

13 A Surely. Well, I have bottom line operational

14 responsibilities for what have been essentially all of

15 Chiquita's activities in Colombia. What does that mean?

16 That means that -- let me give you a little bit of background

17 about Colombia.

18 In 1987 when I took over these responsibilities,

19 Colombia was only a purchased fruit division and we only had

20 activities in Turbo, Colombia, the Gulf of Uraba, with our

21 headquarters in Medellin.

22 The general manager of Colombia, who was a Costa

23 Rican, at the time reported to me. His responsibilities were

24 to contract the fruit, make sure that the quantity and

25 quality of the fruit that we received was appropriate; get it

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1 on board a ship and send it to wherever.

2 Now, that was initially. As it became more

3 apparent to us that Colombia was -- at least potentially a

4 financially attractive place to source bananas from, it's a

5 soft currency country, good place to grow bananas, it was a

6 place where we had quite active competition, several of our

7 competitors, both international competitors as well as

8 Colombian exporting companies were actively engaged, we

9 decided to expand our operations and initially we expanded.

10 We returned to Santa Marta. We have a long history

11 in Santa Marta, we've been in and out of there since the

12 early '20s, I guess, long before I had anything to do with

13 Chiquita. We'd been in and out of there a number times. We

14 decided to return to Santa Marta and we returned initially

15 only contracting for purchased bananas.

16 Some time shortly after '87, and I simply could not

17 give you a date, I don't know whether it was '87, '88, it

18 could have even been '89, but somewhere in that time frame,

19 we decided to purchase banana farms in Colombia. We had a

20 very wealthy Colombian, very successful guy, one of many

21 businesses of which was a number of banana farms offered us

22 some banana farms for sale. I was engaged in that

23 negotiation, we bought those farms. They were located in

24 Turbo.

25 We continued to buy banana farms over the next

Page 20

1 several years, probably through some time around '91, '92,

2 something like that. All of this was kind of in anticipation

3 of the European Community opening up. As I'm sure you know,

4 just the opposite occurred, but it was in anticipation of

5 this. So we bought these banana farms in Turbo.

6 Additionally, we had a Colombian buy additional

7 banana farms for us in Turbo. So there was a lot of

8 acquisition going on in Turbo.

9 And in Santa Marta, started a little bit later, but

10 it would have been in that general time frame, maybe '89 to

11 '91, something like that. We also bought some existing

12 banana farms. We joint ventured the planting of a couple of

13 farms and we planted a couple of farms for our own account

14 and we bought some raw land for future development.

15 I had a general manager in Turbo. I was actually

16 stationed and located in Medellin, but supervising the Turbo

17 operation. And I had a second general manager in Santa Marta

18 supervising the Santa Marta operation. They both reported to

19 me. And I had responsibility within the context of

20 Chiquita's hierarchy of those operations, from an operational

21 standpoint.

22 Q Okay. Where was your position based at this point

23 in time?

24 A At that point in time, I would have been in Panama

25 City.

(b)(7)(C)

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1 (b)(7)(C) Excuse me. What point in time are
2 we referring to?

3 (b)(7)(C) We are talking about the 1996 point
4 in time.

5 THE WITNESS: Oh, I'm sorry. I misunderstood. I
6 thought we were back at the development -- at that point in
7 time, I would have been in San Jose, Costa Rica. In 1996, I
8 would have been in San Jose.

9 BY (b)(7)(C)

10 Q I am trying to get an idea of what the facility is
11 that you are working in at this location.

12 A In 1996?

13 Q Yes.

14 A Me, personally?

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15 Q Yes.

16 A I am working in the Numar building, a downtown,
17 right in the center of San Jose office building where --
18 Numar was a subsidiary of Chiquita's in the oil, palm and
19 vegetable shortening business that was subsequently divested.
20 But before divestiture, through Numar Chiquita owned this
21 building. So we had many -- probably not all of the
22 employees that were working out of San Jose but most of the
23 employees working out of San Jose, Costa Rica were located in
24 the Numar building. Subsequently, we've moved.
25 Subsequently, we moved out of the Numar building, actually

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1 towards the beginning of this year and we're in a location in
2 Santa Ana, sort of -- not an industrial park, but office park
3 in Santa Ana, right outside of San Jose.

4 Q Okay. When you are in that building, what group is
5 it that you work with?

6 Q Okay. In that building, there were -- the major --
7 the major Chiquita occupants of that building were involved
8 in the Costa Rica banana operations. I had nothing to do
9 with them. I was there, we shared facilities. I know them,
10 I saw them every day, but I had nothing to do with their
11 activities. That fell under somebody else's responsibility.

12 Why did I even leave Panama and go to Costa Rica?
13 Chiquita decided at some time, roughly five years ago, this
14 is what prompted my move, that they wanted to set up sort of
15 a tropical administrative headquarters somewhere. And they
16 decided that the appropriate place to do that was San Jose.

17 So what happened? I moved from Panama City. One
18 of my counterparts who had other similar responsibilities to
19 my own, but other geographical responsibilities, was already
20 in San Jose and a third counterpart who was in Cincinnati
21 moved from Cincinnati to San Jose, so the three of us were
22 there.

23 Q Who were the other two individuals?

24 A A fellow by the name of (b)(7)(C) subsequently

25 (b)(7)(C) was responsible for Ecuador and

Page 23

1 the Panama operations. And a fellow by the name of (b)(7)(C)
2 (b)(7)(C) And he

3 was responsible for Costa Rica, Honduras and Guatemala.
4 Q And this is now -- what time period is this when
5 you all are gathered together?

6 A This would have been early '95. Early '95.

7 Q Who do you report to during this time?

8 A At that time, I reported to -- I think it was to

9 (b)(7)(C) I'm hesitant about that because at one point
10 in time in this whole -- you have to forgive me. Chiquita
11 has organized and reorganized this stuff three or four times
12 in the last five or six years.

13 At one point, I was reporting to a guy by the name

14 of (b)(7)(C) was the

15 president of North American Marketing. And when I still had
16 responsibility for Honduras and Guatemala, I was reporting to
17 (b)(7)(C) even though I had Colombia. This is where it gets
18 imperfect and it's not a purely North American, purely
19 European thing. So I was reporting to (b)(7)(C)

20 Then when (b)(7)(C) took over the Guatemala and

21 Honduras thing, he was reporting to (b)(7)(C) and I began reporting
22 to (b)(7)(C)

23 I had reported to (b)(7)(C) on several occasions. When I

24 moved to Panama City initially, I was reporting to (b)(7)(C)

25 (b)(7)(C) So it kind of went from a functional

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1 organization -- a functional tropical organization to this
2 source to market P&L oriented organization and that's why you
3 see so much shifting around of this stuff.

4 Q You may have reported to (b)(7)(C) during this
5 '95 to '97 period? Do you think it would have been then?

6 A (b)(7)(C) if I reported to (b)(7)(C) during
7 that period, it would have been perhaps in '95.

8 Q Not in '96 or '97?

9 A No. And let me say in reporting to (b)(7)(C) I

10 know your primary focus here is Colombia, as a practical
11 matter, he was totally uninvolved in Colombia. His focus was
12 on the North American divisions and the North American
13 divisions were primarily being serviced by Honduras and
14 Guatemala.

15 So at that -- perhaps at that initial '95 period
16 insofar as Honduras and Guatemala are concerned, I would have
17 been reporting to him. He had no involvement in Colombia
18 whatsoever, nor any interest. Colombia has traditionally
19 been a European sourcing division. We have sent bananas to
20 the United States, but --

21 Q Now, back to this office. You reported directly to
22 the United States out of that office?

23 A Yes.

24 Q Okay. What did your staff consist of? Who
25 reported to you in that office? Not going out to the

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(b)(7)(C)

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1 locations, let's stay in that office. What kind of staff did
2 you have?

3 A I had a very, very skeleton staff. I had two
4 people reporting to me. I had a secretary who in fact
5 initially I shared with (b)(7)(C) And I had another guy by
6 the name of (b)(7)(C) who still reports to me. And
7 (b)(7)(C) job, he's basically a guy that we have assigned to
8 try and dispose of and divest idle real estate assets that we
9 have. And I kind of -- it's sort of a cats and dogs kind of
10 a thing that just fell into my lap. It fell into my lap
11 because we had some of these things in Honduras when I was
12 responsible for Honduras. (b)(7)(C) was doing a fairly good
13 job at this.

14 I was supervising him and so when I relinquished
15 responsibility for Honduras, I think (b)(7)(C) suggested that
16 I continue to have (b)(7) report to me. And, in fact, he
17 crosses all geographical boundaries and just sort of deals
18 with the real estate community, trying to dispose of these
19 assets that are no longer of use to us.

20 Q Okay. Again sticking to this 1995 to 1997 time
21 frame, what specific Chiquita entity employs you?

22 A Well, actually, that's a very good question and I'm
23 not sure that I can answer that with 100 percent surety. I'm
24 paid out of the United States. I'm on a U.S. payroll.

25 Q You have knack for guessing the next question.

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1 A Although I do have some -- a portion of my payroll
2 is carried in Costa Rica and I have some tax obligations in
3 Costa Rica. Because I have a multi-geographical
4 responsibility and because I have -- I have literally no
5 responsibility over any of our operations per se in Costa
6 Rica, I have been the object of some interest for some of
7 Chiquita's tax people, you know, as to exactly how my payroll
8 should be handled in terms of tax obligations and so forth
9 and so on. So a portion of my payroll, again, comes out of
10 Costa Rica.

11 I believe I'm a CBII, Chiquita Brands
12 International, Inc. employee, but --

13 Q If that is your --

14 A That's the best I can do for you. I know I get a
15 paycheck every month.

16 Q That you know.

17 A That I know. And it is on the U.S. payroll.

18 Q I think I ran across something somewhere that
19 suggested that (b)(7)(C) worked for you in 1994, reported
20 directly to you in some position.

21 A That's correct.

22 Q Could you explain the circumstances of that for me,
23 what his position was, where this was, and what time period,
24 how it came up, that type of thing?

25 A Sure. Let me just give a little background there.

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1 (b)(7)(C) had joined Chiquita -- I don't know whether it
2 was the late '90s or -- I'm sorry, the late '80s or exactly
3 when he joined Chiquita, but he joined Chiquita and he worked
4 for (b)(7)(C) sort of as a financial assistant for (b)(7)(C)
5 And at that time, I had responsibility for our Guatemala
6 operations and I interfaced with (b)(7) fairly frequently in
7 his position as assistant to (b)(7) and I convinced (b)(7) to
8 relocate to the tropics, to Guatemala, in charge of an
9 expansion project in Guatemala and he did that.

10 The expansion project was done, over and done with,
11 and I wanted to have a little bit more -- a little bit more
12 help in managing some of the other geographical operations.
13 So I believe it was maybe the first quarter or some time
14 early in 1994, I asked (b)(7) to move from Guatemala to work
15 with me in Panama as an assistant. Kind of a financial guy,
16 kind of a guy who -- but financial not in the sense of
17 accounting and custodial and that sort of stuff, financial in
18 the sense of, you know, let's keep track of how we're doing
19 in terms of the operation and what have you. We were
20 still -- while we had stopped acquisition and had this sort
21 of bucket of cold water thrown in our face by the Europeans
22 and had stopped all the acquisition and expansion, we were
23 trying to digest that. A very hectic expansion for several
24 years and we were trying to digest that and get our arms
25 around it.

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1 So I asked (b)(7) to come to Panama City and he
2 worked for me what turned out to be --

3 (b)(7)(C) Hold on for one second.

4 (Interruption to the proceedings.)

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

6 THE WITNESS: He worked for me actually very
7 briefly in Panama City and I was not -- I was not as -- how
8 can I put it -- the financial area in Colombia; the financial
9 and accounting area in Colombia was an area that -- I don't
10 want to overstate it and say that we were struggling, but it
11 was an area that we were challenged in because of this rapid
12 growth. Because we had been used to being a purchased fruit
13 division and suddenly we had farms to run and joint ventures
14 and this, that and the other thing, so we were somewhat
15 strained from a personnel point of view.

16 And I persuaded (b)(7) to accept a position in
17 Medellin as the chief administrative officer there. I would
18 guess that was towards the tail end of '94. I don't think I
19 can get more precise than that for you.

20 BY (b)(7)(C)

21 Q I think it is December '94, if that helps you out.

22 A Okay. I know that we did that in the context of
23 both moving (b)(7) to Colombia as well as (b)(7)(C)
24 (b)(7) I think started the beginning of '95.

25 Q When we talk about you supervising these operations

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(b)(7)(C)

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1 in these countries, I want to just delve a little bit into
2 what we mean by supervising. And, in particular, who it is
3 that you were dealing with on a day-to-day, week-to-week,
4 month-to-month basis and, in particular, are we talking about
5 the GM or does it translate into the lower level employees of
6 these operations.

7 A Well, we're talking surely first and foremost the
8 GM. I mean, I would say that, you know, the overwhelming
9 amount of my time would have been interfacing with the GM.

10 There were areas of interest that at a given point
11 in time I would have been interested in. For example, during
12 the (b)(7)(C) period, we thought that we had a
13 substantial opportunity to synergize some of our financial
14 and accounting operations. We had sort of an independent
15 accounting group in Santa Marta. We had an accounting group
16 in Medellin. We had our Colombian partner who had -- I say
17 partner -- our Colombian guy who had bought a bunch of farms
18 for Chiquita and was administering those farms.

19 Q Is this the Restrepo Group name?

20 A Yes. That was the Restrepo Group. So we had
21 Restrepo. And we said to ourselves, "My God, we've got, you
22 know, these pockets of administration all over the place.
23 Why don't we just sort of collapse all of these things into
24 some sort of a service center concept?"

25 Q Centralize this function.

1 it from afar and how are we doing and how is the progress and
2 what do you think the organization is going to look like at
3 the end and, you know, how many people may we be able to
4 downsize, what are the savings involved and so forth and so
5 on. So I would have dealt with them in that regard.

6 I would have dealt with the general manager and
7 fairly intensively with the production manager about
8 agronomic issues, you know, what's the appropriate fertilizer
9 program. We spent lots of money in those kinds of areas so,
10 you know, I would be -- although I'm not an agronomist, after
11 a lot of years of being involved in the banana business, I
12 have some expertise in that area, so I would have been very
13 interested in that.

14 I would have dealt with (b)(7)(C) another
15 name that you're familiar with. (b)(7)(C) played a legal
16 role, but much more than a legal role, played and plays sort
17 of a role as our representative among the banana industry in
18 Colombia and among -- and I would say our fundamental liaison
19 to our producers. So I would have dealt with (b)(7)(C) on
20 those issues.

21 And we had lots of issues in this time frame that I
22 actually kept the GM and the (b)(7)(C) out of because I didn't
23 want them distracted by them. We had issues around --
24 basically around the European Community and the management
25 and structure of that regime, which at that time involved a

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1 A Centralize the function. Exactly. We thought
2 about doing that, incidently, with Restrepo. At one time, we
3 were talking about setting up a service center, if you will,
4 that not only would have serviced our farms, but his own
5 farms as well. We subsequently abandoned that idea. We
6 decided essentially to get amicably divorced from Restrepo.
7 And, I mean it was basically an amicable sort of a thing, but
8 we decided to divorce. And we took the farms that he had
9 been managing and so forth and so on.

10 So, anyway, this was a significant project. That
11 would have been the kind of thing that I would have dealt
12 directly -- not to the exclusion of the general manager, but
13 I would have dealt directly with a (b)(7)(C) I would have
14 dealt directly with a (b)(7)(C) We were having -- there
15 were issues around -- issues far beyond my area of expertise
16 around MIS systems and so forth and so on and I would have
17 been interested in a non-technical way as to how they were
18 coming along in terms of being able to collapse all of these
19 things into a consolidated effort.

20 But I have to make very clear, in spite of the fact
21 that at one time I was a CPA and so forth and so on, I mean,
22 this has gone by the boards many, many years ago and I don't
23 deny that I know a debit from a credit, but in terms of
24 structural accounting, MIS and so forth and so on, it is not
25 my area of expertise and I would have only kind of looked at

1 very complex set of regulations involving export certificates
2 out of Colombia and those export certificates had to be
3 parceled out to all of the players in Colombia and that was
4 very contentious at times and an area where we had to insist
5 that our rights be respected and so forth and so on because
6 there was a temptation on the part of the Colombia government
7 to sort of give the lion's share of these export certificates
8 to the Colombian exporters as opposed to the multi-national
9 exporters. So I would have spent a lot of time with (b)(7)(C)
10 around those issues.

11 I don't know if that gives you the kind of flavor
12 that you're --

13 Q Yes, it does. Some names we have come across
14 briefly and some we have not and I want to go through a list
15 of names and ask you who these people are and if you can tell
16 me who they are and to the extent you need a time frame, use
17 1996, 1997, if that is something that you need.

18 (b)(7)(C)
19 A General manager. General manager -- let's see.
20 General manager initially of Turbo, subsequently we collapsed
21 Santa Marta not only from a financial point of view but also
22 from a general management point of view and he became the
23 general manager of our Colombia operation.

24 Q Okay. He has been a GM since -- can you give me an
25 idea of the time period we are talking about?

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(b)(7)(C)

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1 A I think that I made him GM in Colombia very shortly
2 after moving to Panama City in '87. Maybe a year later.
3 Maybe less than a year later. So he's been there for quite
4 some time.

5 Q Okay. You talked briefly about two aspects of your
6 supervision and kind of the Colombian operation, one being
7 that you need to be an agronomist and one being kind of these
8 financial issues. Where does (b)(7)(C) focus and job fall
9 into that? Does he oversee both? Does he primarily do one?

10 A Well, I can answer that, I guess, in a technical
11 fashion and as a practical matter. Technically, (b)(7)(C) is
12 responsible for all of our activities in Colombia. He's the
13 general manager. He has a chief administrative officer
14 reporting to him and he has the production manager reporting
15 to him and he has a number of other folks reporting to him.

16 As a practical matter, I don't know if you've had
17 the opportunity -- I guess you haven't had the opportunity to
18 interview (b)(7)(C) but as a practical matter he is not
19 financially oriented. He is a very active, can do
20 operational person. Spends 90 percent of his time figuring
21 out how to grow bananas very efficiently, how to create
22 revenue opportunities out of some of the infrastructure that
23 we have and so forth and so on. He's very good at sort of a
24 bottom line approach, but he's not an office -- not an office
25 kind of a guy. I think he has -- well, I know he has -- he

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1 has a staff meeting on Mondays, if he doesn't leave Monday
2 afternoon, he leaves Tuesday morning for Turbo and Santa
3 Marta, basically spends the week there, comes back Thursday
4 afternoon, Friday or what have you, and so forth. So pretty
5 much of a field kind of a person.

6 Q I think I understand what you are saying, but just
7 to fill it out for the record, are you saying he has a staff
8 meeting on Monday and then he leaves, he is based in
9 Medellin?

10 A Yes. He lives with his family in Medellin. And,
11 as I mentioned before, Medellin is where our -- if you will,
12 our Colombian home office is, our Colombian headquarters is.
13 And he actually with the production manager, they kind of
14 have worked out a routine where they flip-flop back and
15 forth.

16 (b)(7)(C) will go one week to Turbo, the production
17 manager will go that week to Santa Marta and the following
18 week they do it in reverse style.

19 Q The next name is (b)(7)(C)

20 A (b)(7)(C) (b)(7)(C) has been involved with
21 our Colombian operations longer than I have, for a very long
22 time. I can't tell you when he started.

23 (b)(7)(C) has moved from a lawyer with a modest
24 independent practice who was at the same time Chiquita's
25 lawyer in Colombia, so 75 percent of his time spent on

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1 Chiquita activities, 25 percent on -- to at one point in
2 time, which would have been around the expansion period, we
3 asked (b)(7)(C) to give up his independent practice and to
4 exclusively dedicate 100 percent of his time and then at the
5 end of 1997, we severed as part and parcel, as a fallout of
6 this whole thing, we severed our direct employee relationship
7 with (b)(7)(C) and negotiated a contract with him and he has
8 provided us some -- he continues to provide us some legal
9 services really in the form of advice, but primarily I would
10 say 90 percent of his time is spent on the other areas that I
11 mentioned, the sort of industry representation,
12 representation in front of the Colombian government
13 authorities and so forth and so on and involvement with our
14 associate producers.

15 Q During that '95, '96 time frame, do you know what
16 entity employed (b)(7)(C)

17 A I can't tell you absolutely for certain. I can
18 tell you this, that (b)(7)(C) had a small portion of his
19 remuneration on the U.S. payroll and a larger portion, I
20 couldn't give you the percentages offhand, a significantly
21 larger portion of his payroll, in Colombia.

22 Now, he may have been an employee of Danadex. He
23 was undoubtedly at one time an employee of (b)(7)(C)
24 (b)(7)(C) But (b)(7)(C) had some -- this really gets out of
25 my area of expertise. It's a legal area and a tax area.

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1 Are you familiar with CIL?

2 Q Chiquita International, Limited?

3 A Yes. CIL buys fruit from Banadex, et cetera, et
4 cetera, et cetera. Different entities in Colombia. And I
5 believe the tax people felt that in some ways (b)(7)(C)
6 represented CIL and that was the raison d'être for a piece of
7 his remuneration being paid out of the United States.

8 Q Okay. I did not ask you this with respect to
9 (b)(7)(C) so let me ask you now: What entity employed (b)(7)(C)
10 (b)(7)(C)

11 A (b)(7)(C) is also paid out of the United States. I
12 don't know. I don't know exactly how that works. I mean,
13 he's paid out of the United States; on the other hand, he has
14 tax obligations which are taken care of in Colombia, so
15 whether he's on a Banadex payroll as I would be on a local
16 Costa Rican payroll for part of my salary, I'm not sure.

17 Q Okay. Who is (b)(7)(C)

18 A (b)(7)(C) is a Peruvian financial guy who was
19 working in the United States and who we identified as a very
20 active, competent fellow and moved him to Medellin to take
21 over the controllership position at the beginning of 1995
22 from (b)(7)(C) who was the previous controller.

23 Q And he occupied that controller position?

24 A (b)(7)(C) would have left Colombia mid '97 maybe.
25 Mid '97, maybe towards the end of that -- somewhere in that

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(b)(7)(C)

1 arca.

2 Q Okay. That is fine. Who is (b)(7)(C)

3 A (b)(7)(C) is a young man who originally we

4 met in Santa Marta and who we transferred from Santa Marta to

5 Medellin and put in charge of our materials and supplies

6 department. He subsequently has left Colombia and works for

7 us as a financial analyst in Cincinnati.

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

9 A (b)(7)(C) - up until fairly recently was the

10 head of our security department in Colombia.

11 Q Okay. And what has happened recently to change

12 that?

13 A He left. He resigned.

14 Q Was there any reason -- do you know why he resigned

15 recently?

16 A He apparently -- he apparently expressed some

17 interest -- I think (b)(7)(C) was originally from Bogota

18 and he expressed some interest in returning to Bogota and

19 setting up his own sort of security service there.

20 (b)(7)(C) Excuse me. Is this from personal

21 knowledge, John? Is this something you spoke to (b)(7)(C)

22 about?

23 THE WITNESS: I did not speak to him directly.

24 This is what I was told by (b)(7)(C)

25 BY (b)(7)(C)

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

2 A (b)(7)(C)

3 Q If you do not know, the answer is you do not.

4 A (b)(7)(C)

5 Q (b)(7)(C) I am getting a blank stare, so --

6 A I don't know.

7 Q Okay. You mentioned (b)(7)(C)

8 A (b)(7)(C)

9 Q Who is (b)(7)(C) And I may be spelling the name

10 wrong, so if you know how to spell (b)(7)(C)

11 (b)(7)(C) Do you know how to spell it?

12 THE WITNESS: (b)(7)(C)

13 BY (b)(7)(C)

14 Q I can tell you that that man's name is misspelled

15 an awful lot then. Who is (b)(7)(C)

16 A (b)(7)(C) is a fellow who is in charge of

17 Chiquita's corporate security department and he has

18 responsibility for our security activities in the tropics as

19 well. I say he has responsibility. He has a sort of dotted

20 line responsibility, functional responsibility.

21 Q Where is he based?

22 A He's based in Cincinnati.

23 Q Do you know which entity he is employed by?

24 A I don't know. I can only assume it's by CBII, but

25 I don't know.

1 Q Okay. In this 1996, 1996 time frame, did (b)(7)(C)

2 supervise (b)(7)(C)

3 A Yes. I believe so. The only reason that I'm

4 hesitating is (b)(7)(C) had an assistant for a period of time,

5 you know, for about maybe a year and a half. I'm 90 percent

6 sure that this guy whose name escapes me at the moment (b)(7)

7 something or other, I'm 90 percent sure that this guy has

8 long since left the scene by this '95, '96 time frame, but I

9 won't swear to it.

10 (b)(7)(C) would have still had responsibility, but

11 this guy might have been in between them. He was based in

12 Panama and at one time had -- he left. He had some physical

13 disability problems and left Chiquita and was not replaced.

14 Q Just one last question. Did (b)(7)(C) interact with

15 (b)(7)(C)

16 A I have every reason to believe that he did. He

17 would occasionally visit Colombia. Certainly they talked a

18 great deal on the phone and they had a lot to talk about. I

19 mean, they had a lot to talk about.

20 Colombia is a very difficult place to work, as I'm

21 sure you can imagine and have learned, and so they had

22 guerilla issues to talk about, security issues to talk about,

23 drug issues to talk about, a lot of different things.

24 (b)(7)(C) would have been active in that.

25 (b)(7)(C) Okay. This is a good time to take

1 five minutes.

2 (A brief recess was taken.)

3 (b)(7)(C) We are back on the record at

4 approximately 11 a.m. No discussions of substance were had

5 while we were off the record.

6 Is that correct?

7 (b)(7)(C) That is correct.

8 BY (b)(7)(C)

9 Q Who is the primary individual charged with Foreign

10 Corrupt Practices Act compliance responsibilities for

11 Chiquita Brands?

12 A (b)(7)(C)

13 Q And who is (b)(7)(C)

14 A (b)(7)(C) is an attorney in our corporate legal

15 department and has been designated by Chiquita's general

16 counsel as the point man or attorney through whom those kinds

17 of issues would be channelled.

18 Q Okay. What are his responsibilities with regard to

19 FCPA compliance for the operations that are under your

20 control?

21 A There are a number of things that we do for FCPA

22 compliance and perhaps as important as any, if not more

23 important, there's a quarterly reporting system such that key

24 individuals in our operating organizations send a report to

25 (b)(7) in which they would represent that either no payments

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(b)(7)(C)

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1 have been made to any governmental authorities whatsoever or
2 that the following payments have been made and those payments
3 would be described and that confidential report would be sent
4 to (b)(7)(C) for his review. And I presume follow-up if there's
5 an item in question.

6 Q What responsibilities did you have with regard to
7 FCPA compliance? And to the extent we need a time frame,
8 1996 and 1997.

9 A Okay. Well my responsibilities are basically sort
10 of managerial ones in the sense that (b)(7)(C)
11 supervisor and (b)(7)(C) called upon, among other things,
12 to file this quarterly report and I on a regular basis, and
13 when I say regular, it's not the first Monday after each
14 quarter, it's not as rigorous as that, but on a periodic
15 basis, would sit with (b)(7) sit with (b)(7)(C)
16 essentially discuss cash payments that would be made and that
17 were sensitive in nature. And that might embrace or might
18 not embrace FCPA issues.

19 Colombia, as I've said before, is a very
20 complicated place to do business and there are a lot of
21 different violent factions in Colombia, different and
22 competing guerilla factions, some right-wing factions. Some
23 official factions, the Colombia armed forces.

24 And there are obviously violent drug factions which
25 fortunately we have zero to do with, other than being

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1 victimized by them on occasion when they use our vessels to
2 export drugs.

3 Putting that aside, these other factions at one
4 time or another with the exclusion of the Colombian army
5 would extort us and because of the competitive nature of this
6 kind of thing, those payments have to be made in an extremely
7 discrete sort of a way. I mean, to be very blunt about it,
8 if faction A knows that you are, whether extorted or not,
9 that you are in some way collaborating with faction B, the
10 consequences can be life and deathlike in nature.

11 So it's virtually impossible to do business without
12 acceding to some degree to these extortion threats, but it's
13 equally frightening to compromise the discretion around those
14 payments.

15 So those payments are generally made in cash and
16 are very sensitive in nature and it would be a discussion
17 around that sort of thing that I would have on a periodic
18 basis with (b)(7)(C)

19 Now, we need to kind of dissect this because there
20 could be at the same time payments that might have an FCPA --
21 potentially have an FCPA implication. For example, some that
22 I would categorize as having kind of been in the gray area
23 which we now have a little more clarity about and which we
24 now report for reporting purposes, but on occasion we've
25 provided gasoline to the military. That would fall into two

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1 categories. One, you don't want the guerrillas to know that
2 you're helping the military, so it's sensitive. And, two,
3 it's now a governmental or quasi-governmental institution, so
4 it would belong on the list that is provided to Thomas.

5 To put that into perspective for you, the kinds of
6 gasoline contributions that I'm talking about are, you know,
7 \$80, \$100 a month in gasoline. I mean, we're not talking
8 about hundreds of thousands of gallons of gasoline.

9 So I would have -- just to finalize the point, I
10 would on a periodic basis sit with them and discuss with them
11 that sort of activity. I would also make it clear to them
12 that I was available for any sort of consultation before the
13 fact, but with very -- with relatively few exceptions, this
14 tended to be an after-the-fact kind of a conversation. And I
15 would be concerned about the general level of activity, the
16 size. I'd be concerned about the trend, is it growing, is it
17 not growing. I would be alert to FCPA issues if they indeed
18 popped up. It was that kind of a managerial approach.

19 It was not -- I want to be clear about this. It
20 was not an auditing approach. I relied upon -- there's a
21 whole procedure, I'm sure you're familiar with it. I relied
22 upon Chiquita's internal auditors to tick and tie, to make
23 certain that each and every payment was recorded in a manner
24 that they were comfortable with and they could review and so
25 forth and so on. I didn't indulge in that kind of stuff.

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1 Q Yes. We will get to the procedure in a moment.
2 The after-the-fact comment you made, if I understand
3 correctly, is you are discussing with them payments that have
4 already been made.

5 A Right.

6 Q Okay. During these discussions, did you discuss
7 with them whether they were making the proper FCPA quarterly
8 reports?

9 A Yes. I would have had periodic conversations with
10 them about are you up to date on your reporting with (b)(7)
11 (b)(7)(C) the sort. Although (b)(7)(C) would -- he will
12 actively dun you if you're not up to date, so, I mean, it
13 wasn't as if --

14 BY (b)(7)(C) CBI-V1-001-003689

15 Q He would what?

16 A You know, he would -- dun, you know, if you're -- I
17 dun a creditor, I go after a creditor who owes me money.

18 Q Okay. He would follow up.

19 A He would follow up. So, I mean, I didn't feel as
20 if I needed to say (b)(7)(C) have you submitted this quarterly
21 report, because I knew that if he didn't, the system would
22 pick it up and would follow up.

23 BY (b)(7)(C)

24 Q You had mentioned certain gray area payments that
25 were under discussion at some point.

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(b)(7)(C)

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1 A The reference very specifically was to these minor
2 gasoline and so forth and so on, the reason being that there
3 was never, at least in my mind, I'm not an attorney, but
4 there really was never any FCPA issue around that.
5 Nobody was trying to improperly influence or any of
6 that sort of stuff. It was simply the fact that it was now a
7 governmental entity and therefore belonged on the list. And
8 that was it.
9 (b)(7)(C) I just want to clarify the record.
10 The gray area was whether or not it was reportable
11 on the FCPA reports, not whether or not it was proper.
12 THE WITNESS: Exactly. That's exactly what I
13 intended by that comment.
14 BY (b)(7)(C)
15 Q I am handing you a document which has been
16 previously marked as Exhibit 4.
17 For the record, I will describe the document as
18 "The Code of Conduct: A Handbook for Associates" is what it
19 says on the front page. It bears the Chiquita Brands logo
20 and it says Chiquita Brands International also on the front
21 page. The Bates stamp range for the document is
22 DOJ/SEC-01/22/99-0007 through 0029.
23 I will give you a second to page through that, look
24 that document over.
25 (Pause.)

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1 THE WITNESS: Okay. I haven't read it carefully,
2 but I've perused it.
3 BY (b)(7)(C)
4 Q I only want to spend a short amount of time with
5 this document right now. Have you seen this document before?
6 A I have. It's been a long time since I've read it,
7 but I can recall vaguely having seen it many years ago.
8 Q Okay. Can you tell me what this document is?
9 A Yes. This is a document in which Chiquita makes
10 clear to her employees that they will be held responsible and
11 accountable for certain standards of behavior in a variety of
12 different areas.
13 Q The front page of this document talks in terms of
14 associates.
15 A Synonym for employees.
16 Q Okay. That was my question. Do you recall - if
17 you could turn to the third page of the document, not page 3,
18 but the third page, Bates stamp 0009.
19 A Yes.
20 Q And the paragraph there asks that you sign the
21 final page of this booklet. Do you recall if you did that?
22 A I have no concrete recollection one way or the
23 other. I would assume that I did because, again, to use my
24 word, I think I would have been dunned about it if I hadn't,
25 but I don't recall specifically the act of signing it. No.

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1 Q Did the Colombian employees receive this document?
2 A Again, I would have to assume that they did. These
3 are perhaps assumptions on my part, but I believe that
4 probably every employee of Chiquita received this document
5 when it was disseminated in 1993. I don't believe that an
6 employee would have received this document upon moving to
7 Colombia, they would have received this document subsequent
8 to 1993 if they had joined - upon joining the company in
9 1993.
10 (b)(7)(C) Or after.
11 THE WITNESS: I'm sorry, upon joining the company
12 subsequent to 1993.
13 (b)(7)(C) You can put that aside.
14 THE WITNESS: Supposition on my part.
15 (b)(7)(C) Understood. Just put them in the
16 middle for now. We will sometimes come back to them.
17 THE WITNESS: All right.
18 (b)(7)(C) I am going to hand you a document.
19 It has been previously marked as Exhibit 5.
20 For the record, I will describe this document.
21 Again, the first page at the top has a Chiquita Brands logo
22 and next to it, it says "Chiquita Brands International." The
23 RE line on the first page says "U.S. Foreign Corrupt
24 Practices Act, SEC Consent Decree and the Statement of
25 Policies and Procedures." The document spans Bates stamp

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1 numbers DOJ/SEC-01/22/99-0030 through 0036 and there are
2 three parts to this document, the first part being a
3 four-page memo like document followed by a United Brands
4 Statement of Policies and Procedures Adopted by the Board of
5 Directors on February 19, 1976 which is one page and then a
6 two-page Appendix A, a draft letter type document.
7 I will give you an opportunity to look at that
8 document.
9 (Pause.)
10 THE WITNESS: Again, I've perused it. I haven't
11 read it carefully at this moment.
12 BY (b)(7)(C)
13 Q Have you seen this document before?
14 A I, again, have a general recollection of this
15 document. I don't specifically recall the instance when I
16 received it, but I have some familiarity with it.
17 Q What is this document?
18 A This is a document that was disseminated to key
19 employees at Chiquita by Chiquita's general counsel, (b)(7)(C)
20 (b)(7)(C) which essentially reiterates what Chiquita's policy in
21 terms of the Foreign Corrupt Practices Act is and reminds or
22 reinforces the procedures of discussing any doubts that you
23 would have ahead of time with the corporate law department,
24 reporting on a quarterly basis and so forth.
25 Q Who gets this document?

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(b)(7)(C)

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1 A I don't know who specifically, at what level this
2 document would be, what the cutoff might be. I can tell you
3 for certain that general managers, CAOs, controllers, and
4 primary department heads in our operating organizations would
5 get this document. Obviously a day laborer, at the other
6 extreme, wouldn't get the document. I would not be able to
7 tell you with surety whether or not every single salaried
8 employee would get this document or whether it would have
9 been cut off at the department head level or with people who
10 would be in a position to make a payment.

11 Q Do you receive this document?
12 A Yes.
13 Q You do?
14 A This document?
15 Q Yes. Exhibit 5 is the document we are discussing.
16 A Did I receive this document? Did I?
17 Q Okay.
18 A Not on a regular -- I mean, your question is not do
19 I receive the documents that this generates, e.g., the
20 quarterly reporting?
21 Q No, I mean do you receive this document, the
22 entirety of Exhibit 5, on any --
23 A Did I at any time receive it?
24 Q Yes.
25 A Yes, I believe I did. CBI-V1-001-003691

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1 Q Okay. And my next question is -- and I do not want
2 to get stuck with you at the moment, but in general, I want
3 to understand when do you receive this document. This
4 document again being Exhibit 5.
5 A Okay. I'm struggling a little bit with the
6 question because to me this is a one-time issuance type
7 document.
8 Q Okay.
9 A So I would have received this document when it was
10 issued, but I would not be receiving this document
11 repetitively over time.
12 Q Well, let me explain why I am asking this because
13 we have talked about the quarterly reports --
14 A Yes.
15 Q And for me to describe where I am coming from is
16 Appendix A, which is the back of this document?
17 A Yes.
18 Q And --
19 A And that's why -- okay. That was my source of
20 confusion and let me clarify. First of all, I fill out -- as
21 a personal matter, I fill out this document on a quarterly
22 basis so that if I were aware of or had made any payments
23 that were appropriate to appear on this form, I would list
24 them. If I were not to make any payments, I would still sign
25 the form and represent that I had not made any payments.

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1 I am not the recipient of a copy of this form that
2 would be filled out by subordinates.
3 BY (b)(7)(C)
4 Q Just so we are clear, the form you are referring
5 to, because I think the record is going to be a mess, is it
6 the last page of Exhibit 5?
7 A Yes.
8 Q That is the document you are referring to as the
9 form?
10 A That's the document that I'm referring to.
11 Q Okay. I am sorry.
12 A The form that is filled out on a quarterly basis by
13 key Chiquita employees and remitted to (b)(7)(C)
14 BY (b)(7)(C)
15 Q And this boiled to its essence, this is my
16 question, when you are prompted to file that form, I want to
17 know exactly what it is that you receive. Do you receive the
18 entirety of Exhibit 5 or do you receive any portion of
19 Exhibit 5? What is it that comes to you and you say to
20 yourself I have to file a quarterly report?
21 A The last two pages. Appendix A. And just to be
22 concrete about it, my secretary would put this on my desk
23 once a quarter. I mean, she's been instructed to do that, so
24 she would put this on my desk once a quarter and I would
25 obviously think about it and fill it out accordingly.

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1 Q Okay. And this again is the whole Appendix A and
2 not just the --
3 A I'm sorry. Let me make sure.
4 Q -- not just the second page, which would be the
5 form?
6 A Oh, no, it's the two pages of Appendix A, both the
7 explanatory material ahead of time as well as the page that
8 would actively be signed or filled out in the event of
9 payments.
10 Q Exhibit 5 presents Chiquita's policies and
11 procedures with regard to the FCPA. Is that correct?
12 A Yes.
13 Q Is there another Chiquita document which would also
14 do that?
15 A Well, there is this 1993 code of conduct which
16 makes reference. I'm not certain whether or not there is
17 something analogous to this in what would be our financial
18 manual or financial -- I'm blanking on what that's
19 actually --
20 Q Financial and administrative policy manual?
21 A Yes. I mean, in all candor, this isn't something
22 that I consult every day of the week by any stretch of the
23 imagination, but I would be very confident that there is
24 something in that manual that is analogous to both of these
25 documents and consistent with both of them.

(b)(7)(C)

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1 (b)(7)(C): If there is anything in the financial
2 and administrative policy manual relating to FCPA compliance
3 procedures, can I get that?
4 (b)(7)(C): Sure.
5 BY (b)(7)(C):
6 Q Would you please turn to the third page of Exhibit
7 5? A few times you mentioned the term or put together the
8 words key employoc when talking in terms of who needed to
9 file FCPA quarterly compliance reports.
10 A Yes.
11 Q If you would look at the paragraphs under associate
12 quarterly reports, the third and fourth words in are key
13 associate. Is that the terminology, key employoc, key
14 associate? Are those synonymous terms?
15 A Those are synonymous terms, but I was not using it
16 as a defined term, I was simply using it in my own language,
17 not trying to --
18 Q It is somewhat by coincidence, then?
19 A Yes, that's right. That's right.
20 Q You have told me how it comes to pass that you are
21 made aware that you need to file one of these quarterly
22 reports, that your secretary comes and puts it on your desk
23 every quarter. How do people in Colombian operations that
24 are key associates that need to file a report, how are they
25 made aware of this need?

1 you have an obligation to file a report on?
2 A No. First of all, what I would -- unless I were to
3 become aware of -- unless I were to be surprised by
4 something. This report -- I know that it technically says
5 are aware of, so technically I could be aware of. I can't
6 think of an instance in which on a timely basis I have become
7 aware of. I would say -- but if that were to happen, I would
8 say to so and so, that's the kind of thing that belongs
9 without a doubt on this report, please file it or confirm
10 that he already has.
11 What I would tend to list here would be anything
12 that I was involved in in either an initiating fashion or as
13 part of the process, that kind of thing. So my instruction
14 would be as a manager to a subordinate, make sure that you
15 put this on your list. I would not put it on mine.
16 If I were implementing a payment, I would put it on
17 mine. And if I became aware of a payment, I wouldn't --
18 quite honestly, I wouldn't wait for the quarterly report.
19 And I'm sure we'll get to an instance of that. I wouldn't
20 wait for a quarterly report, I would contact the legal
21 department in Cincinnati immediately.
22 (b)(7)(C) I do not think I have any of
23 (b)(7)(C) quarterly FCPA submissions and I just want
24 to make sure that I do not assume that they do not exist.
25 If they do exist, I think --

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1 A I don't know. Let me just say that I don't know,
2 but I do know that if they don't file the report, they are
3 made aware by a follow-up letter from (b)(7)(C) That I
4 know.
5 Q They get dunned. CBI-V1-001-003692
6 A They get dunned.
7 BY (b)(7)(C):
8 Q You indicated that the forms, the last two pages,
9 Appendix A of Exhibit 5, that they do not come to you. Do
10 you review other than your own anybody else's forms?
11 A No, I do not. Let me just elaborate a little bit
12 on that comment, when I say I do not. I do not as a regular
13 matter -- I do not receive these forms and therefore the
14 answer. But if you recall my answer before about sort of the
15 managerial oversight, it would be the kind of thing that
16 would be discussed in that kind of a conversation, so I would
17 be -- I would fully expect in that kind of a conversation
18 that people would bring to my attention not the \$5.00 item,
19 but if there were anything out of the ordinary I would expect
20 to be part and parcel of the conversation.
21 Q Now, how does that work with regard to you filing
22 the form required in Exhibit 5? You are discussing with them
23 certain payments which may implicate the FCPA and then you
24 have to go back and file the form. Are you taking notes of
25 payments now that you are now aware of that you understand

1 (b)(7)(C) We will be happy to inquire.
2 (b)(7)(C) Okay. Inquire and --
3 (b)(7)(C) As I am sitting here, I am not
4 certain as to whether they were produced, but I will be happy
5 to follow up and inquire.
6 (b)(7)(C) Okay. It may just be that they were
7 in Colombia and someone -- various reasons, there could be a
8 lot of reasons.
9 THE WITNESS: I assure you they exist.
10 BY (b)(7)(C):
11 Q Was (b)(7)(C) required to file the FCPA
12 quarterly reports that we are discussing here?
13 A I have never seen a copy of a (b)(7)(C)
14 report. My assumption is that he was, but he certainly was
15 very intimately involved in supplying the detailed
16 information that would have been part and parcel of the
17 Colombian submission.
18 So he would have been putting together detail
19 around these kinds of payments for (b)(7)(C) for (b)(7)(C)
20 and my assumption is that he does file a quarterly report,
21 but, as I said, I haven't seen it and I can't say
22 unequivocally that he has.
23 Q And under your -- correct me if my understanding is
24 not right, under your understanding that -- what I have
25 gleaned from your response is that if a report is going to be

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(b)(7)(C)

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1 filed by the person who initiated the payment or caused the
2 payment to be made, (b)(7)(C) would be front and center with
3 regard to a lot of the payments we are discussing here?

4 A Well, yes and no. (b)(7)(C) is very instrumental in
5 the process, but Alvarado didn't have access -- (b)(7)(C)
6 could not walk into an accounting clerk or what have you and
7 say give me \$10,000, I need \$10,000 to go pay somebody. He
8 would never have been able to do that. So the point being
9 that there was an approval process.

10 What I'm not certain about is whether or not at
11 (b)(7)(C) level he would have filed this report or whether
12 the individuals who would have been called on to approve
13 payment would have exclusively filed this report, but
14 (b)(7)(C) was intimately involved in the payments, of course.

15 BY (b)(7)(C)

16 Q Why don't you describe that approval process? He
17 needs \$10,000, let's say. What was your understanding of
18 what he would do?

19 A My understanding is that (b)(7)(C) would go to
20 (b)(7)(C) the general manager, and would require approval from
21 (b)(7)(C)

22 Q And then what would happen?

23 A Upon getting approval from (b)(7)(C) would
24 sign this document, I think we refer to it as a 1016, which
25 is sort of a cash voucher type authorization to get cash, and

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1 at that point, I presume at that point (b)(7)(C) takes the
2 document, goes to somebody in the accounting department and
3 gets either cash or a check. In his case, because of the
4 nature of the payments, 99 percent of the time it would have
5 been cash.

6 I don't -- where I'm fuzzier is there may be other
7 people that would have to approve the document. They
8 wouldn't be approving it from the standpoint of the
9 legitimacy of the payment, but it may be that there is some
10 accounting -- somebody in the accounting hierarchy who has to
11 approve the document as having been legitimately approved by
12 (b)(7)(C) before it can -- you know, I mean, just a
13 bureaucratic kind of a thing before he could go to a cash
14 clerk, that type of thing. I couldn't speak to that detail.

15 Q And do you have an understanding as to who in this
16 approval succession had reporting responsibility with respect
17 to the FCPA reporting that we have been talking about?

18 A. Could you repeat the question?

19 Q Do you have an understanding as to who in the
20 approval process of these various people that (b)(7)(C)
21 would have to go through would have a reporting obligation
22 with respect to quarterly FCPA reporting?

23 A Certainly (b)(7)(C) does. And in the case of the
24 particular (b)(7)(C) type payments, I don't believe that -- I
25 don't believe that (b)(7)(C) would have required per se the

1 controller's blessing or the chief administrative officer's
2 blessing.

3 If he did, again, it would have been in the
4 procedural context of is he presenting a form that has been
5 duly approved by (b)(7)(C) On the other hand, both the CEO and
6 the controller clearly have a responsibility to file these
7 quarterly reports.

8 Did that --

9 Q Yes. So (b)(7)(C) had the authority to approve
10 the substance of the request.

11 A That's correct.

12 (b)(7)(C) Could we mark these -- all six at
13 once marked individually.

14 (SEC Exhibits 27 through 32 were
15 marked for identification.)

16 (b)(7)(C) I am going to hand you six documents.

17 Each is one page. The first one is Exhibit 27 and they will
18 run through Exhibit 32.

19 For the record, these are, I believe, examples of
20 the quarterly reports, FCPA compliance reports, we have been
21 discussing relating to the third quarter of 1996. Exhibit 27
22 relates to (b)(7)(C)

23 (b)(7)(C) Would you read the Bates number for
24 each one, please?

25 (b)(7)(C) Sure. Bates stamp number

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1 ICHQ1-002660.

2 Exhibit 28 relates to (b)(7)(C) Bates stamp

3 ICHQ1-002663.

4 Exhibit 29 also relates to (b)(7)(C) Bates
5 stamp CHQH-002659.

6 Exhibit 30 relates to (b)(7)(C) Bates stamp

7 ICHQ1-002658.

8 Exhibit 31 relates to (b)(7)(C) The Bates
9 stamp is 2CHQ6-000621.

10 And 32, the final one in this series, is Bates

11 stamped ICHQ1-002657 and it relates to (b)(7)(C)

12 I will give those to you and give you a second to
13 page through them.

14 (A brief recess was taken.)

15 (b)(7)(C) We will go back on the record. We
16 went off for a moment so the witness could review the
17 exhibits.

18 THE WITNESS: Okay. I have reviewed the exhibits.

19 BY (b)(7)(C)

20 Q Do you recognize these documents?

21 A I recognize them as being the second page of the
22 format that's filed with (b)(7)(C) and I recognize, of
23 course, the names of the employees on the documents and in
24 one or two, in (b)(7)(C) case, I recognize his signature.

25 Q Okay. And each of the documents has circled the

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(b)(7)(C)

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1 time period July 1 through September 30, 1996.
 2 A Right.
 3 Q Do you see that?
 4 A Yes, I do.
 5 Q And is that the manner in which one determines the
 6 period to which these documents apply?
 7 A Yes.
 8 Q Let's start with Exhibit 27, (b)(7)(C)
 9 A Yes. This document is blank in terms of its
 10 disclosure. In the area provided to disclose any payments,
 11 the document is blank. Is that correct?
 12 A That's correct.
 13 Q Is it your understanding that this is the proper
 14 procedure for filling out these forms, to leave that blank?
 15 A Yes.
 16 Q Okay. What does that signify to you?
 17 A That signifies that to his knowledge there was no
 18 appropriate entry to be made on these forms, meaning either
 19 for -- as it says, either because the books and records issue
 20 or because of contributions, donations, et cetera, to
 21 designated parties. So in the absence of appropriate items,
 22 it would be appropriate to leave the form blank and simply
 23 sign it.
 24 Q If you look at Exhibit 5 again, Appendix A --
 25 A Exhibit 5?

1 A It is.
 2 Q Signifying that he is not aware of anything that
 3 needs to be reported?
 4 A That's correct.
 5 Q Could we turn to Exhibit 29?
 6 A Yes.
 7 Q This is a second entry for (b)(7)(C) that now says
 8 none in the area of Section 5 and Section 6.
 9 A That's correct.
 10 Q I put this in here only because I do not know -- do
 11 you know why there are two submissions for (b)(7)(C)
 12 A No. I have not a clue. Not a clue.
 13 Q Okay.
 14 A It may be -- I'm not quite sure when (b)(7) joined
 15 us. It may be that he was somewhat unfamiliar with the form
 16 and unsure as to whether or not to leave it blank or fill in
 17 none and therefore did it both ways. I don't know.
 18 Q Please turn to the next document, which is Exhibit
 19 30, relating to (b)(7)(C)
 20 A Yes.
 21 Q This document is also blank in the areas where it
 22 requests reporting information.
 23 A That's correct.
 24 Q Let's skip to 32.
 25 A Okay.

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1 Q Yes. The second to last page of the appendix we
 2 have discussed. The final numbers in the Bates stamp are
 3 0035.
 4 A Okay.
 5 Q And if you look at the sentence next to III, that
 6 is basically your understanding of the way the form works
 7 with regard to it being blank. And let me read this for the
 8 record, what I am referring to. The instructions say "Except
 9 for any payments detailed in Section 5," which is the area of
 10 the form we have been discussing, which is to provide
 11 information about payments, "of this form, by my signature
 12 below, I am confirming the following."
 13 And the following are that -- the document speaks
 14 for itself, but Section A says, "I have not made or offered a
 15 promise to make for or on behalf of the company or any of its
 16 subsidiaries and affiliates," and it goes on, but it says
 17 basically I have not made or caused to be made any payments.
 18 So this is what the signature is affirming, then,
 19 in the blank area?
 20 A Exactly.
 21 Q Okay. Would you turn to the next document, which
 22 is Exhibit 28, (b)(7)(C)
 23 A Yes.
 24 Q And that one is blank in the area of Section 5 as
 25 well?

1 Q Let's skip 31 for the moment. This document relates
 2 to (b)(7)(C) and this document is also blank in the
 3 areas of 5 and 6 where the document request information. Is
 4 that correct?
 5 A That is correct.
 6 Q Okay. Moving back to Exhibit 31, this document
 7 relates to Jorge Forton and this document contains
 8 disclosures in Section 5 or (b)(7)(C) by this document is
 9 reporting certain payments, contributions, donations, the
 10 items that are called for by Section 5 there. Is that your
 11 understanding of what this document is doing?
 12 A That's correct.
 13 Q Okay. Taking these documents as a group, and I
 14 will tell you that this for me is the universe of documents
 15 that I have been able to put together relating to this time
 16 period, is this what you would expect to be the situation for
 17 the Colombian operations? And let me explain a little bit
 18 what I mean by that, which is that (b)(7)(C) would be the
 19 controller, (b)(7) would be the one disclosing payments and
 20 then everyone else's would be not disclosing payments?
 21 If you don't understand, the question kind of got
 22 away from me a little bit.
 23 A I think I understand. I'm not sure that I can
 24 answer that absolutely directly. I think that this is fine
 25 as long as (b)(7)(C) let's assume some of these things are

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(b)(7)(C)

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1 relatively small and although it says method of payment as
2 being cash, in one instance they had a donation of two pigs.
3 That clearly wasn't cash. So I'm not absolutely certain that
4 (b)(7) would have necessarily been aware of each and every
5 single one of these things.

6 The point is that it would be appropriate for
7 (b)(7)(C) to say to (b)(7) listen, have you picked up all of
8 this, you know, any kind of donations that we made in fuel or
9 pigs or this, that or the other thing, and have you reported
10 it. And if (b)(7)(C) had responded, yes, I've reported it --
11 (b)(7)(C) the controller, (b)(7) has access to, you know, to
12 the entries and so forth and so on. To me, it would be
13 perfectly appropriate that (b)(7) not include it on his form.

14 Now, whether that -- upon reflecting at this very
15 instant, you know, whether that is absolutely precisely in
16 conformity with the policy or whether the policy would
17 require each and every person who had any knowledge to
18 essentially repeat the procedure, I'm actually not sure.

19 Q Do you know whether (b)(7) would review the
20 submissions of his underlings?

21 A I don't know.

22 Q Did you have an expectation that he was reviewing
23 the submissions of his underlings?

24 A I didn't have an expectation that he was physically
25 reviewing the document and signing off on the document. I

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1 had an expectation that as general manager that he would have
2 been concerned that the documents were being filed on a
3 timely basis and that everybody understood that they needed
4 to file these documents on a timely basis and that it was a
5 serious requirement.

6 Q We talked briefly about the approval process for
7 some payments and we will get back to that in more depth
8 later, but for the time being, I want to understand that to
9 the extent that (b)(7)(C) was approving a payment which
10 would necessitate a disclosure on this form, there is the
11 expectation that he is going to disclose that on his own
12 form. Is that correct?

13 A I think in my mind, it is fair to assume that he is
14 certain that a disclosure of those payments is made, whether
15 that disclosure be made by him or somebody that reports to
16 him.

17 BY (b)(7)(C)

18 Q Do you know, is (b)(7)(C) required to approve all
19 payments of this sort?

20 A I don't. I honestly don't know. I'm sure that
21 there is -- again, this is sort of more of a technical kind
22 of auditing and accounting approval levels and so forth and
23 so on, so I can't really tell you. Some of it would have
24 been perhaps based upon classification, some of it would have
25 been based upon amount.

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1 So when I see stuff like two pigs, you know, I
2 honestly don't know whether he would have had to have
3 approved that or not. On the other hand, he might have. It
4 might have been, hey, listen, I am going to approve -- you
5 know, whether it's a thumb tack, if it's going to the army
6 command, I want to know about it and I'm going to approve it.
7 I just don't know.

8 Q Well, in your periodic meetings, what level of
9 detail did you go through the sensitive payments? And by
10 sensitive payments, I mean both the ones that would require
11 FCPA disclosure and other types of sensitive payments.

12 Q It was the kind of thing that we went through in
13 some detail initially until a pattern was established. And
14 let me explain that a bit. The guerrilla payments. The
15 guerrilla payments would not have appeared on this list
16 because they were not FCPA sensitive type payments, but the
17 guerrilla payments, that obviously was quite a revelation for
18 us and quite -- it was a big deal.

19 So in the initial periods when we started
20 experiencing this kind of extortion, first of all, that
21 required -- not because there was a policy in place, but just
22 good sense, that required discussing that at some pretty high
23 levels in Chiquita; so it was discussed with me and I
24 discussed it with my boss and so forth and so on.

25 Q When you say initial periods, what time period are

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1 you referring to?

2 A I want to say post-'87, but it's tough for me to
3 refine it much beyond that. It would have been periods when
4 we were beginning to own our own farms.

5 Q Okay.

6 A So initially, when these kind of payments were
7 being made, there are a number of concerns, right? One
8 concern -- a number of managerial concerns, not legal
9 concerns. There was the legal concern, first of all, is it
10 legal. We got beyond that, we got -- we've told the right
11 people, both in and outside of Colombia, we got documentation
12 blessing the transaction, that it was legal.

13 Then there's the concern, well, you're dealing in
14 cash, and you're not dealing in two pigs, you're dealing in
15 cash and you're dealing in -- you know, maybe you're dealing
16 in \$20,000, maybe you're -- you know, how do we know that
17 somebody is not -- how do we know that that really is a
18 legitimate extortion payment, that it's ending up where it's
19 designated to be and how do we know that, you know, (b)(7)
20 (b)(7)(C) isn't stealing it or (b)(7)(C) isn't stealing it or
21 what have you?

22 The short answer is that to some degree you don't
23 know. I mean, unless you're going to go accompany them when
24 they hand it off, which would not be advisable, there's a
25 certain kind of -- there's a leap of faith, right?

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(b)(7)(C)

1 And you hopefully have a very small number of
 2 people involved, but some, more than one, so there's a
 3 little bit of checks and balances and you get some comfort
 4 that way.
 5 So initially, I would have sat down -- when this
 6 started, I would have sat down with (b)(7)(C)
 7 would have gone through each and every payment and I would
 8 have probably had -- I can't recall the substance of the
 9 particular discussions, but I can recall having the
 10 discussions, you know, who were the groups, why this amount,
 11 what is the process that we go through to -- because, not to
 12 get into too many of the details, but, you know, you don't
 13 just pay what you're told to pay or you'll end up paying a
 14 filthy fortune. I mean, you've got to negotiate, you've got
 15 to say I can't pay, I'm not going to pay, you've got to kind
 16 of be dragged to the wedding kicking and shouting or it
 17 really gets out of hand. But you have to kind of know when
 18 to eventually show up or it also gets out of hand. So it's a
 19 tricky kind of thing.
 20 I would have had very, very extensive conversations
 21 with them, with some of our security people about this kind
 22 of thing.
 23 Q How did you know what payments were being made?
 24 Were you provided with a list, did you go over that?
 25 A Yes, I would have been provided -- initially, the

1 Q The groups involved meaning the extorting groups.
 2 A Yes. The various factions. I knew them to be
 3 taken seriously. So at that point, I basically said to
 4 (b)(7)(C) I'm comfortable, you know, I trust you
 5 guys to handle this, you don't have to call me ahead of time
 6 and get my approval. I want to know if this starts to, you
 7 know, grow or get out of hand or take a sharp turn to the
 8 left or a sharp turn to the right, but if the behavior is
 9 going to continue in this general manner, I'm comfortable
 10 with you guys handling it and (b)(7) you must approve it.
 11 BY (b)(7)(C)
 12 Q Can you give me a time period around when this
 13 transition occurred? In a general sense.
 14 A I mean, late '80s, early '90s. That's about as
 15 specific as I can get for you. Then there was a period of
 16 time in which I would have sat down with them probably on a
 17 quarterly basis, maybe not, maybe semiannually or what have
 18 you, but I would have sat down with them and I would have
 19 said, okay, let's see it.
 20 And they would have actually -- (b)(7)(C) for a
 21 while was actually preparing, believe it or not, charts, I
 22 mean, that would show -- coded, but they would show X amount
 23 over a multi-time period or what have you of how much we were
 24 giving to the FARC, how much we were giving to the ELN, that
 25 kind of stuff. I would sit down and review that. It was a

1 very first couple of payments, I was consulted on a
 2 before-the-fact basis and that's when we went through the
 3 whole business of investigating with Colombian counsel as to
 4 whether or not this was -- and, incidently, in that case, not
 5 only inside counsel, but we also investigated with outside
 6 counsel to make sure that we were okay there and, of course,
 7 Chiquita's corporate law department was involved and
 8 Chiquita's top management was involved in that initial
 9 business.
 10 Then unfortunately it becomes impractical. You
 11 can't -- you know, you can't involve everybody and their
 12 brother every time you get extorted in Colombia where you get
 13 extorted rather frequently. So we got the right blessings
 14 and we then -- then it was a question of (b)(7)(C) calling me
 15 and saying, well, we're having this negotiation or that
 16 negotiation and so forth and so on and then it became -- I
 17 became comfortable -- I mean, as comfortable as you can under
 18 the circumstances.
 19 I became comfortable that this was being handled in
 20 a responsible way. I became comfortable that it was not
 21 being handled willy-nilly or out of control. I think even
 22 comfortable that we were dragging our feet enough, but not
 23 too much. And I became comfortable with the groups that
 24 were -- that the groups involved were -- I knew them to be
 25 taken seriously.

1 review in the sense of is this reasonable.
 2 And I would have -- and then, I would say that it
 3 evolved into -- we still do that occasionally, more often
 4 than not the conversation is has anything changed, they might
 5 tell me that the levels of payments to the guerrillas in
 6 Turbo have gone down because the guerrillas were run out of
 7 Turbo. They've gone up a little bit in Santa Marta. They
 8 told me about Convivir, which is a new legal government
 9 blessed and initiated group that is sort of an anti-guerrilla
 10 group.
 11 So they would have told me -- like Convivir, we're
 12 being asked to make a contribution to the Convivir. I would
 13 have then asked questions like, well, tell me about the
 14 Convivir and who are they.
 15 Well, I mean, are these horrible paramilitary? No,
 16 they're not. Convivir, this was founded and pushed by the
 17 governor of Antiochia and it was blessed by legislation in
 18 Colombia. This is an organization that was given -- I don't
 19 know what the term is in English, personeria juridica, which
 20 means legal status, I guess, and so forth and so on.
 21 So I would ask those kinds of questions and we'd
 22 have that kind of a discussion. I would ask at the end of
 23 the year, well, what's the security budget look like for next
 24 year, how does it compare to this year and so forth and so
 25 on.

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(b)(7)(C)

1 A reasonable man kind of approach to is this
 2 varying in any dramatic fashion that would mean that the
 3 circumstances have changed. And as long as it was those
 4 kinds of general questions and those kinds of conversations,
 5 I would say, well, okay, again, periodically let's talk about
 6 this, has it changed, and I would say to them periodically as
 7 a complement to that kind of conversation, by the way, you
 8 guys are up to date on your FCPA filings, nothing unusual
 9 there, that kind of thing. That kind of a conversation.
 10 Occasionally, because we have -- there are two
 11 parts to the procedure and you need to understand this.
 12 There is the FCPA reporting requirement, which is what we've
 13 been discussing. There is also sort of the internal audit
 14 department driven piece. The internal audit department
 15 driven piece, as I understood it, was broader than FCPA.
 16 There was, yes, some FCPA interest perhaps, but the real
 17 thrust was, wait a second, you're running certain payments
 18 through certain designated accounts and I want to understand
 19 what those payments are because those payments are sensitive,
 20 those payments are in cash (b)(7)(C)
 21 (b)(7)(C) but I, the internal audit department, I am an
 22 auditor, I need to worry about, you know, the safekeeping of
 23 corporate assets, I need to make sure that people aren't
 24 running away with this money and putting it in their pocket,
 25 I want to understand that.

1 THE WITNESS: Excuse me. One caveat, okay? One
 2 caveat to my unequivocal yes. And that is that I was aware
 3 that (b)(7)(C) had requested and had some difficulty in
 4 getting 100 percent of the documentation that he had wanted,
 5 not in his FCPA endeavor but in his audit endeavor of what
 6 was going through. So I did have conversations with -- as I
 7 recall primarily (b)(7)(C) in which I would say, hey, you know,
 8 I hope you're making this a high-priority item. I mean, I
 9 was squeezing him a little bit to comply with (b)(7)(C) request
 10 and he was replying and (b)(7)(C) was coming back and saying,
 11 okay, I've got this now, I still have these couple of holes.
 12 And (b)(7)(C) in all fairness to (b)(7)(C) was doing the very best
 13 that he could, but he was struggling with, you know, with
 14 missing -- with clerical screw ups and so forth and so on
 15 that he in large part inherited because he hadn't come on the
 16 scene until '95. So that additional involvement as well.
 17 BY (b)(7)(C)
 18 Q Back to Exhibit 31 for a moment, which is (b)(7)(C)
 19 (b)(7)(C) (b)(7)(C) Is there any check
 20 performed on the accuracy of these submissions?
 21 A None by me. None by me. I suppose the only check
 22 on the accuracy of the submissions, again, is in the kind
 23 of -- I don't want to say unrelated, it's not unrelated, but
 24 the (b)(7)(C), please list for me
 25 irrespective of whether it's an FCPA item, irrespective of

1 And that would be the requests of the (b)(7)(C) of
 2 this world who would say, okay, I want a full listing of
 3 everything that went through the following accounts and I
 4 want the documents behind that and my auditors will audit
 5 that.
 6 I had as a routine matter nothing to do with that.
 7 As, again, I'm sure we'll get to (b)(7)(C) did that,
 8 as you well know, on September 22nd or whenever it was.
 9 (b)(7)(C) April.
 10 THE WITNESS: April 22nd, sorry. We did that
 11 together because we happened to be in the division together
 12 just as part and parcel of follow-up. But they were two
 13 separate and distinct things.
 14 (b)(7)(C) Our next topic is going to be
 15 those --
 16 (b)(7)(C) I just want to ask one follow-up.
 17 BY (b)(7)(C)
 18 Q When you were going through the sort of evolution
 19 of your conversations with (b)(7)(C) on the FCPA matters,
 20 where in those various evolutions were you in 1996? Were you
 21 at the last evolution where you are basically just asking for
 22 updates on trends?
 23 A Yes.
 24 (b)(7)(C) I want to go back to Exhibit 31 for a
 25 moment.

1 whether it belongs on this form, list for me every single
 2 entry that has gone through these designated accounts and
 3 provide me supporting documents for those entries.
 4 Now, that could conceivably reveal something that
 5 should have been reported on this report. I don't know
 6 whether that was the (b)(7)(C) purpose or not, or whether
 7 that was just kind of a corollary benefit, if you will, but
 8 it could have been picked up there. That's about all I can
 9 say.
 10 (b)(7)(C) If I could just clarify, is the
 11 question whether or not these are checked from the point of
 12 view of some investigation or whether or not it is checked in
 13 terms of whether there is backup documentation that supports
 14 it in the company? And whether or not the audit process
 15 matches one against the other?
 16 (b)(7)(C) What I want to get a handle on -- and
 17 here is why I hesitate here is because we are going to fill
 18 this out over the course of the day and I do not want to
 19 embark on, you know, a road to nowhere at the moment, but I
 20 have a bunch of blank forms and then I have (b)(7)(C) form,
 21 referring to the series of exhibits that are the filings
 22 relating to the third quarter of '96 and I am trying to
 23 understand who looks at these maybe as a group or any
 24 individual one and says -- is in a position to say, okay,
 25 this represents the payments that needed to be reported from

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(b)(7)(C)

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1 the Colombian operations.
 2 THE WITNESS: I see what you're driving at. That's
 3 clearly not (b)(7)(C) looks at this with
 4 a different -- this is what (b)(7)(C) is presented, right?
 5 And so he looks at this and he says this isn't a problem,
 6 whoa, this is a problem. That would be his filtering, right?
 7 So you're saying -- your question, if I understand
 8 it correctly is how do we determine that everything that
 9 should have been reported on this form is in fact reported on
 10 this form and the only answer that I have for that is that
 11 the internal auditors go through the -- you know, the
 12 stipulated sensitive payment accounts and try and review
 13 entry by entry by entry and look at the documentation and I
 14 suppose that they are capable of -- and we know that, don't
 15 we, now, that they are capable of saying, well, gee, you
 16 know, I'm uncomfortable with this payment, what's this all
 17 about.
 18 But let me say this, and it's kind of a master of
 19 the obvious statement and it's not an excuse, I haven't been
 20 an accountant and auditor for a long time, but I do know that
 21 when and if you have collusion, there is no way that a
 22 company can really determine, you know, unless you're talking
 23 about broad swings in financial numbers and so forth and so
 24 on, so in theory, could someone -- could (b)(7)(C)
 25 together have conspired to put the money in their pocket?

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1 If they can conspire to put the money in their
 2 pocket, they can conspire to make an FCPA violation payment
 3 as well and it wouldn't be picked up because it would be
 4 characterized as something else, the documents would be
 5 characterized as something else. These are the kind of
 6 payments that people do not sign receipts for. So one
 7 inherently has to recognize that this is -- that in and of
 8 itself, this is an area that does not lend itself to overly
 9 tight internal controls and it's unfortunate but that's real
 10 life.
 11 (b)(7)(C) I am handing you what has been marked
 12 as Exhibit 33.
 13 (SEC Exhibit No. 33 was
 14 marked for identification.)
 15 (b)(7)(C) Take a moment to look at that and I
 16 want to spend the briefest of moments on this.
 17 (b)(7)(C) What is the Bates range on that?
 18 (b)(7)(C) I will describe it for the record
 19 while you are reviewing it.
 20 The Bates range of the document is 1CHQ1-000635
 21 through 000655. The document on the first page underlined in
 22 capital letters says "Table of Contents" at the top. On the
 23 first page, it also represents that it is a report for the
 24 third quarter 1996 and the fourth quarter 1996 relating to
 25 quarterly FCPA payments.

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1 BY (b)(7)(C)
 2 Q Have you ever seen this document before?
 3 A No.
 4 Q You have not.
 5 A No. I'm not familiar with this document.
 6 Q I handed you this document to look at because you
 7 talked about (b)(7)(C) you spoke briefly about (b)(7)(C)
 8 (b)(7)(C) responsibilities with regard to the quarterly
 9 submissions and my understanding is that -- the way I
 10 understand the process to work and this is what I am going to
 11 ask you, if I am way off base, is that those quarterly
 12 submissions are used to create these larger summary
 13 documents.
 14 A I mean, I can only, as you, suppose that that's so.
 15 I don't know where else they'd come from, but I have no
 16 familiarity with this report, don't know who prepares it, and
 17 therefore don't have a clue as to what the source documents
 18 might be. It would be a reasonable assumption, I agree, but
 19 that's as far as I can go.
 20 BY (b)(7)(C)
 21 Q But you have no firsthand knowledge.
 22 A I have no personal knowledge of it at all.
 23 BY (b)(7)(C)
 24 Q While we were motoring by that, I wanted to take
 25 the opportunity to ask that.

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1 Going back for a moment now to -- we talked about
 2 the two functions that are operation here, one being (b)(7)(C)
 3 (b)(7)(C) FCPA compliance and the other being the audit
 4 area, to go back, I was asking you what would be the check
 5 that would operate to tell you to tell (b)(7)(C) that the
 6 information contained in Exhibit 31 or in the Colombian
 7 submissions generally, the quarterly FCPA submissions, were
 8 correct.
 9 Now, we talked about sensitive payments and
 10 internal audit conducting a review of sensitive payment
 11 accounts. Would they have -- the internal audit staff have
 12 information in their review of the sensitive payment accounts
 13 that would give them sufficient information about the nature
 14 of these sensitive payments that would allow them, permit
 15 them, give them information to determine that everything that
 16 needed to be --
 17 A I don't believe so. I don't believe that that kind
 18 of responsibility would have been designated to a low level
 19 auditor type. What I do -- you're kind of asking the wrong
 20 person, you know, it's not my real area of expertise, but it
 21 would be more my understanding that the auditors would come
 22 in and they would insist upon a listing of every entry that
 23 ran through these particular designated accounts and
 24 documentation for every entry.
 25 I suspect that the lower level auditor, that their

1 function would be limited to do I have the entry, do I have a
2 supporting document for the entry? It's not my job to
3 determine whether or not somebody -- if this is an
4 appropriate payment, an inappropriate payment, should it be
5 reported, what it is; just is there a 1016 behind it. And
6 maybe is it a 1016 behind it that has so-and-so's approval
7 signature on it. Purely sort of carpentry approach.

8 Now, what then (b)(7)(C) would have done with that
9 I don't know. I have no idea whether he would have taken
10 that to (b)(7)(C) whether they looked at it together or
11 what he would have done with it, I don't know.

12 (b)(7)(C) Could we go off the record for a
13 moment?

14 (Whereupon, at 12:20 p.m., a luncheon recess was
15 taken.)

16 * * * * *

17 AFTERNOON SESSION

18 (1:25 p.m.)

19 (b)(7)(C) We are back on the record at
20 approximately 25 minutes after five. No discussions of
21 substance were had while we were off the record.

22 Is that correct?

23 (b)(7)(C) That is correct.

24 (b)(7)(C) Twenty-five after one.

25 (b)(7)(C) Oh, what did I say? Five? I am

1 worksheet, it appears to be. That is the title of that
2 worksheet and worksheet is my description of it.

3 The first page is dated January 30, 1996. The
4 attached memorandum is dated April 19, 1990 with a revision
5 date of February 16, 1994.

6 Have you seen this document before?

7 A Yes, I have.

8 Q What is this document?

9 A This is a memorandum addressed to banana division
10 controllers with copies to other key individuals, general
11 managers, I'm copied, a variety of other key managers, in
12 which (b)(7)(C) s alerting people -- alerting these
13 controllers that he has an intention to review those payments
14 that are in the manager's expense fund for 1995 and is
15 requesting that those payments be listed on the accompanying
16 worksheet, as you describe it, and I believe that he also --
17 yes -- is requesting that detailed documents or explanations
18 accompany that.

19 So that's the cover page and then the next two
20 pages are essentially the procedures that have been put in
21 place, a memorandum in which procedures are put in place to,
22 in some sense, control or monitor this activity on a regular
23 basis. So we have the procedures as background and the
24 thrust of the memo is I'm going to be reviewing the details
25 from 1995.

1 rushing, I am sorry. Yes. Twenty-five after one. Wishful
2 thinking on my part.

3 Whereupon,

4 (b)(7)(C)

5 was recalled as a witness and, having been previously duly
6 sworn, was examined and testified further as follows:

7 EXAMINATION (RESUMED)

8 BY (b)(7)(C)

9 Q I am going to hand you a document that has been
10 previously marked as Exhibit 13. I will give you an
11 opportunity to look at that document and while you look at
12 it, I will describe it for the record.

13 The document spans Bates stamp numbers 2CHQ6-000055
14 through 000058. The document to some degree is better
15 described by saying it has three parts. The first page is a
16 memorandum dated January 30, 1996. The document is to a
17 number of individuals and from (b)(7)(C) The subject of
18 the document is "Accounting for Sensitive Payments."

19 The second page of the document and the third page
20 are another memorandum that is attached to that document.
21 This document after "To" has "Distribution attached." This
22 is also from (b)(7)(C) The subject matter of this is also
23 "Accounting for Sensitive Payments."

24 And the final page of the four-page document is a
25 CBII internal audit department 1995 general managers expenses

1 Q Okay. And the activity that is being monitored are
2 the sensitive payments.

3 A The activity that's being monitored are those,
4 payments that are reported through -- that are categorized as
5 manager's expense items which would by their nature be the
6 sensitive payments. Right.

7 Q Turning back to the front page of the exhibit for a
8 moment (b)(7)(C) is at the top. Is that correct?

9 A Yes.

10 Q And he during this time (b)(7)(C)

11 (b)(7)(C)

12 (b)(7)(C)

13 (b)(7)(C)

14 (b)(7)(C)

15 Q Going down to the bottom of the page there, the
16 second row of names at the bottom, the third name, (b)(7)(C)

17 A (b)(7)(C)

18 Q (b)(7)(C) of

19 Colombia operations at this time.

20 A That's correct.

21 Q Okay. Next, the third column of names, third from
22 the bottom this time (b)(7)(C)

23 A (b)(7)(C)

24 Q Okay. Last column of names, middle name, three
25 from the bottom, three from the top, (b)(7)(C) That is

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(b)(7)(C)

1 (b)(7)(C)

2 A That's correct.

3 Q And at this time, what position did he have?

4 A He would have been the (b)(7)(C)

5 of Colombia.

6 Q I want to turn to the second page of this document.

7 Who was responsible for creating the procedure that this

8 document sets forth?

9 A The document that you're referring to, the subject

10 of which is "Accounting for Sensitive Payments," April 19,

11 1990 as revised in '94?

12 Q Yes.

13 A It comes from (b)(7)(C) so I would assume that he

14 is responsible. Now, were others collaborating with him in

15 designing this policy? I would assume so, but I have no

16 firsthand knowledge one way or another, but I would assume

17 so.

18 Q Okay. Let me ask it this way. The procedures set

19 out in this document, were (b)(7) and his people the

20 individuals responsible for seeing that these procedures were

21 followed?

22 A I would assume so, yes.

23 Q Okay.

24 A There's a shared responsibility. There's a

25 managerial responsibility for making sure that the company

1 procedures, was not a direct response to a situation in

2 Colombia.

3 A Oh, that's -- yes. I would feel very comfortable

4 that it was not, that it was a policy in response to activity

5 that might be going on in a number of different locations.

6 Q Okay. We touched a little bit on guerrilla

7 payments. On a more general level, what type of payments

8 would fall within the basket of sensitive payments that this

9 document is directed toward?

10 A Well, there were guerrilla payments. There were

11 payments to the army, not necessarily in Colombia. That

12 issue came up in other locations, typically around security

13 issues.

14 Colombia is by far the most difficult security

15 issue that we face, without a doubt. One of the reasons why

16 the split payrolls are in Colombia. We don't have that kind

17 of thing typically elsewhere. But we do have security issues

18 elsewhere. In Guatemala, for example, Guatemala can be

19 difficult from a security point of view. Honduras can be

20 difficult from a security point of view. Not security in the

21 sense of kidnapping or murder, but a lot of thievery and so

22 forth and so on.

23 So the army might ask you for help, you know, that

24 would tend -- and, remember, in many of these countries, the

25 army and the police force can in some cases be one and the

1 policy in general is followed and in that sense I would have

2 some responsibility in making sure that the people that

3 report to me and the organizations that report to me do so.

4 My superiors would have responsibility for me and so forth

5 and so on.

6 The inherent nature of the internal audit

7 department is, however, to make sure that all that kind of

8 stuff is happening.

9 Q Was this policy, which we will discuss in detail in

10 a few moments, but was this policy to have specific

11 accounting procedures for sensitive payments and a general

12 managers expense fund developed in response to any specific

13 location or operations needs?

14 A I don't know. I don't know whether it was -- I

15 don't know whether it was developed with a particular

16 location in mind. My sense would be that it was not. My

17 sense would be that there were a number of locations where

18 these kind of payments were being made, these kinds of

19 payments being sensitive payments, not necessarily FCPA

20 sensitive, not necessarily guerrilla sensitive, simply

21 sensitive payments for one reason or another. And at some

22 point in time, this was an effort to put a little more order

23 and structure around that.

24 Q Your understanding, then, is that this was not --

25 this policy, this policy being the sensitive payment

1 same or the police might be asking you for some economic

2 help. So those kinds of payments.

3 Occasionally, there might be a payment -- for

4 example, a union representative would come in and would say,

5 look, next week we are celebrating the anniversary of the

6 establishment of the union and we are going to have, you

7 know, a significant celebration and these unions in general

8 are reasonably strapped from a financial standpoint and they

9 might come in and say, look, would you make a donation to the

10 union and help defer some of these expenses. That would be

11 something that might be channelled through this.

12 You know, for obvious reasons, the union

13 representative, the union representatives would not be

14 thrilled with the idea that it became public knowledge that

15 the company was intervening or helping in that manner. So

16 that would be the kind of thing that might happen.

17 I would say very occasionally what would be termed

18 a facilitating payment, some -- maybe an immigration guy or

19 what have you to -- we have corporate aircraft in the tropics

20 and some of these places are kind of remote, so they have

21 airports that may shut down where there are no commercial

22 flights after 3:00 in the afternoon and you know that the

23 company plane is going to be coming in from some place

24 outside of the country and you need an immigration official

25 there and, you know, his official work hours are from -- and

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(b)(7)(C)

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1 there's no overtime or what have you, so maybe something to
 2 encourage him to be there at 6:00 in the evening to stamp
 3 everybody's passport. I don't know if that --
 4 Q That is very helpful. Thank you. You had
 5 mentioned at one point, I did not want to interrupt you, that
 6 somehow the Colombia's particular situation caused a split
 7 payroll situation and I did not really understand where you
 8 were going with that.
 9 A Actually, I was trying to emphasize that Colombia
 10 was a particularly difficult place from a security
 11 standpoint, but in my earlier comments, when you were asking
 12 me about, you know, whose employee was so and so or what have
 13 you, and I was pointing out that some of these people were
 14 paid partially in the States and partially in Colombia,
 15 that's in large part a reflection of our nervousness about
 16 the security situation in Colombia.
 17 The guerrillas, it's a horrible thing to say, but
 18 there's very good reason to believe that the guerrilla
 19 organizations have infiltrated the banks. I mean, I could
 20 tell you some terribly -- some anecdotal stuff that you might
 21 find entertaining, but it's pretty awful. Where they have
 22 access to a lot of information.
 23 If you're an employee that's making, you know,
 24 \$100,000 a year or what have you and everybody knows that
 25 you're making \$100,000 a year, and you on top of that tend to

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1 be working and traveling in remote locations, you become a
 2 potential kidnapping target. They may think on the one hand
 3 that, "Hey, if they kidnap you, Chiquita will step up to the
 4 plate," but they also may very well think to themselves "We
 5 don't care if Chiquita steps up to the plate or not, this guy
 6 has the wherewithal."
 7 Q Plan B.
 8 A Plan B. So it was in that context. I was just
 9 trying to sort of poignantly say that Colombia is still a
 10 more difficult place than the other ones that we deal with.
 11 Q Okay. I want to go through this procedure pretty
 12 carefully. This is a document that I to some degree want to
 13 go through line by line.
 14 Starting with the second sentence in the opening
 15 paragraph, we are on 000056. It says, "The intent of this
 16 procedure is to provide for adequate books and records for
 17 such expenses along with the need of maintaining an
 18 appropriate level of confidentiality about the recipients of
 19 such payments."
 20 Is that your understanding of what the intent of
 21 this document is?
 22 A Yes. But I believe that there is -- I believe that
 23 there is sort of a corollary benefit and I don't know, it may
 24 be mentioned later on here, but the corollary benefit being
 25 that to the extent that inappropriate payments from an FCPA

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1 standpoint might be being made, this would help identify
 2 that.
 3 Q Okay. Moving on to the paragraph which has the
 4 numeral one, taking that as a paragraph, the first sentence
 5 there says, "Underlying detail supporting manager's fund
 6 expenses should be maintained by the general manager to
 7 assure compliance with the provisions of the Foreign Corrupt
 8 Practices Act."
 9 Underlying detail, what does that mean?
 10 A As I understand it, that would mean nothing more
 11 than perhaps an explanatory note or a copy -- I think people
 12 did it in different manners. It's a sensitive payment, so
 13 the accounting document that moves through the accounting
 14 system obviously can't say on it payment to the FARC for
 15 obvious reasons, so you would expect -- and I don't take this
 16 as the general manager meaning literally the general manager.
 17 The general manager or his designee, at least that's the way
 18 I would interpret this.
 19 So (b)(7)(C) in our example, would have his own
 20 document, his own notebook, his own private document or what
 21 have you, that would say payment so and so, that was
 22 described as this on the accounting document, in fact payment
 23 to the FARC. You're not going to get -- as I said before,
 24 you're not going to get the FARC to signed duly received and
 25 thank you very much.

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1 Q You do not ask for that?
 2 A No, we don't.
 3 Q Sticking with the same sentence, then, "Underlying
 4 detail supporting manager's fund expenses should be
 5 maintained by the general manager."
 6 The word maintained. This is what you were
 7 describing to me just now?
 8 A Yes.
 9 Q Your understanding is that this does not mean that
 10 physically the documents are in the possession of the general
 11 manager, but someone within his organization has them,
 12 A That's correct. That's the way I interpret it,
 13 anyway.
 14 Q Okay. If you want to take a moment to read that
 15 paragraph down to the last sentence, and now I am going to
 16 pick up at the last sentence, just so you have all the
 17 context.
 18 A Before the bullet points or including the bullet
 19 points?
 20 Q I am going to stop right before the bullet points.
 21 I am going to pick up with "Once each quarter, the general
 22 manager's supervisor, typically a region manager, will review
 23 each transaction in detail and approve on an after-the-fact
 24 basis that," and then there are three bullet points.
 25 A Right.

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1 (Pause.)
 2 Q This sentence that I just read provides for a
 3 review by the general manager's supervisor. In the case of
 4 Colombia and the case of (b)(7)(C) in the 1996 period,
 5 is that you that this is referring to?

6 A Yes.

7 Q Okay. Did you do this review with (b)(7)(C)
 8 once each quarter?

9 A I tried to describe for you previously the kind of
 10 review that I did, so I did a managerial type review, would
 11 ask him whether or not these transactions were being
 12 maintained and reported if necessary on the quarterly form
 13 and so forth and so on. I did not take an auditing approach
 14 to reviewing each and every transaction with its supporting
 15 document. No, I did not.

16 Q Okay. If you want to take a moment to read the
 17 bullet points because that might be helpful.

18 (Pause.)

19 Q Okay? CBI-V1-001-003702

20 A Mm-hmm.

21 Q Still dealing with paragraph number one here,
 22 "Once each quarter, the general manager's supervisor,
 23 typically a region manager, will review each transaction in
 24 detail and approve on an after-the fact basis that," bullet
 25 point, "The expenditure was properly authorized, documented

1 A Right.

2 Q Okay. Staying on paragraph one for one more
 3 moment, the first bullet point says that the region manager
 4 will approve on an after-the-fact basis that the expenditure
 5 was properly authorized, documented and supported, and I am a
 6 little bit paraphrasing there, so I want to make that clear
 7 for the record.

8 How even on a more -- understanding that you were
 9 not going transaction-by-transaction during these meetings,
 10 how were you approving that the expenditure was properly
 11 authorized, documented or supported or how did you have some
 12 comfort that that was the case during these review sessions?

13 A I was asking the question and I was getting the
 14 response. You know, just backing up for a minute and putting
 15 things in perspective. As I pointed out previously, by their
 16 nature, these kinds of payments require a bit of a leap of
 17 faith. They're impossible to audit in terms of their, you
 18 know, eventual use or what have you. So they require a leap
 19 of faith.

20 So I felt as if I had in place a conversational,
 21 broad management approach to quantity, type of, that sort of
 22 thing. As long as I was getting answers that made sense to
 23 me, that conformed with, you know, the general financial
 24 statements, that I didn't see huge blips going in one
 25 direction or another and people were saying to me with -- you

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1 and supported;" bullet point, "Documentation and support
 2 exists for each transaction reported in the manager's fund
 3 account for the quarter," and then there's a parenthetical,
 4 "a list of such transactions should be prepared by the local
 5 controller;" bullet point three, "The expenditure was
 6 reported on the appropriate quarterly report of the statement
 7 of policies and procedures if any payments went to government
 8 officials or entities or payments to any other persons or
 9 entities required to be sent to the law department."

10 I want to make sure that I am clear on this, that
 11 the review you are describing is not the detailed each
 12 transaction type review that it appears to me is required by
 13 this paragraph.

14 A That could well be the case. It may be that in
 15 fact when (b)(7)(C) wrote that he had in mind an auditing
 16 procedure of some sort.

17 I did not interpret it that way and I did not
 18 interpret it that way because of the reference to point three
 19 and to point four, where I saw the formal auditing tick and
 20 tic, look at every document, that kind of thing, being
 21 essentially handled by the internal auditors. So --

22 Q And point three and point four are the -- I will
 23 call them paragraphs number three and four, which are on the
 24 following page. Bates stamp coding in 57, which we will get
 25 to in more detail in a few moments.

1 know; looking me in the eye and saying it's documented and,
 2 yes, we're following the procedures, that was -- I considered
 3 that to be adequate.

4 I considered it to be adequate, just to reiterate,
 5 because in my mind it was complemented by a precise activity
 6 and follow-up on the part of, one (b)(7)(C) in following up
 7 on quarterly reporting of the payments; and, two, (b)(7)(C)
 8 on the periodic auditing of this activity about which the
 9 cover memo lends pretty good credence because there he is
 10 saying I'm going to do it guys, so that was good enough for
 11 me.

12 Q Okay. And your reference to (b)(7)(C) activities
 13 are the whole FCPA reporting structure that we have discussed
 14 earlier.

15 A Right. Exactly.

16 Q Okay. And you reference to (b)(7)(C) activities
 17 is we are coming up now on soon paragraph three here in the
 18 current memo.

19 A Precisely.

20 Q I want to stay on 000056 and move on to paragraph
 21 two. "The general manager or appropriate region manager will
 22 accompany the underlying the supporting detail to Cincinnati
 23 after the quarterly review and submit the detail to (b)(7)(C)
 24 (b)(7)(C) t says here, but "the general counsel for his
 25 review."

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(b)(7)(C)

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1 A Right. This was a provision that was soon to be
2 found highly impractical. There was -- what can I say --
3 there was a considerable -- in retrospect, a considerable
4 amount of paranoia about these payments. I mean, they were
5 sensitive payments, no question about it, but there was
6 paranoia about, oh, my goodness, what would happen if on the
7 way to the -- well, if I put these payments -- if I put this
8 documentation in the mail and it fell into somebody else's
9 hands and suddenly they learned that we were paying the FARC
10 or that we'd helped in the union celebration.

11 So there was this paragraph about somebody will
12 hand carry this stuff to Cincinnati. Well, these were not
13 bearer bonds and, in fact, that was overkill. And to go
14 running up to Cincinnati on a quarterly basis to carry some
15 of these documents about, you know (b)(7)(C)
16 mean, please. So we didn't do it.

17 And, as a practical matter, what would happen is
18 that you would get quite an accumulation of documents so you
19 would get a backup. And you'd try when you went to
20 Cincinnati for other business to take them. And
21 occasionally, the backup would become problematical for guys
22 like (b)(7)(C) who were saying, you know, gee, I've
23 gotten -- or (b)(7)(C) or whomever, you know, I've gotten
24 this or that, but I'd really like to see the stuff.

25 Remember, this was in 1990. I don't know what the

1 but you know what I mean. In theory, it could have just been
2 a notepaper that said on such and such a day I delivered such
3 and payment to such and such person.

4 And there was no defined corporate structure behind
5 what that documentation had to be. Do you follow me when I
6 say that? It was whatever supporting -- the supporting
7 document might have been a one person -- it could have been,
8 in theory, the general manager could have given \$50 bucks to
9 the FARC himself and so it would have been a one-man show and
10 in theory he could have written down on a piece of paper, "I
11 on November 23rd delivered \$50 to the FARC." End of story.
12 So it depended upon the circumstances as to how detailed that
13 might be.

14 Q I understand on a level and then it gets away from
15 me, so let me tell you what I understand.

16 A Okay.

17 Q These payments are sensitive. To some degree,
18 effort is being made not to have a lot of documents out there
19 describing what these payments are. Now, you seem to be
20 saying to me that the documents that are making their way to
21 Cincinnati tell them the true nature of these payments,
22 somehow tell them the true nature of these payments. Is this
23 on a 1016? Is this -- you know, for each payment, you are
24 telling me there is something in there that explains to them
25 exactly what it is, that they can look at it and discern that

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1 United States was like in 1990, but in parts of Latin America
2 in 1990, we didn't even have DHL or Fed Ex. Now we do. So
3 as, you know, as things evolved, we got a point where this
4 stuff normally gets put into a mail pouch or Fed Ex'd or what
5 have you. It's not in identical conformity with this
6 paragraph.

7 Q So if I were looking for you quarterly at the
8 airport with a handcuffed satchel to your arm, I would not
9 have seen that scene?

10 A Unlikely.

11 Q That is the picture that came to mind.

12 A You might have seen (b)(7)(C) might have been
13 doing it, but I wasn't.

14 Q Let me go back to two. I think I moved on ahead of
15 my time there for a moment. The information that did make
16 its way to Cincinnati, the type of information being
17 requested in paragraph 2 here, what was it?

18 A It would have been the kind of detail that I would
19 have described. It might have been different from place to
20 place and general manager to general manager. It might have
21 been a 1016 that had a relatively harmless description on it
22 or a copy of a 1016 that had a relatively harmless
23 description on it, maybe somebody wrote on the back, you
24 know, payment to the FARC, or maybe it was a napkin. I'm
25 saying that to go to an absurd extreme, it wasn't a napkin,

1 this was a payment to -- and we have used throughout the day
2 a payment to FARC?

3 A You're looking for structure and consistency from
4 location to location or payment to payment that I can't give
5 you assurances that exist.

6 Q If we stick to Colombia.

7 A Okay. Let's talk about Colombia. Colombia might
8 have been a list that (b)(7)(C) would have prepared that would
9 have shown the payments to, you know, the FARC and the ELN
10 and so forth and so on. It might actually have been coded,
11 you know, payment to the blues, payment to reds, payment to
12 the -- and he might well have -- I don't know this, he might
13 well have called (b)(7)(C) or even possibly -- or maybe (b)(7)(C)
14 could have called (b)(7)(C) or maybe a guy like (b)(7)(C) could
15 have called (b)(7)(C) and said the documents that are coming
16 are going to say red, blue and green and, you know, this is
17 what you should understand by that.

18 (b)(7)(C) Do you know of personal knowledge
19 what the packages that were sent to Cincinnati contained?

20 THE WITNESS: Well, that's why I'm reticent to talk
21 about it in definitive terms because sometimes I saw them and
22 sometimes I didn't. And I can't give you assurances that
23 they were absolutely consistent in nature. I did see, for
24 example, I couldn't set the time for you, but I did see, for
25 example, when (b)(7)(C) had done exactly what I described.

(b)(7)(C)

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1 Now, that he did that consistently quarter by quarter or that
 2 it would have been in some other form, I don't know.
 3 Let's put it this way. My comfort was (b)(7)(C)
 4 was getting it and (b)(7)(C) was complaining about, hey, I'm
 5 missing this document or I'm missing that document, but he
 6 was not complaining about the quality of these documents is
 7 unacceptable. So that was my comfort level, I was
 8 comfortable with it. It was adequate from his point of view.
 9 (b)(7)(C): Thank you.
 10 BY (b)(7)(C)
 11 Q Turning to the next page and looking at paragraph
 12 three, "The Vice President Internal Audit has been requested
 13 to review the manager's fund expenses submitted to the law
 14 department every six months."
 15 Based on the conversation we just had, your
 16 understanding is that this was being done.
 17 A I had no reason to believe that it wasn't. I
 18 certainly -- you know, I wouldn't have called (b)(7)(C) and
 19 asked him if he had done it or not, but -- and I don't know
 20 whether it was being done religiously every six months or
 21 not, but, yes, it was clearly being done. This is an
 22 example. There are other memos like this dated differently.
 23 and there are, to use my word again, there are communications
 24 from him dunning people on I'm missing this document or that
 25 document. So, yes, I mean, I was aware that it was being

1 Q This was not a new procedure instituted in '96 or
 2 '95, is that correct?
 3 A That's correct.
 4 Q Okay. So this is -- the request that controllers
 5 provide a listing of detailed transactions by month was a
 6 request that went out annually.
 7 A I can't give you absolute assurance that it went
 8 out religiously annually or not, but I have seen more than
 9 one of them, so I would guess that it did.
 10 Q I would not want to represent it, but I think that
 11 this document appeared with just the year changed a few
 12 times.
 13 A Right.
 14 Q In my records, I do not have them all here, but --
 15 A Probably a reasonable assumption. I just can't
 16 tell you that from 1994 every single year it went out.
 17 Q Okay. For Colombia, in this time frame, 1994,
 18 1995, 1996, were these summaries envisioned by this worksheet
 19 on the final page of Exhibit 13, were these being done for
 20 the Colombia operation, sensitive payments, general managers
 21 expense fund accounts?
 22 A With all due respect, the person that you'd have to
 23 ask that question to is (b)(7)(C) because this is 100 percent
 24 audit function. Now, I do know because I occasionally saw
 25 some communication back and forth that he was asking about

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1 done.
 2 (b)(7)(C) And that is a reference to
 3 Exhibit --
 4 (b)(7)(C) The front page letter of Exhibit 13.
 5 (b)(7)(C) Thank you.
 6 (Pause.)
 7 THE WITNESS: Are you going to get to number four?
 8 (b)(7)(C) Yes.
 9 THE WITNESS: Okay.
 10 BY (b)(7)(C)
 11 Q Let's stop on the front page right here for a
 12 moment, the front page again ending in Bates stamp 55, the
 13 front page of Exhibit 13.
 14 A Okay.
 15 Q And if you could read to yourself, take a moment,
 16 the second paragraph and, in particular, I want to ask you
 17 about this request that controllers provide a listing of the
 18 detailed transactions by month of cash or check payments to a
 19 general managers expense or manager's expense code. But take
 20 a moment to read that paragraph so you understand what I am
 21 going to ask you.
 22 (Pause.) CBI-V1-001-003704
 23 A Okay.
 24 Q This memo is dated January 30, 1996.
 25 A Correct.

1 some documentation. I think on one or two occasions he and I
 2 had a conversation about some documents that were taking some
 3 time that he was uncomfortable with and I mentioned to you
 4 before that on a couple of occasions I was pressuring Forton
 5 to get appropriate documents.
 6 So circumstantially I would say to you that this
 7 activity was going on. But what I want to make clear is it
 8 wasn't something that I was seeing or it wasn't coming
 9 through me or I wasn't reviewing it or -- it was auditors to
 10 controller type.
 11 (b)(7)(C) Could I just ask what you mean by
 12 "this activity"?
 13 THE WITNESS: This activity of filling out this
 14 form with all of the transaction by transaction breakdown on
 15 the manager's account.
 16 (b)(7)(C) The Exhibit 13 worksheet.
 17 THE WITNESS: Exactly.
 18 BY (b)(7)(C)
 19 Q Did you have any understanding that during the
 20 1994, 1995 and 1996 time frame (b)(7)(C) and his people had
 21 somewhat lost control of this procedure with regard to
 22 Colombia? This procedure being again the worksheet and
 23 procedure for this annual summary that we are discussing?
 24 A Lost control may be a characterization that I would
 25 not choose.

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(b)(7)(C)

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1 Q Take issue with it --
 2 A But I was aware of the fact that they were
 3 attempting to reconstruct this kind of stuff for that time
 4 frame. Now, as a matter of fact, it became at one or two
 5 points an annoyance because they would request documentation,
 6 the (b)(7)(C) of this world would say
 7 I've sent the documentation, I've sent it all, they'd copy me
 8 on it and then it would come back, I'm still missing two
 9 things here or three things there.

10 I must say that it was annoying in the sense that
 11 it kind of was interminable and it seemed to me interminable,
 12 quite frankly, around -- the holes that were there appeared
 13 to be very insignificant. So I was aware that that kind of
 14 communication, follow-up and interminable activity seemed to
 15 be going on. I didn't really associate that with a total
 16 loss of control.

17 (b)(7)(C) When you say interminable; you are
 18 referring to (b)(7)(C) persistence in following it down to
 19 the smallest detail?

20 THE WITNESS: Yes. That's exactly what I'm
 21 referring to.

22 BY (b)(7)(C) CBI-V1-001-003705

23 Q Dunning?

24 A Well, actually, when he got to the point of dunning
 25 in writing, that was very helpful because now we were getting

1 A Yes.

2 Q What is this document?

3 A This is a document which I think may well have been
 4 born, quite frankly, out of my frustration with this process
 5 because I was --

6 Q One second. This process? So we are clear,
 7 because we are segueing here.

8 A Okay. With my frustration with the process between
 9 (b)(7)(C) as the case
 10 might have been, for providing documentation around these
 11 expenses. And there had been a lot of give and take about I
 12 still need documentation for such and such a period or I'm
 13 still missing partial documents or this, that and the other
 14 thing on the one hand from (b)(7)(C) on the other hand from
 15 (b)(7)(C), comments of I've send all the documents, that
 16 sort of thing.

17 And I say born out of my frustration with that, I
 18 suggested fairly strongly, as I recall, to (b)(7)(C) that it
 19 was important that he essentially inventory what he had and
 20 inventory what he was missing and get that to (b)(7)(C) so that
 21 we could get more specific around it and get it done and put
 22 it behind us. So that's my interpretation of where this came
 23 from.

24 Q Okay. Back to Exhibit 13, third page, paragraph
 25 number four. "For the major locations where a manager's fund

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1 specific enough so that we could bring an end to it. It was
 2 initially the dunning of I just don't have; oh, yes, you do;
 3 no, I don't and so forth and so on until he got very
 4 disciplined about it and then it became, you know,
 5 considerably easier and at least better defined. But he was
 6 persistent. And appropriately so.

7 (b)(7)(C) I will hand you what has been marked
 8 as Exhibit 34.

9 (SEC Exhibit No. 34 was
 10 marked for identification.)

11 THE WITNESS: Could I go back? Because I wanted to
 12 make a point about point number four.

13 (b)(7)(C) That is next. This is the briefest
 14 of moments and we will jump right back to point number four.

15 THE WITNESS: Okay. All right. Yes. Okay. This
 16 is exactly what I was referring to.

17 (b)(7)(C) And let me just -- take a moment to
 18 page through and I will describe it for the record.

19 Exhibit 34 is a multi-page document spanning Bates
 20 stamp 4CHQ1-000643 through 000670. On the front page of the
 21 document, it is to (b)(7)(C)
 22 Subject is Colombia General Managers Expenses 1993 through
 23 1996.

24 BY (b)(7)(C)

25 Q Have you seen this document before?

1 is used, internal audit will plan to perform a detailed audit
 2 of cash and check disbursements on an annual basis at the
 3 local organizational level to assure that quarterly reviews
 4 contained all appropriate transactions and disbursements."

5 Is Colombia a major location?

6 A Absolutely.

7 Q Can you tell me what the detailed audit is that
 8 appears to be required by this?

9 A Procedurally, no. I mean, it's an audit performed
 10 by the internal audit group. I can only guess from my (b)(7)(C)
 11 (b)(7)(C) says what it might entail, but it's an audit

12 performed by that group on cash and check disbursements.
 13 Q Maybe we could approach it this way. Was this done
 14 on an annual basis at the local organizational level?

15 A Well, if it were done on an annual basis, it would
 16 have been done not by the local organization, but by the
 17 internal audit department of Chiquita at the local
 18 organization.

19 I don't track that, so I can't attest to the fact
 20 that it was done, but I do want to make this point. During
 21 this period, Colombia and many other locations were having
 22 routine audits of various natures, sometimes through the
 23 internal audit staff and sometimes with outside auditors and
 24 I think it's -- my assumption was that because we were having
 25 these audits and because of point number four that this kind

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(b)(7)(C)

1 of manager's fund audit, if you will, was in fact going on.
 2 I receive copies as a matter of routine of an
 3 audit, audit reports, after-the-fact audit reports on those
 4 areas or operations that I'm responsible for. I would
 5 receive from time to time audit reports. I would receive
 6 from time to time audit reports in this time frame. And, for
 7 the most part, those audit reports did not identify issues
 8 around manager's funds that I found alarming.
 9 They did occasionally identify issues around
 10 manager's funds where they would point out -- I think on one
 11 occasion, for example, they pointed out that the fuel, the
 12 monthly \$80 of fuel or \$100 of fuel was not appropriately
 13 being reported. I can't even remember whether it was on the
 14 quarterly report or whether it was on this audit report.
 15 A few things like that would occasionally pop up in
 16 the audits. So kind of double-edged sword. We knew it
 17 wasn't perfect, but on the other hand, the kinds of stuff
 18 that they were identifying were not the source of significant
 19 anxiety, that we had a real problem.
 20 Q Okay. I think we are at a point right now where I
 21 can explain to you where I lose my understanding of this
 22 process.
 23 This review that is being performed by the internal
 24 audit staff, and I want to take the period prior to the 1997
 25 review, what I understand this person to be doing is that

1 auditor and you're auditing everything that's going through
 2 these accounts and you come up with a payment of substance
 3 that has a description on it that may be innocuous but is
 4 different from what you're used to seeing and it kind of
 5 sticks out like a sore thumb, right?
 6 Well, I don't think that individual low level
 7 auditor would deal with that, but that's where a (b)(7)(C)
 8 might go to a (b)(7)(C) or maybe even directly might go to a
 9 general manager and say what's this payment about, it doesn't
 10 appear on your quarterly statements to (b)(7)(C) what's
 11 this about? Well, this is about my payment to the other
 12 guerilla group. Okay. Fine. Not an FCPA issue.
 13 Well, this is about a payment to some customs guy.
 14 What? Uh-oh, maybe I have an issue.
 15 That's the way I see these things intertwining,
 16 potentially.
 17 Q I am going to continue to use as an example the
 18 specific instance but we will discuss that in great detail
 19 but it is a good platform for this discussion concerning the
 20 procedure.
 21 A Okay.
 22 Q My understanding is that (b)(7)(C) conducting
 23 the audit manages to -- there is an issue raised with regard
 24 to a specific payment because what (b)(7)(C)
 25 are the sensitive payment summaries, the Exhibit 13 type

1 they have -- what is available to them is the general ledger,
 2 maybe some type of 1016 with an innocuous description, and
 3 some FCPA, the FCPA quarterly summaries.
 4 A I don't know. I'm not sure that I have the same
 5 understanding. You may be right because I don't know exactly
 6 what happens to all of this when it reconverges in
 7 Cincinnati, okay? And so I don't know that part of the
 8 process. Here is my understanding. We have two separate and
 9 distinct issues which occasionally could overlap. We have an
 10 FCPA issue and we have a cash payment/cash sensitive payments
 11 issue.
 12 You could have 100 percent cash sensitive payments
 13 that have nothing to do with FCPA. You could have cash
 14 payments that have everything to do with FCPA. My
 15 understanding is that the audit group, the internal auditors,
 16 were charged with making certain that there was a list entry
 17 by entry with some documentation, perhaps totally innocuous,
 18 some documentation behind it for each and every entry.
 19 That is separate and distinct from anything that
 20 (b)(7)(C) would have been doing with the quarterly FCPA
 21 reporting.
 22 Now, where could those two things, not necessarily
 23 would they, but where could those two things overlap? Let's
 24 assume that you're an auditor -- why don't we just go right
 25 to the example that we have. Let's assume that you're an

1 required document, the general ledger line-by-line account
 2 for the sensitive payments, and then put away she is also
 3 doing the FCPA stuff, but this is what she has in front of
 4 her and the actual true nature of the payments do not concern
 5 her because at her level, she is not entitled to -- the whole
 6 object is not to let everybody and their family see this.
 7 A That's my understanding. Right.
 8 Q But what she can do is check the general ledger,
 9 check the summary, check the general ledger, check the
 10 summary, and her assumption working through this is that if
 11 it is on the summary (b)(7)(C) or somebody at a proper level
 12 had gotten this summary and that is not her job, that is
 13 someone's job at a level above her to ensure that that
 14 payment is properly document, authorized and supported.
 15 A I think that's exactly the way I would understand
 16 it as well.
 17 Q Okay. Which is where I lose my understanding of
 18 the situation pre-April 1997 (b)(7)(C) because if for two
 19 or three years before that (b)(7)(C) does not have -- and the
 20 documents suggest to me that he is asking for these sensitive
 21 payment summaries and I am looking at what is going to him
 22 and it does not seem that he is getting this type of detailed
 23 summary, the auditor is not able to do this on past
 24 locations.
 25 They are looking at a general ledger and they have

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(b)(7)(C)

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1 no document to tick, tick, tick, tick off of and they have no
2 information and they are just looking at a general ledger
3 with these innocuous -- and this is where I lose it. This is
4 where I can not understand how those audits worked during
5 those years.

6 (b)(7)(C) Answer it if you can.

7 THE WITNESS: I mean, I will answer it if I can.

8 My understanding is that it's not that they had
9 nothing, it's not that they didn't have a list with
10 documents. It is that as we subsequently learned through
11 (b)(7)(C) through this incident, it is that there were
12 holes. There were lists of -- I'm sorry. There were
13 probably -- now I'm guessing. There were probably two
14 issues.

15 One issue, there was probably a number on the
16 general ledger and when they added up all the transactions I
17 suspect it didn't hit to the number, so that they knew that
18 something was missing. Okay? That would have been one
19 problem.

20 And potentially another problem would have been
21 that in fact they had, okay, I've gotten all the transactions
22 that make up the general ledger number, but I'm missing this
23 document, that document and the other document. So there
24 were problems of that nature which, if you like, I would
25 agree with you makes us unable to say that the audit was

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1 perfectly achievable to the last penny. I agree.

2 Now, then it became a question of to some degree
3 materiality, to some degree nature of payments and so forth
4 and so on and I recall -- I can't recall the date, but I do
5 recall at some time -- at the expense of probably making a
6 mistake on the date I want to say September or July of '97,
7 something like that, where Jorge -- no, it wouldn't have been
8 September -- I'm confused on the date.

9 At some point, maybe it was even late '96 or some
10 time in '97 where (b)(7)(C) sent in reply to (b)(7)(C)
11 (b)(7)(C) in reply to Exhibit No. 34, sent a reply to (b)(7)(C)
12 (b)(7)(C) saying here it is, every last bit of it except for
13 here's this one little thing that I'm missing for, you know,
14 \$222.43 and here's -- and this we determined to be a mis-
15 coding and this we determined to be, you know, this problem
16 or that problem, but essentially, you know, put it to bed,
17 essentially put it to bed, in my estimation, in a
18 satisfactory manner.

19 So you're right. It was imperfect and he had the
20 task of sort of catching up. But it wasn't that it wasn't
21 being -- at least in my appreciation, it wasn't that it was
22 not being done in any of these years --

23 Q And (b)(7)(C) catching up is the documents that
24 (b)(7)(C) was in April '97, to some degree. The summaries.

25 A I mean, I don't know. Honestly, I don't know what

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1 her -- what the scope of what she in particular was looking
2 at. I'll be honest with you, I had even forgotten about
3 (b)(7)(C) until I really sat down and tried to, you know, think
4 through that day and so forth and so on.

5 And I do recall (b)(7)(C) at the very end of the audit
6 review saying something about that she was missing some --
7 she was missing a couple of documents or what have you, that
8 she had done this and that she was missing a couple of
9 documents, which at the time I didn't attach a great deal of
10 significance to, it was just, you know, a to-do item on the
11 audit list that was going to be followed up on.

12 What I can't answer for you even today is what time
13 frame she was looking at. I mean, we do know that she was
14 looking at the critical time frame, but I don't know how far
15 back it went.

16 (b)(7)(C) (b)(7)(C) as she missing a couple of
17 documents or were there certain documents, certain
18 transactions on the general ledger that were not included on
19 lists relating to those transactions that were sent?

20 THE WITNESS: Oh, I'm sorry. That could well be
21 the case. I'm actually fuzzy about it. It's an issue -- the
22 point is whether there were a couple of transactions that
23 weren't listed on a sheet or whether there were a couple of
24 transactions that didn't have -- there was a hole in her
25 process that she raised and it was dealt with in the meeting

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1 as a -- yeah, well, that's to do, we need to get that cleaned
2 up.

3 (b)(7)(C) Okay. Thank you. I lapsed for
4 moment, but I understood what you were saying, which is that
5 you do not have perfect knowledge of the details, but you
6 understood that there was a hole.

7 (b)(7)(C) And, as a general reflection, I
8 think (b)(7)(C) describing the process and providing the
9 information he has from his perspective, but he is not the
10 right witness to give you the more specific chronology of how
11 this process worked.

12 THE WITNESS: I'm really not, I mean, you need
13 to -- you need to view my testimony in this regard as to some
14 extent an observer from the outside. There was some
15 circumstantial evidence that the process that was in place
16 was being followed in the sense that audits were going on and
17 so forth and so on, I would periodically get a lot of
18 reports, they would raise small issues in this area, nothing
19 big, and so -- and then I had the (b)(7)(C) back and forth,
20 I'm missing some documents, and I intervened to some degree
21 in that. But it was, you know, pretty much as an observer.
22 So if you try to get too specific with me --

23 (b)(7)(C) No, and I understand that and I asked
24 the question with the expectation that you were not front-
25 and-center on a lot of these issues, but I am asking what you

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(b)(7)(C)

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1 know and what your involvement was and I certainly appreciate
2 it.

3 THE WITNESS: Fair enough.

4 (b)(7)(C) You have been very good at helping me
5 out with that and reading the question that way and I
6 appreciate that.

7 (Pause.)

8 (b)(7)(C) have handed you what has been
9 marked as Exhibit 35.

10 I will describe it for the record. It is a
11 one-page document, Bates stamp 2CHQ6-000198.
12 (SEC Exhibit No. 35 was
13 marked for identification.)

14 (b)(7)(C) I will give you a moment to look that
15 over with counsel.

16 (Pause.)

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17 THE WITNESS: Okay.

18 BY (b)(7)(C)

19 Q Have you seen this document before?

20 A Not that I recall.

21 Q Do you know what this document is?

22 A Only by reading it I can suppose -- I can presume
23 it to be a report from (b)(7)(C) in which he is
24 outlining to him the payments that he's run through the
25 security account. I have never seen the document.

1 for his formal title, but as a practical matter, he was
2 running the banana group. And I know that (b)(7)(C) was aware of
3 the guerilla payments.

4 Would I guess that somebody like (b)(7)(C)
5 would be aware of the fact that these payments are going on?
6 I would feel relatively confident that he knows.

7 Have I ever had the conversation with him? No.

8 Have I ever asked? No. I had this conversation
9 with my boss and I know that it was discussed, but I can't go
10 beyond that.

11 Q Your boss being (b)(7)(C)

12 A At that time (b)(7)(C) Yes. My boss today, my
13 current boss also probably knows. I think we've had the
14 conversation. I think we've had the conversation. I

15 wouldn't even swear to it, but --

16 Q Does the answer change in the 1996 time frame?

17 A No.

18 Q (b)(7)(C) knew then, too?

19 A Mm-hmm.

20 Q Again, not talking in terms of any specific payment
21 or any specific group, what was the highest level of approval
22 or authorization to make these types of payments?

23 A I'm not sure I understand the distinction in the
24 question. One is approval, one is just knowledge? The
25 former question was just knowledge?

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1 (The witness conferred with counsel.)

2 THE WITNESS: Do not use -- use not valid per

3 (b)(7)(C) okay. So I see some scribbling here which (b)(7)(C)
4 has pointed out to me (b)(7)(C) saying it's not valid.

5 BY (b)(7)(C)

6 Q Is this the type of document that was making its
7 way to Cincinnati to help them get a handle on the sensitive
8 payments accounts?

9 A I don't know. I've never seen the document.

10 (b)(7)(C) I think you would have to ask (b)(7)(C)
11 (b)(7)(C) what he means by not valid precisely.

12 BY (b)(7)(C)

13 Q Speaking generally and not of any specific payment
14 or payments to any one group specifically, who is the highest
15 level individual at Chiquita with knowledge of these guerilla
16 payments? And let's start with today, as we sit here today.

17 A I can give you an answer of certainty and I can
18 make a good bet. I know that (b)(7)(C) is aware of the
19 guerilla payments. Doesn't mean that he's aware of the
20 specific amount, the specific payment, but he is aware that
21 we are making guerilla payments.

22 The first time that we were confronted with this
23 issue (b)(7)(C) He no longer
24 reports to (b)(7)(C) They are today actually peers of a
25 sort. But (b)(7)(C) at time was the -- don't ask me.

1 Q I do not know if there is someone out to the side
2 in accounting --

3 A Okay. I think that -- you asked me for the highest
4 level and maybe I have a bias towards operating people and so
5 I think (b)(7)(C)

6 Q And that is what --

7 A -- and not financial people --

8 Q That is right. And that is kind of what I am
9 getting at with the question, that there may be a
10 distinction. I anticipated that there might be.

11 A I feel -- I'm certain that (b)(7)(C) is aware
12 of the fact that we make these payments. I would bet, don't
13 know fact certain, but I would bet that the audit committee
14 of the board of directors is aware. And I don't know if the
15 current CFO of Chiquita who is relatively new in the
16 position, a guy by the name of (b)(7)(C)
17 (b)(7)(C) I don't know whether he would know or
18 not. I just don't.

19 Q Does the answer change if we go back to 1996, pre
20 this event? Do you still think the audit committee knows?
21 Or, you know, possibly?

22 A Yes, I would make a bet -- again, that's all it is,
23 I would make a bet that this was likely raised to the audit
24 committee when we started making payments. Whether it was
25 raised -- probably raised after the fact, the audit committee

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(b)(7)(C)

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<p>1 is not around every day, probably raised after the fact, but 2 I would suspect that it was raised and I would be surprised 3 if it hadn't been. 4 Q Okay. I just wanted to make sure I drew a 5 distinction between who knows now as a result of certain 6 events and who knew before. 7 A: Right. 8 Q Okay. In a general sense, we have talked about 9 these payments throughout the day. I want to talk now 10 specifically in terms of a hypothetical payment and I want to 11 talk about it from two perspectives. Number one is how the 12 demand for payment comes to you and how that person gets paid 13 and on the other end specific pieces of paper that get 14 generated and what they say, all the way. So to the extent 15 each disappears, the books and records disappear, it gets 16 consolidated, the payment disappears in that it is off to 17 where you do not know where it is any more. Can we do that? 18 We can try. 19 (b)(7)(C) You mean a guerilla payment? 20 (b)(7)(C) Yes. 21 THE WITNESS: Where does the request -- how does 22 the request communicated? It could come in a variety of 23 forms. The request could come as a phone call, an anonymous 24 phone call. The request could come through an employee who 25 has a contact who says I have this message. That's probably</p>	<p>1 you know -- 2 (b)(7)(C) We will defer it, then. 3 (b)(7)(C) Yes. That would be a more 4 appropriate place because sometimes these things get buried 5 in the middle and I would like it to be right there. 6 THE WITNESS: I would like it to be right there, 7 too. 8 (b)(7)(C) Okay. 9 THE WITNESS: All right. So -- 10 BY (b)(7)(C) 11 Q Could I just stop you for a moment? 12 A Sure. 13 Q Understanding that every case by case it is going 14 to be different, but is there an expectation or an 15 understanding that the approach or the demand for payment is 16 made to (b)(7)(C) Is he the one with the contacts and the 17 one that -- a large percentage of the time? 18 A Not necessarily. 19 Q Okay. 20 A The approach could be made, as I say, from a low 21 level employee, a farm laborer could tell the manager of a 22 farm who in turn tells somebody else and it works its way up 23 the ladder. It could come with an anonymous telephone call. 24 There's a lot of smoke and mirrors and hocus-pocus in all of 25 this sort of stuff and it comes and then there's a period of</p>
<p>1 about as rich examples as I can give you because I don't tend 2 to know each and every detail, but it would come from -- you 3 know, in a street smart way. 4 The request would be evaluated for its legitimacy. 5 Now, I can tell you that in the past, and I actually don't 6 know about our current guy, but (b)(7)(C) had contacts who had 7 contacts with the guerilla groups often through third 8 parties. There was a guy by the name of (b)(7)(C) 9 (b)(7)(C) One or two other guys. 10 (b)(7)(C) I would just like to make sure that 11 we communicate how sensitive this information is in terms of 12 security of people that he is identifying. 13 THE WITNESS: Well, I was planning on making a 14 little speech about that, but actually you raise a very good 15 point. 16 Allow me the indulgence to ask, this record is not 17 going to be made public? 18 (b)(7)(C) See, you can not say it that way. 19 What you can say is that there are restrictions on getting 20 it. There is a process for getting it, but -- 21 THE WITNESS: Well -- 22 (b)(7)(C) And it is understood -- here is what 23 I would like to do is that I would not want this to be buried 24 in the center of a transcript, it actually is better for it 25 to be on the last page, clear that, you know, to say that,</p>	<p>1 sort of evaluation. 2 We have in the past had an ability on occasion, not 3 always, but on occasion, to go back to these groups and send 4 messages back to them to, one, start a negotiating process 5 or, two, in fact inquire as to whether or not this is coming 6 from them. 7 We've had the very unpleasant experience of going 8 back in one instance and saying why in the world did you kill 9 this guy if we've been paying you and you have promised us 10 and you promised to behave and they came back very 11 apologetically and said that it had been a case of mistaken 12 identity. Well, that was a great consolation to the guy's 13 wife and kids. 14 But there is an attempt to go back and get some 15 level of comfort that this is legitimate. And then we decide 16 in our wisdom or (b)(7)(C) basically decides, talks it over 17 with (b)(7)(C) they decide in their wisdom to make the payment. 18 My understanding is -- I have never walked through 19 this step-by-step or tried to -- I mean, people won't do that 20 with you. It's so sensitive, they just won't do that with 21 you. 22 For the most part, money would be given to 23 (b)(7)(C) in turn would give it to a third party go 24 between like this guy (b)(7)(C) in cash. 25 Q In cash?</p>

(b)(7)(C)

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1 A In cash. End of story. Now, does it get
2 distributed to the people that it should be? Does it get
3 distributed -- you know, there's a commission for this guy
4 (b)(7)(C) Does he take half of it and put it in his pocket?
5 How do you tell? There's no way of determining that.
6 There are some tipoffs, however. The tipoffs can
7 be that you make the payment and they burn down the packing
8 station anyway. And then you say why the hell did you burn
9 down my packing station and they say, well, we never got the
10 payment. You know, that kind of thing. I mean, there's sort
11 of follow up in the very uncomfortable natural course of
12 events or they burn down the other guy's packing station and
13 not yours.
14 So it's a very difficult, unsatisfactory, not able
15 to be tightly controlled process and in terms of paper we've
16 gone through very thoroughly, I think, in the previous
17 testimony what belt and suspender approaches we can have with
18 this and that we do have with this. Other than that, there
19 is no paper. I mean, as I said, the FARC isn't going to sign
20 received, (b)(7)(C) doesn't bring back a piece of paper, so --
21 Q And there is a danger to you all having broadly
22 available explanations on your books and records.
23 A Absolutely. But let me say this, that one of
24 the -- at least -- it's not said here and maybe it wasn't
25 designed with that purpose in mind, but I have always assumed

1 know, anything dramatic up or down in the budget next year
2 for sensitive payments, no, it's approximately the same, end
3 of subject. Nothing beyond that.
4 Q And who would be asking that question?
5 A (b)(7)(C)
6 Q Okay. And is anybody asking you that question?
7 A Certainly not in a rigorous procedural --
8 Q But I mean in a very specific sense asking you what
9 is the budgeting for sensitive payment accounts in Colombia
10 this year.
11 A Again, just to repeat, not in a rigorous fashion.
12 Nobody's got that on their checklist. I mean, it might occur
13 to somebody, you know, this year, to say, by the way,
14 anything going on, or it might not. I mean, it's not
15 procedurally rigorous.
16 Q But to use your terminology, it is on your
17 checklist for (b)(7)(C)
18 A It's on my checklist for (b)(7)(C) If I were to tell
19 you that it is procedurally rigorous, at the top of my
20 checklist or that indeed I even have a checklist, that would
21 be an overstatement. It would be the kind of thing that in
22 the natural course of reviewing an audit I would tend to do.
23 I wouldn't keep a record of it.
24 I couldn't swear to you that I've done it each and
25 every year, but I would tend to view a budget in a

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1 that one of the sort of books and records issues, if you
2 will, is that by channelling these kind of payments through,
3 you know, one or two designated accounts that it, one,
4 enables people in Cincinnati (b)(7)(C) group or what
5 have you, to re-class those expenses to satisfy the books and
6 records issues if it's material enough, if it needs to be
7 done. Frankly, I doubt if it's material enough to need to be
8 done, but that's not my area of expertise.
9 And it concentrates it all right there so that that
10 lends itself to this kind of procedure that we've been
11 talking about, imperfectly working, but nevertheless it's
12 there. Imagine how impossible it would be if it were just,
13 you know, all over the place.
14 Q I want to move on to the budgeting process for
15 these general manager's expense fund accounts. What is the
16 budgeting process for these accounts?
17 A Extremely cursory. I don't want to make it a big
18 deal. The amounts of money in Colombia that are involved
19 have typically been somewhere around maybe 100 to 200,000 a
20 year and, as I said before, you know, fairly early in the
21 game, when this was just beginning, I was tracking that
22 fairly carefully.
23 It gave us something to benchmark off of for
24 budgeting purposes in subsequent years and today the
25 budgeting process, it wouldn't go beyond a question -- you

1 comparative fashion, so that if there were some major blip in
2 one direction or another, it would be the kind of thing that
3 would tend to pop out.
4 Q Okay. I think I understood that, but I did not
5 want it to get away from us on the record, that when you say
6 not a rigorous fashion from your point of view, it is so long
7 as you do not perceive there to be a major increase or
8 decrease.
9 A Right. That's correct.
10 Q In reviewing it, which you do do, you would see
11 that it went up five times --
12 A Absolutely.
13 (Pause.)
14 Q I am handing you what been marked as Exhibit 25.
15 I will give (b)(7)(C) and opportunity to look at that.
16 I will describe it for the record. Exhibit 25 is a
17 one-page document, Bates stamped 1CHQ17-000052. The date of
18 the document is September 19, 1996. And after number, it
19 says CI Haasdek S.A.
20 Have you seen this document before?
21 A No.
22 Q Do you know what this document is?
23 A Yes.
24 Q What is this document?
25 A This is an accounting document for payment. In

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(b)(7)(C)

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1 A That's right. That's correct. And then, again, my
2 understanding in very broad brush strokes, at some point in
3 time the customs agents would come, they would clear that
4 merchandise, either because duties have been paid or because
5 it's been exonerated and the proper procedures have been gone
6 through and that merchandise would then leave that bonded
7 warehouse, might go directly to a farm, might go directly on
8 a truck to a third party, might go to another area within the
9 Banadex property where it would just be stored as cleared
10 material. That's probably about as good as I can do for you.
11 Q Does Banadex need a permit from Colombian customs
12 to use the facility in this manner?
13 A Yes.
14 Q Okay.
15 A I believe it's from Colombia customs. I know that
16 there's -- I understand that there's a permit. I'm not sure
17 who actually formally admits it, but --
18 Q When did Banadex first obtain this type of permit
19 for this facility, the Turbo facility?
20 A I don't know. I mean, I can only guess that we
21 first obtained it when Banadex was created and when the wharf
22 facility was built.
23 Q Did you become aware at some point that Banadex was
24 going to need to renew this permit?
25 A Only insofar as I became aware of this whole issue

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1 that we're discussing today or are going to discuss to day.
2 In that context I became aware of it.
3 Q Prior to that, which we will get to, you had no
4 knowledge that there was a request that Banadex renew this
5 permit?
6 A If I did, I have no recollection of it.
7 Q When was the very first time you ever heard that
8 there was a need, that you recall ever hearing that there was
9 a need to renew this permit?
10 A I'm a little -- I can tell you that it was not
11 prior to my meeting -- meeting is an overstatement.
12 Definitely not prior to my conversation with (b)(7)(C)
13 at the end of the day on September 22nd.
14 (b)(7)(C) April.
15 THE WITNESS: April. I'm sorry. I keep saying
16 September. April 22nd. On April 22nd. It was not prior to
17 that. Now, I don't recall specifically whether or not he
18 mentioned it in this very rapid conversation that I had with
19 him and if he didn't, and he may not have, then it would have
20 only have been subsequent to that. But the first indication
21 that I had of any of this customs business or what have you
22 was April 22nd, in the late afternoon.
23 BY (b)(7)(C)
24 Q Could you describe for me the circumstances of that
25 conversation?

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1 A Yes. I have to -- essentially have to describe
2 what led up to that for it to make any sense.
3 Q That is what I need.
4 A Okay. I had made a trip to Colombia. I go to
5 Colombia quite frequently, so frequently being once every two
6 to three weeks or what have you. So if I try to reconstruct
7 for you what I did on the two days that I was in Colombia, it
8 would be a hopeless task. There's now way that I could do
9 that, but obviously I have been able to reconstruct some of
10 it. And the pertinent part starts with the closing audit
11 meeting on the afternoon of the 22nd.
12 I had been dealing with other matters up until that
13 point in time, don't ask me what, I have really no
14 recollection of what specifically, but one of the reasons
15 that I had chosen to make this trip was that I was aware that
16 the audit was coming to a close and I was interested -- I had
17 heard from my Colombian organization, the financial guys,
18 that things were in much better shape and that they had made
19 significant progress and I was interested in some
20 confirmation around that from the auditor. So I was
21 interested in attending the closing audit, something that I
22 would not have done as a routine matter.
23 Q And the significant process, that is from prior
24 audits or prior circumstances?
25 A Significant progress?

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1 Q Yes.
2 A Yes. That they had -- remember I had referred very
3 early on that they were addressing collapsing the accounting
4 organizations from Santa Marta, Turbo, taking over the
5 (b)(7)(C) stuff and all of that business.
6 Q I think it has been referred to as the Synergy
7 Project.
8 A Exactly. So you know, I wanted to see progress on
9 that front from a cost saving and efficiency point of view,
10 but I also wanted some comfort that we were doing that
11 without losing control and so forth and so on, so I was
12 interested in the audit closing conference.
13 That conference started -- I personally don't
14 recall, but I've been told it started around 3:00 or what.
15 have you and I do recall that it started in the afternoon.
16 And we sat through that conference and the conference was
17 actually quite positive and (b)(7)(C) was extremely
18 complimentary of the work that (b)(7)(C) had accomplished and
19 the work that (b)(7)(C) at that time was -- although he
20 hadn't been with us too long was accomplishing and so the
21 conference was a good one.
22 Now, at the very end of the conference, (b)(7)(C)
23 (b)(7)(C) intervened for -- I don't know -- a five-minute
24 presentation -- picture a bunch of financial people around
25 the room, some auditors around the room and each auditor

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(b)(7)(C)

1 I might talk about the area that they had been auditing. And
 2 so (b)(7)(C) talked about the fact that she had done some
 3 of what we're talking about here earlier, listing
 4 transactions from the general ledger and so forth and so on.
 5 I don't remember specifically the details of what
 6 she mentioned. I remember at the time it was a very routine,
 7 matter-of-fact, non-issue in my mind, but she mentioned that
 8 she had been unable to, again, I'm fuzzy here, whether it was
 9 to locate certain documents or whether it was that the detail
 10 of the individual transactions didn't hit to the general
 11 ledger number and that therefore there were a couple of
 12 missing transactions and a reconciliation gap. But it was
 13 said in a very sort of matter of fact, perfunctory way
 14 where -- I've got this, it's still an open item, (b)(7)(C)
 15 (b)(7)(C) going to follow up on it and we'll get it resolved.
 16 So it was just a pending to-do item.
 17 The conference over and (b)(7)(C) as I recall, turned to
 18 me and he said, look, you know, as long as I'm here, why
 19 don't we sit down with (b)(7)(C) and talk about these procedures
 20 around -- I don't remember whether it was really -- I don't
 21 think it was much around FCPA per se, it was more around the
 22 worksheet that was in the previous exhibit.
 23 Q Exhibit 13? Let's look at the last page of Exhibit
 24 13.
 25 A Exactly. It was more around the worksheet in

1 appointment. I'm very, very hazy and fuzzy on exactly and
 2 precisely when that was. I don't know whether it was -- I do
 3 recall (b)(7)(C)
 4 I don't recall whether at the point that he called
 5 in (b)(7)(C)
 6 (b)(7)(C)
 7
 8 But any rate, so we call in (b)(7)(C)
 9 took out what I recall as a notebook of some sort. It was
 10 not the specific exhibits that you showed me during the
 11 course of the day so far. And it had a list of payments.
 12 And so the payments had innocuous names or what have you and
 13 (b)(7)(C) as going through payment by payment and he was
 14 describing what they really were.
 15 Q Out of his memory.
 16 A With his list, but, yes. He didn't have a pile of
 17 documents, if that's what you mean.
 18 Q I guess what I mean is -- well, I know what I mean.
 19 If you looked at the list, you would not have been able to
 20 tell.
 21 A No.
 22 Q He looks at the list, he knows exactly what it is.
 23 A That's right. That's right. Now, I might have
 24 been able to make a pretty good, educated guess, okay? But
 25 you wouldn't have been able to tell.

1 Exhibit 13 and how he'd like to kind of handle this on a
 2 going forward basis. And it was a bit of a testimony to the
 3 fact that, you know, he'd had some difficulty getting all the
 4 documentation that he had wanted on a prompt basis, but it
 5 was -- it was -- it was -- it was also -- as I recall, he
 6 made some suggestions which subsequently were not implemented
 7 about categorizing these expenses with different codes and so
 8 forth and so on, he was going to put something out on that
 9 and I guess he changed his mind because he never did.
 10 Anyway, we had this conversation and that
 11 conversation basically took place, as I recall, between
 12 (b)(7)(C)
 13 We had moved from what was a conference to (b)(7)(C)
 14 we were having a private conversation about this.
 15 And then we decided -- it may have been (b)(7)(C)
 16 don't remember who suggested it, to be honest with you -- we
 17 decided that we would look at the last -- to be honest with
 18 you, I can't even -- I don't remember the time frame, but
 19 that we would look at (b)(7)(C) activity for the last
 20 empty-ump months or what have. And so we called (b)(7)(C) in.
 21 At some time during this process, it was now pretty
 22 late, the conference had taken several hours and the
 23 conversations with (b)(7)(C) had taken a while
 24 and I'm guessing it was sixish or what have you, at some
 25 point in this meeting, (b)(7)(C)

1 Q Understood.
 2 A And, for the most part, I wasn't able to tell
 3 either. Okay. So (b)(7)(C) is going through this list in
 4 kind of a non-eventful sort of a way, here's a payment to the
 5 FARC and here's a payment to the ELN and here's some boots to
 6 the army or this, that and the other thing and I really don't
 7 remember the detail. And then we came upon this entry or
 8 this item on the list.
 9 And, by the way, this conversation -- (b)(7)(C)
 10 (b)(7)(C) It's not non-existent, but it's
 11 not very good. (b)(7)(C)
 12 (b)(7)(C)
 13
 14
 15 He gets to this particular entry and -- CBI-V1-001-003712
 16 (b)(7)(C) What entry is that?
 17 THE WITNESS: Well, I mean, now I know that it's
 18 this 18 million peso entry.
 19 BY (b)(7)(C)
 20 Q Represented by -- you are pointing to the 1016
 21 which is Exhibit 25.
 22 A Right. That is described as donaciones maritima.
 23 And he gets to that entry and he -- he's not really
 24 forthcoming and he says and I can't remember whether he said
 25 it in English or in Spanish, but he says, you know, I'm

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CBI-V1-001-003713

(b)(7)(C)

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1 this case, 18 million pesos, and the document also has an
2 ability to distribute the cash payment to the appropriate
3 account.
4 Q Is this an example of the 1016 that we have been
5 discussing periodically throughout the day?
6 A I think it is. My only hesitancy is that in each
7 and every division the document is a little bit different
8 size and a little bit different shape and so forth and so on,
9 so this is clearly a document that if it is not what I would
10 call a 1016 formally and I don't see 1016 on it anywhere, but
11 it's the equivalent.
12 Q Okay. Maybe I can help. Just for the moment, I
13 will hand you what has been previously marked as Exhibit 22.
14 I will describe it -- well, I will give you the
15 Bates stamp for the record, 1CHQ17-000051, and give you a
16 second to look at that. And I will tell you the purpose is
17 that Exhibit 25 appears to just be a bad copy, but if you
18 look at 22, you could see it is the same form yet in the
19 upper right corner, it actually has the 1016 which appears to
20 have just not have made its way through the copy process on
21 the other document.
22 A Right. Exactly. And it's obviously the same form.
23 Q Okay. Yes. Throughout the day we have referred to
24 1016, so it would help for the record to have something
25 clear.

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1 Working our way through this document, the entry
2 for nombre is CI Banadex S.A. That is the entity -- my
3 understanding is that that is the entity that is processing
4 the document?
5 A That's correct.
6 Q And my Spanish will now start to fail me: "Pagase
7 a favor de?"
8 A "Payable to the order of."
9 Q Okay. (b)(7)(C)
10 A Yes, that was the name that you asked me about
11 earlier that I don't know who that is. I don't recognize the
12 name. I may know him very well by face, but I don't
13 recognize the name.
14 Q "Favor de" is the amount?
15 A That's correct. The amount of 18 million pesos.
16 Q Okay. The lines -- well, lines -- "por concepto
17 de?"
18 A That would mean "for the purpose" of or something
19 like that.
20 Q So the lines under that are for the description of
21 the payment.
22 A The explanation. That's right.
23 Q And here on Exhibit 25 we have "donacion maritima."
24 A "Donacion maritima." Right.
25 Q And is that "maritime donation?"

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1 A That's a pretty good reading. Yes.
2 Q And under that is "operaciones?"
3 A "Operations."
4 Q Okay. What does this tell you about what this
5 expenditure was for?
6 A It doesn't tell me anything at all. I mean,
7 obviously, I have learned subsequently but on the surface,
8 this to me could be what we've earlier talked about as a
9 totally innocuous explanation. And, actually, just to give
10 you an example of how innocuous, we had our loading
11 facilities in Turbo attacked by the guerrillas in the early
12 '90s. They came in and they blew up the facilities. And
13 fortunately they did it in the middle of the night and nobody
14 was around so nobody got hurt. They blew up the facilities.
15 And if I had seen this as it is in the context of
16 operaciones and this kind of account, my first impression
17 might have been that this was a payment to the guerrillas, to
18 the same group that had previously blown up the work
19 facilities.
20 Now, obviously, today, I know that's not the case,
21 but that's why I say on the surface I would not be able to
22 tell you.
23 (Pause.)
24 (b)(7)(C) You have now a two-page document that
25 has been marked as Exhibit 36.

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1 (SEC Exhibit No. 36 was
2 marked for identification.)
3 (b)(7)(C) will describe it for the record,
4 Bates stamp range 1CHQ17-000072 and 73. It, to my eye,
5 appears to be a portion of a general ledger. And I will draw
6 your attention to line 21 on the second page, so that --
7 otherwise your eyesight will go trying to --
8 THE WITNESS: Okay. Got it.
9 (b)(7)(C) lost mine a number of times trying
10 to read that. I had to put a -- so that I would not have to
11 go through that exercise in the room.
12 THE WITNESS: Yes, it's hard. I see it.
13 BY (b)(7)(C)
14 Q Looking at that line 21 on Bates stamp 000073, is
15 that the entry that corresponds?
16 A It certainly appears to be, yes.
17 Q To Exhibit 25?
18 A I mean, I would certainly say so. Same amount,
19 same payable to, the right account, same description.
20 Q And the description here is no more detailed than
21 on the -- there is no additional information in the general
22 ledger that provides you an understanding of what this
23 payment on Exhibit 25 is.
24 A No. You are correct.
25 Q If you had these documents and you wanted to know

<div style="border: 1px solid black; display: inline-block; padding: 2px;">(b)(6), (b)(7)(C)</div>	Multi-Page™	CHIQUITA BRANDS
<p style="text-align: right;">Page 133</p> <p>1 what this payment was all about, is there another document 2 you could go to to find the answer to that? 3 <div style="border: 1px solid black; display: inline-block; padding: 2px;">(b)(6), (b)(7)(C)</div> These documents being -- 4 <div style="border: 1px solid black; display: inline-block; padding: 2px;">(b)(6), (b)(7)(C)</div> Being Exhibit 25 and Exhibit 36, in 5 particular, the entry that we have been discussing on line 6 21. 7 THE WITNESS: There might be. Looking at these two 8 documents, I couldn't tell, but if I were going to have a 9 discussion about this, and incidentally, I would never see 10 these two documents. If I were going to have a discussion 11 about this, I would choose to have my discussion basically 12 with <div style="border: 1px solid black; display: inline-block; padding: 2px;">(b)(6), (b)(7)(C)</div> would have had his own document, 13 his own record. So if <div style="border: 1px solid black; display: inline-block; padding: 2px;">(b)(6), (b)(7)(C)</div> had said to me never seen it 14 before, I'd be stumped. 15 BY <div style="border: 1px solid black; display: inline-block; padding: 2px;">(b)(6), (b)(7)(C)</div> 16 Q Just so I am clear on something, would you expect 17 <div style="border: 1px solid black; display: inline-block; padding: 2px;">(b)(6), (b)(7)(C)</div> would actually have a document or just the 18 answer? 19 A Well, not an originating document, but <div style="border: 1px solid black; display: inline-block; padding: 2px;">(b)(6), (b)(7)(C)</div> 20 can't carry all this stuff around in his head, so I would 21 expect <div style="border: 1px solid black; display: inline-block; padding: 2px;">(b)(6), (b)(7)(C)</div> would have some -- you know, it might be 22 a list. Remember that I made reference earlier to the fact 23 that sometimes <div style="border: 1px solid black; display: inline-block; padding: 2px;">(b)(6), (b)(7)(C)</div> would make presentations to me about 24 how he had paid so much to such and such a group, paid so 25 much to such and such, another group. He would have had some</p>	<p style="text-align: right;">Page 135</p> <p>1 but they interface in some way with the taxing authority. It 2 may have to do with -- the government in Colombia establishes 3 from an accounting standpoint a standard chart of accounts 4 for the entire country. I think that is managed in some way 5 by the DIAN. I think that's what I'm talking about. Maybe 6 I'm totally off-base. 7 Q Does this organization have any customs 8 responsibilities? 9 A You know, I couldn't tell you. I don't know the 10 structure in Colombia for the customs authorities. 11 Q Okay. Banadex has a port facility at Turbo, 12 correct? 13 A Yes. 14 Q That facility takes in imported materials and 15 supplies? 16 A That's correct. And exports, of course, bananas. 17 Q Okay. How does Colombian customs handle the -- I 18 have heard it called the nationalization process for imported 19 goods, materials, unloaded at this Turbo facility? Banadex's 20 facility there. 21 A Okay. Well, it's not an area of my expertise, so 22 let me paint it in very broad brush strokes for you. I 23 probably can't go beyond that. It's my understanding that it 24 depends upon what kinds of goods that you're talking about. 25 For example, an exporter in Colombia is able to bring certain</p>	
<p style="text-align: right;">Page 134</p> <p>1 of his own notes and so forth and so on behind that. It 2 would be that kind of documentary thing that you might be 3 looking for. 4 Q Okay. 5 A I wouldn't have a predetermined view of what that 6 document might look like. 7 <div style="border: 1px solid black; display: inline-block; padding: 2px;">(b)(6), (b)(7)(C)</div> Could we go off the record? 8 (A brief recess was taken.) 9 <div style="border: 1px solid black; display: inline-block; padding: 2px;">(b)(6), (b)(7)(C)</div> We are back on the record at 10 approximately 3:25. 11 BY <div style="border: 1px solid black; display: inline-block; padding: 2px;">(b)(6), (b)(7)(C)</div> 12 Q Who is -- and I will use the acronym first and then 13 I'll do my best to pronounce the name -- CEA or Comercio 14 Exterior Asesores Limitada? 15 A I don't know. CBI-V1-001-003714 16 Q Who is <div style="border: 1px solid black; display: inline-block; padding: 2px;">(b)(6), (b)(7)(C)</div> 17 A I'm not absolutely certain, but I think that he is 18 perhaps one of the in between guys, like <div style="border: 1px solid black; display: inline-block; padding: 2px;">(b)(6), (b)(7)(C)</div> but I'm 19 not certain of that. 20 Q Who is DIAN? D-I-A-N. And that is an acronym as 21 well. 22 A I think that that is the -- I think that that is 23 the organization in Colombia, the governmental organization 24 in Colombia, that handles all statistics and perhaps is a -- 25 I don't know if -- they're not the actual taxing authority.</p>	<p style="text-align: right;">Page 136</p> <p>1 goods into Colombia duty-free and in order to do that, 2 there's a whole procedure that you go through where you 3 register the fact that you're bringing these goods in and 4 sometimes these are goods that are reexported in one fashion 5 or another, there may be added value to them or what have 6 you. That's one sort of set of materials and there's a 7 procedure behind that. 8 There would be materials that come in, not 9 typically for us, but that might come in on our ships for 10 third parties that have to be cleared through customs and 11 duties are paid they're imported into the country. And I 12 believe that -- I'm getting into a little bit of a shaky area 13 now, but I believe that there are some goods that we import 14 that don't come in with that initial procedure that I was 15 referring to -- I'm blanking on the name of it right now, it 16 may come to me later, there's forms to be filled out and so 17 forth and so on. 18 Anyway, the materials come in, typically materials 19 are offloaded in the wharf area. They're offloaded from the 20 ships onto barges, brought on barges into the wharf area 21 because there's no deep water port in Turbo. They're taken 22 off of the barges and moved to a storage area, where they 23 would initially be put in a segregated area which would 24 pretty much be the equivalent of a bonded warehouse. 25 Q And this is within Banadex's facilities.</p>	

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(b)(7)(C)

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1 really not -- I'm really not totally familiar with what this
2 is all about, if you want to get the information on this, you
3 need to talk to -- and here quite honestly there's a blank.
4 I will give you three possibilities of what he said to me and
5 that's the best I can do. He either said you can talk to
6 (b)(7)(C) Or he said you can talk to (b)(7)(C)
7 (b)(7)(C) just
8 don't remember what permutation or combination. I don't know
9 if it's really significant or not, but that's all I can tell
10 you.

11 So he says this to me. And I kind of pushed him a
12 little bit further and he wasn't forthcoming. Now, at that
13 point, I was a little uncertain as to whether or not he was
14 not forthcoming because he wasn't comfortable in telling me
15 what this was, or whether he wasn't forthcoming because just
16 simply didn't know what it was. I just wasn't sure. But it
17 was pretty obvious that we weren't going to get any further
18 with (b)(7)(C) that sense.

19 So my recollection is I said something to (b)(7)(C)
20 like, hey, why don't we just keep going, you know, put this
21 one on hold and we'll have to come back to it. And we kept
22 going with (b)(7)(C) d, you know, he picked up steam again
23 and he's identifying each and every item and we got done.

24 So now we have this item and by now it was later,
25 6:30 or so. By the way, he did say one thing to me, he did

1 what I can find out about this because everybody else had --
2 well, (b)(7)(C) were no longer in Colombia, they had
3 been transferred out of Colombia. So I went into (b)(7)(C)
4 office and I explained to him that we had been going through
5 this (b)(7)(C) or what have you and that there was this
6 item which I must have described to him in some way or
7 another, and, you know, I got a -- I got sort of a
8 superficial -- you know, yes, this has something to do
9 with -- this has something to do with customs. I have asked
10 myself this on a couple of occasions and I simply in all
11 honesty cannot give you an absolutely clear answer.

12 I don't know if he might have -- it would have been
13 logical for him to have said something to me about the permit
14 at that time, but I don't have a clear recollection of it.

15 But he made something to the effect that this is a payment,
16 it's around a customs issue that was made to our -- not to
17 the customs themselves, but to our customs agent.

18 And there was an insinuation or something in his
19 tone that concerned me. But he still hadn't flatly laid all
20 the details out that concerned me, but he almost sounded like
21 he didn't have all the details. And I just remember saying
22 to him, well, based upon what you know, do we have a legal
23 issue here.

24 (b)(7)(C) I do not want you to disclose
25 (b)(7)(C)

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1 say one thing, I remember this, which my antennas went up
2 when he said it. He said this has something to do with
3 customs, but he said I'm not really sure of the details.

4 Q Do you have any idea at this point that this issue
5 and the (b)(7)(C) issue at the end are in any way related?

6 A Zero. I have not made that connection at all.

7 Q Okay.

8 A I haven't made that connection at all. As a matter
9 of fact, probably if you'd even asked me about the (b)(7)(C)

10 thing right then and there I would have said what (b)(7)(C)
11 thing. I mean, I had just shelved the (b)(7)(C) as being,
12 you know, a ticking and tying issue, a clerical thing that
13 they were going to straighten out. In my mind, I didn't make
14 the connection at all.

15 So we were done, but we had this and we had the
16 uncomfortable mention of the word customs and we had --

17 Q Could I stop you for a moment?

18 A Sure.

19 Q I do not know if I interrupted you when you said
20 something raised your antenna.

21 A When he mentioned the word customs.

22 Q Oh, okay. I am sorry.

23 A At that point in time, (b)(7)(C) was still
24 in the office or I thought he might be, so I said to (b)(7)(C)

25 (b)(7)(C) let me go see if (b)(7)(C) is in his office and see

1 THE WITNESS: Okay. Well, so (b)(7)(C) gave me his
2 opinion. And I went back to -- and that was the end of the
3 conversation with (b)(7)(C) And I went back to (b)(7)(C)
4 I said to (b)(7)(C) I said -- how can I -- I said to him, you
5 know, this looks like an uncomfortable transaction, this
6 looks like something that we need to look into. I can't tell
7 you whether it's improper or it's not improper. And I think
8 we need to pursue this. And he said to me, as I recall, I'm
9 going to be traveling tomorrow morning, why don't you call
10 (b)(7)(C)

11 And I said fine. I said better yet why don't we
12 call (b)(7)(C) right now and we did, but (b)(7)(C) it

13 turned out, I didn't even know it at the time, I got his
14 voice mail, so I left a voice mail asking him to call and as
15 I recall saying something about, you know, we've got a
16 transaction in Colombia, it might be an FCPA problem, don't
17 know, and I want to alert you of this. And that was the end
18 of the day. That was pretty much the end of the day.

19 So, again, my recollection is (b)(7)(C) was traveling
20 the next day, maybe this was the end of the week and we were
21 coming to the weekend, maybe (b)(7)(C)
22 really don't remember, but I do remember that (b)(7)(C)
23 squarely agreed that I would talk to (b)(7)(C) about this.

24 And that, again, is the end of the incident. The
25 next day --

(b)(7)(C)

1 (b)(7)(C) Can we stop for a moment?
 2 THE WITNESS: Sure.
 3 (b)(7)(C) Two things. One is just so the
 4 record is clear, we are not going into the (b)(7)(C)
 5 based on a privilege.
 6 (b)(7)(C) That is right.
 7 (b)(7)(C) Okay. It was not on the record and
 8 just let's make that clear.
 9 (b)(7)(C) Yes. Our view of it is that when
 10 (b)(7)(C)
 11
 12
 13
 14
 15 (b)(7)(C) I just wanted it clear.
 16 I think I missed a jump and you guys will tell me
 17 if it butts up against what we are talking about, but somehow
 18 you go to (b)(7)(C) for information and you wind up calling (b)(7)(C)
 19 (b)(7)(C) to say we have got a potential FCPA, I am calling
 20 you -- the reason you are calling him is for some reason the
 21 FCPA jumps up and I have missed -- I can not --
 22 THE WITNESS: Okay. Why does the FCPA jump up?
 23 The FCPA jumps up because customs has been mentioned. And I
 24 am not an attorney, but I know enough about this so that I
 25 knew that paying, you know, your customs agent to in turn pay

1 the customs guy is no -- you know, is no defense.
 2 BY (b)(7)(C)
 3 Q It is not sounding like facilitating?
 4 A No. And I would say an \$18,000 payment is not a
 5 facilitating payment. At least in my view, it's not a
 6 facilitating payment. And here is where I really can't -- I
 7 just can't be more clear with you about -- in retrospect, if
 8 somebody were to tell me and by the way we made this payment
 9 in order to get permission that might otherwise have been
 10 denied, then it would have been -- I probably wouldn't have
 11 needed to call (b)(7)(C)
 12 I would have called him, but I probably would have
 13 known the answer. I just don't know whether or not the
 14 purpose was clear to me at the time. I really don't.
 15 Okay. So that's the end of the story. Now, (b)(7)(C)
 16 (b)(7)(C) got back to me by voice mail, as I recall, it must
 17 have been, I assume, the next day, saying that he was on
 18 vacation and that he would be back in a few days and would
 19 call me as soon as he got back. That's my recollection,
 20 unless he called me from his vacation. He might have, I just
 21 don't recall. But at any rate, in a relatively short period
 22 of time, within probably 48, 72 hours, he and I were talking
 23 live on the telephone and I related to him exactly what I
 24 related to you. I related to him what my attorney because of
 25 considerations of privilege has asked me not to relate to you

1 I related to (b)(7)(C)
 2 And I very conscientiously withdrew from the entire
 3 process because (b)(7)(C) you know,
 4 probably nothing to be concerned about right now, but at any
 5 rate we need to investigate. And I made the determination
 6 myself at that point in time that it was -- that the most
 7 critical thing was to get very objective facts about what had
 8 occurred and I felt that the best people to do that was the
 9 Cincinnati legal group.
 10 So rather than sitting down with these guys trying
 11 to get -- you know, calling (b)(7)(C) pursuing
 12 it any further myself, I just said, (b)(7)(C) this
 13 is what I know about it, go. And he said, yeah, it sounds
 14 like we need to investigate and I said, yeah, it sounds like
 15 we need to investigate. That was virtually the end of my
 16 involvement until the investigation had pretty much been
 17 completed and we then knew what had happened.
 18 Q Between the time you leave the room, and this is
 19 the late afternoon meeting on April 22nd, and the time you
 20 eventually speak to (b)(7)(C) the conversation that you
 21 have just briefly mentioned that you had, do you talk to
 22 anyone about this incident, this event, this payment?
 23 A You know, I would love to categorically state to
 24 you that absolutely not a single solitary word to anybody. I
 25 don't recall having the conversation with anybody, but I

1 I can't state that categorically I didn't. I mean, it would
 2 be -- let's put it this way. I suspect, and I can't
 3 reconstruct it, if I were leaving the next morning, as I
 4 typically might, at 7:00 in the morning, 7:30 in the morning,
 5 I wouldn't have seen anybody to talk to and I would have
 6 gotten on a plane, gone back to Costa Rica and, you know,
 7 probably if we established when (b)(7)(C) and I actually talked
 8 and so forth and so on, we might be able to determine that
 9 there just wasn't time or opportunity to talk to somebody.
 10 On the other hand, if I didn't leave bright and
 11 early the following morning and had gone to the office and
 12 had run into (b)(7)(C) and not been present during
 13 this -- as I can't remember whether he was, I don't think he
 14 was because I think I would remember his saying something. I
 15 mean, he'd either say, gee, I don't know, or, gee, that's a
 16 guerrilla payment or, gee, I do know. I don't remember any of
 17 that. (b)(7)(C)
 18 If I had run into him the following morning, it
 19 would have been, I must say resolve or not to extricate
 20 myself from this situation, I probably couldn't have resisted
 21 saying, my God, you know, what's going on with this. And I
 22 have no recollection of that, none whatsoever. So my
 23 assumption is that I didn't, but I'm not going to say that
 24 categorically.
 25 BY (b)(7)(C)

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(b)(7)(C)

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1 Q After (b)(7)(C)

2 that evening, he did not come back that night while you were

3 there?

4 A No. No. No.

5 BY (b)(7)(C)

6 Q Maybe I can approach it from this direction.

7 Outside of that meeting that we have been discussing in the

8 afternoon of (b)(7)(C) have you had any

9 other conversation, subsequent conversation, with (b)(7)(C)

10 about this custom's payment?

11 A Subsequent?

12 Q To that. Well, before you did not know about it,

13 so -

14 A Right.

15 Q Talking about it then, just focusing on (b)(7)(C)

16 A It's very conceivable that I have, but I

17 wouldn't - I can't recall having one, but it's - I would

18 say it's probably almost likely that I have. Even though I

19 extricated myself from the investigation, it would not

20 surprise me at all that (b)(7)(C) might have called me on

21 occasion to follow upon something.

22 I can tell you this. Whatever he called me for to

23 follow up on, he hit a blank wall because he knew as much as

24 I did about that time, but he might have given me a call.

25 Q Do you recall any specific conversation?

1 can I tell you, I screwed up. I got the request for the

2 payment, I got it from (b)(7)(C) approved it because I was

3 absolutely convinced that it was a payment to the guerrillas,

4 I thought it was just another routine payment, I didn't ask

5 enough questions and I screwed up. That was the response

6 that I got from (b)(7)(C)

7 And I have - I can tell you - I mean, I'm not

8 going to sit here and be an apologist for him or for anybody

9 else in the process, but I am very annoyed that he screwed

10 upon. On the other hand, no particular reason for you all to

11 believe me, but I truly believe that that's exactly what

12 happened, he just screwed up. I don't think that he was part

13 and parcel of the analysis or the decisions to make this

14 payment to customs.

15 Q Was there any representation by (b)(7)(C) that

16 (b)(7)(C) had represented to him that this was some type of

17 guerrilla payment?

18 A No. No. What there was, what he basically said to

19 me was something to the effect of I was really busy, (b)(7)(C)

20 came in, he put the voucher in front of me, I looked at it,

21 it was coming from (b)(7)(C) it was, you know, not an usual

22 sum for something along those lines and I just made the

23 assumption and signed it. That's what he said.

24 BY (b)(7)(C)

25 Q Did he indicate whether he had asked any questions

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1 A No, I don't.

2 Q Do you recall any conversation you had with (b)(7)(C)

3 (b)(7)(C) about this customs payment?

4 A Yes. I can recall after the investigation was

5 done, essentially done, and when I say essentially done, let

6 me clarify that. I don't mean that Chiquita had yet

7 necessarily made a determination as to what if any

8 disciplinary action they intended to take, but when (b)(7)(C)

9 (b)(7)(C) had gone to Colombia and interviewed his people or

10 interviewed our people here and when (b)(7)(C) had, you

11 know, for all essential purposes determined that indeed we

12 did have a problem, yes, I did have a conversation with

13 (b)(7)(C) and I had a conversation with a number - I had a

14 conversation with (b)(7)(C) not together, but

15 separate occasions.

16 Q Can you tell me about the conversation with (b)(7)(C)

17 A Yeah. I wanted to know what the hell had happened

18 and how, you know, how could this have occurred. And I

19 got - unfortunately, I got a very plausible - I say

20 unfortunately, I don't really mean that because I have an

21 enormously high regard for (b)(7)(C) I really do, and I think

22 that (b)(7)(C) is a very scrupulous, honest guy who is working

23 in an extremely difficult environment, so I can tell you I'm

24 relieved to have gotten the answer that I got, but it wasn't

25 very helpful around this incident and his comment was what

1 about the payment?

2 A My take-away was that he hadn't. I don't remember

3 whether he explicitly said that to me or not. I probably

4 would have asked about it. I think I would have asked him.

5 BY (b)(7)(C)

6 Q Sitting here today, do you have any reason

7 whatsoever to believe that (b)(7)(C) knew about this payment at

8 the time it was being made?

9 A None at all. None at all. And I related to you -

10 I related to you the comment about - or not a comment, but

11 the incident that we had out the wharf and I said to you that

12 when I looked at this, I could - it would be very difficult

13 for me to know exactly what this was, but if I had made a

14 guess, I would have made the wrong guess. I'll bet you that

15 that's the guess that (b)(7)(C) made.

16 You were out of the room -

17 (b)(7)(C) That is okay. You don not have to -

18 (b)(7)(C) And this being Exhibit 25, the

19 payment. You were just holding it up and saying this, and

20 everybody can see that, but for the record it is Exhibit 25.

21 THE WITNESS: Sorry: Yes.

22 BY (b)(7)(C)

23 Q Any other conversations with (b)(7)(C) regarding this

24 customs payment?

25 A The only conversations - the only conversations.

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(b)(7)(C)

1 that I remember subsequent to all of this would have been
 2 more around potential disciplinary action, both for the other
 3 people involved as well as for himself.
 4 BY: (b)(7)(C)
 5 Q And what was that?
 6 A What was the disciplinary action?
 7 Q You had discussions with (b)(7)(C) about that?
 8 A Yes. I had discussions with (b)(7)(C) myself
 9 about the disciplinary action that we took with him.
 10 Q Which was?
 11 A Which was a fairly significant -- I couldn't tell
 12 you exactly, I don't remember the numerical details, but it
 13 was a fairly substantial reduction in an annual bonus that he
 14 otherwise would have received. He didn't receive no bonus,
 15 but his bonus was -- he took a financial hit of some
 16 consequence.
 17 Q And who determined how much the reduction would be
 18 or that there would be a reduction?
 19 A It was a discussion that I had with (b)(7)(C)
 20 (b)(7)(C) and I talked about (b)(7)(C) and the need for some
 21 disciplinary action and we talked about a whole gamut of
 22 things. We talked about firing him, we talked about not
 23 firing him, we talked about not doing anything, we talked
 24 about all that sort of stuff.
 25 And we determined that it was entirely

1 and people were hearing something else. There was a meeting
 2 that took place -- I learned this all in retrospect, okay?
 3 I'm totally unaware of it at the time, but I learned it all
 4 in retrospect from (b)(7)(C) that there was this
 5 meeting with --
 6 (b)(7)(C) (b)(7)(C) bounds of privilege, I
 7 would ask you not to discuss (b)(7)(C) and
 8 whatever report he provided as a result of that?
 9 (b)(7)(C)
 10 THE WITNESS: Okay. I didn't base this on
 11 (b)(7)(C) If you are not basing your answer on
 12 what (b)(7)(C) said, go ahead. I want you to be as complete as
 13 you can without intruding into privileged material.
 14 THE WITNESS: Okay. I'm not basing this based upon
 15 what (b)(7)(C) said, I'm basing this based upon what others said
 16 who might have -- where they derived their information from,
 17 it might have been from (b)(7)(C) don't know.
 18 (b)(7)(C) If it is not a communication from
 19 (b)(7)(C) and it is not his report, go ahead and say what
 20 you have to say.
 21 THE WITNESS: Okay. Well, in that case, I can:
 22 There was apparently a meeting in which I gather (b)(7)(C) was
 23 (b)(7)(C)
 24 were present in which they were discussing this:
 25 I've had a really, really hard time rationalizing

1 inappropriate to do nothing, that it was entirely
 2 inappropriate to fire him, and that there should be more than
 3 a tongue lashing, that there should be something that leaves
 4 a lasting impression and so I think with (b)(7)(C) we said, well,
 5 why don't we reduce his bonus and I think he said why don't
 6 you think about that and make a suggestion and I subsequently
 7 did and he said, yeah, that sounds about right.
 8 I can't remember the amount of money involved, but
 9 it was probably -- it was somewhere probably between \$10,000
 10 and \$20,000 reduction, so it was a good whack, about which he
 11 was naturally upset, but there was recognition on his part --
 12 I also talked to (b)(7)(C) about the consequences for
 13 the other people and I probably most talked to him about the
 14 consequences about (b)(7)(C)
 15 Q What did you discuss with him in that regard?
 16 A I quite frankly was -- I was very, very concerned
 17 about losing (b)(7)(C) is a very
 18 valuable or was a very valuable employee to us. And I had
 19 worked very closely with him for -- I don't know, (b)(7)(C)
 20 years. And I had known him to be an absolutely scrupulous
 21 guy. It was inconceivable to me that he had frankly screwed
 22 up as it appeared on the surface. I have my own set of
 23 beliefs as to what happened there.
 24 I can't prove it, but I think that there was a
 25 language barrier and I think (b)(7)(C) was saying one thing

1 in my own mind the apparent conflict in stories between some
 2 of the parties and particularly with (b)(7)(C) because
 3 this is a guy who is so honest and so proud of his honesty
 4 and so uncompromising about it that it made no sense to me,
 5 so after the fact, after all the investigation was done and
 6 so forth and so on, I started to ask questions about this,
 7 and I actually confronted (b)(7)(C) about that matter as well.
 8 The conversation took place in (b)(7)(C)
 9 (b)(7)(C) if you ever spoke to him, you might say to yourself
 10 here's a guy -- in the first three minutes, you might say to
 11 (b)(7)(C)
 12
 13
 14
 15
 16
 17
 18
 19 (b)(7)(C) why don't you mention
 20 (b)(7)(C) as you know it.
 21 THE WITNESS: (b)(7)(C)
 22 (b)(7)(C)
 23
 24
 25

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1 (b)(7)(C)
2
3
4
5
6
7

8 I mean, look, you don't know him, there's every
9 reason, I understand, for you all to think about that sort of
10 thing skeptically and so forth and so on. I understand that.
11 But I do know him and I'm very convinced that this was all
12 just a real ugly mistake around stupid, stupid behavior on
13 the part of a couple otherwise very smart, dedicated guys who
14 have suffered for it and we're all suffering for it.

15 But at any rate, I did very unabashedly, I mean,
16 you can talk to anybody in this whole -- who's been involved
17 in this process and they will, I'm sure, if you ask them,
18 they will say to you that I tried to be very proactive about
19 defending (b)(7)(C) about our not doing the same thing to
20 (b)(7)(C) And I
21 would tell you that I agonized a considerable amount about
22 what we did to (b)(7)(C) because it's
23 kind of a poignant reminder of how you can, you know, spend a
24 whole career doing the right thing and then do a silly,
25 unnecessary, dumb thing and really suffer for it. And that's

1 THE WITNESS: In a discussion in (b)(7)(C)
2 office when we were discussing -- and there were present a
3 number of other people and we were discussing disciplinary
4 behavior to these folks, it was mentioned not by (b)(7)(C)
5 himself.

6 (b)(7)(C) That does not fix it.
7 THE WITNESS: Doesn't fix it?
8 (b)(7)(C) I will be more precise. What you

9 simply have is a communication where you are discussing the
10 legal advice to the company and that would be privileged
11 communication based upon that privileged communication. I do
12 not know if there is any way you can discuss that.

13 (The witness conferred with counsel.)

14 THE WITNESS: I don't understand --
15 (b)(7)(C) Let me back up a little bit here.

16 BY (b)(7)(C)

17 Q Who were the people who were involved in deciding
18 what to do with (b)(7)(C) (b)(7)(C)
19 (b)(7)(C)

20 A No. It was actually the people that you just
21 mentioned with the exception of (b)(7)(C) had only
22 marginal input. The people that were involved in making this
23 decision were (b)(7)(C) At that time --
24 I'm blanking out the guy's name. (b)(7)(C)
25 (b)(7)(C)

1 what they did.
2 BY (b)(7)(C)

3 Q What did happen? What did you decide to do with
4 (b)(7)(C) What was the consequence to him?

5 A He was -- well, that's actually more complex than
6 it seems. The first thing that we did was we examined our
7 legal options.

8 Q When you say we, who is the we other than you?

9 A (b)(7)(C)
10 He was charged with examining the legal options that we had
11 in Colombia in terms of (b)(7)(C)

12 Now, this may -- again, I'm not a lawyer and this
13 may seem hard to believe, but the confusion that (b)(7)(C)
14 was --

15 (b)(7)(C) (b)(7)(C) have to interrupt on grounds
16 of privilege. You can not share that information if the
17 basis of it is (b)(7)(C) And I am
18 not aware of -- I will leave it to you to answer the
19 question, if you can find a way to answer it from another
20 source.

21 THE WITNESS: Okay. I can. Because I can think of
22 the same information being repeated to me from a
23 non-attorney.

24 (b)(7)(C) State the basis of your information.
25 Go ahead.

1 Q (b)(7)(C)
2 A (b)(7)(C) And (b)(7)(C)
3 (b)(7)(C)

4 Q Were these people involved also in deciding what
5 consequence (b)(7)(C) should bear for his role in this?

6 A I would say without knowing for certain that they
7 were.

8 Q Were all these people involved in deciding what was
9 going to happen to (b)(7)(C)
10 employment at Chiquita?

11 A Yes. And at the very tail end of that process, as
12 they were on the verge of deciding, I was invited to that.

13 (b)(7)(C)
14
15
16
17
18

19 And when I say defending (b)(7)(C) with the
20 intention of making absolutely crystal clear to everybody in
21 the room who did not necessarily know him that well, it
22 wasn't an issue of defending him and saying, you know, he
23 didn't do this or he didn't do that, it was I want you all to
24 be very aware of what (b)(7)(C) career has been with
25 Chiquita, the contribution that he makes with Chiquita, the

(b)(7)(C)

1 background that he comes from, his -- not only his abilities
2 and value to us, but the sense of ethics and honorability,
3 that he has brought to his position.

4 So it was that kind of a -- but it was -- it was --
5 I mean, there was no question about the fact that I had a
6 strong view of this.

7 BY (b)(7)(C)

8 Q I think you alluded this morning that currently he
9 (b)(7)(C)

10 A Right.

11 Q Okay.

12 A We were unable to (b)(7)(C) and we had to
13 reach an amicable agreement with him on the one hand and on
14 the other hand we were, myself in particular, but I would say
15 that my advocacy to some degree prevailed because there was
16 more and more a recognition of what this guy was all about
17 and the kind of activity that he performs for us very well on
18 a day-to-day basis.

19 So essentially we did reach an amicable agreement
20 with him and he was released as an employee, paid his legal
21 severance. That was negotiated but it was within the
22 framework of his legal severance. And his services were
23 contracted for as an outside, outsourced -- I was about to
24 say as an outsourced attorney and that's really -- that's
25 really inaccurate because his legal functions are

i THE WITNESS: (b)(7)(C)

2 (b)(7)(C) I was speaking to him as an employee that apparently
3 had changed -- had apparently, superficially, changed or
4 whose story didn't jive with the subsequent facts, so I was
5 speaking to him sort of shocked and annoyed. And that in
6 part has led me to my conclusions as to what happened because
7 his response to me was this was the context in which I made
8 that statement. And I in retrospect could understand why,
9 frankly, I was hearing one thing and he was saying something
10 else.

11 You know, I'm sorry, I wish I could be a little
12 more specific about it all. Let me just say that he
13 satisfied me that he had been honest with me and that had the
14 conversation not been somewhat hurried, somewhat superficial
15 and had he and I been on the same wavelength in terms of what
16 I was asking him and what he was saying, that there would
17 have been no conflict.

18 BY (b)(7)(C)

19 Q And you have jumped back, the last few comments
20 concern the (b)(7)(C) conversation?

21 A Yes.

22 (b)(7)(C) (b)(7) just to make sure we are clear,
23 was he still a Banadex employee or was he --

24 THE WITNESS: When I had that conversation?

25 (b)(7)(C) This conversation you just mentioned.

1 virtually -- almost non-existent, basically, as a
2 representative to the industry, the kind of stuff that I
3 described for you all this morning.

4 BY (b)(7)(C)

5 Q You had a conversation with (b)(7)(C) Can you tell
6 me about that?

7 A I had a conversation with (b)(7)(C) I guess I have
8 to be careful what I tell you and what I don't tell you about
9 that, not because I'm embarrassed by it, but because of this
10 privilege business.

11 I had a conversation with (b)(7)(C) in which I
12 basically said to him why did you tell me this when I came in
13 on the afternoon of the (b)(7)(C)

14 BY (b)(7)(C)

15 Q So now we are talking about a subsequent
16 conversation.

17 A A subsequent conversation. Now the investigation
18 has taken place and now I have found out what in fact
19 transpired, which superficially didn't jive in my mind with
20 what he had suggested to me on the (b)(7)(C)
21 And so I confronted him with it.

22 (b)(7)(C) Excuse me: At this time, in what
23 capacity are you speaking to (b)(7)(C)

24 THE WITNESS: (b)(7)(C)

25 (b)(7)(C) go ahead.

1 Or was he --

2 THE WITNESS: He was still a Banadex employee.

3 (b)(7)(C) Okay.

4 THE WITNESS: I'm sorry. I see why I've confused
5 you. Yes, I've had a number of conversations with him.
6 Before we had determined what the disciplinary action was
7 going to be, I had this conversation because I wasn't going
8 to be an advocate without getting comfortable about that, so
9 I had this conversation with him, I got comfortable, then I
10 became an advocate, then he was released, contracted back.

11 BY (b)(7)(C)

12 Q Let's stay with this conversation for a moment.

13 A Okay. Which one?

14 Q The second conversation --

15 A Okay.

16 BY (b)(7)(C)

17 Q Do you have a date for that? Do you have any idea
18 when it was?

19 A I don't know.

20 (b)(7)(C) conversation.

21 THE WITNESS: Right.

22 (b)(7)(C) This next one where you go to him and
23 you say -- you know, this is the worst of all paraphrases,
24 but what happened here.

25 THE WITNESS: Yeah. How do you reconcile this

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1 comment that you made.
 2 BY (b)(7)(C)
 3 Q Can you remember what he says to you in sum or
 4 substance?
 5 A Yes, I can. But I don't - let me -
 6 (The witness conferred with counsel.)
 7 (b)(7)(C) All right. That much you can say.
 8 THE WITNESS: That much I can say. All right.
 9 (b)(7)(C) Pardon me. I just want to make sure
 10 on the record we understand what we are doing because I want
 11 it understood that we do not intend to waive the privilege.
 12 What I have advised (b)(7)(C) to do is to describe the
 13 communication without including the content of legal advice,
 14 as best he can, to see if it would be helpful.
 15 Go ahead.
 16 (b)(7)(C) Okay. Let me just say before you do
 17 that I am going back to this, but when we do do this, I need
 18 it to be clear for the record that the reason we are skirting
 19 these conversations is because of privilege assertion.
 20 (b)(7)(C) Fine.
 21 (b)(7)(C) So we are kind of whipping by them
 22 and then later on I do not want it to represent that I did
 23 not want the answers to this in any way on the record. Do
 24 you know what I am saying? So I would like to have that and
 25 then have somebody on your side of the table say -

1 (b)(7)(C) That is all you can say.
 2 THE WITNESS: - within the framework of what
 3 you -
 4 (b)(7)(C) That is all you can do.
 5 BY (b)(7)(C)
 6 Q Before we go on to the others, I wanted to go back.
 7 You talked about a subsequent conversation with (b)(7)(C) after
 8 the investigation where you said words to the effect that he
 9 told you he had screwed up when he got this request from
 10 (b)(7)(C) Do you recall that conversation?
 11 A I mean, I - yes. I don't recall it in detail or
 12 very specifically, but in general terms, I recall having had
 13 a conversation with him to that effect.
 14 Q When you were telling us earlier about talking to
 15 (b)(7)(C) and he was going through
 16 his list of all the payments, when he came to this one, I
 17 think you indicated he did not seem to have the details.
 18 A He didn't - he wasn't forthcoming with the details
 19 and what I - here's kind of what was going through my mind.
 20 I mean, he's batting them off one by one, you know, he's just
 21 going down the list, not a hesitation in his voice, this was
 22 for this, this was for that, and so forth and so on. And
 23 suddenly he gets to this thing and he pauses and he thinks
 24 (b)(7)(C)
 25

1 (b)(7)(C) If I may --
 2 (b)(7)(C) Are we on the record?
 3 (b)(7)(C) Absolutely. Absolutely.
 4 (b)(7)(C) If we are on the record --
 5 (b)(7)(C) So you have it.
 6 (b)(7)(C) You have it. You have got it.
 7 (b)(7)(C) Okay. But I am saying in the future.
 8 I am saying going forward.
 9 (b)(7)(C) I acknowledge that the assertions of
 10 the privilege are coming from me, okay?
 11 (b)(7)(C) That is fine. As long as we know
 12 what --
 13 THE WITNESS: I'm sorry. I need to -- I'm fuzzy as to
 14 to what --
 15 (The witness conferred with counsel.)
 16 THE WITNESS: When I spoke to (b)(7)(C) I asked him
 17 (b)(7)(C)
 18
 19
 20
 21 He said what I thought you were asking me was if I,
 22 (b)(7)(C) were called upon to defend this in a court
 23 of law, what would be my theoretical defense. And he then
 24 shared with me what his theoretical defense would be.
 25 Was that --

1 customs, but I'm not really sure of the details, in order to
 2 understand this you need to talk to -- and I gave you some
 3 choices of what he might have said. And so my antennas went
 4 up because he mentioned the word customs.
 5 What I can't -- to this day I can't tell you, I
 6 don't know whether he knew all about it and he just didn't
 7 want to say it, or whether he truly didn't know about it and
 8 only shared with me what he knew. I just didn't know. But
 9 as soon as he said the word customs, I went hmm, I wish I
 10 hadn't heard that, I wished I had heard something else.
 11 Q Do you know whether (b)(7)(C) was the individual
 12 who handled all transactions of this sort?
 13 A I don't know.
 14 Q So in other words, if (b)(7)(C) of the
 15 others had been involved in the transaction and actually knew
 16 the details, they would have gone to (b)(7)(C) in turn
 17 would go to (b)(7)(C) get the authorization to pay the
 18 money?
 19 A I see what you're driving at. You're asking
 20 whether or not essentially (b)(7)(C) was always the conduit,
 21 if you will, for these expenses categories. I don't think
 22 necessarily as a matter of policy, as a practical matter he
 23 may have been because, you know, I mean, virtually all of
 24 this stuff fell into his bailiwick. But it wasn't as if
 25 nobody could go to (b)(7)(C) because of policy other than

(b)(7)(C)

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1 (b)(7)(C) or something like that.

2 Q Here is what is puzzling me. Is it plausible that
3 (b)(7)(C) could have brought this thing to (b)(7)(C) and not
4 know what it was for? Based on your understanding of how
5 things worked.

6 A I mean, you wouldn't think so, but this -- think
7 about it in these terms. There's a certain hierarchy here.

8 This is a hierarchical organization. (b)(7)(C)

9 (b)(7)(C)
10
11
12

13 Q (b)(7)(C)

14 A That's right. So had one of them said to (b)(7)(C)

15 you know, take this, we need to -- you know, and maybe not
16 described it fully or just made some oblique remark to go

17 take this to (b)(7)(C) I mean, could that have happened? It

18 would be entirely supposition on my part. I don't know. But
19 I guess in my wildest dreams, I could imagine it happening.

20 I just don't know.

21 BY (b)(7)(C)

22 Q Did (b)(7)(C) know about this payment during the time
23 period that it was being made? The customs payment?

24 A I have categorically zero indication that he did
25 and, as a matter of fact, I'm sure that the investigation did

1 still like them, but it was clearly inappropriate for me at
2 that time to sort of let that get in the way. I mean, the
3 appropriate thing was for us as an organization to move
4 forward, make a decision, get on with life, and so forth.

5 Q Okay. So you have no recollection of ever
6 discussing the specifics of this with (b)(7)(C)

7 A I don't.

8 Q Did you ever discuss this customs payment with (b)(7)(C)

9 (b)(7)(C)

10 A No. At least not that I can recall. No, I'm
11 quite sure.

12 Q My understanding is that (b)(7)(C) or is
13 intrigued by the general ledger entry for the payment we have
14 been discussing because it does not appear on the sensitive
15 payment summary that was prepared. Do you know anything
16 about that?

17 A Not really. I mean, I know what I told you before,
18 that she made this comment about there being a gap.

19 Subsequently, I've refreshed my memory and I know that that
20 gap was something like on the order of \$33,000 or what have

21 you and I know that subsequently this \$18,000 payment was
22 part of that; but I've had no conversations with (b)(7)(C) out

23 this. As I pointed out, I made no connection whatsoever at
24 the time when we discovered the \$18,000 payment, so the

25 answer, the short and yet complete answer is no.

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1 not indicate that he knew in any way because he would have
2 been subject to the same kind of disciplinary action.

3 Q After the (b)(7)(C) did you have any
4 conversations with (b)(7)(C) about this customs payment?

5 A No, I had no discussions with (b)(7)(C) about the
6 customs payment, at least that I can recall, but I did see

7 (b)(7)(C) in the office in Cincinnati on a couple of occasions.
8 (b)(7)(C)

9 He was very aware that this investigation was going
10 on and I couldn't tell you when precisely I might have seen

11 him. I recall having seen him after we had taken the
12 disciplinary action and telling him that I was really sorry

13 that things had turned out that way, that he had made a bad
14 mistake and that I thought it was kind of a tragic thing, but

15 that he was a very competent guy and he had to move on with
16 life, basically that.

17 And I suspect that if I had seen him, and I
18 probably did see him, before the disciplinary action was

19 taken, I might have just kind of rolled my eyes and smiled at
20 him or something, you know, like saying, geez, what a mess

21 or, you know, something to that effect, but I would have
22 never sat down with him and had a substantive conversation,

23 nor with (b)(7)(C) I mean, the same kind of thing. It was
24 inappropriate at that point in time.

25 Don't misunderstand me. I liked these guys, I

1 Q My question goes beyond that to I want to know who
2 was the individual who for whatever reason left that payment
3 off the sensitive payment summary. Can you help me with that
4 at all?

5 A No.

6 Q Okay. (b)(7)(C) that you have,
7 do you have any subsequent conversation concerning the

8 customs payment with (b)(7)(C)

9 A No.

10 Q Have you ever had a conversation with (b)(7)(C)

11 about the specifics of the customs payment?

12 A Well, I've had a number of conversations with (b)(7)(C)

13 (b)(7)(C) but I have not -- well, let me think about this. I

14 want to be clear about it.

15 I've had a number -- after (b)(7)(C)

16 (b)(7)(C) a matter of fact, I was actually involved

17 once we had made the decision to release him (b)(7)(C)

18 (b)(7)(C) p(7)(C) We essentially

19 sat with him and negotiated the terms and the conditions of

20 his release. (b)(7)(C)

21 (b)(7)(C)

22 Cincinnati. I was in Cincinnati, it was right around the

23 time that I met with (b)(7)(C) and all this was being

24 discussed, the decision was made, (b)(7)(C) asked me to talk to

25 (b)(7)(C)

1 Q Okay. Let's do it this way, then. Understanding
 2 you have said you had a number of conversations, let's go
 3 through them one by one, starting by you telling me where the
 4 conversation took place and who was in the room, this way, it
 5 will alert everyone to the possibility that this was an
 6 investigation or privileged conversation, we will know right
 7 away and we can --

8 A The only conversation that I've had with (b)(7)(C)
 9 (b)(7)(C)
 10 (b)(7)(C)

11 Q Okay.

12 A We told him that we had decided to terminate him.
 13 I think (b)(7)(C) put some conditions on the table. And he
 14 said that he wasn't totally surprised, but that he wanted to
 15 think about the proposal that was being made to (b)(7)(C)
 16 said that would be fine and he left and I left the next day
 17 (b)(7)(C) and then they continued until he was finally
 18 released.

19 The other conversations that I've had with (b)(7)(C)
 20 (b)(7)(C) (b)(7)(C)
 21 (b)(7)(C)
 22 (b)(7)(C)
 23 (b)(7)(C)
 24 (b)(7)(C)
 25 (b)(7)(C)

1 that he was very upset with -- I don't even remember because
 2 I never saw the report of the investigation, but I know that
 3 there were some cross -- there were some versions apparently
 4 that didn't jive, right? And I don't recall whether he was
 5 very upset with (b)(7)(C) whether he was very upset with
 6 (b)(7)(C) or whether he was very upset with (b)(7)(C) or whether
 7 he was very upset with all of them, but he was very upset
 8 about somebody who he said how could they say that, I mean,
 9 it wasn't true.

10 I can absolutely, categorically say to you that
 11 when he would make those -- when he'd start into that I would
 12 just turn off because I had regard for all of these people
 13 and I don't believe that anybody was lying. I really don't.
 14 I to this day, naive maybe, but I believe to this day that
 15 people were seeing, you know, light through their own set of
 16 glasses and there was miscommunications and different
 17 perceptions of what -- largely because of what I said before,
 18 of the language barrier. But that is the only conversation
 19 that we touched on other than, you know, thank God I'm out of
 20 Chiquita and I'm making my living in some other way.

21 Q According to (b)(7)(C) whose fault was this,
 22 this payment?

23 A I think (b)(7)(C) would say it was (b)(7)(C)
 24 fault because (b)(7)(C) would say (b)(7)(C)
 25 (b)(7)(C)

1 three times over dinner on occasion when I have gone to
 2 Cincinnati. And our conversations have been social in
 3 nature, not substantive in nature regarding this issue, but
 4 there has been -- that we have never touched on it would not
 5 be accurate, we have touched on it.

6 We've touched on it in a black humor sort of a way,
 7 on the one hand lamenting the lack of judgment, on the other
 8 hand, you know, his saying, well, thank goodness I'm out of
 9 Chiquita, I'm getting on with my life, that kind of stuff.

10 In an hour, hour-and-a-half dinner, maybe it's been the
 11 subject matter for two or three minutes. And I've been with
 12 him one-on-one and with him (b)(7)(C)
 13 (b)(7)(C)

14 Q Okay. I understand that this is a little
 15 uncomfortable and I hope you understand that I have to ask.

16 A That's perfectly all right.

17 Q I need to know the specifics of anything he told
 18 you about this customs payment and I know you have said
 19 generally, but if he told you something, anything, about
 20 this, I need to ask you about it. So starting with the first
 21 conversation, any conversation you had with (b)(7)(C) where
 22 he told you what happened here or you asked him what happened
 23 with regard to this payment.

24 A Okay. The only -- I mean literally, the only thing
 25 that I can tell you that he has said about this payment is

1 (b)(7)(C) Do not -- pardon me.
 2 THE WITNESS: I'm sorry.
 3 (b)(7)(C) I am asking you not to disclose the
 4 (b)(7)(C) You can say that (b)(7)(C)
 5 (b)(7)(C)
 6 content of the communication should not be disclosed. The
 7 content of the communication (b)(7)(C)

8 THE WITNESS: Well, I mean, I don't -- I don't know
 9 what the content of the communication was, I am giving you
 10 the content of communications between (b)(7)(C)

11 (b)(7)(C) Okay.
 12 THE WITNESS: Walker represented to (b)(7)(C)
 13 something.

14 (b)(7)(C) Okay.
 15 THE WITNESS: Is that something that -- or does
 16 that mess you up?

17 (b)(7)(C) No, that messes us up.
 18 THE WITNESS: Okay. I'm sorry.

19 BY (b)(7)(C)
 20 Q Did (b)(7)(C)
 21 (b)(7)(C) You can answer that question.

22 THE WITNESS: Yes.
 23 BY (b)(7)(C)

24 Q We have discussed, some cases briefly, some cases
 25 more in depth (b)(7)(C)

(b)(7)(C)

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1 What is your opinion of (b)(7)(C)

2 A (b)(7)(C)

3 (b)(7)(C)

4

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9 (b)(7)(C) I think you are done. I think that

10 is -- you are done, okay?

11 BY (b)(7)(C)

12 Q Let me ask it this way, it will be more specific.

13 Can you see a circumstance where somebody brings an issue to

14 (b)(7)(C) and says we have got a problem, the company needs this

15 permit and the only way to get it is to slip some money to

16 someone in customs, could you see (b)(7)(C) saying the company

17 needs this permit to do business, let's give this guy what he

18 needs?

19 A You know, what can I say? It apparently happened.

20 So how can I say I can't see (b)(7)(C) that's what

21 apparently happened. It's mind-boggling to me that it

22 happened. Absolutely mind-boggling because it's dumb and

23 that's out of character. And because, incidentally, it's dumb

24 for a whole variety of reasons. It's dumb first and foremost

25 because it's a violation of the law and that's dumb. And

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1 defense, it is a little more complicated.

2 (b)(7)(C) I thought that was a definitive

3 judgment in this matter, that is how I took it --

4 (b)(7)(C) Does that collaterally estop? No.

5 (b)(7)(C) I am sorry --

6 (b)(7)(C) Let me put it properly. Can you

7 clarify or explain what you mean by that, saying it is

8 illegal?

9 THE WITNESS: Well, let me retract unequivocally

10 that as being a definitive statement on my part because I

11 don't know whether it's illegal or not. The intricacies and

12 so forth and so on around FCPA law and so forth and so on are

13 far too subtle for me as a layman to know whether in fact

14 this is illegal or not. But clearly unethical and clearly

15 something that nobody at Chiquita would have wanted to

16 happen, whether or not it could fit in a nook and cranny here

17 or a nook and cranny there. So -- it was a dumb thing to do.

18 I think the policy is very clear that -- forget the

19 legalities or the --

20 BY (b)(7)(C)

21 Q Chiquita's company policy.

22 A Chiquita's company policy is you don't make

23 payments, whether it be through a third party conduit or not,

24 to government institutions or individuals to do things that

25 would otherwise be inappropriate to do.

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1 that doesn't get us anywhere.

2 It's also dumb because that -- we didn't have to do

3 that to get a permit. There were lots of ways to get a

4 permit in a perfectly legal fashion. As a matter of fact, if

5 the permit had been denied to Banadex, we could have turned

6 around two days later, Banadex could have sold the warehouse

7 to some other company and we could have gone and gotten the

8 permit from some other company. So, I mean, it was -- this

9 was stupid on all counts. Violation of the law, clear

10 violation of Chiquita policy, clear violation of any kind of

11 standards that I established, your know, exposure for these

12 guys to all kinds of things, discipline within Chiquita, the

13 kinds of things that they face with you all and so forth and

14 so on and on top of it all, absolutely avoidable and

15 unnecessary.

16 Not -- you know, they can't even say we got the

17 permit because of this. We could have gotten the permit

18 anyway. So, I mean -- mind boggling.

19 (b)(7)(C) I would just like to clarify. You

20 say it is illegal --

21 THE WITNESS: Well, I'm not lawyer.

22 (b)(7)(C) All right. As you know, one of the

23 issues is is it illegal locally, is it illegal under FCPA --

24 THE WITNESS: I'm sorry. You're absolutely right.

25 (b)(7)(C) Is there an advice of counsel.

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1 (b)(7)(C) May I just take a moment?

2 (The witness conferred with counsel.)

3 (b)(7)(C) Thanks.

4 BY (b)(7)(C)

5 Q Are you aware of any other non-facilitating

6 payments to government officials that we have not discussed

7 here today?

8 A Non-facilitating payments to government officials

9 that we have not discussed today? No. In Colombia. And I

10 don't mean to be cute, but there are -- let me just explain

11 this because I'm not -- I don't know of any that are

12 improper, but when we give a jeep to the army I don't know if

13 that fits into my definition of a facilitating payment. I

14 don't think it does.

15 It also does not fit into my definition of --

16 particularly since that kind of thing was run in advance

17 through (b)(7)(C) you know, not a violation. So I am aware

18 of things like that, but --

19 Q I am caught in the language, so let me just come

20 out of it and say I do not want to be cute, I am not talking

21 about pigs or any type of live farm animals or gasoline or

22 tires. Do you know of any bribes or kickbacks that I do not

23 know about?

24 A No.

25 Q Other than (b)(7)(C) and any

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(b)(7)(C)

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1 privileged conversations and a few we have discussed already,
2 are there any other conversations that I have not asked you
3 about that you have had where you have discussed the
4 specifics of this customs payment that we have been
5 discussing?

6 A Certainly none that I can recall.

7 Q At some point we had briefly discussed Convivir?

8 A Yes.

9 Q And that a determination had been made that
10 Convivir or payments to Convivir did not implicate or just
11 was not a potential violation of the FCPA. Who made that
12 determination?

13 (The witness conferred with counsel.)

14 (b)(7)(C) You can say who made the
15 determination but not go into the basis for the
16 determination. Who made the determination?

17 (b)(7)(C) I do not want to know the analysis or
18 the specifics, just the person's name.

19 (b)(7)(C) Or persons, as the case may be.

20 THE WITNESS: I don't recall who specifically made
21 the decision and the reason I'm being so hesitant is I don't
22 think of Convivir, frankly, as ever -- in my mind, as ever
23 having been an FCPA issue. To me, that's no more of an FCPA
24 issue than a payment to the telephone company. What to me
25 Convivir was was a public relations issue where the -- I

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1 mean, to put it in very crude terms, the question was is
2 Convivir a right wing death squad type organization and the
3 answer was categorically it is not.

4 Yes, it is an anti-guerrilla organization, it is
5 under the legal auspices of the government, but it is not --
6 to the very best of my knowledge, Convivir is not a
7 government institution, Convivir is a civilian institution in
8 which the government basically said we grant you legal status
9 as a civilian institution and in so doing we are giving you
10 legitimacy that we wouldn't give to a right wing death squad,
11 so your activities of some intelligence information and
12 communication and so forth and so on are just fine with us
13 and we encourage this.

14 So I never viewed Convivir as an FCPA -- I mean, I
15 wouldn't have even put it on the list as an FCPA issue, I
16 would have put it on the same list as the guerrilla payments.

17 (b)(7)(C) I did not understand it to be so
18 obvious that this was not a government organization.

19 THE WITNESS: Listen, you know, I might be wrong,
20 but that's -- I don't think I'm wrong, I might be, but to me,
21 that's my belief at the time and it's my belief today.

22 BY (b)(7)(C)
23 Q Let me approach it from this direction. Do you
24 know if there was ever a determination made, somebody looked
25 at this and said this is not a government entity?

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1 (b)(7)(C) Are you asking for a factual
2 determination, meaning someone reviewed it and based on the
3 facts said they are not government?

4 (b)(7)(C) No. No. Just the consideration of
5 the issue. It sounds like the issue was not even considered
6 and that --

7 (b)(7)(C) Do you know if the issue was
8 considered?

9 THE WITNESS: No, I think -- let's put it this way,
10 I would be surprised if the issue wasn't considered, but I
11 don't -- I can't recall any direct knowledge of it being
12 considered. I think -- you know, Convivir got on the radar
13 screen, right? It got on the radar screen in Colombia, it
14 got on the radar screen in Cincinnati. And I think it would
15 be naive to think that once on the radar screen all those
16 questions weren't asked and answered.

17 My point is that on my radar screen, I never
18 considered it -- and I'll tell you something, even if it were
19 a government entity, on my radar screen, not being a lawyer,
20 on my radar screen, not an FCPA violation, not an FCPA
21 violation any more than a payment to a state-owned utility
22 would be. This wasn't to pay an organization to do something
23 improper or to do something not in the ordinary course of
24 business or what have you, this was paying for a security
25 service. So I mean, I just -- you took me by surprise

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1 because I never even thought of it in those terms. I would
2 be surprised, however, since -- you know, people in
3 Cincinnati aren't quite as familiar with -- it's just an
4 entity, right?

5 Convivir, that's something new -- I would have
6 expected that they would have asked themselves all those
7 questions and answered them satisfactorily.

8 (b)(7)(C) I have no further questions at this
9 time.

10 THE WITNESS: In which case, I would very much
11 appreciate just making a very brief statement. I think it's
12 very obvious from the comments that I've made during the
13 course of the day that in Colombia we deal in a very
14 difficult and threatening environment and those threats
15 potentially involve American citizens and Colombian citizens
16 and whoever happens to be in the way. And there are very
17 unfortunately in Colombia a lot of competing organizations,
18 even more unfortunately perhaps some of them are
19 institutionalized and some of them are just functioning
20 outside of the law. But the kind of information that we've
21 discussed today in that context is so delicate that without
22 overstating it, to the extent that it were divulged and
23 became public knowledge, and unfortunately to the extent that
24 it was even accessible to the kinds of organizations in
25 Colombia that you might consider to be entirely legitimate,

(b)(7)(C)

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1 because of the possibility that those organizations are
 2 infiltrated, we would without question be putting people's
 3 lives in danger.
 4 So I realize that this is all part and parcel of
 5 the legal process, I realize you have your obligations at the
 6 SEC to see this process through. I'm not familiar with what
 7 that really implies, but I would make a very strong plea on
 8 behalf of the people in Colombia, on behalf of myself as well
 9 who travels there often, that those kind of details not be
 10 divulged and that even the fact that we are involved in those
 11 kinds of payments to anybody just per se not be divulged.
 12 (b)(7)(C) Thank you.
 13 (b)(7)(C) We are off the record at
 14 approximately ten minutes after five.
 15 (Whereupon, at 5:10 p.m., the testimony was
 16 adjourned.)
 17

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