

DCDBKURT1 Trial  
1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK  
2 -----x

2  
3 UNITED STATES OF AMERICA,

3  
4 v.

S1 12 Cr. 376(RMB)

4  
5 RUDY KURNIAWAN, a/k/a "Dr. Conti,"  
5 a/k/a "Mr. 47,"

6  
6 Defendant.

7 -----x  
8 December 13, 2013  
8 9:07 a.m.

9  
9 Before:

10  
10 HON. RICHARD M. BERMAN,

11  
11 District Judge

12  
13 APPEARANCES

13  
14 PREET BHARARA,  
14 United States Attorney for the  
15 Southern District of New York  
15 JASON HERNANDEZ,  
16 JOSEPH FACCIPONTI,  
16 Assistant United States Attorneys

17  
17 WESTON, GARROU & MOONEY  
18 Attorneys for defendant  
18 BY: JEROME MOONEY

19  
19 VERDIRAMO & VERDIRAMO, P.A.  
20 Attorneys for defendant  
20 BY: VINCENT S. VERDIRAMO

21  
21 - also present -

22  
22 Ariel Platt, Government paralegal  
23 Bibi Hayakawa, Government paralegal

23  
24 SA James Wynne, FBI  
24 SA Adam Roeser, FBI

DCDBKURT1 Trial

1 (Trial resumed)

2 (In open court; jury present).

3 THE COURT: Okay, everybody. Nice to see you. Please  
4 be seated and we'll start.

5 We'll have the next government witness.

6 MR. HERNANDEZ: Government calls William Koch.

7 THE COURT: Okay.

8 THE DEPUTY CLERK: Sir, please remain standing.

9 WILLIAM KOCH,

10 called as a witness by the Government,

11 having been duly sworn, testified as follows:

12 THE DEPUTY CLERK: Can you state your name for the  
13 record, please?

14 THE WITNESS: William Koch, spelled K-O-C-H.

15 THE DEPUTY CLERK: Thank you.

16 THE COURT: Please be seated.

17 THE WITNESS: Thank you.

18 THE COURT: All right, Counsel.

19 DIRECT EXAMINATION

20 BY MR. HERNANDEZ:

21 Q. Good morning, Mr. Koch.

22 A. Good morning.

23 Q. Mr. Koch, can you please tell the jury what you do for a  
24 living?

25 A. I'm president and chief executive officer of a company

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DCDBKURT1 Koch - direct

1 called Oxbow Carbon, although I know "carbon" is a four-letter  
2 word now. But what we do is we buy a product from oil  
3 refineries, two products, called petroleum coke and sulphur.  
4 Petroleum coke is about 95 percent carbon and with some other  
5 impurities in it, and then we dispose of that. It's a waste  
6 product for the oil refinery, as is sulphur. And we sell those  
7 to power plants, steel plants, aluminum plants, cement plants,  
8 et cetera, all around the world. We, I think, sell to a  
9 hundred different countries.

10 And then we process the aluminum-- or we process the  
11 petroleum coke to make it into a product that is used to make  
12 aluminum.

13 Q. And what's your educational background, Mr. Koch?

14 A. I'm sorry, I missed one other thing. We're also in the  
15 gas-drilling business. So I'm in the politically incorrect  
16 businesses, unfortunately, but we call ourselves waste disposal  
17 people for the refineries.

18 My educational background? I grew up in Wichita,  
19 Kansas. So you can say I'm a hick. I went to public school  
20 there. Then I went to Culver Military Academy because I was a  
21 bit undisciplined when I was a teenager. Then I went to MIT.  
22 And I got three degrees from MIT over a long period of time:  
23 The first was a BS, Bachelor of Science; next was an MS, Master  
24 of Science; and the last was an ScD, which is a doctor of  
25 science.

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Koch - direct

1 I had a professor once who actually taught my father,  
2 who went to MIT as well. He said, "Why in the world do you  
3 want to get a doctorate?"  
4 I naturally said, "Well, because I think it's  
5 prestigious and I love science."  
6 He said, "Well, you know what BS is, don't you?"  
7 I said, "Yes, a Bachelor of Science."  
8 He said, "No, the real BS." And then he said to me,  
9 "Well, you know what MS is, don't you?"  
10 I said "No."  
11 He said, "More of the same." And then he said, "You  
12 know what a Ph.D. is, don't you?"  
13 I said "No."  
14 He said, "Piled higher and deeper." He was trying to  
15 discourage me from spending all that time at MIT.  
16 Q. It didn't work.  
17 Your company, Oxbow, could you tell us where it's  
18 located?  
19 A. Well, the headquarters are in West Palm Beach, but we have  
20 facilities in quite a number of states in the United States and  
21 then we have offices in about 30 different countries.  
22 Q. Do you live in West Palm Beach where the headquarters of  
23 Oxbow are located?  
24 A. I live on an island called Palm Beach, which is a Fantasy  
25 Island, the good and the bad of it. And my office is only 20

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1 minutes from my house.

2 Q. Mr. Koch, are you a collector of any kind?

3 A. My wife calls me a horder, but I am a collector of numerous  
4 things.

5 Q. Can you give us an example of the types of things you like  
6 to collect?

7 A. Well, I like to collect art, paintings, sculpture. I  
8 collect some antiquities. I have collected a lot of Western  
9 items. I'm a Western fanatic. I have Western photographs, I  
10 have Western guns, Western paintings, Western clothes for men  
11 and women and babies, Western saddles, et cetera. Even have  
12 the one and only picture of Billy the Kid. But, anyway, that's  
13 one of my fascinations, is the West.

14 Q. How about wine?

15 A. I have-- yes, unfortunately I have a lot of wine. I have a  
16 cellar of 43,000 bottles. You see why my wife calls me a  
17 horder. And I try to collect wines that I think are the very  
18 best, that I enjoy, that I love drinking.

19 Then I have four types of wines that I try to collect  
20 every year just to satisfy my obsession with collecting. And  
21 I've tried to have every year of, say, Chateau Lafite, which I  
22 believe I have about 150 years or so; I collect Mouton, which I  
23 have about 120; Latour, which I have about 100, 100 years; and  
24 then Petrus, which I have about 90 years. Unfortunately, about  
25 half of all of those years are fake.

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Koch - direct

1 Q. Now, when did you first start collecting wine?

2 A. Well, I'll ramble a little bit. I'm sorry. When I was at  
3 MIT, we'd have parties once a month and we'd do binge drinking  
4 to break up all the hard monotony-- not the monotony, the  
5 pressure of hard work. I found I got hepatitis and couldn't  
6 drink for a number of years, which is great. Saved me from  
7 being an alcoholic.

8 And then I found out I could drink wine, so I started  
9 off with Mogen David, and then went to Lancens because it had a  
10 nice bottle that you put corks in on your dinner table. Then I  
11 started after that gradually trying to get better and better  
12 wines.

13 So I got where I could afford it. In the late '70s  
14 and early '80s I became a voracious collector.

15 Q. You weren't binge drinking at MIT on Chateau Petrus, were  
16 you?

17 A. I certainly wasn't. It was on-- no.

18 Q. Now, what do you do with the wines you collect?

19 A. Well, I put them in a-- well, I mean, I have two  
20 definitions. I have wines that are drinking wines and then I  
21 have wines that are collection wines that I just want to brag  
22 about that I've got them. For example, Thomas Jefferson wines.  
23 I bought those because they were very historical. Then I found  
24 out they were fake. Now I brag and show people the fake Thomas  
25 Jefferson bottles rather than the real ones.

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Koch - direct

1           So I have these collection wines, and I've described  
2 the four types of wines that I do collect and try to get  
3 every year. But then 99 percent of my collection is drinking  
4 wines. I do that because I love to drink fine wines with my  
5 friends, with new people that I meet that love-- that also  
6 appreciate outstanding wines and historical wines. And, also,  
7 I entertain. Sometimes we sell a wine dinner at my house for  
8 auction for the Police Foundation to put their kids through  
9 school or, you know, underprivileged kids, charities and  
10 things.

11           But I generally like drinking with other people. I  
12 don't have a good time drinking by myself. But one of the  
13 great things for me is that if I could have good friends, good  
14 music, beautiful paintings on the wall and great food and great  
15 wine, then you can look and see the love the artist had for his  
16 paintings, the love that the musician had in playing or making  
17 the music, and you could taste the love in the wine.

18 Q. Have you ever sold any wine that you bought?

19 A. Once. I sold it at an auction because a guy conned me into  
20 it. He said, "Prices are high. We could clean out your cellar  
21 of second-rate wines." But then he put in it a lot of very  
22 good wines. Now I'm mad that I let him sell it. Wish I  
23 hadn't.

24 Q. Do you plan to sell any more wine in the future?

25 A. No. If you ask me what I'm going to do with the wines that

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1 I have in my cellar, because I can't drink them the rest of my  
2 life, I'll give them to my kids either to drink or to sell.

3 Q. And where, generally, do you buy the wine from?

4 A. Well, I used to buy them wherever I could get them, but  
5 mostly I've bought wines from-- primarily from auction houses  
6 and also from dealers and occasionally I bought them directly  
7 from the vineyard.

8 Q. Mr. Koch, when you buy wine, does it matter to you whether  
9 the wine in the bottle is authentic?

10 A. Absolutely. I mean, that's like buying a Picasso painting  
11 that's fake in a beautiful frame. No, the whole value is in  
12 the authenticity of the wine.

13 Q. All right. That was an easy one, I'll give you that.

14 But how about this: Does it matter whether the  
15 physical aspects of the bottle, things like the label and the  
16 cork, are authentic? Does that matter to you?

17 A. You bet, it sure does. What's the old saying? If it walks  
18 like a duck, squawks like a duck, has feathers like a duck,  
19 it's a duck. So if the label is fake, the cork is fake, the  
20 capsule is fake, the bottle is fake, what do you think is in  
21 the bottle? There's a 99.99 percent probability the wine is  
22 fake as well.

23 Q. This jury has seen a bottle of wine from a Napa winery  
24 called Duckhorn. You're not suggesting there are ducks in that  
25 bottle. Right?

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1 A. No. No.

2 Q. Just checking.

3 Now, would it matter to you if the bottle had been  
4 reconditioned by someone other than the domaine or the chateau  
5 that produced the wine?6 A. Absolutely, because the only reason you have the recon--  
7 that you have the bottle reconditioned is because you want to  
8 drink it at some time or maybe sell it. But the only place  
9 you-- but the way they recondition it is they open the cork,  
10 put some real-- let's say they're reconditioning Chateau  
11 Lafite, a Chateau Lafite bottle. You'd want Lafite wine going  
12 back in. You wouldn't want Duckhorn wine going into a Lafite.  
13 So, of course. You don't know what the guy did who was  
14 reconditioning it.15 MR. HERNANDEZ: Your Honor, may I approach to show the  
16 witness a few bottles?

17 THE COURT: Sure.

18 Q. Mr. Koch, may I show you three bottles of wine that have  
19 been admitted into evidence?

20 A. Yes.

21 Q. And these were admitted as bottles that you purchased.  
22 Government Exhibit 4-1 says it's a double magnum of 1947  
23 Chateau Petrus.

24 A. Yes, I recognize this bottle.

25 Q. Okay. And then I'm going to show you two other bottles,

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1 4-2 and 4-2A. And on the label it says that this is 1934  
2 Domaine de la Romanee-Conti Romanee-Conti. Take a look at  
3 those two bottles, if you would.

4 A. Yes. These are my bottles because I could tell because we  
5 bar code every bottle that's put into my cellar and these have  
6 my bar codes on them.

7 Q. All right.

8 A. I also know that I bought these bottles.

9 Q. That's a system you use to keep track of the bottles?

10 A. Yes. Yes, it does.

11 Q. I'm going to ask you a few questions about the big bottle,  
12 that big bottle of Chateau Petrus first.

13 A. Yes.

14 Q. The jury has heard that you purchased this from Acker  
15 Merrall & Condit in May of 2005. So just for your  
16 understanding of the questions I'm going to ask, the jury's  
17 already aware of that. They've seen evidence about that.

18 A. Okay.

19 Q. My question to you is, when you purchased this bottle, what  
20 did you think you were buying?

21 A. I thought I was buying 1947 Petrus for a high price.

22 Q. And --

23 A. I was expecting it. '47 was an outstanding year, so I  
24 believed I was really buying '47 Petrus that was in the  
25 bottle.

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1 Q. And would you have paid that high price for that bottle if  
2 you had doubts about the authenticity of the wine or the bottle  
3 itself?

4 A. I wouldn't have paid the high price. In fact, I wouldn't  
5 have even bought the bottle if I had suspicions or even a 10  
6 percent or 20 percent doubt. I wouldn't have bought it.

7 Q. Now I'm going to ask you a few questions about 4-2 and  
8 4-2A. Those are the standard-size bottles that say "1934  
9 Romane-Conti."

10 A. Yes.

11 Q. The jury has that those were sold through The Cellar I  
12 auction by Acker Merrall & Condit in January of 2006.

13 A. Yes.

14 Q. So my first question to you about those bottles, or related  
15 to them, is did you receive the catalog for The Cellar I  
16 auction that was held in January of 2006?

17 A. Yes, I did.

18 MR. HERNANDEZ: And, Mr. Platt, are you able to pull  
19 up 15-3, which is just the cover of that catalog which has been  
20 admitted into evidence? If we could just publish to the jury  
21 to see that this is the catalog that has been admitted into the  
22 evidence, The Cellar, which is January of 2006.

23 THE COURT: Do you all have it?

24 THE JURY: Yes.

25 Q. Do you see that on your screen, Mr. Koch?

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Koch - direct

1 A. Yes, I do.

2 Q. All right. And that's the auction from which you purchased  
3 those two bottles?

4 A. I believe it is.

5 Q. And you bought other bottles from this auction as well,  
6 didn't you?

7 A. Yes.

8 Q. Now, did you read any portion of this catalog, the one on  
9 the screen right now, before you bid on the bottles in the  
10 auction?

11 A. Yes.

12 Q. Can you tell us if you remember reading any particular  
13 portions, if you read the whole thing or if you read select  
14 portions?

15 A. I read-- I did read select portions. I believe I read the  
16 introduction to it and the verbiage in it about how Acker  
17 Merrall was praising these bottles and this collection and  
18 saying they've inspected it and said they're wonderful, et  
19 cetera, et cetera. And then I went through it and picked out  
20 certain bottles that I thought would fit in my collection and  
21 then I read all of the details that were entered about those  
22 bottles.

23 Q. So when you bid on those two bottles in front of you, 4-2  
24 and 4-2A, what did you think you were bidding on?

25 A. Exactly what they said in the catalog.

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- 1 Q. Would you have paid what you did for those bottles if you  
2 had any doubts about the authenticity of the wine or the  
3 bottles themselves?  
4 A. No, I wouldn't have bought at all.  
5 Q. Now, did there come a time when you learned that the three  
6 bottles that are in front of you that we've been talking about  
7 were fake?  
8 A. Yes.  
9 Q. What was your reaction when you learned that?  
10 A. I was disappointed and I was angry.  
11 Q. Why?  
12 A. Well, I got conned, got cheated. No one likes to be conned  
13 or cheated.  
14 Q. And did there come a time when you learned who consigned  
15 those three bottles of wine to Acker Merrall & Condit?  
16 A. Yes.  
17 Q. And who did you find out consigned them?  
18 A. Rudy consigned them.  
19 Q. Rudy Kurniawan?  
20 A. Yes.  
21 Q. And since then have you looked in your cellar to see if you  
22 had any other potentially fake wines that you may have  
23 purchased that were consigned by the defendant?  
24 A. Yes.  
25 Q. And --

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DCDBKURT1 Koch - direct

1 A. I have over-- well, just in Burgundy alone --

2 MR. MOONEY: Objection; nonresponsive.

3 THE COURT: Overruled.

4 A. Just in Burgundy alone, I have found over 219 bottles of  
5 wine that was consigned by Rudy that I paid \$2.1 million for.

6 MR. MOONEY: Objection; foundation.

7 THE COURT: Overruled.

8 A. But I have not yet gone through all the Burgundy-- or  
9 Bordeaux that I have, but I estimate that it's about another 50  
10 to 100 bottles that I paid probably anywhere from a half  
11 million to a million.

12 Q. And when you say that you personally have gone through, has  
13 anyone assisted you in going through those wines in your  
14 cellar?

15 A. I've had-- yes. I've had-- well, the investigation has  
16 been very extensive and long term. I had about six or eight  
17 different experts go through them: An expert in glass, an  
18 expert in labels, an expert in glue, an expert in corks, and an  
19 expert who studied fake wines. I've even taken wines to the  
20 chateaus to ask them if they ever made these kind of wines.

21 I note that Rudy has sold a number of 1921 double  
22 magnums of Petrus --

23 Q. Let me just stop you right there.

24 A. Sorry.

25 Q. Let me just stop you right there for just one moment.

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Koch - direct

1 A. Okay.

2 Q. I just want to be clear that when you say you believe you  
3 found all these fakes that were consigned by the defendant, am  
4 I correct that you've formulated that opinion because you've  
5 hired a number of people to examine the bottles and they've  
6 told you that they believe them to be fake?

7 A. Yes. I've even gone to the extent of taking these bottles  
8 to France to have them put in a cave and the cesium content  
9 measured because there was a cesium of 178, I believe --

10 MR. MOONEY: Objection, your Honor.

11 THE COURT: Overruled.

12 A. -- that did not exist in the world until the first atomic  
13 bomb went off. So many of the bottles I found that were dated  
14 in, say, 1933 or '34 or even 1858 had cesium in it. So they  
15 were made after 1945, when the atomic bombs went off.

16 Q. Just one final question that may have been obscured because  
17 there was an objection.

18 You said you found over two hundred Burgundy bottles  
19 you said you believed were consigned by the defendant that are  
20 fake. Is that right?

21 A. We know they were consigned by him through discovery and  
22 other lawsuits I have.

23 Q. Just one final question.

24 A. Sorry.

25 Q. What was the total value of the wine?

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1 A. The total value of the 219 bottles was in excess of \$2.1  
2 million.

3 Q. Thank you.

4 MR. HERNANDEZ: No further questions.

5 A. No, not the value. The total price I paid. Sorry.

6 MR. HERNANDEZ: Can I have just one second, your  
7 Honor?

8 THE COURT: Yes, sure.

9 (Pause)

10 MR. HERNANDEZ: No further questions.

11 THE COURT: Thank you.

12 Mr. Mooney, cross-examination.

13 MR. MOONEY: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MR. MOONEY:

16 Q. Good morning, Mr. Koch.

17 A. Good morning, sir.

18 Q. This cesium test that you talked about, you didn't-- you  
19 have a Ph.D. in science. Right?

20 A. I have a Doctor of Science in science.

21 Q. But you didn't invent this test. Right?

22 A. No, I didn't.

23 Q. Somebody else invented the test?

24 A. Yes.

25 Q. Did you look at the science to see how the test works?

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Koch - cross

- 1 A. Well, what they did was measured the rays that came off. I  
2 mean, it's fairly clear-cut.
- 3 Q. Do you know how many different places are conducting the  
4 test right now?
- 5 A. I only know that-- I only know of one, and that's in  
6 France.
- 7 Q. Do you know if they've written any authoritative journals  
8 or pieces on what they're doing?
- 9 A. I believe they have.
- 10 Q. Do you know if that's been peer reviewed at all?
- 11 A. Peer reviewed?
- 12 Q. Yes, sir.
- 13 A. I don't know. I didn't investigate that.
- 14 Q. So you heard that they came up with this test and you went  
15 off to have some bottles tested?
- 16 A. Well, but the test was scientifically sound, in my opinion,  
17 and very logical, so...
- 18 Q. And we don't have anybody here today or in this trial to  
19 tell us about how the test works?
- 20 A. I could get you one right away if you want.
- 21 Q. I imagine you could.
- 22 A. Yes, I can.
- 23 Q. How many bottles out of your collection did you have taken  
24 to France and run through this cesium test? Total.
- 25 A. Total?

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DCDBKURT1

Koch - cross

1 Q. Total.

2 A. It's a guess, but I would say two dozen or so.

3 Q. And just to be clear, you've inspected your collection of  
4 wines not just for wines that you believe came to you through  
5 Mr. Kurniawan's hands at some point, but from any source. Is  
6 that correct?7 A. Yes. I've inspected-- I had my collection inspected by  
8 all these experts to find fake wines. Then, when I found the  
9 fake wine, I traced down from where it came, from whence it  
10 came.11 Q. There's a lot of fake wine in your collection, is there  
12 not?13 A. Well, right now we estimate about five hundred bottles of  
14 fake wine.15 Q. And would you put the figure at something like \$6.6  
16 million? That's your purchase price?17 A. My purchase price-- well, from 431 bottles, my purchase  
18 price was \$4.4 million. I haven't added all these other  
19 bottles to it, but it could be anywhere up to \$6 million.20 THE COURT: So, I'm sorry, did you say you found five  
21 hundred fake bottles in your entire collection?22 THE WITNESS: That's what I believe. But the last  
23 numbers that I have, that was done two summers ago, was 443  
24 bottles for which I paid \$4.4 million.

25 THE COURT: Okay.

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DCDBKURT1 Koch - cross

1 THE WITNESS: And I haven't added the other bottles to  
2 that yet because my cellar is still undergoing inspection.

3 THE COURT: Okay. So let's, for argument's sake, say  
4 it's around five hundred bottles.

5 Out of how many total bottles are in your cellar, did  
6 you say?

7 THE WITNESS: I have 43,000 bottles in my cellar.

8 THE COURT: So I'm not so good at math, but what  
9 percentage, roughly, of your collection do you think is fake?

10 THE WITNESS: Well --

11 THE COURT: So far.

12 THE WITNESS: It's less than 1 percent. But the  
13 problem is I've done an analysis on the age of a bottle versus  
14 the value of it. And it may be 1 percent, but it probably is  
15 25 percent of the value of the collection.

16 THE COURT: I got it.

17 THE WITNESS: Because say I paid \$100,000 for one  
18 bottle of Thomas Jefferson wine and I have only four of  
19 them. Well, I have four for which I paid \$400,000. Those were  
20 all fake. What I found is that the fakers faked these very  
21 old, highly expensive bottles. They make the most money that  
22 way.

23 BY MR. MOONEY:

24 Q. Do you recall, back on the 18th of September of this year,  
25 having a meeting with Agent James Wynne, sitting over here at

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DCDBKURT1 Koch - cross

1 the end of this table?

2 A. Yes.

3 Q. Okay. And do you recall on that occasion being asked the  
4 overall value of fakes that you believed that were-- that you  
5 had identified in your cellar? Do you remember him asking you  
6 that question?

7 A. I don't remember it exactly. But when I talked to people  
8 about fake wine, I usually bring that up because it's a huge  
9 irritant to me.

10 Q. And didn't you, sir, on that occasion state to him that  
11 with continued inspection you had identified approximately 6.6  
12 million in fake bottles in your collection?

13 A. I don't exactly remember that, I'm sorry.

14 Q. And that meeting was just a few months ago, wasn't it? The  
15 meeting you had with Mr. Wynne, it was September of this year,  
16 wasn't it?

17 A. Yeah, I believe so.

18 Q. You do remember having a meeting?

19 A. Yes. I've had about two meetings or three meetings with  
20 them.

21 Q. Now, at the point in time that you first became somebody  
22 who started collecting wines, you were buying from just about  
23 any source you could buy from, I think you told us.

24 Is that a fair statement?

25 A. Yes.

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DCDBKURT1

Koch - cross

1 Q. And at that point in time, you weren't worrying too much  
2 about it. Whatever they said it was, that's what you'd accept  
3 and buy. Correct?

4 A. Correct.

5 Q. And you were buying through auction houses and dealers  
6 primarily. Right?

7 A. Well, I mean, it's been a continuum. Initially I bought  
8 from stores, liquor stores.

9 Q. Okay.

10 A. And restaurants.

11 Q. And some from private individuals?

12 A. Well, no. When I got more and more-- well, for a long  
13 period of time I just bought it from liquor stores and from  
14 restaurants. And then, when I got some more money, I started  
15 buying-- I started then going to try to buy better wines and  
16 then someone introduced me to auctions at the time. You know,  
17 I was an MIT nerd and so I wasn't aware of auctions for a long  
18 time.

19 Q. And when you went to the auctions, did you trust the  
20 auction house to have inspected what they were selling you?

21 A. I don't remember really going to an auction house to buy  
22 wine. I went to an auction house to buy art, but I got wine  
23 catalogs from the auction houses and then I bought directly  
24 from the catalogs.

25 To answer your question, yes, I trusted them, what

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DCDBKURT1 Koch - cross

1 they said in the catalog.

2 Q. And a fair amount of your Western memorabilia are things  
3 that you picked up at auction houses, are they not?

4 A. I would say an amount, but a lot of my Western memorabilia  
5 came from estates of horders that I bought. That's why I've  
6 got so much, because I bought four different estates directly  
7 from the executor of the estate.

8 Q. And with --

9 A. But I have bought at auctions. I bought a lot of things at  
10 auction.

11 Q. And with regards to the Western memorabilia that you've  
12 accumulated, a lot of those pieces are essentially antique  
13 pieces now, are they not?

14 A. Yes.

15 Q. And one of the things that -- as a collector of antiques,  
16 you really do want that piece to be as much in the original  
17 condition as it can be, don't you?

18 A. Depends upon what you want to use it for. If I want to  
19 decorate a cabin of a pioneer, I want a beat-up piece of  
20 equipment, you know. If I want to decorate a parlor of a  
21 wealthy person, pretend wealthy person, then I want a very fine  
22 piece.

23 As I said, it depends. I have different motivations  
24 on collecting. I have a spectrum of motivations on what I  
25 collect in the Western lineups.

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DCDBKURT1

Koch - cross

- 1 Q. But one of the things that you learned, one of the things  
2 with regards to most of those pieces, is they've gone through  
3 other people's hands first?  
4 A. Generally they have. If they're old, they have.  
5 Q. Because you weren't around to have bought them when they  
6 were originated.  
7 A. No, I wasn't.  
8 Q. So somebody else had to have them first.  
9 A. Of course.  
10 Q. And we rarely find pieces that were stuck away in the back  
11 room of the factory someplace and discovered by accident so  
12 that we could now have them in a pristine form. Isn't that  
13 fair?  
14 A. Well, I have pristine items that have been stuck away.  
15 Q. Okay.  
16 A. I have a case of Winchester rifles that were never  
17 opened.  
18 Q. And those are rare.  
19 A. Those are rare. Exactly.  
20 Q. Those are very rare.  
21 A. Very, very rare, right.  
22 Q. For every case of Winchester rifles that were never opened,  
23 there are tens of thousands of Winchester rifles that are in  
24 various stages of repair in the hands of people all over the  
25 place. Is that right?

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DCDBKURT1

Koch - cross

1 A. I would say hundreds of thousands.

2 Q. And those Winchester rifles that are out there, some of  
3 them are going to be in pretty good shape and some of them are  
4 going to be in perfectly awful shape. Isn't that correct?

5 A. That's true.

6 Q. And then, also, with regards to those Winchester rifles  
7 that are out there, over the years people will have done things  
8 to them. Is that right?

9 A. Yes.

10 Q. And if I bought one of those Winchester rifles, I might be  
11 the first guy that bought it, I might make modifications to it.  
12 Is that right?

13 A. You might have, but I try to avoid anyone making a  
14 modification to it or buying something that's been subsequently  
15 enhanced.

16 Q. Sure.

17 A. Now, I bought items that the American Indians had and  
18 they've enhanced them, but that adds a different value because  
19 it shows that they were in the possession of the American  
20 Indians.

21 Q. Sure. Now you've got a historic activity that occurred  
22 with regards to it.

23 A. That's right.

24 Q. So activities that occurred with regards to around the time  
25 of the origination of the product or the device may be just

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DCDBKURT1 Koch - cross

1 part of the history of the device. Later, when the device  
2 becomes a collectible, that changes. Right?

3 A. Yes, but I will modify that somewhat to say that if someone  
4 reconditions a gun or someone puts carvings on the gun, if it's  
5 not historical or if it's fake, then that diminishes the value.  
6 Reconditioned Winchesters have a considerably less value than  
7 one that is in similar condition and has not been  
8 reconditioned.

9 Q. Now, not all of those changes that may have been made to  
10 something like that were done by people who were trying to make  
11 it look to be something other than it was.

12 MR. HERNANDEZ: Objection.

13 Q. Is that true?

14 THE COURT: I didn't understand the question.

15 MR. MOONEY: Okay.

16 Q. You said that-- strike that. Bad question. I'll rephrase.  
17 Sometimes, sometimes, people will take-- and let's  
18 stay with your Winchester example.

19 Some people will take the old Winchester someplace  
20 along the line and something will be broken or something  
21 won't be as it should be and they'll fix it. Right?

22 A. Yes.

23 Q. Okay. And when people do that, most of the time it's just  
24 well-meaning. Right?

25 MR. HERNANDEZ: Objection.

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DCDBKURT1

Koch - cross

1 THE COURT: Sustained. If you know.

2 THE WITNESS: Well --

3 THE COURT: Well, you don't have to answer.  
4 Sustained.

5 THE WITNESS: Okay. Thank you.

6 Q. Okay. But you don't necessarily want people to have fixed  
7 an old item, do you?

8 A. Again, it depends. You know, the Indians would break a  
9 rifle, break its stock, and then they'd put some wet rawhide  
10 around it or piano wire or something else to fix it. Now, that  
11 adds significance to the gun.

12 Q. That you want.

13 A. That's good.

14 But if a guy has a broken stock and, say, his father  
15 replaced it with a stock, I, as a collector, would want to know  
16 that the stock was replaced because that changes the value of  
17 it.

18 Q. And people don't always tell you that, do they?

19 A. No, they don't. Quite often they don't tell you.

20 Q. And sometimes a lot of people don't even seem to think it's  
21 significant. They just think I fixed it, I made it better.

22 A. Well, it depends upon if it's a \$100 gun, so what? If it's  
23 a \$10,000 gun, yeah, it's very important.

24 THE COURT: So, Mr. Mooney, could we move from guns to  
25 wine?

DCDBKURT1

Koch - cross

1 MR. MOONEY: Certainly, your Honor.

2 Q. You said that--

3 MR. MOONEY: Maybe if I could give you one more gun  
4 analysis first, your Honor.

5 THE COURT: Okay.

6 Q. We talked about broken.

7 Another thing that might happen is people might just  
8 clean an old gun or clean an old weapon, use an abrasive of  
9 some kind to bring back up the shine. You don't want that, do  
10 you?

11 A. No.

12 Q. But it happens, doesn't it?

13 A. It happens. But I'll tell you something else since you  
14 brought up guns. I have some guns that have been antiques and  
15 had someone's name engraved on it, Chief Ouray, for example.  
16 When I took the gun apart -- I had a gunsmith take it apart --  
17 I had found out it had been antiques. I found out that the  
18 documentation that went with the gun was all forged. And so  
19 someone was selling me a misrepresented -- and what I call a  
20 fake -- gun.

21 Q. It was a conscious fake.

22 A. Yes.

23 Q. An intentional effort to make it look something different  
24 than what it was.

25 A. Yes.

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DCDBKURT1

Koch - cross

1 Q. That's quite a bit different, isn't it, from the person  
2 who says, Well, this thing is old and dirty and pitted and I'm  
3 going to shine up the barrel and make it look pretty again?

4 MR. HERNANDEZ: Objection.

5 THE COURT: I'll allow it. And then --

6 MR. MOONEY: And I'll then move on.

7 THE COURT: Then we get to the wine.

8 Q. That's quite a bit different, isn't it?

9 A. Well, I bought a gun that was given to "Lonesome" Charley  
10 Reynolds, who was customers' personal guide. Died at the  
11 Little Bighorn. And there was a plaque on the gun that said  
12 "Given to Charley Reynolds by George Custer." And it was all  
13 tarnished. I bought it from a very reputable, fine gun antique  
14 dealer. And he warned me, he said "Do not polish that plaque  
15 because you'll show it's too new and you'll ruin the value."

16 So cleaning up a gun, reconditioning it, you know, if  
17 the guy's using the gun and he cleans it just to keep it in  
18 good working order, that's one thing. But if he cleans it up  
19 to sell it, then it takes all the original antique stuff off of  
20 it, that's a different story. That crosses the line.

21 Q. Yet many, many people do that, don't they?

22 MR. HERNANDEZ: Objection, your Honor.

23 THE COURT: Sustained.

24 A. I don't know --

25 THE COURT: Let's go.

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DCDBKURT1 Koch - cross

1 MR. MOONEY: Okay.

2 Q. Well, look, you bought different kinds of collectibles.

3 One of the kinds of collectibles that you buy is wine.

4 A. Yes.

5 Q. And you broke your wine into two different categories.

6 Right? You have the wine for drinking and then you have the

7 wine for collecting.

8 A. That's correct.

9 Q. When you went off and bought the Jefferson bottles, you  
10 really-- did you really think, well, I'm going to go drink  
11 these?

12 A. No.

13 Q. Did you expect that what was in the bottle would be even  
14 drinkable?

15 A. I had no idea.

16 Q. Okay.

17 A. I will tell you the best wine I've ever drunk was an 1853

18 Latour, but that came from the Latour cellar. But it was

19 absolutely fantastic. So some of these old wines can last.

20 You just do not know. The probability is they won't last.

21 Q. Yes.

22 A. They'll be vinegar, but you don't know. But the value of

23 the Thomas Jefferson bottle was in the fact that it supposedly

24 belonged to Thomas Jefferson and he bought it.

25 Q. So that was a collectible piece.

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DCDBKURT1

Koch - cross

- 1 A. Yes.
- 2 Q. And some of the wines, the wines don't necessarily have to  
3 have been owned by a famous person for you to buy them for  
4 collectible purposes?
- 5 A. No, I've already testified that I try to buy every year of  
6 these four wines.
- 7 Q. Yet a good number of people out there that are buying the  
8 wines aren't buying them as collectibles; they're buying them  
9 for the purposes of drinking them. Right?
- 10 A. People buy wines for a whole lot of different reasons,  
11 including reselling them or bragging, as I do, to some of my  
12 friends, or to drink. There's a whole spectrum of them.
- 13 Q. But the ones you're buying for drinking you're thinking of  
14 in a little bit different way than the ones you're buying for  
15 the purposes of collecting, aren't you?
- 16 A. Yes.
- 17 Q. Because the ones that you're buying for drinking, that big  
18 bottle that's sitting up there in front of you that says  
19 "Petrus" on the outside --
- 20 A. The double magnum.
- 21 Q. Okay. Did you buy that as a collectible or did you buy  
22 that for what you thought was inside the bottle?
- 23 A. I bought it to drink.
- 24 Q. You bought that to drink.
- 25 A. Yes.

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DCDBKURT1

Koch - cross

1 Q. And it could say anything on the outside. What you really  
2 were concerned about was what was on the inside.

3 A. I'm concerned what-- you don't want to buy a Mercedes with  
4 a Volkswagen engine in it if you're buying a high-caliber car.  
5 You want to buy the object of what's in it that says on the  
6 outside, because that's the only thing that identifies what's  
7 in it.

8 Q. So the problem with that is that the outside identification  
9 tends to indicate to you that what's said on the outside is not  
10 what's on the inside?

11 A. Wait a minute, I kind of lost that logic there.

12 THE COURT: So did I.

13 Q. Okay. So what you're telling us, though, if I understand  
14 correctly, is what you want is you want to know that the right  
15 thing is inside there.

16 A. Yes, that's right. I want to know that what's inside here  
17 is what is said on the label.

18 Q. Because you want to drink?

19 A. I want to drink it.

20 Q. And when you drink it, you want it to be what it says it  
21 is?

22 A. Absolutely.

23 Q. And what you were sold.

24 A. That's right. Otherwise it could be dishwasher.

25 Q. Now, you've never opened that bottle?

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DCDBKURT1 Koch - cross

1 A. I haven't opened this bottle.

2 Q. Did you send that bottle off for cesium testing?

3 A. No.

4 Q. Did you send that bottle-- did anybody do any test of  
5 what's inside the bottle?

6 A. No. I could tell you why.

7 THE COURT: Well, wait until he asks you.

8 THE WITNESS: Okay. Sorry, sir.

9 THE COURT: That's all right.

10 Q. You gave us a list of the primary wines that you are  
11 accumulating in your cellar. And those are primarily Bordeaux  
12 wines. Is that right?

13 A. No, in my cellar I accumulate a tremendous amount of  
14 different wines, everything from Kiwi wines to California  
15 wines, Spanish wines, Italian wines.

16 Q. When you talked about the ones that you were trying to get  
17 the full years of, the four types, the Chateaus, Lafite's a  
18 bordeaux. Right?

19 A. Yes.

20 Q. Mouton's a bordeaux?

21 A. Yes.

22 Q. And Latour and Petrus?

23 A. Well, yes.

24 Q. Okay. So the ones that-- your primary passion is for  
25 Bordeaux?

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DCDBKURT1

Koch - cross

- 1 A. No. No. I said earlier that to satisfy my incessant  
2 collection habit, I wanted to collect every year of these  
3 wines. Now, if I hadn't gotten stung by most of them being--  
4 most of the older wines being fake, I probably would have  
5 collected La Tache and Domaine de la Romanee-Conti as well, but  
6 I stopped with those four. But my primary passion is  
7 collecting outstanding wines that I could drink and share with  
8 my friends.
- 9 Q. And the reason that you stopped is you found out that 50  
10 percent of those that you had were all fakes?
- 11 A. I don't know whether 50 percent are fakes, but it's  
12 mainly-- I haven't added it up compared to what I've got, but  
13 it's generally the pre-'45 wines are fake.
- 14 Q. Pre-'45s?
- 15 A. Yes, generally. I'd have to go back and look. I got so  
16 many fake wines I can't keep them all in my head,  
17 unfortunately.
- 18 Q. And I take it at the time that you bought all of those fake  
19 wines, or each of those fake wines, you didn't know that they  
20 were fake wines?
- 21 A. I sure didn't. I believed what I was told and I believed  
22 what was represented in the catalogs and I believed the  
23 labels.
- 24 Q. And when in time was it that you started to question the  
25 authenticity of what was in your cellar?

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DCDBKURT1

Koch - cross

1 A. When in time?

2 Q. When in time? What period of time did that start?

3 A. 2005.

4 Q. And that was after you had begun to have the problem with  
5 the Jefferson bottles?

6 A. That's when I found the Jefferson bottles were fake, proved  
7 that they were fake, and then that's when I got some additional  
8 information that there were other fake wines such as magnums of  
9 1921 Petrus and others. So that's when I said, man, if these  
10 Jefferson bottles are fake, I've got some other bottles that  
11 are fake, I better look at my entire cellar, you know. It  
12 opened a curtain for me.

13 Q. And that was on --

14 A. I pulled the curtain back from the Oz, you know, the  
15 wizard.

16 Q. Did you start talking to the auction houses and places  
17 where you had purchased these?

18 A. I talked to a couple. One auction house was good, that  
19 talked to me about fake wine. That was Sotheby's. Then, when  
20 I talked to the other auction houses, I got gobbledygook: "We  
21 verify everything. Everything that we sell is true."

22 Q. Was Acker Merrall one of those?

23 A. Acker Merrall was one of those, yes. Zachy's was one of  
24 them, Christies was one of them.

25 Q. They didn't seem concerned about the problem?

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DCDBKURT1

Koch - cross

- 1 A. They said they were concerned, but they were not helpful.  
2 And when I got down to it, they started pointing at a clause in  
3 their catalog that said you buy as is, where is, and anything  
4 that is said in the catalog is an opinion only or by our  
5 employees is an opinion only and you can't rely on it.  
6       Needless to say, that made me quite angry because the  
7 guy can say We're lying to you or We're selling you this is  
8 Petrus, but you can't believe me. And that's like a car  
9 salesman saying I'm selling you this Mercedes. You can believe  
10 me. And then later the fine print says, No, you can't believe  
11 me and I'm not responsible if it's really a Volkswagen.  
12       So I've sued on that and have found that --  
13 Q. You've got a number of lawsuits that you've filed against  
14 people with regards to wine. Is that right?  
15 A. Yeah, but at least the lawsuit that we filed has gotten  
16 that get out of jail card abolished or modified.  
17 Q. Now, in this day and age, now the auction houses are  
18 starting to change those policies. Is that right?  
19 A. Yeah, that's right.  
20 Q. And you've sued a bunch of auction houses?  
21 A. Yes.  
22 Q. You've sued a bunch of individuals?  
23 A. I've --  
24 Q. You've sued Mr. Kurniawan?  
25 A. Yes, I have.

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DCDBKURT1 Koch - cross

1 Q. And that lawsuit's pending. Right?

2 A. Yes.

3 Q. Okay.

4 A. And I sued Eric Greenberg.

5 Q. And you sued Eric Greenberg.

6 A. Yes, who bought a lot of wines from Rudy --

7 Q. And you bought --

8 THE COURT: Okay, okay.

9 THE WITNESS: I should be quiet or --

10 THE COURT: No, no, no. I'm just trying to focus in  
11 on this lawsuit.

12 THE WITNESS: Okay.

13 THE COURT: This case right here.

14 THE WITNESS: All right.

15 Q. Now, you talked about reconditioning wines.

16 I take it that-- and you've got a couple of wine  
17 cellars. Is that right? You've got a couple of different  
18 houses and they each have wine cellars?

19 A. Yes.

20 Q. One of those wine cellars is 1,300 square feet?

21 A. Well, you've got better information than I do.

22 Q. Okay. The other is 1,700 square feet?

23 A. I don't know where you get your information. Gosh, I've  
24 never heard those numbers.

25 Q. Haven't you reported those in interviews before?

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DCDBKURT1 Koch - cross

1 A. I don't remember.

2 Q. Are they big cellars?

3 A. Yes, they are big cellars.

4 Q. And you bar code-- you bar code the bottle so you'll be  
5 able to figure out where they are. Right?

6 A. Yes.

7 Q. And then from the bar code they go into the computer and  
8 the computer then can tell you where to go find them in the  
9 wine cellar?

10 A. That's correct.

11 Q. So this isn't-- this isn't a little corner that you're  
12 standing in with a rack down one side and a rack down the other  
13 side where you can stand in one place and look at all the  
14 bottles, is it?

15 A. Well, in those two cellars, that's right.

16 Q. And you've got a lot of wine, 43,000 bottles, that are down  
17 in these two cellars?

18 A. Well, I actually have four cellars.

19 Q. Oh, okay.

20 A. So the other cellars are the ones that you described, when  
21 you go down and there's two racks or three racks.

22 MR. HERNANDEZ: I'd object to these questions on  
23 relevance grounds.

24 THE COURT: Okay. We'll allow a little leeway, but  
25 I'd urge Mr. Mooney to focus in on the case.

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DCDBKURT1 Koch - cross

1 Q. And in connection with the passion that you've got with  
2 respect to wine, you've used wine motif in some of the  
3 decorating in at least one of your houses, haven't you?

4 A. Yeah, in two bathrooms.

5 Q. And you have a wall that's made out of wine bottles?

6 A. I would say it looks more like a door that's made out of  
7 wine bottles.

8 Q. And it's wine bottles that are backlit. Right?

9 A. Yeah.

10 THE COURT: That are what?

11 MR. MOONEY: Backlit so that the light comes from  
12 behind them.

13 A. Boy, you've done some good investigation. Been in my  
14 house?

15 Q. You never invited me, sir.

16 A. No, I have wine bottles that are stacked like this.

17 Q. Okay.

18 A. So you see the butt end and I've got the other side lit.

19 Now, it's about that wide and about 6 feet tall and it's  
20 stacked with bottles that I've drunk or that friends and I have  
21 drunk.

22 Q. And then you've got a ceiling that's made out of corks?

23 A. Yes, and the corks came out of the bottles that we've  
24 drunk.

25 Q. So you pull the corks, keep the corks, and there they are?

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DCDBKURT1

Koch - cross

- 1 A. That's right.  
2 Q. And that's kind of pleasing to look up and say, you know,  
3 I've drank those?  
4 A. That's right.  
5 Q. And hopefully you're looking up and not laying there. You  
6 didn't drink all of those at one time.  
7 A. No.  
8 Q. Okay. And you've got a wall that's wallpapered in labels,  
9 don't you?  
10 A. Partially wallpapered.  
11 Q. Okay.  
12 A. I'll give you some help here. The labels are all labels  
13 that we've drunk, of wines that we've drunk. And I've also put  
14 the-- I have a wainscoting of the ends of the crates on the  
15 side, you know. But it's a small bathroom.  
16 Q. I didn't know that part.  
17 A. Well, just helping you out.  
18 Q. It sounds really pretty.  
19 A. Yeah, but the crates and the labels and the corks and the  
20 bottles are all from wine that we've consumed.  
21 Q. And it's just a way for you to enjoy that aspect of your  
22 passion. Is that right?  
23 A. Well, it reminds me of great times and great wine.  
24 Q. And once you get closer to the age we are, we need to be  
25 reminded of those great times.

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DCDBKURT1 Koch - cross

1 A. You're absolutely right. Except you're a young stud, you  
2 know. I'm a fat old man.

3 Q. I suspect we're closer in age than you think.

4 Now, in order to really work your way through your  
5 collection and determine the extent of the problem with regards  
6 to the fake wines, you've ultimately employed five or six  
7 different experts to look at your bottles. Is that right?

8 A. Yes.

9 Q. And you've sent bottles over to the chateaus?

10 A. Yes.

11 Q. And you've sent bottles, as you said, a couple dozen of  
12 them, off for this cesium testing to see if they're old or  
13 new?

14 A. Yes.

15 Q. And some of the experts haven't been able to determine  
16 things that other experts have been able to determine. Is that  
17 right?

18 A. That's true.

19 Q. So --

20 A. Excuse me. One other thing that we've done is that we've  
21 hired a materials specialist, who will look at a label, tell  
22 you when the paper was made, tell you when the print was made,  
23 tell you what kind of glue it is. He's a scientist.

24 Q. Sure.

25 A. And, you know, we found labels. He'll tell you whether the

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DCDBKURT1

Koch - cross

1 labels were Xeroxed, you know. We found Xeroxed labels. We  
2 found 1858 labels that were put on with Elmer's glue, you know.  
3 Things like that.

4 (Continued on next page)

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DCDLKUR2

Koch - cross

1 Q. And those people can easily detect that, can't they?

2 A. I wouldn't say easily. They -- it takes them a certain  
3 amount of time. There's one expert who could look at it and  
4 just from his knowledge of it can look at it, but it takes him  
5 20 minutes per bottle. There's another expert that takes about  
6 an hour, hour and a half per bottle. So it varies with what  
7 they're looking for.

8 Q. And part of the reason that you've had to have all these  
9 experts come in and look at everything is that you just can't  
10 be confident based upon your own eye that which bottles are  
11 correct and which bottles are not?

12 A. That's absolutely true. I can't even tell a fake dollar  
13 bill. I don't want to be a wine expert; I want to be a wine  
14 consumer.

15 Q. Sure. And now you've got some bottles I think you said  
16 that were reconditioned?

17 A. Yes, but they're labeled reconditioned by the chateau on  
18 such and such a date.

19 Q. And what's important about reconditioning, of course, as  
20 you told us, is that if somebody is going to recondition  
21 bottles, you don't want them adding something other than the  
22 actual wine?

23 A. Yes.

24 Q. So --

25 A. I've had some wine in which antifreeze was added to it.

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DCDLKUR2

Koch - cross

1 Sorry.

2 Q. Well, you do know that at the end of World War II, some of  
3 the American soldiers irritated the French mightily by adding  
4 alcohol to the wine?

5 A. (Laughing)

6 Q. So if you're going to have a bottle of a say a '62  
7 Romanee-Conti that it's been reconditioned, you would want it  
8 conditioned with a 62 Romanee-Conti?

9 A. Yes. That's absolutely right.

10 Q. Okay. And if somebody is cleaning up the bottles of wine  
11 and fixing things on the bottles of wine, that would affect the  
12 value of the wine as a collectible, wouldn't it?

13 A. Well, no. It would also affect whether I as a consumer  
14 would want to buy that bottle because I've seen guys, Eric  
15 Greenberg in particular, who did clean up the bottles and his  
16 idea of cleaning it up is considerably different than my idea  
17 of cleaning it up.

18 Q. And that's sometimes even putting new labeling on the  
19 bottle?

20 A. That's right.

21 Q. And at that point in time it means you don't want the  
22 bottle anymore, but it doesn't change what's in it, does it?

23 A. It makes you suspicious of what is really in the bottle.  
24 Why would a person want to change the label, why, unless he was  
25 trying to sell you something, unless he had a huge economic

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DCDLKUR2 Koch - cross

1 motive to sell it for a much higher price than he bought it or  
2 got it. Because anybody knows, as I told you, that you want to  
3 look at the original item, not the reconditioned item.

4 Q. You think maybe he just wants to make it look better?

5 MR. HERNANDEZ: Object to "he," whoever "he" is.

6 THE COURT: Sustained.

7 MR. MOONEY: May I have a moment?

8 No more questions, your Honor.

9 THE COURT: Any redirect?

10 MR. HERNANDEZ: Yes, your Honor.

11 REDIRECT EXAMINATION

12 BY MR. HERNANDEZ:

13 Q. Mr. Koch, I'm actually going to begin, I'm going to start  
14 where Mr. Mooney began, just a few questions about rifles and  
15 then we'll get to wine, if that's okay?

16 A. Sure.

17 Q. You were talking about Winchester rifles as an item that  
18 you purchase, and Mr. Mooney asked you some questions about how  
19 sometimes people may make modern, current-day modifications to  
20 an old Winchester rifle.

21 Do you remember those lines of questions?

22 A. Yes.

23 Q. Now, if you were to be bidding on an old Winchester rifle  
24 in an auction that had been modified let's say in 2013, would  
25 you expect that fact to be disclosed by the person consigning

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DCDLKUR2 Koch - redirect

1 it or by the auction house?

2 A. Absolutely. If it weren't in there, I would say it was, it  
3 was verging on fraud.

4 Q. And would it affect the value or your willingness to bid on  
5 that item if the Winchester rifle didn't have its original  
6 parts?

7 A. Absolutely. It would have lowered it by 95 percent or to  
8 zero, its value.

9 Q. Now, a rifle, that has lots of different parts, correct?

10 A. Yes.

11 Q. So I'm going to ask you about two parts here.

12 There's the butt or the stop, that's the part that  
13 goes against your shoulder, right?

14 A. Yes.

15 Q. And then let's use the trigger because everybody knows what  
16 that is, the part you pull to make it fire, right, right,  
17 that's the trigger?

18 A. Yes.

19 Q. If someone modifies just the trigger on an old Winchester  
20 rifle, is it possible to examine the other parts of the rifle  
21 to determine whether they're original?

22 A. Yes.

23 Q. Now, how about a bottle of wine, if the label and the cork  
24 are modified on or changed on a bottle of wine, can you with  
25 the same ease tell whether the wine is authentic?

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DCDLKUR2

Koch - redirect

1 A. No.

2 Q. Why?

3 A. Because if you open the cork to get at the bottle of wine,  
4 you'll destroy it, you'll destroy the wine because it  
5 deteriorates when it gets in contact with oxygen. And so other  
6 people have thought about, you know, putting a needle in and  
7 pulling it out that way. Well, you put a needle in, you put a  
8 channel for oxygen to get in. So this is in a scientific term  
9 testing the wine and it's called destructive testing. You  
10 destroy it when you test it, and it's impossible to do it in a  
11 nondestructive way.

12 Q. Well, there are some questions also about testing, about  
13 cesium testing?

14 A. Yes.

15 Q. Mr. Mooney asked you about whether that big bottle had been  
16 cesium tested and you said no. Do you remember that?

17 A. Yes.

18 Q. And you weren't given an opportunity to explain why. You  
19 said you could tell us why.

20 Do you want to tell us why it wasn't tested?

21 A. Oh, sure. Well, because the atom bombs went off in 1945  
22 and thereafter. And if I want to determine the year of it, if  
23 the year were accurate, that's all cesium testing does is tell  
24 you the year, tell you whether it was post '45 or pre-'45.

25 And so you use cesium testing when you're getting a

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DCDLKUR2

Koch - redirect

1 very expensive bottle that's a 1736 or I bought one bottle that  
2 was for 1711. I should have had that cesium test. But I  
3 already found out that was fake because it said Chateau Lafite  
4 Rothschild on it and the Rothschilds didn't own Lafite in those  
5 years.

6 So you only take it back to this very, very old wines  
7 where they're demanding a very high price because of its age.  
8 Q. So for that 1947, the test isn't helpful because there was  
9 already atomic testing and cesium in the environment; is that  
10 right?

11 A. That's right, that's right. You know, and to test the  
12 liquid in wines, even if you do chemical testing, that doesn't  
13 prove much because there's over a hundred thousand different  
14 components in wine and various combinations of that give you  
15 all the taste and so it's extremely difficult to do that. And  
16 people said, well, you taste it, you test it by tasting.  
17 That's hogwash because you and I will have different tastes.  
18 Tasting is a subjective test.

19 Q. So is that why the labels and the corks and the physical  
20 items are so important?

21 A. Absolutely, absolutely. Because those are the real things  
22 that you could put your hands on and your mind around that  
23 shows that this is a real bottle.

24 Q. Now, you were also asked some questions about collectible  
25 wine versus drinking wine that you keep at home.

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DCDLKUR2

Koch - redirect

1 Do you remember those questions?

2 A. Yes.

3 Q. And you were asked about whether it matters to you whether  
4 the wine inside is authentic, do you remember those questions,  
5 whether the wine inside the bottle is authentic?

6 A. Yes.

7 Q. Just so that we're absolutely clear, I'm going to ask you a  
8 couple questions about collectible wine first and drinking wine  
9 second.

10 A. Right.

11 Q. Let's talk about collectible wines first. Does it matter  
12 to you that the wine inside the bottle in a collectible wine is  
13 authentic?

14 A. Absolutely.

15 Q. Does it matter to you that the physical parts of the  
16 label -- of the bottle, the label, the cork are authentic in a  
17 collectible bottle of wine?

18 A. Absolutely.

19 Q. All right. Now let's talk about the drinking wines.

20 Does it matter to you that the liquid inside the  
21 drinking wines is authentic?

22 A. Of course. That's what you're putting in your body. Of  
23 course you want it to be what it says it is.

24 Q. Now, what about the corks and the labels for the drinking  
25 wines, does that matter to you too?

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Koch - redirect

1 A. Of course, because the corks and labels tell you whether  
2 it's original or not because that's what the fakers can do.  
3 They fake the corks, they fake the label, they fake the  
4 capsule, and they can even fake the bottle, so.

5 Q. So is it fair to say that it doesn't matter to you what  
6 classification of wine it is in your cellar, you want all the  
7 wine in your cellar to be authentic and you want all the  
8 bottles to be authentic?

9 A. Absolutely.

10 Q. And that affects your both willingness to buy and price you  
11 would pay?

12 A. Absolutely.

13 Q. Now, you were asked a few questions about your home  
14 decoration choices; do you remember that?

15 A. Yes.

16 Q. So there are some rooms in your home that have corks as  
17 part of the decoration; is that right?

18 A. Well, let me be precisely accurate. In my home in Palm  
19 Beach, Florida, I have a bathroom, a small bathroom, that's  
20 right next to my wine cellar that has corks on the ceiling.  
21 One wall right off the commode that has the bottles stacked.  
22 Then on half the wall I have the labels. And then on the other  
23 half, the bottom of the wainscoting, I have the ends of the  
24 crates.

25 Now, on Cape Cod, where I have a summer house, I have

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Koch - redirect

- 1 another cellar and a very tiny john, bathroom, right next to  
2 that. And there I only have -- I have a regular wood  
3 wainscoting and a regular black ceiling. But there we put, I  
4 wallpapered a small part of it with the wine labels of all the  
5 bottles of all the wines that we drank on the cape.  
6 Q. So we're talking about two bathrooms here?  
7 A. Yes, just two.  
8 Q. And take a look around in the jury box there, right where  
9 you're sitting, just right now in the box you're sitting in,  
10 about -- compare the bathroom size to the size of the jury box  
11 you're in.  
12 A. About the same size. Maybe difference might be, you know,  
13 6 inches here, 6 inches there, about the same size.  
14 Q. Room for a sink maybe?  
15 A. Room for a toilet, room for a sink.  
16 Q. I'm sorry. Let me correct something. I said jury box. I  
17 meant witness box.  
18 A. Okay. The jury box is much bigger. I'm sorry.  
19 Q. Let me be more precise and figure out exactly how luxurious  
20 this bathroom is.  
21 You're looking around in the witness box, right?  
22 A. Yes.  
23 Q. You were referring to the witness box when you were  
24 answering?  
25 A. Yes, I was.

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DCDLKUR2 Koch - redirect

1 Q. Okay. I was gesturing to the witness box, but, you know,  
2 everything we do here is for the jury so I had them on my mind.

3 But you meant the witness box, right?

4 A. Yeah, I'm sorry.

5 Q. It's my fault.

6 A. I thought -- you were pointing at me, so I thought it was  
7 where I was.

8 Q. Entirely my fault.

9 THE COURT: You know, Mr. Hernandez, in this  
10 courtroom, both the jury box and the witness box we consider  
11 luxurious.

12 Q. Now, the labels you say that you have in your summer home,  
13 the wine labels that you have in the bathroom, did you print  
14 those on your home computer?

15 A. No. We rinsed them or soaked them off the bottles, real  
16 labels.

17 Q. And then did you scan them into your computer and then  
18 print them and put them on the wall?

19 A. No, heavens no.

20 Q. Did you use any wax to decorate your home?

21 A. No. I mean we wax tables, but we don't put wax, no.

22 Q. Have you ever used an ink pad maybe to paint the walls  
23 instead of paint from the hardware store?

24 A. Heavens no.

25 Q. And do you know the wines of Domaine de la Romanee-Conti,

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DCDLKUR2 Koch - redirect

1 are you familiar with them?

2 A. Oh, that's the premier wine of Burgundy.

3 Q. Do you know they have serial numbers on them stamped in  
4 black ink?

5 A. Yeah, yeah.

6 Q. Did you ever use serial number stamps to decorate your  
7 home?

8 A. No, of course not.

9 Q. Mr. Koch, you also were asked some questions about you  
10 hired a number of experts to examine bottles, and you said that  
11 you have an expert who's examined the bottles and takes about  
12 20 minutes per bottle to make these examinations; is that  
13 right?

14 A. Yes, that's one expert.

15 Q. What was that person's name?

16 A. Mike Egan, I believe.

17 Q. And you said that you yourself are not a wine expert?

18 A. No, I'm not.

19 Q. You're a drinker?

20 A. I'm a consumer.

21 Q. So your primary employment or you don't have any employment  
22 related to the wine business, right?

23 A. No.

24 Q. And you don't spend most of your time either buying or  
25 selling wine or drinking wine, correct?

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DCDLKUR2

Koch - redirect

1 A. No, I do not.

2 Q. And one final subject. You were asked some questions about  
3 reconditioning. You were asked by Mr. Mooney if you bought a  
4 1962 Romanee-Conti, you'd want it reconditioned with a '62  
5 Romanee-Conti, correct?

6 A. Yes.

7 Q. My question to you is would you want that reconditioning to  
8 be done by the Domaine de la Romanee-Conti exclusively, in  
9 other words, no one else?

10 A. Absolutely right. I would only want it done by the  
11 Domaine.

12 Q. If another collector had done it in their home, say in  
13 their kitchen, would that affect your willingness to buy that  
14 bottle?

15 A. Absolutely. I wouldn't buy it because he could have put  
16 dishwasher in it.

17 MR. HERNANDEZ: No further questions.

18 THE COURT: Okay. Thanks very much, Mr. Koch.

19 THE WITNESS: Thank you.

20 (Witness excused)

21 THE WITNESS: Do you want me to take these bottles  
22 home with me?

23 MR. HERNANDEZ: I'll hold them a little longer.

24 MR. MOONEY: I thought we were going to open them.

25 MR. HERNANDEZ: The government calls David Parker.

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DCDLKUR2

Koch - redirect

1 DAVID PARKER,

2 called as a witness by the Government,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. HERNANDEZ:

6 Q. Good morning, Mr. Parker.

7 A. Good morning.

8 Q. Mr. Parker, where do you live?

9 A. I live in Vancouver, Washington, just outside of Portland,  
10 Oregon.

11 Q. What do you do for a living?

12 A. I own several companies that sell wine and publish  
13 information.

14 MR. MOONEY: I can't hear the witness.

15 Q. I'll ask the question again. The audio isn't great in the  
16 courtroom. If you could speak directly into microphone. I'm  
17 going ask you the question again.

18 What do you do for a living?

19 A. I own several companies, two that sell wine, one that  
20 publishes information.

21 Q. What are the names of the two companies that sell wine?

22 A. Brentwood Wine Company and Benchmark Wine Group.

23 Q. Is there a difference in the focus or what those two  
24 companies do with respect to wine?

25 A. Yes. Brentwood Wine Company is an internet auction house

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DCDLKUR2 Parker - direct

1 for rare wine. Benchmark Wine Group is a wholesale and retail  
2 for fine and rare wine.

3 Q. And what did you -- when did you start these businesses?

4 A. Brentwood was started in 1998, Benchmark in 2002.

5 Q. What did you do for work before you started Benchmark and  
6 Brentwood?

7 A. I headed up engineering for a number of high tech firms,  
8 most recently Tektronix in Oregon.

9 Q. Mr. Parker, do you know someone named Rudy Kurniawan?

10 A. Yes, I do.

11 Q. How do you know him?

12 A. I've met him at several wine events. He is also a customer  
13 of both Brentwood and Benchmark.

14 Q. Have you ever sold Rudy Kurniawan wines from Domaine de la  
15 Romanee-Conti?

16 A. Yes.

17 Q. You have in front of you, there's some paper copy of  
18 exhibits. I'd ask you if you could look at Government  
19 Exhibit 33-2. Tell me if you recognize that document.

20 A. Yes, I do.

21 Q. How do you recognize it?

22 A. This is an invoice from Benchmark Wine Group to Rudy  
23 Kurniawan for the purchase of five bottles of Romanee-Conti  
24 1962.

25 Q. What's the date of this invoice?

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DCDLKUR2

Parker - direct

1 A. June 6, 2006.

2 Q. Did this invoice come from Benchmark's records?

3 A. Yes, it did.

4 Q. And is it regular practice of Benchmark to keep invoices  
5 like this?

6 A. Yes, it is.

7 MR. HERNANDEZ: The government offers 33-2.

8 THE COURT: I'll allow it.

9 (Government's Exhibit 33-2 received in evidence)

10 THE COURT: Are we publishing it at this time?

11 MR. HERNANDEZ: If we could publish it to the jury,  
12 please.

13 Mr. Platt, if you could just focus in on maybe the  
14 first half of the document.

15 Q. So, Mr. Parker, you can use the computer or the hard copy,  
16 whichever one is easier for you. Just check to make sure we  
17 can all see what you're talking about.

18 But this exhibit is an invoice from Benchmark Wine  
19 Group, one of your companies, correct?

20 A. Yes, it is.

21 Q. And the order date is June 6, 2006, correct?

22 A. Yes.

23 Q. And who's the person that the wine was billed to and  
24 shipped to?

25 A. Rudy Kurniawan.

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DCDLKUR2 Parker - direct

1 Q. And then I'm going to ask you to explain, do you see the  
2 bar where it starts with product?

3 A. Yes.

4 Q. I'm going to ask you to explain what's in the bar below it,  
5 the information, tell us what each of those abbreviations  
6 means.

7 A. Okay. DRC is an abbreviation for Domaine de la  
8 Romanee-Conti. Romanee-Conti is the best vineyard that that  
9 Domaine has.

10 1962 would be the year, the vintage of the wine.

11 And then in parenthesis, 2.5 inches BC. That would be  
12 a measurement of how far below the cork the level of the wine  
13 was at that time. So in this case, two and a half inches below  
14 the cork to the top of the wine if the bottle is stood up.

15 CC would be corroded capsule, the capsule being the  
16 foil on the top of the bottle.

17 BSL would be bin stained label, a label that had a  
18 stain in it.

19 And then excellent color means the wine is of an  
20 excellent color when lit from behind.

21 Q. All right. And the number of bottles that were sold?

22 A. Five.

23 Q. Now, in this invoice you noted that basically the  
24 evaporation, the gap between the bottom of the cork and where  
25 the wine begins is two and a half inches, right?

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DCDLKUR2 Parker - direct

1 A. Yes, that's right.

2 Q. There's a fancy word for that, it's called ullage, right?

3 A. Yes.

4 Q. Can we call it like the air pocket or something like that?

5 A. Yeah, any of those are fine.

6 Q. So we're talking about the same thing.

7 Now, how did you know that when you sold these bottles  
8 in June of 2006 to the defendant that there was two and a half  
9 inches of air between the cork and the wine in the bottles?

10 A. We measured that at the time of check-in when we first took  
11 the wine from the consignor or seller.

12 Q. Did you personally measure it?

13 A. Yes, I did.

14 Q. Can you describe to the jury how you measured it.

15 A. Well, we stand the bottle up, as those bottles are. We  
16 take a ruler and we measure from the very bottom of the cork as  
17 we can see it to the top of the liquid.

18 Q. Now, sometimes the capsule, the little foil part, can cover  
19 portions of the cork. What do you do then?

20 A. Well, in most cases the amount that's covered is easy to  
21 tell. It's usually about an eighth of an inch. And then we  
22 would allow an eighth of an inch for that amount.

23 Q. When you measured these five bottles, were you careful in  
24 making that measurement of that air pocket?

25 A. Yes.

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DCDLKUR2

Parker - direct

1 Q. Why?

2 A. Well, it goes to value very highly. The lower the fill,  
3 the lower the value of the wine and it can drop off quite  
4 quickly, the value can.5 Q. And at the time in June of 2006, did Benchmark sell a lot  
6 of wines of this caliber and price?7 A. I would say this is very much at the top end of the types  
8 of wines that Benchmark sold. But, yes, Benchmark does sell in  
9 this range.10 Q. I'm going to ask you now to look at a document in front of  
11 you that's Government Exhibit 33-4.

12 Do you recognize that document?

13 A. Yes, I do.

14 Q. What is it?

15 A. This is the check-in sheet. This is the sheet that we use  
16 to record various conditions when we look at a wine as we're  
17 taking ownership of it.18 Q. And there's a lot of handwritten notes on here. Do you  
19 recognize the handwriting?

20 A. Yeah, it's mine.

21 Q. Is there any relationship between the notes on the wines in  
22 33-4 and the Government Exhibit that was just admitted, 33-2?23 A. Yes, a lot of the same abbreviations and also the same  
24 ullage, if you want to use that word, for a number of the  
25 bottles.

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DCDLKUR2 Parker - direct

1 Q. So the notes in 33-4 relate to the bottles that were sold  
2 to Rudy Kurniawan in June 2006?

3 A. Yes, they do.

4 Q. Was it Benchmark's practice to keep records like this with  
5 notations on the condition of the bottles in Benchmark's  
6 records?

7 A. Yes, for bottles like this.

8 Q. And that's a regular practice of Benchmark?

9 A. Yes.

10 MR. HERNANDEZ: Government offers 33-4.

11 THE COURT: I'll allow it.

12 (Government's Exhibit 33-4 received in evidence)

13 MR. HERNANDEZ: Can we publish that exhibit to the  
14 jury, please.

15 Mr. Platt, I'm going to ask you to highlight -- first  
16 if we could focus in on the bracket under five failed corks.  
17 I'm sorry, could we just focus in on that and then we'll do a  
18 highlight. So I ask you to highlight the line that starts with  
19 07162 and then the two numbers that end in 66 and 69.

20 Q. Mr. Parker, I'm going to ask you to explain to us what  
21 these notations mean starting with the first line that's in  
22 yellow highlighting and then work your way down.

23 A. Okay. The first line that's highlighted starts with 07162.  
24 That's the specific serial number of one of the bottles. Each  
25 of the bottles has a unique serial number for Romanee-Conti.

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DCDLKUR2

Parker - direct

1 LCC would be lightly corroded capsule.

2 BSL would again be bin stained label.

3 And then the two and a half inches BC would again be  
4 two and a half inches below cork for the fill.

5 After that we removed about 50 percent of the value of  
6 that bottle as compared to if it had been in excellent  
7 condition because of the lower fill and other conditions on  
8 that wine.

9 Q. Okay. Now, these are Domaine de la Romanee-Conti serial  
10 numbers, correct?

11 A. That's right.

12 Q. You said you made some notations to deduct a percentage of  
13 value because of the fill, correct?

14 A. The fill and the other conditions also.

15 Q. And the other conditions.

16 Now, how would it have affected the price of these  
17 bottles if that air pocket, the ullage, was only say an inch  
18 and a half rather than 2 inches?

19 A. There will be a much lower deduction for the wine. In  
20 other words, it would have been worth much more money.

21 Q. Now, these three wines that you took these notes upon, are  
22 these three of the wines that you sold in June of 2006 to the  
23 defendant?

24 A. Yes.

25 Q. Now, there are also some notes about other bottles of wine

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DCDLKUR2 Parker - direct

1 here. Did you sell any of those to the defendant?

2 A. Yes, other -- yes, we did.

3 Q. In total, how many bottles of 1962 Romanee-Conti did you  
4 sell to the defendant?

5 A. Through Benchmark Wine Group we sold him five, and then  
6 through Brentwood Wine Company we sold him two or he won two in  
7 auction.

8 Q. Did you, after you sold these, were they shipped in June of  
9 2006 or there about?

10 A. Yes, I believe so.

11 Q. And did you see any of these seven bottles that you sold to  
12 the defendant at any time after June of 2006?

13 A. Not until yesterday.

14 Q. All right. Did you see any auction catalogs after June of  
15 2006 where you saw a photograph of these bottles?

16 A. Yes, yes, I did.

17 Q. Could you describe that and explain to us when you saw it  
18 and where you saw it.

19 A. It was an Acker Merrall & Condit auction catalog, I  
20 believe, from the April time frame, 2006. It had -- at least  
21 two of the bottles had the same serial numbers apparent in the  
22 photo as the bottles that we sold to Rudy.

23 Q. So you could see two matching serial numbers from the  
24 bottles that you sold to the defendant?

25 A. Yes, that's right.

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DCDLKUR2 Parker - direct

1 Q. Was this in the Cellar II catalog which was October 2006?

2 A. I'm not sure which catalog it was.

3 Q. Was there anything that struck you about the bottles when  
4 you saw the photograph?

5 A. The fills looked very significantly higher than when we had  
6 the bottles.

7 Q. And in as basic terms as you could, what do you mean by  
8 that?

9 A. The fill level of the wine in the bottles in the  
10 photographs was much higher, perhaps an inch or so, as opposed  
11 to the two and a half inches that when we had the bottles.

12 Q. It looked like there was more wine in the bottles than from  
13 when you sold it?

14 A. Yes, yes.

15 MR. HERNANDEZ: May I approach the witness, your  
16 Honor.

17 Q. I'm going to show you three bottles of wine that have  
18 already been admitted into evidence, Government Exhibit 6-1,  
19 6-2, and 6-3, and all three of these bottles were admitted  
20 through Truly Hardy, the first witness in the trial, and they  
21 all bear the sticker of the Cellar II auction on the back.

22 My question to you is, please take Government  
23 Exhibit 33-4, your handwritten notes on the bottles you sold to  
24 the defendant in June of 2006, and compare those serial numbers  
25 to the serial numbers on those bottles in front of you and tell

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DCDLKUR2 Parker - direct

1 me if there are any matches.

2 A. Yes, this matches three of the bottles.

3 Q. Can you tell us, referring you to the exhibit number and  
4 the serial number, what the matches are?

5 A. Yes. 07162 is this bottle here. 07169 is this bottle.

6 Q. When you say this bottle, could you read the government  
7 exhibit number?

8 A. Yes. For the first one, 07162, Government Exhibit 6-1.  
9 07169, Government Exhibit 6-3. And 07166 is Government  
10 Exhibit 6-2.

11 Q. So, Mr. Parker, these are the exact bottles that you sold  
12 to the defendant in June of 2006?

13 A. Yes.

14 Q. And they had a two-and-a-half-inch air pocket when you sold  
15 it to him in June of '06?

16 A. Yes, that's right.

17 Q. Mr. Parker, what would you need to measure the distance of  
18 the air pocket in those three bottles right now in the same way  
19 that you did in June of 2006 when you sold the bottles to the  
20 defendant?

21 A. A ruler.

22 MR. HERNANDEZ: May I?

23 THE COURT: You may.

24 Q. I'm going to hand you a ruler. I'm going to ask you to  
25 measure the air pocket, the ullage, on all three bottles in the

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DCDLKUR2 Parker - direct

1 exact same way you did in June of 2006 when you sold them and  
2 tell us what the distance is referring to each Government  
3 Exhibit number.

4 A. Okay. Government Exhibit 6-2.

5 Q. And if you could, just vocalize what it is that you're  
6 doing so that we have for the record a description of how  
7 you're doing this.

8 A. So I am measuring from the bottom of the cork to the top of  
9 the liquid.

10 So in this case this looks to be about one and an  
11 eighth inches on, again, Government Exhibit 6-2, serial No.  
12 07166.

13 Q. Thank you. Go on to the next bottle which is Government  
14 Exhibit?

15 A. 6-3. This appears to be exactly 1 inch, again, 6-3 or  
16 serial No. 07169.

17 Q. And then now you're looking at Government Exhibit?

18 A. 6-1. This appears to be one and a quarter inches and,  
19 again, Government Exhibit 6-1, 07162 serial number.

20 Q. Thank you, Mr. Parker. I'm going to take these bottles,  
21 just move them out of the way.

22 You've had a good chance to look at these bottles?

23 A. Yes.

24 Q. Do you know what it means to recondition a bottle of wine?

25 A. Yes, I do.

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DCDLKUR2 Parker - direct

1 Q. And when you examined these bottles, did you see any  
2 evidence that they were reconditioned by Domaine de la  
3 Romanee-Conti sometime between June of 2006 and the Cellar II  
4 auction in October of 2006?

5 A. No, not at all, in fact, to the contrary. They would not  
6 look like that if they had been reconditioned by the Domaine.

7 Q. How would they look?

8 A. They would have new capsules on them. They would have a  
9 sticker on them indicating that they had been reconditioned.  
10 And I don't believe they would have left the labels in that  
11 condition, but that would be a decision of the Domaine.

12 Q. And would it affect the value of these bottles of wine if  
13 someone other than Domaine de la Romanee-Conti added wine to  
14 these bottles?

15 A. Oh, yeah. Nobody else should be doing that. That would  
16 destroy the value of the wine in my opinion.

17 Q. Am I correct that the only way a level of wine can go up  
18 from two and a half inches to one and a half or 1 inch is if  
19 someone adds wine to the bottle?

20 A. Yeah, that would be correct.

21 Q. Over time wine evaporates, correct?

22 A. Yes, it does.

23 Q. But it doesn't regenerate?

24 A. No.

25 MR. HERNANDEZ: No further questions.  
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DCDLKUR2 Parker - direct

1 CROSS-EXAMINATION

2 BY MR. MOONEY:

3 Q. Good morning, Mr. Parker.

4 A. Good morning.

5 Q. Now, you told us that Mr. Kurniawan bought not just these  
6 five bottles from you, but he bought a total of seven bottles  
7 of the '62 DRC; is that correct?

8 A. Yes, that's correct.

9 Q. And four of those were on the invoice that we saw?

10 A. Five.

11 Q. Excuse me, five of them. Five of them are on -- if we can  
12 put the Elmo on, please.

13 THE COURT: Is that what you wanted, Mr. Mooney?

14 Q. Five of them are on this Exhibit 33-2 that we saw; is that  
15 correct?

16 Those you sold to him in June 6 of 2006; is that  
17 right?

18 A. Yes, yes.

19 Q. And the price on those bottles was over -- almost \$6,100 a  
20 bottle, \$6,095 each; is that right?

21 A. Yes, that's right.

22 Q. And then you wrote down distances in this note.

23 Is this a contemporaneous note that you prepared?

24 A. The handwritten note was at the time that the wines were  
25 checked in, yes, at that exact time.

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DCDLKUR2

Parker - cross

- 1 Q. When you were -- when you were first interviewed by  
2 Mr. Koch's investigators back in November of 2009, you had not  
3 been able to locate that; is that correct?
- 4 A. That's correct.
- 5 Q. And you told him at that point in time that you had a file  
6 on Mr. Kurniawan but you didn't know where it was?
- 7 A. I believe my office staff had the file, yes, and we  
8 didn't -- weren't able to put our hands on it immediately.
- 9 Q. And even when you were later interviewed by the FBI you had  
10 not at that point found this file, had you, a couple years  
11 later?
- 12 A. I'm not sure which documents we had provided, but we  
13 continued to provide the documents over time as we found them.
- 14 Q. The other two bottles that were purchased by Mr. Kurniawan  
15 were purchased on the internet auction?
- 16 A. Yes, Brentwood Wine Company.
- 17 Q. And those were done about approximately the same period of  
18 time?
- 19 A. Yeah, I believe that invoice was June 1 of 2006.
- 20 Q. When you were working with the investigators on this thing,  
21 there was some confusion in your mind about what the serial  
22 numbers were for those bottles, wasn't there?
- 23 A. Not so much the serial numbers but which Romanee-Conti it  
24 was.
- 25 Q. The other two bottles that you bought, didn't you

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DCDLKUR2

Parker - cross

1 originally tell them that the serial numbers were 07165 and  
2 07185?

3 A. The other two bottles?

4 Q. The other two bottles.

5 A. I don't remember exactly which ones I told them when.

6 Q. And, of course, 07165 and 07 -- let's put back up  
7 Exhibit 33-4, would you, if you'd highlight 07165, just  
8 highlight it, not expand it. Thanks.

9 Okay. That's the serial number you have on this note  
10 as one of the ones that was provided by Brentwood -- by  
11 Benchmark, not Brentwood.

12 A. This note, this note here does not specifically define  
13 which ones were provided by Benchmark and Brentwood. What this  
14 note is indicating with that bracket is that four of the  
15 bottles were all two and a half inch below cork, very similar  
16 to each other.

17 Q. Does this identify the other two bottles that were sent by  
18 Brentwood?

19 A. Yes. I think you'll see a total of seven bottles there.  
20 And between the five that were sent from Benchmark and the two  
21 that were sent from Brentwood, that exhausts all seven of  
22 these. So every one of the serial numbers you see there  
23 beginning with an 07 was sold to Rudy Kurniawan.

24 Q. So if we looked everything from 07162 down to 07185, those  
25 are the seven bottles?

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DCDLKUR2

Parker - cross

- 1 A. Yes, that's right.  
2 Q. That you sold to Mr. Kurniawan?  
3 A. Yes, that's right.  
4 Q. Are you sure that you measured this in inches and not in  
5 centimeters?  
6 A. Yes, I am.  
7 Q. Do you always write down that ullage?  
8 A. Do I always write down the ullage on every wine?  
9 Q. Yes, on every wine.  
10 A. No, not every wine, only the very high value bottles where  
11 that's an issue.  
12 Q. And do you know whether or not 07166, Exhibit 6-2, had a  
13 capsule on it when you sold it?  
14 A. Yes. All the bottles had capsules when we sold them.  
15 Q. But there's no capsule on it now?  
16 A. There's none now.  
17 Q. You don't know when that was removed?  
18 A. No idea.  
19 Q. And do you know if 07162 had a cut capsule?  
20 A. I believe it did not.  
21 Q. And do you know whether 07169, Exhibit 6-3 had a cut  
22 capsule?  
23 A. Again, I believe it did not have a cut capsule.  
24 Q. When you looked at the auction catalog on Acker Merrall, do  
25 you remember how many bottles were being sold?

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DCDLKUR2

Parker - cross

- 1 A. I believe it was roughly six, perhaps seven.  
2 MR. MOONEY: If we go back to the Elmo. You guys got  
3 the catalog someplace.  
4 Q. Does that look like the page from the sale catalog that  
5 showed the six bottles?  
6 A. Looks like it, although the picture was in color. It would  
7 be easier to read than this one.  
8 Q. I'm not graced -- there we go. That's nice. Much nicer.  
9 A. Yes, that's the picture.  
10 Q. Give a better picture of what there was?  
11 A. Yes.  
12 Q. And that's six bottles that were sold, right?  
13 A. Yes.  
14 Q. Now, originally -- strike that.  
15 You met Mr. Kurniawan originally back in about 2001,  
16 2002; is that correct?  
17 A. Roughly. Might even have been a little bit earlier than  
18 that.  
19 Q. And you met him as somebody who became a big buyer of wines  
20 back in that period of time?  
21 A. Yes, yes. When I first met him, it was not quite as clear  
22 how big a buyer. But over time he developed the reputation for  
23 being a big buyer.  
24 Q. So he bought more and more and more as time went on?  
25 A. By reputation. He bought relatively few bottles from us.

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DCDLKUR2

Parker - cross

1 Q. He spent hundreds of thousands of dollars with you, didn't  
2 he?

3 A. Well, he placed one order that we brokered for a very large  
4 amount and never paid, so we never consummated that deal.

5 Q. So the order never went through?

6 A. Yes, that's right.

7 Q. And you and he have been in dispute over that for a good  
8 number of years, haven't you?

9 A. No. We dropped that a long time ago. We didn't put the  
10 order in with the broker and let it lie, canceled the order.

11 Q. That was a \$420,000 order?

12 A. Roughly. Series of orders that equal that amount.

13 MR. MOONEY: No more questions.

14 THE COURT: Any redirect?

15 MR. HERNANDEZ: Very briefly, your Honor.

16 REDIRECT EXAMINATION

17 BY MR. HERNANDEZ:

18 Q. Mr. Parker, you were asked some questions about the  
19 conditions of those bottles by Mr. Mooney.

20 Do you remember those questions?

21 A. Yes.

22 Q. Have you ever received any wine that was consigned to an  
23 auction house before, either bought it yourself or had it pass  
24 through your hands?

25 A. Yes.

DCDLKUR2 Parker - redirect

1 Q. And do you know whether sometimes auction houses cut the  
2 capsules to look at the corks?

3 A. Yes, I know that they do sometimes.

4 Q. So you don't know because you weren't at Acker, but is that  
5 a possible reason for why those capsules were cut?

6 A. Yes, it is.

7 Q. And the photograph of the bottles in the catalog that  
8 Mr. Mooney showed you, do you remember the set of those  
9 bottles?

10 A. Mm-hmm, yes, I do.

11 Q. Just so that we're clear, some of those bottles are visible  
12 and some are not, correct?

13 A. Yes. Some of them are partially obscured by other bottles.

14 Q. And are you saying that these three bottles here in front  
15 of the jury are the visible bottles in the picture or something  
16 else?

17 A. I believe they're ones that are in the picture, but these  
18 three we cannot see the serial numbers on I don't believe.  
19 There are two in the picture that show the full serial numbers  
20 that are part of this group of seven. I don't believe these  
21 three are specifically visible with their complete serial  
22 numbers.

23 Q. So those three are part of the ones that are partially  
24 obscured?

25 A. In my recollection, yes.

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DCDLKUR2

Parker - redirect

1 Q. All right. But you recognize some of the other serial  
2 numbers where they are visible as being some of the seven total  
3 bottles you sold to the defendant?

4 A. Yes, that's right.

5 Q. And then Mr. Mooney asked you about an order, a \$420,000  
6 order for wine that the defendant placed but never paid so,  
7 therefore, there was no transaction; is that right?

8 A. Yes, that's right.

9 Q. Do you remember what kinds of wines the defendant had  
10 placed the order for?

11 A. They were old wines, primarily European, and, relatively  
12 speaking, they were on the lower end of the value for wines of  
13 that age. They were I guess what I would call middling wines,  
14 not necessarily in keeping with the level of wine that  
15 Mr. Kurniawan generally poured or appeared to generally offer  
16 out.

17 Q. So these were not the top wines of Burgundy or the top  
18 wines of Bordeaux?

19 A. They generally weren't, and where they were, they were very  
20 off vintages.

21 THE COURT: They were off vintages?

22 THE WITNESS: Some of the vintages are worth far less  
23 than others. So what these generally were were some very good  
24 names but poor vintages, or good vintages, poor names.

25 Q. And when you say it's an off vintage or a bad vintage, that

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DCDLKUR2

Parker - redirect

1 just means the weather was lousy and the wine may not be that  
2 great?

3 A. That's right, and the wine would be worth a lot less also.

4 MR. HERNANDEZ: No further questions.

5 THE COURT: Okay. We'll excuse the witness and maybe  
6 we'll take a two-minute break.

7 (Witness excused)

8 (Continued on next page)

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DCDLKUR2

1 (Jury not present)

2 THE COURT: So if I could ask the counsel where we  
3 stand witness-wise.

4 MR. HERNANDEZ: So the next is Antonio Castanos. I  
5 think he's a pretty short witness, maybe 20 minutes on direct,  
6 I would say, probably at most, although, Mr. Facciponti, about  
7 20 minutes?

8 MR. FACCIPONTI: Twenty minutes, your Honor.

9 MR. HERNANDEZ: And then we have another witness who's  
10 on the way because if the Court intends to go as far as  
11 2 o'clock, it's possible that we'll finish that witness too,  
12 which would put us in prime, prime position to rest on Monday.

13 THE COURT: Great. So we will go to two. And, okay,  
14 take two minutes.

15 MR. HERNANDEZ: Thank you.

16 (Recess)

17 (Continued on next page)

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DCDBKURT3

Castanos - direct

1 THE COURT: Okay. We're ready now for the next  
2 witness.

3 (In open court; jury present)

4 MR. FACCIPONTI: The government calls Antonio  
5 Castanos.

6 ANTONIO CASTANOS,

7 called as a witness by the Government,  
8 having been duly sworn, testified as follows:

9 THE DEPUTY CLERK: Please state your name for the  
10 record.

11 THE WITNESS: Antonio Castanos Beltran.

12 THE DEPUTY CLERK: Can you spell that, please?

13 THE WITNESS: Castanos, C-a-s-t-a-n-o-s. Beltran,  
14 B-e-l-t-r-a-n.

15 DIRECT EXAMINATION

16 BY MR. FACCIPONTI:

17 Q. Mr. Castanos, I would just ask that you move your chair up  
18 close to the microphone and pull the microphone close to where  
19 you're speaking. Just for the court reporter who's taking  
20 everything down, try and speak as slowly as possible.

21 A. Yes, sir.

22 Q. In what city and state do you live?

23 A. Los Angeles, California.

24 Q. What do you do for a living?

25 A. I'm in the restaurant business.

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DCDBKURT3 Castanos - direct

- 1 Q. Do you own a restaurant?  
2 A. Yes, sir.  
3 Q. What is that restaurant called?  
4 A. Guido's G-u-i-d-o's.  
5 Q. Where is that restaurant located?  
6 A. 11980 Santa Monica boulevard.  
7 Q. In L.A.?  
8 A. L.A.  
9 Q. What kind of restaurant is it?  
10 A. Italian.  
11 Q. Before you owned Guido's, what did you do for a living?  
12 A. I own other restaurants.  
13 Q. Do you know someone named Rudy Kurniawan?  
14 A. Yes, I am.  
15 Q. Approximately when did you first meet him?  
16 A. It's about 10, 12 years ago.  
17 Q. About 10 or 12 years ago?  
18 A. Yes, sir.  
19 Q. And what were the circumstances under which you met him?  
20 A. I was in a place in Los Angeles called Twenty/20. I was in  
21 my way in and he was coming out.  
22 Q. What was Twenty/20?  
23 THE COURT: You were going in and he was coming out?  
24 THE WITNESS: Exactly, yes, sir.  
25 Q. What kind of place is Twenty/20?

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DCDBKURT3 Castanos - direct

- 1 A. It's a wine place.  
2 Q. A wine store?  
3 A. Wine store, yes.  
4 Q. And did you speak with him?  
5 A. Couple of minutes. Two minutes.  
6 Q. Did you see him any time after that?  
7 A. Yes.  
8 Q. When was that?  
9 A. Well, at the conversation we have for this couple of  
10 minutes, I mentioned to him that I have a restaurant in Santa  
11 Monica Boulevard, in West Los Angeles.  
12 Q. Did he ever come to your restaurant?  
13 A. Yes, he did.  
14 Q. Approximately how many times?  
15 A. Several times over the years.  
16 Q. And did you have any understanding as to what Mr. Kurniawan  
17 did for a living?  
18 A. Not exactly.  
19 Q. You know he collected wines?  
20 A. That, yes.  
21 Q. Do you know if he sold wines at auctions?  
22 A. Yes.  
23 Q. Did there come a time when Mr. Kurniawan asked you to  
24 consign wines for him at an auction?  
25 A. Yes, he did.

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DCDBKURT3 Castanos - direct

1 Q. Approximately when was that?

2 A. That was about 2006.

3 Q. Around 2006?

4 A. Yes, sir.

5 Q. Approximately how many times did Mr. Kurniawan ask you to  
6 consign wines for him at an auction?

7 A. Several times.

8 Q. Several times?

9 A. Yes.

10 Q. Okay. When you consigned wines for him, did he tell you  
11 not to tell anyone that the wines were coming from him?

12 A. It was mention me that in the beginning it's a private  
13 collector and he don't want to see his name there.

14 Q. Okay.

15 THE COURT: So do I understand, so you consigned the  
16 wines for auction under your name?

17 THE WITNESS: Yes.

18 Q. Did Mr. Kurniawan ever tell you why he didn't want you to  
19 tell anyone that the wines were coming from him?

20 A. There wasn't anything specific about that.

21 Q. Did he ever tell you that he didn't want his name out  
22 there?

23 A. Yes.

24 Q. Did you continue consigning wines for Mr. Kurniawan until  
25 approximately 2012?

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DCDBKURT3

Castanos - direct

1 A. That's correct.

2 Q. Now, what was the arrangement you had with Mr. Kurniawan  
3 for the wines you consigned for him?

4 A. Well, it was sometimes I just buy the wines from him and I  
5 put the wines at auction. And sometimes I have a percent, a  
6 percent of the sale of the wines.

7 Q. So sometimes you owned the wines and you gave it to the  
8 auction house?

9 THE WITNESS: Yes.

10 THE COURT: And sometimes you didn't own the wines and  
11 you gave it to the auction house?

12 THE WITNESS: That's correct, your Honor.

13 THE COURT: Who did own the wine in the second case?  
14 When you didn't own it, who owned it?

15 THE WITNESS: Him.

16 THE COURT: Him?

17 THE WITNESS: Mr. Rudy Kurniawan.

18 THE COURT: Yes.

19 BY MR. FACCIPONTI:

20 Q. And when you consigned wines for him at the auction house,  
21 did you receive-- who did you give the money to when the wine  
22 sold?

23 A. To him.

24 Q. And did you keep a portion of that money for yourself?

25 A. That's correct.

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DCDBKURT3

Castanos - direct

1 Q. Approximately how much did you keep?

2 A. Usually was about 5 percent of that.

3 Q. Approximately how much money -- in all of the times that  
4 you consigned wines for Mr. Kurniawan, approximately how much  
5 money did you make from this?

6 A. I would say about \$400,000.

7 Q. What would happen if the wines you consigned for him didn't  
8 sell?

9 A. If it didn't sell, it would be-- he would take it back.

10 Q. Take it back.

11 And was that the case even when you had purchased the  
12 wines from him?

13 A. Yes.

14 Q. Are you familiar with the e-mail accounts --

15 THE COURT: So wait a minute. How does that work?

16 The wine comes back to you?

17 THE WITNESS: If the wines --

18 THE COURT: If it didn't sell.

19 THE WITNESS: If the wines come back to me, I would  
20 give it back to him.

21 THE COURT: And he would give you your money back?

22 THE WITNESS: Yes and no, because I don't give the  
23 money yet.

24 THE COURT: Oh, you didn't pay for it.

25 THE WITNESS: Yet. It's on location.

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DCDBKURT3 Castanos - direct

1 THE COURT: I see. I get it.

2 Q. Are you familiar with an e-mail account dscellar@gmail.com?  
3 That's dscellar@gmail.com.

4 A. Yes, sir.

5 Q. Whose e-mail account is that?

6 A. Mr. Rudy Kurniawan.

7 THE COURT: I'm still confused. Did you ever pay for  
8 the wine you got from him before you gave it to the auction  
9 house?

10 THE WITNESS: Sometimes yes, sometimes no. Sometimes  
11 I will buy the wine automatically and I will pay automatically  
12 to him.

13 THE COURT: Before you went to the auction house?

14 THE WITNESS: Exactly, and until I decide to put in  
15 the auction.

16 Q. Let me direct your attention to 2012.

17 Did you consign wines from Mr. Kurniawan for an  
18 auction that was directly held by Spectrum Wine Auctions at a  
19 company called Vanquish?

20 A. Yes, sir.

21 Q. Like the other auctions, did Mr. Kurniawan tell you not to  
22 tell anyone the wines came from him?

23 A. It probably wasn't mentioned that word, but...

24 MR. MOONEY: Object to "probably," your Honor.

25 THE COURT: Yes. What do you remember?

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DCDBKURT3 Castanos - direct

1 A. Well, I knew-- I knew that they don't supposed to know, but  
2 at the same time everybody knew that.

3 Q. Well, did you ever tell Spectrum when you consigned the  
4 wines from Mr. Kurniawan that these wines were coming from  
5 Mr. Kurniawan?

6 A. No.

7 Q. Did you tell anybody at Spectrum or at Vanquish that any of  
8 these wines were coming from Mr. Kurniawan?

9 A. No.

10 Q. And so you understood that he did not want you to tell  
11 anyone that his name was associated with these wines?

12 A. Yes.

13 MR. FACCIPONTI: Your Honor, we have a stipulation  
14 that we'd like to read into the record.

15 THE COURT: Okay.

16 MR. FACCIPONTI: "It is hereby stipulated and agreed  
17 by and among the United States of America, by Preet Bharara,  
18 United States Attorney for the Southern District of New York,  
19 Joseph P. Facciponti and Jason P. Hernandez, Assistant United  
20 States Attorneys, of counsel, and Rudy Kurniawan, the  
21 defendant, by and with the consent of his attorneys, Jerome  
22 Mooney, Esquire and Vincent Verdiramo, Esquire, that:

23 "1, Government Exhibits 16-1, 16-2 and 16-3 are true  
24 and correct copies of documents of Spectrum Wine Auctions; the  
25 original records were made at or near the time by, or from

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DCDBKURT3 Castanos - direct

1 information transmitted by, a person with knowledge of the  
2 matters set forth in the records; they were kept in the course  
3 of a regularly conducted business activity; and it was the  
4 regular practice of that business activity to make the records.

5 "2, If called to testify at trial, a custodian of  
6 records from Spectrum Wine Auctions would testify based on  
7 their personal knowledge that Spectrum Wine Auctions caused to  
8 be delivered via the United States Postal Service a copy of the  
9 catalog for the February 8th, 2012 wine auction in London,  
10 United Kingdom, which has been marked as Government Exhibit  
11 16-3, to the 86 residents of New York, New York identified in  
12 Government Exhibit 16-1.

13 "It is further stipulated and agreed that Government  
14 Exhibits 16-1, 16-2, and 16-3 and this stipulation may be  
15 received in evidence at the trial of the above-referenced  
16 matter.

17 "Dated: December 5, 2013," and signed by counsel for  
18 both of the parties.

19 Your Honor, we offer Government Exhibits 16-1, 2 and 3  
20 and Government Exhibit 29-9, which is this stipulation.

21 THE COURT: I'll allow it.

22 (Government's Exhibit 29-9 received)

23 BY MR. FACCIPONTI:

24 Q. Mr. Castanos, there's a catalog in front of you marked  
25 Government Exhibit 16-3 that has just been entered into

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1 evidence.

2 A. One moment. Glasses. Glasses. Yes, sir.

3 Q. When I was asking you questions about the Spectrum Wine  
4 Auction that you consigned wines for Mr. Kurniawan, is that the  
5 catalog from that auction?

6 A. Yes, sir.

7 Q. And what is the date of that auction as written on the  
8 front page of that catalog?

9 A. February 8, 2012.

10 Q. And that auction was supposed to take place in London?

11 A. That's correct.

12 MR. FACCIPONTI: We would actually also like to  
13 publish to the jury Government Exhibit 16-1.

14 THE COURT: All right.

15 MR. FACCIPONTI: And if we could just enlarge maybe  
16 just the first quarter of that document.

17 Q. And, Mr. Castanos, you just heard from the stipulation that  
18 this is a list of people in New York City who received that  
19 catalog in the mail. Correct?

20 A. Yes.

21 Q. I'd like now to ask you to turn-- there's a binder of  
22 documents in front of you, Mr. Castanos.

23 A. This?

24 Q. Can you locate-- yes, that's it.

25 Could you locate the document that's been marked as

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1 Government Exhibit 38-5? Do you have that in front of you?

2 A. Yes, sir.

3 Q. Do you recognize that as an e-mail exchange between you and  
4 Mr. Kurniawan?

5 A. That's correct.

6 Q. And are you talking about the Spectrum Auction in that  
7 e-mail exchange? Mr. Kurniawan, are you talking about the  
8 appraisal that the Spectrum Auction gave for that-- for the  
9 wines consigned in that auction?

10 A. I'm-- I'm not-- I'm not sure if that's the--

11 Q. Let me help you out. Do you see the first page of the  
12 attachment, the first attachment to that exhibit? Do you see  
13 at the very top the word "Spectrum" is written, "Spectrum  
14 Auctions"?

15 A. Sir?

16 THE COURT: I think you'll have to--

17 MR. FACCIPONTI: Yes, your Honor.

18 A. Am I in the wrong one? Sorry. Sorry.

19 Q. So, Mr. Castanos, do you see this is an e-mail that has  
20 some attachments regarding the Spectrum Auction?

21 A. That's correct, yes.

22 MR. FACCIPONTI: Your Honor, we offer Government  
23 Exhibit 38-5.

24 THE COURT: I'll allow it.

25 (Government's Exhibit 38-5 received)

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Castanos - direct

1 MR. FACCIPONTI: May we publish that to the jury?

2 THE COURT: Sure.

3 Q. Now I'd like to focus on the top e-mail which is first in  
4 time. So there appears to be two e-mails there.

5 MR. FACCIPONTI: If we can enlarge that, the top  
6 e-mail.

7 Q. Do you see that that is an e-mail that appears to be from  
8 you to Mr. Kurniawan at dscellar@gmail.com?

9 A. That's correct, yes.

10 Q. What is the date on that?

11 A. November 11, '11.

12 Q. 2011?

13 A. That's correct.

14 Q. And does that say-- in this e-mail are you forwarding him  
15 the appraisal of the wines for that auction that had been  
16 prepared by Spectrum?

17 A. That's correct, yes.

18 Q. And --

19 THE COURT: Did Spectrum do the appraisal for you?

20 THE WITNESS: Yes. Yes, your Honor.

21 THE COURT: You asked them to do it?

22 THE WITNESS: Yes, your Honor.

23 MR. FACCIPONTI: So now if we could highlight the  
24 bottom e-mail on that chain.

25 Q. Do you recognize that as an e-mail from Mr. Kurniawan to

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DCDBKURT3

Castanos - direct

1 you?

2 A. Yes, sir.

3 Q. And the date on that is November 14, 2012?

4 A. That's correct.

5 Q. I'm sorry, 2011.

6 I'm just going to read this for you starting with the  
7 first sentence: "This is the reserve from another auction  
8 house. I have checked auction average and this is definitely  
9 correct. What Spectrum gave is ridiculously low and not in  
10 line with market.

11 "I can't e-mail you the appraisal as it has name and  
12 info on it, but I have type in the numbers here. These are all  
13 going into Feb and March HK sale. They split between bord and  
14 burg."

15 Do you have any understanding of what "HK" means? Is  
16 that Hong Kong?

17 A. Hong Kong, yes.

18 Q. And "bord" and "burg" means bordeaux and burgundy?

19 A. That's correct, yes.

20 Q. Mr. Castanos, I'd like you to turn to what's been marked as  
21 Government Exhibit 38-6. It should be the next document in  
22 your binder.

23 Do you see there?

24 A. Yes, sir.

25 Q. Do you also recognize that as an e-mail chain between you

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Castanos - direct

1 and Mr. Kurniawan regarding the Spectrum auction?

2 A. Yes, sir.

3 MR. FACCIPONTI: Your Honor, we offer Government  
4 Exhibit 38-6.

5 THE COURT: I'll allow it.

6 (Government's Exhibit 38-6 received)

7 THE COURT: Do we have that? Yes? Okay.

8 Q. Now, this is a little confusing in terms of the sequential  
9 order --

10 THE COURT: Excuse me for a second before you go to  
11 this.

12 So with respect to the previous exhibits and the  
13 appraisal from Spectrum, right?

14 THE WITNESS: Yes.

15 THE COURT: So you got the appraisal from Spectrum for  
16 the wine that was going to be auctioned?

17 THE WITNESS: Yes.

18 THE COURT: So was that a case where you had paid for  
19 the wine before or not?

20 THE WITNESS: No.

21 THE COURT: You didn't --

22 THE WITNESS: I don't pay nothing for this particular  
23 wines.

24 THE COURT: So you have the appraisal done, but you  
25 didn't own the wine?

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1 THE WITNESS: No.

2 THE COURT: Okay.

3 BY MR. FACCIPONTI:

4 Q. Okay. So I'd like you to look at the first, top e-mail.

5 MR. FACCIPONTI: If we can please enlarge that for the  
6 jury.

7 Q. Do you see this is an e-mail from someone named Walker  
8 Strangis to you?

9 A. What is that?

10 Q. This is Government Exhibit 38-6.

11 A. Thirty-eight. Yes, sir. I got it. I think I got it.

12 Q. Okay. And this is an e-mail from Walker Strangis to  
13 yourself?

14 A. To me, yes.

15 Q. And it's dated February 2, 2012?

16 A. Yes.

17 Q. It says "Hi, Antonio. Any further details on these lots  
18 will be a very big help. Please give any dates or specifics  
19 that you can. Thanks."

20 Who is Walker Strangis?

21 A. Walker Strangis is the wine consignment for Spectrum.

22 Q. And do you see that below that--

23 MR. FACCIPONTI: If we can enlarge the e-mail that  
24 appears at the bottom of that page for the jury.

25 Q. -- he is forwarding you an e-mail that someone else had

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1 sent to him?

2 A. That's correct, yes.

3 Q. And he had deleted the name of the person who sent that  
4 e-mail to him?

5 A. That's correct.

6 Q. And so just reading that e-mail that had been forwarded:

7 "Hi, Walker, I hope all is well. A few questions  
8 regarding your upcoming sale. I'm looking for detailed  
9 provenance on the wines below. Not provenance like 'he bought  
10 them from a trustworthy source,' but the date and location of  
11 where he bought them and where that place sourced the wine. I  
12 know guys like to remain anonymous and I won't go digging on  
13 who he is or talk to any of the auction houses directly, but in  
14 order to bid on these in good faith I do need as many details  
15 as possible.

16 "I" also need --

17 THE COURT: I may also.

18 Q. "I may also need photos of the cork stamps when possible.  
19 Is that all doable? Thanks!"

20 Then you see he lists three wines below and by lot  
21 number: Lot 72, a '45 Musigny, four bottles; lot 132, a '45 La  
22 Tache; and lot 133, a '45 Romanee-Conti.

23 Were these three wines that Mr. Kurniawan had given  
24 you to consign to Spectrum?

25 A. Yes, sir.

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DCDBKURT3

Castanos - direct

1 Q. And you then forwarded that e-mail to Mr. Kurniawan.  
2 Correct?

3 A. Yes. Yes.

4 MR. FACCIPONTI: And so if we could look on the second  
5 page of this document and enlarge the e-mail that appears  
6 there.

7 Q. Does this appear to be Mr. Kurniawan's response to you?

8 A. Yes.

9 Q. Okay. And that is dated February 2nd at 2012?

10 A. That's correct, yeah.

11 Q. Okay. And he responds "All of these old burgandies came  
12 from one large private collection that I bought about ten years  
13 ago. As far as I know, the cellar was accumulated between the  
14 '80s and '90s through retailers, brokers and auctions. Mostly  
15 from Europe."

16 Now, Mr. Castanos, I'm going to ask, with the Court's  
17 permission, that you step down from the witness stand and  
18 examine the bottles of wine that appear in front of you.

19 Actually, before you do that, I have one more document  
20 to show you.

21 MR. FACCIPONTI: Can we have Government Exhibit 14-4A?  
22 This is an exhibit that has already been entered into evidence.  
23 It was a document that was pulled from one of Mr. Kurniawan's  
24 computers.

25 Can we enlarge the top of that document from left to

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DCDBKURT3

Castanos - direct

1 right?

2 Q. Does this document-- it should be in your binder as well,  
3 Mr. Castanos.

4 A. What?

5 Q. 14-4. Does this appear to be a list of wines that you had  
6 consigned to Spectrum for Mr. Kurniawan?

7 A. Yes, sir.

8 Q. Okay.

9 MR. FACCIPONTI: And if we can highlight the writing  
10 that appears in the right-hand corner of that top ribbon.11 Q. If you want to look on your screen there, does your name  
12 appear as the consigner?

13 THE COURT: You can see on here.

14 A. Yes. Yes.

15 Q. Is there a number next to your name? Is that number  
16 10445?

17 A. That's correct.

18 Q. Now, Mr. Castanos, I'd like you to step down and look at  
19 the bottles.

20 THE COURT: Be careful there.

21 THE WITNESS: Yes.

22 Q. These bottles are all marked as Government Exhibits 3-1  
23 through 3-14. Just starting with Government Exhibit 3-8--24 THE COURT: So maybe you want to go over to the other  
25 side so the jury can see what you're doing.

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DCDBKURT3

Castanos - direct

- 1 MR. FACCIPONTI: We have a cart over here. I'll move  
2 that, your Honor.  
3 Q. Just asking generally, do you recognize these as some of  
4 the wines you consigned to Mr. Kurniawan from the Spectrum wine  
5 auction?  
6 A. Yes.  
7 Q. And do these-- do all of these bottles-- and you're free to  
8 look at all of them-- have a label on the back from Spectrum  
9 Wine Auctions?  
10 A. That's correct.  
11 Q. Do they all have the same number, consignment number,  
12 10445?  
13 A. Yes, sir.  
14 Q. And do some of these bottles appear in the Spectrum  
15 catalog?  
16 A. (Indicating)  
17 MR. FACCIPONTI: Can we have --  
18 THE COURT: Did we get an answer for that? Madame  
19 Court Reporter?  
20 THE REPORTER: No.  
21 MR. FACCIPONTI: I think he nodded his head yes.  
22 THE COURT: No, but she has to--  
23 MR. FACCIPONTI: He can say it.  
24 Q. Do some of these lines appear in the catalog as well?  
25 A. Yes, they are.

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DCDBKURT3

Castanos - direct

1 MR. FACCIPONTI: Can we have page 71 from the Spectrum  
2 catalog?

3 Q. What is the serial number that appears on Government  
4 Exhibit 3-8?

5 A. 0905.

6 MR. FACCIPONTI: If we can enlarge that on the...

7 MR. HERNANDEZ: Is it published to the jury?

8 MR. FACCIPONTI: Yes.

9 Your Honor, we offer Government Exhibits 3-1 through  
10 3-14.

11 THE COURT: I'll allow it.

12 (Government's Exhibits 3-1 through 3-14 received)

13 Q. You can return to the witness stand, Mr. Castanos.

14 Now, were all of these wines sold at the Spectrum  
15 Auction?

16 A. That, I don't know.

17 MR. FACCIPONTI: Can we now have Government Exhibit  
18 16-2?

19 Q. It's on the screen in front of you, Mr. Castanos.

20 A. Yes.

21 Q. Does this appear to be a list of lots that had been  
22 withdrawn from the Spectrum Auction?

23 A. That's correct, yes.

24 MR. FACCIPONTI: We have no further questions, your  
25 Honor.

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DCDBKURT3 Castanos - direct

1 THE COURT: Okay. Thank you.

2 So counsel for the defense.

3 MR. MOONEY: Thank you, your Honor.

4 CROSS-EXAMINATION

5 BY MR. MOONEY:

6 Q. Good morning, Mr. Castanos.

7 A. Good morning, sir.

8 Q. Still morning.

9 We've got a number of bottles of wine here on the  
10 table.

11 Do you recall how many bottles you sent to the  
12 Spectrum Auction?

13 A. How many?

14 Q. Do you remember how many there were?

15 A. No, I don't. I don't count every one bottle we send  
16 there.

17 Q. Okay.

18 MR. MOONEY: Could we go back to Exhibit-- we were  
19 just looking at it-- 14-4, please?

20 THE COURT: You can see it on the screen if you'd  
21 like.

22 THE WITNESS: Okay.

23 MR. MOONEY: If you would magnify the top part.

24 THE WITNESS: Yes, sir.

25 Q. Does that tell you what the bottle count was that was sent?

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DCDBKURT3

Castanos - cross

- 1 Calling your attention to the right-hand side.  
2 A. Yes, 429.  
3 Q. So this is only a portion of those wines?  
4 A. Yes, sir.  
5 Q. Spectrum did not sell all the wines. Right?  
6 A. No.  
7 Q. And some of the wines, according to what we just saw, they  
8 withdrew. Right?  
9 A. That's correct, yes.  
10 Q. And do you know which ones were withdrawn?  
11 A. Not exactly.  
12 Q. And some of them didn't sell. Right?  
13 A. Yes.  
14 MR. MOONEY: You can take this down now.  
15 Q. What happened to the wines that didn't sell? Did you get  
16 them back?  
17 A. No.  
18 Q. Did Spectrum at some point want to send some of the wines  
19 to Hong Kong?  
20 A. Not-- not that wines, no.  
21 Q. Not in this auction?  
22 A. No.  
23 Q. Okay. Was there another auction where they wanted to send  
24 them to Hong Kong?  
25 A. I think-- I think what you talking about is some of the

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DCDBKURT3

Castanos - cross

1 wines, they was not going to London. They were offered to sell  
2 it in Hong Kong.

3 Q. So --

4 A. But they have nothing to do with this particular wines.

5 Q. So the 429 were destined for London for potential sale?

6 A. That's correct.

7 Q. And the ones that-- the ones that were not-- that were  
8 withdrawn from sale, did Spectrum communicate with you with  
9 regards to the ones they were withdrawing?

10 A. Yes.

11 Q. Did they tell you we're going to withdraw some of these,  
12 we're not going to sell some of these?

13 A. Oh, yes.

14 Q. Did you have communications with them about why they were  
15 not going to sell some of these?

16 A. They tell me that they're gonna withdraw some wines because  
17 there were some problems.

18 Q. Some problems or issues with them?

19 A. Have issues, exactly.

20 Q. And do you know how many bottles altogether that they  
21 pulled?

22 A. No.

23 MR. MOONEY: If we could go back to Exhibit 16-2 and  
24 put that up.

25 Q. So we see a number of different lots that show problems or

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DCDBKURT3 Castanos - cross

1 that are withdrawn. Is that correct?

2 A. Yes, sir.

3 Q. This doesn't tell us why any lot was withdrawn, does it?

4 A. No.

5 Q. And we also see notes on conditions.

6 Were those withdrawn, the ones that are marked under  
7 conditions?

8 A. I guess so.

9 Q. For example, lot 28 says "Signs of past seepage." Do you  
10 see that?

11 A. Yes.

12 Q. What does that mean?

13 A. That means that the wine is not in good condition. That  
14 the wine's been leaking. You know, it been leaking for some  
15 reason.

16 Q. And would you serve a wine like that in your restaurant,  
17 one that showed signs of leakage?

18 A. No.

19 Q. Would you knowingly sell one that showed signs of  
20 leakage?

21 A. No. That probably that was there. I don't know.

22 Q. And then lot 79 also appears to show signs of leakage.

23 A. Signs of leakage mean sometimes that the bottle, the bottle  
24 of the wine. That doesn't mean that the wine -- the wine you  
25 cannot sell it. But the wine, if it have sign of leakage, that

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DCDBKURT3

Castanos - cross

- 1 mean that the bottle of the wine is different, is less. That's  
2 all that that mean. You know, when they put that in there,  
3 signs of leakage.  
4 Q. It identifies a potential problem--  
5 A. Exactly.  
6 Q. -- with the wine.  
7 Now, over the period of time from when you first met  
8 Mr. Kurniawan, say ten years ago, you became fairly friendly  
9 with him, didn't you?  
10 A. We were friends, yes.  
11 Q. And you liked him?  
12 A. Yeah.  
13 Q. You thought he liked you?  
14 A. Well, he was calling me dad and he was call my wife mom.  
15 Put it this way.  
16 Q. He'd come into your restaurant and the two of you would get  
17 together from time to time. Is that right?  
18 A. That's correct, yeah. Yes.  
19 Q. And you had a wine collection of sorts, did you not?  
20 A. Yes, I was.  
21 Q. Did you ever get up to -- did you ever see any of his wine  
22 collection, go to his warehouse?  
23 A. Yes.  
24 Q. His wine was primarily kept in a warehouse. Is that right?  
25 A. That's correct.

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DCDBKURT3 Castanos - cross

1 Q. Where was that warehouse located?

2 A. I think is in Santa Clarita or-- actually, it's Gina's  
3 Place, Pacific wine distributor. It's around that area. I  
4 think Santa Clarita or something like that in California.

5 Q. You knew he had a separate business called The Wine Hotel?

6 A. I know that, but I never been there. Yes.

7 Q. But the warehouse was not The Wine Hotel. That was  
8 something different?

9 A. Something different, yes.

10 Q. And in the warehouse, how big a space did he have?

11 A. Huge.

12 Q. And a lot of wine was stored there?

13 A. Huge.

14 Q. Case after case after case?

15 A. Hundreds of.

16 Q. Is the warehouse the primary place you would go to get the  
17 wines to send off to auctions?

18 A. I never went there to pick up any wines. He usually  
19 deliver the wine to my house.

20 Q. Did you ever go through bottles at the warehouse with him,  
21 take a look and see what was in there?

22 A. I look without look too much. I was there one day when it  
23 was-- one day when he was there. Yes, I look, and I was -- it  
24 was impressive, yeah.

25 Q. Did you ever go over to his house on Naomi?

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DCDBKURT3

Castanos - cross

1 A. Never.

2 Q. Did he come to your house?

3 A. Yes.

4 Q. So if there were wines that were going to be auctioned,  
5 he'd bring the cases over to you?

6 A. Yes, sir.

7 Q. How would the wines be packaged to get to you and to then  
8 be sent off?

9 A. Cartons like this.

10 Q. These types of Styrofoam boxes?

11 A. Usually like this or in wood.

12 Q. Sometimes they were in wooden cases?

13 A. Sometimes wood.

14 THE COURT: And then how did they get to the  
15 auctions?16 THE WITNESS: The Spectrum people, they were coming to  
17 my house and they pick it up and they take from there.

18 THE COURT: With a truck?

19 THE WITNESS: A truck.

20 Q. And Spectrum had offices in the Los Angeles area?

21 A. In Orange County.

22 Q. In Orange County.

23 And was it your understanding that Spectrum would  
24 inspect the bottles after they would decide to sell the lots?

25 A. Definitely.

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DCDBKURT3

Castanos - cross

- 1 Q. And did you consider yourself to be a sufficient expert to  
2 be able to look at a bottle of wine and know whether it was  
3 authentic or not?  
4 A. Well...
- 5 Q. For example, can you tell us whether this is really --  
6 Exhibit No. 3-14 is really what it says it is on the outside?  
7 A. To me, personally, I don't like it because the color of  
8 the bottle, but I can't say that's fake, no. No, I can't say  
9 that.
- 10 Q. Okay. But let me see if I understand you correctly. What  
11 you're telling us is the color of the wine in there looks bad.  
12 Is that right?  
13 A. Yeah.
- 14 Q. This purports to be-- well, we don't know. It might be a  
15 white wine, but that doesn't--  
16 A. It's white wine, it's 50 years old? Who knows?  
17 Q. You wouldn't drink that?  
18 A. No, thank you.
- 19 Q. But you don't know from your personal expertise whether or  
20 not this is a correct label?  
21 A. I wouldn't know.
- 22 Q. So you would rely upon others for that?  
23 A. Definitely.
- 24 Q. And one of the areas -- one of the sources that you would  
25 rely upon for that kind of information or that kind of material

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DCDBKURT3 Castanos - cross

1 would be the auction house. Right?

2 A. Yes.

3 Q. So you weren't surprised when the auction house went  
4 through the 429 bottles and came up with a number of them that  
5 they said they wouldn't sell. Right?

6 A. Yes, that's-- that's surprise me, yes.

7 Q. That had become fairly common, hadn't it?

8 THE COURT: Wait. I think he said-- did you say it  
9 was a surprise?

10 THE WITNESS: It was surprising for him to come--

11 THE COURT: He said it was surprising.

12 Q. It was surprising--

13 A. It was surprising that he come with that many bottles.

14 Q. How many bottles did they withhold?

15 A. I have no idea.

16 Q. More than what's here?

17 A. Yes.

18 Q. But not a great number more?

19 A. Yes. I don't know the amount.

20 Q. You had been submitting bottles for other auctions, hadn't  
21 you?

22 A. Yes, sir.

23 Q. And had the auction houses in the earlier years looked at  
24 the bottles?

25 A. I guess they looked at the same way that this guy looked

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Castanos - cross

1 at.

2 Q. Did you expect that the auction houses in the earlier years  
3 were looking at the auctions-- or at the bottles?

4 A. Of course.

5 Q. Which auction houses were you dealing with prior to this  
6 Spectrum auction in 2012?

7 A. Zachy's and Christies.

8 Q. Zachy's?

9 A. And Christies.

10 Q. And Christies.

11 And how many times had you sent bottles off to be  
12 auctioned off at Zachy's, for example?

13 A. Three or four times.

14 Q. And that was during the period from 2006 up until when?

15 A. Until Christies went to New York and...

16 Q. How many bottles had Zachy's pulled out and sent back to  
17 you?

18 A. None.

19 Q. How many bottles had Christies pulled out and rejected?

20 Well, when you sent the bottles to auction at Christies, did  
21 they pull any out and say we're not selling these?22 A. No. I don't recall to pull out bottles. Maybe they-- when  
23 they check every bottle of wine, you know, they can find some  
24 they don't like and they refuse that bottle. Probably there  
25 were few along the way. I cannot recollect now how many

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DCDBKURT3

Castanos - cross

- 1 bottles, but I'm sure that there had to be few if I along the  
2 way.
- 3 Q. So there may have been some from Christies that were  
4 rejected?
- 5 A. Could be.
- 6 Q. Now, when you were sending bottles of wine off for auction  
7 at Zachy's, some of those bottles were from your personal  
8 collection. Is that correct?
- 9 A. Yes, many of them.
- 10 Q. And some of those bottles came from Mr. Kurniawan?
- 11 A. That's correct.
- 12 Q. And sometimes you would buy the bottle from him and put it  
13 in the auction consignment?
- 14 A. That's correct.
- 15 Q. Other times you would basically take it from him, like on  
16 consignment, and put it in?
- 17 A. That's correct.
- 18 Q. And when you sent consignments of wine off to the auction  
19 houses, would you frequently receive advances from him?
- 20 A. No.
- 21 Q. Did you receive advances-- ever receive advances from him?
- 22 A. Yes.
- 23 Q. And how would the advances be determined?
- 24 A. By the quantity of the wine you put in there.
- 25 Q. And then that would be based, what, on the reserve price or

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DCDBKURT3 Castanos - cross

1 on the expected price?

2 A. The reserve price, yeah.

3 Q. And how would that-- how would the advances then be  
4 covered? How would you pay the-- you didn't expect to pay the  
5 advances. You expected that they would get them. Right?

6 A. The advances they would have paid to me.

7 Q. Okay.

8 A. And the wines, if they are mine, I don't have to give  
9 nothing to anyone. In this particular case, the wines they  
10 were from Rudy, Mr. Kurniawan. So every one penny plus some  
11 money, I give it to him.

12 Q. So you got the advances and then you'd give the advances to  
13 him?

14 A. That's correct.

15 Q. Because he supplied the wine.

16 A. Yes.

17 Q. And then the expectation is that the wine will be sold and  
18 the sale of the wine will cover the advances plus additional  
19 money?

20 A. Yes, sir.

21 Q. And that's how it usually worked. Right?

22 A. That's the way it usually worked.

23 Q. Did you get bottles of wine from other people that went in  
24 to some of the auction consignments to put up?

25 A. Maybe small quantities. Some people say, Tony, you gonna

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DCDBKURT3

Castanos - cross

1 be -- you gonna put these wines in auction? Can you put that  
2 for me? I say okay.

3 THE COURT: And by "small quantities," what do you  
4 mean?

5 THE WITNESS: I mean is one case, two cases.  
6 Somebody, they want to sell the wines and they coming to me. I  
7 said, You have auction going, can you please do that for me?  
8 Say okay.

9 Q. Did you make any secret of the fact that you had wines from  
10 Rudy that you were putting in to auctions?

11 A. It wasn't secret then. Practically everybody knew where  
12 the wine coming from. Practically.

13 Q. And with regard to the Spectrum wine auction, was there any  
14 question in your mind that the people at Spectrum knew who the  
15 wine came from?

16 A. Well, I already say that one time. You know, is like I was  
17 sitting, you know, have a meeting with certain people. And I  
18 say, We are drinking water here, right? I say yes. But nobody  
19 no say we are drinking water, but we're drinking water. So is  
20 the same thing. People knew that the wine was coming from him  
21 especially in the wine in the auction in London. We know that  
22 the guy from London, Richard Brenner, he was buying Rudy's wine  
23 at the same time.

24 THE COURT: So how do you think he knew the wine you  
25 gave him was from Mr. Kurniawan?

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DCDBKURT3

Castanos - cross

1 THE WITNESS: Because I think he have certain kind of  
2 wines that people, they are familiar with them. People that  
3 were here in New York, you know, and the ones that were here in  
4 New York. That's my personal...

5 THE COURT: That's your opinion.

6 THE WITNESS: My opinion.

7 THE COURT: You're assuming that.

8 THE WITNESS: Assuming that.

9 Q. And part of the reason you're assuming that is because you  
10 knew that Vanquish was also getting wines from Rudy at the very  
11 same time?

12 A. That's correct.

13 Q. Would Rudy bring bottles of wine into your restaurant from  
14 time to time to drink with dinner?

15 A. Not that often.

16 Q. So --

17 A. I have my own wines, too.

18 Q. So he would sometimes order wines from you?

19 A. Not order. You know, if he come in, we gonna have dinner  
20 or something, whatever, we have a small party or something. He  
21 come in only occasionally, you know, when I have a birthday or  
22 something. He come in there, maybe he can bring one or two  
23 bottles of wine. So do I. I have my wine at the table, too.

24 Is that what you mean?

25 Q. And after he'd come into your restaurant, he didn't make a

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DCDBKURT3 Castanos - cross

1 big thing about the bottles, did he? He didn't care about the  
2 bottles?

3 A. When you say he don't care, what you mean?

4 THE COURT: Yes, I don't understand the question.

5 Q. Did he make you -- make sure that he got all his empty  
6 bottles back or did he just not care?

7 THE COURT: Well, there's two questions there. Ask  
8 the first one first.

9 MR. MOONEY: Okay.

10 Q. Did he ask you to give him back the bottles, empty  
11 bottles?

12 A. He-- I mean --

13 Q. If you remember.

14 A. I mean, if you're talking about one or two bottles, he  
15 never take the bottle back. One or two bottles, I don't think  
16 that had-- practically I don't think they go anywhere, because  
17 one or two bottles, it doesn't make a difference. I don't  
18 know. You know what I mean?

19 THE COURT: I guess he asked you if he ever asked you  
20 to send the empty bottles back to him.

21 THE WITNESS: What I tried to tell him, the wine he  
22 bring, he bring to my restaurant, that was insignificant. It  
23 was nothing-- it was nothing to make a big deal about it.  
24 Because when you talk about \$100, \$200 worth of wine, that not  
25 what we talking about here. Correct? That's what I'm trying

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DCDBKURT3

Castanos - cross

1 to say.

2 THE COURT: I understand.

3 Q. Now, on some of the consignments sent to auction, you  
4 didn't use your name. You used your son's name, didn't you?

5 A. No. The last-- in the last consignment, the last  
6 consignment, because it was -- the quantity was too much and I  
7 think I say I'm gonna split it.

8 Q. So you put part of it under your name and part of it under  
9 his name?

10 A. That's correct.

11 Q. That's part --

12 THE COURT: Wait. Part your name and part who? Your  
13 son's?

14 THE WITNESS: My son's name.

15 Q. And part of the reason that you said did that was that you  
16 wanted your son's name to start getting some recognition with  
17 regards to this?

18 A. That was the intention to do, yeah.

19 Q. And I take it some day you'd like him to be able to take  
20 over from you?

21 A. One of these days, but not yet. Not yet.

22 Q. Not yet. I'm not suggesting anything.

23 A. Okay, thank you.

24 Q. I've been to your restaurant. I liked it.

25 A. Oh, thank you very much. I hope to see you again some day.

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DCDBKURT3 Castanos - cross

1 We can talk a little more about it.

2 MR. HERNANDEZ: Objection.

3 MR. MOONEY: I live across -- withdrawn.

4 A. Please, I need some customers there back, you know.

5 Q. You wouldn't put your son's name on an auction or on a  
6 consignment if you thought that there were difficulties or  
7 problems or fraud going on, would you?

8 A. Definitely not. And I want to say more about that.

9 Definitely not because I have four people, four people from  
10 Spectrum to come and to check these wines out for one month.  
11 For one month. And two people in London checking this wine for  
12 one month and exchange photographs and things like that.

13 So at the same time this guy in London buy wine from  
14 Rudy at the same time, so that make me feel comfortable.  
15 Comfortable that everything is fine. Now looks like it's  
16 not.

17 Q. And as you sit here today, do you personally know if  
18 there's actually any problem with any of these bottles?

19 A. Personally? No.

20 Q. Have you ever bought fake bottles before?

21 A. Yes.

22 Q. That happens, doesn't it?

23 A. Definitely.

24 Q. Do you know the names of any of the individuals, the  
25 experts that inspected the wine for Spectrum?

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DCDBKURT3

Castanos - cross

1 A. Yeah. Is Walker Strangis, Amanda Crawford, Jason Boland  
2 and somebody else.

3 Q. Do you know if there's a Mr. Egan?

4 A. He may be there, but this particular person never come to  
5 me.

6 Q. And all of the inspections in Los Angeles did not result in  
7 withdrawing-- there was no wine withdrawn until it had been  
8 sent to London. Is that correct?

9 A. Yes.

10 Q. And it was only after it was in London that somebody  
11 decided there was problems with some of these wines?

12 A. Yes, sir.

13 Q. And to this day, has anybody ever told you what the  
14 problems are with any of these wines that are sitting here?

15 A. Well, I just see the wines now. I don't know exactly what  
16 the problem is now. I guess...

17 Q. Some of these wines appear to have drinkability problems,  
18 don't they?

19 A. Yeah. Well, yes.

20 MR. FACCIPONTI: Objection. I don't know what he  
21 means by that.

22 THE COURT: Sustained.

23 MR. MOONEY: No more questions, your Honor.

24 THE COURT: Any redirect?

25 MR. FACCIPONTI: Very briefly.

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DCDBKURT3

Castanos - cross

1 Can we have Government Exhibit 14-4A back up?

2 REDIRECT EXAMINATION

3 BY MR. FACCIPONTI:

4 Q. Mr. Castanos, you remember Mr. Mooney asked you some  
5 questions about your opinion about who knew whether these wines  
6 were Mr. Kurniawan's or not. Correct?

7 A. Yes.

8 Q. This is the consignment list for the wines Mr. Kurniawan  
9 gave you. Correct?

10 A. Yes.

11 Q. And that includes the wines that are marked as the  
12 Government Exhibit 3 series on the table there. Correct?

13 A. Yes.

14 MR. FACCIPONTI: If you can highlight the upper  
15 right-hand portion again.

16 Q. That's your name there. Right?

17 A. That's correct.

18 Q. That's not Mr. Kurniawan's name. Right?

19 A. No.

20 Q. And yet these are wines that you got from him. Correct?

21 A. That's correct.

22 Q. You did not buy these wines from him. Correct?

23 A. No.

24 Q. He told you not to tell anybody to use his name in  
25 connection with these wines. Correct?

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DCDBKURT3

Castanos - redirect

1 A. Yes.

2 Q. And you did not tell anybody that he was the person who  
3 gave you these wines. Correct?

4 A. Correct.

5 Q. Now, do you remember Mr. Mooney asked you some questions  
6 about whether you knew these wines were counterfeit or not?

7 A. Yes.

8 Q. And you're not an expert on that. Correct?

9 MR. FACCIPONTI: Could we have the ELMO --

10 THE COURT: Wait. Do you have a question pending?

11 MR. FACCIPONTI: Yes, I do, your Honor.

12 THE COURT: Are you an expert on whether wine is  
13 authentic or not?

14 THE WITNESS: Expert? No.

15 MR. FACCIPONTI: Can we have the ELMO up? I'm going  
16 to try and --

17 THE WITNESS: I have opinion, but, no.

18 THE COURT: Okay. You should tell them, tell the  
19 jury. He says he has an opinion.

20 THE WITNESS: I have opinion, but I'm not an expert.

21 BY MR. FACCIPONTI:

22 Q. Do you see the label here, it says Percy Fox Limited? Can  
23 you spell the way that says 32 Sackvilee Street? Can you spell  
24 that for the jury? Is it S-A-C-K-V-I-L-E-E?

25 A. Percy Fox?

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DCDBKURT3

Castanos - redirect

1 Q. Yes. The street, is it spelled S-A-C-K-V-I-L-E-E?

2 THE COURT: Well, we see that.

3 A. Yeah.

4 MR. FACCIPONTI: Okay. No further questions, your  
5 Honor.

6 THE COURT: All right. Thanks very much.

7 THE WITNESS: Done?

8 THE COURT: Yes, you're finished. Be careful walking  
9 down.

10 THE WITNESS: Thank you, sir. Thank you, your Honor.

11 THE COURT: You bet.

12 (Witness excused)

13 MR. HERNANDEZ: Government calls Douglas Barzelay.

14 DOUGLAS E. BARZELAY,

15 called as a witness by the Government,

16 having been duly sworn, testified as follows:

17 THE DEPUTY CLERK: Can you state your name for the  
18 record, please.

19 THE WITNESS: It's Douglas E. Barzelay,

20 B-a-r-z-e-l-a-y.

21 THE DEPUTY CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MR. HERNANDEZ:

24 Q. Mr. Barzelay, can you tell us what city you live in?

25 A. I live in Southampton, New York.

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DCDBKURT3 Barzelay - direct

1 Q. Are you currently working?

2 A. I am not. Well, I am part time. I'm retired. I retired  
3 after a long career in the law. Currently I'm working in a  
4 small business part time with some friends where we source  
5 wines from private collections for restaurants. And I am in  
6 the process of writing a book on burgundy.

7 Q. So you must collect wine then?

8 A. I do.

9 Q. And can you tell us when your interest in wine started and  
10 how it developed over time?

11 A. It really started after I got out of law school in 1973 and  
12 I moved to New York. And it was a time at which the wine  
13 market had just crashed and wine at that time was quite  
14 inexpensive. It was very easy to find great bottles of wine  
15 for \$5, \$7. Ten dollars was a lot to spend on a bottle of  
16 wine. And so with a bunch of friends we would buy bottles,  
17 put them in brown bags, taste them, and just argue about them  
18 and try to figure out why we liked them and defend our  
19 positions. And then, after that, we would sit down and just  
20 finish them.

21 Q. How did you fare in those arguments? Pretty well?

22 A. I learned a lot. It was an interesting time. Today you  
23 have all kinds of journalists who tell you-- are happy to tell  
24 you what to think about particular wines, but that fortunately  
25 didn't exist back then. So I and others really had to figure

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DCDBKURT3

Barzelay - direct

1 out what we liked and why we liked it. And fortunately it  
2 wasn't an expensive proposition. Some of those same bottles  
3 are going today for 50 or 100 times the price, so it was a very  
4 different world.

5 Q. Thank you.

6 Do you have any experience with older burgundy wines?

7 A. Yes. I began -- the kinds of tastings I was talking about  
8 were mostly bordeaux at that time in the '70s, but I started to  
9 get interested in burgundy. And then sometime in the early  
10 '80s, the prices of young burgundy started to go up and I  
11 discovered that old burgundy was around and available and less  
12 expensive.

13 And as I started tasting them, I also discovered that  
14 they had an extraordinary quality that the young ones didn't  
15 have. And at the time I think most people wrote them off and  
16 said burgundy just dies in the bottle after, say, 20 years.  
17 But I was drinking things 30, 40, 50 years old and they were  
18 amazing experiences. And I was getting them, as I say, for  
19 less than the current vintage. So I started buying as much as  
20 I could afford at the time.

21 Q. Are there a number of things, maybe one thing in  
22 particular, that you loved about the wines of Burgundy and old  
23 burgundy wines?

24 A. Yeah. I think there's a quality to them -- it's hard to  
25 describe, but with time these wines just take on a

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DCDBKURT3

Barzelay - direct

1 seamlessness. It's an entirely involving sensory experience  
2 and there's a wholeness, an ethereal quality to the wines.  
3 It's quite extraordinary and, in my experience, unique in the  
4 wine world.

5 (Continued on next page)  
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DCDLKUR4 Barzelay - direct

1 Q. When you buy wine, where do you buy it from, do you buy it  
2 from auctions, retail stores or other places?

3 A. All of the above, brokers, also buy some in France, yeah.  
4 I've just bought over the years wherever I could find things.

5 Q. Mr. Barzelay, do you know someone named Rudy Kurniawan?

6 A. I do.

7 Q. And do you see him sitting in the courtroom here today?

8 A. Yes, I do.

9 Q. Could you identify him by an article of clothing and where  
10 he's sitting in the courtroom?

11 A. Yes. He's sitting at the table over there in the glasses.

12 MR. HERNANDEZ: Let the record reflect that

13 Mr. Barzelay has identified the defendant?

14 THE COURT: The record will so reflect.

15 Q. Mr. Barzelay, when did you first meet the defendant?

16 A. I don't recall exactly. I believe it was sometime in 2004.  
17 His reputation somewhat preceded him in the kind of narrow  
18 world of wine collectors. Somebody coming on the scene who's  
19 young, who's spending a great deal of money in the auction  
20 houses, who appears to be quite knowledgeable, word gets  
21 around. And so I had heard about Rudy I think well in advance  
22 of when I met him.

23 First time I can recall having met him was I may have  
24 seen him at one or more auctions in 2004, but I definitely  
25 recall seeing him and talking with him around the Acker Merrall

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DCDLKUR4 Barzelay - direct

1 put on a series of I think it was two days of tastings in  
2 October of 2004 called top 100 wines of all time or something  
3 like that, and so that I recall meeting him and talking with  
4 him at that time and being part of a group that went out to a  
5 dinner after that event was over.

6 Q. Did you have other occasions to talk with him or meet him  
7 between 2004 and 2008?

8 A. Yes. On a number of occasions I would see him at auctions  
9 in New York. I remember there were -- there was at least one  
10 dinner at Cru in October of 2005 where he had invited a number  
11 of people down to the restaurant and was paying for the whole  
12 event, opening a lot of rather expensive old bottle and rare  
13 old bottles of wine and I was part of that dinner.

14 And then there were several other occasions, including  
15 a major tasting of Romanee-Conti wines that some friends and I  
16 put together to which he was invited. So there was a number of  
17 occasions, yes.

18 Q. Is it fair to say you've had several conversations with  
19 Rudy Kurniawan about fine rare wine?

20 A. Yes.

21 Q. Now, have you ever spoken to Rudy Kurniawan about  
22 counterfeit wine?

23 A. On several occasions. There were -- the first I can  
24 remember is actually around that 2004 top 100 wines event where  
25 there were several wines served at that event that were clearly

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DCDLKUR4 Barzelay - direct

1 fraudulent. And I recall Rudy saying that he had supplied a  
2 number of wines for the event, that all of his wines were  
3 correct, that he would never provide a fraudulent wine and that  
4 he was quite proficient at noting the differences. So that was  
5 one event.

6 Another, the dinner in October of 2005 that I  
7 mentioned, the subject came up again and he suggested that what  
8 we all ought to do after events like this was to -- that  
9 because of the incidents of fraudulent wines and the  
10 possibility that bottles could be reused, that what we all  
11 ought to do is deface the labels of the bottles, mark them so  
12 that they could never be reused.

13 Q. Do you recall any conversations with the defendant about  
14 the details about wine labels or other physical aspects of old  
15 Burgundy wines?

16 A. There were several conversations that I do recall. One was  
17 a conversation about a bottle of 1875 Romanee-Conti that was  
18 for sale in Europe and I remember talking to him and asked him  
19 about if he knew about it. And he said is that the bottle from  
20 a particular broker because if it is, I've looked at it and  
21 it's a fake and that -- we had that kind of conversation on a  
22 few occasions where he would say don't go near this or that  
23 bottle. It's a fake.

24 He would also, on a few occasions I know he asked me  
25 particular questions about say labels for -- well, one that I

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DCDLKUR4 Barzelay - direct

1 particularly remember, some labels for Roumier wines that were  
2 not the standard Domaine label and whether they could be real  
3 or not and it was I believe a negociant bottling. Someone else  
4 other than the Domaine had bottled the wine and put a slightly  
5 different label on it. So there were a few conversations like  
6 that.

7 Q. Did Kurniawan ever tell you where he bought the wines in  
8 his collection from?

9 A. Sometimes he would talk about specific auctions and places  
10 that he bought them. And on at least one occasion I can recall  
11 asking a question and he just sort of gave me a half smile and  
12 referred to a magic cellar.

13 But in general he had, well, he had a prodigious  
14 memory in general and particularly for wines, particular wines  
15 at particular auctions and where he had bought things from  
16 brokers and so on.

17 Q. Now, based on your several conversations with Rudy  
18 Kurniawan and also other conversations you've participated in  
19 with him and others, do you have an opinion as to whether  
20 Kurniawan was knowledgeable about older Burgundy wines?

21 A. He was indeed very knowledgeable about older Burgundy  
22 wines.

23 THE COURT: Did he say he was indeed?

24 THE WITNESS: Indeed, yes.

25 Q. Did have an opinion as to whether he was skilled at

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DCDLKUR4 Barzelay - direct

1 identifying counterfeit bottles of wine?

2 A. I believe he was skilled at identifying counterfeit wines,  
3 yes.

4 Q. So you mentioned Acker Merrall & Condit. You know that's a  
5 wine auction house. Correct?

6 A. Yes.

7 Q. Have you ever received any of their auction catalogs?

8 A. I used to receive them regularly. Before the auctions they  
9 would mail me copies of the catalogs.

10 Q. These would come in the U.S. mail?

11 A. Yes.

12 Q. So are you familiar with the catalog for a January 2006  
13 auction called The Cellar?

14 A. I am.

15 Q. And how about an October 2006 catalog called The Cellar II?

16 A. Yes.

17 Q. Did you receive copies of these catalogs?

18 A. I did.

19 Q. In the U.S. mail?

20 A. In the mail, yes.

21 Q. Did you look at the Burgundy wines that were offered in  
22 those two catalogs in 2006 when you received them?

23 A. In quite some detail, yes.

24 Q. And why?

25 A. Well, I was very interested. These were the kinds of wines

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DCDLKUR4 Barzelay - direct

1 that I like to buy when I could and enjoyed drinking and so I  
2 wanted to look through and see what might be available and what  
3 I might potentially bid on.

4 Q. You said you've been collecting these wines with a great  
5 passion since the seventies?

6 A. Yes.

7 Q. What was your reaction when you saw the total spread of  
8 older Burgundy wines in those two auctions?

9 A. I would say it was slightly different. I think in the  
10 first auction I was struck by how many of the old and rare  
11 bottles that I'd seldom ever seen were available for sale and  
12 it seemed -- it seemed remarkable I guess is the conclusion I  
13 drew at that time.

14 I think by the time of the second sale it seemed  
15 incredible that just there were more and more of these wines.  
16 And one example of it was the 1959 Musigny from Domaine Roumier  
17 which I don't think I'd ever seen a bottle at auction and here  
18 were, I don't know whether it was something like six. Only  
19 about 200 bottles were ever made and released under the Domaine  
20 label, and here there were either six in the first auction and  
21 12 in the second or the reverse of that. I don't recall  
22 exactly, but it's just an incredible number.

23 And that was repeated time and again in the catalog.  
24 Wines that were very rare and I had seldom if ever seen  
25 available at auction in prior years were now available in half

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DCDLKUR4 Barzelay - direct

1 case or case quantities.

2 Q. Now, are these the kinds of wines that you would be eagerly  
3 seeking out through auction houses, brokers, and other avenues?

4 A. To the extent I could afford it, yes.

5 Q. But you're friends with a number of other collectors for  
6 whom maybe price isn't even an issue, right?

7 A. Yes, that's certainly true. And those were people I was  
8 talking with at the time and they were very interested, keenly  
9 interested in a lot of the wines and were asking me questions  
10 about the wines and had I had them and what did I think about  
11 the purchase of, that kind of question.

12 Q. Was one of those people someone named Don Stott?

13 A. Yes. Don is an old and good friend of mine.

14 Q. And he's an avid Burgundy collector of old wines like you,  
15 right?

16 A. He is. He got into it somewhat later but more than made up  
17 for lost time. He collected extremely avidly I would say.

18 Q. And he has the bank account too to go and buy it if he  
19 finds it and likes it?

20 A. Yes. I think his general attitude was if he wanted it, he  
21 just wanted to buy it and he was not terribly concerned about  
22 the price.

23 Q. Let me ask you, and there are other people like Don Stott  
24 out there collecting, as well, that you know?

25 A. There are and there have been today. That was not the case

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DCDLKUR4 Barzelay - direct

1 at all when I started, but that whole world changed radically  
2 over the years, really in the 2000s probably more than at any  
3 other time.

4 Q. While we're talking about Mr. Stott, if we could show I  
5 believe what's already been admitted as 40-2, a program from a  
6 dinner at Mr. Stott's home.

7 Mr. Barzelay, it's going to appear on the screen in  
8 front of you.

9 A. Yes.

10 Q. We have what's here already been admitted through  
11 Christophe Roumier a program of a dinner on January 14, 2007 at  
12 Mr. Stott's home, and you're listed as one of the attendees.

13 Did you in fact attend this dinner?

14 A. I attended it. I was also one of the people who helped  
15 plan it, yes.

16 Q. And what was the theme of this dinner, can you just remind  
17 us?

18 A. The intention in the Cellar I auction, this idea had  
19 started with the Cellar I auction and the fact -- grew out of  
20 the fact that there seemed to be so many of these great wines  
21 that it was a little worrisome about whether they were in fact  
22 real. There was an offer of money back guarantee in effect for  
23 anyone who was unhappy with the wines and returned them.

24 So Don and I thought that it would be a good idea to  
25 taste some of the wines that he had bought at the auction -- he

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1 bought quite a bit -- and to see if they were real and, if  
2 necessary, to take advantage, he would take advantage of the  
3 return guarantee.

4 THE COURT: Who made the guarantee, the auction house?

5 THE WITNESS: It was listed in the catalog, but it was  
6 what the catalog said, I believe, was that the seller  
7 guaranteed.

8 Q. That night did you know where --

9 A. I'm sorry, just to finish up, we decided that it would be,  
10 since we were going to taste predominantly Roumier wines, it  
11 would be a great idea to have the producer come because he  
12 would be the best source of opinion on whether the wines were  
13 real or counterfeit, and also Allen Meadows, who's a prominent  
14 critic and writer on Burgundy.

15 And so in the process of getting that dinner together  
16 and getting a date, the Cellar II auction occurred. Don bought  
17 addition wines in that auction and so we included wines from  
18 both when the dinner finally took place in January of 2007.

19 Q. And then when you had the dinner in January 2007, did you  
20 know at that time who had consigned these Roumier wines to the  
21 Acker auction that Mr. Stott bought?

22 A. Yes. It was Rudy Kurniawan.

23 Q. And did you taste the wines that are on the list of the  
24 program here? If we could go to the previous page, can remind  
25 us what the lineup was.

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DCDLKUR4 Barzelay - direct

1 A. Yes, I tasted all of the wines.

2 Q. Did you have any personal impressions or feelings about the  
3 authenticity of any of the wines?

4 A. Yes. And to be clear, a few of those wines were not from  
5 the Cellar I and Cellar II sales.

6 Q. So I'll ask you just to answer with respect to the wines  
7 that were from the Cellar I and Cellar II sales.

8 A. From the Cellar I and Cellar II sales, we tasted I think it  
9 ultimately came to be 11 or 12 bottles because we tasted two  
10 bottles of two of the wines. And six or seven of them were  
11 clearly fraudulent wines, so roughly 70 percent.

12 Q. Can you explain what you mean by that?

13 A. They did not, did not taste at all as they were represented  
14 to be. In some cases the wines clearly tasted more like wines  
15 from the Rhone, which is a different part of France. In other  
16 cases they didn't taste like wines of the particular year that  
17 they were represented to be although they were probably  
18 Burgundies of some sort but difficult to tell what.

19 Q. If we could go to the first page of the exhibit, one of the  
20 wines that was consumed that night that features prominently on  
21 the cover purports to be a wine from 1923 from Domaine Roumier.

22 Do you see that?

23 A. I do.

24 Q. Have you ever seen in all of your time searching for these  
25 wines a 1923 Domaine Roumier wine in the marketplace?

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Barzelay - direct

1 A. Never.

2 Q. After this tasting, did your view or your impressions of  
3 Rudy Kurniawan change in any way?4 A. Yes, quite considerably. I think up until that point and I  
5 had had some concerns based on some prior tastings about the  
6 fact that there were wines that I felt were fraudulent that he  
7 had supplied for some tastings, but up until that point I just  
8 assumed it was the normal problems that a large collector might  
9 have and in buying a few bottles here and there that were not  
10 going to be correct.11 But the wines were -- there were so many of them that  
12 they were so self-evidently fraudulent that at that point I  
13 came to believe it was impossible that Rudy could not have  
14 known that these bottles were fraudulent and that he was an  
15 active and witting participant in a scheme to distribute these  
16 wines.17 Q. And was that based on not only the number of wines you  
18 considered to be clearly fraudulent, but also all the previous  
19 conversations and interactions you had with Rudy Kurniawan and  
20 his knowledge base that you thought he had?21 A. Yes. It was based essentially on the fact that I knew he  
22 was extremely knowledgeable. He had a very fine palate. He  
23 clearly knew himself the difference between a correct wine and  
24 a fraudulent wine and he often talked about that and identified  
25 fraudulent wines and that he would when he was speaking be very

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1 proud of his collection and of the quality of it and that, you  
2 know, he was, even though he was collecting very large amounts  
3 of wine, he was familiar when we talked with every single wine  
4 and tasted most of them a number of times.

5 I think based on all of those factors, it just seemed  
6 to me no longer possible that this was just an unwitting  
7 transmission of these wines.

8 Q. I'm going to direct your attention to April of 2007.

9 A. Right.

10 Q. Did you attend a special Romanee-Conti tasting in New York  
11 in that month?

12 A. Yes. I was one of the people that helped organize that  
13 tasting.

14 Q. Can you tell us a little bit briefly about what that  
15 tasting was?

16 A. It was a -- what we were attempting to do was to have the  
17 most comprehensive collection of Romanee-Conti wines that had  
18 ever been tasted in a single place and at a single time. And  
19 in the event I think we had 70, we had collected 74 vintages of  
20 the wine.

21 Q. And is that the tasting that this jury has heard from  
22 Aubert de Villaine, the manager, the head of Domaine de la  
23 Romanee-Conti, also attended?

24 A. He did, yes.

25 Q. Did Rudy Kurniawan attend this event?

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Barzelay - direct

1 A. He did.

2 Q. You said you were one of the managers or the organizers of  
3 this event?

4 A. Right.

5 Q. But you also said that in January of '07 after the tasting  
6 at Mr. Stott's home you had a negative view now of Rudy  
7 Kurniawan. So why then in April of 2007 did you invite him to  
8 this event?

9 A. Actually the invitation had been extended about two years  
10 previously. The difficulty of collecting this many wines, it  
11 took us two or three years of trying. And at the time Rudy was  
12 invited, he was well-known as one of the premier collectors of  
13 Romanee-Conti in the world.

14 And we were, all of the people who were invited to the  
15 tasting were being asked to contribute wines from their  
16 cellars, so he had also by that time sent ahead a number of  
17 wines to be used in the tasting and that would have been  
18 finished I think in 2006 at some point because I was very  
19 concerned that the bottles get there well in advance of the  
20 tasting with -- particularly with older bottles, if they don't  
21 sit for months, they can just taste off and be bad and so I  
22 wanted to make sure everything was representative.

23 Q. So you didn't feel you could withdraw the invitation  
24 because it had been extended previously -- let me finish the  
25 question.

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DCDLKUR4

Barzelay - direct

1 A. Sorry.

2 Q. You didn't feel you could withdraw the invitation because  
3 it had been extended two years before and Kurniawan had  
4 committed to bringing some of the wine for the event and if he  
5 didn't attend, the wine wouldn't attend either?

6 A. That's correct. And although we tried to have duplicate  
7 bottles from different sources of every wine, that wasn't  
8 possible. And he had supplied some of the more difficult to  
9 find wines for this tasting, many of those were off vintages  
10 because the best vintages often tend to come to auction and be  
11 collected, but the lesser vintages are often much harder to  
12 find. But he also was the person who supplied the really the  
13 most rare wine, the 1945, for that event, and he was the only  
14 source of that wine.

15 Q. And did you detect any problems with the wines that  
16 Kurniawan provided?

17 A. There were no problems with any of those wines. And,  
18 again, we had a group of people, very experienced tasters  
19 tasting more than 70 wines together. Any problems you would  
20 have seen instantly. And Aubert, of course, is more than  
21 expert. If any of the rest of us missed something, he  
22 certainly would not have.

23 So we had no problems with wines being that we felt  
24 were fraudulent, other than some negociant bottlings that we  
25 expected to find a problem with.

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DCDLKUR4 Barzelay - direct

1 Q. Did the people who were invited to this event know that the  
2 head of the Domaine, Mr. de Villaine, was going to be in  
3 attendance?

4 A. Yes, everyone knew that. And, in fact, we had rescheduled  
5 the dinner once already because he couldn't make an earlier  
6 date.

7 Q. At the end of the event did Kurniawan say anything to you?

8 A. At the end of the event we asked the participants if anyone  
9 would like a bottle as a souvenir and a few people took a  
10 bottle with them. Rudy told me he would like all of the empty  
11 bottles sent back to him in California.

12 Q. Do you mean all of them from the tasting or all the ones  
13 that he provided?

14 A. All of the ones that he provided and that we had opened.  
15 There were a number of bottles from him and from others that  
16 because we had backups, second bottles of everything, there  
17 were a number of unopened bottles and those, of course, went  
18 back to the people who supplied them. But this refers to open  
19 and empty bottles.

20 Q. Can we show the witness Government Exhibit 13-26. And if  
21 we could focus on maybe just the top third so Mr. Barzelay can  
22 see the document a little bit better.

23 THE WITNESS: Would it be possible to get a glass of  
24 water?

25 THE COURT: Sure.

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1 A. Yes.

2 Q. Do you recognize this document, Mr. Barzelay?

3 A. This is a series of emails back and forth from Rudy,  
4 between Rudy and me.

5 Q. And do you recognize that to be your email address at the  
6 time?

7 A. Yes, yes, it was.

8 Q. Is the subject matter the empty bottles that you just  
9 mentioned from that Romanee-Conti tasting?

10 A. The subject matter is the empty bottles and the full  
11 bottles.

12 MR. HERNANDEZ: Government offers 13-26.

13 THE COURT: I'll allow it.

14 (Government's Exhibit 13-26 received in evidence)

15 MR. HERNANDEZ: May we publish this to the jury?

16 THE COURT: Sure.

17 MR. HERNANDEZ: Can we start at the bottom of the  
18 exhibit.

19 Q. We're not going to read all of this email, Mr. Barzelay,  
20 but this is an April 24, 2007 email from yourself to Rudy  
21 Kurniawan, correct?

22 A. Yes.

23 Q. And really all that you're communicating in this email is  
24 where to be for this tasting and what to wear and some  
25 excitement, right?

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DCDLKUR4 Barzelay - direct

1 A. Yes.

2 Q. So let's move up an email chain.

3 So this email comes from Rudy Kurniawan May 1, 2007.

4 That's after the tasting, right?

5 A. That's correct.

6 Q. And the email reads, can you please arrange to have my  
7 bottles of RC shipped to Rudy Kurniawan, then giving an address  
8 in Arcadia and phone number. It ends with, thanks for the  
9 great weekend, still recovering. Probably won't drink RC for a  
10 few weeks...

11 Did I read that correctly?

12 A. Yes.

13 Q. And then can we move up to the email above that. And we  
14 can group the last remaining emails, I think. I think we'll be  
15 able to read them all.

16 All right. And then you respond on May 2, 2007, will  
17 do. Assume you want full bottles, backups that were not used,  
18 shipped to the same address as well as the empties.

19 Is that correct?

20 A. That's correct, yes.

21 Q. And then 15 days later can you read what Kurniawan wrote?

22 A. He writes, did you ship abbreviation for bottles.

23 Q. And then you responded that same day, should go out  
24 beginning of next week. FedEx Ground for empties, overnight  
25 for fulls.

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DCDLKUR4 Barzelay - direct

1 Is that correct?

2 A. That's correct.

3 Q. Did you in fact ship the empty bottles and the full bottles  
4 to Rudy Kurniawan?

5 A. Eventually, yes. The empties went out somewhat later than  
6 stated in this email and the fulls went out later still because  
7 there was warm weather at this time.

8 Q. Mr. Barzelay, there were other participants at this event  
9 that brought wine.

10 Did any of them ask to have all of their empty bottles  
11 shipped to them?

12 A. None, no one.

13 Q. Did anyone take home any bottles at all?

14 A. I would say half to two-thirds of the participants chose to  
15 take a single bottle, yes.

16 MR. HERNANDEZ: If we could show just to the witness  
17 13-27. Can we just focus in on maybe the top third or so of  
18 this email.

19 Q. Mr. Barzelay, when you can read that, just tell me if you  
20 recognize this email.

21 A. I do. Again, these are further emails in the same chain on  
22 the same subject.

23 MR. HERNANDEZ: Government offers 13-27.

24 THE COURT: I'll allow it.

25 (Government's Exhibit 13-27 received in evidence)

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1 MR. HERNANDEZ: And can we publish just what we have  
2 magnified here is perfect, publish this to the jury.

3 THE COURT: Sure.

4 Q. I'm going to pick up in the email that's in the middle,  
5 Mr. Barzelay. This is May 30, 2007. Kurniawan writes, still  
6 no bottles. I got the email from Michael somewhere and I will  
7 check my cost ASAP. Your prices are hilarious, with a wink and  
8 a smile.

9 And then above that you write on May 30, empty bottles  
10 were sent FedEx last Tuesday or Wednesday so should have  
11 arrived. I will try to trace. Full bottles and the empty '45,  
12 which is packed with them, not sent yet due to warm weather  
13 here.

14 Did I read that correctly?

15 A. Yes.

16 Q. So Mr. Kurniawan was still going after you because you  
17 hadn't sent him the bottles by or he hadn't received them by  
18 May 30, 2007?

19 A. That's correct.

20 Q. But you did in fact send them?

21 A. I did eventually, yes.

22 Q. Do you understand his reference to I will check my cost  
23 ASAP, your prices are hilarious, do you understand what he  
24 means?

25 A. Yes. As part of the tasting, in order to equalize people's

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1 contributions, everyone was asked to provide their cost prices  
2 for the wines that they supplied.

3 Q. Meaning how much they paid for it?

4 A. Meaning how much they paid for it.

5 Q. As opposed to how much it might be worth today?

6 A. Or at the time, yes, that's correct. It was not based on  
7 market value. It was purely cost value. We had asked Rudy  
8 several times for that information and he had said, well, I  
9 don't really keep much in the way of records and but I'll try  
10 to find it.

11 After waiting and this was -- this started before the,  
12 before the tasting and then we were waiting afterwards. And  
13 finally one of the other organizers, Michael in this email,  
14 sent out an email saying, well, here's what we think they  
15 should be and if you've got other prices, tell us what they  
16 are, but we'd really like to get this settled and that was  
17 the -- that was the reason for the reference I will check my  
18 cost ASAP. Your prices are hilarious. He obviously felt they  
19 were way low.

20 Q. I'm going to ask you about a different subject now.

21 In 2008 were you familiar with the wines of Domaine  
22 Ponsot?

23 A. Yes.

24 Q. Do you know anyone from Domaine Ponsot?

25 A. I'm familiar with and friendly with Laurent Ponsot who was

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DCDLKUR4 Barzelay - direct

1 the proprietor of the Domaine.

2 Q. In April 2008 did you receive a wine auction catalog from  
3 Acker Merrall & Condit for an April 25, 2008 auction?

4 A. I did.

5 Q. How did you receive it?

6 A. It was sent to me by mail.

7 Q. And did you review that catalog?

8 A. I did.

9 Q. Was there anything that particularly stuck out to you when  
10 you saw it?

11 A. There were a number of things. But in particular the thing  
12 that I most focused on was a selection of very old Ponsot Clos  
13 St. Denis from, if I recall, the sixties, the fifties, and the  
14 forties.

15 Q. Why did that stick out to you?

16 A. I had never seen any Clos St. Denis from Domaine Ponsot  
17 prior to 1985 and I wasn't aware it existed. So I was rather  
18 surprised to see it and decided to check on it.

19 Q. How did you check?

20 A. First thing I did was go to the Domaine website and as it  
21 confirmed the fact that the Domaine had only started making  
22 this wine under a sharecropping agreement with the owners of  
23 the property sometime in around about 1982, in the early 1980s.

24 I then, I called a couple of friends, including Allen  
25 Meadows, to see if they were aware of anything earlier and they

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1 had never seen anything before about 1985.

2 And then it occurred to me that, well, possibly the  
3 Domaine had had some kind of sharecropping agreement with  
4 someone else at the time, that it ended long ago and the way to  
5 find that out was to contact Laurent Ponsot.

6 Q. Did you do that?

7 A. Yes, we did.

8 Q. And did you tell him what it is that you saw in the  
9 catalog?

10 A. We, at first the question was when did the Domaine first  
11 start making Clos St. Denis and --

12 MR. MOONEY: Objection, hearsay.

13 THE COURT: Overruled.

14 That was your question?

15 THE WITNESS: That was mine. That was our question,  
16 yes.

17 And he was, he wanted a lot more information as a  
18 result of that question, wanted to know why we were asking and  
19 asked. And at that point I or one of us said to him that these  
20 wines were up for auction at Acker Merrall -- this was maybe a  
21 week or two before the auction or I'm not sure the exact timing  
22 but at some point before the auction -- and that there were  
23 pictures of these bottles available. And he obviously wanted a  
24 great deal more information about this at the time.

25 Q. Now I'm going to move forward in time to the auction

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1 itself. Did you attend the auction?

2 A. I did.

3 Q. Do you know whether Rudy Kurniawan was there?

4 A. He was.

5 Q. And how about Laurent Ponsot, you did see him there?

6 A. Yes, he came. He attended the auction.

7 Q. And what happened to those Domaine Ponsot wines that you  
8 noticed in the catalog, were they auctioned or not?

9 A. They were not.

10 Q. Because no one bought them or for some other reason?

11 A. No. I had previously been -- I had contacted the  
12 auctioneer, John Kapon, prior to the auction to tell him that  
13 these bottles were clearly fraudulent and that they needed to  
14 be withdrawn and we had several conversations about that.  
15 Ultimately, at the auction when the bottles were to come in the  
16 sequence, he announced that all of the Ponsot bottles had been  
17 withdrawn at the request of the Domaine.

18 Q. Now, the following day after the auction did you have a  
19 lunch with John Kapon, Rudy Kurniawan, and Laurent Ponsot?

20 A. I did. John had asked me to attend that luncheon and he  
21 wanted Laurent and Rudy to talk and he wanted Rudy to tell  
22 Laurent essentially where he had gotten the bottles.

23 Q. And did that topic come up, the question of where Kurniawan  
24 had got the bottles from during the lunch?

25 A. It came up several times. I believe that John was the

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1 first to ask the question. Rudy was --

2 Q. Before -- I'm going to ask you in a minute what Kurniawan  
3 said.

4 A. Okay, sorry.

5 Q. But before you do, can you describe what his demeanor was  
6 during this lunch and, in particular, while the topic of the  
7 source of the bottles came up?

8 A. His demeanor in general was I found him to be nervous,  
9 fidgety, much quieter and less self-assured than he normally  
10 was. He -- often when he spoke his eyes would be downcast. He  
11 was generally I would say his demeanor was very uncomfortable,  
12 very nervous.

13 Q. Now, what did he say with respect to where he got the  
14 bottles from?

15 A. He said he couldn't remember and he would have to go back  
16 and check his records.

17 Q. What was your reaction when you heard him say that?

18 A. I found that to be totally incredible.

19 THE COURT: Totally what?

20 THE WITNESS: Lacking credibility.

21 Q. Why?

22 A. My based on my prior experiences with him and the fact that  
23 he seemed to know in great detail the history of pretty much  
24 every bottle, the idea that he didn't know anything about where  
25 these particular bottles came from did not seem credible. And

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1 given the conversations we had about his general lack of  
2 recordkeeping, I didn't believe it was likely that he had some  
3 set of records that he would be going back to check.

4 In short, I thought that he was trying to evade the  
5 question. And, indeed, each time it came up, as soon as he  
6 would give that answer, he'd try to change the subject.

7 MR. HERNANDEZ: Thank you.

8 No further questions.

9 THE COURT: Counsel.

10 MR. MOONEY: Thank you, your Honor.

11 CROSS-EXAMINATION

12 BY MR. MOONEY:

13 Q. Good afternoon, Mr. Barzelay.

14 A. Good afternoon.

15 Q. You're writing a book about Burgundy?

16 A. I am, trying.

17 Q. But you've written things, have you not?

18 A. I have.

19 Q. And you've been published in some places?

20 THE COURT: You mean about wine or anything?

21 Q. Just generally.

22 A. Well, on the subject matter of wine, most of what I've  
23 written has been for a blog that I write. It's not a  
24 separate -- it's not published by someone else.

25 Q. Well, you put your name on it, don't you?

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DCDLKUR4 Barzelay - cross

- 1 A. Absolutely.  
2 Q. And you copyright it, don't you?  
3 A. Yes.  
4 Q. And you put it out there for the world to see?  
5 A. Absolutely.  
6 Q. And you assume people are going to read it, at least you  
7 hope they will?  
8 A. I hope so.  
9 Q. And one of the subjects that you write about is  
10 Mr. Kurniawan, is it not?  
11 A. That's correct.  
12 Q. And so is it fair to say in at least in your writings you  
13 expressed an opinion and taken a position with regards to  
14 Mr. Kurniawan and his role with regards to counterfeit wine?  
15 A. I have expressed my opinions, yes.  
16 Q. And expressed it publicly?  
17 A. Yes.  
18 Q. Let's go back then. When you first met him, first became  
19 aware of him, I think you told us it was back sometime around  
20 2004?  
21 A. As best I can recall, yes.  
22 Q. And he'd come on to the scene as a collector?  
23 A. Yes.  
24 Q. He'd come on to the scene as somebody who was buying  
25 quantities of wines?

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DCDLKUR4

Barzelay - cross

- 1 A. Yes.  
2 Q. And he was buying Bordeaux and Burgundies?  
3 A. At least, yes.  
4 Q. And other things?  
5 A. Yes.  
6 Q. And you understood back then that he sort of had a  
7 reputation as somebody who would buy just about anything,  
8 right?  
9 A. I'm not sure I'd say that, no. In fact, no.  
10 Q. Or at least pay just about anything?  
11 A. For the things that he was interested in buying, yes.  
12 There were definitely wines he told me at various times he had  
13 no interest in.  
14 Q. There was even an auction at one point where there was  
15 something he wanted, he didn't even bring his paddle down, he  
16 just left his paddle up in the air, right?  
17 A. I don't know that I was there. May have heard that story,  
18 but I don't recall being there.  
19 Q. But at any rate, lots of stories were going around --  
20 A. Yes.  
21 Q. -- about how much he was spending and how much he was  
22 buying?  
23 A. Yes.  
24 Q. And it was millions of dollars that he was spending buying  
25 wines; is that right?

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DCDLKUR4 Barzelay - cross

- 1 A. That's what I heard.  
2 Q. And you had no reason to believe otherwise?  
3 A. That's correct.  
4 Q. And he started showing up at places where wines were being  
5 drunk and he would bring wines; is that right?  
6 A. At the dinners I attended, he mostly bought wine in New  
7 York, mostly bought wines off the list. His practice in Los  
8 Angeles I have heard was different, but I don't know that from  
9 my own experience.  
10 Q. So you didn't go to dinners with him in Los Angeles?  
11 A. No.  
12 Q. When you went to dinners with him here, he would buy from  
13 the list that was available in the restaurant?  
14 A. Yes.  
15 Q. And spent fairly lavishly?  
16 A. Yes.  
17 Q. Were other people invited to these dinners that were  
18 recognized people within the wine collector community?  
19 A. Yes. There were usually, well, I only attended two or  
20 three dinners, but I'd say eight to ten people. Allen Meadows  
21 attended one or two of those, whom I've mentioned, the  
22 journalist, and other collectors, yes.  
23 Q. Allen Meadows is an important person in the wine community,  
24 isn't he?  
25 A. He's a respected journalist, yes.

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DCDLKUR4 Barzelay - cross

1 Q. He tastes wines and writes about what he tastes?

2 A. Yes.

3 Q. And if you're going to be a player in that community, he'd  
4 be one of the people that you'd want to get close to; is that  
5 right?

6 A. I would suppose, yes.

7 Q. And Mr. Stott that you mentioned would also be someone that  
8 was a player, right?

9 A. He was also someone who was buying a great deal of wine,  
10 yes, constantly.

11 Q. In fact, Mr. Stott and Mr. Kurniawan would often be on the  
12 opposite bidding side of pieces, would they not?

13 A. That's correct, yes.

14 Q. And sometimes the prices of certain items would go high  
15 because those two gentlemen would be the ones in the game; is  
16 that fair?

17 A. That's fair, yes.

18 Q. And you remember the Doris Duke auction, for example?

19 A. Yes.

20 Q. That was one example where there was some fierce bidding  
21 that went on between Mr. Stott's interests and Mr. Kurniawan's  
22 interests; is that right?

23 A. I don't recall specifically. I know they both bought a lot  
24 of wine at that particular auction.

25 Q. And that auction was unique because there was some very,

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DCDLKUR4 Barzelay - cross

1 very rare wines that were being made available for sale,  
2 weren't they?

3 A. That's correct, yes.

4 Q. There was a case of '34 La Tache, wasn't there?

5 A. I don't recall '34 La Tache. There was a great deal,  
6 multiple cases of '34 Romanee-Conti. That was one of the  
7 centerpieces of that auction.

8 Q. And Mr. Kurniawan ended up buying some of those?

9 A. Yes.

10 Q. So this dinner at Cru that you told us about in October of  
11 2005, that would be one where what Mr. Kurniawan did was just  
12 bought wine from the menu?

13 A. As best I recall, yes.

14 Q. And then he paid for the wine, he paid for the dinner, he  
15 paid for everything?

16 A. Yes.

17 Q. How many people were at that dinner?

18 A. Probably eight, maybe ten.

19 Q. And some pretty wealthy people, weren't there?

20 A. I believe so, yes.

21 Q. None of them got their wallet out, it was his American  
22 Express card that paid for it?

23 A. That's my recollection, yes.

24 Q. Do you sometimes take people out to lunch and dinner in  
25 terms of what you're doing as your wine business?

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DCDLKUR4 Barzelay - cross

- 1 A. Sometimes, yes.  
2 Q. And important influential people, are those the sort of  
3 people you might be willing to buy dinner for?  
4 A. No, that's not what this business is about.  
5 Q. The people whose business you want to attract would be,  
6 those would be the sort of people --  
7 A. No, they would be sommeliers in restaurants predominantly.  
8 Q. Those are people who would be your customers?  
9 A. Customers, yes.  
10 Q. You said you had a conversation with Mr. Kurniawan clear  
11 back in 2004 at the top 100 wine event?  
12 A. That's correct.  
13 Q. And you knew at that point in time that he'd really only  
14 been on the scene of the rare wine world for about a year, is  
15 that right, maybe two?  
16 A. I had only known of his being on the scene for that period  
17 of time, yes.  
18 Q. It was there was no question he was a fairly recent entry  
19 into this scene?  
20 A. Yes, that's correct.  
21 Q. And he was a young man. He was quite a young man then,  
22 wasn't he?  
23 A. He was still in his late twenties, I believe, yes.  
24 Q. So it hadn't even been that long that he had been legal to  
25 drink, even in Los Angeles.

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DCDLKUR4

Barzelay - cross

1 So do you consider yourself an expert at being able to  
2 spot fraudulent bottles?

3 A. I think expert is a term of art in the law as I understand  
4 it. I'm reasonably good at it but I don't necessarily -- what  
5 such a knowledge I have is pretty much confined to Burgundy.  
6 It doesn't extend to Bordeaux. And I don't pretend to be  
7 completely knowledgeable on the subject. It's a very  
8 complicated subject.

9 Q. And, in fact, it's pretty dangerous to start to think you  
10 know it all, isn't it?

11 MR. HERNANDEZ: Objection.

12 THE COURT: If you want to answer, you can answer.

13 A. Yes.

14 THE COURT: I think our experience is for everybody.

15 Q. But what you were getting from Mr. Kurniawan at that point  
16 was I know it, I can do it, right?

17 A. I would say, yes.

18 Q. Didn't that make you just kind of shake your head a little  
19 bit and say, boy, he's looking for trouble?

20 A. No, that wasn't my reaction. I mean I did, I did wonder.  
21 I wondered how what the -- how deep his knowledge was, where he  
22 had gained it, what the basis of it was, yes.

23 Q. You knew people like Allen Meadows, how many years had  
24 Meadows been out doing this?

25 A. A very long time, probably 30 years.

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DCDLKUR4 Barzelay - cross

1 Q. You knew people like Michael Egan?

2 A. I don't know.

3 Q. Mr. Edgerton, for example?

4 A. I'm aware of who he is, but I don't.

5 Q. But at least Meadows is somebody you knew had done it a  
6 very, very long time?

7 A. Yes.

8 Q. And what you did know about Mr. Kurniawan is that his  
9 palate was very good, right?

10 A. He did seem to have an excellent palate, yes.

11 Q. So he was able to taste things and he could do blind  
12 tastings and tell you what you they were?

13 A. I did not experience that. I heard stories about that, but  
14 I did not experience that.

15 Q. But that was part of what had sort of elevated him into the  
16 recognized world, if you will, was it not?

17 A. I don't know of my own knowledge.

18 Q. In fact, there was another conversation you told us about  
19 between the two of you where there were two Romanee-Conti wines  
20 of the same vintage but with different labels on them -- do you  
21 remember you were testifying about that before -- and  
22 Mr. Kurniawan raised a question why are we looking at two  
23 different labels; is that right? Is that what happened?

24 MR. HERNANDEZ: Object. I don't think that's the  
25 right wine.

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DCDLKUR4 Barzelay - cross

1 THE COURT: If you recall.

2 Q. Am I picking the wrong wine? You remember an event with  
3 you and Mr. Kurniawan where there two same year vintages of the  
4 same wine with different labels?

5 A. I'm not sure exactly what you're referring to.

6 Q. Let me see, look closer at my notes.

7 THE COURT: Only if you're aware.

8 Q. Maybe it was a Roumier?

9 A. Are you referring to what I said earlier about him asking  
10 me about certain labels, yes. We were not comparing side by  
11 side, but he had I believe sent me a picture of a Roumier  
12 label.

13 Q. And basically said what's -- how can this be?

14 A. Right. Is this -- have you seen this before?

15 Q. As if this looks like it's fake to me.

16 And you explained it to him because you knew the  
17 difference, right?

18 A. On that particular occasion, actually, as I recall, I did  
19 not respond.

20 Q. So you didn't tell him this was a negociant and that's why?

21 A. It was after the point where I had come to question why he  
22 was asking me these things.

23 Q. But it seemed to indicate that maybe his expertise was not  
24 quite as good as he expressed it as being, wouldn't it, if he  
25 didn't know that that was a negociant label and that was

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DCDLKUR4 Barzelay - cross

1 something that exists?

2 MR. HERNANDEZ: Objection.

3 THE COURT: Sustained.

4 Did you have that sense?

5 THE WITNESS: No, that was not my conclusion.

6 Q. Okay. Now, you helped to plan the Don Stott dinner; is  
7 that right?

8 A. In January of 2007, the Roumier tasting, yes, that's right.

9 Q. You've testified at some length about that. I'll try not  
10 to belabor it too much. But --

11 THE COURT: Let me stop for a minute. Did you want a  
12 break -- we're going to end at two -- or do you want to keep  
13 going? Keep going. Anybody need a break? No.

14 All right. So maybe we'll take five minutes. Now  
15 you'll find back in the jury room we've got a little snack or  
16 something to tide you over, but we will end at 2 o'clock.

17 (Continued on next page)

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DCDLKUR4

1 (Jury not present)

2 THE COURT: So my guess is this could turn into ten  
3 minutes or so because there is a little something for them back  
4 there.

5 MR. HERNANDEZ: Okay, Judge. Would you like us to  
6 give you an update at this time?

7 THE COURT: Yeah, that would be great.

8 MR. HERNANDEZ: So Mr. Barzelay is the last witness we  
9 have for the day, so we won't have another witness. And then  
10 on Monday we expect to rest. We think we're going to get our  
11 case in entirety on Monday.

12 THE COURT: Would you have another witness on Monday?

13 MR. HERNANDEZ: We do have I believe two more  
14 witnesses on Monday. And then there are one or two more small  
15 matters that I want to talk to Mr. Mooney and Verdiramo about  
16 that I think we can do by stipulation. If not, we might have  
17 two custodians to get a couple of documents in that we think  
18 are relevant but we're on track. We expect to rest on Monday.

19 And then we want to raise the issue if there's going  
20 to be a defense case and whether the defendant is going to  
21 testify, when we're going to get notice, 3500, and those sorts  
22 of things.

23 MR. MOONEY: We have Mr. Egan.

24 THE COURT: Hold on one second.

25 Those two witnesses that you have on Monday, are they

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1 long or short?

2 MR. HERNANDEZ: One is long. Mr. Egan is the expert,  
3 the wine authentication expert, but not terribly long. And the  
4 other one is probably maybe a half-hour or so. It's the ICE  
5 agent to testify about immigration matters.

6 MR. MOONEY: That might be a little problematic. We  
7 have Mr. Collins scheduled to come in on Monday so we've got  
8 him available first thing Tuesday morning based upon what we  
9 talked about before. We may have one or witness, another  
10 expert that we're trying to make arrangements to get up here on  
11 Monday, and that's all we anticipate.

12 MR. HERNANDEZ: Okay. So just so that we're clear,  
13 two witnesses.

14 MR. MOONEY: We may wrap up, we may be done Monday  
15 with time left over, but I don't have Mr. Collins physically  
16 here until Tuesday morning.

17 THE COURT: Okay. So we'll have a charge conference  
18 or something like that. So your witnesses are scheduled for  
19 Tuesday.

20 MR. MOONEY: That's correct.

21 THE COURT: One or both.

22 MR. MOONEY: That's correct, your Honor.

23 THE COURT: Okay. So that will work.

24 MR. MOONEY: Okay.

25 THE COURT: So if we have open time on Monday say in  
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DCDLKUR4

1 the afternoon, we will have our charge conference.

2 MR. MOONEY: Perfect.

3 THE COURT: Then we'll have your witnesses. Then  
4 we'll talk at the charge conference about when the summations  
5 will be depending on how long your witnesses are going to --

6 MR. MOONEY: Right.

7 THE COURT: -- really. If your witnesses were  
8 finished in the morning, for example, we'd go right to  
9 summation.

10 MR. HERNANDEZ: Okay.

11 THE COURT: Is that fair?

12 MR. HERNANDEZ: That sounds good.

13 Is Mr. Mooney comfortable putting on the record that  
14 the defendant is not going to testify? Because that makes a  
15 big difference.

16 THE COURT: Well, yeah, I think he suggested that. I  
17 always give the defense some latitude in that regard. He  
18 probably has to discuss that more with Mr. Kurniawan.

19 (Continued on next page)

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DCDBKURT5 Trial

1 (In open court; jury not present)

2 MR. MOONEY: One of the things I always have to do  
3 is I always have to ask him and let him make the final  
4 decision.

5 THE COURT: And you should do that in this case. So  
6 we won't bind you to what--

7 MR. MOONEY: Right. I think it is highly unlikely.

8 THE COURT: Okay. Whatever. But he has the right to  
9 make that decision, obviously.

10 MR. MOONEY: Absolutely.

11 THE COURT: And, indeed, I would urge you to discuss  
12 it with him at great length, or whatever length you think is  
13 appropriate.

14 MR. MOONEY: All we can do is make our  
15 recommendations. Some people follow them and some people  
16 don't.

17 MR. HERNANDEZ: So in the event that the defendant  
18 does decide to testify, it will be on Tuesday, not Monday,  
19 Judge?

20 MR. MOONEY: That's true.

21 MR. HERNANDEZ: Is that fair to say?

22 MR. MOONEY: Yes.

23 THE COURT: All right. Just to make sure  
24 Mr. Kurniawan has heard, we're having a discussion about the  
25 balance of the trial, when it's likely to end. It's our sense

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1 that the government's case will conclude on Monday. And then  
2 your defense case will start on Tuesday. And in that context,  
3 counsel, your counsel, has indicated that the question about  
4 whether or not you testify is solely your decision -- obviously  
5 speaking with counsel -- and he's going to let us know about  
6 that probably on Monday.

7 THE DEFENDANT: Thank you, your Honor.

8 THE COURT: Okay? Fair?

9 All right. I'll be back in a minute.

10 (Recess)

11 (Continued on next page)

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DCDBKURT5 Trial

1 (In open court; jury present)

2 THE COURT: Please be seated.

3 THE DEPUTY CLERK: Mr. Barzelay, I remind you you're  
4 still under oath.

5 THE WITNESS: Yes, thank you.

6 BY MR. MOONEY:

7 Q. Mr. Barzelay, when we stopped, we were beginning to talk  
8 about the Don Stott dinner.

9 Do you recall that dinner?

10 A. Yes, the dinner I assume you're speaking of in January of  
11 2007.

12 Q. And at that dinner, a good part of the wines that were  
13 tasted had come from the purchases from The Cellar I and Cellar  
14 II auctions at Acker Merrall. Is that right?

15 A. That's correct.

16 Q. And I think you told us that of the 15 bottles that were  
17 there, 11 of them were bottles that were sourced in one way or  
18 another to Rudy?

19 A. Eleven or 12, yes.

20 Q. And you told us that from that, you thought five or six  
21 were fakes?

22 A. No, six or seven.

23 Q. Six or seven?

24 Now, when you originally met with Stanley Los, an  
25 investigator for Mr. Koch -- do you recall that, meeting with

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DCDBKURT5 Trial

1 him?

2 A. I recall meeting with him, yes.

3 Q. And do you recall telling him the number of fakes that you  
4 thought there were?

5 A. I do not recall the substance of that.

6 Q. Do you recall telling him that were four fakes?

7 A. No.

8 Q. Do you recall listing for him the '55 Roumier Musigny, the  
9 '29 Bonnes-Mares, the '23 Bonnes-Mares, and the '45  
10 Bonnes-Mares?

11 A. I recall those wines were fake. There were also, as I  
12 recall, two bottles each that we tasted of the '55 and the '23.  
13 So that could account for the difference in count.

14 Q. Again, those wouldn't be part of the list of 11, would  
15 they? Those would be others?

16 A. No, they would be part of that list.

17 Q. I see.

18 So of the 15 wines that are listed on the program, not  
19 all-- not 11 of those 15 or 12 of those 15 came from Rudy  
20 because part of what he brought, part of what was there, were  
21 double bottles. Is that right?

22 A. That's correct. There were two wines where we tasted a  
23 second bottle. That would be listed once on the program.

24 Q. So that was the '23 and the other was the '29?

25 A. No, '23 and '55.

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DCDBKURT5 Trial

1 Q. The '23 and the '55. Okay.

2 So we have those four wines, but six different  
3 bottles?

4 A. Yes. I think there may have been one other that fell in  
5 that category, but, yes.

6 Q. Then, subsequent to that, you had an opportunity to make  
7 further examination of Mr. Stott's cellars. Is that correct?

8 A. That's correct.

9 Q. And you found a good number of anomalies when you started  
10 going through wines in his cellars.

11 Is that fair to say?

12 A. Of bottles that he had purchased in The Cellar I and Cellar  
13 II auctions, yes.

14 Q. And other auctions. Right?

15 A. We were-- I was specifically looking at the bottles that  
16 were purchased in that auction. This was not a general review  
17 of the cellar.

18 Q. So when you were doing your examination, that was your  
19 focus, was just that part of his cellar?

20 A. He had asked me to do that because he wanted to return  
21 bottles under the terms of the guarantee.

22 Q. And you even tasted some of the wines that you found,  
23 didn't you?

24 A. We did.

25 Q. Of the wines that you were looking at.

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1 A. Yes.

2 Q. And in the course of doing that, you found even more  
3 confusion, didn't you?

4 A. I wouldn't say confusion. I would say more fraudulent  
5 bottles.

6 Q. And didn't you then start finding buildings that looked  
7 like they had fraudulent labels, but authentic wine?

8 A. That was true at the dinner in January of 2007, yes.

9 Q. And you found bottles with exactly the same labels that you  
10 did not think were authentic labels. One bottle would be not  
11 real and the other bottle would be real. Is that right?

12 A. No, we found bottles that had labels that appeared  
13 similar-- that appeared new and inauthentic and similar to  
14 those on the bottles that were not real, but that nonetheless  
15 when tasted the bottles tasted real.

16 Q. And you wrote about this back in 2012, didn't you?

17 A. Yes.

18 Q. And you wrote about it in your article about

19 Mr. Kurniawan?

20 A. Yes.

21 Q. Do you recall in that article writing the following: "The  
22 labels on the fraudulent bottles --

23 MR. HERNANDEZ: Objection.

24 THE COURT: I'll allow it.

25 Q. "The labels on the fraudulent bottles were surprisingly

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DCDBKURT5 Trial

1 pristine for wines that were ostensibly 50 to 85 years old, and  
2 there were other label and capsule issues; however, the  
3 authentic bottles looked much the same (in other words, in this  
4 case it wasn't that the fakes looked real; rather, the real  
5 bottles looked fake)."

6 Is that what you wrote?

7 A. That is what I wrote. That's a part of what I wrote, yes.

8 Q. Now, the next time after the Stott dinner that you had an  
9 opportunity to sample wines that were supplied by  
10 Mr. Kurniawan, by Rudy, was the Per Se dinner?

11 A. The series of -- yes. The Romanee-Conti tasting.

12 Q. And that's over three days. Right?

13 A. Yes.

14 Q. Because even tasting, you're not going to do 70 wines in  
15 one sitting.

16 A. Sometimes we do.

17 Q. Okay. Not as good an idea. Right?

18 A. No.

19 Q. And Rudy supplied a pretty good number-- how many bottles  
20 of wine did he supply? Do you remember?

21 A. I don't recall. Of the wines that we actually used, it  
22 was, I'm guessing, somewhere around a dozen, but I'm not  
23 certain. There were also bottles that he supplied that we did  
24 not use.

25 Q. Right.

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DCDBKURT5 Trial

- 1 A. I'm just not sure of the exact number.  
2 Q. So by the end-- but by the end of the dinner, there were  
3 full bottles left over?  
4 A. Yes.  
5 Q. And these were pretty good bottles of wine?  
6 A. Yes, presumably.  
7 Q. These are not the kinds you're just going to stick on the  
8 shelf someplace. You sort of want to watch out for these?  
9 A. Well --  
10 Q. They're expensive?  
11 A. They're expensive bottles of wine, yes.  
12 Q. So after the dinner you've got a number of expensive  
13 bottles of wine that belong to Rudy?  
14 A. Yes.  
15 Q. And those bottles are going to be returned to him?  
16 A. That's correct.  
17 Q. And then he also asked for his empties and there were,  
18 what, eight or ten of those?  
19 A. Actually, he just asked for his empties initially. He  
20 didn't ask at all about the full bottles.  
21 Q. But the e-mail communication you had with him talks about  
22 the full and the empties. Right?  
23 A. In one of the e-mails that I just read, as you'll note, it  
24 asks do you also-- it refers to the full bottles. It was the  
25 first --

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1 Q. It says "the bottles."

2 A. I was reminding him that he had those as well.

3 Q. Well, it didn't say "the empties." It just said "the  
4 bottles," didn't it?

5 A. I'd have to look.

6 THE COURT: You have to look at the exhibit.

7 MR. MOONEY: Let's pull that up and take a look, shall  
8 we?

9 THE COURT: This is the first of two methods of  
10 shipment, Mr. Mooney, remember?

11 MR. MOONEY: Well, I think it's just before that. I  
12 think the first one in the series is 13-26.

13 Q. Okay. Now, the very bottom, if we look at this e-mail  
14 thread--

15 MR. MOONEY: Let's highlight again the very bottom  
16 parts.

17 Q. So this is the beginning of the thread. This is where  
18 you've invited-- you told him where and when to be.

19 A. That's correct.

20 Q. Okay. So that's important in something like this, to know  
21 where and when to be there.

22 A. Absolutely.

23 Q. Okay. So you're giving him that information.

24 MR. MOONEY: So now let's stop that and let's go back  
25 up to the next. The one above that. No, the next one above--

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1 no, no, before you get to that there's one more. Just below  
2 that.

3 THE WITNESS: That's all part of the same.

4 MR. MOONEY: There we go. We'll do both of them.

5 Okay.

6 Q. Then what you get is you get "Thanks for the great  
7 weekend."

8 And then, above that, he says "Can you please arrange  
9 to have my bottles of RC shipped to" and then gives the  
10 address. Right?

11 A. Yes.

12 Q. He doesn't say which bottles he's talking about.

13 A. That's correct, in this e-mail.

14 Q. Okay. So let's go up then. And then the next thing we get  
15 after that is you say "Will do. I assume you want full bottles  
16 (backups that were not used) shipped to the same address as  
17 well as the empties?"

18 A. That's correct. That's the e-mail I was referring to where  
19 I was reminding him he had full bottles as well as empties to  
20 be returned.

21 Q. Okay. And that's from you to him?

22 A. Yes.

23 Q. So when you-- but his e-mail to you just said Send me my  
24 bottles of RC?

25 A. That's correct.

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DCDBKURT5 Trial

- 1 Q. Okay. And then you-- because part of the thing is you're  
2 going to -- you're not going to pack them all together and use  
3 the priority fast shipping for both the full bottles and the  
4 empties, are you?  
5 A. That's correct.  
6 Q. Now, you need to use overnight mailing for the full bottles  
7 in order to protect the contents. Right?  
8 A. Yes.  
9 Q. You can't put those in a truck and have them moving across  
10 the country in the hot sun?  
11 A. If it were refrigerated, you could.  
12 Q. But that's more-- you're more worried about the shipment  
13 that way. Right?  
14 A. Yes.  
15 Q. So the fast way to do it is to do it overnight?  
16 A. The fast way.  
17 Q. And even then you were concerned about the weather. You  
18 said I don't want to send it to you right now because it's too  
19 warm?  
20 A. The full bottles, yes.  
21 Q. The full bottles, right.  
22 A. Yes.  
23 Q. But then you sent the others out by ground.  
24 A. That's correct.  
25 Q. And later on you get an e-mail from him asking, hey, you

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- 1 know, it's May 30th and I haven't seen my bottles. Right?  
2 A. Yes.  
3 Q. But at that point in time, you still hadn't even sent the  
4 full bottles?  
5 A. That's correct.  
6 Q. And he doesn't say Where are my empties? He says Where are  
7 my bottles? Right?  
8 A. Yes.  
9 Q. Do you remember how many full bottles there were?  
10 A. I do not. Probably-- no.  
11 Q. You say "bottles." I take it that means there was more  
12 than one.  
13 A. Yes, I would-- as best I can recollect, there was somewhere  
14 in the neighborhood of a case.  
15 Q. A case?  
16 A. It could have been more or less.  
17 Q. If somebody had 12 of your bottles of Romanee-Conti, would  
18 you want them?  
19 A. Absolutely.  
20 Q. Okay. And then I think you said-- when the people drank at  
21 this big Per Se dinner, that one went off without a hitch and  
22 everything tasted great?  
23 A. Not everything tasted great, but it went off without a  
24 hitch, yes.  
25 Q. Okay. Everything went off as it should be?

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1 A. Yes.

2 Q. And one of the-- one of the highlights of that dinner was,  
3 in fact, the wine that had been supplied by Rudy. Isn't that  
4 correct?

5 A. Yes. The highlight, I would say.

6 Q. The highlight, the number one, the best, the crme de la  
7 crme, was the '45 Roumier. Right?

8 A. Yes, absolutely.

9 Q. And he supplied that?

10 A. Yes.

11 MR. MOONEY: In fact, could we put the ELMO on for a  
12 minute?

13 Q. I show you what's been previously marked as Defense Exhibit  
14 B-31.

15 Does that look like the '45 Roumier?

16 A. It does.

17 Q. Is your name on there someplace?

18 A. I presume it is. I recall signing it.

19 Q. Okay.

20 A. I don't think I can see it on the small screen, but it  
21 should be there.

22 Q. And this was one of the bottles that you shipped back to  
23 Mr. Kurniawan, is it not?

24 A. That's correct.

25 Q. Yes. And this bottle has some pretty important signatures

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1 on it, too, doesn't it?

2 A. It has the signatures of all of the people who attended,  
3 yes.

4 Q. Including Christophe Roumier?

5 A. No.

6 Q. Aubert de Villaine?

7 A. Aubert de Villaine, yeah.

8 Q. Aubert de Villaine. Roumier would not have been invited to  
9 this one, okay, because this is the DRC.

10 So that would be a bottle you would expect he would  
11 want back. Right?

12 A. Yes.

13 Q. And if that had been your bottle, you would want it back.  
14 Right?

15 A. That's correct.

16 Q. Now, additionally, after that one of the things that you  
17 tried to do is to figure out what people had paid for some of  
18 the wines, for the wines that they had supplied. Is that  
19 right?

20 A. That's correct.

21 Q. And that's in May of 2007. And at that time you asked Rudy  
22 what the sources were on the bottles that he had supplied to  
23 that dinner?

24 A. No, we asked -- starting before the dinner, it was the same  
25 question, what his cost had been, not where the bottles came

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1 from.

2 Q. And he was never able to provide you those cost figures,  
3 was he?

4 A. That's correct.

5 Q. And he told you that he just didn't have very good  
6 records?

7 A. He did.

8 Q. And you knew that he had been just gluttonously buying wine  
9 for the years preceding?

10 MR. HERNANDEZ: Objection.

11 THE COURT: If you can answer the question.

12 A. He had been buying in large quantities, yes.

13 Q. Okay. So in a way you weren't surprised that he couldn't  
14 specifically give you information, but in other ways you  
15 thought, gee, he should be keeping track of this. Is that  
16 fair?

17 A. I thought whether or not he had specific records, that he  
18 had a pretty good memory for what he bought where and what he  
19 paid for it. And so I did expect more information than I got.

20 Q. He didn't have it on that occasion, did he?

21 A. No.

22 Q. And there were no questions about those. Right?

23 A. He didn't supply it.

24 Q. He didn't supply it.

25 And then, almost a year later, we have the incident

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1 with regards to the Ponsot wines?

2 A. That's correct.

3 Q. And we have a catastrophic number of wines that purport to  
4 have come from Ponsot Domaine that are just obviously fakes.  
5 Right?

6 A. That's correct. A large number.

7 Q. And it creates this-- you start to get the ball rolling  
8 when you call up Mr. Ponsot and you tell him there's a problem  
9 here. And he comes all the way out to New York. Right?

10 A. He did, yes.

11 Q. All right. And nobody ever disagrees that there's this big  
12 stack of false wine there. Right?

13 A. That's correct.

14 Q. So then you go to a lunch the next day. And at this lunch  
15 is Mr. Ponsot, whose wines those purported to be, and  
16 Mr. Kapon, who is the person who Mr. Kurniawan has been doing  
17 business with in the auctions, and yourself and Mr. Kurniawan.

18 And Mr. Kurniawan was the one that put the wine in  
19 that auction, is that right, those Ponsot bottles?

20 A. Yes, correct.

21 Q. If you were Mr. Kurniawan going to that lunch, wouldn't you  
22 be embarrassed?

23 MR. HERNANDEZ: Objection.

24 THE COURT: Sustained.

25 Q. You said that he looked nervous, he looked fidgety. Is

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1 that right?

2 A. That's correct.

3 Q. Could he have just been ill at ease and very, very  
4 embarrassed?

5 MR. HERNANDEZ: Objection.

6 THE COURT: Sustained.

7 Q. You knew he was from Indonesia, didn't you?

8 A. I was told he was from Indonesia. I have no knowledge of  
9 where he's from.

10 Q. Rudy didn't tell you at that lunch, Oh, what are you  
11 worried about, these wines are fine, did he?

12 A. No.

13 Q. But he didn't provide the source of where they had come  
14 from?

15 A. He did not.

16 Q. And just as he had on previous occasions, he didn't provide  
17 information?

18 A. I'm not sure I understand --

19 Q. Strike that.

20 And to this day, as you sit here, you really don't  
21 know where those Ponsot wines came from, do you?

22 A. I do not.

23 MR. MOONEY: No more questions.

24 THE COURT: Okay. Any redirect?

25 MR. HERNANDEZ: Yes, your Honor.

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1 REDIRECT EXAMINATION

2 BY MR. HERNANDEZ:

3 Q. Mr. Barzelay, do you remember being asked some questions  
4 by Mr. Mooney about something you had written about having  
5 found bottles with fake labels, but authentic wine inside of  
6 them?

7 A. Yes.

8 Q. Do you remember those questions?

9 A. Yes.

10 Q. You had written about that before coming here today at some  
11 point?

12 A. I had written that in the blog article that Mr. Mooney  
13 referred to, yes.

14 Q. And why had you written that observation or why had you  
15 noted that you found authentic wine with fake labels on it?

16 A. Well, I was trying in that article to be as comprehensive  
17 as I could of my understanding of what had happened with all  
18 these fake wines and to fully report to the reader as many of  
19 the impressions as I could that I had had.

20 Q. You were also asked some questions about a statement that  
21 Rudy Kurniawan made about a lack of keeping records.

22 Do you remember that?

23 A. Yes.

24 Q. It was something -- in sum and substance, Kurniawan said he  
25 didn't keep records. Correct?

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DCDBKURT5 Barzelay - redirect

1 A. I'm not sure I would go that far, but that he didn't have  
2 any organized set of records.

3 Q. I see.

4 So it wasn't that he didn't have them; just they  
5 weren't organized?

6 A. The impression I got was that to the extent he had records  
7 of purchases, they were not organized. But I didn't get any  
8 sense that I could tell you of what he might have kept or not  
9 kept.

10 Q. Well, that's my question. Whatever it is he told you about  
11 his recordkeeping system, or lack of records, you don't have  
12 any personal knowledge to know whether that's true or not.  
13 Right?

14 A. That's correct, I do not have any personal knowledge.

15 Q. You haven't been to see his records ever, have you?

16 A. No.

17 Q. You are just going off of what he told you?

18 A. That's correct.

19 Q. And a couple final questions.

20 You were shown that bottle of '45 Romanee-Conti that  
21 everyone had signed from the tasting.

22 A. Yes.

23 Q. Is that one of the bottles that Mr. Kurniawan got back?

24 A. Yes, it is.

25 Q. One of the empty bottles?

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DCDBKURT5

Barzelay - redirect

1 A. Yes.

2 Q. And that's a special bottle, isn't it?

3 A. It certainly is, yeah. It was a very special occasion and  
4 a privilege to drink that one.5 Q. Did Kurniawan ask just for the '45 back or did he ask for  
6 all of the bottles?

7 A. He asked for all of the empty bottles that he had supplied.

8 Q. And were all of the bottles that he supplied special  
9 bottles like that '45?

10 A. Not at all.

11 Q. Can you explain more?

12 A. I mean, he had supplied, and we had drunk, a number of  
13 bottles, as I say, from off vintages, wines that were not by  
14 any stretch of the imagination great wines. We were tasting  
15 them because we wanted to be as inclusive as possible, but many  
16 of those poor vintage wines had given up the ghost a long time  
17 ago.18 Q. And were those off-vintage wines signed by all of the  
19 participants like that '45?20 A. There was no other bottle that was signed by the  
21 participants.

22 Q. Thank you.

23 MR. HERNANDEZ: No further questions.

24 THE COURT: Okay. We'll excuse the witness and that  
25 will be it for today.

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DCDBKURT5 Barzelay - redirect

1 (Witness excused)

2 THE COURT: Let me just go over a few things with the  
3 jurors. Keep your notes in your seats.

4 And, Noam, I want to make sure that they're secured  
5 over the weekend.

6 And then remember for over the weekend these  
7 instructions: First, do not talk to each other about the case  
8 or anyone who has anything to do with it until the end of the  
9 case, when you go to the jury room to decide, deliberate, on  
10 your verdict.

11 Second, do not talk with anyone else about the case or  
12 about anyone who has anything to do with it until the trial has  
13 ended and you have been discharged as jurors. And you remember  
14 talking is in the broadest sense. Social media, e-mailing,  
15 texting, Tweeting, et cetera, is included. And anyone else  
16 includes members of your family and your friends and embraces  
17 social media. So you can tell them that you're a juror in a  
18 case, but don't tell them anything else about the case until  
19 after you've been discharged by me.

20 Third, do not let anyone talk to you about the case.  
21 If someone were to do that, please report that to me or to  
22 Christine immediately.

23 Fourth, do not read any news or internet stories or  
24 articles, blogs, et cetera, or listen to any radio or TV or  
25 internet reports about the case or about anyone who has

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1 anything to do with it.

2 Fifth, do not do any type of research or any type of  
3 investigation -- for example, on the internet -- about the case  
4 on your own.

5 So just to bring you up to date schedulewise, we're  
6 very much on the schedule that I described on Monday. My  
7 expectation is that certainly before Thursday, Thursday at the  
8 latest, I will give you the instructions and we'll have the  
9 summations and you'll begin your deliberations.

10 And it could even be a little bit before Thursday.  
11 We'll see.

12 So have a great weekend and I thank you for your  
13 attention. See you on Monday.

14 (Jury excused)

15 (Continued on next page)

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DCDBKURT5 Barzelay - redirect

1 (In open court; jury not present)

2 THE COURT: Okay. Yes?

3 MR. HERNANDEZ: Since your Honor isn't taking written  
4 submissions, I want to make an oral application at this point.  
5 We think it's too late for the defense to provide notice that  
6 they're going to call potentially a handwriting expert, and  
7 here are the reasons why. The only documents, one document,  
8 it's 36-1, it's the note that Laurent Ponsot said that the  
9 defendant gave him with --

10 THE COURT: The two phone numbers?

11 MR. HERNANDEZ: -- the two phone numbers.

12 THE COURT: Correct.

13 MR. HERNANDEZ: That was produced in discovery from  
14 the very beginning. If anyone has read any article, I'm sure  
15 Mr. Verdiramo and Mr. Mooney have, about this case, those  
16 numbers are mentioned by Laurent Ponsot in every article about  
17 it. It's no secret that we were going to bring this fact out.  
18 And to be given notice now that maybe an expert, whose name we  
19 don't know, might be called on Tuesday, we will not be able to  
20 call an expert to rebut that, to analyze the report.

21 So we're going to make an application at this point to  
22 preclude the defense from making this eleventh-hour motion for  
23 an expert.

24 MR. MOONEY: Your Honor, we didn't get the 3500  
25 materials until just before trial, as the Court knows --

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DCDBKURT5

Barzelay - redirect

1 THE COURT: Well, you got it a week ago.

2 MR. MOONEY: A week ago.

3 THE COURT: Right.

4 MR. MOONEY: And there are three different versions  
5 that Mr. Ponsot had told with respect to what happened with the  
6 note throughout -- at different times. At one point in time,  
7 he said that he wrote it down. At least that's what -- and we  
8 have nothing that comes directly from him. All we get is what  
9 other people said. So at one point he I wrote --

10 THE COURT: In his testimony?

11 MR. MOONEY: Not in his testimony here in court, but  
12 in the materials that we received previously. So there was  
13 that version.

14 There was another version that said that Mr. Kurniawan  
15 supplied it.

16 And then there was the third version, which is what we  
17 got in court, was that Mr. Kurniawan wrote it down at the time  
18 in front of him. And that's why when he said that, you know, I  
19 assured that. So we immediately went back, because we looked  
20 at this and said, Wait a minute, this doesn't look right,  
21 because we had been seeing --

22 THE COURT: Well, what's not right? Where do you  
23 think the numbers came from?

24 MR. MOONEY: We don't think that this-- this doesn't  
25 look anything -- that doesn't look anything like

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1 Mr. Kurniawan's handwriting.

2 THE COURT: You think Mr. Ponsot made up those  
3 numbers?

4 MR. MOONEY: I don't know who wrote those numbers  
5 down. If Mr. Ponsot wrote the numbers down and Mr. Kurniawan  
6 told him to write them down, he could have written them down  
7 wrong. It's important whether Mr. Kurniawan wrote the numbers  
8 or not. And Mr. Kurniawan --

9 THE COURT: So here's the thing. You'll have to  
10 submit letter briefs. The government can submit something  
11 today and you can submit something tomorrow, after you've read  
12 it, and I'll take a look at it.

13 MR. MOONEY: Okay.

14 MR. HERNANDEZ: Judge, just to correct something,  
15 this was not produced as 3500 material. That's why there's an  
16 RK stamp. There's only two Indonesia numbers in the whole  
17 discovery.

18 THE COURT: I get it.

19 MR. MOONEY: We don't know what that means. It  
20 comes-- it's just there. It's one of three hundred-- it's one  
21 of six hundred thousand documents with an RK number.

22 MR. HERNANDEZ: There's an index that says where it  
23 came from.

24 THE COURT: Okay. Okay. So let's have a short letter  
25 application with authorities. It is kind of late in terms of

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1 experts, but you'll see what your authorities say. And then  
2 you could submit that -- you've got plenty of time today -- by,  
3 say, 7 p.m. You can fax for that purpose. And then we'll have  
4 Mr. Mooney respond by tomorrow. It should be easily done by  
5 midday, right? Because you already know what you're going to  
6 argue, but you'll see that. So let's say 2 o'clock from you,  
7 Mr. Mooney.

8 MR. MOONEY: Okay.

9 THE COURT: And the fax number for this purpose is  
10 212-805-6717.

11 And you might spend a couple minutes, too, and see if  
12 you can work this out without an application with Mr. Mooney.  
13 I don't know if there's some possibility to come up with a  
14 stipulation that might cover this topic.

15 MR. VERDIRAMO: Judge, can I just repeat that number  
16 back to make sure we have it correctly? 212-805-6717?

17 THE COURT: Correct.

18 MR. VERDIRAMO: Thank you, Judge.

19 THE COURT: Okay.

20 (Adjourned to December 16, 2013, at 9:00 a.m.)

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