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Highly Confidential Videotaped Deposition of Thomas P. Lesnak
Conducted on March 22, 2016

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION CIVIL ACTION NO. 5:13-CV-00527-F -----X U.S. TOBACCO COOPERATIVE, INC.; : U.S. FLUE-CURED TOBACCO : GROWERS, INC.; and BIG SOUTH : DISTRIBUTION, LLC, : Plaintiffs, : v. : BIG SOUTH WHOLESALE OF : VIRGINIA, LLC, d/b/a BIG SKY : INTERNATIONAL; BIG SOUTH : WHOLESALE, LLC; UNIVERSAL : SERVICES FIRST CONSULTING, : a/k/a UNIVERSAL SERVICES : CONSULTING GROUP; JASON : CARPENTER; CHRISTOPHER SMALL; : EMORY STEPHEN DANIEL; ALBERT M. : JOHNSON, and other unnamed : co-conspirators, : Defendants. : UNITED STATES OF AMERICA, : Intervenor. : -----X HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF THOMAS P. LESNAK Raleigh, North Carolina Tuesday, March 22, 2016 Job No.: 106174 Pages: 1 - 372 Reported By: Lisa A. Wheeler, RPR, CRR	A P P E A R A N C E S ON BEHALF OF PLAINTIFFS: Tevis Marshall, Esquire Amy M. Pocklington, Esquire Ogletree, Deakins, Nash, Smoak & Stewart Riverfront Plaza, West Tower 901 East Byrd Street, Suite 1300 Richmond, Virginia 23219 (804) 663-2330 tevis.marshall@odnss.com amy.pocklington@odnss.com -and- L. Gray Geddie, Jr., Esquire Ogletree, Deakins, Nash, Smoak & Stewart 300 North Main Street Greenville, South Carolina 29601 (864) 271-1300 gray.geddie@odnss.com ON BEHALF OF DEFENDANTS BIG SOUTH WHOLESALE, JASON CARPENTER and CHRIS SMALL: Gary S. Parsons, Esquire Brooks, Pierce, McLendon, Humphrey & Leonard 1600 Wells Fargo Capitol Center 150 Fayetteville Street Raleigh North Carolina 27601 (919) 839-0300 gparsons@brookspierce.com ON BEHALF OF DEFENDANTS BIG SOUTH WHOLESALE OF VIRGINIA BIG SOUTH WHOLESALE, JASON CARPENTER and CHRIS SMALL: Alan D. Mathis, Esquire Butler Snow One Federal Place, Suite 1000 1819 Fifth Avenue North Birmingham, Alabama 35203 (205) 297-2200 alan.mathis@butlersnow.com (Appearances continued on following page.)
2	4
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Videotaped Deposition of THOMAS P. LESNAK, held at the offices of: Brooks, Pierce, McLendon, Humphrey & Leonard 150 Fayetteville Street, Suite 1600 Raleigh, North Carolina 27601 (919) 839-0300 Pursuant to notice, before Lisa A. Wheeler, RPR, CRR, Notary Public in and for the State of North Carolina.	A P P E A R A N C E S (CONTINUED) ON BEHALF OF DEFENDANT EMORY STEPHEN DANIEL: W. Sidney Aldridge, Esquire Nicholls & Crampton 3700 Glenwood Avenue, Suite 500 Raleigh, North Carolina 27612 (919) 781-1311 wsaldridge@nichollscrampton.com ON BEHALF OF DEFENDANT ALBERT M. JOHNSON: Christopher T. Graebe, Esquire Graebe Hanna & Sullivan 4350 Lassiter at North Hills Avenue, Suite 375 Raleigh, North Carolina 27609 (919) 863-9092 cgraebe@ghslawfirm.com ON BEHALF OF BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES: James P. Vann, Esquire U.S. Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives 1401 H Street, N.W., Suite 900 Washington, D.C. 20005 (202) 648-8119 james.vann@atf.gov ON BEHALF OF UNITED STATES OF AMERICA: Wynne P. Kelly, Esquire United States Attorney's Office 555 Fourth Street, N.W. Washington, D.C. 20530 (202) 252-2545 wynne.kelly@usdoj.gov (Appearances continued on following page.)

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EXHIBIT

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<p style="text-align: right;">5</p> <p>1 APPEARANCES (CONTINUED)</p> <p>2</p> <p>3 ON BEHALF OF THE DEPONENT:</p> <p>4 Joseph E. Zeszotarski, Jr., Esquire</p> <p>5 Gammon, Howard & Zeszotarski</p> <p>6 The Water Tower Building</p> <p>7 115 1/2 West Morgan Street</p> <p>8 Raleigh, North Carolina 27601</p> <p>9 (919) 521-5878</p> <p>10 jzeszotarski@ghz-law.com</p> <p>11 ALSO PRESENT: Albert Johnson</p> <p>12 Chris Small</p> <p>13 Stuart Thompson</p> <p>14 Andrew Shepherd</p> <p>15 Charlie Batten</p> <p>16 Luis Lopez, Videographer</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">7</p> <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: Here begins Tape Number 1 in</p> <p>3 the videotaped deposition of Thomas Lesnak in the matter</p> <p>4 of U.S. Tobacco Cooperative -- Cooperative, Inc., et al,</p> <p>5 versus Big South Wholesale of Virginia, et al, in the</p> <p>6 United States District Court for the Eastern District of</p> <p>7 North Carolina, Western Division, Case Number</p> <p>8 5:13-CV-00527.</p> <p>9 Today's date is March 22nd, 2016. The time on</p> <p>10 the video monitor is 9:11. The videographer today is</p> <p>11 Luis Lopez representing Planet Depos. This video</p> <p>12 deposition is taking place at the law offices of Brooks</p> <p>13 Pierce McLendon Humphrey & Leonard.</p> <p>14 Would counsel please voice identify themselves</p> <p>15 and state whom they represent.</p> <p>16 MR. MARSHALL: Tevis Marshall, represent the</p> <p>17 Plaintiffs, U.S. Tobacco Cooperative, U.S. Flue-Cured</p> <p>18 Growers and Big South Distribution.</p> <p>19 MS. POCKLINGTON: Amy Pocklington. I represent</p> <p>20 the Plaintiffs.</p> <p>21 MR. GEDDIE: Greg Geddie. I represent the</p> <p>22 Plaintiffs as well.</p> <p>23 MR. ALDRIDGE: Sid Aldridge. I represent Steve</p> <p>24 Daniel.</p> <p>25 MR. GRAEBE: Chris Graebe. I represent Albert</p>
<p style="text-align: right;">6</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3 EXAMINATION BY MR. MARSHALL 8</p> <p>4 EXAMINATION BY MR. MATHIS 330</p> <p>5 EXAMINATION BY MR. GRAEBE 357</p> <p>6 EXAMINATION BY MR. ALDRIDGE 358</p> <p>7 EXAMINATION BY MR. MARSHALL 366</p> <p>8</p> <p>9</p> <p>10 EXHIBITS</p> <p>11 LESNAK</p> <p>12 NUMBER DESCRIPTION PAGE</p> <p>13 EXHIBIT A Binder of Documents, Tab 1 through 80</p> <p>14 EXHIBIT B E-mail String, December 4, 2012, 199</p> <p>15 Subject: BIG SOUTH</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">8</p> <p>1 Johnson.</p> <p>2 MR. PARSONS: Gary Parsons. I represent Jason</p> <p>3 Carpenter, Chris Small and Big South Wholesale.</p> <p>4 MR. MATHIS: Alan Mathis representing Jason</p> <p>5 Carpenter, Chris Small, Big South Wholesale of Virginia</p> <p>6 and Big South Wholesale.</p> <p>7 MR. VANN: James Vann, represent Bureau of</p> <p>8 Alcohol, Tobacco, Firearms and Explosives for DOJ.</p> <p>9 MR. KELLY: Wynne Kelly representing the</p> <p>10 interests of the United States. And I would just ask as</p> <p>11 has been our practice that this transcript remain highly</p> <p>12 confidential until we have a chance to review it.</p> <p>13 MR. ZESZOTARSKI: Joe Zeszotarski for the</p> <p>14 witness.</p> <p>15 THE VIDEOGRAPHER: The court reporter today is</p> <p>16 Lisa Wheeler representing Planet Depos. Would the</p> <p>17 reporter please swear in the witness.</p> <p>18 THOMAS P. LESNAK</p> <p>19 being first duly sworn, testified as follows:</p> <p>20 EXAMINATION</p> <p>21 BY MR. MARSHALL:</p> <p>22 Q Good morning, Mr. Lesnak.</p> <p>23 A Morning.</p> <p>24 Q We met just a couple of minutes ago, but my</p> <p>25 name is Tevis Marshall. I represent the Plaintiffs in</p>

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3 (Pages 9 to 12)

9	1 this action. Have you ever had your deposition taken 2 before? 3 A No. 4 Q Okay. I wanted to go over here just a few of 5 the basics before we get started, make sure that 6 everything's clear for you. You've been placed under 7 oath and even though we're not in a courtroom, the oath 8 has the same effect and impact as it would as if we were 9 in court. I'm going to ask you a series of questions 10 today. If you don't understand one of the questions, 11 please let me know. I'm happy to repeat it, but I want 12 to make sure that you understand everything that's being 13 asked of you. 14 Can you agree that if you don't understand a 15 question you'll ask me to restate it or repeat it? 16 A Yes. 17 Q Okay. And if you go ahead and answer a 18 question that I've asked, I'll assume that you 19 understood it and answered it to the best of your 20 ability. Is that fair? 21 A Yes. 22 Q Okay. I'm going to try not to interrupt you as 23 you're giving your answer. I want to make sure if 24 you've got something to say, you get a chance to get it 25 all on the record. If you're not done with your answer,	11
10	1 A But I have medication for my neck. 2 Q Okay. 3 A Probably shouldn't drive, probably shouldn't 4 give sworn testimony with it so I didn't take it this 5 morning. 6 Q Okay. Well, I appreciate that. But you do 7 feel that you're able to give proper sworn testimony 8 this morning? 9 A Oh, yeah, absolutely. 10 Q Okay. Okay. Could you state your full legal 11 name please. 12 A Thomas, middle name is Paul, last name is 13 Lesnak, L-e-s-n-a-k. 14 Q Okay. And what's your Social Security number? 15 A [REDACTED] 16 Q And your current address? 17 A 396 [REDACTED] 18 [REDACTED] Tennessee, [REDACTED] 19 Q Thank you. Now who lives at that residence 20 with you? 21 A Me, my wife and three kids when they're not at 22 school. 23 Q Okay. Is that the only property that you and 24 your wife own? 25 A My wife owns several properties independent of	12
11	1 me, but we own that house jointly. 2 Q Okay. Where are the other properties that your 3 wife owns? Where are those located? 4 A Tennessee and Virginia. 5 Q How many properties approximately? 6 A Approximately? I could give you exactly. 7 Q Okay. 8 A One, two -- three. 9 Q Okay. Are those for residential purposes or 10 are they commercial? 11 A Oh, no. It's all residential. 12 Q Do you all own them and live in them from time 13 to time or do you rent them? 14 A No. We inherited a farm -- my wife's farm. 15 Q Okay. 16 A That's one of the properties. The other two my 17 kids live at when they go to school. 18 Q Okay. When did she inherit those properties? 19 A Oh, God. 15 years ago, 20. 20 Q And that's all three? 21 A No, that's just one. 22 Q Okay. How about the other two, when were those 23 acquired? 24 A Last year and the one before that was probably 25 five years ago.	13

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13

1 Q Okay. The one that was acquired five years
2 ago, do you remember what was paid to acquire that
3 property?
4 A It was a foreclosure. It was like 60, 65,000,
5 something like that.
6 Q All right. And the one from last year?
7 A 55,000.
8 Q Okay.
9 A Also foreclosure or estate.
10 Q Your primary residence, that address, when did
11 you move there?
12 A Four years ago, three-and-a-half.
13 Q Okay. So sometime in 2012?
14 A Yeah. You know, you build a house. It's --
15 and you piecemeal it, you know, so it would have been
16 the end of '12, early '13. I -- I believe we actually
17 moved in -- like slept in there was middle of '13.
18 Q All right. And you said you built that house?
19 A Yes.
20 Q Do you -- do you recall what the cost was to
21 build it?
22 A 308, 311, something like that.
23 Q Is that fixtures, land, structures, everything?
24 A Yeah, that's everything.
25 Q Have you had that appraised recently?

14

1 A Oh, no. No.
2 Q Okay. Okay. Have you listed all the
3 properties that you and your wife collectively own for
4 me?
5 A Yes.
6 Q Okay.
7 A Real estate, right?
8 Q Yes.
9 A You said properties. Just land?
10 Q Right.
11 A Yeah.
12 Q Do you have another understanding of
13 properties?
14 A No, I -- property, you know.
15 Q Okay.
16 A Jewelry, cars. I was just --
17 Q We don't need to --
18 A Gotcha.
19 Q -- take a complete inventory.
20 A Gotcha.
21 Q Yeah. But I appreciate it. What's your
22 current e-mail address?
23 A My work e-mail for my company?
24 Q Yeah.
25 A Is TPIgroup, g-r-o-u-p, @rocketmail.com.

15

1 Q Okay. How long have you had that e-mail?
2 A Since I started my company four years ago,
3 three-and-a-half.
4 Q And am I correct that you had a couple of
5 different Yahoo accounts that you might have used when
6 you were affiliated with ATF?
7 A Yes.
8 Q Was one of those kmaclub@yahoo.com?
9 A Yes.
10 Q Was another one philipscigs@yahoo.com?
11 A Yes.
12 Q Were there any others?
13 A Those are the ones we used for work.
14 Q Okay. And am I correct that the kmaclub and
15 philipscigs addresses, those were used in connection
16 with your ATF activities?
17 A Yes.
18 Q Okay. Did you have to obtain approval from
19 anybody at ATF or Department of Justice to use those
20 accounts?
21 A No.
22 Q Do you know if they were secured accounts?
23 A What's that mean?
24 Q Well, were they just -- you can go to Yahoo I
25 think and just set up an account.

16

1 A That's exactly --
2 Q Is that what you did?
3 A -- what we did. Uh-huh.
4 Q Okay. Is that a common practice as an ATF
5 agent?
6 A Every agent we work with had a similar account.
7 Q Okay. And can you explain for me, what --
8 what's the reason for using an account other than your
9 Department of Justice account?
10 A If you go back to when we started undercover
11 operations, it was before iPhones and laptops. The only
12 way you were able to access your sources, your
13 informants, bad guys was off your government laptop.
14 Obviously that was foolish. The ATF and Department of
15 Justice BlackBerries that we were issued, you couldn't
16 have a private e-mail account on it. So if you were
17 traveling for two weeks, you literally could not contact
18 your informants or bad guys or good guys or whatever
19 and, as you know, you don't want to ever send something
20 from a U.S. Government account, though we accidentally
21 did and every agent I worked with accidentally did from
22 a U.S. Department of Justice e-mail account to a bad
23 guy.
24 Q Uh-huh.
25 A So everybody's practice, even the headquarters

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17

1 guys, all had some undercover e-mail account that we
2 used so that --
3 Q Right.
4 A -- when we had our -- you're at a hotel
5 traveling, you could still access all the agents you
6 were working with.
7 Q Was part of the reason to have a Yahoo account
8 to cloak or disguise your identity if you're
9 communicating with certain people?
10 A Yeah. We dealt with bad guys all the time all
11 over the globe. Early on in our operation one of our
12 informants had been dealing with us. This was early on.
13 This is 2006. It was lesson learned. Somebody had
14 spammed him, Canadian Pharmacy -- I'll never forget, it
15 was the first time I had ever seen that, Canadian
16 Pharmacy, and it went out to everybody in his address
17 book so all the bad guys and all the good guys so all
18 you saw was U.S. Department of Justice, ATF, FBI, all
19 the agencies. It was a lesson learned. So from that
20 point on we never sent anything from DOJ.
21 Q Okay. Okay. What's your current cell phone
22 number?
23 A 423-429-0001.
24 Q How long have you had that number?
25 A Six years.

18

1 Q Okay. And where did you attend college?
2 A East Tennessee State, Johnson City --
3 Q Okay.
4 A -- Tennessee.
5 Q What year did you graduate?
6 A '86.
7 Q And what was your degree in?
8 A I had a double major in political science and
9 criminal justice.
10 Q Did you take any postgraduate courses?
11 A No.
12 Q Okay. And I'm only asking you this question
13 because we ask it of every witness in every deposition,
14 but I need to know if you've ever been convicted of any
15 crimes in the past.
16 A No.
17 Q Okay. Are you aware of any criminal charges
18 that are currently pending against you?
19 A No.
20 Q Are you aware of any investigations right now
21 that might relate to any of your activities from 2010 to
22 2013?
23 A No.
24 Q And you are represented by counsel today, is
25 that correct?

19

1 A Yes.
2 Q And your attorney is Mr. Zeszotarski?
3 A Yes.
4 Q Okay. And let me be real clear about one
5 thing. None of my questions are designed to uncover or
6 reveal communications you've had with your attorney.
7 You don't need to tell me anything that y'all have
8 talked about, okay? So without telling me about any
9 specific discussions you may have had with
10 Mr. Zeszotarski, can you tell me what you did to prepare
11 for today's deposition.
12 A I met with the attorneys yesterday in Joe's
13 office for a couple hours.
14 Q Okay.
15 A I was given some documents to read which I
16 unfortunately did not read. I hate to say that. I will
17 admit I did not prepare. That's been the extent of my
18 three-hour preparation for this.
19 Q Okay.
20 A More on process.
21 Q All right. You correct me if I'm wrong, but I
22 think you said you met with attorneys yesterday. Who
23 were the other attorneys that were there?
24 A The two attorneys for the government.
25 Q Okay. Do you remember what documents you were

20

1 given to review? I know that you didn't read them, but
2 do you recall what they were?
3 A One was my Subpoena and -- I hate -- I'm sorry.
4 He gave me a document and I just put it in my folder and
5 I --
6 Q That's okay.
7 A It --
8 MR. KELLY: I can proffer if you want. It was
9 the active Complaint in this case.
10 MR. MARSHALL: The Complaint?
11 MR. KELLY: Uh-huh.
12 MR. MARSHALL: Okay.
13 THE WITNESS: It was the second one. Thank
14 you.
15 A It was the Second Amended Complaint.
16 Q All right. Well, we'll have plenty for you to
17 read today.
18 A Sorry. Yeah. I'm just --
19 Q It's all right. Did you review any videos at
20 all --
21 A No.
22 Q -- when you met with your attorneys?
23 A Sorry. No.
24 Q Did you listen to any audio recordings?
25 A No.

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21	1 Q Other than your attorney and the AUSA who's 2 here who else have you commun -- communicated with about 3 today's deposition? 4 A About the content or that I was being deposed? 5 Q The content. 6 A Nobody. 7 Q Did you have any discussions with Jason 8 Carpenter about your deposition? 9 A No. 10 Q Did you have any discussions with Mr. Carpenter 11 about his deposition? 12 A No. I knew he had been deposed but, no. 13 Q Okay. 14 A The content? No. 15 Q When's the last time that you spoke with 16 Mr. Carpenter? 17 A A week or two ago. 18 Q Okay. Can you tell me about that discussion. 19 A I was driving back from New Orleans home and my 20 son was playing a ball game in Alabama where he lives. 21 I had hoped to get a hotdog with him at the ball game. 22 Q Okay. 23 A But he had a soccer tournament so we never 24 hooked up. 25 Q Okay. Have you had any discussions with	23	1 you had any discussions with him about your deposition 2 today? 3 A No. 4 Q How about his deposition which I think was in 5 October of last year? 6 A No. 7 Q When's the last time you spoke with Mr. Small? 8 A Outside of this morning I probably spoke to him 9 twice in the last year. 10 Q Okay. 11 A Maybe two months ago I -- we live in the same 12 town. I think I passed him once for five minutes and 13 that was it. 14 Q In those two discussions have you had any 15 discussions about this lawsuit? 16 A No. No. I talked to Chris early on like with 17 Jason obviously with -- 18 Q Uh-huh. 19 A -- when's the government going to come up and 20 release this stuff? Again, almost all our conversations 21 were about that. 22 Q All right. When's the last time that you spoke 23 with Mr. Johnson, Albert Johnson? 24 A I guess a year ago. At my lawyer's office 25 probably a year ago. I'm guessing on the date. It
22	1 Mr. Carpenter since July of 2013 about this particular 2 lawsuit? 3 A Yes. 4 Q Okay. Can you tell me about those discussions. 5 A Most of them were early on basically trying to 6 get the government -- hey, you know, can the government 7 produce these documents, where can we get these 8 documents. You know, the -- the big allegation, as you 9 know, early on was that we and they were the 10 unauthorized operation which was untrue and they said, 11 look, we need some documents to show, who can we talk to 12 at ATF and Department of Justice? So I'd say of my 40 13 phone calls with Jason, 35 of them was that topic. 14 Q And that topic meaning how did they get ahold 15 of documents? 16 A Yeah. When's ATF going to come to the table, 17 when are they going to clear up the record, blah, blah, 18 blah. 19 Q All right. Have you had any discussions with 20 Mr. Carpenter about the progress of this case as it's 21 been going on? 22 A No. No. My conversations are still dragging 23 on and that type of thing. There was no -- no 24 discussions of the status of the case. 25 Q All right. How about Christopher Small, have	24	1 seems -- seems like it's a year ago. 2 Q Okay. And can you share with me what you all 3 discussed? 4 A I was briefing his attorney on what I knew 5 about my involvement and ATF's involvement with 6 Mr. Johnson. And I could give you the date of that. It 7 was right -- I don't know the exact date, but it was 8 right after he was added to the lawsuit. 9 Q All right. 10 A So I'm saying a year ago. It may be slightly 11 off that. 12 Q And when you say you were briefing his 13 attorney, were you discussing government operations in 14 the past that involved Mr. Carpenter or Mr. Small? 15 A No. They came and they asked, I guess, the -- 16 couple simple questions, did we ever pay him, did he 17 ever pay us -- 18 Q Okay. 19 A -- did I -- was I aware of any corruption. 20 Q What -- 21 A We briefly discussed the -- the meeting in 22 Kingsport. I don't remember Albert saying anything 23 except hello. I didn't have a relationship with him. 24 Obviously he was the chairman, I was a GS-13 nobody, but 25 I did agree we'd meet with them and answer whatever

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7 (Pages 25 to 28)

25

1 questions they had.
2 Q All right. Do you remember how long y'all met?
3 A Oh, geez. Less than an hour.
4 Q Okay. When you were asked whether Mr. Johnson
5 ever received any payments, what was your response?
6 A He had not.
7 Q Okay. Have you had any discussions recently
8 with Dave Rickard?
9 A Oh, no. God, no. No.
10 Q Okay. When do you think the last time was that
11 you spoke with him?
12 A God, two, three years ago.
13 Q Did you talk to him about this case at all?
14 A No.
15 Q How about Bill Haberberger?
16 A I'm sorry. Is he the treasurer of Premier or
17 was the treasurer of Premier? I'm sorry.
18 Q I'll represent he was --
19 A I just want to make sure I'm answering the
20 right guy.
21 Q No. Fair enough. He was associated with
22 Premier, yes.
23 A No. I haven't seen him since I retired from
24 ATF.
25 Q And that would have been late 2012?

26

1 A Yeah. My -- my last day was the last day of
2 2012.
3 Q All right. How about Brandon Moore, when's the
4 last time you spoke with Mr. Moore?
5 A Just prior to the raids on the warehouse. I
6 was at the warehouse probably a week or two prior and I
7 saw him. That would have been it.
8 Q So you did not speak with him during the
9 investigation that began in March of 2013?
10 A No. Upon hearing what his allegations were,
11 obviously I knew not to -- so I couldn't be accused of
12 tainting a witness or intimidating a witness made a
13 conscious decision not to talk to him.
14 Q All right. How about Wendi Davis?
15 A Same. I hadn't talked to her since I retired.
16 I don't even think I've seen her since I've retired.
17 Q John Taylor?
18 A No. I mean, I haven't seen him in years. I'd
19 only met him a few times but I don't...
20 Q Okay. Have you met with either Mr. Whitmore or
21 Mr. Duke to talk about today's deposition?
22 A No, I haven't. I've -- I've met with Cory,
23 a/k/a William Duke, geez, maybe a year ago.
24 Q Okay.
25 A Dan Whitmore I haven't seen in two or three

27

1 years. We all talked that we are okay to get
2 subpoenaed. It was one of those things, hey, you know,
3 we're going to get subpoenaed, and I -- I believe it was
4 Cory who called me and said, hey, the government
5 authorized our testimony.
6 Q Okay. How about Steve Daniel, have you had any
7 discussions with him recently?
8 A Yeah. I've talked to Steve two or three times
9 in the last year.
10 Q Okay.
11 A Not about dep -- depositions or testimony and I
12 don't even know if he knows I'm here. Well, I assume he
13 knows I'm here but we never discussed it.
14 Q What did you discuss with Mr. Daniel as it
15 relates to this case?
16 A We never discussed this case.
17 Q What did y'all talk about?
18 A He started a new position with another tobacco
19 company up in New York and he had some procedural
20 questions about exports.
21 Q You're a consultant right now, is that right?
22 A Yes.
23 Q Okay. Was Mr. Daniel calling on you in your
24 capacity as a consultant?
25 A No. It was a quick question about something.

28

1 It wasn't a paid job if that's your question. No.
2 Q Okay.
3 A He just had a -- he had a question about how
4 certain things should be done with U.S. Customs. I got
5 him the answer and that was it.
6 Q All right. Have you ever had any discussions
7 at all with Mr. Daniel about this case or the
8 investigation or the allegations in this case?
9 A No. I don't even think I -- even early on I
10 don't believe I ever discussed the -- you know, the
11 government's involvement and why we were slow doing
12 certain things as a government. I don't think Steve and
13 I ever discussed that.
14 Q Okay. And when you say slow as a government
15 doing those kinds of things, what are you referring to?
16 A Well, it took ATF too long to come to the table
17 and admit what we told Clay Wheeler in the meeting, that
18 we were the authorized operation, and to make
19 allegations other than that was unjust to us and the
20 informants and ATF should have come to the table early
21 on and did that.
22 Q Okay.
23 A That's the opinion of myself and not
24 necessarily the views of the government.
25 Q Sure.

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29	1 A Okay. 2 Q Okay. You mentioned this a couple minutes ago, 3 I think. But you're no longer employed by the ATF or 4 affiliated with the ATF, is that right? 5 A That's correct. 6 Q Okay. How did your employment with the ATF 7 end? 8 A I retired. I was not forced to retire. I had 9 health issues. I had a job opportunity. I had received 10 several significant rewards from the government, what's 11 called quality step increases. I had been maxed out in 12 pay. I could have stayed another 11 years till I was 13 mandatory, but nobody wants to hire a 57-year-old with 14 36 years with the government. So you either leave when 15 you're young enough to start a new job and have a 16 government pension coming in or you stay. 17 Q Okay. 18 A So I was at that point. It was like I 19 literally could have stayed 11 more years. I was maxed 20 out. I had gotten so many awards I couldn't go anywhere 21 else without moving to Washington and I didn't want to 22 do that. 23 Q Okay. So your decision to retire was entirely 24 voluntary, correct? 25 A 100 percent.	31	1 just give you your Social Security check when you 2 retire. 3 Q Okay. 4 A So I was able to draw on that at 46. 5 Q How many years did you serve with the ATF? 6 A It was 26 years with the government, 20 -- 7 almost 27, 20 with the -- 20 with ATF and -- 8 Q Okay. 9 A -- six with the U.S. State Department. There's 10 months in there but that's a... 11 Q That's all right. 12 A Yeah. I did 26 years government service, 13 little over. 14 Q Did you hold the same position for the entire 15 time you were with ATF? 16 A I was a special agent and I -- I transferred a 17 couple of times. Then I got promoted to senior special 18 agent which is what I retired as. 19 Q All right. When did you get that promotion? 20 A Oh, gosh. Ten, 12 years before I retired. 21 Q Okay. So around the year 2000 maybe? 22 A Yeah. 23 Q All right. If you recall, do you remember what 24 your annual salary was when you started as a -- a 25 special agent for the ATF?
30	1 Q Okay. Do you have any current involvement or 2 affiliation with the ATF? 3 A They pay me a pension every month but, no. 4 Q Okay. Do you get your full pension? 5 A Yes. 6 Q Can you share with me how much that is per 7 month? 8 A A little less now than it was because my health 9 insurance went up. 10 Q Okay. 11 A It's -- I'm ballparking. Before taxes it's 12 like 7,000. 13 Q Monthly? 14 A That is -- yeah. 15 Q All right. 16 A Yeah. And then we get -- just so we're clear, 17 there's a Social Security supplement included on that. 18 If you spend your -- not that anybody cares, but if you 19 spend your entire 25 years or 57 years you get -- as 20 federal law enforcement they give you your Social 21 Security when you retire. You don't have to wait until 22 67. 23 Q All right. 24 A So as part of that is -- they call it a supp -- 25 Social Security supplement but in essence it's -- they	32	1 A When I was with the State Department it was 2 \$400 a month -- or a paycheck, excuse me, \$800 a month. 3 I remember that, 1986. I retired from the government it 4 was about 130,000. 5 Q Okay. So about 130,000 in 2012, is that right? 6 A Yes. Maybe 132, something like that. I forget 7 what the max pay was as a 13-10, but it's about that. 8 Q Okay. And you had maxed out on your pay you 9 said? 10 A Yes. Meaning -- what I mean by that is that I 11 could not go any further. There is -- we're in a -- I 12 was a 13, Step 10. There was no 13, Step 11. 13 Q Okay. 13. You mean Grade 13? 14 A Yes. 15 Q Step 10? 16 A Yes. 17 Q Does that include locality pay? 18 A Yeah. I don't think we got locality pay in -- 19 in our office like you get in New York, 16 percent or 20 20 percent. I don't even know what it is now. We did not 21 get that. 22 Q Okay. You familiar with law enforcement 23 availability pay? 24 A Yeah. That -- that -- that 132 included the 25 25 percent --

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1 Q Okay.

2 A -- availability pay.

3 Q Did you ever receive any special awards or

4 honors or recognitions with the ATF?

5 A Dozens.

6 Q Okay.

7 A And from the FBI and from the State Department.

8 Q Can you tell me about any awards you might have

9 received in your last five years with the ATF.

10 A In the last five I got a Medal of Valor for

11 work in Iraq. I got an award from the FBI for my work

12 in Iraq. I received two quality step increases which

13 I'll be happy to explain if you care, if you don't care

14 I'll just move on, and several distinguished awards like

15 outstanding awards that come with either paid time off

16 or pay -- or like a cash bonus.

17 Q Okay. In the last ten years of your time with

18 the ATF were you ever the subject of any disciplinary

19 proceedings or actions?

20 A Never.

21 Q Okay.

22 A Never an oral reprimand, never a written

23 reprimand, never a suspension.

24 Q Okay. I assume you're familiar with the term

25 churning accounts, correct?

34

1 A Yes.

2 Q And just to make sure that we're on the same

3 page, can you explain to me what your understanding of a

4 churning account was in the context of ATF operations.

5 A I didn't know what churning was in 2005 when we

6 started a fairly large tobacco investigation so we all

7 kind of learned at the same time. Under Public Law I

8 believe it's 102, you get seed money from Department of

9 Justice, seed money meaning they -- they start you with

10 a set amount of money. I believe ours was \$50,000.

11 What you provide -- what you do is you open up a

12 significant investigation, sometimes it's bikers,

13 sometimes it's an arson task force, sometimes it's a

14 violent crime task force. In this case it was a tobacco

15 task force. And you apply to Department of Justice.

16 The Deputy Attorney General at that time in 2006

17 personally signed off on our churning authority. In

18 that churning memo you detail out your case, your

19 targets, your theories, your -- whatever it takes for

20 the Department of Justice to authorize you to work a

21 churning investigation. FBI call them PGI cases.

22 Homeland Security has their own versions. We call them

23 churnings.

24 Q Okay.

25 A Upon approval you set up a -- a churning

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1 account which is -- it's different now, but in 2006 we

2 set up our own churning account. One of the agents in

3 the office, actually the IRS agent in our office, knew a

4 bank president and they opened up the account for us

5 at -- at a local bank. Now it's all centralized at ATF

6 headquarters. It was not in 2006. We were one of the

7 first two or three cases who had churning authority at

8 ATF. So we did most of our stuff in the beginning on

9 our own.

10 My understanding in earl -- in 2006 was that

11 the churning case -- we could work everything that was

12 approved under our churning umbrella. Whatever was in

13 our memo we could work. ATF had a memo out -- we didn't

14 have a ATF policy at the time and I'm sure everybody

15 read -- read the OIG report. ATF had put out a memo

16 from our deputy director which told you what you could

17 do with churning, what you couldn't do with churning. I

18 mean, you could do everything. Literally it says in

19 there you could buy a building and I know the FBI has,

20 in fact, bought buildings with it. You could do

21 anything in direct support of that operation that you

22 got authority to work under.

23 Q Uh-huh.

24 A But I couldn't work on stuff that was outside

25 that scope. So I couldn't take that churning case and

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1 go buy narcotics unless one of my defendants or targets

2 said to me, hey, in exchange for these cigarettes, we'll

3 give you 20 kilos of cocaine. So in that case I could

4 work it because it was clearly linked back to the

5 original churning case, but I couldn't go to LA and

6 start buying cocaine off the street. That was not

7 linked back to my case. That's the simplest way to

8 explain what churning was versus -- what you would use

9 churning money for and what you were allowed to use it

10 by Justice.

11 Q Okay. And -- and just so I'm clear, explain to

12 me how you were able to use the proceeds from a churn

13 operation. If you generated revenue or funds, what

14 could then be done with those funds?

15 A Anything within -- I mean, everything from

16 literally buying a building, travel, source payments,

17 purchase of evidence. ATF later came out with a new

18 policy in '11 -- 2010, '11, I don't remember, which

19 spells out everything in detail. I haven't seen that

20 policy obviously in four years.

21 Q Okay.

22 A But it basically -- anything in furtherance of

23 that investigation.

24 Q Was one of the options also to turn some of

25 that money back over to the U.S. Treasury?

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10 (Pages 37 to 40)

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1 **A** We turned -- well, okay. Your question was in
2 general. The answer is that money did -- at the end of
3 the churning case -- I don't want to speak for the
4 Department of Justice but they made a policy change. In
5 the first churning cases our money did, in fact, go back
6 to the asset forfeiture account at Department of
7 Justice. I'll be happy to explain what that is but --
8 if you -- if not, I'll move on. Later on under our
9 second churning investigation, we had two, the second
10 money -- that money was required to go back into the
11 general fund, not the asset forfeiture fund, at Justice
12 and that was significant for -- for law enforcement
13 obviously.
14 **Q** And I'm sorry. You said you had two churning
15 operations.
16 **A** Correct.
17 **Q** Did you only have two in your history with the
18 ATF?
19 **A** Correct.
20 **Q** Okay.
21 **A** You mean me personally or my office --
22 **Q** That you were involved in.
23 **A** Because it wasn't me personally. I was
24 involved with? Yes.
25 **Q** Okay. And the first one you said was set up in

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1 2006?
2 **A** Yes.
3 **Q** And what about the second one?
4 **A** Two years later.
5 **Q** Okay. Did the churn operation in 2006 involve
6 Mr. Carpenter or Mr. Small?
7 **A** Definitely Jason Carpenter. I believe Chris
8 came in on the end of the first churning case.
9 **Q** Okay.
10 **A** And -- and the reason there were two churning
11 cases, the first case had been so big and so successful
12 and had had so many defendants, it -- it literally
13 became a monster -- a monster administratively and so we
14 started feeding off defendants. I -- I use the term
15 defendants but targets may be a better term because we
16 were working everything from Native American trafficking
17 to counterfeiting, to narcotics to illegal smuggling to
18 counter -- corrupt U.S. manufacturers -- tobacco
19 manufacturers, corrupt foreign tobacco manufacturers.
20 Obviously our little office couldn't handle all of that
21 and so we started feeding out those investigations and
22 we spurred -- and I -- I --
23 **THE WITNESS:** Did we get an agreement to use
24 the charts later?
25 **MR. KELLY:** (Nods head).

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1 **THE WITNESS:** Okay.
2 **A** That ended up spurring off where we literally
3 were the umbrella. So we sat up here and as a defendant
4 would come in we would send him off or them off to other
5 agents or other agencies who would then open up their
6 own churning cases.
7 **Q** Okay. Did you have to provide any kind of
8 supplemental information to folks at the ATF or DOJ when
9 your first churn account grew that large --
10 **A** Yes.
11 **Q** -- that you were --
12 **A** Yeah. And that's why we -- I'm sorry. I
13 should have let you finish.
14 **Q** That's all right. Go ahead.
15 **A** Yeah. We ended up -- it got so big that
16 another agent in my office -- it may have been Dan
17 Whitmore. He wrote the first one or the second one. We
18 had to prepare the second one because the case went
19 global at that point and so to make sure we were within
20 Department of Justice regulations and working everything
21 in our scope, we closed out the first churning case,
22 sent the money back to the Treasury or the asset
23 forfeiture fund from the original churning case and
24 started fresh with a new churning case which was much
25 larger and much broader than the first one. That's also

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1 the time I know for a fact that we had to bring on Chris
2 Small. We moved our undercover warehouse from another
3 state and put it basically in the backyard of our office
4 because of the massive amount of work, manual labor as
5 well as evidentiary. So we moved that warehouse which
6 was probably a hundred miles from where we originally
7 were to our backyard.
8 **Q** And that would be Bristol?
9 **A** Yes. It may have been the county but, yes, it
10 was --
11 **Q** Okay.
12 **A** -- southwest Virginia.
13 **Q** Okay. The -- but we're talking about the
14 warehouse that ultimately was acquired by Big South
15 Distribution?
16 **A** There was a warehouse before that which you may
17 or may not be aware of --
18 **Q** Okay.
19 **A** -- but it was an older, smaller building which
20 we quickly outgrew, quickly, a year or two. I don't
21 even remember how long we were there.
22 **Q** Okay.
23 **A** But also in the same area.
24 **Q** And did the operation --
25 **A** But it was the same operation, same churning

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1 case. That -- that -- it -- it wasn't location specific
 2 so we didn't have to do a new churning memo when we
 3 moved down the street.
 4 Q Okay. Well -- and that was going to be my next
 5 question. Af -- after the 2008 churning memo that you
 6 provided to ATF or Department of Justice, did you do any
 7 other churning memos after that point?
 8 A Oh, God. We did hundreds of memos, literally
 9 hundreds of memos. We did a memo every month. The memo
 10 would be generated from our office through the
 11 accountant or the agent accountant in our office who
 12 would go to supervisory, who would then go up to the
 13 Washington field division which was who I reported to in
 14 Washington, D.C. They would review it. Then they would
 15 send it over to headquarters -- to the tobacco division
 16 at headquarters and then at some point prepare -- they
 17 prepared reports for main Justice.
 18 Q Okay. And just so that I make sure I'm
 19 understanding what you mean by the memos, were these
 20 memos to update the folks in Washington or were they
 21 memos to obtain additional or broader churning
 22 authority?
 23 A Oh, I'm sorry. Yeah. I should have been
 24 clearer. There were only two churning memos --
 25 Q Okay.

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1 A -- for authority.
 2 Q Okay.
 3 A Okay. There were hundreds of other memos and
 4 reports of interview and re -- you know, briefing memos
 5 and other stuff. There were hundreds of those, but
 6 there were only two -- those were the ones that gave us
 7 the authority to operate. Those were signed off by the
 8 Deputy Attorney General of the United States and those
 9 were the guidelines that we had to live by.
 10 Q Okay. And, again, just to make sure I'm clear,
 11 so the only time you wrote a memo or were involved in a
 12 memo that was designed to obtain authority for a
 13 churning account was in 2006 for your first operation
 14 and 2008 for a separate operation, is that right?
 15 A No. I think you need to be more specific.
 16 Q Okay.
 17 A There were -- there was authority from main
 18 Justice -- there were two memos, okay, churning memos.
 19 That's a very strict process that goes up through our
 20 headquarters through the ATF and maybe even the deputy
 21 director and he's the one who hand carries it over to
 22 main Justice.
 23 Q Uh-huh.
 24 A There were many, many, many other memos that
 25 went up on everything we did, be it operationally or

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1 travel, international work, liaison with law enforcement
 2 from other countries. Each of those had separate memos.
 3 Q Okay.
 4 A So they were asking -- obviously that's a -- a
 5 request for authority to do something but slightly
 6 different than a churning request that we spoke of.
 7 Q Okay.
 8 A There were only two of those.
 9 Q Only two churning requests?
 10 A Correct. Because they're good until you close
 11 them out or Department of Justice closes them out for
 12 you.
 13 Q Uh-huh. Okay. Did you receive any kind of
 14 training or formal instruction from the ATF or any other
 15 federal agency on how to operate a churning account?
 16 A No.
 17 Q All right. You mentioned to me a memo from --
 18 well, maybe you didn't say this specifically, but were
 19 you referring to a 2005 ATF memo that discussed churning
 20 authority?
 21 A I could tell you the guy's name who wrote it.
 22 It was a guy named Bouchard who was, I believe, the
 23 deputy assistant director and that was basically our
 24 guide for two, three years.
 25 Q All right.

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1 A It's a two-pager. It's nothing complicated.
 2 It's nothing sophisticated. It had -- it was terrible.
 3 Q Okay.
 4 A It was a terrible process. We -- we made a lot
 5 of mistakes, we as an agency early on, and obviously
 6 that -- that changed in the second when the orders
 7 actually came out because we ended up having in -- and
 8 I -- I forget what -- and I'm -- I'll tell you what the
 9 OIG report said and they were right. There were 24
 10 operations and 24 operations ran 24 different ways and
 11 that was ridiculous and it caused a lot of problems.
 12 Q You said that a lot of mistakes were made.
 13 Were there any mistakes made under your churning
 14 account? Let's start with the 2006 one.
 15 A Yes.
 16 Q Okay. What were those?
 17 A The biggest -- I get -- used to get yelled at
 18 all the time, but the -- the one -- the oddest thing
 19 that I got yelled at for was -- the memo says -- and
 20 obviously you referenced a date so you must have read
 21 it. It says you can buy a building. Well, we could
 22 have rented a forklift -- I'll never forget this. It --
 23 it goes to idiocy of the government sometimes. We could
 24 have rented a forklift for like 6, 7, \$800 a month or we
 25 could have bought a used one for 6,000. So we could

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1 have bought a building or we could have rented, you
 2 know, so, I figured, hey, shit, let's just go by a used
 3 forklift for 6,000. It'll save the government tens of
 4 thousands of dollars. Boy, that was a mistake.
 5 So six months into it we'd been using the thing
 6 for six frigging months. We had sent it off to another
 7 undercover operation that needed one. They were using
 8 it and headquarters said, you can't buy a forklift, and
 9 my boss says -- calls me into his office and he says, we
 10 could buy a building. The memo here says we could buy a
 11 building. Yeah, but that's not what we envision, people
 12 buying a forklift. You should have leased the forklift.
 13 We made -- we had to do a memo showing how -- what we
 14 did which would have saved the government and did, in
 15 fact, save the government tens of thousands of dollars
 16 over the life of that forklift, but they didn't want us
 17 purchasing equipment like that.
 18 Q Okay.
 19 A So that was one. I think there was a camper
 20 top to a pickup truck -- we -- we did small deliveries
 21 where you didn't need to rent a huge box truck which,
 22 you know, cost us money obviously. So we had an
 23 undercover pickup truck. We just bought a camper top
 24 for it, 600 Bucks, 800 Bucks, something like that, so we
 25 could put -- I think it held 25 or 50 cases of

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1 cigarettes so we could do deliveries to the under --
 2 other operations around the country and not have to
 3 drive a big truck. Well, we couldn't do that either.
 4 We had to donate that to a police department.
 5 So those were the mistakes we made early on
 6 because, again, there was no process and I think when
 7 you read the OIG report, they were very critical of
 8 that. 24 operations did it 24 different ways.
 9 Q Okay. The 2005 churning policy memorandum, I
 10 think you said it was two or three pages long, is that
 11 right?
 12 A Correct.
 13 Q And I have not seen a copy of it. Do you have
 14 a copy of it here with you?
 15 A No.
 16 Q But you had access to it in 2006 and --
 17 A Yeah. That's what they gave --
 18 Q Okay.
 19 A That's what they gave you. And it was from a
 20 guy named Bouchard who was deputy director or deputy
 21 assistant director, I forget his job title, and it was
 22 actually written before we even had churning authority.
 23 Or we, our operation. And so that was our guide.
 24 Q Okay. And are you familiar with a separate
 25 churning memorandum that was issued in 2011 by the ATF?

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1 A Yes.
 2 Q Okay. Did you ever receive a copy of that?
 3 A Yes. I got an e-mail of it. I don't have a
 4 copy of it with me but, yes, I am familiar with it.
 5 Q Okay. And did you receive any training at that
 6 point on, you know, how to run or operate churning
 7 accounts?
 8 A No, just the opposite. We became the trainer.
 9 Almost every undercover operation came to Bristol and we
 10 set up their -- their undercover operations for them.
 11 So we would show them -- I'm not being critical of ATF
 12 agents because I didn't know it either. You know, if
 13 you're a government worker you've never held a real job,
 14 right? You -- you go -- the government pays you every
 15 two weeks. You -- you have government forms to fill out
 16 but, you know, our guys wouldn't know what an invoice or
 17 BOL was or a shipping document or what a freight
 18 forwarder was.
 19 Q Uh-huh.
 20 A I mean, you just wouldn't and I didn't either
 21 until we started this. So hundreds of agents and law
 22 enforcement officers from around the country came
 23 through Bristol and we sat them down and Chris, Jason,
 24 Wendi were all good about taking their time and helping
 25 them set up. It sounds silly. I'll give you an example

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1 of what I'm talking about. ATF didn't have the
 2 foresight -- very -- phenomenal work our guys did on
 3 biker cases and -- and violent crim -- do -- nobody in
 4 the country does better. But the white-color crime
 5 work -- world is a different beast, okay? So our guys,
 6 the undercover agents who had approval to do things from
 7 Department of Justice, churning cases, didn't know how
 8 to get -- they would go to rent -- in fact, right here
 9 in Raleigh -- to go rent an undercover warehouse. Well,
 10 a real estate agent requires proof of insurance, proof
 11 of incorporation, proof of money in bank accounts. You
 12 got to -- you can't just be -- have an undercover
 13 driver's license and walk into a place and expect them
 14 to rent you a very nice warehouse.
 15 Q Uh-huh.
 16 A And worse than the real -- real estate agents
 17 were the insurance agents who before -- because the real
 18 estate agent required you to have insurance on the
 19 property. Well, you can't put down you're the
 20 U.S. Government running an undercover operation. And so
 21 that's really -- early on when the new memo came out we
 22 got sucked into and I became -- I -- I joke. I became
 23 half landlord, half manual labor, half logistics manager
 24 because an operation would open up -- and I'll -- in
 25 Oklahoma and the guy would call up, hey, I hear you're

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1 the guy, can we come over? So him and his boss, the
 2 task force officers, everybody would come over. All
 3 right. Look, we found a warehouse, but they won't rent
 4 it to us. Hey, we can't get insurance for it. We can't
 5 even get the damn internet in the building because the
 6 cable company -- we don't have a credit history. I
 7 mean, it was silly stuff. I mean, those are the things
 8 where ATF did not do very well.

9 Q Okay.

10 A So these guys would call headquarters -- and I
 11 didn't know any of these folks. They'd call
 12 headquarters, they'd call the tobacco branch and say,
 13 hey, how do we do this and they'd say, call Tom, or call
 14 Bruce or any of the other guys in our office.

15 Q All right.

16 A So they would all come to Bristol and we would
 17 often backstop their stuff until it could transition to
 18 their name. So you'll see and I'm sure you guys have
 19 the records Tom's of Oklahoma or Tom's of Kansas City
 20 and that was to identify that that was one of our
 21 undercover warehouse operations being run by another
 22 agent or agency, FBI or other agencies, and that we had
 23 a hand in it so that we could account for that. So
 24 that's why --

25 Q Okay.

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1 A -- you would see some odd company.

2 Q Is there also a Tom's of Winchester?

3 A Yeah. There's -- I mean, there's dozens of
 4 Tom's.

5 Q Okay.

6 A And the -- there are also other operations that
 7 had their own name that were able to backstop
 8 themselves. So, you know, Bob's Big Boy of Oklahoma,
 9 because it says that doesn't mean it was an operation.
 10 It just means that they were able to through their own
 11 law enforcement contacts get their operation
 12 backstopped.

13 Q Uh-huh.

14 A And what I mean by backstopped for -- if you
 15 want me to expand on that, I'll be happy to -- is, you
 16 know, we were dealing with not just our operation but
 17 the FBI, HSI, Homeland Security, Customs, FDA. We're
 18 dealing with very good, sophisticated crooks. And I
 19 know the government lawyers hate when I say this, but
 20 they had better lawyers and better accountants than we
 21 did. They had more of them and they could pay them a
 22 lot more and some of our crooks are worth a Billion
 23 Dollar company. And we had to make sure -- like some of
 24 our guys would be driving on cars that the tags came
 25 back not on file. Some of our guys had no undercover

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1 credit card. Some of our guys had no undercover
 2 driver's license, our guys meaning ATF around the whole
 3 country.

4 Q Uh-huh.

5 A So they came to us and said, hey, look, we
 6 can't put this in our real name. We can't rent this
 7 building in our real name, Joe Blow, can you guys do it
 8 for us? And that's how you'll see all of these
 9 undercover operations. Some were sting operations.
 10 Some were tattoo parlors. Some were biker houses. We
 11 actually owned or leased several undercover biker houses
 12 because we were backstopped. So when a -- when a crook
 13 ran a Dunn & Bradstreet -- and one of the operations got
 14 burned because a guy run -- ran a \$19 Dunn & Bradstreet
 15 and saw that that company had no credit history. So
 16 supposed to be this huge, big international crook and
 17 yet they have no credit history. So it didn't take very
 18 long for -- for our guys, meaning federal law
 19 enforcement agencies, to understand that they needed a
 20 better backstopping system than ATF was providing or
 21 some of the other agencies.

22 Q Okay. Let -- let me ask you about -- you were
 23 explaining earlier that you -- you had to obtain
 24 authority from main Justice and I think you did that on
 25 two separate occasions. That was a written request, is

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1 that right?

2 A Correct.

3 Q Okay. In your written request did you have to
 4 include some kind of a description of your background
 5 investigation or the background of the investigation
 6 that you wanted to pursue?

7 A Justification which would be, I guess,
 8 background and everything else.

9 Q Okay.

10 A For instance -- I'll give you an example if
 11 you'd like.

12 Q Sure.

13 A One I remember -- again, this is a document
 14 that's five, six years old. We were talking about
 15 Native American trafficking which in 2006 was a huge
 16 problem, unlicensed -- 30-something unlicensed factories
 17 in the United States dumping tens of millions of dollars
 18 worth of product into the marketplace absent tax,
 19 counterfeits moving through the reservations, drugs,
 20 guns going back and forth across the border. So we
 21 wrote that up in -- in several paragraphs ti -- titled
 22 Native American Trafficking, boom, and so we were able
 23 to work all the corrupt manufacturers and unlicensed
 24 manufacturers that were doing anything that was detailed
 25 out in that background memo.

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1 Q Okay. And I think you've probably answered
2 this next question for me, but did you have to include
3 an identification of the suspect or the target that was
4 involved in your vest -- your investigation?
5 A I believe now you do. Then we didn't. My --
6 mine was the umbrella. My operation, okay, was the
7 umbrella operation so ours was much broader. And,
8 again, I haven't read it in four or five years, but it
9 would be a category of crimes as opposed to -- I didn't
10 list the company in China. When we -- there's a section
11 on counterfeits, okay?
12 Q Uh-huh.
13 A I didn't list all the crooks in China that were
14 making counterfeit cigarettes and pharmaceuticals. I
15 just put Chinese counterfeit or counterfeit cigarettes
16 and goods coming in illegally imported into the United
17 States. That's it. I didn't put -- I didn't list the
18 background. I believe now you have to. Back then we
19 did not.
20 Q And when you say now you have to, are you
21 talking about after the 2011 memorandum came out?
22 A Correct.
23 Q Okay.
24 A Yeah. Yeah. They require more detailed links
25 to organized crime, terrorism, violent crime --

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1 Q Okay.
2 A -- massive fraud. I forget what the categories
3 were. So you have to show how this is tied to organized
4 crime or violent crime.
5 Q Okay.
6 A I don't want to speak for ATF, but that's my
7 understanding of -- of where the policy is now versus
8 where it was in 2006.
9 Q So your understanding is that after 2011 if you
10 were going to pursue a specific target that you would
11 have to obtain some kind of authority or approval to
12 pursue that specific target?
13 A They don't allow umbrella cases anymore is what
14 I'm told.
15 Q Uh-huh.
16 A So I couldn't put Native American trafficking.
17 I -- I -- it's -- my understanding, and I'm only
18 speaking from my understanding, is that you'd have to
19 spell it out. Who are the crooks on the reservation
20 that are --
21 Q Uh-huh.
22 A -- selling guns, drugs and -- and illegal
23 tobacco? You know, who were the Chinese factories
24 and -- and how do you know that? That's my
25 understanding. I haven't prepared one. I don't even

55

1 know if ATF has approved one since then.
2 Q Okay.
3 A But it has to be more specific. They -- they
4 basically said no more umbrella investigations.
5 Q And that's post-2011, correct, or starting in
6 2011?
7 MR. KELLY: Just lodge an objection to the form
8 and just make clear that, you know, we're representing
9 Mr. Lesnak's information from 2011 through the end of
10 2012.
11 MR. MARSHALL: Uh-huh.
12 MR. KELLY: Anything after that, you know, is
13 not acquired in the scope of his employment just so
14 we're precise on -- on date ranges.
15 MR. MARSHALL: That's fine.
16 BY MR. MARSHALL:
17 Q And I'll -- I'll try and narrow the question
18 for you a little bit. From the beginning of 2011 until
19 the end of 2012 was it your understanding that if you
20 were going to pursue a specific target that you had to
21 obtain specific approval from the ATF or the DOJ in
22 order to do that in light of the 2011 memo?
23 A You always had to obtain approval. I believe
24 the new approvals required links to terrorism, organized
25 crime, violent crime or massive tax fraud. I may have

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1 missed a category but that's --
2 Q Okay.
3 A -- that's my understanding.
4 Q And I'm sorry. That was links to terrorism,
5 organized --
6 A Terrorism, violent crime, organized crime,
7 massive tax fraud -- or massive fraud. I don't -- I
8 don't even think it said tax fraud but massive fraud.
9 Q Okay. And, again, my next question is covering
10 the same time period, all right, so 2011 until the end
11 of your retirement. Did you have an understanding one
12 way or another that your written request for
13 authorization had to describe the technique that would
14 be used to produce proceeds from an operation?
15 A I'm sorry. Can you say that --
16 Q Sure.
17 A -- one more time?
18 Q Yeah. Were you ever aware of any requirement
19 that you had to describe the technique that would be
20 used in your operation to produce proceeds from a churn
21 account? Well, let me -- let me back up a little bit.
22 A Yeah. Thank you.
23 Q That's all right.
24 A Can you clear that up a little bit?
25 Q All right. Describe for me the ways you can

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15 (Pages 57 to 60)

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1 generate money from a churning account. I assume
2 there's a couple different ways so let's start with
3 that.
4 **A Correct. The government I'll use the term**
5 **fronted you money, right. They gave you I believe it**
6 **was 50,000. I'm -- I'm -- I'm talking off the top of my**
7 **head but I think it was -- 50,000 sticks out for some**
8 **reason that you can use to start your investigation.**
9 **Hypothetically you buy ten cases of Marlboros for \$10.**
10 **You sell them for 20. Your profit is \$10.**
11 **Q Uh-huh.**
12 **A Okay? That's a \$10 profit that goes into your**
13 **churning account run by an ATF agent, supervised by**
14 **other people but -- so there's a \$10 profit in that**
15 **account so working off that simple math. The next week**
16 **you got to travel to Washington, D.C., to brief your**
17 **management team and Department of Justice or do a**
18 **congressional briefing which we have done. You got --**
19 **you need a dollar of that money. You do a -- you do a**
20 **travel authorization request saying, hey, I need to**
21 **travel to Washington, D.C. to do a congressional**
22 **briefing. When you come back you hand your hotel**
23 **receipts, your invoice and they give you a dollar back**
24 **to pay for your trip. That was all explained on -- on**
25 **the process of churning or what you could use your --**

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1 **Q Okay.**
2 **A -- churning funds for and the mechanism to buy**
3 **and generate profit.**
4 **Q And let me see if I can get a little more**
5 **specific with that. So you gave a good example which**
6 **was you obtained Marlboros at \$10 a carton, you sell**
7 **them at \$20 a carton so you have a \$10 profit, right?**
8 **A Yes.**
9 **Q Who would you sell the Marlboros to in order to**
10 **generate the \$10 profit?**
11 **A It depend -- I mean, we literally had hundreds**
12 **of defendants. Nationwide we had hundreds of defendants**
13 **so you'd have -- we'd have to talk which specific**
14 **transaction. Some were sold to Armenia and some the**
15 **Chinese, some the Russians; some we traded for**
16 **counterfeit. We had a huge operation. We took**
17 **millions -- maybe like \$11 Million worth of counterfeit**
18 **cigarettes off the street that we were trading genuine**
19 **Marlboros for counterfeit cigarettes which obviously we**
20 **didn't resell, we destroyed -- or U.S. Customs destroyed**
21 **for us. So the answer is hundreds of people.**
22 **Q Okay.**
23 **A And it just -- it really just depended on what**
24 **that particular operation needed.**
25 **Q But the -- the people that you're describing**

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1 for me I think are targets or bad guys in an
2 investigation; that's who you would sell the cigarettes
3 to?
4 **A And -- and/or buy contraband from them, yes.**
5 **Q Okay. Explain to me how you would generate**
6 **money if you bought contraband from them.**
7 **A You don't. And that's where you need the**
8 **profit to offset the costs of the --**
9 **Q Okay.**
10 **A -- investigation to take counterfeits off the**
11 **streets or to buy narcotics or guns or stolen property.**
12 **Q Okay.**
13 **A I mean, just -- that's what -- that's the**
14 **beauty of churning is we don't have to take taxpayer**
15 **funds to -- which, hey, look, if I went to ATF today and**
16 **said, I need -- I need to buy five keys of cocaine from**
17 **the Hells Angels in Montreal who are bringing it down**
18 **into Albany, New York, and distributing it, ATF could**
19 **not come up with that money.**
20 **Q Okay.**
21 **A And they sure couldn't come up with that money**
22 **quickly. I don't want to speak for ATF. I'm just**
23 **giving you an example.**
24 **Q That's fine.**
25 **A The nice thing about churning was if that was**

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1 **linked to your case, you had \$100,000, you can make a**
2 **huge case against the Hells Angels and we did just that.**
3 **We ran huge biker operations that we funded, that we --**
4 **we used our proceeds and then ultimately they then**
5 **started their own investigation on international drug**
6 **traffickers, on violent criminal groups. So -- but you**
7 **didn't make money when you bought narcotics, right? We**
8 **didn't resell narcotics, we --**
9 **Q Okay.**
10 **A -- we didn't resell stolen cars, we didn't**
11 **resell counterfeit pharmaceuticals or counterfeit**
12 **cigarettes so you lost that. So you needed to generate**
13 **a profit to offset those losses and those losses were in**
14 **the millions.**
15 **Q Okay.**
16 **A This was not -- this was not insignificant.**
17 **Q Okay. So I understand the churning account had**
18 **costs that were associated with it when -- when you had**
19 **to buy counterfeit items. And, again, what I'm most**
20 **interested in is, you know, the method by which you**
21 **would generate the profits or the proceeds, whatever you**
22 **want to call it.**
23 **A I could give you 15 examples and they're all**
24 **different --**
25 **Q Yeah. But that's --**

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16 (Pages 61 to 64)

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1 A -- if -- if you want those or you don't want
2 those.
3 Q I -- I don't want to get that specific, but
4 what --
5 A Okay.
6 Q -- I think I hear you saying is those sales
7 would usually be made to defendants or future
8 defendants --
9 A Right. Through --
10 Q -- criminal defendants?
11 A We were operating 11 different informants,
12 okay, at the time. We had 11 different undercover
13 warehouses around the country, we, ATF. Our other
14 agencies -- our sister agencies had their own, but just
15 ATF, we had 11. There were a total of 20 -- whatever,
16 24 churning operations. So oftentimes the product would
17 move through the informants or move through the
18 undercover operations or move through the undercover
19 agents so it -- like I said, we -- to give you an exact
20 answer, we'd have to look at the specific defendant and
21 see, hey, look, did -- did -- and I'll use Chris Small
22 as an example. Did a bad guy come in to Chris Small and
23 say, hey, I want to trade a kilo of cocaine for
24 cigarettes? So that -- that deal would have run through
25 Chris Small. If they came into one of the Hells Angels

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1 biker houses that we ran in -- in Virginia or in the
2 midwest or in California, that would have been handled
3 slightly different and always to protect. We would
4 never have generated an invoice to the bad guys
5 obviously in that case --
6 Q Right.
7 A -- because those loads were portrayed as being
8 stolen, right, or, hey, we hijacked a truck en route to
9 Wal-Mart or Costco or Sam's Club or to 7-Eleven. So
10 most of the undercover operations around the country
11 operated under the -- were hijackers, steal -- thieves,
12 drug dealers, gun traffickers. That was their -- their
13 MO. We were the white-collar guys.
14 Q Okay.
15 A So it would really just depend on -- on -- so
16 that product -- those Marlboros would be invoiced
17 depending on who the target was.
18 Q Uh-huh. And, again, they were sold to the
19 targets, correct?
20 A Ultimately the targets paid, yes.
21 Q Right.
22 A But there were of -- oftentimes intermediaries.
23 Sometimes it was Big South, sometimes it was Big Sky,
24 sometimes it was Tom's of Baltimore or Tom's of Kansas
25 City, Tom's of Oklahoma, Tom's of whatever. And so

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1 you'll see a bunch of invoices of Tom's of whomever.
2 Q Uh-huh.
3 A Well, that's showing that it was part of the
4 undercover operation and that's how the money would
5 flow.
6 Q And then those entities, Tom's of Baltimore,
7 Tom's of Winchester, Big South, they would then -- if
8 they acquired the product from you, they would sell to
9 targets on your behalf, is that correct?
10 A Correct. So the invoice would go out from the
11 warehouse, okay -- and I'll be happy to explain that
12 process if you'd like or --
13 Q We'll -- we'll get into that --
14 A Okay.
15 Q -- later on, I think. Okay. Well, let me
16 confine this next question to 2008, 2009 and 2010. Were
17 there ever any times during those years that you sold
18 tobacco products to an entity that was not the subject
19 of an investigation or not a target or not a future
20 criminal defendant in order to generate funds for your
21 operations?
22 A It wasn't for that purpose, but did we sell
23 product to people who didn't become targets? The
24 answer's yes and here's how that all worked: Somebody
25 would come to you and ask you for something or try to

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1 sell you something. Well, as you know, you don't know
2 right away who all the crooks are. In fact, half these
3 manufacturers I had never heard of before. I don't
4 smoke so -- some crook would come in and, you know --
5 I'm not going to name names but, you know, I'd say,
6 shit, I didn't even know they made cigarettes, one of
7 those things or, no, I never heard of that wholesaler in
8 North Carolina.
9 So we would do the first deal. It would be a
10 hundred percent legal at least as far as we knew.
11 There'd be an invoice, there'd be a sale, there'd be a
12 deposit. Do a second deal, do a third deal --
13 Q Uh-huh.
14 A -- while ATF headquarters or the FBI or some
15 other agency would vet these guys. And what typically
16 happened -- the reason -- and -- and when you see the
17 charts you'll better understand. What we found quickly
18 was that because I didn't know them while I'm sitting in
19 Virginia doesn't mean this wasn't a huge target to our
20 guys out in Washington State which was one of the very
21 first targets we ran into or down in Mississippi so we
22 always wanted to make sure that, look, we documented
23 those transactions. If they later become illegal -- and
24 at the time you -- I had a saying that I've used and
25 everybody laughed at but I used it almost from the day

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1 we started the operation. 90 percent of our business
 2 was a hundred percent legitimate. The smart crooks, the
 3 smart crooks don't cheat a hundred percent. The corrupt
 4 manufacturers, and you guys know who many of them are,
 5 they don't cheat a hundred percent. You get caught. If
 6 you cheat 10 percent -- and I've had them -- I've sat in
 7 meetings with the crooks, the large manufacturers, some
 8 of the largest in the country, who told me, look, if you
 9 cheat 10 percent you'll never get caught because we
 10 would list -- list it as waste, right, that -- it's --
 11 even if we get audited by TTB or IRS, we would just
 12 chalk that 10 percent up to waste.

13 Those guys don't want to deal with crooks.
 14 ATF -- like I said, I -- I brag about our guys. Tattoos
 15 from their ears down to their fingertips, big muscular
 16 men, lived in biker houses for years. Got to love those
 17 guys because I wouldn't do it. They can't meet the head
 18 of one of the corrupt tobacco manufacturers because that
 19 tobacco manufacturer who's a white highly-educated guy
 20 with good lawyers and good accountants ain't going to do
 21 business and sure isn't going to do multimillion dollar
 22 business with some guy who looks like he's a Hells
 23 Angel.

24 Q Uh-huh.
 25 A Okay? So the role we played in that -- in that

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1 scenario was we would do deals and later on -- sometimes
 2 it took a year or two to determine whether that
 3 transaction was legal because it would depend -- we'd
 4 have to track -- if I sold you something, okay -- legal
 5 deal. You paid, you wrote a check, it went into the
 6 account, no problem. Boom. Another deal, another deal
 7 next week. So three, four deals later ATF headquarters
 8 comes back to me or one of the other agencies and said,
 9 hey, this is a huge target of ours. Holy crap, he's
 10 supplying these guys in Chicago, tied to Italians,
 11 Russian, whatever, Armenians. So we go, hey, that's
 12 fantastic. We got the audiotapes, we got the invoices,
 13 we got the wire transactions, you know, here's your
 14 evidence.

15 So these guys would come down. They'd come
 16 down to Bristol. They'd pick up copies of all their
 17 evidence. They would interview Chris or Jason or Wendi
 18 or whomever and then they would say, hey, can you do a
 19 few more deals and then can you cut us in? And so
 20 typically what happened -- I'm talking hundreds of
 21 times -- Chris or Jason or somebody or me would say,
 22 hey, look, instead of you coming to pick it up or us
 23 delivering it FedEx or UPS freight, we'll just deliver
 24 it to you. This way, you know, we make sure we control
 25 the delivery and there's no paperwork.

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1 Q Uh-huh.
 2 A An undercover agent drives the truck. He -- he
 3 now is doing a face to face with the bad Italian guy in
 4 Chicago and he's cut us out which is good. Now he says
 5 to the bad guy in Chicago -- and like I said, this
 6 happened hundreds of times -- hey, my boss is fucking
 7 jacking -- he's -- he's jacking these prices up on you.
 8 He's making a killing. Why don't you deal directly with
 9 me. We'll cut him out and I'll make an extra buck a
 10 carton. That's how we started undercover operations
 11 throughout the country. And more importantly, that's
 12 how we protected the sanctity of the big undercover
 13 operation because when that case got knocked off and
 14 those bad guys got indicted, we had plausible
 15 deniability. You know, hey --

16 Q Okay.
 17 A -- you were dealing with us, everything was
 18 fine. You go and deal with some street thugs and this
 19 is what happens. So that's how we were able to stay
 20 covert for seven years.

21 Q Let me see if I can condense that a little bit.
 22 A Thank you.
 23 Q So --
 24 A I -- I --
 25 Q No. I appreciate your --

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1 A Can I stand up --
 2 Q -- your answer.
 3 A -- while you're --
 4 Q Absolutely.
 5 A Thank you.
 6 Q Yeah. Do you need --
 7 MR. KELLY: Do we want to take a break? We're
 8 at an hour.
 9 BY MR. MARSHALL:
 10 Q Yeah. Would you like to take a break?
 11 A Yeah. If I could just walk around for a
 12 minute.
 13 Q Yeah. That's fine.
 14 MR. VANN: Can we put on the record he's having
 15 back and neck surgery? He gets numb.
 16 MR. KELLY: Yeah. We --
 17 MR. VANN: Is it on the record though?
 18 MR. KELLY: Oh, yeah.
 19 MR. VANN: I think we should do it for purposes
 20 of -- of the audiotape. He's -- he's getting numb --
 21 MR. MARSHALL: That -- that's fine.
 22 MR. VANN: -- and he actually has to stand for
 23 a medical condition so the fact that he's leaning and
 24 everything I want noted for the record.
 25 MR. MARSHALL: Sure.

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18 (Pages 69 to 72)

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1 MR. VANN: Thank you.
2 THE WITNESS: And the hydrocodone has not
3 kicked in because I didn't take it --
4 MR. MARSHALL: Okay.
5 THE WITNESS: -- so --
6 MR. MARSHALL: Well --
7 THE WITNESS: I don't want to be rude but I --
8 MR. MARSHALL: No, you're not being rude at
9 all.
10 THE WITNESS: And I know everybody's billing by
11 the hour so I don't want to drag this on any longer. I
12 just need to get --
13 THE REPORTER: Do you want to go off the
14 record?
15 THE VIDEOGRAPHER: We are going off the record.
16 The time is 10:18 a.m.
17 (Whereupon, there was a recess in the
18 proceedings from 10:18 a.m. to 10:30 a.m.)
19 THE VIDEOGRAPHER: We are back on the record.
20 The time is 10:30.
21 BY MR. MARSHALL:
22 Q Mr. Lesnak, I don't want to be repetitive with
23 my questions. I just want to make sure I understand
24 what I think you were summarizing right before we took
25 our break. I think I had asked you during the years

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1 2008, 2009 and 2010 to describe some of the methods by
2 which you generated proceeds for your operations. And
3 you correct me if any of this is wrong, okay? But one
4 of those methods is selling cigarettes directly to
5 existing ATF targets or individuals or companies that
6 you know are likely to be criminal defendants, is that
7 correct?
8 A Correct. That's one of the ways, yes.
9 Q Okay. And another one of the ways was -- I
10 think you said certain people would come to you all and
11 ask to do business with one of your operations -- and
12 I'll use Big South. Is -- is that fair to use Big South
13 as an example of one of the entities somebody would
14 approach?
15 A That's one of 11 of the primary ones, yes.
16 Q One of the 11. So individuals who were not
17 necessarily defendants or targets at that time would
18 approach an entity like Big South and would ask do
19 business with Big South and you all would arrange for
20 that business to be conducted and that sometimes a year
21 or two later, that same entity could become the subject
22 of some kind of a criminal investigation, hence, they
23 could become a target, is that correct?
24 A That's correct.
25 Q Okay.

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1 A Sometimes it took weeks. Sometimes it took
2 days. Sometimes right away we knew they were crooks.
3 Q All right.
4 A It really -- like I said, we had so many
5 defendants that it -- you'd almost have to go defendant
6 by defendant, but the answer is, yes, that -- sometimes
7 they came directly into Big South. I mean, it was a big
8 warehouse operation. I --
9 Q Uh-huh.
10 A I'll -- I'll editorialize here but, you know, I
11 used to say, build it and they will come. We didn't go
12 after bad guys. They came to us.
13 Q All right.
14 A Which is slightly different than most
15 undercover operations. Most undercover operation, you
16 know a guy selling drugs, you approach him, say, will
17 you sell me drugs? When you build something like Big
18 South and -- and as you guys know in the tobacco
19 business, it's a small world. Everybody knows
20 everybody. Once we started doing business with one of
21 the big crooks who we later indicted and just put him in
22 jail, word got around and they would come to us and say,
23 what are you moving their product for, you need to move
24 our product, that type of thing. So success breded --
25 breeds success and that's how so many defendants came to

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1 us. That's how so many different federal agencies came
2 to us --
3 Q Uh-huh.
4 A -- because their bad guys were coming to us.
5 Q Okay.
6 A And so we'd get the phone call or typically ATF
7 headquarters would get the phone call and they'd say,
8 you need to call Bristol.
9 Q All right. Now am I correct that for these
10 individuals that we're talking about -- and these are
11 people or companies who are not currently the focus of
12 an investigation, they're not currently a target, but
13 certain people would come to one of your operations and
14 then a couple years later, you know, they might become a
15 target or you might investigate them at that point. In
16 all those instances were they coming to you or were you
17 all going to them ever?
18 A Well, there was a -- there were occasions --
19 another agency called us up and said, hey, look, we have
20 a JTTF case on this guy. They're in the business. Can
21 you see if maybe you guys can -- we knew years ago --
22 this was years before we even had an operation. You
23 guys had done business with them. You think maybe you
24 can do business again and maybe introduce an undercover?
25 So, you know, we asked Chris to do it. Him and

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19 (Pages 73 to 76)

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1 my boss went, met with the bad guys and we did, in fact,
2 in that case make them a very good deal on product so
3 that they would start doing business with us again.
4 Q All right.
5 A So that did happen, but as a general rule bad
6 guys came to us or good guys came to us. And -- and the
7 problem -- this is why I say 90 percent of the business
8 was a hundred percent legit. This was a public
9 building, like a retail store, and I had run --
10 previously run storefronts in -- when I worked in
11 Memphis. A customer walks in, I'll say 7-Eleven.
12 They -- they weren't a customer at least as far as I
13 knew. But 7-Eleven guy, the manager walks in and he
14 sees, you know, \$3 Million worth of cigarettes and says,
15 I want four of these, two of these, two of those, two of
16 these, can you deliver them to my store? You can't say
17 no. I mean, we're in the tobacco business. You're
18 willing to pay the price on the shelf.
19 Q Uh-huh.
20 A So you had to do legitimate business. This is
21 what I always explained to ATF headquarters is that
22 that's different than an operation saying, we stole
23 these cigarettes and, you know, only selling them to one
24 bad guy in exchange for drugs. So our business had to
25 be 90 percent legitimate because 90 percent of our -- of

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1 the main bad guys were legitimate -- they're legitimate
2 or 90 percent legitimate and 10 percent illegitimate.
3 So I would often get a call -- actually, it was
4 usually Chris. On occasion Wendi would call me up and
5 say, hey, this guy's here. There's a huge case going on
6 in Kentucky, fantastic case our guys did a great job on,
7 and it started with this guy who drove his van into our
8 warehouse. I never heard of the guy. He had just been
9 through North and South Carolina picking up Newports and
10 headed north and he stopped in our warehouse, heard
11 about us. I -- I believe it was Chris and I don't want
12 to give too many details because the case went to trial.
13 The first half of the people got convicted but the
14 other -- second half of the case hasn't been
15 adjudicated. But the bad guys said, hey, I want to buy
16 this, this and this and this. I remember Chris --
17 specifically Chris calling me up. He said, hey, he
18 wants the last of the Newports. I said, hell, no, you
19 can't sell them. They're like gold. I mean, we
20 typically tried saving Newports for drugs. I -- I know
21 that sounds stupid but -- we -- we would get a lot of
22 drugs for Newports, a lot of guns for Newports. He
23 said, well, he'll take all the Marlboros we got. How
24 many Marlboros we have left on the shelf? We got 20
25 cases. Sell him ten. That -- that's -- that was every

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1 day, sometimes two, three, four times a day.
2 So in that particular instance it would be an
3 invoice from Big South to that particular guy and once
4 Chris told me, hey, he had loaded up his van with
5 Newports in North and South Carolina, I didn't have to
6 be told it was a bad guy. I -- I had never heard of him
7 but I knew this was obviously in all likelihood crime.
8 So the problem with cigarettes is that the bad guys
9 would take every Marlboro you had and every Newport you
10 had every day, every day.
11 Q They were the most popular brand?
12 A Absolutely. And we couldn't -- obviously we
13 couldn't do that. We couldn't sustain that. I mean,
14 literally I could sell a truckload of Newports every day
15 to the Chinese organized crime in New York City without
16 exception, every single day. So we had to -- I don't
17 know what the word is -- quota it out and try to move
18 that bad guy to another operation so that they can
19 supply their own product, collect the evidence and then
20 find a pretext to not deal with that bad guy.
21 Now in the case I just spoke about the ATF guys
22 did such a good job they immediately took this target,
23 tied him to a huge international operation and then
24 opened up their own investigation and then he was off
25 our -- our back because he literally would have come to

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1 our warehouse every day.
2 Q Okay.
3 A So -- so the answer to your question is it's --
4 it was really a mix. On a few occasions we said, look,
5 that's a significant terrorism target, can you please
6 introduce an undercover from our agency and another
7 agency? But as a general rule it was morely [sic] vans
8 coming through and saying, hey, we'd like to buy what
9 you have.
10 Q All right. Have -- have you described for me
11 to the best of your ability the way that you would
12 generate funds for your operations from 2008 to 2010?
13 A The best of my ability? We could talk for two
14 days, but I know nobody wants that.
15 Q In -- in general terms.
16 A The answer is as a general rule we -- we had a
17 certain mandate. You couldn't make too much money, you
18 couldn't lose too much money. If you lost too much
19 money, your case was over. They weren't -- Department
20 of Justice wasn't giving you any more, okay? So we had
21 to always try to balance, okay, we need enough money to
22 buy the counterfeits, to buy the drugs, to buy the guns,
23 to buy the pharmaceuticals, whatever, and -- and support
24 at the initial thing all these other operations around
25 the country that -- that operated through us and under

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1 our umbrella. So every day that was a discussion we
2 had. But, yeah, you made money by the only thing we
3 could. We didn't make money by selling counterfeits or
4 stolen property or anything like that.
5 Q Right.
6 A Money in the churning account was from the sale
7 of cigarettes.
8 Q Okay. And those cigarettes were either sold to
9 existing targets or individuals or entities that could
10 in -- at some point in the future become a target,
11 right?
12 A Right. 90 percent of the business was a
13 hundred percent legitimate.
14 Q Okay. So that is the technique that you used
15 and that folks within your operation used in order to
16 generate proceeds for your operations, correct?
17 A Well, you make it sound like it was a technique
18 like we did the business to make money. That wasn't the
19 case. We wanted to make sure we were making money to
20 support a long-term undercover operation to keep it
21 going.
22 Q Uh-huh.
23 A So you couldn't lose money on every deal. We
24 lost money on a lot of deals and probably -- if you did
25 the math, probably -- probably lost money on most deals,

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1 but you tried to make up the money on the other deals to
2 offset the losses on literally millions of dollars in
3 counterfeits or pharmaceutical --
4 Q Right.
5 A -- or guns or drugs which we obviously did not
6 resell.
7 Q And when I refer to proceeds, just so we're
8 clear, I'm talking about money that could then be used
9 for your operations.
10 A Correct.
11 Q Those kind of proceeds.
12 A Churn --
13 Q Okay.
14 A We're talking churning proceeds.
15 Q Okay. Now the techniques that you've described
16 for me, is that something that you would have to put in
17 your memorandum, you know, that went up the ladder to
18 Washington? Is that something that you would have to
19 describe when you were requesting churning authority?
20 A Well, I -- I -- I tell you the truth, it's been
21 so long since I've seen the memo. I -- I think
22 everybody at main Justice knew what churning was and I
23 didn't have to explain it, that it was for the
24 purchase --
25 Q Okay.

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1 A -- purchase and -- you know, buying and selling
2 and trading of -- of contraband tobacco.
3 Q Okay.
4 A So I -- I don't know if -- I could tell you
5 every month we did a monthly report, we did a financial
6 report. Every month we wrote dozens and then ultimately
7 thousands of reports of interview which documented those
8 transactions.
9 Q Right.
10 A But did we go to main Justice before that
11 transaction that I described where a guy shows up with a
12 van? Did I have to do a memo? No, I was not required
13 to do a memo.
14 Q Okay.
15 A However, the agent who took over the case in
16 Kentucky, he generated a memo and that was the
17 justification for opening up his case. So those were
18 what we would call spinoff investigations which we
19 document on that chart over there.
20 Q Okay. You're familiar with the OIG report from
21 September of 2013, correct?
22 A Yes.
23 Q Okay. And I'm sorry. We should have gotten
24 you a binder --
25 A That's okay. I'm --

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1 Q -- before we started this.
2 A Oh, I'm --
3 MR. MARSHALL: Thank you, Joe. And just for
4 the record, we're going to enter this entire binder as
5 Exhibit A.
6 (LESNAK EXHIBIT A, Binder of Documents, Tab 1
7 through Tab 23, was marked for identification.)
8 BY MR. MARSHALL:
9 Q All right. There's a copy of that report at
10 Tab 20. If you could turn to Page 11. And, again,
11 you're welcome to take time to read this report --
12 A Yeah.
13 Q -- if you want, but I assume you're familiar
14 with it and --
15 A I am familiar with it.
16 Q Okay. So the reason I'm asking you this
17 question is if you look up at the top in the first
18 paragraph it states, according to the 2005 memorandum
19 the request, and they're referring to request for
20 authorization, was required to include, and then it's
21 got several different items listed underneath that. If
22 you look at Number 4, at least according to the OIG
23 report, one of the required items was the proposed
24 investigative activity and technique that will be used
25 to produce the proceeds from the operation.

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21 (Pages 81 to 84)

81	1 And so that's -- that's where my question comes 2 from if that helps you. I'm trying to figure out, is 3 that something that you included in your report, your 4 memorandum, to obtain churning authority that you 5 submitted in 2008? 6 A Yes. 7 Q Okay. And would you describe -- and did you 8 describe just in general terms how you were going to 9 generate proceeds from your operation? 10 A Yeah. It was -- I mean, clearly in my memo -- 11 in both memos it said we were opening up a storefront 12 tobacco warehouse undercover operation, buying, selling 13 and trading with the bad guys listed in these 14 subcategories. 15 Q All right. 16 A I mean, that was spelled out in the very 17 beginning of that memo. 18 Q Okay. And you refer -- 19 A When you say investigative tech -- it's my 20 fault. 21 Q That's all right. 22 A I thought you were saying like that this guy 23 would wear a body wire on this date. That is something 24 that -- you know, in the old days we used to have to put 25 the Marantz body recorder -- I don't know if you were a	83	1 A -- that may have been worked under the 2 subcategories, but it was spelled out in there. 3 Q So as long as your proceeds were being 4 generated by selling to individuals or companies that 5 fell within those categories, that -- you had authority 6 to do that based on your 2008 memorandum? 7 A Or buying from them. 8 Q Or -- 9 A Obviously we -- 10 Q Or buying from them. 11 A -- wouldn't sell counter -- we wouldn't sell 12 counterfeit so in those cases the criminal cases were 13 made by buying contraband. For instance, we had a 14 corrupt manufacturer and I'll name them because the case 15 has been adjudicated. We talked in depth to Clay as 16 this being the model of -- of our investigations. We 17 had a corrupt manufacturer in Brazil that moved to 18 Miami. That corrupt manufacturer came to us on what 19 appeared to be legitimate transactions and then quickly 20 started saying, don't report the sales or only report 10 21 percent of the sales, only report none of the sales, and 22 we made that criminal case by buying contraband, not 23 selling contraband. 24 Q All right. 25 A And that would fall under the category of
82	1 prosecutor -- the serial number, the date it was used 2 and match it to the inventory log. That's an 3 investigative technique we were required to do. That 4 was not required in the OIG memo. 5 Q Okay. 6 A But it's -- clearly we put in there that we had 7 an undercover warehouse operation buying, selling and 8 trading in contraband tobacco. 9 Q Okay. Buying and selling and trading in 10 contraband tobacco with bad guys I think as you refer to 11 them as? 12 A Yeah. Anybody -- we were allowed to work 13 everybody in those subcategories. 14 Q Okay. And I'm sorry. Just to make sure I'm 15 clear, the subcategories you're referring to are what? 16 A Chinese organized crime, counterfeits, Native 17 American trafficking, im -- corrupt importers and 18 exporters, corrupt U.S. and -- and foreign 19 manufacturers. In the second one we may have put 20 something in there about violent crime and drugs, I -- I 21 don't remember, or it may have been a subcategory. For 22 instance, in some of these cases we had components that 23 we had documented about drugs and -- and international 24 smuggling and counterfeiting -- 25 Q Uh-huh.	84	1 corrupt U.S. and foreign manufacturers. 2 Q All right. Did your request for churning 3 approval need to contain some kind of a statement as to 4 the time period of the investigation that was at issue 5 or was it more an ongoing-type time period? 6 A There was no deadline. It didn't say you had 7 12 months, five years, seven years. I know other 8 agencies, undercover operations that are still going at 9 ten years -- 10 Q Okay. 11 A -- ten years going. Ours was seven. 12 Q So you were not aware of any requirement that 13 your request for churning approval contain a statement 14 of the time period -- a finite statement of the time 15 period? 16 A The second one may have. I -- I don't -- I 17 don't remember. It's been many, many years. I know 18 when the ATF policy came out, the -- the written one, 19 the formal policy, don't hold me to this, but I think it 20 said you had to do a -- a subsequent memo to extend it 21 another year. I -- I think I remember that. I -- I -- 22 that would have been at the edge of when I was getting 23 ready to retire. 24 Q Right. 25 A But I -- I think they came out with a policy

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1 saying every year you had to do a renewal through ATF
2 headquarters. Now whether ATF headquarters sent that to
3 main Justice, I don't know.

4 Q All right. Do you recall if either of the
5 memorandums, the 2005 or the 2011, required a
6 description of inducement techniques that might be used
7 to, you know, ensure that innocent parties aren't
8 subject to entrapment, things like that?

9 A I'm -- I'm sure -- not in the first one. I
10 know not in the 2005 memo. It's a two-pager.

11 Q Okay.

12 A I'm -- I'm sure it's somewhere in the ATF
13 orders on the -- on the second one. And for those who
14 don't understand, the concern we had on that -- and
15 we're often criticized in the media and to some extent
16 rightfully so. Here's an example that happened to us
17 all the time, us meaning ATF operations that were under
18 our umbrella. A bad guy would come in there with a
19 piece of junk gun worth a hundred bucks and he'd try
20 selling it to you or trade it for [sic] you for
21 cigarettes, for \$500 worth of Newports. If we did that,
22 the only good defense attorney like Joe is going to
23 argue that we entrapped that guy, we induced him.
24 Our -- it was so ridiculous, we -- we so overpaid for
25 that gun he had to commit the crime to do it. On the

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1 other hand, we've been criticized, we meaning ATF, for
2 not buying that gun and putting a crime -- what was
3 potentially a murder weapon back on the streets. I see
4 both sides of it and it's a fine line we walked about
5 not letting guns, drugs, whatever walk, I mean, and
6 we've been criticized on both sides. I'm not -- I'm not
7 in ATF anymore and I don't know how you answer that. I
8 mean, do you let a gun walk? The answer is no so you
9 got to pay what you got to.

10 And we had a gun that was tied to the murder of
11 a taxi driver. The bad guy had shot and killed a taxi
12 driver, drove to our undercover warehouse in another
13 city and traded it for a case of Newports. They do
14 what -- ATF has a gun tracing thing on that bullet,
15 matched it to that homicide in 24 hours --

16 Q Uh-huh.

17 A -- and that's what got -- solved a homicide in
18 D.C. So had we let that gun walk because we didn't want
19 to trade a case -- we meaning ATF -- we didn't want to
20 trade a case of Newports which was worth 1800 Bucks,
21 \$2,000 --

22 Q Uh-huh.

23 A Did we overpay for that gun? You bet we did,
24 but morally I think they made the right call. But I
25 could see why a defense attorney would say, you -- you

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1 entrapped this man into selling you that gun.

2 Q Okay. Did you have to obtain approval from the
3 director of the ATF to start a churning operation?

4 A I'm going to say yes and -- because it went up
5 through ATF headquarters. The memo went from our office
6 in Bristol to our Washington field division, probably
7 through legal counsel I would assume. Then ATF
8 Washington field division, the special agent in charge
9 in my field division would have then either hand carried
10 it or sent it over to ATF headquarters. They would
11 often suggest changes or typos or whatever -- I don't
12 recall them doing it in our case, but they -- they had
13 the right to make input. And then they would hand carry
14 it over to Department of Justice and the first one was
15 approved by the Deputy Attorney General themselves, the
16 second one a slightly lower-level official at Justice.
17 I think they delegated --

18 Q Okay.

19 A -- it down.

20 Q And the second one you're talking about the
21 2008 request for churning approval, the use of --

22 A The more -- the bigger one, the more -- more
23 broader one.

24 Q Okay.

25 A You say 2008. I don't know if that's the case

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1 but --

2 Q Yeah.

3 A -- it was after the first one of 2006.

4 Q Okay. Fair enough. Do you know if the
5 director of ATF signed off on your second request for
6 churning approval?

7 A Whether it was the director or the deputy
8 director, I don't -- I don't know. I mean, it's on the
9 memo. It's --

10 Q Okay.

11 A I don't -- I don't have that memo.

12 Q And how about the Attorney General on the
13 second memo?

14 A It was -- I remember -- I don't remember who it
15 was, but I remember the first one I was proud of the
16 fact the Deputy Attorney General of the United States
17 signed off. The second one was maybe Assistant Deputy
18 and I was disappointed it -- it was delegated down to
19 that assistant level.

20 Q Okay.

21 A You know, just out of ego. That's all. There
22 was no -- no -- no -- didn't change our -- our chart
23 authority. It was just the first one you pay attention
24 when you're a street agent and a Deputy Attorney General
25 signs off on your work product.

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1 Q Well, did you have any understanding when you
2 submitted that second request that you had to get
3 approval from the Attorney General in order for it to be
4 a legitimate operation?
5 A Yes.
6 Q Okay. And then --
7 A Or -- yeah. I think Public Law 102 -- I'm
8 sorry. I didn't mean to cut you off.
9 Q That's all right.
10 A I think Public Law 102 required Department of
11 Justice approval. I don't know if it says the -- the
12 Attorney General himself.
13 Q All right.
14 A I don't -- I don't recall that.
15 Q Are you familiar with a committee referred to
16 as the ATF undercover review committee?
17 A That was set up after the OIG audit, I believe.
18 I think they had one but it was never in effect. It
19 never met. And then I think they put it in effect after
20 the OIG audit.
21 Q You're referring to the 2013 audit?
22 A Of OI -- Inspector General audit? Yes.
23 Q Yes.
24 A Uh-huh.
25 Q Okay. So you're not aware of that committee

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1 being in existence prior to the OIG report that we've
2 discussed?
3 A No. I think they had it. I don't think it
4 ever met. In fact, I think when the OIG report -- I
5 think when I was interviewed by the OIG when they were
6 preparing their report -- I think they had asked me if I
7 had ever met with the -- the committee and I said, what
8 committee? And obviously I had to take them back to the
9 same place I took you --
10 Q Okay.
11 A -- what -- who's -- how did you -- you know,
12 where did your bank account start? We started it.
13 Where did you get your undercover ID? We got it. Why?
14 Headquarters didn't have the mechanism to do it. They
15 told us to do it.
16 Q Okay.
17 A So we didn't know there was an undercover
18 committee. I think they put it in effect, like had
19 people assigned to it to do the job, after the OIG
20 audit.
21 Q Okay. Are you familiar with the position of
22 chief of special operations division within the ATF?
23 A I'm familiar with it, yes.
24 Q Okay. Did you have any reason to believe that
25 approval was required from whoever held that position

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1 prior to setting up a churning account?
2 A It went to headquarters. I don't know who --
3 whose desk it -- it moved through. It makes sense
4 they're in charge of undercover operations, but we
5 didn't have any direct dealings with those guys.
6 Q All right. Did you have any understanding that
7 you were required to maintain any kind of a case
8 management log with respect to your churning
9 investigations?
10 A And we did, yes.
11 Q You did?
12 A Uh-huh.
13 Q What kind of information would go in that log?
14 A Oh, God. We had 5,000 undercover tapes, more
15 than that actually. We had probably hundreds of
16 thousands of pieces of evidence, I mean, a sea container
17 full -- a 52-foot sea container full. Every one of
18 those things got an exhibit number. All of those were
19 logged in the -- in the ATF management log.
20 Q All right.
21 A And the purpose of that, when we went to -- we
22 meaning ATF, went to a sophisticated case management
23 system, my -- my investigation was given a case number.
24 Everybody in headquarters could look at it. They could
25 sign on. They could type in tobacco and it would pull

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1 up every single tobacco case in the country. They could
2 pull up a defendant. And say, for instance -- like when
3 I mentioned earlier that a guy pulls up to our
4 warehouse, well, that would go to headquarters to the
5 intelligence division or tobacco division. They would
6 query that system to see if any ATF agent around the
7 country had an open case against them. That's what we
8 would call our deconfliction system.
9 Q Okay.
10 A So my case was always available. Not just my
11 case. All the spinoff cases to everybody in head --
12 headquarters through that case management system.
13 Q Were you aware of any guidelines with respect
14 to tracking the inventory that you all sold? To use
15 your example, Marlboro cigarettes, did you have to track
16 that?
17 A We did track that. I don't believe -- well,
18 again, there were no orders in the first process. And
19 so when -- when the first set -- obviously the memo from
20 Bouchard we talked about. We set up a QuickBooks
21 tracking system in Bristol, we did monthly reports, we
22 did a monthly inventory and -- and that became the model
23 and that's why headquarters would send the people to us
24 to -- because, again, not -- no offense to any ATF
25 agent. They wouldn't know what QuickBooks was if it bit

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1 them in the ass. So Wendi was very good about sitting
2 with the guys and showing them how it worked, how to
3 show -- set up an inventory tracking system. That was
4 really part of the second set of ATF orders or the first
5 official set of ATF orders was requiring a mechanism for
6 inventory control.

7 Q And did Wendi handle all that for you, for your
8 operations?

9 A No. No. Inventory? No, she did not handle
10 inventory.

11 Q Okay.

12 A But she was --

13 Q I'm sorry. Maybe -- well, go ahead. You
14 finish your answer.

15 A She -- I don't know how to work QuickBooks.
16 I've never been on QuickBooks so I can't explain to a
17 guy what the hell QuickBooks is. So she would show you
18 how to set up a customer thing, how to set up inventory
19 and she traveled some. She went to some of the
20 undercover operations and -- and met with the guys --

21 Q Uh-huh.

22 A -- and they came to her and she was very good
23 about sitting there and showing them how to set up --
24 you know, they wouldn't call them bad guys but how to
25 set up bad guy, you know, in your QuickBooks system, how

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1 to do inventory and all that other stuff.

2 Q All right. And --

3 A But that was the second -- that was really --
4 and that goes back to the OIG report which was a hundred
5 percent correct when they criticized the fact that, you
6 know, there were 30 operations and -- or 24 I think it
7 was at the time and all 24 did it differently.

8 Q Yeah. Did you have any formal training in
9 accounting --

10 A No.

11 Q -- at that time?

12 A No. No.

13 Q Did you --

14 A No.

15 Q -- have any formal training in inventory
16 tracking?

17 A No. I didn't know -- I -- I didn't do any
18 accounting.

19 Q Okay. So am I correct you would rely on Wendi
20 or others in a similar position to Wendi to handle that
21 for you --

22 A No.

23 Q -- for your operations?

24 A No. When it was ATF product? No. It was the
25 whole ATF office.

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1 Q Okay.

2 A We had an ATF -- I call them an ATF accountant
3 but we -- we had an ATF agent who was not part of the
4 undercover operation who was in charge of our churning
5 and he did the monthly financial reports and -- and
6 accounting for us. That was audited at the end of every
7 month and then it was sent up to headquarters through
8 our field division. So for ATF product, no, we had our
9 own people, we did our own. For other product Wendi --
10 or for training, Wendi was the expert to go to on that.

11 Q All right. Let -- let me ask you just a couple
12 more questions about your use of proceeds from churning
13 accounts. And, again, when I'm referring to that I'm
14 talking about the money that you would make when you
15 sold cigarettes to either targets or anybody else. What
16 was your understanding as to how you could use those
17 proceeds?

18 A I think the word that everybody used was
19 furtherance.

20 Q All right.

21 A So we can use the money in furtherance of any
22 of the investigations that were spelled out in the
23 churning authority. Furtherance was the key.

24 Q Okay.

25 A That later changed in 2011 but furtherance was

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1 the -- was the buzzword that headquarters used.

2 Q What was the change in 2011 that you're
3 referring to?

4 A When they came out with the new memo or the
5 new -- I keep saying new. It's not new. The original
6 ATF churning orders --

7 Q Uh-huh. Okay.

8 A -- they determined that the -- we and the other
9 operations that were open prior to the new orders coming
10 out were grandfathered into whatever system it was we
11 arranged. However we did it we were grandfathered. So
12 new cases forward had slightly different requirements.
13 For instance, after 2011 they said no more umbrella
14 investigations --

15 Q Uh-huh.

16 A -- meaning no more that broad which obviously
17 ours and many others -- you know, there was an
18 operation -- a fantastic violent crime operation
19 targeting Armenian organized crime guys. Well, they
20 didn't know the bad guys' names. They knew they were
21 organized crimes, Armenians and they owned retail
22 stores, wholesale. They were doing arsons. They were
23 doing bombings. They were doing everything. So that
24 operation would have required some more detail on the
25 specifics, but that was allowed to conclude because it

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1 was, quote, grandfathered in with the Bouchard memo of
2 '05.
3 Q Okay. Was your involvement in churning
4 accounts ever investigated by the OIG's fraud detection
5 office?
6 A I don't know which office. We were audited,
7 hell, I don't know how many times.
8 Q Okay.
9 A A bunch.
10 Q Are you familiar with an individual by the name
11 of Lou Sessions?
12 A Name --
13 Q And if --
14 A Name's familiar.
15 Q Okay. Turn to Page -- or Tab, excuse me, 23 in
16 the binder that I gave you. And you can take whatever
17 time you need to look over that document. I -- my
18 question will be whether that refreshes your memory on
19 Mr. Sessions.
20 A 23?
21 MR. ZESZOTARSKI: Keep going.
22 THE WITNESS: I'm sorry.
23 BY MR. MARSHALL:
24 Q I'm sorry, Mr. Lesnak.
25 MR. ZESZOTARSKI: It's 22.

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1 BY MR. MARSHALL:
2 Q Maybe yours is in Tab 22.
3 A Okay.
4 Q Just to make sure that we have the correct
5 e-mail, is the version you're looking at a February
6 11th, 2012 e-mail from you to Mr. Small and
7 Mr. Carpenter?
8 A Yes.
9 MR. ZESZOTARSKI: Is the tabs, Tom?
10 THE WITNESS: Oh, I'm sorry.
11 BY MR. MARSHALL:
12 Q No, it's not. I'm sorry.
13 MR. ZESZOTARSKI: Yeah.
14 BY MR. MARSHALL:
15 Q That's the document that you're look -- could
16 you just tell me what tab you're looking at there?
17 A I'm looking at 22, second page.
18 Q Okay. My apologies for the confusion.
19 A Okay.
20 Q Just let me know when you've had enough time to
21 look --
22 A Yes.
23 Q Okay. So is this an e-mail that Mr. Sessions
24 sent to you on February 8, 2012?
25 A Yes.

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1 Q Okay. And just based on his e-mail tag here
2 he's with the fraud detection office in the OIG
3 department. Do you know -- well, was Mr. Sessions
4 investigating your churning activities at that time?
5 A Yes. He was one of five or six different
6 people that flew through Bristol --
7 Q Okay.
8 A -- or head -- or their headquarters -- or our
9 headquarters, ours meaning, I'm sorry, ATF headquarters.
10 Q What was your understanding as to the reason
11 for that investigation?
12 A They were auditing every single ATF churning
13 account.
14 Q Do you know how long that audit lasted?
15 A Over a year.
16 Q Okay.
17 A I mean, they -- they literally flew to every
18 operation and then obviously drafted the report we
19 referenced before. It was well over a year.
20 Q Do you know if Mr. Sessions was the person who
21 was in charge of that investigation?
22 A I don't know.
23 Q Okay. Do you know what the outcome of that
24 investigation was?
25 A They generated a OIG report. Is that what your

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1 question was?
2 Q Yes. And I'm sorry. So you're referring to
3 the 2013 OIG report?
4 A Yes.
5 Q Okay.
6 A That's the only document I've seen from the
7 OIG, the only report I've seen from them.
8 Q Okay.
9 A There may have been others I -- I'm not aware
10 of.
11 Q Okay. So am I correct that some of your
12 operations were the subject of that OIG report?
13 A Oh, yeah, absolutely.
14 Q All of your operations?
15 A Every oper -- ATF operation around the country
16 was.
17 Q Okay.
18 A Yes.
19 Q Okay. We'll talk about that report in more
20 detail later on. Did Mr. Sessions or anyone else from
21 the OIG express to you disapproval regarding the manner
22 in which you operated churning accounts?
23 A No.
24 Q When did you first meet Jason Carpenter?
25 A I know it was early 2006. It was possible it

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1 was late 2005.
 2 Q Okay. And can you explain to me just briefly,
 3 I mean, how did you meet him?
 4 A ATF -- well, how I met him in an official
 5 capacity? Is that what your question is or -- or --
 6 Q Any -- any capacity.
 7 A He was a witness in a case in -- let me get
 8 your order. I'm going to say March of 2006, okay, there
 9 was a gentleman in another state who ATF had executed
 10 search warrants on, ATF and other agencies. He was a
 11 high-profile individual and a large target of ours,
 12 mean -- not mine. I didn't know who he was. ATF.
 13 After his debrief, and I believe it was December of
 14 2005, ATF headquarters who was present for that
 15 contacted me in February and said, you need to interview
 16 this guy. He's got some huge international and domestic
 17 stuff and it's big and we want you to take a look at it.
 18 At the time I hadn't had churning. I just -- I had had
 19 a small -- smaller tobacco case.
 20 So headquarters came down and I interviewed
 21 this guy for two days. Transcript -- the transcript of
 22 that debrief is this thick (Deponent indicates). He
 23 documented every crook in the business. I didn't know
 24 99 percent of them. He became our first source and he
 25 became really what would turn into the largest tobacco

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1 cases ATF or the FBI have ever done. Because he was
 2 tainted with public search warrants and the target of a
 3 criminal case, the smart crooks as we talked about
 4 before didn't want to deal with him so he was dealing
 5 with a lower-level crook, not the big guys. And he says
 6 to me and my boss in our -- and headquarters -- ATF
 7 headquarters in this debrief, hey, I know a guy who
 8 everybody likes, trusts, has never ripped anybody off
 9 and he might be willing to help me. And what we were
 10 doing was looking for a -- how do I -- a front man. I
 11 couldn't play that role. I later played that role but I
 12 couldn't in 2006. I didn't know enough of the industry
 13 to have been a tobacco guy. And he gave me Jason
 14 Carpenter's name. He says to me -- he says, look, with
 15 your permission I can call him and tell him I want to
 16 cooperate with the government and help you guys and see
 17 if he'll help me. Obviously he was looking for a 5K or
 18 a -- a reduced sentence from the ATF charges.
 19 So we had a sitdown with me, the first
 20 informant who you'll see on that board over there, Jason
 21 Carpenter, ATF headquarters, FBI and IRS, Internal
 22 Revenue Service. And Jason -- I don't want to say
 23 reluctantly agreed but he said, look, if it helps this
 24 guy, you know, I'll do what I can. You know, obviously,
 25 you know, I have a wife, kid, don't put me in jeopardy.

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1 No, won't do that. And that was the first time that he
 2 came to our knowledge as a -- okay, we can put this guy
 3 to work.
 4 Q All right.
 5 A And that would have been -- my first interview
 6 and second interview with the guy -- the first defendant
 7 was in February so this would have been probably
 8 March --
 9 Q Uh-huh.
 10 A -- of 2006.
 11 Q In approximately 2007 did you approach
 12 Mr. Carpenter about setting up a warehouse to assist you
 13 with law enforcement activities?
 14 A No. We did that in 2006.
 15 Q That was 2006?
 16 A Yeah.
 17 Q Okay.
 18 A If you remember I had mentioned earlier that we
 19 had set up a first warehouse in another state.
 20 Q Uh-huh.
 21 A Jason was part of that.
 22 Q All right. What was the purpose in setting up
 23 that warehouse?
 24 A Well, the first purpose was we had Chinese
 25 organized crime tied to the Chinese consulate in New

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1 York who were trafficking in -- in prostitutes, alien
 2 trafficking. They were dropping illegal aliens off at
 3 massage parlor -- you know, just terrible stuff.
 4 They -- they were basically indentured servants and they
 5 had -- they would take -- they would leave New York with
 6 a 15-passenger van, drop these women who later
 7 unfortunately became prostitutes and -- and worked at
 8 Chinese restaurants, well, now they're in South
 9 Carolina, North Carolina, Virginia and they had a empty
 10 15-passenger van and they would load up on cigarettes
 11 and take it back to the Chinese organized crime.
 12 This first defendant operated a very small
 13 warehouse, I mean, God, not -- not much bigger than this
 14 conference room, and the Chinese organized crime guys
 15 would stop in there and load up and then they later
 16 asked us to sponsor them at some universities, some of
 17 the -- we -- we'd get \$25,000 for sponsoring some of
 18 these women so that they could get them over on visas
 19 and stuff like that. And that's when we introduced
 20 other agencies into the mix and that's really when we
 21 got very busy which is February -- excuse me, March of
 22 2006, April of 2006.
 23 Q Uh-huh.
 24 A And then ultimately that operation got so large
 25 it became unmanageable a hundred miles from my -- my

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105	1 office and we moved it to Bristol. 2 Q And it was your idea, your decision to move the 3 warehouse to Bristol? 4 A Yes. 5 Q Okay. And, I mean, help me out here, but am I 6 correct that the -- the basic idea was to set up a 7 warehouse that would look like a legitimate warehouse 8 that you could then use for purposes of your operations? 9 A Even better. It was a legitimate warehouse 10 and, you know, it was backstopped meaning Jason and then 11 ultimately Chris and two other partners in the business 12 were well known in the tobacco industry so we weren't 13 starting something from scratch. We basically merged 14 ourselves with a tobacco business so that when bad guys, 15 corrupt manufacturers, importers -- they didn't know our 16 undercover company. Our undercover company didn't 17 exist. We didn't have a credit history. We didn't 18 have, you know, a business license, but that first 19 company did and then ultimately Big South did. And so 20 that's who we dealt with the bad guys was through that 21 face of Big South. We were behind it doing that 10 22 percent crime -- 23 Q Uh-huh. 24 A -- behind the face of Big South and some of the 25 other companies that we operated through.	107	1 field division and I'll tell you the truth, I don't know 2 if legal counsel sees it first or not. Then the 3 Washington field division, which is who we reported to, 4 they would assign you a -- what's called a CI number. 5 Q Uh-huh. 6 A And that's -- that's when you're approved to 7 utilize that person. And -- and they can and have 8 denied people in the past with bad criminal histories. 9 You know, if you're chasing a guy for bad checks, you 10 don't want to use a drug trafficker and give him a pass 11 on a crime to go after a check -- check -- a bad check 12 writer. So they have declined case -- informants in the 13 past, but that's -- 14 Q Okay. 15 A -- the process. 16 Q Did -- did Mr. Carpenter complete that process? 17 A Yes. 18 Q And so he was approved? 19 A Yes. 20 MR. KELLY: Ted, excuse me for a minute. I 21 just want to make sure the witness doesn't need a break. 22 THE WITNESS: Yeah, I'm okay. 23 MR. KELLY: Okay. 24 THE WITNESS: Thanks. 25 MR. MARSHALL: Sure.
106	1 Q Would you direct other distributors or 2 retailers to Big South, to do business with Big South? 3 A It de -- are we talking crooks or are we 4 talking -- I'm sorry. 5 Q Okay. Go ahead. 6 A Are we talking -- the question is, are we 7 talking crooks? I gave you a few examples -- 8 Q Uh-huh. 9 A -- of where we did direct crooks to our 10 business or the other 11 operations and the other 11 agencies often directed them to our business. So the 12 answer to that question is yes, in those cases we 13 absolutely did, we meaning U.S. law enforcement. 14 Q Okay. Was there ever any kind of a formal 15 vetting process with respect to Mr. Carpenter before he 16 became a confidential informant for the ATF? 17 A Yes. There's a contract that's signed with 18 ATF. You do a background on the guy, you answer all 19 these questions, you know, are you a convicted felon, 20 you ever been convicted of perjury, are you a sex 21 offender? There's all -- there's a series of two pages 22 of questions and then you -- you run a criminal history 23 check and then obviously it then goes up. You do a 24 request to have this guy or girl documented as a 25 confidential informant. It goes up to the Washington	108	1 MR. KELLY: Excuse me. Sorry. 2 MR. MARSHALL: That's all right. In fact, we 3 can go off the record real quick. 4 THE VIDEOGRAPHER: We are going off the record. 5 The time is 11:13. 6 (Whereupon, there was a recess in the 7 proceedings from 11:13 a.m. to 11:18 a.m.) 8 THE VIDEOGRAPHER: Here begins Tape Number 2 in 9 the deposition of Thomas Lesnak. We are back on the 10 record at 11:18. 11 BY MR. MARSHALL: 12 Q Mr. Lesnak, when you first met Jason Carpenter, 13 do you know if he owned a warehouse at that time? 14 A He did. He owned a small -- I didn't know it 15 at the time but I found out shortly thereafter he had a 16 small -- it's not a warehouse -- storage building I 17 guess is the right phrase, you know, with the like popup 18 aluminum door and a little door here, probably about the 19 size of this room -- 20 Q Okay. 21 A -- in a town in Tennessee probably 30 minutes, 22 25 minutes from where the Big South warehouse eventually 23 made it. 24 Q All right. Was he operating as a distributor 25 at that time?

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1 **A** He wasn't a retail business. I'm not sure what
2 his license was, whether he was a licensed wholesaler or
3 not.
4 **Q** Okay.
5 **A** But he didn't -- he didn't have a retail
6 business that I'm aware of at the time.
7 **Q** Okay. Was he selling cigarettes out of this
8 facility of his?
9 **A** Yeah. He was doing deliveries. He had a
10 delivery cargo van out of that building but I don't -- I
11 don't recall any retail location, but I think it was a
12 wholesale business --
13 **Q** All right.
14 **A** -- in Tennessee.
15 **Q** Now when Mr. Carpenter affiliated himself with
16 ATF as a confidential informant, were -- were all of his
17 activities somehow associated with ATF after that point?
18 **A** Oh, no. There were dozens of federal agencies
19 and state agencies that he worked with and for. So it
20 wasn't exclusively us. We kind of shopped him around a
21 bit. Other agencies would need an expertise or a deal
22 or some intel and, to tell you the truth, I was acting
23 like a traffic cop as things got really busy and kind of
24 filtered these guys off, eventually Chris as well and
25 Wendi and Brandon, to assist these other operations

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1 directly because by the time we would get from an
2 operation from some agency to headquarters to me back to
3 headquarters back to some agent in the field at -- you
4 know, it just -- it wasn't practical. So these guys
5 would come -- as I mentioned before, they would meet
6 Jason, then obviously eventually Chris and Wendi and
7 those agents from all these different agencies built up
8 a certain level of trust and then they incorporated them
9 in their undercover operations which at that time I
10 stopped tracking it because, tell you the truth, I -- I
11 had enough on my own plate.
12 **Q** Okay. So what you're saying is Mr. Carpenter
13 worked for multiple government agencies, is that
14 correct?
15 **A** Oh, God. Dozens. If you add federal, state
16 and local, dozens.
17 **Q** Okay. Do you know if -- let's take from 2007
18 forward. Let's even do 2008. Am I correct that by that
19 time the warehouse had been set up in Bristol?
20 **A** It would have been about the right time frame,
21 yes.
22 **Q** Okay.
23 **A** I don't remember the exact date because we had
24 that other warehouse between the Big South warehouse.
25 **Q** Okay.

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1 **A** So that is about the time frame, 2008, that we
2 moved to Virginia from another state.
3 **Q** Okay. When you moved to Virginia, who owned
4 the warehouse that Big South operated out of?
5 **A** I don't think it was called Big South then. It
6 had a different name. It was a guy in -- named Hobart
7 Anderson and a guy named Trey Prevost and Jason
8 Carpenter.
9 **Q** Okay. And they're the individuals who owned
10 the physical warehouse?
11 **A** That's my understanding, yes.
12 **Q** All right. When's your understanding as to
13 when Big South Wholesale started to operate?
14 **A** One of those three people I just mentioned was
15 getting ready to go to federal prison for an extended
16 period of time and not to burn Jason and be tainted by
17 one of those guys going to jail for an extended period
18 of time, we reformed without those. So, again, Jason's
19 position -- and I don't want to declare --
20 **THE WITNESS:** Stop me if I'm going too far in
21 my undercover operation details.
22 **A** But what we set it up was that we gave Jason
23 plausible deniability. So when this guy goes to federal
24 prison Jason was in a position, hey, fuck, everybody
25 knew he was a crook. I never did anything illegal with

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1 him. Guys, guys, after the ATF raids, you were stupid
2 for doing deals with him.
3 **Q** Uh-huh.
4 **A** So we had that plausible deniability. So Jason
5 started distancing himself from that guy. That was
6 intentional. We had that set up. We knew this guy was
7 going to go away a year before he went away so we had
8 some time to start laying the groundwork and -- and by
9 that time many other undercover operations had opened up
10 around the United States and so, you know, we just
11 wanted to -- if we got burned that we didn't want to
12 burn the other -- what eventually became ten other
13 undercover operations.
14 **Q** Uh-huh.
15 **A** So we were very careful over that year to
16 distance ourselves from the guy who went to jail.
17 **Q** Okay. Is that how Big South Wholesale was --
18 **A** Yes.
19 **Q** -- created --
20 **A** Yes.
21 **Q** -- essentially?
22 **A** And that's why it was created.
23 **Q** All right. And was that in -- at some point in
24 2008 maybe?
25 **A** It'd be about that time.

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1 Q Okay. When Big South Wholesale was
2 operational, were all of Mr. Carpenter's activities
3 through BSW somehow associated with law enforcement?
4 A No. No. It goes back to that 90/10 thing. 90
5 percent of their business I had nothing to do with --
6 Q Okay.
7 A -- didn't care about. I -- we had enough
8 trouble keeping up -- or six, seven of us in Bristol
9 working on the 10 percent. We didn't keep up with the
10 90 percent of their retail and wholesale business until
11 it linked back to obviously some criminal investigation
12 or regulatory investigation by some agent or agency
13 somewhere in the country.
14 Q All right. Were you Mr. Carpenter's case agent
15 from 2007 forward?
16 A You know, that may have a real meaning to it.
17 I don't remember who documented Jason -- in fact, it
18 probably wasn't me. -- which would have been the agent
19 responsible for Jason, but I was clearly his handler.
20 But everybody in my office -- I mean, when I say
21 everybody, I mean everybody. Male, female, new guy, old
22 guy, all worked with Jason over the period of those
23 seven years.
24 Q Okay.
25 A And the handler, how we had it arranged -- and

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1 you'll be talking to Cory and you'll be talking to Dan.
2 When it was their investigation -- and like I said, the
3 umbrella case was here, this is us. As cases were being
4 offshot, that case agent became his handler. He was
5 directing him from -- let's just say -- say it was an
6 FBI operation which was the biggest one ever done. That
7 spins off. It's over here. The FBI was running Jason
8 at that point, okay? It's not my role to -- you know,
9 so I had a general understanding what they were working
10 on for deconfliction, but the FBI was directing Jason on
11 who to meet with, who to set up with, who to introduce
12 undercovers to, and the same thing from all the other
13 undercover operations. We made the initial
14 introduction. Then those case agents from what agency
15 took over running Jason or -- or Chris or -- or any of
16 the other guys that were actively working for us.
17 Q Okay. With respect to ATF though and more
18 specifically your churning operations, were you
19 Mr. Carpenter's primary handler for those operations?
20 A To be fair, the answer is of everybody in my
21 office I dealt with Jason the most.
22 Q That's my question.
23 A Yes.
24 Q Okay. So did you oversee most of his
25 activities, again, in the context of ATF investigations?

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1 A Except on where he was working on other
2 people's investigations --
3 Q And that would be?
4 A -- which were hundreds. Literally there were a
5 hundred cases around the country of which in Bristol we
6 prosecuted some of those, but they were prosecuted in --
7 literally there was a -- an investigation in every
8 single ATF field division in the country tied back to an
9 investigation out of Bristol.
10 Q All right.
11 A So, again, I had a general understanding on
12 when he was working on something for some agent in
13 California, what it was, but I wasn't writing those
14 reports, those agents were.
15 Q Okay. Let me -- let me just -- I'll confine
16 this next set of questions to when you were directly
17 supervising Mr. Carpenter. So the projects or
18 investigations that he helped you with, did he meet with
19 ATF targets at your request?
20 A Yes.
21 Q Did he conduct ATF-approved unlawful deals with
22 ATF targets?
23 A Department of Justice targets?
24 Q Yes.
25 A Some were ATF, some were FBI but under my

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1 guidance, yes.
2 Q Did he record conversations with targets?
3 A Yes.
4 Q Did he ever introduce other undercover agents
5 to some of your targets?
6 A Many.
7 Q Would he purchase vehicles at your request?
8 A Yes.
9 Q Was he ever involved in setting up any
10 international facilities?
11 A He had a role. I don't -- I don't know if he
12 set them up. We had other people who actually set them
13 up. If you're talking about the physical setting up,
14 there were other people, but he had a role in that, yes.
15 Q Okay. Do you know if he ever assisted British
16 intelligence?
17 A Yes.
18 Q Were those with worldwide smuggling and
19 counterfeit operations?
20 A And terrorism financing, yes.
21 Q Okay. We're going to talk about this in a
22 little more detail later but you -- do you understand
23 what I mean when I refer to the government buy program?
24 A Yes.
25 Q Okay. Was he also involved in purchasing

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1 cigarettes on behalf of the ATF in connection with the
 2 government buy program and then handling the inventory?
 3 **A We used Big South to move the product through.**
 4 **Not all of it, some of it.**
 5 Q All right.
 6 **A But those orders for product came through the**
 7 **ATF office, not through Jason Carpenter.**
 8 Q Okay. Was Mr. Carper -- was Mr. Carpenter
 9 compensated by the government for his services as a
 10 confidential informant?
 11 **A You know, it -- you ask that question. That is**
 12 **one of the conversations I did have with Cory Duke. He**
 13 **looked that up. It was a few hundred bucks if I**
 14 **remember off the top of my head but I -- I -- he has**
 15 **that answer. The answer is he may have gotten**
 16 **reimbursed for one trip he took for us, but other than**
 17 **that, ATF did not pay him or write him a check.**
 18 Q Okay. So is it your testimony that if
 19 Mr. Carpenter made money while he was assisting the ATF,
 20 that would have been made independent from the ATF?
 21 **A You mean as part of the 90 percent legitimate**
 22 **business?**
 23 Q Sure. Yeah.
 24 **A Yeah. They made money in their legitimate**
 25 **business, yes.**

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1 Q Do you know how much money Mr. Carpenter made
 2 in 2010?
 3 **A No.**
 4 Q How about in any other year after that?
 5 **A No.**
 6 Q Best of your knowledge how long did
 7 Mr. Carpenter remain a confidential informant for the
 8 ATF?
 9 **A I think he was documented as an informant up**
 10 **until this litigation.**
 11 Q Okay. So until the middle of 2013?
 12 **A Yeah. That's a better answer for Cory, I had**
 13 **retired, but I believe he was documented right up to the**
 14 **end because those cases are still pending or some of**
 15 **those cases are still pending.**
 16 Q Okay. So then --
 17 **A Criminal cases I'm talking about, I'm sorry --**
 18 Q Okay.
 19 **A -- that he had worked on just to be clear.**
 20 Q So you worked with Mr. Carpenter as a
 21 confidential informant from approximately 2006 until the
 22 end of 2012, is that right?
 23 **A Correct.**
 24 Q Do you think he did a good job for the ATF?
 25 **A For us and every other --**

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1 MR. KELLY: Objection as to form. You can
 2 answer.
 3 THE WITNESS: I'm sorry?
 4 MR. KELLY: Objection as to form. You can
 5 answer.
 6 THE WITNESS: Thank you. Sorry I cut you off.
 7 **A He did a fantastic job. And as I told the**
 8 **board of directors when we briefed the board after this**
 9 **litigation started or just prior to it started, out of**
 10 **the hundreds of law enforcement officers, hundreds that**
 11 **he worked with and Chris worked with, Big South**
 12 **liaisoned with, I am unaware of a single law enforcement**
 13 **officer making a complaint that he stole from them, that**
 14 **he was dishonest, that he lied. That's important**
 15 **because under the law, as you know, we have a lawful**
 16 **obligation to report that, to tell our U.S. attorneys,**
 17 **to tell our prosecutors. I am unaware of a single**
 18 **incident in the hundreds of cases that they worked on**
 19 **where anybody made a complaint which would have forced**
 20 **us legally to decommission him as an informant.**
 21 Q All right. Did you ever personally have any
 22 concerns regarding his performance as a confidential
 23 informant?
 24 **A No. If I could expand on that just briefly, we**
 25 **were gun and drug cops, right? That's what ATF is.**

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1 **We're used to guys not showing up for work, come in**
 2 **stoned, selling drugs on the side, you know, being**
 3 **violent criminals. It was a pleasure dealing with the**
 4 **guys that we dealt with, you know, the white collar.**
 5 **You know, they show up on time, they're sober, they're**
 6 **not using drugs, they're not convicted felons. It was a**
 7 **real pleasure to work with. You know, Jason, Chris,**
 8 **they were professional businessmen which is why they got**
 9 **ingratiated in so many operations around the country.**
 10 Q Okay. Did part of Mr. Carpenter's role with
 11 the ATF involve deceiving some of the targets that you
 12 were investigating?
 13 **A If you mean deceiving by saying he wasn't a**
 14 **government informant, yes, of course.**
 15 Q Okay. Well, didn't he have to do business with
 16 certain individuals who either were targets or were
 17 going to become targets in the future?
 18 **A Yes. But that's what I'm saying --**
 19 Q Okay.
 20 **A -- he didn't tell them he was working on behalf**
 21 **of the government.**
 22 Q Okay. So did he have to earn their trust to a
 23 certain degree?
 24 **A Most of the -- the nice things about Jason is**
 25 **what I talked about earlier. He had an excellent**

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1 reputation in the business so he didn't have to earn
 2 these guys' trust. They knew him and entrusted him from
 3 his many years in the tobacco business.
 4 Q Okay. Was there ever a time where
 5 Mr. Carpenter that you're aware of had to convince
 6 somebody, let's say a target, that he was involved in
 7 some kind of illicit activities or tobacco trade?
 8 A Oh, God. I'm sure there were hundreds of those
 9 examples. What we typically did with Jason -- again, he
 10 played a similar role to me. Obviously he was smarter
 11 than I was and knew the business better than I would
 12 ever know, but his job was to introduce the undercover
 13 ATF or FBI or DEA agent and they would do the dirty
 14 deal.
 15 Q Okay.
 16 A Okay. Jason was the white businessman who, you
 17 know, was smart -- the smart guy, right? Like all the
 18 other crooks in the business, he cheated on the margins
 19 where the margins were the undercover ATF, FBI, DEA
 20 agents he introduced to do the dirty deals. So his role
 21 typically was that first introduction. I could give you
 22 a good scenario that -- that was -- caused some
 23 confusion both with the OIG report and -- and
 24 subsequent.
 25 We ran a huge operation in a state. We -- not

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1 we. ATF did. And there was an organized crime group
 2 made up of certain ethnic people and you got to have an
 3 ethnic guy to get into there. Well, Jason was the only
 4 white guy we knew who could get into those guys because
 5 they had a history with him for ten years. So Jason at
 6 great peril to himself drove with an ATF agent, took him
 7 to this meeting of this organized distribution criminal
 8 group, introduced and said, here's our guy, he's going
 9 to handle all our business down here from now on. So
 10 did he deceive those guys you're -- to your question?
 11 The answer is yes. Was it at our direction?
 12 Q Uh-huh.
 13 A The question is yes. Was it successful? The
 14 answer is yes.
 15 Q Okay. Was he ever discovered by any of the
 16 individuals that he was trying to -- to deceive?
 17 A In seven years I'm unaware of any -- any time
 18 that our operation was burned or Jason was burned.
 19 Q Okay. Did you work with other confidential
 20 informants while you were working with Mr. Carpenter?
 21 A Too many, yes.
 22 Q Okay. Where would you rank Mr. Carpenter among
 23 the other confidential informants you worked with? Was
 24 he near the top?
 25 A Well, he was the best, most honest guy we

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1 had --
 2 THE WITNESS: No offense, Chris.
 3 A -- because Jason was willing to do a lot more.
 4 Jason was willing -- if we needed him to fly to
 5 California, he flew to California. We needed him to go
 6 to some other country, he went at great peril to
 7 himself, without armed cover teams. That wasn't the
 8 case with everybody.
 9 Q So he was one of your best confidential
 10 informants?
 11 A I would say he was the best.
 12 Q Did he help you with over a Hundred Million
 13 Dollars in seizures?
 14 A Yes.
 15 Q How many defendants do you think he helped you
 16 put away?
 17 A Well over a hundred.
 18 Q When did you first meet Chris Small?
 19 A Sometime obviously after Jason. He had worked
 20 for Jason for a period of time. Jason didn't live in
 21 Tennessee as you probably know at this time or in
 22 Virginia. Six months later so maybe sometime mid to
 23 late 2006, and I'm guessing, Jason said, hey, guys, I
 24 can't -- I can't come here every week. You know, I
 25 don't live here. I live however many -- 400 miles from

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1 here. I can't run this day-to-day thing for you guys.
 2 And at the time when we first started, ATF agents
 3 including bosses, management, task force officers,
 4 attorneys who -- who worked with us, we were running a
 5 warehouse. We were taking cases of cigarettes,
 6 unloading trucks, running them through stamp machines,
 7 repalletizing and wrapping them, loading them, doing
 8 deliveries. It got to the point where we were, you
 9 know, warehouse workers as opposed to criminal
 10 investigators.
 11 Well, the same became true with -- with Jason.
 12 He was trying to assist all these other undercover
 13 operations around the country plus maintain his own
 14 legitimate business and it got too much to do the
 15 day-to-day stuff. And he says to us, I got a friend I
 16 trust complicitly [sic] and you could meet with him and
 17 maybe he's the guy to help us on the ground in Bristol
 18 run the 90 percent of the business.
 19 Q Okay. And he was referring to Mr. Small?
 20 A Chris Small.
 21 Q At some point did you meet with Mr. Small and
 22 explain to him your involvement with Mr. Carpenter and
 23 with Big South Wholesale?
 24 A We did.
 25 Q All right. Tell me about that meeting.

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1 **A Boy, I don't even remember all the details. I**
2 **remember it was me and my boss and -- and Jason. I**
3 **remember Chris was very nervous and didn't want to be**
4 **there. I wouldn't want to be in a government office**
5 **either. And we laid out what we had hoped the strategy**
6 **would be and what we would need Chris for which was**
7 **basically to run the warehouse operation.**
8 **Unfortunately, our sister agencies had authority to hire**
9 **retired agents to do that. We did not. We had asked**
10 **and we could not hire outside agents with our churning**
11 **money. We were specifically prohibited from using it.**
12 **And we begged. We begged to be able to hire Deloitte &**
13 **Touche. We begged to hire warehouse management and we,**
14 **you know -- and when we couldn't do that, we were denied**
15 **doing that, Jason said, you know, Chris knows this**
16 **business and he could help run it.**
17 **Q All right. Did you ask Mr. Small to keep his**
18 **knowledge of your operations confidential?**
19 **A Yeah. We had a standard obstruction of justice**
20 **conversation. It was a standard speech that, look, you**
21 **don't have to cooperate with us. At any point -- in**
22 **fact, I would -- this is what I would say, you could**
23 **tell me to go fuck myself and I'll leave here. That was**
24 **the standard line I used. You don't have to work with**
25 **us. You're not a defendant. You're not a target. You**

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1 **don't have to be here. At any point you feel**
2 **uncomfortable, pack up and leave, okay? But if you**
3 **stay, there's a couple of rules and I gave him the**
4 **rules. You can't lie to me. You can't do side deals.**
5 **You know, you give them the drug speech, you know, we're**
6 **used to drug traffickers --**
7 **Q Uh-huh.**
8 **A -- that any illegal activity if it is not**
9 **specifically authorized by us is unlawful activity.**
10 **Again, the drug dealers who sell drug on the side and**
11 **then if they get caught, they say, oh, I was doing that**
12 **for you trying to entice this bad guy. And that if you**
13 **go to the media, if you do -- if you go to any**
14 **defendants and compromise us, you are committing a**
15 **crime --**
16 **Q Okay.**
17 **A -- and literally undercover agents' around the**
18 **country lives are on -- including Jason's life is on the**
19 **line. Are you okay with that? And I believe he**
20 **reluctantly said yes. I know he said yes and I believe**
21 **it was reluctantly done.**
22 **Q Reluctant. Okay. Did you perform any kind of**
23 **a background check on Mr. Small?**
24 **A Yes. Every employee at Big South -- our task**
25 **force officer ran criminal histories on -- on everybody**

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1 **at the warehouse, warehouse drivers, anybody who had**
2 **access to the warehouse.**
3 **Q Okay. Would that include Wendi Davis?**
4 **A Yes.**
5 **Q Brandon Moore?**
6 **A Every employee.**
7 **Q When were those background searches performed?**
8 **A Oh, I remember in the old warehouse -- I don't**
9 **remember who generated a questionnaire form, but we were**
10 **trying to subtly find everything out about somebody.**
11 **You know, it was like where do you live, boom, boom,**
12 **boom, boom, Social Security number, all that crap. We**
13 **compiled that list. We gave it to our task force**
14 **officer and he did all the background investigations and**
15 **that -- that was maintained in a black book at our**
16 **office. It's probably still sitting there.**
17 **Q Okay. Now was Mr. Small a confidential**
18 **informant for the ATF or a cooperating witness?**
19 **A I don't know if there's a legal definition of**
20 **the difference. He chose to be what I would call a**
21 **cooperating wholesaler. That's how we referenced him in**
22 **our reports and that's how I asked all our law**
23 **enforcement friends from all the different agencies to**
24 **reference him. There was a couple of reasons for that.**
25 **Chris did not want to become a documented informant. In**

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1 **the beginning I don't think he trust us. Obviously that**
2 **proved out to be true. And in a report that goes to a**
3 **defense attorney, the phrase cooperating wholesaler**
4 **would give Chris plausible deniability. For instance,**
5 **an agent from another agency interviewed Chris on a very**
6 **significant matter. He, Chris, is a cooperating**
7 **wholesaler. Chris if he was ever called to the carpet**
8 **by a bad guy would say, yeah, the state audit team came**
9 **in here and asked me a bunch of questions. Of course I**
10 **cooperated with them. Again, plausible deniability so**
11 **that he's not burned and his name does not appear in any**
12 **official government reports. He was the cooperating**
13 **wholesaler.**
14 **Q Okay.**
15 **A So in the thousands of reports whenever you saw**
16 **cooperating wholesaler, that was usually Chris.**
17 **Q All right. And I -- I assume you ran a**
18 **background check on him shortly after you met him.**
19 **Would that have been --**
20 **A Every employee.**
21 **Q -- in 2000 --**
22 **A Yes, every employee got -- yes.**
23 **Q 2006 or 2007?**
24 **A That time frame.**
25 **Q Okay. Was there ever any procedure by which**

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1 you all updated the criminal background checks? Was
2 this done every year?
3 **A Oh, no. No. Now with Jason you had to do --**
4 **Jason and the other 11 guys that we had documented,**
5 **every six months I think we had to do an update, I**
6 **believe.**
7 Q Okay.
8 **A I know we had to do a yearly report. You know,**
9 **is this guy involved in investigations, what**
10 **investigations, how long, is there any reason that he**
11 **should be decommissioned or fired as an informant, that**
12 **type of thing.**
13 Q All right.
14 **A That was done every six months or a year. The**
15 **employees -- I mean, we -- we kept pretty good tabs on**
16 **these guys and -- but, no, we -- we had no requirements**
17 **to do updated backgrounds.**
18 Q All right. We talked about the fact that you
19 were the -- one of the handlers for Mr. Carpenter. Were
20 you also Mr. Small's ATF handler?
21 **A Chris probably worked with more of the other**
22 **guys than Jason did. Because of Chris's role in the**
23 **logistics and the support of all these other operations,**
24 **you know, 30 around the country, 11 undercover**
25 **warehouses, Chris probably worked with more people than**

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1 **me and more people than even -- if I could be clearer**
2 **because that didn't -- you know, when somebody needed**
3 **something shipped, they would call me. I'd say, hey, I**
4 **don't do fricking shipping, call Chris. So that was**
5 **pretty much how Chris's role was in the beginning. You**
6 **know --**
7 Q Okay.
8 **A -- I can't handle it, I'm traveling, I'm not**
9 **there, call Chris.**
10 Q Okay.
11 **A And so Chris had more of the -- that role early**
12 **on.**
13 Q How often were you at the Big South Wholesale
14 warehouse in Bristol in 2008 and 2009?
15 **A Every day.**
16 Q Every day.
17 **A Unless I was traveling, every day.**
18 Q Okay.
19 **A Yes. And me and my boss, we rotated through**
20 **case agents as we would call them. A case agent is**
21 **assigned a specific criminal investigation. I was**
22 **assigned the big investigation, the umbrella, but**
23 **specific criminal investigations were assigned to agents**
24 **from IRS, ATF, FBI, whomever.**
25 Q All right.

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1 **A But I went to the warehouse every day I was in**
2 **Bristol unless I was traveling.**
3 Q And Mr. Small worked at the same warehouse,
4 correct?
5 **A Every day.**
6 Q Were you his primary handler during those
7 times?
8 **A You mean did I see Chris every day in those**
9 **regards? Oh, yeah, absolutely.**
10 Q Okay. When Mr. Small was under your
11 supervision, did he also meet with ATF targets?
12 **A Yes.**
13 Q Did he conduct deals with targets at your
14 request?
15 **A Yes.**
16 Q Did he also record conversations with targets?
17 **A Reluctantly we did a few and we pissed him off**
18 **when we did it.**
19 Q Pissed off who?
20 **A Chris.**
21 Q Okay. Did you ask him to keep doing it?
22 **A Yeah.**
23 Q Did Mr. Small introduce undercover agents --
24 other undercover agents to targets of your
25 investigations?

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1 **A Yes, many times.**
2 Q Did he purchase vehicles at your request?
3 **A Yes.**
4 Q Was he also involved in setting up the
5 international facility that we talked about with respect
6 to Mr. Carpenter?
7 **A Again, setting up, no. Did he do the logistics**
8 **on it? No. But he was a part of it, yes.**
9 Q Do you know if he assisted British
10 intelligence?
11 **A Yes.**
12 Q Now was Mr. Small ever compensated by the
13 government for his services as a cooperating wholesaler?
14 **A No.**
15 Q How long to the best of your knowledge did
16 Mr. Small remain a cooperating witness or cooperating
17 wholesaler for the ATF?
18 **A Until this litigation.**
19 Q Okay. Did you ever have any concerns regarding
20 his performance as a cooperating witness?
21 **A No. And, again, as I said before, of the**
22 **hundreds of law enforcement he dealt with I never heard**
23 **a complaint, not one.**
24 Q All right. I'm going to ask you some of the
25 same questions I'd asked with respect to Mr. Carpenter

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1 so I'm not asking you to choose favorites here but --
 2 **A I think I answered that already but that's --**
 3 **Q I think you did, yeah. Am I correct that part**
 4 **of Mr. Small's role involved to a certain extent**
 5 **deceiving targets for the ATF?**
 6 **A Did he act on our instructions with bad guys?**
 7 **The answer's yes.**
 8 **Q And did he deceive them?**
 9 **A Yes. We were very successful at deceiving the**
 10 **bad guys.**
 11 **Q Okay. How many times? Hundreds?**
 12 **A Hundreds.**
 13 **Q How many people would you estimate Mr. Small**
 14 **helped you convict?**
 15 **A Well, that's all part of the same -- when I**
 16 **said Jason a hundred, it wasn't Jason did a hundred and**
 17 **Chris did a hundred. They were -- again, you can't --**
 18 **you couldn't have one without the other.**
 19 **Q Uh-huh.**
 20 **A They were -- they were a team in that. One --**
 21 **one held -- did a certain role, the other did a**
 22 **different role, but they were all part of every**
 23 **investigation.**
 24 **Q All right. You're familiar with Stephen**
 25 **Daniel, correct?**

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1 **A Yes.**
 2 **Q Are you familiar with a company named Universal**
 3 **Services First Consulting?**
 4 **A I think I was asked that -- I wasn't but I**
 5 **think that was a company Steve owned, but I didn't know**
 6 **that at the time -- or Steve was part of.**
 7 **Q Okay.**
 8 **A If I -- if I'm -- I'm guessing. I did not know**
 9 **that until later on. I -- I think it may have been --**
 10 **Clay Wheeler may have mentioned if I knew that. I said,**
 11 **no. And he said, would it surprise you if that was**
 12 **Steve's company? I said, it wouldn't surprise me, but I**
 13 **don't think I knew about it.**
 14 **Q Okay. You said you didn't know about it at the**
 15 **time.**
 16 **A Yeah. I --**
 17 **Q What time are you referring to?**
 18 **A That -- that we were operational.**
 19 **Q Okay. When did you first meet Mr. Daniel?**
 20 **A God, I couldn't give you a year. I had met him**
 21 **a total of once or twice. I would see him around the**
 22 **warehouse. Not being able to explain my role in that**
 23 **building, I didn't sit down with Steve and -- and have**
 24 **any in-depth conversations with him. We would wave as I**
 25 **would drive by. He knew obviously we were ATF, but we**

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1 **didn't want to get into a specific discussion with him.**
 2 **Obviously Flue-Cured and Steve Daniels [sic] knew who we**
 3 **were, but I can't say I really had a conversation with**
 4 **him until what later became the IRS audit. I forget**
 5 **what year that was. It's really the first time I -- I**
 6 **sat down and had a conversation with Steve and a cup of**
 7 **coffee.**
 8 **Q You said that Flue-Cured and Steve Daniels**
 9 **[sic] knew who you were. Who else at Flue-Cured knew**
 10 **who you were?**
 11 **A You mean at that time in 2006?**
 12 **Q (Nods head).**
 13 **A I don't know if anybody did.**
 14 **Q Okay.**
 15 **A At some point they become aware and I knew**
 16 **three people maybe -- yeah, three people total that I**
 17 **knew of --**
 18 **Q Okay.**
 19 **A -- which was Steve Daniels, Albert Johnson and**
 20 **the treasurer, John Taylor.**
 21 **Q Okay. And we'll talk about them in more detail**
 22 **later. Do you know who Mark Dunham is?**
 23 **A Yes.**
 24 **Q Okay. Did you ever have a meeting with Dave**
 25 **Rickard, Mark Dunham and Steve Daniel?**

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1 **A Yes.**
 2 **Q All right. Do you recall when that meeting**
 3 **was?**
 4 **A It is -- it would have been just prior to the**
 5 **acquisition of Premier by U.S. Flue-Cured, I believe,**
 6 **and I'm -- I'm -- I don't remember the time frame. I**
 7 **believe he flew into Bristol and came to the warehouse**
 8 **and I met with him there. I think that was the first**
 9 **time I met with him.**
 10 **Q And am I correct that Premier in 2008 was**
 11 **involved in the government buy program with your**
 12 **operations?**
 13 **A They were involved. I don't know if it was**
 14 **2008, but if you have a document that says 2008, I won't**
 15 **quibble with it. But there was a time that they did**
 16 **become part of the government buy program.**
 17 **Q Did you ever sit down with Mr. Dunham and**
 18 **Mr. Rickard and Steve Daniel and explain to Steve Daniel**
 19 **Premier's involvement in the government buy program?**
 20 **A Steve was there at that meeting so he would**
 21 **have known about that. As part of the government buy**
 22 **program Flue-Cured as the U.S. manufacturer -- as you**
 23 **know, Premier doesn't own a manufacturing facility.**
 24 **They just own the brands if I understood it correctly.**
 25 **So to get their brands Flue-Cured had to manufacture it**

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1 so you couldn't get the brands from Premier without
2 including U.S. Flue-Cured in that.
3 Q All right. So there came a time where you
4 brought Steve Daniel into the loop on that?
5 A Yes.
6 Q Did you ask him to keep his knowledge of your
7 involvement in the government buy program confidential?
8 A I'm sure ATF headquarters did that. I -- I
9 wasn't part of those discussions, but ATF headquarters
10 was the one who generated that relationship directly
11 with Steve or somebody at Flue-Cured. I don't even know
12 who. It may have been John Taylor. It may have been at
13 the chairman's level. I don't know. So that would have
14 been part of what I assume is ATF headquarters
15 instructing them on how to handle those transactions.
16 Q Was there a specific person at ATF headquarters
17 that you think organized this or brought Mr. Daniel into
18 the -- into the loop?
19 A Yeah. That -- the memo's generated from ATF
20 headquarters. I'm sorry, I don't know who generates it.
21 Q Okay. Can you explain for me just your general
22 understanding of Mr. Daniel's role in your ATF-related
23 operations in 2008.
24 A I can't distinguish between '7, '8 and '9, this
25 time frame.

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1 Q All right.
2 A Okay. In the time frame --
3 Q Why don't we say --
4 A When I first start working with Steve, is
5 that --
6 Q Sure.
7 A Is that fair to say that?
8 Q Sure.
9 A Again, I don't -- I don't know the years.
10 Obviously a few people at U.S. Flue-Cured needed to know
11 who we were. This is be -- all preacquisition I'm
12 talking about here.
13 Q Uh-huh.
14 A Okay? And so I met with Steve on one or two
15 occasions in his role as -- I -- I always called him a
16 vice president, but he had some other job title
17 apparently. Met with him as the vice president of
18 U.S. Flue-Cured and we begin a series of intelligence
19 debriefings with Steve and we write a series of what we
20 would call reports of investigations and Steve falls
21 into the family similar to what Chris's position was as
22 a cooperating manufacturer. And you will see reports --
23 I don't know if you've seen them, but there are
24 reports -- or you may see e-mails between me and Steve
25 and many other government agents where Steve is

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1 providing realtime intelligence to the U.S. Government
2 and starts supporting operations globally actually. So
3 I don't want to -- I don't want to understate that, but
4 here's -- and, again, just -- just for the record, as a
5 contra -- and this is something I had to explain to many
6 law enforcement officers. As -- Flue-Cured as a
7 contract manufacturer, they did business with crooks all
8 over the place, right? Every crook would walk in the
9 door and say, can you make this for me, right? And
10 Flue-Cured would make it, right? You would -- that's
11 the idea is to generate business and you would take
12 contracts to manufacture cigarettes. In fact, Premier
13 owned certain brands and contracted with U.S. Flue-Cured
14 to make their brands. That's how I understood it.
15 So we -- we kind of -- it was a -- it was a
16 good partnership because Steve would call up and say,
17 this guy X wants us to make 20 containers of cigarettes,
18 this guy wants us to make three, do you know him?
19 Guy's -- guy's a long-term counterfeiter. This guy's
20 the target of stuff, you know, you got to be careful.
21 Or, hey, you know, would you mind meeting the agent or
22 talking to the agent who's working that case? So that
23 was really the role that Steve played preacquisition.
24 Q You said that Mr. Daniel provided realtime
25 intelligence to the ATF or to other organizations. What

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1 kind of intelligence are you talking about?
2 A Well, the example I just gave. He would --
3 Q Okay.
4 A Steve was the guy -- and I -- again, I'm -- I'm
5 not sure of the hierarchy but everybody knew Steve and
6 liked Steve. He would go to the tobacco shows and he
7 would be the face of the -- Flue-Cured at least in my
8 opinion and -- and so people would approach him and say,
9 hey, Steve, would you do this for me? Now Steve's
10 history in the tobacco business goes way past mine and
11 he would know -- he would know these guys were crooks.
12 He didn't have -- need me to tell him that, but he would
13 like to feel that out and he'd say, hey, this guy
14 approached me. He wants a container of product for
15 whatever. Steve, that's contraband, you can't -- yeah,
16 I know, but I'm just passing it on. So that was the
17 type of realtime intelligence. And then there were many
18 investigations in particular with other agencies where
19 we just had Steve deal with them directly.
20 Q All right. Was Steve put through some kind of
21 a vetting process similar to Mr. Carpenter and
22 Mr. Small?
23 A Not by me but ATF headquarters vetted
24 U.S. Flue-Cured before -- and it's not just ATF. Other
25 agencies that were working with U.S. Flue-Cured vetted

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1 the company as we vetted other companies as well.
 2 Q What considerations go into vetting a company
 3 as opposed to an individual?
 4 A I didn't -- ATF headquarters did that. I mean,
 5 are they a target of TTB audits, are they -- are they
 6 known crooks, have they made counterfeits, do they pay
 7 their taxes? You know, I assume those type of things.
 8 I mean, the government would not want to contract with a
 9 manufacturer that was under criminal investigation by
 10 the IRS, for instance. So that was vetted at the
 11 headquarters level and obviously we weren't part of
 12 that.
 13 Q But you're not aware of any vetting with
 14 respect to Steve Daniel --
 15 A Personally?
 16 Q -- as an individual?
 17 A No.
 18 Q All right. That concern you at all?
 19 A No. He was the vice president of a large
 20 tobacco company and only the highest reputation in the
 21 business, never heard anybody say a negative thing about
 22 him so I -- I knew he wasn't a target of a criminal
 23 case. I would have known that. So as a result I had no
 24 concerns about Steve's information he was passing. And,
 25 you know, we don't take anybody's -- not Chris's, not

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1 Jason's, not -- not Steve's word on anything. We
 2 independently validate that. So if he came in and said,
 3 this company has offered me this and, oh, by the way, he
 4 sent me this e-mail of the graphics of the product he
 5 wants us to make illegally, you know, that was how we
 6 would validate his information.
 7 Q Okay. But am I correct that Mr. Daniel also
 8 played a role in the government buy program? What I
 9 mean by that is the government would arrange to purchase
 10 products that were manufactured by U.S. Flue-Cured.
 11 Steve was the point person for that, correct?
 12 A I don't know who ATF headquarters sent that to.
 13 I'm sure it's in the book, but I -- I don't -- I don't
 14 know if it went to Steve or John Taylor as the
 15 treasurer. I knew I had to meet John Taylor once
 16 because he was the treasurer and, you know, he was
 17 selling stuff to operations around the country and, you
 18 know, John's a smart man and would know that those
 19 companies have no prior credit history and aren't --
 20 aren't a licensed tobacco wholesaler so they -- I knew
 21 that for a fact they had to bring John Taylor in and I
 22 had met John and -- on one of these visits to Bristol.
 23 Q All right. To the best of your knowledge was
 24 Mr. Daniel ever involved in training government
 25 informants or government agents?

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1 A Well, I don't know of him training government
 2 informants, but he trained a lot of government agents.
 3 Q All right.
 4 A He met a bunch of government informants. He
 5 assisted on numerous government operations directly with
 6 the informants, but he hosted many training things and
 7 had many meetings with many different agencies. Their
 8 tobacco enforcement units, the regulatory units both in
 9 Raleigh and wherever those agents happened to be
 10 throughout the country. He was always good about --
 11 again, I'll give you an example. I learned a lot about
 12 the business from Steve. U.S. Flue-Cured was in a
 13 position that nobody else I'm aware of in this country
 14 was which is why we were glad to support them. They had
 15 everything from the tobacco leaf -- they grew it, they
 16 process it, they made it, they wholesaled it to retail.
 17 They had export business. They had leaf business
 18 globally. Philip Morris doesn't have that. Reynolds
 19 doesn't have that. Lorillard doesn't have that. So of
 20 one guy in the entire tobacco business in the United
 21 States of America, the expert is Steve Daniels.
 22 Everybody will tell you that because Steve's the only
 23 guy who could tell you from leaf to retail. There's
 24 nobody at Philip Morris who can tell you that. So his
 25 role was able to -- depending on which crooks we were

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1 dealing with, which agency, some were asking about
 2 the -- the -- the -- the scams with the tobacco leaf.
 3 Some were asking about the processing. Some were asking
 4 about the corrupt contract manufacturing. Some were
 5 asking about illegal exports. So Steve was the guy who
 6 could answer every one of those questions. I couldn't.
 7 Chris -- Chris Small couldn't. Jason Carpenter
 8 couldn't.
 9 Q Okay.
 10 A So Steve filled that role as our expert.
 11 Q All right.
 12 MR. MARSHALL: Can we go off the record?
 13 MR. VANN: We are --
 14 MR. MARSHALL: I'm at a good --
 15 THE VIDEOGRAPHER: We are going off the record.
 16 The time is 12:00.
 17 (Whereupon, there was a lunch recess in the
 18 proceedings from 12:00 p.m. to 12:49 p.m.)
 19 THE VIDEOGRAPHER: We are back on the record.
 20 The time is 12:49.
 21 MR. KELLY: Just for the record, I know at the
 22 beginning of the morning we identified counsel. If
 23 those in addition to counsel who are present could just
 24 identify themselves and their affiliation. We can start
 25 with Chris.

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Conducted on March 22, 2016

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145	1 MR. SMALL: Chris Small, Defendant. 2 MR. JOHNSON: Albert Johnson. 3 MR. KELLY: That's it for our side. 4 MR. SHEPHERD: Andy Shepherd, board member of 5 USTC. 6 MR. BATTEN: Charlie Batten, board member of 7 USTC. 8 MR. THOMPSON: Stuart Thompson, CEO of USTC. 9 MR. KELLY: Thank you. 10 MR. MARSHALL: Okay. 11 BY MR. MARSHALL: 12 Q Welcome back, Mr. Lesnak. Same rules as 13 before. If you need a break, just say the word. Let me 14 know. I'm happy to do it. 15 A Thank you. 16 Q When we broke for lunch we were talking about 17 Mr. Daniel and some of the activities that he engaged in 18 with the ATF and other law enforcement agencies. I 19 believe you testified that he was involved in training 20 individuals associated with some of those agencies, is 21 that correct? 22 A Yes. 23 Q How often would he train people? 24 A Oh, there were dozens of meetings where he 25 would sit with the guys, bring records, explain what the	147	1 Q Do you know if Mr. Daniel was required to keep 2 any log of the hours that he was spending on these 3 activities? 4 A Required by us? No. 5 Q Okay. Do you know if he kept a record of his 6 hours? 7 A Don't know. 8 Q Did you consider Mr. Daniel to be a 9 confidential informant ever? 10 A No. I -- I listed him as I would Chris. In 11 reports that we wrote he was listed as a cooperating 12 manufacturer. 13 Q All right. You're familiar with Bill 14 Haberberger, correct? 15 A From Premier, yes. 16 Q Did he provide services to the federal 17 government similar to Mr. Daniel? 18 A He was a liaison I believe with Premier and ATF 19 headquarters. I spoke to him on a few occasions, met 20 with him twice, I believe. 21 Q Okay. 22 A And I'm -- I'm -- if I recall, I think he was a 23 treasurer or a finance guy at -- at Premier. 24 Q How about Dave Rickard, did he provide services 25 to the government?
146	1 records were. There was at least two official trainings 2 at the factory or at the -- the facility in Timberlake 3 as well with FDA and all its researchers and all its lab 4 techs and all its criminal agents from the new tobacco 5 enforcement unit. Other than that one, the rest were 6 localized -- 7 Q All right. 8 A -- whether there was meetings or meetings at 9 the national Attorney Generals association meetings, 10 meetings with FDA events in -- in D.C., meetings out in 11 California, just wherever our guys -- when I say our 12 guys, federal law enforcement guys happened to be -- 13 Q Uh-huh. 14 A -- and Steve was there or he would deal with 15 them obviously on the phone. 16 Q Do you think he was having as many as one 17 meeting a month? 18 A Well, in the two-year time frame is 24. Would 19 that be 24? Yeah. I know he's talked to -- and had 20 briefings on at least 24 occasions. I -- I don't know 21 if it averaged out to one a month, but it wouldn't 22 surprise me if he had 24 separate briefings. 23 Q Did he ever ask to be compensated for the 24 trainings or other services that he was providing? 25 A Did not.	148	1 A Dave -- I don't want to say similar to Steve 2 because it was a much less significant role, but as a 3 manufacturer or a brand owner, he would hear a lot of 4 stuff that he made sure got back to us. I -- I -- if 5 I'm correct, I think almost every one of those occasions 6 flowed back through Jason. Like he would call and Jason 7 would say, hey, I just talked to St. Louis and, hey, 8 just so you know, this guy's coming to meet with them, 9 that type of stuff. 10 Q How about Albert Johnson, was he a confidential 11 informant, cooperating witness, cooperating anything? 12 A No. I -- prior to this I'd only met Albert 13 once or twice. 14 Q All right. Are there any other individuals who 15 are affiliated or who were affiliated with USTC that 16 were providing services for the government similar to 17 Steve Daniel? 18 A No, none -- none that I dealt with directly. I 19 can't speak for the whole country, but none that I'm 20 aware of. 21 Q All right. We talked about this briefly 22 earlier, but am I correct that both U.S. Flue-Cured and 23 Premier were involved in the government buy program in 24 2008? 25 A Yeah. I -- I couldn't commit to the date, but

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1 **I was aware that they were part of the government buy**
 2 **program.**
 3 Q All right. And I have my own understanding of
 4 that program, but I want to make sure mine's the same as
 5 yours. So can you explain to me how the government buy
 6 program operated just with respect to U.S. Flue-Cured in
 7 2009 -- 2009, 2010 time frame?
 8 A **Someone at ATF headquarters would have**
 9 **generated -- I'm sure the word isn't a contract but**
 10 **would have generated some type of agreement with**
 11 **U.S. Flue-Cured. I'm -- I'm not sure I've ever seen it,**
 12 **but they would have generated a document. That document**
 13 **would have been vetted through TTB, Tax and Trade**
 14 **Bureau, as well and there would be a series of e-mails**
 15 **that would generate to all the guys working tobacco**
 16 **investigations and the Homeland Security fusion center**
 17 **saying, hey, does anybody know these people, anybody**
 18 **have any derogatory stuff, very similar to what happens**
 19 **when a new -- or a company comes up for relicensure. So**
 20 **the -- the government, ATF, TTB, does their due**
 21 **diligence. I was always part of those e-mail chains,**
 22 **anybody know this company, that type of thing.**
 23 Q Okay.
 24 A **So I don't know who negotiates it at**
 25 **U.S. Flue-Cured. I don't know who generates the**

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1 **agreement or contract and then they get on the buy**
 2 **program. And what would typically happen, ATF and all**
 3 **the other agencies that utilized that buy program would**
 4 **call their headquarters or would call ATF headquarters**
 5 **and say, hey, can you get me cheap cigs, can you get me**
 6 **Newports, can you get me Marlboros? Sometimes the**
 7 **question was, can you get me, I'll say, Swisher Sweets**
 8 **and the answer would be no because they're not --**
 9 **they're not on the buy program. I don't know if they**
 10 **are. I'm just saying --**
 11 Q Okay.
 12 A **Back then they weren't. So that's how that was**
 13 **administered at the headquarters level.**
 14 Q All right. You said that there was some kind
 15 of an agreement that would have been entered into
 16 between ATF or TTB and somebody at U.S. Flue-Cured.
 17 Have you ever seen a copy of that agreement?
 18 A **I don't think so.**
 19 Q Okay. Can you say with certainty that an
 20 agreement was entered into by U.S. Flue-Cured?
 21 A **Well, I know memos were sent from ATF**
 22 **headquarters to the cooperating manufacturers so I don't**
 23 **know if you call that an agreement or a memo, but --**
 24 Q Okay.
 25 A **-- I know that did occur.**

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1 Q All right. And am I correct that the ATF would
 2 be able to purchase cigarettes from U.S. Flue-Cured such
 3 that there would be no tax liability, is that right?
 4 A **Correct. The tax was waived.**
 5 Q Tax --
 6 A **The federal tax, yes.**
 7 Q Okay. Would this usually be in the 4 to \$6 per
 8 carton range?
 9 A **I think pre-SCHIP it was \$3, 3.90. Post-SCHIP,**
 10 **which was part of the big takedown in 2011, it went up**
 11 **to \$10.10.**
 12 Q And I'm sorry. What is SCHIP?
 13 A **That's the -- the healthcare -- child**
 14 **healthcare law that was passed that took the federal tax**
 15 **from 3.90 and increased it to 10.10 in order for that**
 16 **extra money to be put into child healthcare as I**
 17 **understood what the tax was for.**
 18 Q All right.
 19 A **That -- that this was our busiest season as**
 20 **criminal investigators because every crook was trying to**
 21 **get product and hide it in hidden warehouses around the**
 22 **country because of the floor tax. There was a -- TTB**
 23 **assigned a floor tax and that -- you would have a price**
 24 **advantage -- by hiding your product, then taking it out**
 25 **after the SCHIP law passed and then putting it in the**

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1 **market you had a \$6 price advantage and thereby you were**
 2 **generating false documents back to the U.S. Government**
 3 **and that was the basis of many of our prosecutions.**
 4 **More -- the FBI did most of those, but that was joint**
 5 **with us.**
 6 Q Okay.
 7 A **So that -- there was two pricings during this**
 8 **time frame, 3.90 and 10.10 or 10.09 or...**
 9 Q All right. So the ATF was able to get
 10 cigarettes at relatively low prices from U.S. Flue-Cured
 11 through this program, correct?
 12 A **That's correct.**
 13 Q All right. And was the fact that they could
 14 get cigarettes at those low prices a critical part of
 15 the government buy program? Let me be a little more
 16 specific.
 17 A **Thanks.**
 18 Q Once you acquired cigarettes from
 19 U.S. Flue-Cured at a low cost, where were those
 20 cigarettes then sent on average?
 21 A **All over the country.**
 22 Q Okay. Were some of them sent to Big South?
 23 A **Yes.**
 24 Q All right. And --
 25 A **Big South at the time just -- I'm sorry. Just**

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1 to be correct, Big South had several warehouses as you
2 know, Atlanta, someplace else in South Carolina, I
3 forget the name of the town, little town in South
4 Carolina, obviously one in Bristol that were -- and I
5 know Premier had warehouses in the midwest as well and I
6 think at the -- this time frame Premier warehouses were
7 part of Flue-Cured at the time so it went out around the
8 country.
9 Q And once they went out around the country,
10 would those warehouses then sell those cigarettes like
11 we described earlier in order to generate proceeds for
12 your operations?
13 A Not in order to generate. In -- on occasion
14 they did generate, but that wasn't necessarily what
15 prompted those orders. Bad guys always wanted product.
16 There were only so many Marlboros and Newports we could
17 get. And in the inner city, in the poor rural
18 communities that Big South served, cheap cigarettes is
19 what people want. They can't afford a 30, 40, \$50
20 Newport or -- or in New York a \$110 Newport a carton
21 which is -- you know, when you could buy a cheap
22 Flue-Cured cigarette for 15 or 18, whatever the prices
23 were back then. So you had a need so guys in operations
24 around the country would say, hey, I need cheap
25 cigarettes. Well, you know, I can't give you -- I can't

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1 give you -- I can only give you so many Marlboros and
2 Newports. I can't take -- you know, because we're
3 paying for them and I just can't -- we can't sustain
4 that, you know, all these operations around the country.
5 So ATF entered into agreements with a bunch of the
6 mid-major manufacturers for the purpose of getting a
7 cheaper cigarette which produced the same criminal
8 violations. The criminal violations isn't that you're
9 trafficking in Marlboros, it's that you're trafficking
10 in contraband cigarettes, so we didn't care what the
11 brand was.
12 Q The money that it took for you to -- well,
13 strike that.
14 Let me ask it this way: If you were going to
15 order a bunch of cartons from U.S. Flue-Cured at, say,
16 \$4 a carton, where did you get the money to pay
17 U.S. Flue-Cured? Would that come from your churning
18 operations or would it come from --
19 A Yeah.
20 Q -- somewhere else?
21 A When it came on ATF letterhead -- and I haven't
22 seen the memo, but I assume it was generated on ATF
23 letterhead. -- it would be paid -- we would get a bill
24 from the cooperating manufacturer, would come to the ATF
25 accountant, auditor, guy who ran the books. He would

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1 get a bill and I think that's really Bill Har -- I'm
2 sorry. What's his name, Hargen --
3 MS. POCKLINGTON: Haberberger.
4 THE WITNESS: Thank you.
5 A -- Hagenberger [sic] or John Taylor would
6 e-mail either ATF headquarters or e-mail our auditor,
7 our -- our ATF agent bookkeeper, whatever his job title
8 was, the bill and say, hey, you owe us this much money
9 and he would write a check.
10 Q All right. But just so I'm clear, the ATF
11 auditor that you're referring to, I mean, would this be
12 money coming directly from the ATF or would it be money
13 coming from one of your churn operations to pay for the
14 cigarettes?
15 A That is the -- I'm sorry. That's the same
16 thing. When I say churning, that is ATF.
17 Q Okay. Okay.
18 A There were other agencies that also ordered,
19 but that's -- I'm talking specifically about ATF
20 Bristol.
21 Q All right. If you could turn to Tab 24 in the
22 binder in front of you and hopefully this is the right
23 document. Let me check yours.
24 MS. POCKLINGTON: Which one, 24?
25 MR. MARSHALL: Yeah. I'm looking for this.

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1 MR. KELLY: We don't have anything.
2 A Mine's blank.
3 Q Sorry about that.
4 A That's okay.
5 Q All right. Here -- here it is.
6 MS. POCKLINGTON: I remember saying that. It's
7 23.
8 BY MR. MARSHALL:
9 Q Sorry. 23, Mr. Lesnak. And if you could flip
10 to the second page which for the record at the bottom
11 should have a Bates number which is USTC 5468. Are
12 these the contracts or agreements that you might have
13 been referring to earlier? And take your time to look
14 at that if you need to.
15 A No. I -- well, I believe there's an initial
16 agreement.
17 Q All right.
18 A This is an individual order form.
19 Q Do you recognize these letters?
20 A I never saw them but I do -- I -- I've never
21 seen this document. It never came to me. It came from
22 ATF headquarters directly to Steve so we -- we didn't
23 get these for our files or anything.
24 Q All right. If you look at the third page of
25 this exhibit which is 5469 down at the bottom --

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1 **A Yes.**
2 **Q -- you see where it says, shipping and billing**
3 **address, Moretz Candy building, 8142 --**
4 **A Yeah.**
5 **Q -- Wagner Road?**
6 **A That was the old warehouse. When we moved that**
7 **was the older one I told you we -- we stayed at for**
8 **maybe a year -- I -- I don't remember the exact**
9 **date. -- prior to moving to the Big South warehouse.**
10 **That's when we operated as a different company before**
11 **Big South.**
12 **Q All right. Would Jason --**
13 **A And Mor -- I'm sorry. Go --**
14 **Q No. You go ahead.**
15 **A Moretz Candy Company was just the name on the**
16 **building. That wasn't our undercover company. It**
17 **just -- it literally was an old candy company and had a**
18 **sign up that said, Moretz Candy Company. So if you**
19 **didn't put that, the trucks would never have found us.**
20 **Q Is that where Mr. Carpenter and Mr. Small were**
21 **running their operation at that time, at the time this**
22 **letter would have been sent?**
23 **A Yeah. That would have been our -- we were**
24 **located at that warehouse, is that your question, at the**
25 **time?**

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1 **Q Yes, it is.**
2 **A Yes. That was the only warehouse we had at**
3 **that time.**
4 **Q So to use this one as an example, this is 1500**
5 **cases of different variations of trafficked cigarettes**
6 **that were sent to that location. Am I correct that some**
7 **of those cigarettes -- once they were received by that**
8 **location some of those might have been sold to ATF**
9 **targets?**
10 **A Yes. We created that brand Traffic. We**
11 **thought it was -- actually, we didn't create it. I'm**
12 **sorry. I believe trade -- Flue-Cured owned that**
13 **trademark, but it was priceless. I mean, we were**
14 **running trafficking cases. What better to sell bad guys**
15 **Traffic cigarettes in a trafficking case? It was -- we**
16 **had a couple other examples like that. But, yeah,**
17 **that's why I remembered this. It was quite --**
18 **Q Okay.**
19 **A We thought it was quite interesting. We --**
20 **sorry I editorialized there as well but, yeah, we --**
21 **that's why I remember this.**
22 **Q And to take that example one step further, if**
23 **Mr. Carpenter and Mr. Small assisted you in selling**
24 **those cigarettes to ATF targets, that would be one way**
25 **that you could generate proceeds or funds for your**

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1 operations, correct?
2 **A That's correct.**
3 **Q Could they also trade -- have traded those**
4 **cigarettes or similar cigarettes for contraband**
5 **cigarettes, knives, guns, drugs?**
6 **A We did that around the country, yes.**
7 **Q All right.**
8 **A Now I don't -- I can't swear that these**
9 **cigarettes were traded that way.**
10 **Q Understood.**
11 **A I -- I'd have no way of knowing without looking**
12 **at all the reports.**
13 **Q And I'm just using this as an example. I don't**
14 **expect you to know about this particular batch of**
15 **cigarettes. Is it possible that some of these**
16 **cigarettes or cigarettes involved in similar**
17 **transactions that went to the Moretz building, is it**
18 **possible that some of those would have been sold to**
19 **nontargets?**
20 **A Yes. Yes.**
21 **Q And would that be in the context that you**
22 **described earlier for me that you might be selling to a**
23 **business or an entity that is not yet a target --**
24 **A It --**
25 **Q -- but could become one?**

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1 **A Yes. Or the van pulls up with a regular**
2 **customer and he sees new packaging on a new brand and he**
3 **goes, hey, I'll take ten of those and you're not going**
4 **to not sell the guy something you have priced to sell.**
5 **What's your excuse for not selling when you got 1500**
6 **cases there? So some of it went out in legitimate**
7 **commerce.**
8 **Q All right. And -- and to use that example, the**
9 **customers came to you all; they came to the warehouse to**
10 **purchase the cigarettes, correct?**
11 **A Yeah. That was not uncommon.**
12 **Q All right. All right. With respect to -- let**
13 **me go back to the -- the government buy program again**
14 **real quick. When -- when U.S. Flue-Cured would sell**
15 **cigarettes to the government at 4, 5, \$6 a carton, did**
16 **you place any restrictions on the profits that**
17 **U.S. Flue-Cured could make from those transactions?**
18 **A No. I -- I just wanted to make sure they made**
19 **money.**
20 **Q All right.**
21 **A I did -- with any of the cooperating**
22 **manufacturers, I -- I didn't price their goods from some**
23 **of the other manufacturers that cooperated.**
24 **Q Uh-huh.**
25 **A That was their price of goods that they -- ATF**

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1 headquarters agreed to that price, that they would buy
2 at that price.

3 Q Was John Taylor to the best of your knowledge
4 aware that these transactions were taking place?

5 A It was my understanding that we had to loop
6 John in as the treasurer -- again, I'm saying he was the
7 treasurer. I think he was the treasurer at the
8 time. -- because he was handling the finances from
9 companies that didn't exist except through the
10 U.S. Government.

11 Q Was he looped in before 2011?

12 A I don't remember the date.

13 Q All right. How about Albert Johnson, did
14 Mr. Johnson to the best of your knowledge know about
15 these transactions prior to 2011?

16 A The answer is yes but not by me. I knew he was
17 aware and at some point I sat down with him in
18 Kingsport, Tennessee for my -- at the time my one and
19 only meeting with him prior to this.

20 Q All right. Is there anyone else who was
21 affiliated with USTC or U.S. Flue-Cured at that time,
22 and I'm referring to before 2011, who was aware that
23 these transactions were taking place, again, to the best
24 of your knowledge?

25 A I was told, though I didn't know who it was,

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1 that board members were briefed, that there were a few
2 guys on the board that were told because there were
3 questions about, boy, they're making a lot of money on
4 some of these sales.

5 Q Okay.

6 A But I wasn't part of those briefings and I
7 couldn't tell you who was told.

8 Q Who told you that board members had been
9 briefed?

10 A Jason, Chris, Steve Daniels. Because at some
11 point we had discussions about they wanted me to do a --
12 a briefing which ultimately became the briefing that Dan
13 Whitmore went to.

14 Q In 2011?

15 A At the time of the acquisition.

16 Q All right. Did that concern you that board
17 members and others potentially within USTC knew about
18 these transactions?

19 A Did it concern me that people knew?

20 Q Yeah.

21 A Well, it always concerned me every -- I mean,
22 we were covert for years so any time a new player was
23 brought in I was concerned, but I also understand that a
24 legitimate company has a right to protect itself and --
25 and vet this with headquarters or with their lawyers

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1 and, you know, I -- I believed then and I believe now
2 that we acted reasonably in briefing the chairman, the
3 treasurer, the vice president and outhouse counsel --

4 THE WITNESS: Inhouse counsel, outhouse
5 counsel?

6 MR. ZESZOTARSKI: Inhouse.

7 THE WITNESS: Sorry.

8 A -- counsel. I was comfortable that, you know,
9 we -- we had done our fair share and if nobody else
10 knew, I'd been very happy. If somebody else had to be
11 brought in like a John Taylor because he handled the
12 finances, then I think that was -- you know, it's like,
13 hey, would you mind talking to John or say hello, John
14 needs, you know, to -- to know that, you know, this is
15 the government? We would be happy to do that.

16 Q Okay. Was it important to you that fewer
17 people knew about U.S. Flue-Cured's involvement in the
18 government buy program for the reasons you've just
19 described?

20 A Well, I -- there were several reasons for that.
21 Nobody wants this out there for many safety reasons, for
22 business reasons. In my one meeting with Albert
23 Johnson, his concern was -- is that we not burn
24 U.S. Flue-Cured, burn them meaning publicize this.
25 That's when I learned a lot of his business and his

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1 involvement was in China and that he was concerned that
2 if the Chinese government found out that U.S. Flue-Cured
3 was cooperating with the government, that it would cost
4 them their Chinese business. So while I was there to
5 meet with Albert at the hotel, I really got lectured for
6 30 minutes about not screwing this up and not screwing
7 them up and not burning him.

8 Q All right. In 2009 were you able to generate
9 revenue for your undercover operations by engaging in
10 these kinds of transactions with U.S. Flue-Cured?

11 A This is December 17th of 2009. So the answer
12 is starting about that date -- if this is the first
13 one -- and I don't know if it was. If this is the first
14 one, it would have been the end of 2009 or 2010.

15 Q Okay. But you believe you were able to
16 generate revenue through your involvement with
17 U.S. Flue-Cured in 2009?

18 A The U.S. Government generated some income and
19 lost money on transactions. You got to -- overall I --
20 without looking at the audits that -- that ATF
21 headquarters did, I couldn't tell you if we made money
22 on this particular transaction. Some of these went out
23 free to operations all over the globe.

24 Q Okay.

25 A I know for a fact because it was Traffic and we

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1 were able to Traffic -- track Traffic because we were
 2 the only ones who had it. So any time it appeared up in
 3 the marketplace, we were able to link the first guy we
 4 sold it to to bad guys and their entire distribution
 5 network. So that was what the benefit was of having a
 6 unique brand to us, whereas, a Marlboro I couldn't have
 7 told you -- if I had sold it to an Armenian guy and -- I
 8 could not have been able to recover it through his
 9 retail store. However, if it was Traffic, we know that
 10 was ours and we were able to link that to distribution
 11 networks.
 12 Q All right.
 13 A So some of that we made money on, some we did
 14 not.
 15 Q Other than buying product that was manufactured
 16 by Premier or U.S. Flue-Cured, were there other
 17 companies that were participating in the government buy
 18 program with respect to your operations in 2009 and
 19 2010?
 20 A Yes.
 21 Q All right. How many? You can give me an
 22 approximate.
 23 A To tell you the truth, I don't know.
 24 THE WITNESS: Can I tell them who we dealt with
 25 or --

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1 BY MR. MARSHALL:
 2 Q I'll make it easier for you. You can just tell
 3 me the number. I don't need to know the names.
 4 MR. KELLY: Could we go off the record for one
 5 minute?
 6 MR. MARSHALL: All right.
 7 MR. KELLY: Okay.
 8 THE VIDEOGRAPHER: We are going off the record.
 9 The time 13:14.
 10 (Whereupon, there was a recess in the
 11 proceedings from 1:14 p.m. to 1:17 p.m.)
 12 THE VIDEOGRAPHER: We are back on the record.
 13 The time 13:17.
 14 BY MR. MARSHALL:
 15 Q Thanks for your patience with these questions,
 16 Mr. Lesnak. I want to make sure that I'm not confusing
 17 you on one of the things that we're talking about. The
 18 letter that we were looking at from December 17th of
 19 2013, this is maybe a good example, but, you know, my
 20 understanding is that this reflects one transaction in
 21 the government buy program. Would you agree with that?
 22 A Yes.
 23 Q All right. Now when those cigarettes are
 24 purchased, they're purchased by the government and then
 25 they're sent to a facility that's owned by Mr. -- I'm

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1 sorry, that's being run by Mr. Carpenter and Mr. Small.
 2 Is that also correct?
 3 A In this particular case, yes.
 4 Q Okay. Now when those cigarettes are sold or
 5 whatever they do with the cigarettes, they're being used
 6 in your churn operation, is that correct?
 7 A That's correct. In this particular order, yes.
 8 Q Okay. And so, again, referring back to this
 9 letter, if they sold those cigarettes, that would
 10 generate proceeds, if you will, for your churn
 11 operation?
 12 A Yes. And I think what I said was I can't say
 13 this particular transaction generated --
 14 Q Sure.
 15 A -- any proceeds but --
 16 Q And I'm using this --
 17 A -- the answer is yes, that is the model.
 18 Q All right. Okay. So now that we're clear on
 19 that, what -- what I'm trying to figure out here is were
 20 you working with other manufacturers to buy cigarettes
 21 through the government buy program and then use them for
 22 your churning operations? And I just want to know if
 23 it's only Premier and U.S. Flue-Cured or if there were
 24 other manufacturers that were engaged in those
 25 transactions for your operations.

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1 A Yes.
 2 Q All right. How many approximately? You don't
 3 need to tell me names but just...
 4 A There are ones I know of that we didn't deal
 5 with. Do you want that answer or you want ones I only
 6 dealt with?
 7 Q The ones that you dealt with for purposes of
 8 your churning operation.
 9 A Three.
 10 Q All right. So U.S. Flue-Cured, Premier and
 11 then one other group?
 12 A I'm sorry. Four. I put Premier together with
 13 Flue-Cured. Four.
 14 Q Okay. Four others?
 15 A Yes. No. Four total.
 16 Q Sorry. Four total. All right. Thank you. Of
 17 those four, can you give me a rough ballpark of what
 18 percentage of the product that you were acquiring came
 19 from U.S. Flue-Cured?
 20 A I haven't done that math. Sorry.
 21 Q All right. That's all right. Did you have any
 22 concerns prior to May of 2011 that the government buy
 23 program might come to an end?
 24 A The ATF churning program or the government buy
 25 program? I never heard that the ATF buy program was

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1 going away. In fact, I don't think it has. There was
2 concern that ATF was changing the churning program and
3 those of us who were involved in it like myself wanted
4 us to adopt the FBI model which had been in place for 20
5 years and I spent many e-mails to headquarters saying,
6 why are we recreating the wheel, let's just do like the
7 FBI does. So there was concern back and forth for maybe
8 a year. I think it took a year to get that all worked
9 out.

10 Q Did they eventually change the program, the
11 churn program?

12 A Change it? No. They came out with orders
13 finally.

14 Q Okay.

15 A You know, they had the memo of 2005 and then
16 came out with orders and those of us in the field wanted
17 the orders to look like -- we never wanted anything to
18 be like the FBI, right, but in this case they had done
19 it for 20 years and done it very well. Why can't we
20 just have the same exact orders as the FBI does? We're
21 all Department of Justice now. It just made sense to
22 us.

23 Q Were some of your recommendations incorporated
24 into the 2011 guidelines if you will?

25 A Yes.

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1 Q All right. Let me ask you to turn to Tab 2 in
2 your binder. One of the CCs in this e-mail is Tom
3 Blackberry. Would that be -- do you think that's you?

4 A I hope not. That would have been my government
5 Blackberry so I hope it wasn't but --

6 Q Well, let me ask you --

7 A -- it could have been.

8 Q Okay. Do you recognize this e-mail at all?

9 A No. Well, it doesn't give the e-mail address.

10 Q I'm sorry. Do you recognize the content of the
11 e-mail as something that you received in the past?

12 A Yes, I do remember that actually. I -- I
13 remember that distinctly actually.

14 Q All right. If you look at the second
15 paragraph -- this is an e-mail from -- purports to be
16 from Jason Carpenter. It says, I know the timing is
17 sensitive right now, however, we have no choice but to
18 wait until the entire order is produced.

19 What I'm curious to know is what is your
20 understanding when Mr. Carpenter says in July of 2010
21 that the timing is sensitive right now?

22 A If you could show me what the order was, I
23 could answer your question.

24 Q Okay. This is the only document that I have.

25 A Then I'd just be guessing. I know what

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1 prompted this. We were doing our monthly
2 reconciliation. We always did that, me, my boss, Dan,
3 Cory, somebody from the office. We always counted our
4 inventory at the end of every month. And it was a pain
5 in the butt -- I'm not supposed to say ass. It was a
6 pain in the butt when a manufacturer would send -- we'd
7 order 400 cases. They'd send us 240. Well, hell, now
8 we had to sit around and get a partial order. Then we
9 got another partial order. Then the next one came in
10 the next month. So you would -- we on occasion -- and I
11 don't mean from Flue-Cured but it -- it happened that we
12 would get inventory in three different shipments and it
13 was a nightmare for us.

14 And the other thing was -- is on occasion and,
15 again, I -- I don't remember if it was Flue-Cured, we
16 would order a specific -- we -- the bad guy would order
17 a specific style of something, a hard-to-come-by style
18 and you could often tell where the product was going.
19 If somebody offered Parliament, it was going to New
20 York, the Russians or the Armenians or LA, right? I
21 mean, we had a -- we -- we had a pretty good idea by
22 what they ordered. But sometimes the hard-to-come-by
23 brands they didn't have in stock on the floor or that
24 they weren't willing to sell to the government. So we'd
25 have an order of 260 we'd order and 255 would show up.

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1 Well, did the UPS man steal it or is it coming later?
2 Then we'd call headquarters and say, hey, we got shafted
3 five cases, you know, we paid for, and they said, oh,
4 well, let me check. Then they'd make a phone --
5 headquarters would make a phone call and say, oh, they
6 were short those five cases. Well, it was an
7 administrative nightmare for those of us who had other
8 things to do.

9 Q Okay.

10 A So I said, please, God, if you're going to send
11 me an order, just wait until it's all ready and send it.

12 Now the sensitive thing -- and, again, I don't
13 know what this -- without looking at the order was --
14 there were a lot of deals that needed to be done on buy
15 busts. We had a significant amount in this time frame
16 of buy busts --

17 Q All right.

18 A -- meaning product would go to a bad guy, he'd
19 hand the money to the undercover, they'd get arrested.
20 We were starting our takedowns around this time and I
21 know we were doing -- we wrapped up at almost exactly
22 this time. It may have been this. It was the largest
23 Cuban hijackers out of Hialeah, Florida, that were
24 jacking trucks -- hijacking trucks and we needed
25 product. And no offense to your brands. I'd rather

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1 somebody steal and get away with your brands at 4, 5, \$6
2 a carton than a Marlboro --

3 Q Okay.

4 A -- okay, worth a Million Two for a truck. And
5 so we often had need for cheap product that -- I don't
6 want to say we didn't care if it got hijacked or
7 stolen --

8 Q Right.

9 A -- but that was part of the -- that was part of
10 the operation. But, again, without looking at the order
11 I couldn't -- I couldn't swear to you and tell you what
12 that was.

13 Q That's fine. Could you turn to the next tab
14 which is Tab 3. And I'll ask you to take a minute and
15 review this. Let me know when you're done. My first
16 question, again, will be whether you recognize this
17 e-mail.

18 A I've got to read backwards.

19 Q That's fine.

20 A Okay. I'm respond -- could I ask you a
21 question? I assume I'm responding to the PowerPoint
22 that I was e-mailed?

23 Q And you don't need to review that just yet.

24 A Okay.

25 Q If we -- I might ask you a couple questions

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1 about it. I'll make sure you have time to review that
2 separately.

3 A Yes.

4 Q Okay. If you look at the first page which,
5 just for the record, is BSW 79755 and it is also marked
6 highly confidential, you sent an e-mail to Jason
7 Carpenter on the 6th of November 2010. Do you see that?

8 A Yes.

9 Q In the third paragraph down it states, we've
10 been operating with play money for the last three years.
11 2011 will be your money. I would act like it.

12 What did you mean when you said you've been
13 operating with play money for the last three years?

14 A Well, those guys can no longer take the loss of
15 buying a Million Dollars worth of counterfeit
16 cigarettes. That's their money. They can't -- I
17 wouldn't expect them to buy narcotics. I wouldn't
18 expect them to buy guns and -- and explosives and
19 counterfeit pharmaceuticals. So this is their money.
20 They -- they got to stop -- if somebody offers them a
21 deal, they shouldn't be using their money. That's how I
22 take that con -- that e-mail -- again, I haven't seen it
23 in how many years now, five-and-a-half. -- is that
24 you -- you got to start preparing for your own 100
25 percent legitimate business. I mean, this is --

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1 Q Why was that?

2 A -- at the end of the day -- well, because we'd
3 been operating six years. We were winding down. I
4 mean, it was clear we were making defendants. We had
5 had an operation taken down, unfortunately, due to
6 threats to the informant there in that operation and
7 that was another agency's operation. He got scooped up
8 with his wife in the middle of the night, put in hiding
9 for three years, lost his house, lost his business. And
10 so there was serious concerns at this time frame to make
11 sure at the end of the day -- I don't want to say that
12 the government didn't leave these guys hanging, but at
13 the end of the day the government doesn't leave these
14 guys hanging. So, look, you know, you got to make sure
15 you take care of yourselves and your money. You know,
16 if an opportunity comes up to buy a counterfeit
17 container or a container of something, you know, that's
18 your money, it's not the government's money.

19 Q Well, the only time they would have bought a
20 counterfeit container would be in connection with one of
21 your operations, correct?

22 A Oh, that's -- absolutely.

23 Q Right.

24 A Absolutely. But don't -- my point is don't
25 commit. If we're not buying new -- if we're not opening

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1 new criminal cases -- and I believe this -- this was the
2 time frame -- and I don't have the new ATF orders so I'm
3 going to be guessing. This is the time frame that the
4 draft ATF orders are coming out, the new --

5 Q Right.

6 A -- 2011 ones. So we knew then that if it
7 didn't tie to one of your ongoing defendants, okay,
8 which we have -- again, the charts I think do a nice
9 visualization of that. If it doesn't charge to one of
10 your new de -- your old defendants -- we were
11 grandfathered into those old defendants. If a new
12 player comes in, we can't work that case, we meaning ATF
13 Bristol. We cannot work that case. We need to try to
14 find a home for it, but we cannot obligate it under the
15 new ATF policy to make any purchases of anything for the
16 new. So if a new Chinese guy came and said, I want to
17 trade female prostitutes and counterfeit cigarettes to
18 you, as asinine as this sounds -- or if a guy came in
19 with machine guns and -- and you'll see e-mails from me
20 to my headquarters saying this -- and said, I want to
21 trade this machine gun for a case of those Newport's,
22 under the new policy I had to say no. That's asinine,
23 but that was the policy. And so things were changing.
24 No longer could Chris Small call me from the warehouse
25 and say, hey, this van just pulled up and he wants to

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1 make this deal. If it's a new defendant, I had to say
2 no --
3 Q Were you --
4 A -- under the new policy.
5 Q Were you in the process then of contemplating
6 the extraction of the ATF from the business that Jason
7 and Chris were doing in late 2010?
8 A We -- well, the answer is we always did since
9 the beginning. I mean, we -- since 2006. It's, okay,
10 how much evidence do we need, how long's it going to
11 take to prosecute, let's find the -- the proper judicial
12 district, let's meet with main Justice, let's --
13 let's -- you know, let's prepare search warrants. The
14 financial part on these investigations as you are
15 obviously seeing yourselves take years, not -- not
16 because of us, because, I mean, to Subpoena records and
17 those records lead to other records that lead to other
18 records -- and in one of the cases --
19 Q Uh-huh.
20 A -- you know, we seized \$42 Million worth of
21 assets from one defendant. That takes years
22 unfortunately. So, yes, were we contemplating at some
23 point we were going to get burned? We have to plan for
24 that, of course. At some point are we going to have to
25 go to trial on one of these cases? You have to plan for

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1 that. So we didn't want to leave the guys who were good
2 to us, the guys who had been working and some risking
3 their lives for us, out there like this informant who
4 was living in an 800-square-foot house with his wife and
5 lost everything he owned because a bad guy showed up at
6 his door after a series of search warrants. And that --
7 that -- that informant who was an FBI informant, that
8 dictated a lot of us to my management at ATF
9 headquarters, ATF, FBI, Customs to make sure at the end
10 of the day that we had an exit strategy for these guys
11 for their personal safety, for their wives, their kids,
12 their husbands.
13 Q And at this time you were contemplating an exit
14 strategy, late 2010?
15 MR. GRAEBE: Objection.
16 A I--
17 MR. GRAEBE: I believe he interrupted him.
18 A I-- I had --
19 THE REPORTER: I'm sorry. I didn't hear the
20 objection.
21 MR. GRAEBE: I said, objection. I believe he
22 interrupted him.
23 A I contemplated an exit strategy since 2006.
24 Q All right.
25 A That was a constant -- we worked seven days a

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1 week for years and our always concern was not to burn
2 the umbrella and to make sure the informants knew when
3 they were going to get burned and some we sat down in a
4 room and said, this -- this operation's coming down,
5 you're going to be burned, and then to protect the guys
6 who had worked with the government for years. So, yes,
7 the answer to your question is it wasn't just in 2010.
8 We had an exit strategy from almost the beginning.
9 Q Let me ask you to look three more paragraphs
10 down where it starts with pay raises based on
11 performance. Do you see where that is?
12 A Yes.
13 Q And the next sentence, which I assume is
14 something you wrote but if you didn't, then you tell me,
15 should be based upon becoming profitable absent my
16 deals --
17 A Correct.
18 Q -- was -- was it your opinion in late 2010 that
19 BSW would not have been profitable without your
20 involvement?
21 A I don't know that --
22 MR. KELLY: Objection.
23 THE WITNESS: Oh, sorry.
24 MR. KELLY: Objection as to form. You can
25 answer.

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1 THE WITNESS: Sorry about that.
2 A No. They were profitable before we got
3 involved. That's why we were so successful. Bad guys
4 came to us because we were -- wait. Excuse me. -- they
5 were a successful business. Smart crooks don't want to
6 do business with bad crooks. Smart crooks don't want to
7 do business with bad businessmen. The business model
8 worked as -- as Big South and the companies prior to
9 that. So, no, I wanted the business model to work for
10 them and they were profitable but -- I use this phrase
11 all a time, a pig in a poke. I didn't want anybody --
12 and, thus, the purpose of my statement there, don't
13 forget, your real volumes, okay, have to be your 90
14 percent, not the government's 10 percent. Make sure you
15 continue to keep that in mind that it's 90 percent, not
16 our 10 percent. So while you may have -- and I'm making
17 up the number -- eight trucks and 28 employees, maybe
18 you don't need that much if the government is no longer
19 part of this business and we made a very conscious
20 effort to make sure that nobody was under the impression
21 on -- that the government may not be here forever and to
22 make sure that you have a -- a sustainable business
23 model.
24 Q Okay. How did you know that BSW was profitable
25 in 2010?

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1 **A** Well, because they were clearly buying stuff.
2 **They -- they were running a thriving business, at least**
3 **what I saw was a thriving business. I -- I was never**
4 **involved in their legitimate business. I didn't see**
5 **their taxes or their bank statements.**
6 **Q** Right.
7 **A** But it's clear they were bring on employees.
8 **They were moving large volumes of Flue-Cured's product.**
9 **They were moving Premier's product. I -- I could see**
10 **the legitimate business. I could see the fact that they**
11 **had a need to open up a warehouse in South Carolina.**
12 **That's a sign that the business is growing.**
13 **Q** All right.
14 **A** So while I never saw any -- any spreadsheets or
15 **profit and loss statements, it became clear to me as**
16 **somebody there that, hey, when you got to buy a new**
17 **truck or open up a new warehouse for better**
18 **distribution, things are going well.**
19 **Q** But it was an assumption you made at that time
20 **that they were profitable, correct?**
21 **A** Yes.
22 **Q** Okay. And I -- I'm still not clear on -- I
23 **mean, the way that I read this sentence, should be based**
24 **upon becoming profitable absent my deals -- why would**
25 **you tell Mr. Carpenter that, you know, that -- becoming**

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1 **profitable. To me that suggests that they're not**
2 **currently profitable or that that's what you thought.**
3 **A** No. This is the new business model -- the new
4 **business model becoming profitable absent the**
5 **government, not -- not that they weren't profitable. I**
6 **think clearly they were profitable and I don't -- so**
7 **it's -- this new -- he sends me -- again, I haven't**
8 **reviewed this. He sends me the 2011 business plan. For**
9 **this to become profitable, make sure you don't take into**
10 **account the government. That's clearly what I'm saying**
11 **in there.**
12 **Q** And is that because they were only profitable
13 **because of the government involvement at the time this**
14 **e-mail was written?**
15 **A** No, absolutely not. But let's just say they
16 **made 12 Bucks and I wanted to make sure that they knew**
17 **of that 12 Bucks what was the government's so that in**
18 **their business model in 2011 that -- make sure they**
19 **don't take into account whatever the government**
20 **percentage of their business was.**
21 **Q** Uh-huh. All right. Could you turn a couple of
22 **pages in where the Bates number -- and that's the number**
23 **in the bottom lower right corner -- is 79762. And my**
24 **question for you is that this slide makes a reference to**
25 **Big Sky International. Do you know if Big Sky**

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1 International had been created or was it being used as a
2 business name as of late 2010?
3 **A** I don't know when it was created. I know when
4 **we talked about the acquisition of U.S. Flue-Cured**
5 **buying Premier and Big South that we assured the parties**
6 **and, in fact, I assured Albert that we would not taint**
7 **U.S. Flue-Cured under any regard, that under no**
8 **circumstance would a bad guy see anything that had**
9 **U.S. Flue-Cured's name on it. And in our discussions**
10 **with Jason, Chris, they either said they had an old**
11 **company or they can create a new company, I forget,**
12 **because Big Sky I think of Montana -- so I don't -- I**
13 **don't -- I don't -- I don't know what its relevance**
14 **was -- that, hey, look, this way we're not sending**
15 **invoices out that say U.S. Flue-Cured or we're not doing**
16 **wire transfers from U.S. Flue-Cured to bad guys around**
17 **the globe and that's why -- that was our very first**
18 **discussion about Big Sky. So I don't know -- the answer**
19 **to your question is I don't know if it was created --**
20 **already an entity in 2010, but it became a player in**
21 **2000 and -- or around this time.**
22 **Q** All right. Could you turn to BSW 79770. Do
23 **you see there that there's a reference to Tabacos USA?**
24 **A** Yes.
25 **Q** Was Tabacos USA a target of the ATF in 2010?

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1 **A** That's a trick question. You don't mean it as
2 **a trick question, but it is a trick question.**
3 **Q** And I don't mean to trick you. If there's
4 **another term to use, then let me know.**
5 **A** Can I go into some detail on this --
6 **Q** I --
7 **A** -- to -- I'm sorry.
8 **Q** That's all right.
9 **A** I -- I don't want to go out of procedure.
10 **Q** Well, you can answer that yes or no. I mean,
11 **were they being investigated by the ATF? Were they a**
12 **target of the ATF in 2010?**
13 **A** The answer is at some point they were a target
14 **of the U.S. Government.**
15 **Q** All right.
16 **A** At this point I don't believe they are. I got
17 **to look -- there's a point where they're not, okay, but**
18 **there was a point where that entity looked suspicious --**
19 **Q** All right.
20 **A** -- to the U.S. Government agencies, not us.
21 **Q** Was the relationship between BSW and Tabacos
22 **USA something that was established by the ATF?**
23 **A** It was encouraged.
24 **Q** What do you mean by that?
25 **A** We were very happy they did it.

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1 Q And why was that?

2 A Because as part of our overall strategy of

3 looking at importers, exporters, corrupt manufacturers,

4 domestic and international, this was a great in for us

5 into that community.

6 Q All right. It says on this slide, I believe,

7 move Palermo to a breakeven by January 1st, 2011 and

8 profitable by April 1st, 2011. Was the making of the

9 Palermo -- was the fact that Mr. Carpenter wanted to

10 make Palermos profitable important to your operations in

11 late 2010?

12 A I always wanted them profitable because we

13 needed them to operate these operations globally so I

14 needed them profitable. So it wasn't just Palermo. I

15 needed them profitable wherever they could be

16 profitable.

17 Q Do you have any understanding as to whether

18 Palermos were a popular brand in the market in 2010?

19 A Yeah. I'd have no -- I know we, we meaning Big

20 South -- pre-Big South, I believe, and another

21 agency's -- many different agencies' operations, we took

22 massive losses in the early stages of this investigation

23 and when I say massive, I mean seven-figure massive. So

24 to get even or to get breakeven would be fantastic

25 because, again, there were seven-figure losses at the

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1 start of some of these investigations.

2 Q Well, as far as you're aware was there any real

3 demand amongst retailers for Palermo in 2010?

4 A I mean, that company had already been

5 established before we had Big South, Tabacos USA and the

6 brand Palermo in the U.S. As you know, it's an SPM

7 meaning it can be sold in every state in the country.

8 That in and of itself gave it substantial value in my

9 opinion. I'm no expert. So I don't know what its sales

10 were, but I know there were very few SPMs in the market

11 and if you could get one, it had value to you.

12 Q But do you know if it was popular or if there

13 was a lot of demand?

14 A That's why I say, I have no idea what the sales

15 were.

16 Q All right.

17 A I -- I just know if somebody asked me, hey, I

18 can get you -- would you like to buy an SPM and -- and

19 develop that, I don't know a single guy in the tobacco

20 industry that would say no.

21 Q All right. Did you ever recommend or suggest

22 to Mr. Daniel, Mr. Carpenter, Mr. Small or anyone else

23 for that matter that U.S. Flue-Cured should consider

24 acquiring BSW and BSW Virginia?

25 A Did I initiate that idea? No. Did I think it

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1 was a great idea? The answer's yes.

2 Q Okay. Do you know who initiated that idea?

3 A I don't. I remember my first conversation

4 about it, but I don't remember -- there were obviously

5 multiple conversations before I got involved.

6 Q All right.

7 A So the answer is no, I don't know who initiated

8 it.

9 Q Why did you support -- well, did you support

10 the acquisition of BSW and BSW Virginia by

11 U.S. Flue-Cured?

12 A Yes.

13 Q Okay. And why was that?

14 A I had a meeting with -- a meeting. Shit, I was

15 at the warehouse. Jason and -- and -- Jason Small

16 and -- Jason Carpenter and Chris Small were there and

17 that's when I first learned about the acquisition

18 discussions. And I remember Jason looking at me, almost

19 had tears in his eyes, and we were all worried about

20 this other informant who literally got moved in the

21 middle of the night. And Jason says to me, he says, you

22 know, we got 30 employees. If I disappear, we'll be

23 fine. If Chris disappears, we'll be fine, but we'll

24 lose all of this, all these employees. And we had these

25 employees, some of them, since 2006. I mean, these are

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1 hourly-waged employees who were there for five years. I

2 mean, that's pretty unheard of. He says, you know, I'm

3 concerned that -- we had had obviously the WikiLeaks

4 issue as you guys are all aware. We had had the huge

5 takedown -- several huge takedowns. We were beginning

6 to start prosecuting. We knew -- we knew at some point

7 our evidence in one of these cases would require a

8 trial. We were fortunate that the cases were so solid,

9 none of them ever went to trial.

10 But back to your question. That was the first

11 when I said, hey, this is great. And the discussion

12 was, hey, look, we're the largest -- I believe we're the

13 largest, being -- meaning Big South, distributor for

14 U.S. Flue-Cured. The biggest domestic client is

15 Premier. We make their brands. And I remember a

16 specific conversation because I called the guy a son of

17 a bitch, the former owner of Premier threatened to take

18 his business to China and have his stuff made there a

19 lot cheaper and I thought that was wrong. So they were

20 in the process of losing Premier to China. They were in

21 the process of Jason and Chris maybe having to disappear

22 in the WITSEC program and losing their entire

23 distribution network. So to me it made -- hey, this

24 is -- shit, this makes sense. Even Philip Morris, even

25 R.J. Reynolds does not own leaf to distribution so I

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1 **think -- I think -- and I still think that was a great**
 2 **idea.**
 3 Q All right. Do you recall attending a meeting
 4 with representatives of USTC and U.S. Flue-Cured in
 5 February of 2011 to discuss the possible acquisition of
 6 BSW and BSW Virginia?
 7 A **Can you tell me where it was?**
 8 Q I believe it was in Bristol but if your
 9 recollection is different, then --
 10 A **I -- I meant -- I met Steve -- I mean, there**
 11 **was a period of time during the IRS audit I met Steve,**
 12 **shit, it seemed like every week and John Taylor a few**
 13 **times came up to Bristol. So I don't -- so I don't know**
 14 **if you want to call that a meeting but, I mean, we --**
 15 **there was a period of time that I saw these guys every**
 16 **week which was odd.**
 17 Q Let me -- let me see if I can be more specific.
 18 Did you ever meet in Bristol with Steve Daniel, John
 19 Taylor and some of the board members of USTC
 20 specifically to talk about a merger or an acquisition?
 21 A **Can I ask you a question? Are you in a**
 22 **position to tell me who else was at that meeting? I**
 23 **don't -- I don't remember that meeting.**
 24 Q Okay. That -- that's fine.
 25 A **Because I met -- I hate to say it. I -- I -- I**

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1 **mean, if -- we had hundreds of meetings so I -- they**
 2 **were more like sit in the conference room at the**
 3 **warehouse and drink a cup of coffee meetings.**
 4 Q All right.
 5 A **So was there a formal meeting at a hotel like I**
 6 **had with Albert Johnson? The answer is no.**
 7 Q Okay. Well, let me ask you about that then.
 8 Do you recall having a dinner with Albert Johnson and
 9 Steve Daniel sometime in early 2011, most likely in
 10 February, to discuss an acquisition of Big South?
 11 A **I don't remember having dinner with Albert.**
 12 Q Okay.
 13 A **I don't remember -- our meeting in Kingsport I**
 14 **think lasted an hour -- half hour and I don't think I**
 15 **saw him again until a year or two later.**
 16 Q Okay.
 17 A **So I -- I'm not saying I didn't have dinner**
 18 **with him but, geez, I -- I don't recollect it.**
 19 Q That's all right. You -- but you did have a
 20 meeting with Mr. Johnson in Kingsport you said?
 21 A **Yes.**
 22 Q Would that have been in early 2011?
 23 A **It was when he was yelling at me not to burn**
 24 **him and not to screw up China.**
 25 Q Was it prior to the acquisition?

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1 A **Yes. Yes.**
 2 Q Was Steve Daniel there for that meeting?
 3 A **Yes.**
 4 Q All right. Tell me what you recall from that
 5 meeting.
 6 A **It was me, my boss, Albert, Steve Daniels,**
 7 **Jason and Chris and we were meeting in somebody's hotel**
 8 **room. Somebody had a little sitting area in their hotel**
 9 **room and literally I went in there and I thought I was**
 10 **going to give my speech about thank you for serving your**
 11 **government and, you know, you're doing a great service**
 12 **and instead I got lectured for 30 minutes, was told,**
 13 **don't burn us, and I think that was pretty much the end**
 14 **of the meeting. And I walked out of there -- was I**
 15 **don't want to piss this guy off and that was Albert**
 16 **Johnson. Steve's a nice, easygoing, mild guy, but**
 17 **Albert, I could tell he had an edge to him and he wanted**
 18 **to make sure we didn't burn the company.**
 19 Q All right. And can you tell me specifically,
 20 what was he concerned about when he said, don't burn the
 21 company? What did he tell you?
 22 A **Well, he basically spent a lot of time in**
 23 **China. My understanding was that was a profitable piece**
 24 **of the business selling leaf to China and he made it**
 25 **clear to me -- he came right out and said it, if the**

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1 **Chinese government gets wind of this, you know, that'll**
 2 **cost us our Chinese business or our China business.**
 3 Q Gets wind of what?
 4 A **That they're cooperating with the government.**
 5 Q All right.
 6 A **That's -- that's actually the only thing I**
 7 **remember from that meeting and I was glad to get out.**
 8 Q Okay.
 9 THE WITNESS: No offense. Sorry.
 10 BY MR. MARSHALL:
 11 Q Is there anything else that you recall from
 12 that meeting?
 13 A **No. It was very brief and I -- yeah, I**
 14 **don't -- it wasn't memorable except the fact that I**
 15 **walked away from that thing, don't burn us with China.**
 16 Q Did you have any discussions with Mr. Johnson
 17 or Mr. Daniel during that meeting as to the scope of
 18 your involvement or operations after an acquisition if
 19 an acquisition was to go through?
 20 A **Not that I remember.**
 21 Q All right. Did you have any discussion during
 22 that meeting that Mr. Carpenter and/or Mr. Small may
 23 still be assisting the ATF with your operations --
 24 A **Yes.**
 25 Q -- after an acquisition?

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1 A Yes.

2 Q All right. What did you say on that topic?

3 A That we were finishing up our cases. We were

4 clearly in discussions -- and I don't know if the new

5 orders came out but, like I said, it took a year so

6 those were going around from every undercover operation

7 in the country working churning. So we knew what the

8 new orders would be and we knew that we were going to be

9 grandfathered if we weren't already to finish up our

10 work, but we wouldn't be starting new ones. So we were

11 committed not to burn them and to abuse Jason and Chris

12 as much as we could until we were finished.

13 Q How much longer did you think that you would

14 need to finish at that time in early 2011?

15 A Ultimately it's taken years. There are still

16 cases pending. We don't dictate that, unfortunately.

17 We had commitments from federal prosecutors to indict

18 cases time certain. We had some significant

19 international stuff that was outside our scope meaning

20 I -- I didn't get to make the decisions on. They were

21 made at a much higher level than mine. So nobody was

22 happy with the -- the speed of prosecutions on some of

23 these cases.

24 Q Uh-huh.

25 A The huge prosecution that was going on at this

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1 time in Bristol was done by a fantastic prosecutor in --

2 in Virginia and -- Cory Duke, who you'll meet tomorrow,

3 and that shut down their office. It was a 42 Million --

4 it was a mul -- a huge fraud. We seized 40-something

5 Million Dollars, 500, 600 reports, hundreds of thousands

6 of pieces of evidence. Unfortunately, that shut the

7 U.S. Attorney's office down for a year, our federal

8 prosecutor, shut him down for a year. So where I had

9 hoped to have some other cases indicted in '12 and

10 definitely retire -- indicted before I retired, they got

11 backed up. And some of those cases are still being

12 adjudicated now, but nobody was happy with the speed of

13 those prosecutions.

14 Q All right.

15 A And that's a common thing. Whether it's a gun

16 case or a drug case, they -- so it dragged on longer

17 than any of us wanted to.

18 Q All right. You can if you're able to answer

19 this question yes or no, but did you have any reason to

20 believe during that meeting with Mr. Johnson that

21 Mr. Carpenter and/or Mr. Small either individually or in

22 their capacity as ATF informants would be selling

23 products to the Plaintiffs in this case after an

24 acquisition had been completed?

25 A I knew that the plan was for them to be the

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1 filter so that U.S. Flue-Cured's name was not on any

2 invoices going to the bad guys, that Flue-Cured was not

3 dealing directly with the bad guys or, in fact, the

4 other 11 or ultimately 20-something operations. So I

5 was aware of that, that Jason and Chris would still be

6 the cutout for U.S. Flue-Cured, and that was the

7 assurances we gave Albert was that we would not burn

8 U.S. Flue-Cured, that at the end of the day, the guys

9 who got burned was Jason and Chris and the other nine

10 informants that we were working and not Albert and Steve

11 and U.S. Flue-Cured. That was the assurances we gave

12 them.

13 Q You're aware, aren't you, that after May 1st of

14 2011 Big South Wholesale, which at some point was

15 operating as Big Sky International, sold products to Big

16 South Distribution which is one of my clients in this

17 case? Are you aware of that?

18 A Yeah. The company names I can't swear to but,

19 yes, I am aware -- and I'm going to say U.S. Flue-Cured,

20 whether it's -- whatever your company's subcompanies

21 are. But, yes, I am aware that product went from us

22 through Big Sky to U.S. Flue-Cured --

23 Q Were you aware --

24 A -- or its entities.

25 Q Okay. I'm sorry. I didn't mean to cut you

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1 off. Were you aware that that was going to occur when

2 you had this discussion with Mr. Johnson that we've been

3 talking about?

4 A Yes. That was the assurances, that we would

5 still be the cutout, we meaning the U.S. Government,

6 would still be the cutout before U.S. Flue-Cured or with

7 U.S. Flue-Cured.

8 Q Did you specifically tell Mr. Johnson in that

9 meeting that Jason and Chris would be involved in

10 selling products from Big South Wholesale to whatever

11 entity was created to acquire Big South Wholesale which

12 ended up being BSD or Big South Distribution?

13 A I don't think we got into that kind of detail.

14 Q All right.

15 A Not that I remember.

16 Q All right. Let me see if I can ask it a little

17 simpler then.

18 A Can I get some water just while --

19 Q Yeah.

20 A -- while you're asking the question? I can

21 still hear you.

22 Q That's all right.

23 MR. MARSHALL: Break?

24 MR. KELLY: Yeah. I didn't know if you were at

25 a good point. Seemed like you were still on the same

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1 topic. You just want to finish this topic?
 2 MR. MARSHALL: Let me -- yeah, let me wrap
 3 this --
 4 MR. KELLY: Sure.
 5 MR. MARSHALL: -- up real quick.
 6 **A Thank you.**
 7 Q What I'm trying to figure out, Mr. Lesnak, is
 8 in this meeting that you had with Steve Daniel and
 9 Mr. Johnson, did you ever expressly tell him that if an
 10 acquisition occurred that after the acquisition, Jason
 11 Carpenter and Chris Small would be involved in selling
 12 products back to his company, to Mr. Johnson's company?
 13 MR. MATHIS: Object to the form.
 14 MR. GRAEBE: Object to the form, asked and
 15 answered.
 16 **A I'm sorry. I didn't understand what they said.**
 17 **Am I supposed to say something?**
 18 Q They're just making objections for the record.
 19 MR. GRAEBE: I'm just objecting because you
 20 already answered that question in response to his
 21 previous question, but I have no problem with you
 22 answering the same question again.
 23 **A I don't believe we got into that minutia. I**
 24 **remember assuring him that Jason and Chris would be the**
 25 **go-between, the cutouts, not to burn U.S. Flue-Cured. I**

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1 **specifically remember that. I don't recall the minutia**
 2 **of how -- I mean, the guy was the chairman. I mean, I'm**
 3 **a nobody. I don't recall us ever getting down to that**
 4 **minutia, but I do -- we -- we -- me and my boss assured**
 5 **him that we would not burn him or his company.**
 6 Q But you did know at that time that that's
 7 something that Jason and Chris could have been doing,
 8 right, that they could have been selling products back
 9 to Albert Johnson's company after an acquisition,
 10 correct?
 11 MR. MATHIS: Object to the form.
 12 **A I knew they did that. Whether it was before**
 13 **that meeting or after that meeting, I don't know.**
 14 Q Okay.
 15 **A Without looking at a document, I don't know.**
 16 **But, again, that would -- the -- the meeting was for me**
 17 **to get yelled at and assured that we wouldn't screw up**
 18 **his China business, not for me to get into minutia about**
 19 **particular transactions.**
 20 Q All right.
 21 **A That's how I took the meeting.**
 22 MR. MARSHALL: Okay. We can go off the record.
 23 We'll take a --
 24 THE VIDEOGRAPHER: We are going off the record.
 25 The time is 13:57. This marks the end of Tape Number 2.

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1 (Whereupon, there was a recess in the
 2 proceedings from 1:57 p.m. to 2:08 p.m.)
 3 THE VIDEOGRAPHER: Here begins Tape Number 3 in
 4 the deposition of Thomas Lesnak. We are back on the
 5 record at 14:08.
 6 (LESNAK EXHIBIT B, E-mail String, December 4,
 7 2012, Subject: BIG SOUTH, was marked for
 8 identification.)
 9 BY MR. MARSHALL:
 10 Q Mr. Lesnak, I'm going to hand you -- that's not
 11 in the binder we gave you so I've marked this as Exhibit
 12 B and we'll pass these around.
 13 MR. KELLY: Thanks.
 14 BY MR. MARSHALL:
 15 Q You're welcome to take your time to read it.
 16 My question for you is going to be about content on the
 17 second page.
 18 **A Yes, I've read it.**
 19 Q Okay. Are you familiar with this e-mail?
 20 **A Do I remember it? Yes. Not the specifics of**
 21 **it but, yes, I do remember South Carolina contacting us.**
 22 Q If you look at the second page in the second
 23 paragraph you're writing an e-mail to Johnny Legette
 24 here and in the -- the second paragraph it says, the old
 25 Big South was sold to a company called Big South

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1 Distributors [sic] about 18 months ago after we were
 2 ready to do one of the takedowns and the WikiLeaks
 3 issues. This was done as we had safety issues for the
 4 former owners.
 5 And you're referring to Mr. Carpenter and
 6 Mr. Small there, is that right?
 7 **A Yes.**
 8 Q And is it your position that you didn't arrange
 9 for or orchestrate the acquisition of Big South?
 10 **A I'm sorry. One more time.**
 11 Q Sure. Was it your idea to arrange an
 12 acquisition of Big South by U.S. Flue-Cured?
 13 **A No, it was not my idea.**
 14 Q It says, this was done as we had safety
 15 concerns for the former owners. Is that the only reason
 16 that the acquisition took place?
 17 **A I'd like to explain the whole document --**
 18 Q Okay.
 19 **A -- if I can. South Carolina was auditing an**
 20 **ongoing ATF criminal case -- ATF and many other**
 21 **agencies' criminal case. They had a bad reputation for**
 22 **publicly disclosing and chasing what we would call the**
 23 **low-hanging fruit meaning we -- we -- we were embedded**
 24 **with South Carolina tax. Their -- their guys -- and you**
 25 **can see it in there. Archie had told me he thought --**

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Conducted on March 22, 2016

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1 Archie is a investigator with South Carolina Department
2 of Revenue and our concern, which is why I stressed the
3 safety issue and have been consistent on the safety
4 issue even before all this litigation, is that South
5 Carolina would do something stupid as other states had
6 done, go after the low-hanging fruit which was the
7 government undercover operation and expose our
8 cooperators to public disclosure that they were
9 long-term informants.

10 Johnny Legette had been to our undercover
11 warehouse on several occasions as had his Department of
12 Revenue guys, but based upon this investigation, which
13 was not directly tied to us, I was concerned that they
14 would publicly disclose Big South, a/k/a, Jason and
15 Chris, as part of their audit of those bad guys in South
16 Carolina. And I also put in there, they're still
17 assisting on dozens of ops. Again, I was trying to --
18 Johnny Legette I believe is a lawyer. I believe he's
19 the Attorney General in South Carolina or Attorney --
20 Deputy Attorney General for tobacco. And I was trying
21 to make the point this is still ongoing, that this
22 operation is still ongoing, they're helping agencies
23 around the country and I had safety concerns for Jason
24 and Chris. That was the -- what I was trying to impart
25 to him.

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1 Q And -- and, again, you say here, this was done
2 because of safety issues. Was -- was that the primary
3 motivation for the acquisition, the safety concerns --

4 A Well, that's clearly --

5 Q -- you had?

6 A I'm sorry. That's clearly what I told Johnny.
7 That was my problem. I mean, hell, I thought it was a
8 great idea not because I had any financial interest in
9 U.S. Flue-Cured but Jason and Chris, we needed to
10 protect them, and I think this document shows that was a
11 top concern of mine, that everything we did came back to
12 making sure these guys were protected.

13 Q Okay. Let me ask you to turn to -- sorry --
14 Tab 4 in the binder. I'm sorry. Tab 5. You should
15 have a copy of an e-mail from Stephen Daniel dated March
16 3rd, 2011, is that right?

17 A That's what I have, yes.

18 Q Okay. Take a minute to look over that and let
19 me know when you've had a chance to review it.

20 A Just one page? Yes, I've read it.

21 Q Okay. About halfway through that first
22 paragraph Mr. Daniel says, I believe this would be very
23 beneficial in helping me to continue to structure some
24 things in ways that are the most beneficial to Jason,
25 Chris and BSW and what we are all trying to achieve.

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1 What's your understanding of what they were all
2 trying to achieve at that time?

3 A Yeah, I wouldn't know. I mean, I understand
4 this was postacquisition, but I don't -- my concern was,
5 and I had mentioned it before -- is that U.S. Flue-Cured
6 not buy a pig in a poke and I kept using that phrase
7 even back then which is why we offered to go to Raleigh
8 or anywhere else to do pretty much the down-and-dirty
9 debrief with outside counsel, inside counsel and whoever
10 else they thought was appropriate to brief them on the
11 undercover operation and -- obviously so that they knew
12 that what portion of Big South was the government and
13 what portion of Big South was not the government.

14 Q Let me make sure I understood you correctly. I
15 think you said that this -- you thought this was
16 postacquisition. This is March 3rd, 2011. Do you have
17 a recollection as to when the acquisition occurred?

18 A I don't. This would have been -- the meeting
19 in Raleigh would have been preacquisition.

20 Q All right. That's what I wanted to clear up.

21 A What I meant postacquisition was the plan for
22 postacquisition, not -- not the meeting was
23 postacquisition.

24 Q All right. Is this a meeting that you were
25 willing to have?

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1 A Yes. Probably was my idea. I probably offered
2 it. Again, we were adamant that everybody knew what the
3 facts were before anybody made decisions.

4 Q Uh-huh. Did you have any concerns about
5 introducing yourself and providing knowledge of your
6 operations to additional representatives of USTC?

7 A Well, two lawyers from Flue-Cured and Tommy
8 Bunn so I would have -- I would have asked, though I
9 have no -- I don't remember reading this e-mail. I'm
10 sure I did. I have no issue with briefing lawyers from
11 Flue-Cured at their request.

12 Q Okay. Did you -- the people who are on this
13 list, was there any vetting process with respect to
14 those individuals?

15 A Not by me.

16 Q All right. How about by anybody with ATF or
17 DOJ?

18 A No. I -- I don't -- I'm not sure this e-mail
19 went anywhere within my own agency. Obviously if this
20 is the meeting we're referring to that Dan Whitmore went
21 to, he would have been party to this e-mail at some
22 point.

23 Q That was my next question. Am I correct that
24 you did not attend the meeting that's being contemplated
25 in the e-mail?

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1 **A I did not.**
2 Q All right. Was there a reason why?
3 **A I can't explain it. It had to be a good**
4 **reason. I would not have missed something like that.**
5 **Dan was not involved to the extent of the operation as I**
6 **was, not from the beginning for sure. There had to be a**
7 **really good reason for me not to go.**
8 Q Okay.
9 **A Could have been a case, could have been grand**
10 **jury, could have been something and I have no -- no**
11 **knowledge of that. Maybe Dan remembers why I stuck him**
12 **with this meeting, but I clearly stuck Dan with this**
13 **meeting.**
14 Q And you said I think that Mr. Whitmore wasn't
15 involved to the extent that you were with Mr. Carpenter
16 and Mr. Small and their operation, is that right?
17 **A Only because the first two or three years he**
18 **didn't work the operation.**
19 Q All right.
20 **A So I was the only one there from 2005, 2006.**
21 **He was in the office, knew who these guys were but**
22 **wasn't assigned full time to it until one of the other**
23 **agents transferred to Washington, D.C. Then he was nice**
24 **enough to raise his hand and said he'd take over some of**
25 **those criminal cases.**

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1 Q Did you discuss with Mr. Whitmore what he was
2 going to talk about at that meeting before he showed up
3 for the meeting?
4 **A Yes. I remember specifically talking about a**
5 **couple of items. We looked at the charts. We had a**
6 **series of briefing charts that we had used every time we**
7 **met with ATF headquarters on the extent of the**
8 **operation, the different judicial districts. We had --**
9 **ATF headquarters had prepared a chart that showed every**
10 **judicial district where we had had tentacles. Let me**
11 **put it that way. And that's a pretty impressive chart**
12 **and so we thought that was a fair representation of the**
13 **extent of Big South and what their involvement was with**
14 **the government.**
15 Q All right.
16 **A And I know he brought several charts to the**
17 **briefing. I don't remember which.**
18 Q Did you and Mr. Whitmore -- and, again, this is
19 prior to the meeting that occurred, but did you and
20 Mr. Whitmore discuss Jason and Chris's involvement with
21 the ATF postacquisition, what they were planning to do
22 after the acquisition?
23 **A Yeah. Dan was part of all the -- Dan, Cory --**
24 **Cory Duke, Dan Whitmore, me, the other three agents in**
25 **the office who worked on this -- these cases about how**

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1 **the new churning policy -- how we were grandfathered,**
2 **how the umbrella -- how we were allowed to finish up**
3 **everything that was on our chart over there, which I'd**
4 **like to get to at some point before everybody falls**
5 **asleep -- how we were allowed to finish those cases up,**
6 **where we needed Jason and Chris and, to be fair, nine**
7 **other informants, not just these guys, to finish them**
8 **up. We needed to keep them in play to finish up all**
9 **those cases that headquarters said we could finish up.**
10 Q All right. Part of the finishing up, did that
11 require Jason and Chris to help you generate additional
12 proceeds for those cases?
13 **A Required us to generate additional proceeds.**
14 **Some of the cases did generate proceeds. Many generated**
15 **six or seven-figure losses so we'd have to talk which**
16 **specific --**
17 Q Okay.
18 **A -- case we're talking about, but the answer was**
19 **we were trying to get everything out in the wash.**
20 Q Was it your intention in March of 2011 to use
21 Jason Carpenter and Chris Small to assist you in selling
22 tobacco products for the purpose of generating funds or
23 proceeds for your operations postacquisition?
24 **A And we were authorized to do so as long as they**
25 **were on our chart that headquarters prepared.**

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1 Q Authorized by headquarters?
2 **A Yes.**
3 Q Okay. Was it also your intention for
4 Mr. Carpenter and Mr. Small after the acquisition to
5 sell product back to the company that they would be
6 working for postacquisition?
7 MR. MATHIS: Object to the form.
8 **A Sorry. Can you repeat that one more time?**
9 Q Sure. Sure.
10 **A Caught me off guard.**
11 Q I'll limit the time frame just to around the
12 time of this meeting that we've been talking about so
13 March of 2011. Did you know in March of 2011 that if an
14 acquisition occurred and U.S. Flue-Cured acquired Big
15 South that Jason Carpenter and Chris Small would be
16 selling products on behalf of the government back to
17 U.S. Flue-Cured?
18 MR. MATHIS: Same objection.
19 **A I -- I believe that was the plan we laid out to**
20 **protect U.S. Flue-Cured. I think that's what we talked**
21 **about with Albert Johnson in the meeting assuring him**
22 **that we would not burn Flue-Cured. That's when Big Sky**
23 **was discussed about using that so that there were not**
24 **invoices or wire transfers going to bad guys around the**
25 **globe that were coming from U.S. Flue-Cured in**

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1 **Timberlake, North Carolina. So that was -- clearly part**
 2 **of the plan on the transition is to finish up those**
 3 **cases. In order to finish up those cases we needed to**
 4 **keep Jason and Chris in play.**
 5 Q So is the answer to my question yes then, you
 6 knew at that time that Jason and Chris would be selling
 7 products back to U.S. Flue-Cured or Big South
 8 Distribution after the acquisition?
 9 MR. MATHIS: Objection.
 10 A I knew we were still going to use Flue-Cured
 11 but with Jason and Chris as the buffer between the
 12 government and bad guys and U.S. Flue-Cured so that
 13 U.S. Flue-Cured was not going to testify,
 14 U.S. Flue-Cured would not appear on any federal
 15 prosecution documents. So the answer was yes, we
 16 absolutely knew that. That was the plan.
 17 Q Okay. So you -- and just to make sure I'm
 18 clear. You said that you were going to use
 19 U.S. Flue-Cured and what you mean by that is that you
 20 knew in March 2011 that after an acquisition, Jason
 21 Carpenter and Chris Small at the request of the ATF
 22 would be selling cigarettes back to the company that
 23 they worked for, correct?
 24 MR. MATHIS: Objection.
 25 A And it wasn't just ATF but, yes. Was I aware

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1 of that system? Did I approve that system? The
 2 answer's yes.
 3 Q All right. Do you know if that's something
 4 that Mr. Whitmore discussed in the March 2011 meeting
 5 that he had with representatives of USTC?
 6 A I don't know.
 7 Q Did you talk to Mr. Whitmore before the meeting
 8 about disclosing that fact to the people who were going
 9 to attend the meeting?
 10 A Don't recall. I remember specifically
 11 talking -- using the phrase winding down, that we were
 12 winding down, that we were only going to finish up the
 13 cases that we had initiated prior to the new churning
 14 policy and that that would take whatever period of time
 15 to finish those cases up. And I know Dan specifically
 16 told me that's what he relayed to the board along with
 17 the charts that he brought.
 18 Q Do you have any knowledge one way or the other
 19 as to whether Mr. Whitmore specifically told the
 20 attendees at that meeting that if the acquisition goes
 21 through, Jason and Chris will still be involved in
 22 selling products for the ATF and that some of those
 23 products could be sold back to your company, the
 24 acquiring company?
 25 MR. KELLY: Objection as to form. You can

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1 answer.
 2 A I know he was told they were still going to
 3 cooperate with us. The other details and minutia of it
 4 I do not know.
 5 Q All right. Let me ask you to turn to Tab 6 of
 6 your binder. Just take a minute to thumb through that
 7 document if you would. Again, I'm going to ask you if
 8 you recognize it.
 9 A I can't say I recognize it but I may have seen
 10 it. I don't recall specifically seeing this.
 11 Q All right. Were you involved in preparing that
 12 document at all?
 13 A No. That's above my technical ability.
 14 Q Okay. Do you have any recollection of
 15 Mr. Carpenter or Mr. Small or Mr. Daniel ever asking for
 16 your input on that document?
 17 A I don't remember that.
 18 Q All right. If you'd look to where it says Page
 19 22 down at the bottom. Do you know anything about the
 20 accuracy of the financial numbers that you're looking at
 21 there?
 22 A I do not. As I said, I wasn't part of their
 23 legitimate business and how much money they made or lost
 24 or their tax returns or any of that.
 25 Q All right. Look at Tab 7 if you would. Do you

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1 recall ever seeing that document?
 2 A No.
 3 Q So I assume you had no involvement in creating
 4 that?
 5 A I did not.
 6 Q Are you familiar with an entity referred to as
 7 DL Greer Tobacco?
 8 A Yes.
 9 Q All right. What is that entity?
 10 A If it's the account I'm talk -- I'm thinking
 11 about, that was our second -- I believe it was our
 12 second ATF churning account --
 13 Q Okay.
 14 A -- the title on that. I believe it stand --
 15 stood for Dan Greer which was the undercover name of the
 16 agent and also really stood for Damn Life's Good and was
 17 the logo for the company.
 18 Q Okay. Look at Tab 8 of the binder if you
 19 would. Just take a minute to look at that cover e-mail.
 20 A Yes.
 21 Q And for the sake of clarifying my questions and
 22 the next series of questions I'm going to ask you, I'll
 23 represent to you that the acquisition of BSW and BSW
 24 Virginia was completed on or about May 1st of 2011.
 25 A Okay.

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Conducted on March 22, 2016

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1 Q Do you -- do you recognize this e-mail?
 2 A Well, the top part I'm not on. The second
 3 part, I had dozens and dozens of e-mails like that so I
 4 don't specifically remember this one, but there were
 5 dozens of e-mails similar to that.
 6 Q Rjmsale@hotmail.com. That was Jason Carpenter,
 7 correct?
 8 A That's his initials. I'm not sure that's his
 9 e-mail. I assume it is.
 10 Q All right.
 11 A And that was his original e-mail I think when I
 12 first met him. That goes back a ways.
 13 Q Okay. Okay. And philipcigs@yahoo.com. That's
 14 you, correct?
 15 A That's my undercover account, yes.
 16 Q All right. And you're copied on this e-mail
 17 that says, in order to clear out the funds that we owe
 18 to DLG Tobacco for product, will you please pay the
 19 attached accordingly. The total amount is about \$2.9
 20 Million. Do you see that?
 21 A Yes.
 22 Q Look at the next page. Do you recognize that
 23 document?
 24 A I don't recognize it. I understand it but I
 25 don't recognize it.

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1 Q Okay. Well, tell me what you understand about
 2 it. Tell me what this document means.
 3 A Well, if your dates are right, and I believe
 4 they are -- let's just say your dates are right about
 5 the acquisition. ATF had inventory in that warehouse
 6 that we had purchased through churning.
 7 Q Uh-huh.
 8 A We obviously needed to do -- make sure we
 9 reconciled our inventory and that at the acquisition
 10 that the government-purchased inventory was paid back to
 11 the government. And I believe this is a breakdown based
 12 upon the brands which appear to be \$2.9 Million worth.
 13 And my guess is that there's a corresponding deposit in
 14 the U.S. Government churning account for \$2.9 Million
 15 because the next page has the cashier's check or checks,
 16 I guess, made out to the U.S. Government, the undercover
 17 churning account. I assume --
 18 Q And you're correct.
 19 A -- it's all there.
 20 Q We were going to -- we were going to get to
 21 those next but --
 22 A Oh, I'm -- I'm sorry. Sorry.
 23 Q That's all right. That's all right. But I'll
 24 represent to you that those checks add up to about \$2.9
 25 Million, I believe. So am I correct that part of the

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1 inventory that USTC acquired when it acquired Big South
 2 Wholesale and Big South Wholesale of Virginia was
 3 actually the ATF's inventory?
 4 A Correct.
 5 Q All right.
 6 A At -- I'm sorry.
 7 Q Do you know if the spreadsheet -- and turn to
 8 the second page so you can follow here with me. Do you
 9 know if this represents -- if it accurately reflects the
 10 cost of that product to BSW and/or BSW of Virginia? Do
 11 you --
 12 A Just on this document I have no way of knowing
 13 that.
 14 Q Okay. Well, this --
 15 A I know that's what the government was owed and
 16 that's what the government obviously got to make sure
 17 our inventory was zero.
 18 Q All right. So an easy example would be the
 19 second one down, 113, 2011, \$374,400 for Wild Horse and
 20 you see where it says 37,440. I believe that's cartons.
 21 And then --
 22 A Yes.
 23 Q -- write a check for \$374,400 dated 5/6 which I
 24 guess would be May 6th. I have a calculator if you want
 25 to use it but I'll represent to you that that comes out

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1 to about \$10 per carton. Does that sound about right as
 2 far as what Big South would owe to the government or to
 3 the ATF for that product?
 4 A If you told me what we paid for it, which you
 5 may know, I could tell you probably the answer to that.
 6 So it wouldn't surprise me, but we would have based it
 7 on a calculation on what it was -- what we paid for it,
 8 what the reasonable expenses were, overhead, delivery
 9 costs, prior losses. Makes it difficult to look at one
 10 particular transaction. You have to look at all the
 11 transactions and literally there were thousands to
 12 figure out profit and loss and then we would have come
 13 up with a number and I would have said, okay, your
 14 expenses were 3 Bucks, government paid -- I'm going to
 15 make up a number, I don't know this to be true -- \$6.
 16 Pay us 10. Government makes 4. They can't complain.
 17 You guys make 1 or 2. You get all your expenses paid.
 18 Everybody's happy.
 19 Q All right. Let me -- let me see if I can
 20 simplify this a little bit. Am I correct that the
 21 inventory or the product we're looking at on this page,
 22 this was all in the Big South warehouse at the time of
 23 the acquisition, is that correct?
 24 A Yes.
 25 Q And Big South Wholesale and/or Jason or Chris,

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Conducted on March 22, 2016

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1 whoever it was, they owed ATF money for that product
 2 that was sold as part of the asset purchase agreement,
 3 correct?
 4 **A We needed to make sure the government -- the**
 5 **U.S. Government got their money back --**
 6 Q Okay.
 7 **A -- and that our inventory was paid for and**
 8 **returned -- the money returned back to the government.**
 9 Q And that's what this \$2.984 Million reflects?
 10 **A That's what it appears to me. Like I said, I**
 11 **don't recall seeing this particular document. It**
 12 **wouldn't surprise me that we have that document in the**
 13 **ATF churning folder.**
 14 Q All right.
 15 **A But I don't recall specifically this document.**
 16 Q Do you know if Mr. Carpenter or Mr. Small had
 17 to pay any additional money to the ATF or to you -- and
 18 when I say to you I mean the ATF -- in order to get
 19 these products?
 20 **A I-- one more time with that.**
 21 Q Sure. It was a poorly-worded question. Jason
 22 Carpenter and Chris Small arranged for \$2.9 Million to
 23 be sent back to the ATF to obtain this product or to
 24 acquire possession of the product, correct?
 25 **A Correct.**

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1 Q Are you aware of any other payments that would
 2 have been made in connection with this product in order
 3 for them to obtain full possession of it?
 4 **A I-- I can't answer that because there would**
 5 **have been payments prior to this, there would have been**
 6 **payments after this to -- I don't know that to be a**
 7 **fact. If this was partial inventory, if the truck came**
 8 **in and, you know, was 800 cases and there were two**
 9 **payments of 400 -- I can't say there weren't other**
 10 **payments. I'm just saying that this is the stuff that**
 11 **was sitting on the floor at the warehouse at the time**
 12 **that had to get out of the government's possession.**
 13 Q All right. I'll represent to you that the
 14 Traffic cigarettes that are referenced in this -- in
 15 this document, if you do the math it turns out to be
 16 about \$7 per carton for the ones at the top, \$12 per
 17 carton for the ones referenced lower down. Would it
 18 surprise you to learn that Mr. Carpenter and Mr. Small
 19 have represented in this lawsuit that the actual cost
 20 they paid to acquire those cigarettes was higher than \$7
 21 and \$12 per carton?
 22 **A Well, I -- I don't know how you can say that if**
 23 **it could be higher because isn't that cashier's check --**
 24 **if your numbers are right, that -- that says \$7, I don't**
 25 **know how you could say it wasn't \$7 when that thing says**

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1 **\$7.**
 2 Q Okay.
 3 **A Now if there were other payments, like I**
 4 **said -- there may have been payments prior to 3/14 or**
 5 **post-3/14. Government has to tell you that. I don't**
 6 **have that off the top of my head.**
 7 Q All right. Are you familiar with the acronym
 8 BWMMK? Does that mean anything to you?
 9 **A Not off the top of my head.**
 10 Q After the acquisition of BSW and BSW Virginia
 11 which, again, was in May of 2011, did you direct
 12 Mr. Carpenter or Mr. Small to transfer approximately \$2
 13 Million of the proceeds from the asset purchase
 14 agreement into an account that you controlled?
 15 **A I didn't control any accounts.**
 16 Q Did you instruct them to transfer \$2 Million
 17 into any account?
 18 **A You'd have to show me details. There were**
 19 **undercover operations going on all over the country they**
 20 **were still involved in so you'd have to show me the**
 21 **document and I'd have to tell you if that was a**
 22 **government operation or that was for something else.**
 23 Q All right. Do you know how much money was
 24 exchanged in the asset purchase agreement, what the
 25 acquisition cost was?

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1 **A No.**
 2 Q All right. Do you have any individual
 3 recollection of instructing Mr. Carpenter or Mr. Small
 4 to set aside approximately \$2 Million in May of 2011 in
 5 connection with the asset purchase agreement?
 6 **A If it was money owed to other operation --**
 7 **you'd have to show me the document. I mean, like I**
 8 **said, there were 11 other operations other than mine,**
 9 **actually a total of 20 something but 11 that we worked**
 10 **with almost every day. So you'd -- you'd have to show**
 11 **me the document.**
 12 Q All right. And so I think that's no, you don't
 13 have a recollection of asking them --
 14 **A No.**
 15 Q -- to do that?
 16 **A I'm sorry.**
 17 Q Did you ever ask Mr. Carpenter or Mr. Small to
 18 make payments to Steve Daniel?
 19 **A No.**
 20 Q Did you ever say anything to Mr. Carpenter or
 21 Mr. Small to imply or suggest that you thought
 22 Mr. Daniel should be compensated for the time he spent
 23 assisting the ATF in the past?
 24 **A I remember a conversation with Jason. I don't**
 25 **remember if Chris was around. It was at the Bristol**

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1 warehouse and it was during the time frame that Steve
2 was around a lot. It was the IRS audit period which we
3 caused, we meaning the federal government caused. And
4 Steve was around quite a bit and he had been busy on
5 many other operational issues and I had mentioned to
6 Jason -- I said, is he being paid for this or some
7 phrase like that.
8 Q Uh-huh.
9 A And Jason said, quote, yeah, we got it taken
10 care of. That was my one and only conversation with
11 Jason and, like I said, I don't even remember if Chris
12 was in the room at the time.
13 Q And that was in connection with Mr. Daniel's
14 assistance with the government audit, correct?
15 A And the IRS audit and his travels around the
16 country and his meetings and his trainings and -- it was
17 just a comment I made like --
18 Q All right.
19 A You know, he literally would sit and -- you had
20 to see it to believe it. Our -- our binders would fill
21 this table with evidentiary binders and transactions and
22 invoice -- probably what your conference looks like in
23 your office. And Steve was sitting there helping them
24 go through that madhouse because as -- as you probably
25 know, the -- the cause of that IRS audit was the -- the

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1 cars and everything going to government agencies around
2 the country, police departments and everything. You
3 can't just go to H&R Block down the street. Steve who
4 knew we were an operation -- and I didn't know at the
5 time actually. I think that's when I learned that Steve
6 was a CPA or an accountant. I guess there's a
7 difference but I -- that's when I learned Steve was a
8 CPA and was doing taxes and had his own tax firm on the
9 side. So then it made sense to me. Okay. Steve was
10 being paid and he was helping these guys with an IRS
11 thing that dragged on for, God, had to be over a year.
12 Q Uh-huh.
13 A They had a -- they had to find a special
14 investigator who was cleared to access the -- the
15 investigation's records, especially some of the
16 international stuff which was very sensitive. They had
17 to bring her in and she was there over a year.
18 Q Was this in -- did this start in late 2010, do
19 you recall?
20 A I don't remember the date. I'd have to -- it
21 was the start of the IRS audit.
22 Q Do you recall when you had this discussion with
23 Mr. Carpenter?
24 A It was the time of the IRS audit. That's --
25 Q Okay.

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1 A I -- yeah. Sorry.
2 Q That's all right.
3 A I can't pinpoint it more.
4 Q Was it your understanding that Mr. Carpenter
5 was already providing some kind of payment to Mr. Daniel
6 when you asked that question?
7 A No. No. I -- I -- I never followed up. It
8 wasn't worthy of a -- I didn't have a dog in the race.
9 Q Did you discuss any specific amounts?
10 A No.
11 Q At any time after January 1st of 2011 did you
12 ever instruct Mr. Carpenter or Mr. Small to make
13 payments to anyone who was employed or affiliated with
14 USTC, U.S. Flue-Cured or Big South Distribution?
15 A What were the dates? I'm sorry.
16 Q At any time after January 1st of 2011 did you
17 ever instruct them --
18 A Was that postacquisition, preacquisition?
19 Q Again, I'll represent to you that the
20 acquisition took place on or about May 1st, 2011.
21 A Just prior to that, is that what your question
22 is? Just prior to the acquisition up through --
23 Q Well, yeah, let's do that time period first,
24 January to May of 2011.
25 A The answer is yes. And I don't know if they

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1 were employees, but there were delivery drivers, guys
2 who would come in on weekends that unloaded sea
3 containers or loaded trucks or met undercover agents at
4 the warehouse who were taking their deliveries on a
5 Friday or a Saturday night, Sundays. We wanted to make
6 sure that U.S. Flue-Cured was not paying these guys
7 overtime, right. That -- that was -- would have been
8 unreasonable and -- and a righteous reason for
9 U.S. Flue-Cured to be -- condemn us for -- for doing
10 that and so there were times that -- I'll -- I'll just
11 use one example. Brandon, he -- we would get a big
12 shipment in or out. We would get a VIP visitor, good
13 guy or whomever, a federal prosecutor would come in,
14 something, and he would come in on a Saturday or Sunday
15 and clean up and make sure everything's in order, make
16 sure that we -- we would run a dog and pony show we
17 would call it. We had literally -- when I say hundreds
18 of people come through that warehouse, I mean hundreds
19 of people come through that warehouse, cops,
20 investigators, prosecutors. And so if this was a night
21 or on weekends or a sea container would come in, we
22 would make sure that the employees were not paid by
23 U.S. Flue-Cured overtime but were compensated through
24 the proceeds account.
25 Q All right. So you're talking mostly about

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1 warehouse workers --
 2 A Oh, yeah.
 3 Q -- in Bristol then?
 4 A Yes, I'm sorry. Yeah. We never paid or --
 5 not that I -- I'm aware of anybody else other than
 6 warehouse workers.
 7 Q And where did the money come from to pay those
 8 warehouse workers?
 9 A The -- well, Jason and Chris's accounts. I
 10 don't know if it was Big Sky accounts or what bank
 11 account it was, but it would have been a -- from the
 12 nongovernment churning accounts. It would have come
 13 from one of their accounts.
 14 Q Okay. So it was not churn money that was used
 15 to pay --
 16 A No, absolutely not.
 17 Q It was Jason and Chris's own personal money?
 18 A Correct. And I be --
 19 MR. MATHIS: Objection.
 20 THE WITNESS: I'm sorry.
 21 MR. MATHIS: You can answer.
 22 A I believe Wendi was really in charge of that.
 23 I mean, she -- she was there every day and she pretty
 24 much tracked that account for Jason and Chris and for me
 25 for that matter.

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1 Q Did you ever personally pay Wendi Davis money?
 2 A I'm sure I did. If I can give you a little
 3 background on why an ATF agent is paying Wendi Davis, my
 4 role in that building was the owner. I was, you know --
 5 I was the front man for this operation. There was a
 6 reason I would go in that warehouse, right? They knew I
 7 didn't do manual labor. They knew I didn't know
 8 anything about computers. I didn't do any of the
 9 financials so I had to have a reason for being there,
 10 right? My boss who was there every day with me is a
 11 very large man, six foot, six, pushing 400 pounds. Dan
 12 Whitmore who you'll see tomorrow was my partner.
 13 They're always the -- my bodyguard. Their explanation
 14 of why they were around was they were my muscle.
 15 Obviously I didn't fit that role either. So the
 16 employees thought of me as the owner, the -- the --
 17 really the man behind Jason and Chris, right, the --
 18 that was my role with bad guys and/or those employees.
 19 So early on to continue that -- to build that
 20 legend the -- the Christmas bonuses or the monthly
 21 bonuses that went to the employees were given out by me,
 22 hey, thanks, appreciate the work, hey, appreciate you
 23 coming in. It was 120 degrees in that sea container. I
 24 appreciate you guys doing that. That was all part of
 25 the role and you know what, after a few months it was

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1 like, shit, Wendi, just take care of everybody because
 2 it became -- I didn't need to do that to build my legend
 3 anymore with these people. They stopped questioning why
 4 I would come in with 400-pound men in and out of the
 5 warehouse meeting people seven days a week.
 6 Q Where did that money come from?
 7 A Jason and Chris's bank accounts. I'm not sure
 8 which banks or what accounts.
 9 Q That was not churn money, correct?
 10 A It was not churn money.
 11 Q Building the legend I think is the term that
 12 you used for this. Maybe I've got that wrong. But were
 13 you trying to do that with respect to Wendi Davis?
 14 A Initially but she was smarter than I was.
 15 That's not a surprise. I remember a conversation -- and
 16 I don't know if this is where you're going. I'd be
 17 happy to relay the conversation with Wendi. Chris calls
 18 and me and says, hey, look, I need you to do me a favor.
 19 I need you to sit with Wendi. She's tore up. She knows
 20 something's going on here. We need her, she's doing
 21 good and she knows you guys ain't right. So me and my
 22 boss went over and we talked to her and she broke down
 23 crying and she said, I'm so happy. I love this job and
 24 I'm so glad you're -- you're the good guys and not the
 25 bad guys. And so we had to out ourselves to Wendi

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1 because it became our interest to keep her.
 2 Q Did it surprise you that Jason and Chris were
 3 willing to pay employees out of their own accounts, out
 4 of their own pockets for work that they were performing
 5 for the government?
 6 MR. MATHIS: Objection.
 7 A No. It worked for everybody. It worked for
 8 the government. It worked for them. It kept the legend
 9 alive. It -- they didn't have to explain, you know, why
 10 Flue-Cured is paying guys to unload sea containers on a
 11 Saturday. So it just worked for everybody.
 12 Q And there were how many people in the
 13 warehouse, about 25 or 30?
 14 A No. I think that was Big South's total in all
 15 their warehouses. At the time then I think it was
 16 probably eight. Now I don't know how many sales guys
 17 they had, but I think it was eight warehouse workers --
 18 Q Uh-huh.
 19 A -- three in the office, Wendi and then probably
 20 four guys who worked every day loading, unloading and
 21 stamping and delivering.
 22 Q Were there times that you would give an
 23 envelope full of cash to Wendi Davis and ask her to make
 24 sure that she took care of the employees who were
 25 working overtime?

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1 **A Only in the beginning. Yeah. After that I**
 2 **didn't have to. I mean, Wendi just handled all that.**
 3 **That's when we were building the legend. So once you**
 4 **meet the guy and you shake his hand and the guy's making**
 5 **I'm going to say \$8 an hour and you hand him 200 Bucks**
 6 **for working on a Saturday or Sunday or -- or his**
 7 **Christmas bonus, right --**
 8 **Q Uh-huh.**
 9 **A -- and you pat him on the back, you -- you**
 10 **built their loyalty and these guys were good. So after**
 11 **that, once they saw it -- Wendi told them it was from me**
 12 **anyway so Wendi pretty much took that over.**
 13 **Q Before Wendi took it over would you go to**
 14 **Mr. Small or Mr. Carpenter to get the cash?**
 15 **A Jason wasn't there at that -- I mean, he**
 16 **wasn't -- I don't want to say he wasn't there. He was**
 17 **there all the time but he didn't live there. It was**
 18 **Chris that worked there every day. It could have been**
 19 **him, could have been one of the girls in the front**
 20 **office, could have been Brandon. I -- I don't -- could**
 21 **have been anybody. I didn't have access to the bank.**
 22 **So I assure you the employees knew when it was bonus**
 23 **time or -- or when it was Christmastime or whatever. So**
 24 **they made it known to -- there were many times Brandon**
 25 **would come to me and say, hey, Tom, just so you know,**

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1 **the guys are asking when they're going to get their**
 2 **bonus. So I'd go, hey, Chris, would you make sure these**
 3 **guys get their bonus or I'd stick my head in to Wendi**
 4 **and say, hey, Wendi, you know, would you make sure these**
 5 **guys get their bonus, time's coming. That's typically**
 6 **how it worked.**
 7 **Q Did you ever instruct Mr. Carpenter or**
 8 **Mr. Small to make any payments to Albert Johnson?**
 9 **A No.**
 10 **Q Are you aware of the ATF ever making any**
 11 **payments to Albert Johnson?**
 12 **A He did not -- we did not.**
 13 **Q How about John Taylor?**
 14 **A We did not.**
 15 **Q Do you know if Mr. Carpenter or Mr. Small paid**
 16 **Mr. Taylor?**
 17 **A I have no way of knowing that.**
 18 **Q Same question for Bill Haberberger.**
 19 **A Yeah. I'd have no way of knowing that.**
 20 **Q And Dave Rickard?**
 21 **A Have no way of knowing that.**
 22 **Q All right. And did you ever personally arrange**
 23 **for any payments to be made to the individuals that I**
 24 **just referenced?**
 25 **A Did not.**

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1 **Q All right. Am I correct that merchandise was**
 2 **often provided to some of the warehouse workers as**
 3 **well --**
 4 **A Yes.**
 5 **Q -- in addition to cash?**
 6 **A I'm sorry. Yes.**
 7 **Q Okay. Tell me about that.**
 8 **A Many government operations operate around the**
 9 **country, state, local guys. We were designated by ATF**
 10 **headquarters as the national warehouse. We came upon**
 11 **everything, everything from tattoo sanitizing machines**
 12 **to TVs, Blu-ray players, washing machines, dryers, you**
 13 **name it. If it was in commerce we came across it, often**
 14 **free, mostly free. We ran import -- we meaning the**
 15 **U.S. Government, various agencies, we ran import/export**
 16 **companies. We run undercover warehouses. So it's**
 17 **funny. Some guy would come up with some commodity,**
 18 **sneakers. He'd send them to us. We'd send him tobacco**
 19 **and then we'd send storefronts all over the country**
 20 **those sneakers and tobacco and sanitizing machines. As**
 21 **a general rule if -- let's just say 500 Blu-ray players**
 22 **came in. I specifically remember Blu-rays. Every**
 23 **employee in that building got a free Blu-ray, everyone.**
 24 **Q Why was that?**
 25 **A Same reason they got a pack of cigarettes at**

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1 **the end of the day from a damaged cigarette carton that**
 2 **went through the machine. The damaged cartons were**
 3 **there. So when the UPS man came in, he would go over**
 4 **there and pick a pack of cigarettes and smoke. The**
 5 **employees who smoked would go over there and pick up a**
 6 **pack of cigarettes that were all crushed and couldn't be**
 7 **stamped and smoke a cigarette. It's part of the legend.**
 8 **I mean, it was, hey, look -- obviously when they saw**
 9 **that they knew I was an international smuggler. They**
 10 **knew I was traveling. The employees thought I was an**
 11 **international smuggler. I mean, that was the thing. We**
 12 **had Colombians come in, we had Bolivians come in, we had**
 13 **Paraguayans come in, we had Californians come in. So,**
 14 **you know, we had -- they knew -- they knew we were in**
 15 **the import/export business. So it came in and you know**
 16 **what, those Blu-rays were either free or -- I think they**
 17 **cost 4 Bucks. We'd pat a guy, hey, take one home to**
 18 **your wife. You know, I appreciate the work. That's**
 19 **all.**
 20 **Q Okay. Am I correct that one of the operations**
 21 **that Mr. Carpenter and Mr. Small assisted you with was**
 22 **an undercover operation relating to Tabacos USA?**
 23 **A The answer is yes. It changed focus a few**
 24 **times, but if you're going to put it under the umbrella**
 25 **of Tabacos USA, the answer's yes.**

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1 Q Okay. Can you tell me when that investigation
2 commenced?
3 A **Not off the top of my head. I'm sorry. I**
4 **should know that. Hell, I get asked about it all the**
5 **time. It's in WikiLeaks. If somebody's got a copy of**
6 **that, I'd be happy to look it up but it was --**
7 MR. MATHIS: Could we -- could we take a
8 break --
9 MR. MARSHALL: After --
10 MR. MATHIS: -- and -- and then I'll let you --
11 well, before it goes farther actually, I mean, because
12 there's some governmental issues that I'd like to
13 discuss before we do that.
14 MR. MARSHALL: Okay.
15 THE VIDEOGRAPHER: We are going off the record.
16 The time is 14:53.
17 (Whereupon, there was a recess in the
18 proceedings from 2:53 p.m. to 3:03 p.m.)
19 THE VIDEOGRAPHER: We are back on the record.
20 The time is 15:03.
21 BY MR. MARSHALL:
22 Q Thanks for your patience with this, Mr. Lesnak.
23 Am I correct that Mr. Carpenter and Mr. Small assisted
24 you with an undercover operation relating to Target A?
25 A **Yes, at the request of other government**

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1 **agencies. I was the intermediary in the beginning, yes.**
2 Q Do you recall when that investigation started?
3 A **I don't. Sorry.**
4 Q Do you --
5 A **A long time ago.**
6 Q Okay. Do you believe that the investigation
7 had already commenced by May 1st, 2011 which is when the
8 asset purchase agreement went through?
9 A **It definitely had, yes.**
10 Q All right. Had it been ongoing for about a
11 year at that point?
12 A **At least.**
13 Q Okay.
14 A **I would feel comfortable -- now are you asking**
15 **ATF's role in it or the big picture?**
16 Q I'm not asking --
17 A **The government's role started way before we got**
18 **involved.**
19 Q I'm asking for Mr. Carpenter and Mr. Small's
20 involvement in that.
21 A **Their involvement was at least a year prior to**
22 **the acquisition if not two. Wouldn't surprise me if you**
23 **told me it was two.**
24 Q All right. Did Mr. Carpenter, Mr. Small, Big
25 South Wholesale or Big South Wholesale of Virginia ever

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1 loan any money to you or to the ATF in connection with
2 the investigation of Target A?
3 A **No one ever loaned any money to me personally**
4 **ever so that answers that question. Did -- loan isn't**
5 **the right word. What I would say is as the model was on**
6 **many other investigations that we worked successfully,**
7 **Big South, Jason and Chris, whatever the company entity**
8 **was, was doing business with people through their**
9 **company, not with -- utilizing government money. They**
10 **were using their own funds, not government money. They**
11 **would do whatever it was they were doing. In this case,**
12 **Target A, they were buying, selling and trading with**
13 **Target A at the direction of the U.S. Government. They**
14 **were using their own funds to do that and in the**
15 **beginning at great financial loss to them personally.**
16 Q How much of a loss?
17 A **I think I said earlier it wouldn't surprise me**
18 **if it was a seven-figure loss. This was the largest,**
19 **most significant government operation I've ever been**
20 **part of, that -- not -- not just our undercover**
21 **operation but that particular target, and the fact that**
22 **our counterparts at other agencies listed them as one of**
23 **the top ten targets in the world. And me and my senior**
24 **management including the deputy director of ATF in**
25 **closed-door congressional briefings showed us the**

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1 **significance not just in -- nobody cared about tobacco.**
2 **I didn't care about tobacco. -- but in the illicit**
3 **terrorism funding mechanism that this company may have**
4 **been involved with and that became our A number one**
5 **focus that -- no offense. I didn't really care about**
6 **some of these other smaller cases, that this is what --**
7 **my mandate was from the guy who became the deputy**
8 **director of my agency and from Congress was to -- the**
9 **quote was, there's nothing more we could do on the war**
10 **on terror than do this case.**
11 Q Okay.
12 A **That was the quote.**
13 Q When you say that they -- Mr. Carpenter and
14 Mr. Small used some of their own money in connection
15 with the relationship they developed, for lack of better
16 words, with Target A and you said it could be seven
17 figures -- so are we talking a Million Dollars?
18 A **It wouldn't surprise me if it was more than**
19 **that.**
20 Q Okay.
21 A **I don't know. I wasn't part of the final audit**
22 **that ATF or others did, but I know at a period of time I**
23 **was begging our sisters at these other government**
24 **agencies, I'll use another phrase that I'll get**
25 **reprimanded for, to shit or get off the pot, that guys,**

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1 we can't continue this, this is not sustainable, not --
 2 not for me but for them --
 3 Q Right.
 4 A -- that their lives are in jeopardy, that it's
 5 costing them a ton of money and we got to make a
 6 decision what we're going to do on this case.
 7 Q Why were Mr. Carpenter and Mr. Small using
 8 their own funds for this as opposed to ATF churn money?
 9 A That's a good question. The primary reason was
 10 the U.S. business of this entity was 100 percent
 11 legitimate. I know that sounds silly. Every government
 12 agency or the significant ones had spent years before we
 13 got involved trying to taint this company and prove its
 14 U.S. culpability. Instead they ended up taking down one
 15 of the world's largest banks that we were clearly part
 16 of. But the goal was to get close to these bad guys,
 17 identify their network, infiltrate their business model
 18 domestically and internationally while main Justice did
 19 their thing with other agencies.
 20 Q Is it fair for me to say that Mr. Carpenter or
 21 Mr. Small were perhaps advancing money towards your
 22 cause?
 23 A I -- that kind of implies something negative.
 24 Like many other targets including -- I could give you a
 25 great model of the Belcorp case. They were buying,

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1 selling and trading with these targets as part of
 2 their -- and under the cover of their legitimate
 3 business and it's why when we talked about this Traffic
 4 stuff and we talk -- I'll stop -- when we talked about
 5 some of these other transactions, you can't look at any
 6 one particular transaction. You got to look at the
 7 transactions over the total scope of the dealings with
 8 that bad guy and then ultimately the dealings with all
 9 of the investigations.
 10 So what started out -- what should have been --
 11 and this was not my decision. What should have been a
 12 very quick short-term operation, infiltrate them,
 13 introduce an undercover overseas and get cut out as we
 14 had done in dozens and dozens of other cases, we got
 15 sucked in at the highest levels of main Justice --
 16 THE WITNESS: No offense.
 17 A -- to where my deputy director flew down to a
 18 foreign country and had meetings at the highest levels
 19 with many government agencies and he committed us to
 20 stay the course.
 21 Q Why would you not use a churn account for that
 22 kind of operation?
 23 A Several reasons. This is -- the first one,
 24 their American business was legitimate. You can't -- I
 25 can't -- it just never linked back to a pending -- when

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1 you look at our churning memos, hey, we're targeting
 2 Corporation A, that was not part of this. It was part
 3 of their legitimate business. And I'm going to talk
 4 about a case and it -- it's the same exact model --
 5 Q Well --
 6 A -- that's public. No. It -- it mirrors to
 7 why -- why what we did with A we had previously done
 8 with other cases that were successfully prosecuted.
 9 Q All right.
 10 A So that --
 11 Q But --
 12 A -- became the model for the -- the Target A
 13 investigation.
 14 Q Okay. And you don't need to give me the
 15 background for the other one. I appreciate the offer
 16 though. Why could you not just take money from the
 17 churning account and provide that to Mr. Carpenter and
 18 Mr. Small or their company so that they could engage in
 19 these transactions with Target A?
 20 A Couple reasons. One, we were prohibited from
 21 mixing churning and nonchurning money. A number one,
 22 can't do it. Number two, there was no underlying
 23 criminal violation nor would there be. It was very
 24 clear early on nobody cared about tobacco. We didn't
 25 care about tobacco. I didn't care about tobacco.

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1 Tobacco was just a way of going -- having meetings with
 2 some very important, powerful people around the globe
 3 and to infiltrate their global network with other
 4 agencies. So their -- it didn't meet any of Department
 5 of Justice requirements to use churning funds.
 6 Q Were Mr. Carpenter and Mr. Small concerned that
 7 they were engaging -- engaging in these transactions and
 8 losing money? Did they ever express concern to you?
 9 A In writing often and you will find a series of
 10 e-mail, me e-mailing agents and investigators at
 11 Department of Justice, saying, guys, this has got to
 12 end. One way or another, pick or choose, but this needs
 13 to end.
 14 Q Did you have discussions with Mr. Carpenter or
 15 Mr. Small about repaying them that money that they were
 16 concerned about?
 17 A From the government?
 18 Q (Nods head).
 19 A No, absolutely not. No. I mean, there were --
 20 some of our agents -- our sister agencies had reward
 21 systems where their informants were paid millions and
 22 when I mean millions, I mean many millions. We joked
 23 about that but never -- never did I say, you would get a
 24 government reward check or ATF would pay you back. We
 25 never had that conversation.

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1 Q Did you say anything to represent to them that
2 you would help make them whole for the money that they
3 had spent on Target A?
4 A That was always our goal was to get them even.
5 That's why I said you can't look at any one particular
6 transaction and say they made or lost money. You got to
7 look at the whole scope of the work because -- and I'm
8 going to just use the term a Million Dollars. They were
9 down a Million Dollars on -- on the Investigation A
10 investigation so they had to make up a Million Dollars
11 somewhere else to come out even. Does that make sense?
12 Q Sort of but why would --
13 A So that was the rationale.
14 Q All right. Why would the government if -- is
15 it your position that Mr. -- Mr. Carpenter and Mr. Small
16 were doing this work or engaging in this -- these
17 transactions on behalf of the ATF in connection with an
18 ATF investigation?
19 A On other investigations. They were -- they
20 were specifically requested and met with senior-level
21 government agencies, many other agencies, and ATF was
22 just a conduit for these other agencies. So they were
23 acting on their behest. The introduction of
24 undercovers, the international stuff was not done with
25 ATF authority. We merely assisted.

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1 Q Did you ever come up with some kind of a method
2 to make sure that they were repaid the money that they
3 had invested in this operation for lack of better words?
4 A Again, without talking about the model it's
5 hard to explain what method we had set up, but we had
6 set up a method to make sure we got a fair -- I don't
7 know what the word is. -- that we were fair to them at
8 the end of the day, that they weren't being punished for
9 cooperating with the government.
10 Q What was that method?
11 A I got to tell you the story that you don't want
12 me to say, but the model of the prior cases that a
13 federal judge and Department of Justice signed off on,
14 that became the model for all of our cases from that
15 period forward, which was at the end of the
16 investigation due to the analysis by smart people who
17 say how much they made, how much they lost. What was
18 criminal proceeds went back to the U.S. Government.
19 What was legitimate income, they kept. That was the
20 model in a simple form.
21 Q So your model was to make sure that they could
22 make legitimate income?
23 A Of course. Absolutely.
24 Q How were you going to do that?
25 A You hoped that they -- well, they already had a

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1 legitimate business model. And I'll tell you the truth.
2 In my very first conversation about -- I'll never forget
3 this. It was funny. I get a phone call from Jason.
4 He's in Chicago, Illinois. I'll never forget this. He
5 calls me up. I found it. What did you find? He was
6 there with an FBI informant and Chris and a couple other
7 people. I found it. We just met with this Company A
8 from a foreign country. These are it. These are the
9 legitimate guys because they knew they were knocking off
10 all the crooks in the marketplace. There was going to
11 be a vacuum, right? They're not stupid people. They
12 know there's going to be a vacuum. These guys want a
13 hundred percent legitimate, not like all these other
14 crooks in the business, we want to make sure we do
15 everything right in the U.S. and, boom, boom, boom. I
16 said, hey, what's that company? Never -- obviously I
17 never heard of them. Yeah, they said -- I said, oh,
18 that's interesting. So I did like I always do. I write
19 it up, I send it to headquarters, I send it to the other
20 agencies, hey, anybody ever hear of these guys? Boom.
21 Red lights and sirens. Me and my boss get called to the
22 office. It's like, holy shit, what are you guys doing
23 talking to these people? I mean, shit, I didn't even
24 know where this country was, you know, but this is what
25 happened. This is how you fall into things for huge

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1 investigations. Headquarters then took the role of
2 coordinating with all these other agencies and then it
3 took off like lightning from there.
4 Q After the closing of the asset purchase
5 agreement in May 2011 were you aware that Mr. Carpenter
6 and Mr. Small either individually or through their
7 company, BSW of Virginia, were selling Palermo
8 cigarettes to Big South Distribution?
9 A Yes. I knew we were still moving Palermo
10 cigarettes, yes.
11 Q To --
12 A That investigation --
13 Q To B --
14 A -- was still on.
15 Q To BSD?
16 A They were selling it to everybody but, yeah, I
17 mean -- I don't have the specific details of all the
18 transactions, but the fact is that Palermo cigarettes
19 were still being moved, yes.
20 Q Is it your testimony that Mr. Carpenter or
21 Mr. Small through their company were selling to entities
22 other than BSD after May 1st, 2011?
23 A There were numerous undercover operations that
24 were ongoing still at the time dealing in what I'd call
25 four-tier discount cigarettes. So as part of other

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1 investigations, which I think we called Schedule A or
 2 Corporate A, those transactions were still ongoing.
 3 Q I'm talking about transactions that only
 4 involved Mr. Carpenter or Mr. Small.
 5 A Well, they were -- they were the investigation
 6 against --
 7 Q Okay.
 8 A -- Corporation A.
 9 Q Okay. But just to be clear, you had an
 10 understanding or you knew that they were selling
 11 cigarettes to Big South Distribution, BSD?
 12 A Correct. That goes back to what I said before,
 13 that Jason and Chris were the buffer between the
 14 government and U.S. Flue-Cured. So that nothing could
 15 ever come back on U.S. Flue-Cured, Jason and Chris were
 16 the buffer.
 17 Q Whose idea was it to do this?
 18 A Oh, God. It goes back to, as I said earlier,
 19 our assurances to Albert and I'm sure to Steve Daniels
 20 that we would not burn these guys, burn these guys
 21 meaning U.S. Flue-Cured.
 22 Q All right.
 23 A We knew eventually many of these informants
 24 would get burned, but we -- we walled off
 25 U.S. Flue-Cured, which to this day outside of leaks from

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1 this room, nobody even knows that U.S. Flue-Cured was
 2 involved in this stuff.
 3 Q Let me just ask this question to make sure I'm
 4 a hundred percent clear on it. Before May 1st of 2011
 5 did you or did anybody else to your knowledge tell
 6 Albert Johnson that Jason Carpenter and Chris Small were
 7 going to be selling Palermo cigarettes or any kind of
 8 cigarettes to BSD?
 9 A I never got into the minutia with Albert in my
 10 one meeting with him about anything specific like that.
 11 Q All right. So --
 12 A There was not a conversation that I had with
 13 Albert that I recall.
 14 Q All right. Same question with respect to Steve
 15 Daniel.
 16 A Oh, I -- I knew Steve knew about that. He
 17 was -- hell, he was at the warehouse all the time during
 18 the sting. We were very busy during that period of time
 19 and Steve must have known. I mean, he was -- he was
 20 there all the time. He was pretty intimately aware of
 21 our involvement with Operation A.
 22 Q All right.
 23 A He was very aware of that operation.
 24 Q All right. Before May 1st, 2011 did you ever
 25 specifically tell Steve Daniel that Mr. Carpenter and

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1 Mr. Small were going to be selling cigarettes to BSD
 2 after the acquisition? Did you ever have that
 3 discussion with Mr. Daniel?
 4 A My recollection is at every meeting I -- I
 5 promised to wall them off and that they would be -- the
 6 buffer would be Jason and Chris and nine other guys with
 7 U.S. Flue-Cured and the bad guys. I never got into the
 8 minutia of specific deals in any conversation with Steve
 9 Daniels. He wasn't at that level.
 10 Q So the answer's no?
 11 A In that specific question of did I tell him
 12 that we would do this, no. I specifically told him and
 13 he obviously saw that we would be moving product
 14 through, which ultimately became Big Sky, that we would
 15 finish off those operations and he was happy about that.
 16 It was clearly in Flue-Cured's interest to have the rest
 17 of the crooks out of the marketplace.
 18 Q All right. Do you know who I -- whose idea it
 19 was to sell cigarettes through Big Sky International
 20 back to BSD after May of 2011?
 21 MR. MATHIS: Objection.
 22 A I knew about it. I'm not saying it was my idea
 23 or wasn't my idea. I knew about it. It was the way of
 24 protecting U.S. Flue-Cured. So I -- I don't know who --
 25 four years ago I can't recollect whether we were having

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1 a meeting over coffee or I came in late. I have no
 2 idea. But I was clearly aware of it and we thought it
 3 was a great idea and it was the only way we could think
 4 to protect U.S. Flue-Cured.
 5 Q We referring to you?
 6 A Me, my bosses, everybody involved in the other
 7 sister agencies that we worked with, the other people
 8 who were buying, selling and trading with us. And as
 9 you saw from my e-mail to South Carolina that we -- we
 10 continued to preach the operational security and the
 11 safety of Jason and Chris and didn't compromise. In
 12 that e-mail it would have been easy to say, hey, go talk
 13 to U.S. Flue-Cured, but we never put them in the grease.
 14 Q How is selling Palermo cigarettes to USTC
 15 considered protecting USTC?
 16 A Well, the alternative would have been being
 17 involved in a big international investigation
 18 compromising to the Chinese and to a bunch of other
 19 foreign governments that U.S. Flue-Cured was cooperating
 20 with the government. So that product had to move. That
 21 was the model. The product had to move. That was our
 22 mandate from main Justice. That was the undercover
 23 operation, that product had to move from Target A for
 24 various investigative purposes way above my pay grade.
 25 The only way to do that was to sell the product.

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1 Q But you could have sold that to anybody, right,
2 any company? Why was it BSD?

3 A Yeah, I don't -- no idea. First of all, in
4 those quantities -- you don't sell retail in those
5 quantities that we were buying from Schedule A or Team A
6 or Target A. So, you know, again, it was sitting in, as
7 you know, the Big South warehouse. That's where it sat.

8 Q Correct.

9 A That's where it was.

10 Q So was it more --

11 A Perfectly --

12 Q Go ahead.

13 A It was perfectly normal. It was perfectly --
14 this worked out -- worked out great. There was a buffer
15 between the bad guys and Flue-Cured as we promised. The
16 product got moved which is what we promised Target A.
17 The U.S. Government was ecstatic because we had
18 infiltrated this organization from the top down. It was
19 working great for everybody.

20 Q Is there any reason why you couldn't have sold
21 to an entity other than BSD? Did you have any directive
22 from your superiors in the ATF suggesting that it had to
23 be BSD and --

24 A No.

25 Q -- you could not --

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1 A Sorry.

2 Q -- sell to anybody else?

3 A No, absolutely not.

4 Q All right. So you had a choice as to where
5 this product ultimately ended up and that ended up at
6 BSD?

7 A Right. Like I said, that -- it was a great
8 idea because it buffered everybody, protected everybody,
9 got the product moved. Department of Justice and other
10 agencies were happy. The bad guys were happy. It
11 worked out great for everybody.

12 Q Do you think that it worked out great for my
13 client?

14 A Your client made millions of dollars with the
15 work with the government.

16 Q How do you know that?

17 A Because I saw the product that we bought from
18 you. You guys were making 2, 3, \$4 a carton. The
19 product in -- I don't -- I can't recall the Palermo
20 prices, but you guys -- it was built in a dollar or two
21 for U.S. Flue-Cured to make on those sales, the price
22 what was normal wholesale to what they got that product
23 for. We built that in the cost. So, yeah, I'm very
24 confident that U.S. Flue-Cured made millions of dollars
25 on the -- on their work with the government.

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1 Q Have you ever seen U.S. Flue-Cured's accounting
2 records to reflect that?

3 A I have not, but I saw their expansion. I saw
4 their product in markets that had never appeared before.
5 I saw their standing in the -- the marketplace. They
6 clearly grew as a tobacco company during this period of
7 time.

8 Q I think you testified a couple minutes ago that
9 you couldn't move that volume of Palermos to retail
10 customers. Was that correct?

11 A We couldn't --

12 Q All right.

13 A -- not out of our -- our -- our warehouse in
14 Virginia? No, absolutely not.

15 Q All right. Well, when the cigarettes were sold
16 to BSD they never left that warehouse in Virginia,
17 correct?

18 A Well, you guys raided it before it was being
19 able to be sold, but it would have eventually all been
20 sold, of course.

21 Q We raided it two years after that activity
22 started.

23 A The -- the --

24 MR. MATHIS: Objection to the counsel
25 testifying.

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1 A The -- this investigation lasted years, years
2 as you -- as you know. That Target A investigation was
3 probably four or five years in the making. So there was
4 product constantly flipping, mean -- coming -- I'm
5 sorry, flipping. It was fresh stuff coming in, old
6 stuff going out, that type of stuff. So there was --
7 hell, we had old product from other manufacturers in
8 there too that were part of ongoing criminal
9 investigations. So I'd be surprised if all of it was
10 that old, but we had been in the business for four
11 years. You -- you could have told me that some of that
12 product was four years old and it wouldn't surprise me.

13 Q Well, my question relates more to Palermos. If
14 it's your position that that warehouse couldn't have
15 moved that volume of Palermos, why do you -- why did you
16 think that BSD could move that volume of Palermos?

17 A Well, because at this time U.S. Flue-Cured had
18 a -- a reach -- a whole reach from coast to coast. Big
19 South of -- I don't even remember their company's name.
20 Their -- the Big South new company or Jason and Chris's
21 new company was a tiny little wholesale business. That
22 wasn't capable of doing -- to do Palermo in that scope
23 you needed -- and I remember in conversation that there
24 was Flue-Cured distribution in the midwest, in Vegas and
25 it would have taken a whole U.S. reach to move that much

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253	<p>1 product.</p> <p>2 Q All right. Were you able to generate proceeds</p> <p>3 or funds for your operations based on these sales of</p> <p>4 Palermo cigarettes to BSD?</p> <p>5 A Not that I recall. I know we were in the hole,</p> <p>6 like I said, seven figures, on that. I don't believe</p> <p>7 there were any proceeds.</p> <p>8 Q Didn't the ATF retain some money as a result of</p> <p>9 those transactions?</p> <p>10 A As part of criminal forfeitures? Are you</p> <p>11 talking about --</p> <p>12 Q Let me -- no. Let me be more specific.</p> <p>13 When -- when Big Sky International would acquire Palermo</p> <p>14 cigarettes and then sell those to BSD for whatever the</p> <p>15 cost might have been, didn't the ATF get a cut of the</p> <p>16 amount that was paid by BSD?</p> <p>17 A That's a different question. The -- ATF got</p> <p>18 nothing. That was not government money. It was not</p> <p>19 churning money. There -- as I've often repeated and</p> <p>20 nobody listens, that was money on purchases made by</p> <p>21 Jason and Chris's money and not with U.S. Government</p> <p>22 money. We could not interact that money with government</p> <p>23 churning money. At the conclusion of that case, as with</p> <p>24 the model, there would have been a full accounting on</p> <p>25 every Palermo sold, and I believe there was, to get to</p>	255	<p>1 Q Do you see where he's referring to</p> <p>2 miscellaneous cigarettes, 48-count chips and certain</p> <p>3 types of water, correct?</p> <p>4 A Yes.</p> <p>5 Q Then on the next page there's an e-mail from</p> <p>6 Mr. Carpenter to you and Mr. Small and Wendi Davis. Do</p> <p>7 you see where I am?</p> <p>8 A Yes.</p> <p>9 Q Below please find the math for the 792 cases.</p> <p>10 And what it looks like he's saying is 47,520 cartons at</p> <p>11 \$15. What does the \$15 mean in -- in the context of</p> <p>12 that transaction?</p> <p>13 A If I recall, and, again, this is, what, four</p> <p>14 years ago, I think that stuff was wholesaling out for</p> <p>15 \$18, 18.95, \$19, somewhere in that ballpark, so the 15</p> <p>16 would be an acceptable rate where nobody was getting</p> <p>17 gorged.</p> <p>18 Q An acceptable rate to who? Did -- were you</p> <p>19 involved in setting that price, \$15, for those cartons</p> <p>20 of Palermos?</p> <p>21 A I was -- I was responsible for setting every</p> <p>22 price tied to my operation, yes.</p> <p>23 Q All right.</p> <p>24 A I don't specifically recall this, but I would</p> <p>25 have been involved in this, yes.</p>
254	<p>1 what the, quote, profit was. If it was deemed as the</p> <p>2 Department of Justice had previously done in the models</p> <p>3 to be unlawful proceeds, Big South or Jason and Chris,</p> <p>4 whatever the entity was, would write a check back to the</p> <p>5 U.S. Government as they did previously of the unlawful</p> <p>6 proceeds. What was legitimate proceeds the government</p> <p>7 allowed them to keep.</p> <p>8 Q Turn to Tab 11 in the binder if you would. I</p> <p>9 want to walk through some transactions that I think</p> <p>10 relate to some of these sales of Palermos. On the first</p> <p>11 page do you see an invoice dated December 7th, 2011?</p> <p>12 A Yes.</p> <p>13 Q And this is from Tabacos USA to DLG/AMI. Do</p> <p>14 you see that?</p> <p>15 A Yes.</p> <p>16 Q And the price, and I believe this is per</p> <p>17 carton, was \$2.90.</p> <p>18 A Yes.</p> <p>19 Q All right. Flip to the second page. Now I</p> <p>20 believe this was Brandon Moore's e-mail address.</p> <p>21 A Yes.</p> <p>22 Q All right. So he e-mailed you on December</p> <p>23 13th, 2011. He says -- I think what he meant to say is,</p> <p>24 attached is what you ordered. This is what we sent.</p> <p>25 A Yes.</p>	256	<p>1 Q And you see below that where money was wired to</p> <p>2 Lorelei?</p> <p>3 A Yes.</p> <p>4 Q \$137,000. And then it looks like more money is</p> <p>5 deducted from that total amount for cases of Omega 3</p> <p>6 water?</p> <p>7 A Yes.</p> <p>8 Q And you see where there's a commission payable</p> <p>9 to Paul?</p> <p>10 A Yes.</p> <p>11 Q Would that be Paul Mendoza?</p> <p>12 A Yes.</p> <p>13 Q And if you do 15 times 400 -- I'm sorry,</p> <p>14 47,520, you get this number at the top, \$712,000, less</p> <p>15 all these other expenses and Mr. Carpenter has said here</p> <p>16 that that totals 519,000 and that that is the total net</p> <p>17 to be transferred from Big Sky to DLG Tobacco which I</p> <p>18 think you testified earlier was the -- the churn</p> <p>19 operation, correct?</p> <p>20 A That is the correct term, yes.</p> <p>21 Q So from this transaction your churn operation</p> <p>22 got \$519,102?</p> <p>23 A It did not.</p> <p>24 Q Explain that to me.</p> <p>25 A As is often confused by everybody involved in</p>

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1 this, you couldn't list the ATF account, you couldn't
 2 list the -- what we called the proceeds account, so
 3 obviously Jason wrote that the DLG account was -- and
 4 you see where it says, management? That means the
 5 management account -- now, look -- look, let me -- let
 6 me ask two -- can I ask you a question to make sure this
 7 is right? Do you have a copy of that wire transfer?
 8 And I'll tell you definitively if that went to the
 9 government churning account. I don't believe it did but
 10 you're going to have -- if -- if you could help me, I
 11 could -- I could describe this entire transaction for
 12 you.
 13 Q I don't know if we do or we don't, but I don't
 14 believe it's in the exhibit I've given you.
 15 A I don't believe that's right. I think that
 16 went into the proceeds account that Wendi managed that
 17 we accounted for at the end of the investigation what
 18 was profit, what was loss, what was criminal proceeds,
 19 went -- what went back to the forfeiture account, not to
 20 the ATF churning account and what they were allowed to
 21 keep as genuine profit.
 22 Q Okay.
 23 A So if that is the government, that would really
 24 surprise me. I don't think that's correct. I think
 25 what -- what Jason probably meant was to the proceeds

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1 account that was maintained by Wendi.
 2 Q Let me see if I can ask it another way. Did
 3 Jason Carpenter, Chris Small or either of their
 4 entities, Big South Wholesale or Big South Wholesale of
 5 Virginia, did they retain this \$519,000 to use however
 6 they pleased?
 7 A As part of the overall Group A investigation,
 8 the answer was yes. It went on a spreadsheet that was
 9 tallied and maintained showing, hey, we're down seven
 10 figures and I'm -- I don't know this to be the case
 11 here. -- okay, now we're down six figures --
 12 Q Okay.
 13 A -- until the end of the investigation where we
 14 would do the complete accounting as was the model set up
 15 by Department of Justice and the federal prosecutors and
 16 the U.S. judge that we worked with. So that would have
 17 went in the account, would have offset their
 18 seven-figure loss and there were probably others similar
 19 to this trying to get to a point where, as I said,
 20 during this period of time I was sending e-mail after
 21 e-mail to headquarters and others saying it's time to
 22 shift or get off the pot.
 23 Q All right. So if I hear you correctly, what I
 24 think you're saying is that this money that would have
 25 been sent to DLG Tobacco was used to offset the money

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1 that Mr. Carpenter and Mr. Small had expended in
 2 connection with the investigation of Target A, is that
 3 correct?
 4 MR. MATHIS: Object to the form. You can
 5 answer.
 6 A I'm saying at the end -- we wouldn't know that
 7 till the end. Unfortunately, there were probably 15
 8 more deals and expenses related to this investigation.
 9 I don't know. So you would have to literally pull every
 10 invoice of every transaction involving this brand of
 11 cigarettes, okay --
 12 Q Uh-huh.
 13 A -- to come up with how much they're up or how
 14 much they're down. I know what ATF calculated. I had
 15 already retired. ATF did an audit. I know what ATF
 16 calculated. I don't know what the final audit numbers
 17 were, but I do know what the final number ATF
 18 headquarters said was the number that they made on all
 19 of these investigations.
 20 Q All right. But just so I'm clear, is it your
 21 testimony that when money like this, the \$519,000, is
 22 transferred from Big Sky to DLG Tobacco, that is not
 23 money that was to be used in connection with your
 24 operations or investigations, is that right?
 25 A I didn't say that. What I first said was I

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1 really need to see that transaction to tell you if this
 2 went to the government. If I could see that wire
 3 transfer, I would tell you. If it went to the
 4 government, that would be one -- one issue, okay? I
 5 have no way of knowing that without a copy of that.
 6 Q Okay.
 7 A If it didn't -- we tracked every carton of
 8 cigarettes that came in or out of that building. This
 9 would have went against -- no different than had they
 10 bought product there would have been a tran -- there
 11 would have been a transition. There would have been
 12 a -- a notation in QuickBooks showing where they bought
 13 product and then, again, at the end of the
 14 investigation -- so it -- if you look at just this one
 15 transaction, you would say they're up whatever it is
 16 they're up profitwise, but you don't know if the
 17 transaction before that and before that and before
 18 that -- I'm telling you there was a period of time that
 19 they were seven figures in the hole on -- on
 20 Investigation A.
 21 Q Do you know if -- if after May 1st, 2011 if any
 22 of the sales that were made from Big Sky International
 23 to BSD, back to my clients, if any of the money
 24 generated from those sales ultimately went back to the
 25 government, whether it's to ATF, your operations, the

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1 government?

2 **A I-- I am aware of at least one cashier's check**

3 **that went back to the U.S. Treasury. There may have**

4 **been many more. I -- I haven't looked at that in four**

5 **years.**

6 Q But -- all right. Do you know personally if

7 any of the money generated from these sales was used in

8 furtherance of any of your ATF investigations?

9 **A Well, this particular case was in furtherance**

10 **of a huge U.S. Government investigation so the answer is**

11 **yes. It wasn't --**

12 Q All right.

13 **A And I'm not being -- I'm not -- I'm not picking**

14 **hairs here, but ATF was a small piece of this. There**

15 **were many bigger, more significant agencies that were**

16 **running this investigation. So was their money from**

17 **this investigation A used in furtherance of that**

18 **operation? Yes. Were there profits from that**

19 **investigation used in furtherance of Investigation A?**

20 **The answer is yes.**

21 Q Did you ever disclose to any of your superiors

22 at the ATF that Mr. Carpenter or Mr. Small through Big

23 Sky were selling product to BSD after the acquisition?

24 **A They knew they were still selling product. I**

25 **don't know if my boss and I ever sat down and went**

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1 **through every invoice. At the end of every month we did**

2 **a monthly reconciliation that my boss was involved in.**

3 **That would get put into binders and sent up to my field**

4 **division which would then get sent up to my**

5 **headquarters. So do I recollect a specific**

6 **conversation? No. But there are hundreds of reports**

7 **and memorandum and financial transactions that the**

8 **government has and at the highest levels of ATF.**

9 Q Your boss, was that Bruce Lambert?

10 **A Yes.**

11 Q All right. In these hundreds of memos and

12 reports that you're referencing, did any of those

13 reports ever disclose or reveal the fact that

14 Mr. Carpenter and Mr. Small and/or Big Sky International

15 were selling products to BSD?

16 **A Every one of those invoices is in our financial**

17 **transactions that were audited by the OIG on three**

18 **occasions, by headquarters on every month, so the answer**

19 **is yes, they were aware of it and those invoices are in**

20 **government documents that would fill this conference**

21 **room table.**

22 Q Did you have to obtain approval from anybody

23 else within the ATF, any of your superiors or anybody,

24 for Carpenter and Small to be able to sell products to

25 BSD through Big Sky International?

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1 **A No. Justice Department and many other agencies**

2 **knew we were buying, selling and trading with Target A.**

3 **Again, they didn't get into the minutia of how. They**

4 **were just glad we -- we infiltrated the organization.**

5 Q To the best of your knowledge who at USTC,

6 U.S. Flue-Cured or BSD was aware that Carpenter and

7 Small were selling Palermo cigarettes to BSD after May

8 1st, 2011?

9 **A What am I personally aware of? No idea. I**

10 **mean, I -- I don't know who saw those invoices. I don't**

11 **know how the wires were cut.**

12 Q Do you know if Mr. Daniel was aware that these

13 transactions --

14 **A I assume --**

15 Q -- took place?

16 **A I assume he -- he was. He was at the warehouse**

17 **at this time pame -- frame. He was aware of**

18 **Investigation A and its significance. He was intimately**

19 **involved in that. He was -- he sat in on meetings with**

20 **those folks at our -- our behest. He was a big asset in**

21 **that case. So the answer is yes, he was aware. Do I**

22 **recall a specific conversation I had with him about any**

23 **particular transaction? The answer's no.**

24 Q Do you know if Mr. Johnson was aware post May

25 1st, 2011?

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1 **A Wasn't made aware by me. I only talked to him**

2 **that one time in Kingsport.**

3 Q Okay. Was he made aware by anybody else to the

4 best of your knowledge?

5 **A I -- I don't know if that ever came up.**

6 Q Okay. And you're familiar with a company by

7 the name of Lorelei, correct?

8 **A Yes.**

9 Q You're familiar with Paul Mendoza?

10 **A Yes.**

11 Q Now these entities and/or individuals were

12 sometimes involved in the sale of Palermos to BSD, is

13 that right?

14 **A Those companies you just mentioned, were they**

15 **involved in the investigation of Schedule A? The**

16 **answer's yes.**

17 Q All right. Explain to me your understanding of

18 how a transaction involving the sale of Palermo

19 cigarettes to BSD typically worked. And what I'd like

20 for you to do is walk me through an example of how the

21 money and the actual product flowed to the point where

22 it ended up with my client, BSD.

23 **A Target A said, I got a container I want you to**

24 **send to the Middle East, to Africa, to some new market.**

25 **We're trying to generate new business. We can't smuggle**

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1 **contraband into a foreign country without their approval**
 2 **obviously, okay? It's called espionage or fast and**
 3 **furious. So we walked a fine line trying to ingratiate**
 4 **ourselves with the targets of Investigation A without**
 5 **starting a international incident with some foreign**
 6 **country. It was a fine line we walked and obviously we**
 7 **relied on our sister agencies to help us on this.**
 8 **Again, to protect Jason and Chris both**
 9 **personally and physically and always to protect**
 10 **U.S. Fluc-Cured we came up with a cutout. Jason and**
 11 **Chris were not the guys to have the 100 percent illegal**
 12 **conversation, I need narcotics, I need to launder drug**
 13 **proceeds. Obviously I assume you met Jason. He doesn't**
 14 **fit that role. Chris is not a drug and gun guy. So we**
 15 **had to find somebody who was. So as, again, you read in**
 16 **a WikiLeaks article, we came up with a very complex plan**
 17 **to introduce some international assets into the supply**
 18 **chain to do the unlawful activity -- the blatantly**
 19 **unlawful activity, the international money laundering**
 20 **with some of the world's largest banks. And that's how**
 21 **we came to do -- to cut out Jason and Chris from having**
 22 **the unlawful activity conversation with the targets of**
 23 **Investigation A. So that's why you see new companies**
 24 **appear that you previously had not seen. That was a**
 25 **conscious decision made and approved at the highest**

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1 **levels at Justice Department to introduce this cutout to**
 2 **be the face of the investigation on A.**
 3 **Q All right.**
 4 **A So that's why there's extra stops. It is meant**
 5 **to disguise. It's meant to disguise from the bad guys**
 6 **who are very smart and have been targeted before by**
 7 **smarter agents than me from many different agencies and**
 8 **we determined that this route -- this investigative**
 9 **route was the best way to infiltrate this group and**
 10 **ultimately we were correct.**
 11 **Q All right. What -- what I'm trying to get --**
 12 **and I appreciate that. What -- what I'm trying to get a**
 13 **better understanding of is when Big Sky International**
 14 **would sell Palermos to BSD, how would that transaction**
 15 **typically flow? And -- and let me see if -- I'll walk**
 16 **you through what I've reviewed in the documents and you**
 17 **tell me if I'm wrong or right on this. Lorelei was**
 18 **involved in these transactions, correct?**
 19 **A In the second half of the investigation, yes.**
 20 **Q Okay. Was it sometimes common that Lorelei**
 21 **would place an order with Target A for Palermo**
 22 **cigarettes?**
 23 **A What was common was the bad guy always called**
 24 **us. We didn't want any more product. The bad guys**
 25 **would call us up. Like I said, Jason and Chris were**

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1 **bleeding money at this point. They would call us up and**
 2 **say, hey, we really need to move a container, hey, we**
 3 **have this coming up, hey, we're -- we're doing this.**
 4 **The cutouts who you mentioned the company would then**
 5 **with approval from us and the other agencies on**
 6 **recorded -- obviously recorded both in person and -- and**
 7 **over the phone dialogued with the targets of A and would**
 8 **place an order with our approval, ours meaning the**
 9 **U.S. Government's.**
 10 **Q All right.**
 11 **A That product would then come to the United**
 12 **States. As you know, it's not made here. And it would**
 13 **eventually move through either Florida or Pennsylvania**
 14 **or Virginia.**
 15 **Q Some of that product was in the Bristol**
 16 **warehouse though, correct, in a bonded cage?**
 17 **A That's Virginia. I'm sorry. When I say**
 18 **Virginia, that's correct.**
 19 **Q All right. Let's look back at Tab 11, the**
 20 **first document. Again, this is an -- this is an invoice**
 21 **and you see the reference --**
 22 **A Yes.**
 23 **Q -- where it's coming from up at the top. Hang**
 24 **on one second. I'm sorry. Flip over to Tab 12.**
 25 **A Yes.**

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1 **Q All right. Do you see that this is an in --**
 2 **this is an invoice coming from the same entity and it**
 3 **says on the left-hand side here, bill to Lorelei,**
 4 **Incorporated?**
 5 **A Yes.**
 6 **Q So is Lorelei placing an order for these**
 7 **products?**
 8 **A That's what this invoice says, yes.**
 9 **Q Okay. Was it common that Big Sky would then**
 10 **wire money to Lorelei in order to pay this entity up in**
 11 **the top left-hand corner?**
 12 **A Yes, because Lorelei was just a cutout.**
 13 **Q Okay.**
 14 **A They were the expendable front. If this**
 15 **operation got burned and -- against Target A that**
 16 **Lorelei was the fall guy. Lorelei did not have funds.**
 17 **The funds that Lorelei got were from Jason and Chris.**
 18 **So the money would go -- Target A would call up, say,**
 19 **look, we need to move a container, okay? Lorelei would**
 20 **call up Jason or Chris after they -- he spoke to me,**
 21 **said, hey, Target A wants to move it. I would seek the**
 22 **approvals from all the relevant agencies. Jason and**
 23 **Chris would wire money to Lorelei who would then wire**
 24 **money to a foreign country, okay?**
 25 **Q Uh-huh.**

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1 **A We tracked all -- this was significant to the**
 2 **big international investigation. That product would**
 3 **then come to Miami, Bristol or Pennsylvania. It**
 4 **depended on which transaction we're talking about.**
 5 Q And Paul Mendoza is associated with Lorelei,
 6 correct?
 7 **A Yes.**
 8 Q And Mr. Mendoza would sometimes receive what's
 9 I think been referred to as a commission for his
 10 involvement in this kind of a transaction, is that
 11 right?
 12 **A Yes. He maintained a -- a -- I don't know if I**
 13 **could -- I should say but the answer is yes, he had**
 14 **significant expenses from his work with many different**
 15 **government resources.**
 16 Q All right. The Palermos that are the subject
 17 of a transaction like this, was it sometimes the case
 18 that those Palermos were already in Bristol in the
 19 bonded cage?
 20 **A Some of them, yes.**
 21 Q All right. What would happen with those
 22 Palermos at that point in time? Would they be removed
 23 from the cage?
 24 **A Yes. We would tell -- almost always removed**
 25 **from the cage. We would -- again, without having a**

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1 **specific deal in front of me, seeing it all the way**
 2 **through, bad guy would call up Lorelei, we need to move**
 3 **a container. Somebody at Department of Justice or one**
 4 **of the other agencies said, yeah, we need to track that**
 5 **money. Jason or Chris would wire the money to Lorelei.**
 6 **Lorelei would wire the money to a foreign country. That**
 7 **money would then be dirtied up which they would then**
 8 **track through other financial resources. Now that**
 9 **product as far as the Target A was concerned was getting**
 10 **ready to be smuggled into a foreign country. Obviously**
 11 **we cannot smuggle product into a foreign country. That**
 12 **product came into the U.S. domestic commerce and instead**
 13 **of sending contraband into a foreign country without**
 14 **their approval we sent potato chips, water, crap --**
 15 Q Okay.
 16 **A -- sneakers, shirts, hats, whatever it was.**
 17 **Bad guy was ecstatic because he got a sea container**
 18 **number showing that a container of his product was**
 19 **shipped to a foreign country. He was happy, ingratiated**
 20 **us with them. They were believing that we were**
 21 **developing a global market for them in Africa, Middle**
 22 **East and elsewhere and our relationship with them, ours**
 23 **meaning Jason and Chris's, and then ultimately through**
 24 **that the U.S. Government's assets we became very, very**
 25 **close with these folks.**

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1 Q All right. So at some point you all would
 2 acquire the Palermo cigarettes that were the subject of
 3 this kind of a transaction, correct?
 4 **A Correct. They would come into the Bristol**
 5 **warehouse in a nonbonded side, in what I would say is**
 6 **the domestic commerce side.**
 7 Q Okay. At that point could Jason and Chris
 8 through Big Sky International sell those Palermo
 9 cigarettes to any entity that they chose?
 10 **A I don't know what their noncompetes said so I**
 11 **don't know what -- the legality of that so I don't want**
 12 **to speak to that, but it was a legal product, it was**
 13 **labeled properly in the United States, it was not**
 14 **counterfeit so it -- it had the ability to be sold. I**
 15 **don't think they had the resources to sell it**
 16 **domestically anymore once they sold their business so --**
 17 **just my opinion. So it all went in bulk to**
 18 **U.S. Flue-Cured and that goes back to the role I said**
 19 **that Steve played. He was intimately involved -- Steve**
 20 **Daniel, I'm sorry. He was intimately involved in the**
 21 **Target A investigation as an American patriot. Had**
 22 **nothing to do with market share, had nothing to do with**
 23 **any of that. That -- he understood that this was a**
 24 **significant investigation.**
 25 Q All right. I understand that a lot of it --

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1 **A And --**
 2 Q -- went back to U.S. Flue-Cured, but my
 3 question was a little more specific. Subject to their
 4 noncompetes agreements, and I understand you may or may
 5 not have seen those, but did you or anybody else with
 6 the ATF impose any restrictions on what Mr. Carpenter or
 7 what Mr. Small could do with Palermos once they were
 8 removed from the cage and put in the nonbonded area of
 9 the warehouse? Could they sell to anybody that they
 10 wanted to?
 11 **A Yeah. It was genuine domestic product. If**
 12 **they had the ability to sell a thousand cases to**
 13 **somebody in California or New Mexico, I would not have**
 14 **objected to that. I don't think it was feasible at the**
 15 **time but --**
 16 Q Okay.
 17 **A -- I -- I would not have objected to that.**
 18 Q So you did not tell them that they had to sell
 19 this product to BSD?
 20 **A No, I never had that conversation.**
 21 Q And they had the freedom to sell to whatever
 22 entity they chose, correct?
 23 **A I -- I don't want to speak to the noncompetes**
 24 **clause so I'm going to --**
 25 Q Subject --

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1 **A** I'm going to say whatever that says is what
2 they were bound to.
3 **Q** All right. Did you have any involvement in
4 setting the price that BSD was charged for the Palermo
5 cigarettes?
6 **A** BSD. Are you talking U.S. Flue-Cured BSD? I'm
7 sorry. I just want to be exact.
8 **Q** Yes.
9 **A** Okay. Yes. We -- I'm -- I'm thinking off the
10 top of my head it was a \$2 profit. I -- I don't know
11 why I was -- I'm stuck on \$2, but it always seemed we
12 tried to get them a \$2 advantage over what it would
13 normally wholesale for.
14 **Q** All right.
15 **A** Just off the top of my head that -- that was
16 always a fairly consistent number we tried to -- to
17 stick to.
18 **Q** A \$2 profit to whom?
19 **A** Whomever. U.S. -- and U.S. Flue-Cured. So
20 my -- my statement to you is if it was normally
21 retailing or wholesaling for \$19, \$17 seemed reasonable
22 because at the end of the day, we had to move this
23 product, we meaning the U.S. Government had to move this
24 product.
25 **Q** Let me ask you to look back to the documents

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1 under Tab 12 again.
2 **A** Yes.
3 **Q** All right. So an invoice is issued to Lorelei,
4 Incorporated, for Palermos at \$2.95 per carton, right?
5 **A** Yes.
6 **Q** On the next page -- well, you can skip the next
7 page. On the third page, again, down here at the bottom
8 where it says, Tom, please -- below please find what I
9 have so far in the recent Palermo deal. 752 cases,
10 which I guess comes out to be 47,520 cartons, at \$12.
11 Explain to me again who established this \$12
12 amount and what that meant.
13 **A** Again, without seeing the -- the actual
14 financial transaction, that was a price most likely I
15 would have said or -- set or if it was going to another
16 operation would have set, okay?
17 **Q** All right. So that was established by --
18 **A** So --
19 **Q** -- somebody in the ATF?
20 **A** Or one of the other agencies. It depends on
21 the transaction. Again, I'm -- I'm -- without seeing
22 the tran -- the actual paperwork, I couldn't tell you.
23 But that -- that would have been -- if at the time --
24 and I don't -- I think at the time cigarettes -- these
25 things were wholesaling for 17 Bucks, 18 Bucks, whatever

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1 it was. That would have been about right.
2 **Q** All right. And do you see directly below that,
3 \$140,184 payment to Tabacos USA?
4 **A** Yes.
5 **Q** If you look back to the very first page of that
6 exhibit, that's consistent with the amount that Lorelei
7 was being charged, correct?
8 **A** Yes.
9 **Q** Okay. Then there is a payment to Lorelei for
10 commission, 47,520 cartons at \$2.
11 **A** Yes.
12 **Q** There's some other random expenses in here.
13 \$252,000 balance.
14 **A** Yes.
15 **Q** And then Mr. Carpenter says, Wendi is going to
16 reconcile the management account to see if there are any
17 outstanding bills due or checks outstanding.
18 **A** Yes.
19 **Q** Is it -- and is it your position that the ATF
20 did not retain ultimate control of this balance that's
21 being referenced in the e-mail, the \$252,000?
22 **MR. KELLY:** Objection as to form. You can
23 answer.
24 **A** You mean was that sitting in a U.S. Government
25 account?

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1 **Q** Was it sent back to the government? Did you --
2 **A** No, we were prohib --
3 **Q** -- have the use of it?
4 **A** We were prohibited from sending it back. I
5 tried sending money back and we were specifically told,
6 you can't mix churning and nonchurning money. The fact
7 that churning money -- U.S. Government money did not buy
8 this product, I cannot take this product and put it in
9 my churning account, this profit. I could not. I was
10 prohibited from doing so by law. What we could do and
11 did do in the model of these investigations was at the
12 end of the investigation, whatever the unlawful profit
13 was would go back to U.S. Treasury -- not to the ATF
14 churning account, would go back to the general fund at
15 U.S. Treasury.
16 **Q** All right. Then if you look at the last page,
17 this is an invoice from Big Sky International to Big
18 South Distribution.
19 **A** Yes.
20 **Q** And it says price in the column over here on
21 the right, \$16.
22 **A** Yes.
23 **Q** That I believe is the price that BSD was
24 charged to acquire these cigarettes. Were you involved
25 in setting that price or was that something that

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Highly Confidential Videotaped Deposition of Thomas P. Lesnak
Conducted on March 22, 2016

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1 Mr. Carpenter and Mr. Small set?
2 **A I would have been involved in that, yes.**
3 Q Okay.
4 **A I don't specifically remember this transaction,**
5 **but I would have been involved in that, yes.**
6 Q How did you determine that that was an
7 appropriate price?
8 **A I think if you look, we've been consistent,**
9 **commission to Lorelei, \$2 a carton. U.S. Flue-Cured**
10 **would make \$2 a carton. Let's just say I'm right and**
11 **that this stuff was wholesaling out for about \$18. That**
12 **would leave \$2 a carton for Big Sky International**
13 **management account which you saw referenced there which**
14 **covered all of the prior expenses which, as I said, had**
15 **extended well past a Million Dollars. So I think that's**
16 **consistent with the \$2 across the board. Again, rough**
17 **numbers. We would clean this up at the end of the**
18 **investigation, but those were the rough numbers that we**
19 **came up with.**
20 Q Do you know if Mr. Carpenter or Mr. Small kept
21 any money personally for themselves as a result of these
22 sales?
23 **A They could have. They weren't prohibited from**
24 **doing so. We didn't prohibit them from doing so.**
25 Q Okay. You're aware that Mr. Small became

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1 employed by BSD as an employee in May of 2011, correct?
2 **A I am.**
3 Q You're aware that Mr. Carpenter was a
4 consultant for BSD after that point?
5 **A I am.**
6 Q Was it your understanding that part of their
7 job duties involved buying or procuring product on
8 behalf of BSD?
9 **A They were in sales so I -- I assume it was**
10 **buying, selling and trading tobacco products.**
11 Q Okay. Had you ever before had individuals who
12 were working for a private company in a position in
13 which they were responsible for purchasing items and, in
14 essence, selling products to themselves in connection
15 with the ATF?
16 MR. PARSONS: Objection.
17 **A You got to say that one more time.**
18 Q Sure. Who was your under -- what was your
19 understanding as to who approved on BSD's end these
20 purchases of the Palermo cigarettes?
21 **A Well, I know for a fact that this had come up**
22 **at about this time in the acquisition and after the**
23 **briefing that Dan did that in-house counsel said, don't**
24 **disclose the government portion of the investigations to**
25 **everybody. That was my understanding. In fact, I**

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1 **believe I saw an e-mail to that -- to that effect. So**
2 **keeping consistent with what I've been saying all day**
3 **and what these documents are consistent with is that we**
4 **agreed to wall off U.S. Flue-Cured or whatever the --**
5 **you call the new company BSD that U.S. Flue-Cured**
6 **owned -- from the bad guys, from testifying in court,**
7 **from exposure. So that was the whole purpose of this,**
8 **what you're seeing here, and I think as you look at the**
9 **numbers, that is all consistent with what I was saying.**
10 Q But you understood that Mr. Carpenter and
11 Mr. Small were still acting in some capacity for Big Sky
12 International, correct?
13 **A I'm sorry?**
14 Q Mr. Carpenter and Mr. Small were affiliated
15 with Big Sky International?
16 **A And I think that was clear U.S. Flue-Cured**
17 **authorized that. That was my understanding and the**
18 **e-mail I read from the in-house counsel made that pretty**
19 **clear -- again, I'm not a lawyer.**
20 Q Uh-huh.
21 **A -- that the lawyer knew they were still**
22 **cooperating with the government and not to disclose**
23 **that. That was my understanding so I didn't -- I didn't**
24 **have to pry any further into what their relationships**
25 **were.**

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1 Q Did you see any conflict of interest between
2 Mr. Carpenter or Mr. Small selling products on behalf of
3 Big Sky International to BSD where they were responsible
4 for buying products?
5 MR. KELLY: Objection as to form. One second.
6 **A That was --**
7 MR. KELLY: Hold on. Don't answer.
8 THE WITNESS: Oh, I'm sorry.
9 MR. KELLY: I -- I apologize.
10 THE WITNESS: Oh, I'm sorry.
11 MR. KELLY: No. Objection as to form. You
12 know, subject to the agreement, the witness can answer.
13 **A What was the question?**
14 MR. MARSHALL: Is there any chance you could
15 read that back?
16 MR. ZESZOTARSKI: Your opinion of something.
17 THE WITNESS: My attention span, I'm losing it.
18 (Pending question read back.)
19 MR. MARSHALL: Thank you.
20 MR. KELLY: Just lodging an objection as to
21 form.
22 **A If that means what I think it means, I'm**
23 **confused by the question. The -- I was morally**
24 **comfortable as was my management team as were the other**
25 **agents that U.S. Flue-Cured knew what Jason and Chris**

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1 was doing. It benefitted Flue-Cured. We were -- we
 2 were clear -- crystal clear that the operation -- that
 3 Target A was a significant target and that certain
 4 things had to be done to get to Target A. So I didn't
 5 see any conflict with that. That was disclosed to
 6 everybody who asked.

7 Q Okay. Well, I -- I asked you earlier if at the
 8 March 2011 meeting that Mr. Whitmore went to -- you
 9 know, did he to the best of your knowledge specifically
 10 tell anybody that Mr. Carpenter and Mr. Small would be
 11 engaging this these kind of transactions, selling
 12 products to BSD.

13 Is it your testimony that that was clearly
 14 communicated to everybody at that meeting?

15 A No. I never -- I don't know what was said at
 16 that meeting. I wasn't there.

17 Q All right.

18 A What I said was that Steve Daniels in
 19 particular, and I'll speak for him, and I know the
 20 in-house counsel knew that Jason and Chris were still
 21 working with the government and in writing there's an
 22 e-mail that says, don't disclose that you're still
 23 working with the government or words to that effect.
 24 So, no. Was the minutia of Invoice Number 48, was that
 25 approved by Albert Johnson? I doubt Albert ever saw

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1 this. I'm sorry. I don't want to speak for Albert.
 2 I -- I don't know who saw this. But they knew that
 3 Jason and Chris were still cooperating with the
 4 government.

5 Q But did they know that that cooperation
 6 involved them selling cigarettes back to BSD after the
 7 asset purchase agreement?

8 A If we look at --
 9 MR. MATHIS: Objection to form.
 10 THE WITNESS: I'm sorry.
 11 MR. MATHIS: Go ahead.
 12 THE WITNESS: Did you -- did you say something?

13 A If we look at the charts and -- and discuss the
 14 issues, that was the investigation, was buying, selling
 15 and trading with the targets. That's why we needed
 16 Jason and Chris.

17 Q Okay.

18 A So that was understood. Everybody understood
 19 it. Do I recollect a specific conversation saying they
 20 were buying, selling and trading cigarettes for us? No.
 21 But, hell, that's all they did for us.

22 Q All right. Weren't you only authorized to sell
 23 products to actual ATF targets in connection with --
 24 with your operations?

25 A Under my churning operation, that's exactly

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1 right. That's why we couldn't use churning funds in the
 2 furtherance of this investigation. They weren't a legal
 3 activity in the United States. This was another
 4 agency's two or three-year operation targeting this
 5 company and we merely were assisting them by identifying
 6 and infiltrating their organization. So we were
 7 operating at the highest levels of the Justice
 8 Department, not at GS-13 nobody level, me.

9 Q All right. So are you telling me that the
 10 transactions where Palermo cigarettes were sold by Big
 11 Sky International to BSD, that had no part whatsoever to
 12 do with your churn operations?

13 A I don't. I don't -- when you -- when you put
 14 it like that, here's what the answer is: My undercover
 15 operation was asked by the Department of Justice to do
 16 certain things. We did those certain things. In the
 17 Palermo investigation that you are documenting here
 18 against Target A, we did not use U.S. Government funds.
 19 Now there -- there were funds used but not for the
 20 buying, selling and trading of this. There were many
 21 other agencies involved who used government funds, okay,
 22 but ATF did not. So that did occur. We were asked to
 23 infiltrate this group, to buy, sell and trade, to
 24 identify the financial network and to track the
 25 international money and that's what we did.

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1 Q Okay. But in the past you had sold cigarettes
 2 to generate proceeds to ATF targets, correct, and --

3 A I -- no, not correct. You make it sound like
 4 we sold stuff to generate profit -- proceeds. We sold
 5 stuff to targets that sometimes generated profit,
 6 sometimes lost millions.

7 Q All right.

8 A So it just depends on the specific transaction.

9 Q Was USTC a target in 2011 when these
 10 transactions were occurring?

11 A U.S. Tran -- TC? No.

12 Q U.S. Flue-Cured.

13 A Flue-Cured. I'm sorry. No.

14 Q So were you specifically authorized to sell
 15 Palermo cigarettes to BSD and/or U.S. Flue-Cured?

16 A At the highest levels of our government from --
 17 many different agencies were well aware of what we were
 18 doing and how we were doing it.

19 MR. MARSHALL: All right. Why don't we take a
 20 five-minute break. We can go off the record.

21 THE VIDEOGRAPHER: We are going off the record.
 22 The time is 16:07. This marks the end of Tape Number 3.
 23 (Whereupon, there was a recess in the
 24 proceedings from 4:07 p.m. to 4:26 p.m.)

25 THE VIDEOGRAPHER: Here begins Tape Number 4 in

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1 the deposition of Thomas Lesnak. We are back on the
2 record at 16:26.
3 BY MR. MARSHALL:
4 Q Mr. Lesnak, looking back at the documents under
5 Tab 12 again, third page in. In this transaction that
6 we've been discussing can you explain for me who would
7 keep the difference between \$12 per carton and the 2.95
8 per carton that Lorelei was charged?
9 A In this particular case I believe this is
10 called the management account. I -- I -- it's been
11 referenced as proceeds accounts, different things. The
12 nongovernment account that Wendi maintained, she tracked
13 on a daily basis, that was the account -- as I said, was
14 the model that we had used in previous investigations
15 where we tracked the profits or losses on every single
16 transaction per -- per target. This management
17 account -- that money would have went into the
18 management account and -- which is I think why it says
19 Wendi is going to reconcile the management account, see
20 if there's any outstanding bills due, warehouse rent,
21 utilities. Like I said, there were undercover
22 operations all over the country that they were paying
23 rent for, et cetera, to make sure that everything evened
24 out. And then whatever that money was left at the end
25 of the Target A investigation, there would be a full

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1 accounting and that money was -- would go back to
2 Treasury or if it was legal profits, they were allowed
3 to keep.
4 Q And your testimony is that the account that
5 you're referring to here, the management account, that
6 was not part of the churn account, is that correct?
7 A It definitely was not.
8 Q All right. But you also testified that you
9 were the individual or another individual within the ATF
10 would set this price of \$12 per carton, is that correct?
11 A Or other government agents.
12 Q Other government agents?
13 A Yeah. I didn't say other ATF. If it was ATF,
14 it would have been me.
15 Q All right.
16 A Other deals involved other agencies.
17 Q Who was the lead agency on the Target A
18 investigation?
19 A That's a good question. It had two components;
20 it had a criminal and an intelligence.
21 Q Let's start with the criminal.
22 A My understanding though I actually --
23 MR. VANN: I think he's --
24 MR. KELLY: Yeah. We're going to direct you
25 not to answer that.

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1 MR. VANN: Yeah.
2 BY MR. MARSHALL:
3 Q How about the other portion?
4 MR. KELLY: Intelligence, definitely not.
5 BY MR. MARSHALL:
6 Q But is it your testimony that it was not ATF
7 that was the lead agency in charge of that
8 investigation?
9 A It definitely was not ATF.
10 Q Let me ask you to look under Tab 14 please.
11 And this is an e-mail from Mr. Carpenter to you and he's
12 discussing -- it says, below please find the fourth tier
13 funds recap. Fourth tier funds, that was the churn
14 account, wasn't it?
15 A No.
16 Q What was it?
17 A That's what I was mentioning before. Some
18 people called it the management account, some called it
19 a proceeds account, some people called it the four tier.
20 The term four years tier means basically discounted
21 brands, non-U.S. Government stuff, non-U.S. Government
22 meaning it wasn't purchased by the U.S. Government, and
23 that's what we tracked and Wendi tracked every single
24 day from all the operations around the country and that
25 the accounting was done at the end of each case.

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1 Q So it wasn't the churn account but it was still
2 an account that you had some involvement in, correct?
3 A I had no access to. I don't know what bank
4 it's from. It was -- my involvement was the same as
5 every other law enforcement officer that they had
6 supported, was, hey, the rent's due on the warehouse in
7 XYZ city or, hey, this -- this is being done, Wendi can
8 you cut a check to the real estate agent, stuff like
9 that.
10 Q Isn't that a churn account?
11 A No.
12 Q What's the difference?
13 A One's using government's money; one's not.
14 Q So is it your testimony that the money that's
15 being referenced in this e-mail is not government money;
16 this is Big Sky's money or Mr. Carpenter or Mr. Small's
17 money?
18 A As I think I said five times now, we wouldn't
19 know that until the end of the investigation when, as
20 previously, IRS, FBI, U.S. Attorney's office, federal
21 judge, defense attorneys all sat at a table for one week
22 and said, here's what every transaction was, here's
23 criminal proceeds, this goes back to U.S. Treasury, the
24 rest is legitimate commerce you're entitled to keep. So
25 I couldn't make a statement on what of that was

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1 legitimate and what was illegitimate until the
2 conclusion of the investigation.
3 MR. GEDDIE: Tevis, what happened to the 571?
4 What did they do with it, the bank account?
5 BY MR. MARSHALL:
6 Q What happened to Mr. Carpenter and Mr. Small's
7 portion from that account? At the end of everything was
8 everything reconciled in a way that Mr. Carpenter or
9 Mr. Small were owed money out of that account?
10 A I'll give you the example that I've been
11 wanting to say and you didn't want me to say. In the
12 Belcorp case, the model on this investigation was over a
13 two-year period and hundreds if not a thousand
14 transactions or invoices. All the agencies involved,
15 TTB, Tax and Trade, IRS, FBI, U.S. Attorney's office,
16 all met with Jason and every one of the records --
17 financial records, wire transfers and they sent -- spent
18 the week in Tampa, Florida, and at the end of millions
19 and tens of millions of dollars worth of transactions
20 the U.S. Government with the approval of a federal judge
21 in the Southern District of Virginia said, okay, these
22 are the criminal proceeds, write a check to the
23 U.S. Marshals Service. I believe it was U.S. Marshals
24 Service. The rest was legitimate commerce. Made it
25 through commerce, you made a profit, good for you, go

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1 capitalism. And that's what the federal judge and
2 that's what the Department of Justice accepted as the
3 model. So that was the same model for Investigation A
4 which was do all your transactions, document them.
5 Obviously you have the documentation. We hid nothing.
6 Document it. At the end government sits down, goes
7 through every transaction, every investigative expense,
8 says what's criminal proceeds. That would go back to
9 the U.S. Marshals to the U.S. Treasury and the rest is
10 lawful profits that they're entitled to keep.
11 Q And can you explain for me one more time how it
12 was determined that one account could be a churn account
13 and one account would be a nonchurn account?
14 A Okay. This is why we're going seven hours. If
15 it started with U.S. Government money, if the money was
16 to be returned to the ATF churning account, not to
17 U.S. Treasury, there's a difference, that was churning.
18 If it was money from Jason and Chris's legitimate
19 business that we didn't know to be illicit or not
20 illicit, there would be a full accounting at the end.
21 That money was not churning. That would not go to the
22 ATF churn account. That would go to the U.S. Treasury
23 general fund. That's the distinction between why we
24 track stuff, management account, proceeds account, four
25 tier account, everybody used different terms, and the

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1 ATF churning account. Two different things.
2 Q All right. We've established that
3 Mr. Carpenter and Mr. Small through Big Sky were selling
4 Palermo cigarettes to BSD in 2011 and 2012, correct?
5 A Yes.
6 Q Do you know how long they planned to engage in
7 those kinds of transactions?
8 A We had numerous conversations with them begging
9 me to end this investigation and I would send e-mail
10 after e-mail as did my partner as did folks in
11 headquarters and I think we talked about that, it's time
12 to shit or get off the pot. Those were my e-mails. We
13 got to close this thing. I think if we had asked them
14 to stay in it another five years, they would have sucked
15 it up and stayed in it another five years. If we told
16 them, time to shut down, we're indicting everybody,
17 you're going to go in the WITSEC program, they would
18 have reluctantly went in the WITSEC program, but that's
19 what would have happened. You know, in for a penny, in
20 for a pound, we had to finish the investigation or we
21 had to get it to a point where main Justice at the
22 highest levels of this government told us to shut it
23 down.
24 Q To finish your investigation though was it a
25 prerequisite that they continue selling products to BSD?

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1 A It was a prerequisite that we were in business
2 buying, selling and trading with the targets of A.
3 Well, you can't buy millions of dollars worth of product
4 and destroy it unless it's counterfeits, of course,
5 which we did. This product had to move in order to keep
6 this operation going. And like I said, for the first
7 year or two the losses were in seven figures to keep
8 that portion of the case going to ingratiate ourselves
9 with the bad guys. So that was -- the first two or
10 three years of this investigation was that.
11 Q Look under Tab 14 at the bottom -- I'm sorry,
12 at the middle of Page 3205, where it says USTC 3205.
13 There's an entry there that says, negative \$3600
14 prepayment to Big Sky for 12 months of phone service and
15 iPads.
16 A Yes.
17 Q And I think this was sometime in 2012.
18 Was it your intention to continue this
19 investigation and, therefore, continue in the sales of
20 Palermo to BSD throughout the year 2013?
21 A Until the U.S. Government told us to shut it
22 down there was --
23 Q Okay.
24 A -- a time certain and it was after I retired
25 maybe as a result of my prompting to get this wrapped up

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1 before I retired. My concern was that this would drag
2 on forever and as you -- as you know by who Target A is,
3 there was some time frame concerns. So we would have
4 went at it as long as main Justice and others said, we
5 need you to keep doing this, we need you to stay close.
6 We would have done it and I believe Jason and Chris
7 probably reluctantly would have continued to do so.
8 Q Does that mean that they would have continued
9 to sell Palermos or other cigarettes to BSD in
10 connection with those activities?
11 A If the government asked them to do it, I'm sure
12 they would have done it.
13 Q You're aware that our client at some point, and
14 I think it was in March of 2013, learned what was going
15 on at the Big South Distribution warehouse, correct?
16 MR. MATHIS: Object to the form.
17 BY MR. MARSHALL:
18 Q Is that why these sales stopped?
19 A No.
20 Q Why did they stop in 2013?
21 MR. MARSHALL: And I'm happy to clarify the
22 question if we need to.
23 MR. KELLY: Sorry. Sorry. Just -- can we have
24 one minute?
25 MR. MARSHALL: Uh-huh.

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1 MR. ZESZOTARSKI: Yeah, Tom, stand up.
2 THE WITNESS: When we've got a break in the
3 action.
4 MR. KELLY: We have two options. Either he can
5 answer or he can't.
6 MR. VANN: Yeah.
7 MR. KELLY: Tevis, do you mind if we go off the
8 record for one second just while we --
9 MR. MARSHALL: Go ahead.
10 MR. KELLY: -- converse? Okay.
11 THE VIDEOGRAPHER: We -- we are -- we are going
12 off the record. The time is 16:39.
13 (Whereupon, there was a recess in the
14 proceedings from 4:39 p.m. to 4:41 p.m.)
15 THE VIDEOGRAPHER: We are back on the record.
16 The time is 16:41.
17 BY MR. MARSHALL:
18 Q Mr. Lesnak, I'm going to see if I can simplify
19 my questions for you and address some of the concerns in
20 the room. Is it your understanding that if
21 Mr. Carpenter and Mr. Small were able to that they would
22 have continued selling products to BSD longer than they
23 actually did in 2013?
24 A I think if the people at main Justice who they
25 had met with and asked to do this had asked them to

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1 continue, I believe they would have.
2 Q Okay. Turn to the last page of Tab 14. If you
3 look about halfway down that page do you see where there
4 are some contributions that are listed, for example,
5 contribution to Sullivan Central High School?
6 A I don't see that specific one. There's a bunch
7 but --
8 Q I'm sorry.
9 THE WITNESS: Where are we, Joe?
10 MR. ZESZOTARSKI: Contribution to --
11 A There we go. Yes. Sure do.
12 Q Okay. Can you explain to me what -- what are
13 these contributions? Why are these being made?
14 A Several years -- I guess it was prior to
15 this -- we were at the new warehouse and Jason and Chris
16 had made profits, some significant profits, as part of
17 their business and they went to every employee and said,
18 hey, we -- we want to contribute to the charities of
19 your choice so every employee, women's shelter, Boys &
20 Girls Club, high schools, churches, schools, everybody
21 had checks cut from Jason and Chris's personal accounts,
22 not from the government account. This was no government
23 money here at all. As we move forward -- I don't know
24 what date you're looking at but -- is this 2012? Is
25 that what that date is, the above top balance?

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1 Q Uh-huh. I believe so.
2 A Is that what that means? Okay. Jason and
3 Chris had money in the account -- on their management
4 account, their proceeds account or their four tier
5 account which they're allowed to keep and do whatever
6 they wanted. We knew that was a problem. We knew that
7 was a problem because at the end of the day, these guys
8 may have to testify. And as I told the Inspector
9 General and as I repeated to Clay and I'll repeat here,
10 Jason and Chris would be able to take the stand, raise
11 their right hand and say that, yes, we made money. We
12 made what was reasonable and customary for being in the
13 wholesale business and any excess profit [sic] was given
14 to the battered women's shelter, to the Boys & Girls
15 Club, to churches and schools, to police departments, to
16 sheriff's departments, to the FBI, to the U.S. Marshals
17 Service in the form of donations. We giggled about how
18 a defense attorney would -- really while the attempt was
19 to taint them for giving away money that they could have
20 kept to causes that we all thought was reasonable and
21 good. So that was the rationale behind it.
22 At the end of the day it didn't affect our
23 bottom line. If the proceeds on the Belcorp case, which
24 was done, like I said by a U.S. judge and the approval
25 of the Justice Department -- at the end of the

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1 accounting on that case on what was proceeds, what was
2 illegal activity and what they were allowed to keep,
3 donations never came into it. There was never a -- and
4 this was a confusion part with the OIG as well -- is
5 that -- let's just say there was \$100,000 worth of
6 profit and the government said, you owe us 100,000.
7 They would have written a check for 100,000, not 100,000
8 minus \$6,552. So that was to keep the taint of excess
9 profit from tainting a bunch of good criminal cases,
10 some that went on for three, four, five years. And that
11 started probably in 2010, '9, whenever that was when
12 they first moved to the new warehouse.

13 Q And you said that those donations were being
14 made out of the fourth tier or the management account
15 money, is that correct?

16 A Correct.

17 Q Isn't that money that at some point would need
18 to be reconciled with tax authorities, the government,
19 ATF?

20 A And, like I said, as with the Belcorp case,
21 when that was done, when the government said, you owe us
22 50,000 or 500,000 or, I believe, 800,000 in one case,
23 they wrote a check. They didn't say, oh, stop, we gave
24 money to a church or the battered women's shelter. No,
25 that never came into the calculations nor would any

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1 defense attorney or federal judge ever signed off on
2 that.

3 Q Was it a concern of yours that Jason Carpenter
4 and Chris Small not make more than the average
5 wholesaler would in this line of work?

6 A We tried to make sure their expenses were
7 covered and they made -- we -- a -- what was customary
8 and reasonable. Now you're going to -- you may look at
9 some of those numbers and say, that's not customary and
10 reasonable, but I think in the one example we used there
11 before with the \$16, that \$2 thing was pretty consistent
12 throughout. And that was the number we tried to stick
13 with because when you look [sic] into account that ATF
14 was not paying rent, utilities, truck rentals, wasn't
15 paying employees' salaries, they were and so that \$2 or
16 \$3 or in some cases \$4 -- some significant expenses were
17 relayed -- were offset by that which is why I've always
18 said you can't judge one particular transaction. You
19 got to wait until all 150 are done and do a final
20 reconciliation at the end.

21 Q Let's say you have two individuals who are
22 engaged in a wholesale business of this same size and
23 scope, Big South Wholesale's scope. What in your
24 opinion is customary and reasonable for two owners to
25 take home at the end of a year?

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1 A Oh, God. I know some people that are
2 multimillionaires that live in huge mansions that are in
3 the same business and wholesale businesses much smaller.
4 I know guys who made millions just buying from Costco
5 and reselling, marking up it 25 Cents a carton. It
6 depends on your volume obviously. If it's consistent
7 that you're going to make \$2 a carton -- I'm just using
8 that as a random number -- if each transaction and
9 each -- yeah. I -- I guess the question -- it's -- if
10 you ran three warehouses in a global operation and -- it
11 wouldn't surprise me that you would make as much money
12 as a guy who was going to Costco and buying cigarettes
13 and running them up to Kentucky.

14 Q After you resigned from the ATF were you still
15 involved in any of these activities with Mr. Carpenter
16 or Mr. Small?

17 MR. PARSONS: Objection.

18 A I retired. Not to --

19 MR. ZESZOTARSKI: Go ahead.

20 A I think there's a distinction. After I
21 retired, as you know, I was brought on as a consultant
22 by U.S. Flue-Cured for a period of time so I was still
23 involved with them and I wanted to -- you know, the
24 long-term plan was -- to help U.S. Flue-Cured maintain
25 an international presence was predominantly what I was

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1 brought on for.

2 Q How did you -- I'm sorry.

3 A No. That -- that -- that was my role.

4 Q How did you obtain that position?

5 A Oddly enough, though you're probably not happy
6 with my answers, some people consider me an expert in
7 this field and there were many tobacco companies that
8 had offered me fairly significant opportunities and law
9 firms and transport companies and others. There was an
10 issue -- and I don't know if I'm supposed to talk about
11 it so cut me off if I'm not. There was an issue with
12 some investigations in a foreign country that
13 U.S. Flue-Cured was involved in and I think at that time
14 they realized that, look, they're doing international
15 business but they don't have anybody looking out to make
16 sure their international business is legitimate. Again,
17 goes back to the -- when you're a contract manufacturer,
18 you're supposed to know your supply chain obviously
19 and -- and ultimately that your product that you're
20 manufacturing is legal in the market it's going to, but
21 sometimes your customers are not exactly truthful to you
22 and will tell you they're going to send it somewhere
23 when, in fact, they divert it somewhere elsewhere where
24 they can make more money. So that was the role I was to
25 play.

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1 Q Did Steve Daniel offer you the position?
2 A **Ultimately Steve, yes. He was the one I talked**
3 **to about it, yes.**
4 Q Was Albert Johnson involved in those
5 discussions at all?
6 A **Not with me personally, no.**
7 Q When did you first learn that the Plaintiffs in
8 this action were going to conduct an internal
9 investigation into the activities at the Bristol
10 warehouse?
11 A **The day of the raid.**
12 Q Which would have been sometime in March of
13 2013?
14 A **Yeah, whatever that day was.**
15 Q All right. Did you know at any time before the
16 raid that attorneys were going to be showing up in
17 Bristol?
18 A No.
19 Q All right. Prior to your retirement from the
20 ATF did you have any discussions with Mr. Carpenter or
21 Mr. Small about what you wanted them to do with
22 documents of yours as they related to ATF
23 investigations?
24 A **Yes. I'd say three or four months before I**
25 **retired me and my boss who was also retiring -- you**

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1 know, you don't want to leave a mess behind for the guy
2 who takes over from you. ATF did not keep a significant
3 amount of government documents at the warehouse with one
4 exception. We maintained a 52-foot -- with approval
5 of -- of headquarters a 52-foot sea container at the
6 warehouse. By regulations we were allowed to do so as a
7 secondary scorage -- storage device which maintained
8 hundreds of thousands of documents. So the vast
9 majority, 99.999 percent, of our documents were in that
10 sea container as evidence. There was also a small caged
11 area of old documents from our operation in another
12 state that we first had. Those operations had closed
13 down four, five, six years earlier and we just kept them
14 over there. Again, when I say ATF documents, these
15 aren't documents that had ATF letterhead on them. These
16 were documents of Tom's of Baltimore, Tom's of wherever,
17 all these different cities, invoices. Now the question
18 and rightful criticism of ATF headquarters was why did
19 you keep those documents there? Because we always
20 complied with every state who -- they knew who we were
21 when we operated in those states, but they would
22 routinely audit us, sometimes at our direction,
23 sometimes not at our direction, and those documents had
24 to be made available to them. We wanted those documents
25 available to them though -- so they could continue to

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1 **chase the other bad guys that we didn't wrap up in our**
2 **federal case. So we didn't do a deal, immediately erase**
3 **QuickBooks off of the Big South website, take every copy**
4 **from that transaction and take it our office. We did**
5 **not do that. We made a copy of everything. We took it**
6 **to our office, entered it into evidence, matched it with**
7 **the audio or videotape and that became, if it became a**
8 **criminal case, Count 1 of the criminal case.**
9 Q All right. Were any documents of yours or any
10 of the other ATF agents ever kept in a van in the
11 warehouse?
12 A **Yes. About a month or two before I retired we**
13 **loaded up a van out of that small caged area with crap**
14 **and when I say crap, I mean old invoices, old records,**
15 **old stuff, just junk. It was put in a van and I think**
16 **sat at that warehouse for a month or two. My boss**
17 **didn't want it at our office. We had already taken what**
18 **I would have argued was our evidentiary value out of it.**
19 **All those cases from the original operation were already**
20 **way ahead of where we were and those documents were put**
21 **in that van for movement later on or destruction at the**
22 **three-year mark I think it was.**
23 Q Did Albert Johnson ever contact you about
24 meeting with him in Spartanburg after the investigation
25 commenced into the warehouse?

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1 A **Yes. I don't know if it was Spartanburg, but I**
2 **met him at a Cracker Barrel. I think it was in South**
3 **Carolina. Sometime -- and I'm -- if I'm correct, I**
4 **think when the raid happened Albert was in China. If --**
5 **I may -- I may be wrong about that but I remember he was**
6 **missing when this occurred and he contacted me and said,**
7 **what the hell's going on, why isn't ATF doing whatever**
8 **the hell ATF's -- can you come meet with me and update**
9 **me what's going on that what I don't know? We went. We**
10 **had a nice lunch at Cracker Barrel. I assured him, hey,**
11 **you know, ATF will, you know, say this is ours and you**
12 **guys have no exposure.**
13 Q At that time you were not affiliated with ATF
14 though, correct?
15 A **I was retired.**
16 Q Okay. How long did the meeting last?
17 A **Lunch.**
18 Q Did Mr. Johnson ask you to come and talk to the
19 USTC board?
20 A **I think he asked me if I'd be willing to at**
21 **that point. There were subsequent conversations**
22 **obviously that -- that resulted in a meeting with the**
23 **board with me and the two ATF agents that we were**
24 **working the case with.**
25 Q That was Mr. Duke and Mr. Whitmore?

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1 **A Yes.**
2 **Q** And you attended a -- I believe it was a May
3 2013 meeting with the full board of directors, is that
4 correct?
5 **A I attended a meeting, yes. If it was May, I**
6 **believe you.**
7 **Q** Okay. Do you recall Clay Wheeler being at that
8 meeting?
9 **A Yes.**
10 **Q** An individual associated with him by the name
11 of Daniel Vandergriff?
12 **A Don't recall that name.**
13 **Q** Okay. Did he have a college with him when he
14 was there?
15 **A There were a lot of people in that room and --**
16 **Q** Okay.
17 **A -- I didn't see a roster so I didn't know if it**
18 **was a lawyer with him or what.**
19 **Q** Did you know everybody who was in the room?
20 **A No.**
21 **Q** Did you do anything to vet or run background or
22 security checks on the people who were in the room?
23 **A No.**
24 **Q** Tell me what you recall discussing at that
25 meeting.

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1 **A Walked in the meeting. Clay had a PowerPoint**
2 **that he clearly wanted to show us. He showed his**
3 **PowerPoint, had what he considered some gems up there**
4 **which I disagreed with and told him his numbers were**
5 **wrong. He made it clear that his numbers were not wrong**
6 **and I made it clear his numbers were wrong. He said,**
7 **well, I'm confident in my numbers. Well, okay. Your**
8 **numbers are wrong. He asked me about a couple other**
9 **transactions and then one of the board members, I don't**
10 **remember his name, asked me if I trusted Jason and Chris**
11 **and what their reputation was. And in that meeting in**
12 **front of everybody and this board and with the two ATF**
13 **guys sitting next to me, I relayed the meeting that we**
14 **had with Clay Wheeler not once but twice with a federal**
15 **prosecutor in the room and said, these guys were the**
16 **authorized operation. These guys did phenomenal work.**
17 **Clay Wheeler was told that and that of the hundreds of**
18 **law enforcement officers that they worked with over the**
19 **period of the six, seven years, as far as I know not a**
20 **single law enforcement officer ever made a complaint or**
21 **an allegation against Chris or Jason. That was my**
22 **answer to the board member. That was the one question I**
23 **remember answering. I think somebody else asked me or**
24 **asked Cory and Dan about Jason and Chris's safety. I**
25 **answered that, that this was a serious incident and that**

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1 **the one guy was already in hiding and had already lost**
2 **everything he owned because of an op sec issue and that**
3 **I was concerned that if this got out publicly Jason or**
4 **Chris would be killed and/or other informants which**
5 **nobody takes into account. These guys introduced other**
6 **informants to bad guys who were still deep cover. These**
7 **guys introduced undercover ATF, FBI, DEA, HSI and other**
8 **agencies to bad guys globally. They were still**
9 **undercover. And I expressed the importance of this**
10 **stuff staying in house.**
11 **Q** Okay. So am I correct that you disclosed to
12 the folks in that room the fact that Mr. Carpenter was a
13 confidential informant for the ATF?
14 **A We -- yeah. And we did that in our meeting --**
15 **our first meeting with Clay Wheeler with the federal**
16 **prosecutor sitting next to me.**
17 **Q** Okay.
18 **A We did that in our second meeting and then in**
19 **the -- the full board meeting, I don't know if I used**
20 **the word confidential informant, but I said had**
21 **cooperated with the government for years.**
22 **Q** Did you say the same thing about Mr. Small?
23 **A I did.**
24 **Q** Did you identify certain manufacturers who were
25 prosecuted as a result of investigations that Mr. Small

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1 and Mr. Carpenter had helped you with?
2 **A I believe so.**
3 **Q** Okay. Was one of those CLP, Incorporated?
4 **A Yes.**
5 **Q** Was one of those General Tobacco?
6 **A They weren't prosecuted but there was a -- a**
7 **case made against them.**
8 **Q** Was one of those King Mountain?
9 **A Yes.**
10 **Q** Was one of those Alternative Brands,
11 Incorporated?
12 **A A/k/a Renegade? Yes.**
13 **Q** How about Tantus Tobacco?
14 **A Yes.**
15 **Q** Farmers Tobacco?
16 **A Yes.**
17 **Q** These are all entities that you disclosed
18 during that meeting, correct?
19 **A The search warrants had already occurred.**
20 **There was plenty of media. There were many other**
21 **investigations I obviously did not disclose that were**
22 **still ongoing.**
23 **Q** Okay. Did you state to anybody in that meeting
24 that you had orchestrated the acquisition of BSW and BSW
25 Virginia?

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1 **A I didn't acquisition [sic] nor would I have**
 2 **said that.**
 3 Q Did you discuss during that meeting whether you
 4 were aware that any payments had gone to Steve Daniel
 5 from Carpenter and Small?
 6 **A I believe I was shown a check and I was asked**
 7 **that -- if I had seen that check before and I said no**
 8 **and I hadn't. I don't remember any other discussions**
 9 **about payments other than that one check that was on the**
 10 **PowerPoint.**
 11 Q Okay. Were you aware of the amount of payments
 12 that Mr. Carpenter or Mr. Small were providing to
 13 Mr. Daniel?
 14 **A I was not.**
 15 Q Did you have any discussions with Chris Small
 16 in 2015 wherein you stated to him your belief that USTC
 17 was a target of the ATF at one point?
 18 MR. VANN: Can we -- just a second.
 19 MR. KELLY: Yeah. Yeah. Just to be clear,
 20 since this question postdates his employment with ATF,
 21 it's outside the scope of the Touhy request. However,
 22 if Mr. Lesnak based on advice of his counsel wants to
 23 answer, you know, we're not going to preclude it.
 24 MR. ZESZOTARSKI: You may answer.
 25 THE WITNESS: Are you going to do something?

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1 MR. ZESZOTARSKI: Go ahead and answer.
 2 THE WITNESS: Son of a bitch. What are you
 3 here for?
 4 MR. ZESZOTARSKI: Go ahead and answer.
 5 **A I don't believe I said ATF but I did say there**
 6 **was an ongoing investigation, yes.**
 7 Q What is your basis for that understanding?
 8 **A I don't know if I have the authority to**
 9 **disclose that.**
 10 MR. ZESZOTARSKI: Well, I think you can.
 11 **A Sorry. I don't want to get in trouble. That's**
 12 **why I'm asking.**
 13 Q Well, and our position would be that if you
 14 told Mr. Small --
 15 MR. ZESZOTARSKI: Well --
 16 BY MR. MARSHALL:
 17 Q -- I think it's fair game.
 18 MR. ZESZOTARSKI: -- if he tell -- that's what
 19 I was about to say is I think you can tell them what you
 20 told Mr. Small, okay? I think his question is to you,
 21 what did you tell Mr. Small, so I think you should
 22 answer with what you recall telling Mr. Small.
 23 **A May have been a question of, hey, have you**
 24 **heard anything about an ongoing criminal case against**
 25 **U.S. Flue-Cured and others involved in smuggling into**

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1 **Mexico?**
 2 Q Okay.
 3 **A That's what I remember the question was or**
 4 **something similar to that.**
 5 Q All right. What was your response?
 6 **A No. I asked that question.**
 7 Q You asked that question. Okay.
 8 **A I asked that question.**
 9 Q What entity or agency to your knowledge is
 10 involved in that investigation?
 11 THE WITNESS: You know, with my work with these
 12 guys I don't know if I have the authority to disclose
 13 that, Joe.
 14 MR. ZESZOTARSKI: Right. Right. I don't think
 15 you should disclose it unless you disclosed it to
 16 Mr. Small in this conversation --
 17 THE WITNESS: I did not.
 18 MR. ZESZOTARSKI: -- that he's asking you
 19 about. Okay.
 20 THE WITNESS: I did not.
 21 MR. MARSHALL: All right. So is that an
 22 instruction not to respond?
 23 MR. ZESZOTARSKI: Yes.
 24 BY MR. MARSHALL:
 25 Q What else did you and Mr. Small discuss in that

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1 conversation?
 2 **A That was the only conversation that -- God, I**
 3 **think that was the five-minute conversation I referenced**
 4 **this morning where I passed him somewhere. I don't**
 5 **remember where in the hell I passed him in Blountville.**
 6 **Asked how he was doing with the wife and kids. I think**
 7 **that was the extent of our conversation.**
 8 Q Do you know one way or another whether USTC is
 9 still the subject of an ongoing investigation?
 10 MR. ZESZOTARSKI: Again, if that comes from
 11 what we've talked about, I'm instructing you not to
 12 answer unless you -- unless you shared it with Mr. Small
 13 during this conversation.
 14 THE WITNESS: I did not share it.
 15 MR. ZESZOTARSKI: Okay.
 16 BY MR. MARSHALL:
 17 Q Can you share with me from whom you acquired
 18 that information?
 19 **A U.S. law enforcement.**
 20 Q Okay. Can you share with me what agency within
 21 law enforcement?
 22 MR. ZESZOTARSKI: That's part of -- that's part
 23 of what you're doing with them. I don't think you
 24 can -- I'm instructing you not to answer that question.
 25 BY MR. MARSHALL:

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1 Q I think you answered this for me earlier,
2 Mr. Lesnak, so I apologize if I'm repeating my
3 questions, but we looked at the OIG report from 2013
4 earlier today. Was it your testimony that some of your
5 operations were the subject of that audit report?
6 A Mine and every other churning case in the
7 country was, yes.
8 Q Did you agree with the findings and conclusions
9 of this report?
10 A Some I did; some I didn't.
11 Q Okay. Did you agree with the finding that many
12 of the expenditures appeared improper, unnecessary and
13 unreasonable in support of ATF investigations?
14 A That was not targeted with my investigation so
15 I could not speak to that when I was asked. They did
16 not raise a single expenditure in our investigation
17 that -- that was suspect, a/k/a strip clubs, purchase of
18 sex toys, things like that that many operations around
19 the country were involved in working Hells Angels and
20 outlaw motorcycle gang investigations. That did not
21 apply to my investigation.
22 Q Did you agree with the finding that ATF -- I'm
23 sorry, the OIG found that there was a lack of oversight
24 of these operations?
25 A I did agree with that.

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1 Q There's a reference here to -- and just so you
2 know where I am in the report, Tab 20 at Page ii, and
3 it's ii, little 2. There was an unauthorized churning
4 investigation that sold approximately \$15 Million of
5 cigarettes in an 18-month period. Do you know if that
6 was referring to one of your churn operations?
7 A As I told Clay Wheeler twice -- actually, three
8 times, twice in the presence of the federal prosecutor
9 who worked with our office, that was not our operation
10 and every time he kept saying it was our -- our
11 operation I told him he was lying.
12 Q How do you know that it wasn't your operation?
13 A Because I know which operation it was and the
14 Inspector General told me on my many interviews with
15 them.
16 Q Okay. It also says they found a confidential
17 informant who was allowed to keep more than \$4.9 Million
18 of the 5.2 Million of gross profit.
19 Do you know if that is a reference to any of
20 the confidential informants that you worked with?
21 A He is not tied to any of our ongoing cases nor
22 is he part of that litigation that is part of this. I
23 know who that informant is --
24 Q Okay.
25 A -- and it is not anybody that you would know or

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1 was part of this litigation.
2 Q It's not Mr. Carpenter?
3 A It is not.
4 Q It's not Mr. Small?
5 A It is not.
6 Q Okay.
7 A And, again, that was also told to Clay Wheeler
8 with the federal prosecutor sitting next to me on two
9 occasions.
10 Q There's a statement in here that the OIG was
11 unable to reconcile the disposition of 2.1 Million of
12 the more than 9.9 Million cartons of cigarettes
13 purchased for 20 investigations.
14 Did that have anything to do with your churn
15 activities?
16 A Some --
17 MR. PARSONS: As a matter of courtesy, could
18 you tell us what page you're on?
19 MR. MARSHALL: Sure.
20 MR. KELLY: Hold on. That's iii.
21 MR. MARSHALL: That was on little iii.
22 MR. PARSONS: Okay. Thank you.
23 A Some did and I'd like to explain. In my many
24 meetings with the OIG and ATF was vehement in their
25 defense of this for those 20 investigations that they

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1 cite, the OIG's authority was only to investigate the
2 churning investigations. When they came to my warehouse
3 and they came to the -- obviously 20 other ones they
4 referenced here, they would have found a purchase that
5 we made and then a sale or a delivery. And I'm going to
6 use the example of a case in Kentucky where we were
7 doing deliveries to Kentucky. What Kentucky did with
8 that and who they sold to was the subject of their own
9 reports and later indictments. So when they came to us
10 and I assume the other 19 operations and said, where did
11 those cigarettes go, shit, we delivered them to the
12 undercover FBI warehouse or the undercover ATF or DEA or
13 HSI warehouse. What did they do with it? I don't know.
14 You really got to go to them. And that's what I said,
15 you got to go to them. I -- I manage my case. They
16 manage theirs. And they wrote that up that those
17 cigarettes were unaccounted for. We vehemently
18 disagreed with that. They were accounted for. They
19 were paid for. It implies there that these things are
20 missing. They're not missing.
21 Q Okay. Thank you. If you would -- for the
22 record, I'm looking at the bottom of Page 11 of the
23 report right now and it carries over into Page 12.
24 A What tab are you on? I'm sorry.
25 MR. ZESZOTARSKI: It's 20.

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1 BY MR. MARSHALL:
 2 Q 20. I'm sorry.
 3 A You said 11?
 4 Q Page 11, correct. It states here that some of
 5 the agents that were interviewed by the OIG, some of
 6 these requests were intentionally broad -- and I think
 7 they're referring to requests for churning authority --
 8 were intentionally brought so that the agent would have
 9 the flexibility to pursue suspects that had not yet been
 10 identified at the time of the request. For example, one
 11 request we reviewed identified potential tobacco
 12 trafficking schemes as the target of the investigation
 13 rather than particular suspects.
 14 Do you know if that pertained to any of your
 15 churn operations?
 16 A It sounds right. I can't say that's my chapter
 17 or mine and others, but it sounds right. Ours was very
 18 broad. We were the umbrella.
 19 Q All right.
 20 A And I think I spelled out Chinese
 21 counterfeiting, international smuggling, Native
 22 Americans, corrupt manufacturers. They were categories
 23 as opposed to specific defendants. Now that proposal
 24 was approved by the Department of Justice, the Deputy
 25 Attorney General, and ATF director or a director who

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1 signed off under the old policy. Under the new policy
 2 that churning memo would not have gotten approved.
 3 Q There's a reference on Page 13 to Operation
 4 Alpha. Was that one of your operations?
 5 A I never heard it referred to that. Hang on one
 6 second.
 7 Q Sure.
 8 A That's a little bit poorly written I believe
 9 if -- Operation Alpha is the unauthorized ATF churning
 10 operation is how I take that.
 11 Q All right.
 12 A I don't know that to be a fact, but that's how
 13 I read that.
 14 Q Could you turn to Tab 21 please.
 15 A Yes. I'm sorry. Oh, Tab, not page, 21.
 16 Q Tab 21. I'm sorry.
 17 A Sorry. I was on Page 21.
 18 Q Didn't look like the right document. That one
 19 does. Did you attend a meeting at The Mirage in late
 20 January 2012?
 21 A Yes, if those dates are correct I did.
 22 Q Who arranged for that meeting?
 23 A I believe that was the tobacco show where we
 24 had the international bad guys all over the world come
 25 and pay us a visit. So as I look at that list I see

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1 agents and informants and supervisors from several
 2 different organizations attending as I used to joke the
 3 bad guy convention.
 4 Q Okay. Is this something that you had been to
 5 before 2012?
 6 A I'd been to Vegas twice, three times on
 7 tobacco -- for the tobacco shows. So this is '12. Yes,
 8 I would have been there for the prior one at least.
 9 Q Okay. Did you attend the shows with this many
 10 people? I mean, I'm just guessing here but it looks
 11 like maybe 15 individuals.
 12 A Yeah, but we probably had 30 bad guys there.
 13 Q Okay.
 14 A So these were cover teams. These were
 15 supervisors. These were informants. These were agents
 16 from all across the country as well.
 17 Q Who paid for that trip?
 18 A My guess is it was a mix of Jason and Chris
 19 paying for themselves and -- and probably some of the
 20 incidental expenses like -- we used and -- if this is
 21 right, we turned one of their rooms into our command
 22 post so they would have paid for that command post. But
 23 the supervisors, the agents would have traveled out
 24 on -- on the government dime. The informants would have
 25 been reimbursed by their handlers.

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1 Q Okay. So am I correct then that the government
 2 paid for this trip for government agents?
 3 A There's a mix. I said that was a mix. There
 4 are undercover agents in here, there are informants in
 5 here and, again, without the documents in front of me
 6 I -- I can't tell you what other agents and other field
 7 divisions did because there's agents from several
 8 different field divisions here.
 9 Q Was -- was this paid for out of any churn
 10 account?
 11 A Some would have been paid by the churn account,
 12 I'm sure, because the agents on that list had their own
 13 churning accounts.
 14 Q Turn to Tab 22. Okay. Do you recognize this
 15 e-mail from July of 2011?
 16 A I don't recognize it but reading it it -- it is
 17 familiar to me, yes.
 18 Q Did you attend a conference in Edinburgh?
 19 A No.
 20 Q This trip never happened?
 21 A We went to London, we did a memo, but this trip
 22 did -- that's documented here did not happen, no.
 23 Q Okay. Is there a reason it didn't happen?
 24 A I don't remember.
 25 Q Had you made a trip to Edinburgh in the past

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1 with other ATF agents and confidential informants?
 2 **A No. I can answer your question in detail now**
 3 **having read that if you'd like or --**
 4 Q Sure.
 5 **A -- just shut up. There was a meeting in South**
 6 **Africa which I did not go to and the stopoff -- that's a**
 7 **long trip. -- the stopoff was to meet our British**
 8 **counterparts in London and then the team that was going**
 9 **to South Africa for an operation would fly from there.**
 10 **I didn't go on that and I don't think they ever stopped**
 11 **in London.**
 12 Q Okay. Has anybody asked you if you would be
 13 willing to appear as a witness at the trial of this
 14 action?
 15 **A Nobody asked me.**
 16 Q Okay. If you're asked to attend as a witness
 17 in person, would you attend?
 18 **A If the government said I could, I would.**
 19 MR. MARSHALL: Okay. Let's go off the record.
 20 I think we're close.
 21 THE VIDEOGRAPHER: We are -- we are going off
 22 the record. The time is 17:17.
 23 (Whereupon, there was a recess in the
 24 proceedings from 5:17 p.m. to 5:29 p.m.)
 25 THE VIDEOGRAPHER: We are back on the record.

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1 The time is 17:29.
 2 BY MR. MARSHALL:
 3 Q Mr. Lesnak, I've got a couple more questions,
 4 but we're going to keep them short, okay?
 5 **A Okay.**
 6 Q Not to continue harping on this issue, but we
 7 talked earlier about the difference between I think what
 8 you referred to as a proceeds account or the DLG account
 9 and an actual churn account within your operations. Do
 10 you recall that?
 11 **A DLG was the official name of the ATF government**
 12 **churning account. That was what the bank account was**
 13 **open under.**
 14 Q Okay.
 15 **A So I wouldn't have referenced the proceeds**
 16 **account as DLG. Other people inadvertently did but I**
 17 **tried not to.**
 18 Q Okay.
 19 **A And if I did today, I -- I was mistaken.**
 20 Q Well, it's probably my mistake and not yours.
 21 The pro -- when we were talking about the sale of
 22 Palermo cigarettes from Big Sky International to BSD, I
 23 think your testimony was that some of the proceeds if
 24 you will from those sales ended up in a separate
 25 nonchurn account. Have --

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1 **A Manage --**
 2 Q Have I got that right?
 3 **A Yes, sir, the management account.**
 4 Q Okay. The management account. And that was
 5 the account that according to you was going to be
 6 reconciled by the powers that be, correct?
 7 **A Yes.**
 8 Q Should anyone have been taking any proceeds out
 9 of that account before a reconciliation had occurred?
 10 **A They could have. It wouldn't have affected the**
 11 **accounting because at the end of the day, illegal**
 12 **proceeds, legitimate income, you're entitled to keep the**
 13 **legitimate income. If the government said you owed**
 14 **100,000, you write a check for 100,000. So there was**
 15 **no -- there was no confusion. It was a pretty simple --**
 16 **and I'm not an accountant, but when you see the**
 17 **spreadsheets on Belcorp and some of the others, it was a**
 18 **pretty simple thing, acquisition costs, expenses, what**
 19 **was reported, you know, what was illicit, you know, a**
 20 **federal prosecutor would make that determination**
 21 **obviously, and then what was illicit going to the**
 22 **government, what was proceeds, legitimate income, was**
 23 **allowed to be kept.**
 24 Q Do you know if Mr. Carpenter or Mr. Small took
 25 proceeds out of that account in 2011?

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1 **A It wasn't determined to be proceeds until the**
 2 **case was over so the answer is -- I -- if you're saying**
 3 **proceeds -- you mean did they take money out of the**
 4 **account, they may have. It wouldn't have affected the**
 5 **accounting at the end. The proceeds were not deducted**
 6 **by -- if Jason had taken \$10 out of the account, it**
 7 **wasn't, hey, you owe the government minus \$10. It was,**
 8 **you owe the government \$100,000, not 100,000 minus 10.**
 9 Q So are you saying that if they took money out
 10 of that account that when this reconciliation occurred,
 11 it was possible they could have owed money back to the
 12 government?
 13 **A Oh, I know they owed money back in certain**
 14 **cases. Absolutely did.**
 15 Q All right.
 16 **A And they sent checks back to the**
 17 **U.S. Government.**
 18 Q Would it surprise you if in 2011 Mr. Carpenter
 19 and Mr. Small's tax returns from Big Sky International
 20 reflected somewhere in the neighborhood of \$2 Million
 21 each?
 22 MR. MATHIS: Object to the form.
 23 **A Was the question would it surprise me?**
 24 Q Yes.
 25 **A Wouldn't surprise me.**

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1 Q All right. And more than \$3 Million in 2012,
2 would that surprise you?
3 A **2012 wouldn't surprise me.**
4 Q Okay. Do you know if -- well, let me ask this:
5 Did a reconciliation ever occur?
6 A **Yes.**
7 Q When did that occur or conclude?
8 A **ATF has those records. It would have been**
9 **March, April, May of the year I retired.**
10 Q March of 2012 then?
11 A **Wasn't it '13?**
12 MR. ZESZOTARSKI: The year after you retired.
13 A **Yeah. It was the year after I retired. I'm**
14 **sorry.**
15 Q Okay.
16 A **The year I retired meaning I retired, you know,**
17 **January 1st of 2013. That occurred by ATF and their ATF**
18 **management March, April, May, sometime in that time**
19 **frame.**
20 Q Were you involved in that reconciliation?
21 A **I was not.**
22 Q Would -- do you know if Mr. Carpenter or
23 Mr. Small had to pay money back to the government after
24 that reconciliation?
25 A **It was my understanding that they owed money**

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1 **back to the government.**
2 Q Do you know how much?
3 A **I think the proceeds, I'm working off the top**
4 **of my head, was 60,000, 68,000, something similar to**
5 **that.**
6 Q Each?
7 A **No, total.**
8 Q Okay.
9 A **And that was sent up to ATF headquarters and**
10 **I -- instead of me guessing, William Duke was clearly**
11 **part of that with senior management at ATF. They made a**
12 **determination because they called me and said, hey,**
13 **that's reasonable for them to be allowed to keep that.**
14 **Let them keep it. And that was -- ATF management said**
15 **that, not me.**
16 Q All right. Just to clear up what you just
17 said, was it your understanding that Mr. Small and
18 Mr. Carpenter were allowed to keep 68,000 or did they
19 have to turn that back into the government after the
20 reconciliation?
21 A **What I said was that's what the government**
22 **determined that they profited on those Palermo sales.**
23 **That was -- the particular audit was 68,000 or 62,000.**
24 **It was 60-something thousand. I don't -- I don't**
25 **remember. That was sent up to ATF headquarters. The**

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1 **ATF field division, senior management, don't know who,**
2 **Cory Duke will tell you that, said, you know what,**
3 **that's reason reasonable for four years' worth of work,**
4 **let them keep it.**
5 Q Mr. Lesnak, when you were hired as a consultant
6 by -- was it U.S. Fluc-Cured or BSD?
7 A **My check came from U.S. Fluc-Cured.**
8 Q U.S. Fluc-Cured. Did you work primarily out of
9 the Timberlake facility?
10 A **I worked wherever they sent me.**
11 Q Okay. Did you have an office at Timberlake?
12 A **No. No.**
13 Q Did you ever go to USTC's main office in
14 Raleigh?
15 A **Yes.**
16 Q Okay. Prior to your attendance at the May 2013
17 board meeting had you ever been to that office?
18 A **Good question. I think I had. I'd been to the**
19 **factory which is in Timberlake as you referenced.**
20 Q Okay.
21 A **I believe I had been to their headquarters as**
22 **I'll reference it prior to the board meeting but I can't**
23 **swear to it. I -- I drove past it so many times, hell,**
24 **it seems like I was there, but I may have gone in once**
25 **or twice prior to the audit.**

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1 Q Did somebody invite you to attend a -- a
2 committee meeting at USTC's headquarters in the early
3 part of 2013?
4 A **Yes. The plan was to do a state of the**
5 **industry briefing, really talk about the international**
6 **aspects. As you know, every American tobacco company**
7 **wants to be in the international business. The American**
8 **market is shrinking.**
9 Q Okay.
10 A **So I was supposed to do a state of the tobacco**
11 **industry presentation.**
12 Q Who invited you to that meeting, do you recall?
13 A **I don't.**
14 Q All right.
15 A **It would probably have been Steve Daniels, but**
16 **it may have been somebody else. But I believe it was**
17 **Steve.**
18 Q Did you know Richard Renegar?
19 A **I did know Richard. Well, I -- I met him once,**
20 **twice --**
21 Q All right.
22 A **-- at the board meeting.**
23 Q Did you attend any committee meetings with
24 Mr. Renegar?
25 A **Committee meetings. I never -- outside of the**

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1 board meeting that I attended with two other ATF agents,
 2 I never attended a U.S. Flue-Cured committee meeting or
 3 any other official meeting.
 4 Q Okay. You have no recollection of attending an
 5 operations committee meeting?
 6 A Okay. Okay. Is that -- I'm -- I'm sorry. I'm
 7 thinking like a meeting like this.
 8 Q That's okay.
 9 A You mean there were a couple of guys from the
 10 board sitting around a conference room table and we were
 11 talking about business, the operations, the -- meaning
 12 the international business and sales? I believe Albert
 13 was there with -- may have been two other board members
 14 talking about, gosh, business. I don't even -- I don't
 15 even remember the -- the content of the meeting.
 16 Q Do you remember any of the details of that
 17 meeting?
 18 A No.
 19 Q Okay.
 20 A No. I mean, I -- I remember a couple of board
 21 members were there and if this was the postraid meeting,
 22 there was some issues about -- I think Clay didn't want
 23 us there. I don't think Clay wanted us talking to board
 24 members. In fact, he said so. So if this is the
 25 meeting you're referencing, I don't think we had the

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1 attendance that I think Albert or Steve had hoped
 2 because Clay warned those people off and -- and to some
 3 extent said, you know, if you go in there and you listen
 4 to them, you might be a witness. So if that's the
 5 meeting you're talking about, it was not as substantive
 6 [sic] as it should have been.
 7 Q Okay.
 8 MR. MARSHALL: Mr. Lesnak, thank you for your
 9 time today and your patience. We appreciate it. I have
 10 no further questions at this time.
 11 MR. MATHIS: Do I need a microphone or just
 12 speak?
 13 THE VIDEOGRAPHER: Just speak up.
 14 EXAMINATION
 15 BY MR. MATHIS:
 16 Q Okay. Mr. Lesnak, I'm Alan Mathis. I
 17 represent Jason Carpenter, Chris Small and the Big South
 18 Wholesale entities. I'll try to be brief. First, I
 19 understand that you brought some charts today. Do you
 20 mind showing us -- those to us and explaining what they
 21 depict?
 22 A With the approval of --
 23 MR. KELLY: You can refer to them. Just keep
 24 your microphone on. You can -- you can refer to them,
 25 just don't put them on camera and don't discuss any of

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1 the targets --
 2 THE WITNESS: By name?
 3 MR. KELLY: -- by name.
 4 A I'll step over there if I can.
 5 MR. KELLY: Keep your microphone on if you can.
 6 THE WITNESS: I don't think it'll reach.
 7 MR. ZESZOTARSKI: Just speak up.
 8 THE WITNESS: I'll speak up.
 9 A ATF headquarters had prepared a series of
 10 charts over the seven years of our operation.
 11 THE WITNESS: If you can't hear me or you can't
 12 hear me, let me know.
 13 MR. ZESZOTARSKI: Just use those two. Don't
 14 use that one.
 15 THE WITNESS: Yes. They're hard to see.
 16 A What was determined as part of ATF's writing of
 17 the new churning proposal --
 18 THE WITNESS: If you don't mind, I'm going to
 19 stand up. Do you mind?
 20 MR. MARSHALL: Of course.
 21 A -- ATF's churning proposal, ATF mandated that
 22 the operations that were initiated prior to the new
 23 churn -- ATF churning orders could continue if you
 24 showed links back to your initial churning
 25 investigation, okay? So if it was related -- if it was

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1 initiated by your operation, you could continue to work
 2 it. What the new orders prohibited was umbrella
 3 investigations and prohibited new defendants. If I got
 4 a new defendant -- the example I gave you earlier where
 5 if a guy brings a machine gun in and says, I want a -- a
 6 case of Newports, by this stupid policy we were
 7 prohibited from doing that transaction because that
 8 would have violated the new churning policy. But
 9 nonetheless, that was the new policy that we had to
 10 follow.
 11 So ATF headquarters sent two intelligence
 12 analysts down to our office for six months and then the
 13 two intelligence analysts --
 14 MR. KELLY: I just want to make sure it's not
 15 on camera.
 16 THE WITNESS: No. I -- oh, keep it off?
 17 MR. KELLY: Yeah.
 18 A So the two ATF intel analysts created five
 19 charts. Now this is the oldest of the charts and I
 20 obviously do not have all of -- this one was dated 2010
 21 and this was to show churning investigations and
 22 nonchurning investigations. So this was my CYA document
 23 as you would describe it. Headquarters created this and
 24 it really helped me. What you see here is the
 25 gentleman, I won't use his name, who we first approached

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1 and said, you can trust Jason, he'll be the front and he
2 will help me. What you see here are many significant
3 churning investigations and significant task force
4 investigations. He brought us this, this being Jason
5 Carpenter. Jason Carpenter initiated these criminal
6 investigations and then initiated these defendants and
7 these informants who then gave us well over a hundred
8 defendants. If you add them up, you're probably pushing
9 200 defendants and \$200 Million in seizures, but to be
10 conservative, just off of this chart there was a hundred
11 defendants and \$100 Million in seizures. Again, this
12 was prepared by headquarters in 2010.

13 Now the role this played -- and I didn't put
14 him in the middle, but he was the umbrella for every
15 single one of these cases meaning -- when I say he, it
16 was Big South Wholesale or the prior undercover
17 companies, okay? He backstopped and initiated every
18 investigation that was spun off. For instance, and I
19 won't use her name, we documented her in our office.
20 She was a brilliant woman and it led to the largest
21 tobacco case ever worked in this country and it was a
22 spinoff run by the FBI. She gave us him who gave us him
23 who then gave us those and gave us those cooperating
24 defendants. These notes were made by me. As you can
25 tell, I am not sophisticated technologywise. And so we

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1 would just make notes as we went on who's in jail, who's
2 out of jail, who's a cooperating defendant because these
3 informants gave us these informants. And as we told the
4 Inspector General and as we told everybody else, if you
5 want to account for everything, you then have to go to
6 these criminal cases and track all of those. The
7 Inspector General said, that's not their job. So that's
8 the importance of this investigation -- of this chart.

9 Q Okay.

10 A Any questions while I'm standing here with
11 this?

12 Q No.

13 A The other chart is a more specific chart. In
14 my churning proposal as we discussed -- sorry. In my
15 churning proposal we listed one of the categories as
16 corrupt manufacturers and importers. This chart dealt
17 specifically with our corrupt manufacturers and
18 importers. It was originally produced by ATF
19 headquarters in 2009, last updated January 11th of 2012.
20 There are many significant tobacco manufacturers on this
21 list which I won't detail on tape but many you talked
22 about earlier that had already been prosecuted and that
23 the U.S. Government has gotten tens of millions of
24 dollars in criminal forfeitures and many of their
25 executives are in jail or were in jail and are now out.

335

1 So this also was prepared by headquarters
2 showing the prosecuting states, basically -- obviously
3 if I had to update this again, that's changed quite a
4 bit because we've done prosecutions in many other
5 districts. But this gives you an idea on how our
6 operation had prosecutions, Jersey, Florida, Washington,
7 Canada, Germany, North and South Carolina, et cetera.
8 So that was the purpose of this chart.

9 Now, like I had said, there were three other
10 charts that I remember, some that Dan Whitmore brought
11 to the -- I'm sorry. Anybody got any questions while
12 I --

13 Q That's fine.

14 A -- Dan Whitmore brought to the board meeting.
15 I don't have those charts but I -- I think it probably
16 gave an overall -- because if I recall the charts, they
17 gave an overall presentation of the scope, what made
18 this largest case ATF had worked in -- one of the
19 largest in the Department of Justice history.

20 Q When you say made this the largest case or one
21 of the largest cases, are you referring to the national
22 warehouse in Bristol?

23 A We had a meeting in headquarters with the
24 acting ATF director and all the senior staff. ATF
25 realized as I proposed and my SACs and deputy directors

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1 had proposed a national warehouse. We needed to do what
2 other agencies had done and they saw by many of those
3 charts that we touched every field division in the
4 country. At the end of that meeting the deputy director
5 said to us -- to my SAC, the special agent in charge,
6 I'm designating you guys to national warehouse until we
7 can get our \$2.2 Million in funding which is what he was
8 asking Congress for to do a separate national warehouse
9 and we were part of the discussions where to locate
10 those. Do we do it in northern Virginia, do we do it in
11 Chicago, St. Louis, do we do it in California? So we
12 were holding the fort down for years as it turned out.
13 We had hoped it'd have been the next congressional
14 appropriation, but we held that fort down for years as
15 the officially-designated national warehouse.

16 Q And -- and Jason Carpenter and Chris Small were
17 a crucial part of that, correct?

18 A I think ATF headquarters tells you that. I
19 didn't prepare that chart and how it was prepared was
20 they went as the OIG did to every churning investigation
21 in the country. Then they went to the spinoffs of those
22 churning investigations that were tobacco
23 investigations. As you saw the different color codes,
24 black -- green was churning black was nonchurning
25 meaning your standard criminal investigation. And they

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1 went to those and pulled all the reports and spent six
 2 months doing this and did a phenomenal job linking it
 3 all back. So my authority -- mine and the agents in my
 4 office and all the agents working on that, if it
 5 appeared on that chart, we were allowed to work it.
 6 Q You mentioned charts that you believe Dan
 7 Whitmore showed when he met with representatives of USTC
 8 and U.S. Flue-Cured. Were they those charts or
 9 different charts?
 10 A No. I specifically -- we didn't take the
 11 informant chart.
 12 Q Okay.
 13 A That would have been bad. I'm not sure what
 14 charts he takes -- took. I know it wasn't those charts.
 15 Q Okay. You -- you mentioned backstopping and I
 16 think you touched on it a little bit earlier, but could
 17 you tell us what that is in general.
 18 A I'll give you an example without using a
 19 location. An ATF agent was just patched in through a
 20 outlaw biker group in the midwest. His story to those
 21 guys was -- is that he jacked -- hijacked trucks. He
 22 needed to rent some buildings for the outlaw motorcycle
 23 gang. We rented that building for him. He had no
 24 credit history under his real name -- or under the
 25 assumed name. He gets a call from ATF headquarters that

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1 they required him to fly to D.C. -- you talk about
 2 stupidity of the government sometimes. -- to fly to
 3 D.C. to take a polygraph immediately, a drug test and a
 4 polygraph as was custom if you're a deep cover agent.
 5 He called me up and I called Chris up and he said, look,
 6 I need some help. Supposed to make a run with these
 7 guys meaning a ride over the weekend. If I don't show
 8 (Deponent indicates), right. I mean, I've got to have a
 9 good reason to show. Flying to Washington, D.C. is not
 10 a good reason for the outlaw motorcycle gang. So he
 11 said, hey, you guys know the people I work for, the guys
 12 I sell all their contraband with. They're requiring me
 13 to come over there. They got a deal for me. And we had
 14 it arranged that he flew to D.C. We FedExed -- I'll
 15 never forget this. We FedExed the check to the biker
 16 clubhouse and in the note -- I wrote a note, hey, thanks
 17 for coming, here's your commission, great work, some
 18 bullshit thing like that.
 19 THE WITNESS: I'm sorry. Start talking about
 20 work I go back to work lingo.
 21 A When he got there, hell, those guys had already
 22 opened the FedEx envelope, had a check. Man, they're
 23 partying, 1500 Bucks of, you know, booze that weekend.
 24 That's one of hundreds -- and when I say hundreds, I
 25 mean hundreds of examples of agents saying, hey, look,

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1 we need a tattoo machine, we're running a -- a tattoo
 2 parlor and we're buying drugs and guns, hey, we need
 3 this, we need that, can you get it for us?
 4 Q So would --
 5 A And that's the -- I'm sorry.
 6 Q It would include equipment?
 7 A It was everything from forklifts to vehicles to
 8 buildings to sanitation machines. One of the undercover
 9 operations was operating a tattoo parlor. This is one
 10 of those other things for whatever reason stick to you.
 11 And they were doing tattoos. Their informant was a
 12 Hells Angel that was in protective custody. The ATF
 13 agents instead of just babysitting put him to work so
 14 they put him to work in a tattoo parlor. It was
 15 brilliant. All the bad guys who were in the
 16 neighborhood see this big tattooed biker, right, so
 17 business took off for the ATF guys but they were doing
 18 tattoos without a sanitation machine. They didn't have
 19 a sani -- you know, sterilizer, not sanitation machine,
 20 a sterilizer. So we -- we sent them a sterilizer not to
 21 give hepatitis to every one of their clients/defendants.
 22 So this was the day-to-day -- I don't want to say it was
 23 the fun part of the job but, you know, we were providing
 24 a service -- deep cover service to many different
 25 agencies that didn't have the capability that we had at

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1 Big South.
 2 Q And like rent, utilities I think you mentioned
 3 earlier, is that --
 4 A Rent, utilities --
 5 Q -- part of it?
 6 A -- cars, insurance.
 7 Q Credit cards?
 8 A Liabilities -- credit cards, liability
 9 insurance, you know, excuses to be with us. We provided
 10 them -- we ran a huge operation involving Bolivian drug
 11 traffickers. We filtered that off to one of our sting
 12 operations that was doing drugs and guns. We would meet
 13 with them. Chris would meet with these Bolivians --
 14 these were bad guys -- real bad guys. -- as part of a
 15 stolen car ring. They were stealing cars literally out
 16 of the Port of Newark. They knew the cars were coming
 17 in. Before they got off the ship they had a corrupt guy
 18 at Toyota who was making the key fob. They would
 19 literally go on the -- the lot in Newark, New Jersey,
 20 boot the car and we would track the mileage to our
 21 warehouse. Wrapped up that whole network. So those
 22 guys -- our tattooed agents with tattoos up to their
 23 ears couldn't fit the role of being international
 24 smugglers who can get cars to Bolivia and narcotics to
 25 the U.S. That was our role.

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1 Q And when you said -- you said we in that. When
 2 you say we you mean Jason and Chris, Big South
 3 Wholesale, that operation, correct?
 4 A And 100, 150, 200 other law enforcement agents
 5 from all over the country. It -- it would take me
 6 longer to list everybody that we worked with and worked
 7 for.
 8 Q Did -- did Jason and Chris and their companies
 9 also help arrange for travel and charter jets for
 10 operations?
 11 A Whatever -- whatever the operations called for,
 12 purchase of narcotics, purchase of stolen cars, purchase
 13 of whatever.
 14 Q Was the operation in Bristol, Virginia, audited
 15 several times, not just by OIG but by ATF and others?
 16 A Every month we were in essence audited. An
 17 unrelated non-ATF agent did our books. They would go in
 18 there, do the accounting every month. That was then
 19 sent to my boss. The boss would sign off, the boss --
 20 David Lambert in this case. He would sent it to the
 21 Washington field division who was our direct chain of
 22 command. They would audit it, account for it, make sure
 23 the numbers match. Sometimes you make a typo. It
 24 happens, right? They would then send it over to ATF
 25 headquarters. They independently did whatever their own

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1 audits and reviews were. So every transaction had those
 2 steps. Then when we went to the new policy, every
 3 single case got audited by ATF forensic auditors to make
 4 sure no money was missing, no tobacco was missing, no
 5 inventory was missing and then ultimately we went
 6 through two separate OIG investigations which were made
 7 part of that report.
 8 Q And the accounting and the operation in Bristol
 9 involving Jason and Chris, did that come through those
 10 audits looking good? Were there --
 11 A Yes.
 12 Q -- any problems?
 13 A In fact, the Inspector General interviewed
 14 Wendi, interviewed Jason separately. I don't know if it
 15 was under oath or not but they did separate interviews
 16 of them, asked them all the hard questions that -- you
 17 know, for -- everything from inventory control to
 18 corruption questions to, you know, anything that they
 19 thought was inappropriate. So that was common for us
 20 and it was common -- the FBI went through the same
 21 thing. Homeland Security went through the same thing.
 22 This was -- this was common to have those type of
 23 audits.
 24 Q When Jason and Chris were considering selling
 25 Big South assets that -- that eventually led to the

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1 acquisition by U.S. Flue-Cured/BSD, do you recall that
 2 they were also considering selling to Premier?
 3 A I knew there was a three-way thing going on,
 4 but I wasn't part of --
 5 Q Sure.
 6 A -- those discussions. I knew -- I knew that
 7 the owner of Premier had threatened to go to China. I
 8 knew that. I was part of those discussions cursing him
 9 for that. I thought that was wrong. But I wasn't part
 10 of the discussions, maybe Premier buys Big South and
 11 then Flue-Cured's -- I don't -- I don't -- I don't
 12 recall that.
 13 Q Do you recall making any statement to Jason or
 14 Chris something to the effect of, go with the farmers
 15 over Dunham?
 16 A I do remember that. I hate -- I don't know --
 17 my ATF lawyer may be pissed off at me when I say this,
 18 but I thought our criticism would have been that we were
 19 picking winners and losers. I didn't want the money to
 20 go to Philip Morris. I didn't. I made a conscious
 21 decision that if we can move these bad guys to cheaper
 22 brands, that six -- that helps 600 American farmers.
 23 Why would we not help 600 American farmers? I said
 24 that -- I said that for years. I told that to every
 25 agent that ever listened to me. I said, hey, these are

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1 good guys. These are American farmers. What the hell?
 2 Why -- why wouldn't we give our money to these guys? I
 3 had that conversation all the time.
 4 Q And so after the asset purchase agreement with
 5 U.S. Flue-Cured/Big South Distribution did you see sales
 6 from Big Sky International to Big South Distribution as
 7 a benefit to Big South Distribution and U.S. Flue-Cured?
 8 A I did because one --
 9 MR. KELLY: Objection as to form. You can
 10 answer.
 11 THE WITNESS: Did you say form or farm?
 12 MR. KELLY: Objection as to form.
 13 MR. ZESZOTARSKI: Go ahead and answer.
 14 MR. KELLY: You can answer.
 15 THE WITNESS: Okay.
 16 A Yeah. Because I made sure as you saw that one
 17 example that they gave me, everybody made 2 Bucks. It's
 18 kind of hard to complain, you made 2 Bucks. You know,
 19 my conscious was clear. They were serving a greater
 20 good, bad guys were going to jail and nobody was losing
 21 money.
 22 Q After the asset purchase agreement was it your
 23 understanding that 100 percent of the operations in Big
 24 Sky International were related to law enforcement
 25 activities?

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1 **A** That was my understanding, yes, and not just
 2 our operation. There were all these other operations.
 3 None of them had closed. They were all open for many
 4 other agencies. So it wasn't just Bristol. Even if we
 5 had closed there were many other cases as you see on
 6 that chart that were still open that still needed to be
 7 adjudicated.

8 **Q** Even though there were many different agencies
 9 involved and using the -- the operation in Bristol, were
 10 you -- did you remain the -- the primary handler for
 11 Jason and Chris all the way up to your retire --
 12 retirement?

13 **A** I was the traffic cop is probably the best
 14 explanation. ATF headquarters would get a phone call
 15 from some agent in the middle of nowhere. We need help,
 16 can you help us? They'd say, call Tom. I would help
 17 them. On the first thing I'd have them come to Bristol.
 18 We'd teach them, train them up. I'd introduce them to
 19 Brandon, Wendi, Chris or Jason depending on who was
 20 there and said, please, God, deal with these guys
 21 direct, I don't have time to help you out. And that was
 22 pretty much how I -- I handled it. I made sure -- I
 23 vetted it. We made sure this was genuine, it came from
 24 ATF headquarters, ATF headquarters knew about it, there
 25 was an e-mail chain documenting all this and then I got

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1 cut out which is what generates all those cases on that
 2 chart.

3 **Q** Is it your understanding that the last Palermo
 4 transaction between Big Sky International and BSD was in
 5 2012 or do you know?

6 **A** I'm going to say it would have had to have
 7 been. So the answer is yes.

8 **Q** Earlier you talked about -- they asked you
 9 about payments to Steve Daniel. For the work that you
 10 described Steve was doing for law enforcement, do you
 11 believe it was appropriate that he be paid?

12 **MR. KELLY:** Objection as to form. You can
 13 answer.

14 **A** I didn't object to it. I was the one who
 15 raised it.

16 **Q** And so you -- you think it was appropriate that
 17 he was paid --

18 **A** I did.

19 **Q** -- for that work?

20 **A** I -- I didn't have an objection to it.

21 **Q** Do you know Brandon Moore?

22 **A** I do.

23 **Q** Are you aware of his role in the USMC internal
 24 investigation in 2013?

25 **A** I'm not sure we ever found -- I, speaking for

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1 me, am exactly sure what his role was. I know he called
 2 the Paraguayans and told them he was the far -- they
 3 were the target of an undercover operation and I believe
 4 he called Flue-Cured and said he had a bunch of rogue
 5 drug traffickers in his warehouse. That's my
 6 understanding of the extent of it.

7 **Q** What was his -- let me back up.

8 He was aware of some of the ATF operations that
 9 Jason and Chris were helping with, correct?

10 **A** I think from the e-mails you'll see these
 11 agents were dealing with him directly. He had met
 12 dozens and dozens and dozens of law enforcement
 13 officers. He became friendly with the chief of police
 14 and the sheriff through our operation. We gave him the
 15 same speech we gave Wendi and some of the others, my
 16 boss and I did, about that. We had concerns as -- as
 17 you may know. I'm not speaking out of school. His
 18 family had a drug history and, the father, the brother.
 19 The father had been fired for drug use at the warehouse
 20 or buying narcotics from a driver from another company
 21 so we needed to make sure he understood, you couldn't
 22 taint what we were doing here. That's not what we
 23 allowed. So while, you know, you may think we're
 24 international crooks. You know, this is early on, okay?
 25 We're the U.S. Government. Here's what we're doing.

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1 Oh, by the way, this guy's an FBI agent. Oh, guy --
 2 this guy's an IRS agent. Oh, by the way, this is
 3 U.S. Customs. U.S. Customs was at our warehouse all the
 4 time. Every time we bought counterfeits, U.S. Customs
 5 came in and seized it and destroyed it. When we got
 6 counterfeit pharmaceuticals in, U.S. Customs came to the
 7 warehouse and seized it. So he was regularly meeting
 8 with law enforcement.

9 **Q** Do you know why he contacted the company he
 10 contacted and let them know that they were a target?

11 **A** He stopped getting paid. The operation as far
 12 as he knew he -- his -- he didn't need us anymore. I --
 13 I -- I knew for a fact because he had told me he wanted
 14 Chris Small's position. He had shown some unstable
 15 behavior at various points and I defended him. He was a
 16 young guy, family. I was concerned about his mental
 17 stability. You'll see his e-mails which I'm sure you
 18 guys have where he'd e-mail, hey, I'm so sorry for
 19 blowing up at everybody. I'm so sorry for this. I'm
 20 so -- that was a constant thing and it was wearing on
 21 some of the girls -- or the women in the office.

22 **Q** When you say unstable behavior, are you just
 23 talking about that, emotional outbursts? Was there any
 24 other --

25 **A** Yeah. I mean, he was -- he mismanaged his

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1 money. He was always broke and when he got even he was
2 in debt the next month, you know, things like that, just
3 stupid stuff. And we all tried helping him with, hey,
4 Brandon, you know -- you know, maybe you don't need to
5 buy another car. Hey, maybe you don't need a house, you
6 know what I mean, that type of thing. We helped him
7 out. Whenever he needed overtime, whenever he wanted a
8 trip, we always tried to get him the extra money for
9 doing that work so at the end when we're gone,
10 meaning -- we meaning the U.S. Government is no longer
11 involved and he's not getting paid and I assume
12 U.S. Flue-Cured wasn't paying him bonuses and -- and
13 money for working and unloading sea containers and
14 for -- for doing the government's business, he -- he saw
15 this as a way of getting rid of Chris and -- and making
16 himself the hero. That's my opinion.

17 Q Did you meet with Brandon after the internal
18 investigation?

19 A No.

20 Q Do you know if anyone from ATF met with him?

21 A I don't think so.

22 Q During the internal investigation how many
23 times did you meet with Clay Wheeler or other
24 representatives of USTC? I should broaden it.

25 A I'm going to say four that I remember, two at

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1 the ATF office with the federal prosecutor, Joe Mott,
2 once at the board meeting and once over at the
3 warehouse -- at least once over at the warehouse. We
4 had asked -- one of the things the federal prosecutor
5 and the agent in my office had asked Clay is, you can't
6 enter the vault and you can't enter the evidence locker.
7 You cannot. I mean, we're cooperative. Hey, have at
8 it. You know, we want you to -- we don't have -- just
9 like every other state, we have nothing to hide, go
10 audit it. And they entered both. They entered both the
11 bonded warehouse and the evidence sea container and that
12 infuriated both the federal prosecutor and the agent
13 whose evidence it was. So we ran over there that day
14 and said, what the hell you doing? I was retired.
15 Said, what the hell you doing? So I'd say four.

16 Q You said we. Who -- who went over there with
17 you to talk to --

18 A Well, at this point it was me, Dan, William
19 Duke -- Dan Whitmore, William Duke. One of the things
20 that this stuff got spun up that shouldn't have happened
21 was the day they did the raid, there was an FBI agent
22 and all the ATF agents and supervisors sitting in
23 Bristol waiting for them to come and Dan Whitmore was
24 calling Clay and kept leaving him messages because we
25 got Clay's number from -- I don't remember if it was

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1 Jason or Chris, somebody -- saying, hey, he's the guy in
2 charge of this investigation, so Dan said, hey, we want
3 to call him, get him over here. So I sat in the ATF
4 office for four days. He never called us back. He
5 ended up calling Dan back on a Sunday -- the following
6 Sunday so five days they were there and said, okay, I
7 could come in and meet with you guys. And that's when
8 the federal prosecutor came in with us and -- and -- our
9 first of two meetings.

10 Q Did Clay ever share with you his theory of
11 what -- what had gone on and what he thought was bad
12 behavior?

13 A I think there were many theories. I think
14 we've run the whole gamut of corrupt cops, drug
15 traffickers operating through Big South. You know, I --
16 I think it just depend what day of the week it was,
17 depends on what his theory of -- of the crime was.

18 Q Was it a moving target?

19 A And I think he intentionally made it so that he
20 didn't know certain things. We had offered him not just
21 those charts but he was sitting in my office -- my old
22 office, sorry -- where the federal prosecutor had
23 thousands of documents for him to review. He chose not
24 to do so. He wouldn't tell us who his client was
25 because we wanted to ask. I'm thinking this is just an

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1 innocent -- right? This is clearly an innocent mistake.
2 He doesn't know that we're a government operation. And
3 so, hey, who's your client? And he wouldn't tell us,
4 wouldn't tell the federal prosecutor. So we didn't know
5 who to call. We didn't know if it was Albert Johnson,
6 the chairman. We didn't -- we didn't know who the hell
7 his client was. You'd ask him if he was the lawyer on
8 the case. He'd say, no, I'm an investigator. Other
9 times he was an investigator and not a lawyer. I --
10 I -- I don't -- so it was never clear.

11 So the answer to your question is it was a
12 constant moving target. We would address something and
13 then the theory of the case would change and we'd
14 address something else.

15 Q Did he ever tell you about a theory that you
16 thought rang true?

17 A Well, I knew it was all lies. I knew it was
18 all lies. The federal prosecutor sitting next to me in
19 the room knew it was all lies. We knew we were the
20 authorized operation. Hell, I had the letter from the
21 Department of Justice. We knew everything we did was
22 approved at the headquarters level. We knew these guys
23 were documented sources. We knew there were hundreds of
24 cases that they worked. This is just a
25 misunderstanding. Clay, let us tell you the truth, and

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Conducted on March 22, 2016

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1 he didn't want to hear it.

2 Q In your conversations with Clay Wheeler did you
3 ever tell him that you had concerns about the Sheriff
4 brand of cigarettes?

5 A I did.

6 Q What did you tell him about that?

7 A I had a meeting in his office. It was just
8 before I was fired. This was two weeks before I was
9 fired so whatever that date is. Again, I still -- I'm
10 still stupidly -- even though I'm not following advice
11 from lawyers who are smarter than me that don't trust
12 these people, I'm still thinking it's a
13 misunderstanding. I got binders of stuff showing this
14 is a government operation, everything was accounted for,
15 blah, blah, blah. So I'm just thinking, hey, I'm a
16 retired agent, right? I can go talk to this guy and I'm
17 going to give me another speech. He asked me if I would
18 come to Raleigh. I went, oh, yeah, of course I'll come
19 to Raleigh. I'll talk to anybody. I got nothing to
20 hide. And he -- one of the questions he asked me in his
21 office was, you know, who is -- what -- what did you do
22 for -- for -- I don't even know his client but what did
23 you do for U.S. Flue-Cured and I laid it out. I said, I
24 was trying to protect your business. The Sheriff
25 brand -- and I told him, Sheriff brand was one of the

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1 largest illegal brands in Mexico. The Mexican
2 government was targeting you and your company, not you
3 personally but you and what I perceived to be his
4 client, and that we wanted to make sure, we -- because
5 now I was a contractor or a consultant -- to make sure
6 that that business, profitable as it was, was also
7 legal, which it was not.

8 Q What was his response?

9 A I don't know. I was fired two weeks later.

10 Q Do you know if he ever reported that up the
11 line to USTC or U.S. Flue-Cured?

12 A I'd have no way of knowing. And I think that
13 was -- I don't think I've met or talked to him since or
14 exchanged e-mails. Once I got my dismissal letter
15 ending my contract, I didn't have any dealings anymore.

16 Q One thing -- if I could turn your attention to
17 Tab 8 in your binder there.

18 A I thought I was done with this.

19 Q The second page of that tab. You were asked
20 some questions about these cigarettes earlier. You
21 don't know whether these -- the cigarettes referenced
22 here were still on the floor of the warehouse at the
23 time of the asset purchase agreement, do you?

24 MR. MARSHALL: Object to the form.

25 MR. ZESZOTARSKI: Go ahead and answer.

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1 THE WITNESS: Thank you.

2 A I don't know. I don't have -- I'd have to see
3 all the backup documentation for that. There would have
4 been inventory sheets. There would have been copies of
5 cashier's checks back to the government which there is.
6 There would have been invoices. There would have been
7 something. So I don't know if it was sitting at the
8 warehouse or -- we would -- we would do reconciliation
9 usually at the end of the month, sometimes the first of
10 the next month depending on where I was or where Wendi
11 was or where Chris was or where my boss was. So it's
12 possible this was sold on the 1st of the month or the
13 31st of the prior month. I -- I'd have no way of
14 knowing by looking at this.

15 Q And you also can't tell from looking at this
16 page whether the amounts that were still owed to DLG
17 were the entire amount that it took to acquire these
18 cigarettes or just a portion of the amount it took to
19 acquire these cigarettes, correct?

20 MR. MARSHALL: Object to the form.

21 A I think I was -- tried to explain that before.

22 Q I think you did too. I just wanted to make
23 sure.

24 A There were partial shipments. There were --
25 there were different orders. Some things were sold and

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1 already paid for the prior month. There may have been
2 cashier's checks the prior month or wire transfer,
3 whatever. I don't -- I don't -- again, looking at this
4 I can't tell. So I can't swear to you that this was one
5 transaction paid in full and every carton was accounted
6 for. It may have been two or three payments. That was
7 not unusual.

8 Q And I'm sure you've answered this before but
9 just to be clear, the transactions involving Target A
10 and products of Target A were undertaken in connection
11 with an authorized federal investigation, correct?

12 A By many agencies at the highest levels of the
13 Department of Justice and what's often lost, and I had
14 to remind my ATF headquarters about this, we did con --
15 closed-door congressional briefings on this case, okay,
16 and I -- I sat back for the first two years of this
17 saying, how the hell can anybody say this was
18 unauthorized? Go sell [sic] my director who I sat in a
19 closed-door congressional briefing with and briefed this
20 very case. Sorry. That's a bit of my frustration
21 coming out.

22 MR. MATHIS: Can we take a quick break? I
23 might be -- let's go off the record.

24 THE VIDEOGRAPHER: We are going off the record.
25 The time is 18:11.

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1 (Whereupon, there was a recess in the
2 proceedings from 6:11 p.m. to 6:16 p.m.)
3 THE VIDEOGRAPHER: Here begins Tape Number 5 in
4 the deposition of Thomas Lesnak. We are back on the
5 record at 18:16.
6 MR. MATHIS: I have no further questions.
7 THE WITNESS: All right.
8 MR. KELLY: No questions from the government.
9 THE VIDEOGRAPHER: He's --
10 THE WITNESS: They're making their way down.
11 MR. KELLY: Okay. Chris has got one.
12 THE WITNESS: There's a lot more lawyers in the
13 room.
14 MR. KELLY: Yeah.
15 THE WITNESS: So...
16 EXAMINATION
17 BY MR. GRAEBE:
18 Q Mr. Lesnak, I'm Chris Graebe. I represent
19 Albert Johnson. I have one question only and I think
20 it's a -- a quick answer. At your meeting with Albert
21 Johnson prior to the Big South acquisition, was it your
22 clear impression based on Mr. Johnson's statements at
23 that meeting that his only concern was the protection of
24 the interests of U.S. Flue-Cured?
25 MR. MARSHALL: Object to form.

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1 MR. ZESZOTARSKI: Go ahead and answer.
2 A He beat me up for 30 minutes. I've testified a
3 few times to that. That's my takeaway from that
4 meeting. That's all he cared about is protecting
5 U.S. Flue-Cured and, in particular, the China business
6 because I think he was heavily involved in that. That's
7 what I talk -- took away from that entire meeting and I
8 would have felt -- as I joke with my big boss, I'm glad
9 we weren't in a bar because he would have kicked me ass
10 that night. He was very adamant that we were not to do
11 anything to jeopardize that business.
12 MR. GRAEBE: That's all I have. Thank you.
13 EXAMINATION
14 BY MR. ALDRIDGE:
15 Q Mr. Lesnak, my name is Sid Aldridge. I
16 represent Steve Daniel and I have a few questions, one
17 along the lines of Mr. Graebe. In your years of dealing
18 with Mr. Daniel, do you recall or are you aware of any
19 time that you feel like he wasn't putting the interest
20 of USFC, USTC at the top of his list or performing his
21 obligations to them?
22 MR. MARSHALL: Object to the form.
23 A In his dealings with me, we honored his
24 concerns. He had those concerns I don't want to say at
25 every meeting because later on I met with him a fair

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1 amount, but early on was, you know, protect us, protect
2 our company. Then obviously as I talked about ad
3 infinitum on the acquisition, don't burn us, don't burn
4 U.S. Flue-Cured. And it really was the mantra for years
5 of relationships with Steve and Jason and Chris to set
6 up what I called those buffers between the bad guys and
7 U.S. Flue-Cured -- that was Jason and Chris and nine
8 other guys -- to -- to protect U.S. Flue-Cured. Steve
9 was intimately a part of that and that's why to some
10 extent we brought him into the inner circle especially
11 on Investigation A because we couldn't have done it
12 without him. The U.S. Government could not have
13 accomplished that without him and his assets at
14 U.S. Flue-Cured. Be it Albert Johnson or -- or John
15 Taylor or whomever in -- in the company that knew about
16 the work, we needed U.S. Flue-Cured to know to some
17 extent the importance of the work that we were doing.
18 Q All right. So expand on that little bit more,
19 the -- the investigation into Target A couldn't have
20 been accomplished without Steve Daniel's help and
21 U.S. Flue-Cured. What do you mean by that?
22 A One of the nice things that we utilized, not
23 just we -- when I say we I mean all the guys working
24 that investigation -- was the fact that U.S. Flue-Cured
25 was a big company. It wasn't a tiny wholesale company.

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1 Even when Big South became bigger it's still relatively
2 small compared to U.S. Flue-Cured, right? When our bad
3 guys or the guys from Target A knew of the relationship
4 between Jason and Chris and this huge American company,
5 I -- they were ecstatic. This gave them what they were
6 looking for which is U.S. cred -- credibility. I'm
7 sorry. I don't mean to street talk here. But this was
8 huge for us to allow the targets in A to see -- I don't
9 know what Flue-Cured's worth. -- you know, a \$50
10 Million company as actually the people behind their
11 brands and their business model. That was important to
12 us.
13 Q Okay. And -- and you said this is one of the
14 most important investigations that the government's been
15 involved in in this --
16 A No.
17 Q -- type of area?
18 A I don't want to overblow it. What we were told
19 at my headquarters at Justice Department was that the
20 agency we were working for at the time could do nothing
21 more on the war on terror than to successfully take this
22 case down. That's a fact. That's what we were told.
23 That was the mantra that we were operating under.
24 Q Okay.
25 A Not because that particular guy was financing

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1 terrorism. That is not the case. But entities that he
2 was doing business with were.
3 Q Okay. You mentioned that Mr. Daniel was
4 helpful to a number of federal agencies and I think you
5 indicated one of his strengths or talents or whatever
6 was that he had knowledge of every end of the tobacco
7 process from growing it to manufacturing it to
8 distributing it, is that accurate?
9 A That is correct.
10 Q And which federal agents -- I mean, give us an
11 idea of some of the federal agencies he conferred with,
12 assisted.
13 MR. KELLY: I'm going to direct you not to
14 answer that.
15 MR. ALDRIDGE: Okay. I understand.
16 MR. KELLY: We don't have authority to disclose
17 that.
18 MR. ALDRIDGE: I understand. I understand.
19 BY MR. ALDRIDGE:
20 Q But agencies other than ATF, correct?
21 A More agencies than not, yes.
22 Q Okay. You mentioned that Mr. Carpenter and
23 Mr. Small, you felt like at some point if this
24 investigation had fallen apart, they'd been ratted out
25 might have had -- been in danger of losing their lives?

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1 A The answer -- the short answer is yes, so much
2 so that not me but my headquarters went to -- and it may
3 have went to Chris's house. I -- I think they did, but
4 I can't swear to it. But we sent -- we meaning ATF
5 headquarters sent the ATF local office to Jason's house
6 and did a full threat assessment, met with the local
7 police and sheriff's department, arranged an evac
8 process that if the phone call came in -- as the FBI
9 informant in a very related case that both Jason and
10 Chris knew this guy very well, if ATF and the local
11 office had to go to Jason's house in the middle of the
12 night that he and his wife and ultimately his son would
13 understand what the process was, that the local
14 sheriff's department when they got the call to show up
15 at Jason's house knew what the process was, why we --
16 why some ATF agent or FBI agent was asking them, hey --
17 we were concerned -- and I -- I don't -- I -- we were
18 concerned that there were going to be further
19 disclosures that would risk Jason and Chris's lives as
20 well as nine other guys who were intimately involved in
21 not just Target A but many other more violent cases
22 involving Hells Angels and outlaw motorcycle gangs and
23 Bolivian drug smugglers and other stuff. These were
24 deep cover agents from many different agencies. We did
25 not take that lightly and as you see from my e-mails, I

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1 beat that up in every e-mail and every briefing I did to
2 somebody, don't burn these guys.
3 Q And you mentioned, I think, that they might
4 have had to go into the witness protection program?
5 A That would have been the process. Those were
6 the discussions we had with our informants. They're
7 made known to that. They knew that you don't have to
8 go, it's voluntary as -- as you may know. The informant
9 that they knew of and actually gave us who did the
10 largest tobacco case the FBI has ever done chose not to
11 go in the WITSEC program and he went out on his own and
12 unfortunately for the next three years basically lived
13 in the squalor, couldn't get a job. He was a
14 60-year-old man that half the -- the industry thought
15 was a crook, the other half knew was an informant, and
16 his life was ruined. And so that would have been their
17 decisions, but it's our legal obligation to present
18 those facts to these guys and let them make that
19 decision whether they wanted to go in the WITSEC program
20 or not.
21 Q I understand. Was -- was I correct in hearing
22 you say that you thought Jason and Chris were patriots?
23 A I -- and I added Steve to that. What -- and --
24 and, look, you know, I do what I do now because I love
25 doing what I do for a living. You know, at the end of

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1 the day it's good guys fighting bad guys. These guys
2 did not have to do it. It's different than a defendant
3 where you put handcuffs on him, you take him out of his
4 bed and you say, you're going to cooperate with the
5 government or you're going to get 15 years in federal
6 prison, okay? These guys literally put their lives and
7 their families' lives in jeopardy to cooperate with us.
8 I respected that. And in particular especially in
9 the -- early on with Investigation A they were doing
10 stuff that I wouldn't have done and I've been in many
11 bad places in the world and I wouldn't have done what
12 they did.
13 Q Okay. With regard to the IRS audit, am I
14 correct that Steve Daniel was assisting these two
15 gentlemen who you termed patriots with dealing with an
16 IRS issue that arose because of their assistance to the
17 ATF or other government agencies, is that accurate?
18 A What the IRS agent told me was what prompted
19 the audit was all of the cars in particular that went to
20 federal, state and local agencies around the country, 22
21 of them, 23 of them. I forget what the exact number
22 was. And like I said earlier, I started seeing Steve
23 around a lot during that audit and I later came to learn
24 that he was a CPA or an accountant and he had his own
25 firm and was allowed to do accounting work.

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1 Q All right.

2 A So that's -- that's when I became more familiar

3 with Steve. Like I'd sit and have a cup of coffee with

4 Steve at the warehouse whereas in the past I would just

5 wave and keep on walking.

6 Q So because of his knowledge of some of these --

7 these operations already, it made him a natural fit to

8 help with these tax issues because he would understand

9 sort of what was going on behind the scenes, is that

10 accurate?

11 A Yeah. You couldn't go to H&R Block and say,

12 hey, these 23 operations are federal government so where

13 you see checks coming and going and cars coming and

14 going, that's U.S. marshals, that's FBI, that's Homeland

15 Security, that's, you know -- you can't do that so Steve

16 was already in the inner circle. I didn't bring him in.

17 Just to be clear, I didn't say, hey, let's bring

18 Steve --

19 Q Right.

20 A -- Daniels in. I didn't object to it clearly.

21 I didn't know at the time he was an accountant so it

22 made out -- perfect sense that -- if you got to bring

23 somebody in to talk to IRS, Steve made sense.

24 MR. ALDRIDGE: Okay. That's all the questions

25 I have. Thank you very much.

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1 EXAMINATION

2 BY MR. MARSHALL:

3 Q At the risk of offending everybody in the room,

4 I do have a couple questions. I'm going to keep them as

5 brief as I can. When -- I think you testified earlier,

6 Mr. Lesnak, that you thought that the payments that were

7 being made to Steve Daniel by Mr. Carpenter and

8 Mr. Small were appropriate, is that correct?

9 A Yes.

10 Q What's your understanding as to how much

11 they -- they paid Mr. Daniel?

12 A I think I testified I didn't know then and I

13 don't know now.

14 Q Okay. Would your testimony change if you

15 learned that Mr. Daniel received more than \$450,000

16 between May of 2011 and October of 2012?

17 MR. KELLY: Objection as to form. You can

18 answer.

19 A I'm sorry. Give me the -- 18 months? Is that

20 what you're saying?

21 Q From May of 2011 to October of 2012 would it

22 change your opinion that it was appropriate to pay Steve

23 Daniel if you knew that he received more than \$450,000

24 during those months?

25 A No, if the alternative was hiring an a -- a

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1 lawyer to litigate your stuff with IRS. I'm sure you

2 would have paid far more for a lawyer to spend 18 months

3 on that file. But does it surprise me that that's high?

4 No. But as I said earlier, he was there all the time on

5 that IRS audit. So, again, I don't know what CPAs

6 charge, but if he was a lawyer or accountant I know it

7 would probably be more than that.

8 Q When you say he was there all the time, how

9 frequently was he there working on the audit?

10 A Any time she was there, end of the month, end

11 of the quarter, those type of things, meetings when law

12 enforcement would come in.

13 Q Uh-huh.

14 A Didn't see him much early, saw him much more in

15 the middle, in the mid -- middle time during the audit.

16 And, again, I don't have those years of the IRS audit.

17 I'm sorry. But during that period of time he was a

18 frequent visitor sitting there with binders and tax

19 records and stuff on those issues.

20 Q All right. How long do you think that this

21 audit lasted --

22 A Over --

23 Q -- as long as a year?

24 A Over a year.

25 Q Over a year?

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1 A I -- I think I said earlier it may -- wouldn't

2 surprise me if it was two years, but I know it was at

3 least a year.

4 Q Do you think that Mr. Daniel was involved in

5 this audit on a weekly basis?

6 A No. Was he in Bristol weekly? Not that I saw,

7 no.

8 Q Monthly?

9 A Oh, probably monthly.

10 Q Did he --

11 A It wouldn't surprise me if I -- I saw him once

12 a month.

13 Q Did he meet with the person in charge of the

14 audit during regular business hours?

15 A I'm not sure he met with the IRS agent. She

16 was -- she had a special clearance -- security clearance

17 and she was working on sensitive aspects of the tax

18 filings so I -- I don't recall if he ever met with her.

19 So the answer is I don't know.

20 Q Would Mr. Daniel meet with Mr. Carpenter and

21 Mr. Small on a monthly basis with respect to the audit?

22 A Audit business. I mean, you know, obviously

23 when he was there there was all the other business that

24 was going on. So I saw him there when there were

25 binders of tax documents, but I also saw him there when

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1 there were meetings and -- and -- and distributors and
2 folks from Premier would fly in. So Steve was there all
3 the time on other business as well.
4 Q Okay.
5 A I didn't sit in on the -- obviously I didn't
6 sit in on the good guy meetings unless they were law
7 enforcement, but I would see Steve in the conference
8 room with five other guys I knew as distributors or
9 customers or wholesalers or, you know, guys from
10 Premier. So I saw him all the time in that regard.
11 Q All right.
12 A And like I said, I wasn't part of the
13 legitimate business. I would wave, go to the coffee pot
14 and drive to my office.
15 Q And just to be clear, was it your understanding
16 that Mr. Daniel was being paid by Carpenter and Small in
17 connection with this audit and nothing else?
18 A I didn't have an opinion on that. I asked
19 Jason that one question I had, is Steve getting taken
20 care of for all these hours and everything? And he
21 said, yeah, we got it taken care of. That was the
22 extent. There was no follow-up conversation. And prior
23 to Clay putting up a check up on PowerPoint, I didn't
24 know anything.
25 Q Did you ever instruct Mr. Carpenter or

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1 Mr. Small to pay Mr. Daniel for all the training that
2 Mr. Daniel did for federal agencies?
3 A No. I had that one conversation with Jason
4 Carpenter to -- I don't remember if Chris was even there
5 and I never had a subsequent one.
6 Q All right. And am I -- my understanding you
7 correctly that you never instructed Mr. Carpenter or
8 Mr. Small on the amount to pay Mr. Daniel?
9 A I did not.
10 Q Okay.
11 MR. MARSHALL: All right. Thank you. Nothing
12 further.
13 THE VIDEOGRAPHER: This marks the end of
14 today's deposition. We are going off the record at
15 18:32.
16 THE REPORTER: And you're going to order?
17 MR. MARSHALL: Yes, video and transcript.
18 THE REPORTER: Okay. Mr. Zeszotarski, do you
19 need a copy?
20 MR. ZESZOTARSKI: No, I don't. Thank you.
21 THE REPORTER: All right. Mr. Kelly, do you
22 need a copy? Do you need a copy of the transcript?
23 MR. KELLY: Yes.
24 THE REPORTER: Okay. Mr. Vann, do you need a
25 copy of the transcript?

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1 MR. VANN: No. I'll get it --
2 MR. KELLY: Just send it to me.
3 THE REPORTER: Okay. All right. Mr. Mathis,
4 you need a copy?
5 MR. MATHIS: Yeah.
6 THE REPORTER: Okay.
7 MR. MATHIS: Whatever we -- whatever we --
8 THE REPORTER: Whatever you have been getting?
9 Okay.
10 Mr. Graebe -- Mr. Graebe, do you need a copy of
11 the transcript?
12 MR. GRAEBE: Yes.
13 THE REPORTER: Mr. Aldridge, do you need a
14 copy?
15 MR. ALDRIDGE: Yes.
16 (The deposition concluded at 6:32 p.m.)
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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC
2
3 I, LISA A. WHEELER, Registered Professional
4 Reporter, Certified Realtime Reporter and Notary Public,
5 the officer before whom the foregoing deposition was
6 taken, do hereby certify that the foregoing transcript
7 is a true and correct record of the testimony given;
8 that said testimony was taken by me stenographically and
9 thereafter reduced to typewriting under my supervision;
10 that reading and signing was not requested; and that I
11 am neither counsel for or related to, nor employed by
12 any of the parties to this case and have no interest,
13 financial or otherwise, in its outcome.
14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 1st day of April, 2016.
16 My commission expires June 7, 2018.
17
18
19
20
21 NOTARY PUBLIC IN AND FOR
22 THE STATE OF NORTH CAROLINA
23
24
25